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EEOC v. OSI Restaurant Partners, Inc., et al.

Judge Stephen M. McNamee

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EEOC v. OSI Restaurant Partners, Inc., et al.

Keywords

EEOC, OSI Restaurant Partners, Fleming's Prime Steakhouse and Wine Bar, Outback/Fleming's, Fleming's Prime Steakhouse and Wine Bar, OS Restaurant Services, CV-07-683-PHX-SMM, Consent Decree, Sexual Harassment, Retaliation, Sex, Male, Hospitality, Employment Law, Title VII

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

No. CV-07-683-PHX-SMM

Plaintiff,

v.

OSI Restaurant Partners, Inc., a
Delaware corporation, d/b/a Fleming's
Prime Steakhouse and Wine Bar;
Outback/Fleming's, LLC,
a Delaware corporation, d/b/a
Fleming's Prime Steakhouse and Wine
Bar; OS Restaurant Services, Inc., a
Delaware corporation, d/b/a Fleming's
Prime Steakhouse and Wine Bar,

CONSENT DECREE

Defendants.

RECITALS

The United States Equal Employment Opportunity Commission ("the
Commission" or "EEOC") filed this action on March 30, 2007 against OSI
Restaurant Partners, Inc.; Outback/Fleming's, LLC; and OS Restaurant Services,
Inc., to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

1 (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. In its Amended
2 Complaint, the Commission alleged that each of the named defendants: (1)
3 engaged in unlawful sex discrimination, including sexual harassment of Jon
4 Pilkington and a class of male employees because of their sex in violation of
5 Section 703(a) of Title VII and the Civil Rights Act of 1991, 42 U.S.C. § 2000e-
6 2(a); and (2) engaged in unlawful retaliation against Pilkington in violation of
7 704(a) of Title VII and the Civil Rights Act of 1991, 42 U.S.C. § 2000e-3(a). The
8 Commission seeks appropriate relief to Jon Pilkington for alleged sex
9 discrimination and alleged retaliation, and a class of similarly situated men who
10 allegedly were adversely affected by alleged sex discrimination (hereafter referred
11 to collectively as "class members").¹ No class member sought to intervene in this
12 proceeding.

13 By entering into this Decree, Defendants deny and do not admit, either
14 expressly or implicitly, that they (or any one of them) violated any federal, state,
15 or local law, or that they (or any one of them) have any liability in this civil action.
16 Defendants maintain that they comply with all applicable employment laws
17 including those pertaining to unlawful harassment and retaliation. Defendants
18 have entered into this Decree to avoid the disruption, costs, delay, and expense of
19 litigation.

20 The parties do not object to the jurisdiction of the Court over this action and
21 waive their rights to a hearing and the entry of findings of fact and conclusions of
22 law. The parties agree that this Consent Decree is fair, reasonable, and equitable
23 and does not violate the law or public policy.

24 In the interest of resolving this matter and as a result of having engaged in
25 comprehensive settlement negotiations, the parties have agreed that this action
26 should be finally resolved by entry of this Decree.

27
28 No allegation has been made in this lawsuit that any Defendant unlawfully
retaliated against any employee other than Pilkington.

DEFINITIONS

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The following terms, when used in this Decree, shall have the following meanings as set forth below. Except as otherwise provided herein, all terms defined in the singular shall have the same meaning when used in the plural, and all terms defined in the plural shall have the same meaning when used in the singular.

1. **Class Members:** References to "class members" shall include Jon Pilkington, Garrett Hahn, and Joseph Carrigan.

2. **Effective Date:** The Effective Date of this Decree is the date on which the Court gives final approval to the Decree, after hearing, if required.

3. **The Parties:** References to "the parties"* shall include the EEOC and Defendants Outback/Fleming's, LLC. and OS Restaurant Services, Inc. As set forth below, the EEOC and Defendants OSI Restaurant Partners, Inc.; Outback/Fleming's, LLC; and OS Restaurant Services, Inc. stipulate to the dismissal with prejudice of Defendant OSI Restaurant Partners, Inc. as a defendant in this action. The remaining defendants in this action - Outback/Fleming's, LLC, and OS Restaurant Services, Inc. - shall be referred to herein collectively as "Defendants"* or "Fleming's."

It is hereby ORDERED, ADJUDGED, AND DECREED:

GENERAL PROVISIONS

4. The EEOC and Defendants agree that this Decree fairly resolves all claims alleged by EEOC in the Amended Complaint as well as all claims that could have been alleged by the EEOC in the Amended Complaint, and constitutes a complete resolution of all such claims.

5. Dismissal of Defendant OSI Restaurant Partners, Inc. - The EEOC OSI Restaurant Partners, Inc.; Outback/Fleming's, LLC: and OS Restaurant Services, Inc. stipulate to the dismissal, with prejudice, of Defendant OSI

1 Restaurant Partners, Inc. as a defendant in this action. As to the dismissal of
2 Defendant OSI Restaurant Partners, Inc., the EEOC; OSI Restaurant Partners, Inc.;
3 and Defendants agree that each party shall bear its own fees and costs.

4 6. Scope - This Decree applies only to Fleming's Prime Steakhouse &
5 Wine Bar restaurants located at 20753 North Pima Road, Scottsdale, Arizona
6 85255 (hereinafter the "DC Ranch" location) and 6333 North Scottsdale Road,
7 Scottsdale, Arizona 85250 (hereinafter "Lincoln Drive" location).

8 7. Term of Consent Decree - This Decree shall remain in effect for two
9 and one-half (2/4) years subsequent to the Effective Date. This Court shall retain
10 jurisdiction over this action for the duration of the Decree, during which the
11 Commission may petition this Court concerning compliance with this Decree. In
12 that event, the Court may order appropriate relief. This Decree shall expire by its
13 own terms at the end of 2/4 years (which is equal to thirty (30) months) from the
14 Effective Date, without further action by the parties or the Court.
15

16 8. Complete Consent Decree - This Decree constitutes the complete
17 understanding among the parties with respect to the matters herein.

18 **INJUNCTION**

19 9. Defendants and their officers, agents, employees and all persons in
20 active concert or participation with them, are permanently enjoined for the
21 duration of the Decree from (a) discriminating against any employee on the basis
22 of sex, including but not limited to sexually harassing any employee and (b)
23 retaliating against any employee because he or she (i) opposed discriminatory
24 conduct believed to be unlawful under Title VII, (ii) reported conduct believed to
25 be unlawful under Title VII to managers of Defendants, (iii) filed a charge or
26 assisted or participated in the filing of a charge of sex discrimination, including
27 sexual harassment, or (iv) assisted or participated in an investigation or proceeding
28 resulting from any of the preceding items.

MONETARY RELIEF

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10. Judgment is entered in favor of the Commission and against Defendants in the amount of Two Hundred Forty-Eight Thousand Seven Hundred Fifty Dollars and No Cents (\$248,750.00).

11. Defendants shall pay a settlement amount separately to each class member, in the amounts set forth in Exhibit A, by check, cashier's check, or money order, in accordance with Paragraph 12 of this Decree. These payments represent settlement of any and all claims brought by the EEOC, or that could have been brought by the EEOC, constitutes back pay and compensatory damages to the class members, and shall be distributed to each class member as set forth in Exhibit A within ten (10) calendar days of the Effective Date of this Decree. The back pay (if any) and compensatory damages portion of each payment to each recipient are separately set forth in Exhibit A. Defendants shall take standard deductions from amounts set forth as back pay and shall make no deductions from the amounts set forth as compensatory damages. By January 31, 2011, Defendants shall issue United States Internal Revenue Service 1099 forms for all payments of compensatory damages amounts, and W-2 forms for all back pay amounts.

12. The checks provided for in Paragraph 11 of this Decree shall be mailed directly by Defendants to each class member at the addresses supplied by the EEOC. Within 10 business days of issuance of the checks, Defendants shall furnish a copy of each check and related correspondence, if any, to the Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012.

13. Defendants will not condition the receipt of monetary relief on any class member's agreement to: (a) maintain as confidential the terms of this Decree; (b) waive his statutory right to file prospectively a charge with any federal or state anti-discrimination agency; or (c) refrain from applying for employment at

1 Defendants' facilities; provided, however, that, as to any such recipient who has
2 been determined to be ineligible for re-employment for reasons unrelated to their
3 participation in this action, Defendants shall not be required to rescind that
4 determination.

5
6 **OTHER RELIEF**

7 14 Defendants shall expunge from the personnel files of each class
8 member all references, if any, to any charges of discrimination filed against
9 Defendants or participation in this action. Nothing set forth herein, however, shall
10 require Defendants to expunge any records relating to any investigation performed
11 by Defendants pursuant to Defendants' equal employment opportunity policies,
12 provided any such records are not maintained in any class member's personnel
13 file.

14 15. Defendants shall provide each class member with a personalized
15 copy of the written statement attached as Exhibit B, signed and printed on
16 Fleming's corporate letterhead. The class members shall instruct any prospective
17 employer seeking an employment reference for any class member to direct that
18 request, in writing, to Mr. Bob Donovan, Corporate Counsel for Labor and
19 Employment. If Mr. Donovan receives a written request for an employment
20 reference from a prospective employer of a class member, Defendants shall
21 provide a copy of the written statement attached hereto as Exhibit B for the
22 appropriate class member. No other information will be provided by Mr. Donovan
23 in response to a written request for an employment reference received from a class
24 member's prospective employer, and Defendants will not provide an explanation
25 for why it will not provide additional employment information to prospective
26 employers or any other entities that inquire about the employment history of any
27 class member other than to state that it is Defendants' policy to provide only the
28 information set forth in Exhibit B in response to a request for an employment

1 reference.

2 16. Defendants shall review and revise their policies and practices, ii
3 necessary, to help assure a work environment free from sexual harassment of their
4 employees and that allow employees to raise concerns or complaints without
5 retaliation about matters, whether alleged, perceived, or actual, made unlawful by
6 Title VII. To assist Defendants in their efforts to assure a work environment free
7 of sexual harassment and retaliation, Defendants shall take the actions provided in
8 Paragraphs 18 through 24 of this Decree.

9 **DEFENDANTS' CORRECTIVE POLICIES AND PRACTICES**

10 17. Within 30 days of the Effective Date of this Decree, Defendants
11 shall post for the duration of this Decree the notice attached as Exhibit C in a
12 prominent place frequented by its employees at the DC Ranch and Lincoln Drive
13 locations. The notice shall be the same type, style, and size as Exhibit C.
14

15 18. During the duration of this Decree, Defendants shall provide training
16 on sexual harassment and retaliation for employees at the DC Ranch and Lincoln
17 Drive locations according to the following terms:

18 A. Defendants shall provide training to employees" of the DC Ranch
19 and Lincoln Drive locations one (1) time during the duration of this
20 Decree, with the training session to take place within four (4)
21 months of the Effective Date of this Decree. The person or persons
22 responsible for conducting this training shall be knowledgeable
23 about employment discrimination, including sexual harassment and
24 retaliation. Defendants shall mandate that all current employees
25 who work at the DC Ranch and Lincoln Drive locations shall attend

26
27 " The terms "employee" or "employees" shall hold the meaning as defined in Title
28 VII and shall include Chef Partners, Joint Venture Partners, Operating Partners,
any other natural persons who hold any percentage interest in the profits of the DC
Ranch and Lincoln Drive locations.

1 this training session, which shall be a sixty (60) minute live-seminar
2 training (or live via remote video link). This seminar will be focused
3 on how to identify, report, and document sexual harassment and
4 retaliation observed or experienced by employees. This seminar will
5 also discuss disciplinary actions that will be taken against any
6 employee who engages in sexual harassment or retaliation.
7 Defendants shall continue their current practice of providing new
8 hourly employees at the DC Ranch and Lincoln Drive locations an
9 orientation on their sexual harassment and retaliation policies,
10 consistent with Paragraph 21 of this Decree, within 21 days of hire.

11 B. In addition to the training discussed in Paragraph 18(A) above, all
12 human resources, supervisory, and managerial staff of the DC
13 Ranch and Lincoln Drive locations, as well as the Joint Venture
14 Partner responsible for the DC Ranch and Lincoln Drive locations in
15 2005, shall attend a minimum ninety (90) minute live (or live via
16 remote video link) training on preventing, identifying, investigating,
17 and addressing sexual harassment and retaliation in the workplace
18 every ten (10) months during the duration of this Decree. The
19 person or persons responsible for conducting this training shall be
20 knowledgeable about employment discrimination, including sexual
21 harassment and retaliation.

22 C. The seminar-training sessions discussed in Paragraph 18(B) shall
23 include a fifteen minute period for questions and answers. All
24 persons attending any of the trainings as discussed in Paragraph
25

26
27 ³ "Managerial staff includes Chef Partners. Joint Venture Partners. Operating
28 Partners, any other natural persons who hold any percentage interest in the profits
of the DC Ranch Location.

1 18(B) shall sign a registry of attendance. Defendants shall retain
2 these registries for the duration of the Decree.

3 D. The seminars discussed in Paragraph 18(B) shall include the subject
4 of what constitutes sexual harassment and retaliation; that sexual
5 harassment and retaliation in the hiring, firing, compensation
6 assignment, or other terms, conditions, or privileges of employment
7 violates Title VII; how to prevent sexual harassment and retaliation;
8 how to provide a work environment free from sexual harassment and
9 retaliation; to whom and by what means employees may complain if
10 they feel they have been subjected to sexual harassment or
11 retaliation in the workplace; and appropriate investigation
12 techniques. The session shall also review and explain Defendants'
13 policies set out in Paragraph 21 of this Decree below.

14
15 E. During the live training sessions discussed in Paragraph 18(B) an in-
16 house attorney or corporate officer holding the title of vice president
17 or above ("Designated Representative") shall discuss the disciplinary
18 actions that will be taken against partners, supervisors, managers
19 and employees who (1) commit acts of sexual harassment or
20 retaliation, (2) fail to properly and promptly act on
21 complaints/reports of conduct that may rise to the level of sexual
22 harassment or retaliation, (3) fail to properly and promptly act on
23 observations of conduct that may rise to the level of sexual
24 harassment or retaliation, or (4) otherwise allow sexual harassment
25 or retaliation to occur in the workplace. The Designated
26 Representative shall also discuss the importance of maintaining an
27 environment free of sexual harassment and retaliation, and
28 Defendants" policy with regard to sexual harassment and retaliation

1 referred to in Paragraph 21 of this Decree.

2 19. Defendant shall provide written notice to the Regional Attorney of
3 the EEOC's Phoenix District Office of the time, date, location, and identity of the
4 trainer(s) for each training scheduled pursuant to Paragraph 18(B) above at least
5 thirty (30) days before each training. The EEOC, at its discretion, may designate
6 up to two (2) EEOC representatives to attend, as observers only, the training
7 sessions discussed in Paragraph 18(B) above. The EEOC will provide Defendants
8 written notice of its intent to attend the training sessions at least fourteen (14) days
9 prior to the scheduled training.

10 20. Defendants shall designate for the duration of this Consent Decree
11 an organization or person(s) external to the DC Ranch Location ("Ombudsman"*)
12 to receive complaints of discrimination from employees employed at the DC
13 Ranch Location. A designated member of Defendants* corporate human resources
14 or legal department, as set forth on Defendants' "Associates Info Poster," shall
15 satisfy the requirements of this Paragraph 20. As of the Effective Date of this
16 decree, the Ombudsman will be Vice-President of Training Jennifer Capler.
17 Employees will be notified of this appointment and her contact information by the
18 Operating Partner, within thirty (30) days of the Effective Date of this Decree.
19 Notwithstanding the designation of the Ombudsman, those individuals who are
20 designated to receive complaints of discrimination under Defendants' policy, as
21 set forth on Defendants' "Associates Info Poster," which includes names and
22 phone numbers for those individuals, shall continue to also be designated to
23 receive complaints of discrimination from employees employed at the DC Ranch
24 Location.
25

26 21. Defendants shall review and revise, if necessary, their written policy
27 concerning sexual harassment and retaliation to conform to the law. As part of
28 this Decree, Defendants shall submit the policy to the Regional Attorney of the

1 Phoenix District Office of the EEOC within thirty (30) days of the entry of this
2 Decree. This written policy will include:

3 A. A strong and clear commitment to a workplace free of sexual
4 harassment and retaliation;

5 B. Clear and complete definitions of sexual harassment (both
6 quid pro quo and hostile work environment forms) and retaliation, with relevant
7 examples;

8 C. A clear statement that sexual harassment can occur between
9 individuals of the opposite sex, as well as between individuals of the same sex.
10

11 D. A clear and strong encouragement of persons who believe
12 they have been harassed or retaliated against to come forward;

13 E. A description of the consequences, up to and including
14 termination, which will be imposed upon violators of the policy;

15 F. A promise of maximum feasible confidentiality for persons
16 who believe that they have been harassed or retaliated against;

17 G. An assurance of non-retaliation for witnesses of sexual
18 harassment and persons who believe they have been sexually harassed;

19 H. That sexual harassment by all persons, including managerial
20 employees, supervisors, vendors, suppliers, third parties, and customers is
21 prohibited and will not be tolerated;

22 I. Contact information for persons (including the Ombudsman)
23 to whom employees who have observed or have been sexually harassed or
24 retaliated against can report the sexual harassment, including a written statement
25 that the employee may report the harassment to designated persons outside their
26 chain of management;

27 J. That physical contact between employees that may be
28 construed as sexual is prohibited on Defendants* premises:

1 K. Assurances that Defendants will investigate sexual
2 harassment and retaliation allegations promptly, fairly, reasonably, and effectively,
3 and that appropriate corrective action will be taken by Defendants; and

4 L. Provide that Defendants shall promptly and appropriately
5 respond to all complaints of sexual harassment and/or retaliation, including taking
6 of appropriate corrective and remedial action, including, if appropriate,
7 disciplining persons alleged to have engaged in harassment and retaliation.

8 22. Within one-hundred twenty (120) days of the Effective Date of the
9 Decree, these policies shall be distributed to each current employee at the DC
10 Ranch and Lincoln Drive locations. These policies shall be distributed to all new
11 employees at the DC Ranch and Lincoln Drive locations when hired. These
12 policies shall be posted in both English and Spanish in a prominent place
13 frequented by the employees of the DC Ranch and Lincoln Drive locations.
14

15 23. Defendants shall promptly and appropriately respond to all
16 complaints of sexual harassment and/or retaliation.

17 24. Defendants shall not retain documents related to any investigation in
18 the personnel file of any employee who complains of sexual harassment or
19 retaliation. All disciplinary actions taken against employees for violation of
20 Defendants* sexual harassment and/or anti-retaliation policy will be retained in
21 that employee's personnel file where a violation is found and discipline is
22 imposed.

23 REPORTING BY DEFENDANTS AND ACCESS BY EEOC

24 25. Defendants shall report in writing and in affidavit form to the
25 Regional Attorney of the Commission's Phoenix District Office at 3300 North
26 Central Avenue, Suite 690, Phoenix, Arizona 85012, beginning seven (7) months
27 from the Effective Date of this Decree, and thereafter every seven (7) months for
28 the duration of the Decree, the following information:

1 A. Any changes, modifications, revocations, or revisions to the
2 policy referenced in Paragraph 22 of this Decree;

3 B. The name and position of any individual employed at the DC
4 Ranch Location who has made a complaint of sexual harassment and/or retaliation
5 pursuant to the policy referenced in Paragraph 21 of this Decree during the seven
6 (7) months preceding the report. The nature of the complaint, investigatory efforts
7 made by Defendants, and the corrective action taken, if any, shall be specified;

8 C. Copy of the registry of persons attending the seminar required
9 in Paragraph 18(B) of this Decree;

10 D. Confirmation that (i) the Notice required in Paragraph 17 of
11 this Decree was posted at the DC Ranch and Lincoln Drive locations, (ii) the
12 policy required in Paragraph 21 of this Decree was posted and distributed to each
13 current and new employee employed at the DC Ranch and Lincoln Drive
14 locations, and (iii) the expungement, if any, from the class members' personnel
15 files required in Paragraph 14 of this Decree took place, the date of the
16 expungement, and the specific documents expunged;

17 E. A copy of the policy required by Paragraph 21 of this Decree;
18 and

19 F. A copy of each written statement issued pursuant to
20 Paragraph 15.
21

22 **COSTS AND DURATION**

23 26. Each party shall bear its costs and attorney's fees incurred as a result
24 of this action through the Effective Date of this Decree.

25 27. The duration of this Decree shall be two and one-half (2/4) years
26 from its entry. This Court shall retain jurisdiction over this action for the duration
27 of the Decree, during which the Commission may petition this Court concerning
28 compliance with this Decree; provided that the party seeking Court intervention

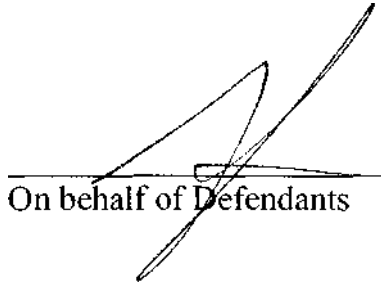
1 first notifies the other party, in writing and in reasonable detail, of the compliance
2 issue and thereafter provides that party with a reasonable opportunity (which shall
3 not be less than 20 calendar days) to address the compliance issue prior to seeking
4 Court intervention. In that event, the Court may order appropriate relief. This
5 Decree shall expire by its own terms at the end of 2*Vi* years (which is equal to
6 thirty (30) months) from the Effective Date, without further action by the parties
7 or the Court.

8 28. The parties agree to entry of this Consent Decree and judgment
9 subject to final approval by the Court.

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APPROVED AS TO FORM AND CONTENT:

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On behalf of Defendants

GREENBERG TRAURIG, LLP

/s/Mary Jo O'Neill
MARY JO O'NEILL
Regional Attorney
Phoenix District Office

/s/Lawrence J. Rosenfeld
By: Lawrence J. Rosenfeld
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