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Equal Employment Opportunity Commission v. Uncle Harry's New York Bagelry, LLC.

Judge Oliver W. Wanger

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Equal Employment Opportunity Commission v. Uncle Harry's New York Bagelry, LLC.

Keywords

EEOC, Uncle Harry's New York Bagelry LLC, F 01-6252 OWW/SMS, Consent Decree, Hostile Work Environment, Constructive Discharge, Disparate Treatment, Sex, Female, Service, Employment Law, Title VII

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10 Attorneys for Plaintiff

FILED

MAR 13 2003

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 EQUAL EMPLOYMENT
14 OPPORTUNITY COMMISSION,

15 Plaintiff,

16 v.

17 UNCLE HARRY'S NEW YORK
18 BAGELRY, LLC,

19 Defendant.

Civil Action No.
CIV F 01-6252 OWW/SMS

CONSENT DECREE

20 1. Plaintiff Equal Employment Opportunity Commission (hereinafter "Plaintiff",
21 "EEOC," or "Commission") brought the above-noted lawsuit (hereinafter "action" or "lawsuit")
22 under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct
23 alleged unlawful employment practices on the basis of sexual harassment, sex discrimination and
24 constructive discharge and to make whole Karla Burgueno and other females (hereinafter
25 "Claimants") identified by the Commission, whose names are attached in sealed Exhibit A and
26 incorporated herein by this reference, aggrieved by the unlawful practice. Plaintiff alleged that
27 Defendant Uncle Harry's New York Bagelry (hereinafter referred to as "Defendant" or "Uncle
28 Harry's") unlawfully subjected Claimants to sex discrimination and hostile work environment sexual
harassment. Finally, Plaintiff alleged that Uncle Harry's subjected Claimants to constructive
discharge and to discharge after they complained about sex discrimination or sexual harassment.

CONSENT DECREE
FRESNO:70697.1 027553.1001

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2. Defendant denies these allegations.

3. In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations, the U.S. Equal Employment Opportunity Commission, Claimants, and Uncle Harry's (hereinafter collectively referred to as "the Parties") have agreed that this action should be finally resolved by entry of this Consent Decree (hereinafter "Decree"). This Decree shall not constitute an adjudication and/or finding on the merits of the case, and shall not be used as evidence of liability, res judicata, or collateral estoppel in any other legal proceeding against Uncle Harry's. The Parties acknowledge that this Decree shall not in any way be construed as an admission by Uncle Harry's of any wrongdoing.

4. This Decree is final and binding upon the Parties, their successors and assigns.

5. The Parties agree that this Decree resolves all claims arising out of EEOC Charge No. 375-AO-0057, and the complaint filed in this lawsuit, and constitutes a complete resolution of all claims of sex discrimination; sexual harassment; constructive discharge and discharge under Title VII that were made by the Commission and Claimants in this action. This Consent Decree does not, however, resolve any future charges or charges that may be pending with the Commission other than the charges specifically referred to in this paragraph or those that may be released by Claimants pursuant to this Decree.

6. This Decree comprises the full and exclusive agreement of the parties with respect to the matters discussed herein. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court.

7. Each side shall bear its own attorneys' fees and costs in connection with and claims asserted and the negotiation and completion of this Decree.

8. All notices and other communications hereunder shall be communicated to all parties in writing and shall be delivered or mailed by registered or certified mail, postage prepaid and with return receipt requested. Hand-delivered notices shall be deemed communicated when received. Mailed notices shall be deemed communication when received. Mailed notices shall be deemed communication as of five (5) full business days after mailing, if mailed to the following

1 respective addresses:

2 WILLIAM R. TAMAYO
3 JONATHAN T. PECK
4 SANYA P. HILL
5 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
6 San Francisco District Office
7 901 Market Street, Suite 500
8 San Francisco, California 94103

9 SHELLINE K. BENNETT
10 Littler Mendelson
11 5200 North Palm Avenue, Suite 302
12 Fresno, California 93704

13 Names and addresses of Claimants
14 Incorporated herein by reference and attached as Exhibit A under seal.

15
16 9. If names or addresses change during the term of this Decree, it shall be the
17 sole obligation of the individual whose information has changed to notify all Parties of such change.

18 NOW, THEREFORE, in consideration of the mutual promises and agreements set
19 forth herein, the sufficiency of which is hereby acknowledged, IT IS ORDERED, ADJUDGED
20 AND DECREED that:

21 10. This Court has jurisdiction of the subject matter and of the parties to this
22 action. This Court retains jurisdiction over this Consent Decree for all purposes until the expiration
23 of the Defendant's obligations as set forth herein.

24 11. This Decree conforms with the Federal Rules of Civil Procedure and is not in
25 derogation of the rights or privileges of any person. The entry of this Decree will further the
26 objectives of Title VII and will be in the best interest of the Parties, those for whom EEOC seeks
27 relief, and the public.

28 **Scope of Consent Decree**

 12. The duration of this Decree shall be three (3) years from the date of entry of
the Decree or after satisfaction by Defendants of its obligations under this Decree, which ever date is
sooner. During such time, this Court shall retain jurisdiction over this matter and the Parties for the
purpose of enforcing compliance with the Consent Decree, including issuing such orders as may be
required to effectuate its purposes.

1 **General Injunctive Provision**

2 13. Sex Discrimination and Sexual Harassment. Uncle Harry's hereby agrees not
3 to: (a) discriminate against persons on the basis of sex in the terms and conditions of employment;
4 (b) engage in or be a party to any action, policy or practice that is intended by or is known to it to
5 have the effect of harassing or intimidating any female employee on the basis of her gender; or (c)
6 create, facilitate or permit the existence of a work environment that is hostile to female employees.

7 14. Retaliation. Uncle Harry's hereby agrees not to engage in, implement or
8 permit any action, policy or practice which is intended or known by it with the purpose of retaliating
9 against any current or former employee of Uncle Harry's because he or she has in the past, or during
10 the term of this Decree: (a) opposed any practice of sex discrimination, sexual harassment or
11 retaliation made unlawful under Title VII; (b) filed a charge of Discrimination alleging such
12 practice; (c) testified or participated in any manner in any investigation (including any internal
13 investigation undertaken by Uncle Harry's) proceeding in connection with this case and/or relating to
14 any claim of sex discrimination, sexual harassment; (d) was identified as a possible witness in this
15 action; (e) asserted any rights under this Decree; or (f) sought and/or received any monetary and/or
16 nonmonetary relief in accordance with this Decree.

17 **Monetary Relief**

18 15. Uncle Harry's agrees to pay the total sum of One Hundred Fifty Thousand
19 Dollars, to be allocated as determined by the Commission to Claimants for their claims as set forth in
20 this Decree. Within 90 (ninety) days after the date of the lodging of this Decree with the Court and
21 it being fully executed, Uncle Harry's shall pay directly to Claimants, pursuant to the manner set
22 forth in Paragraph 8, the first of three installment payments, each installment payment to be 1/3 of
23 the total amount set forth in attached Exhibit B. The second installment payment shall be due on or
24 before 365 days after the first installment payment is made, and the third installment payment shall
25 be due on or before 365 days after the second installment payment is made. Each installment
26 payment shall be in the form a of check, made payable directly to the individual Claimant. No
27 interest shall accrue on the amount set forth in Exhibit B and/or any of the installment payments.
28 Uncle Harry's agrees to provide the EEOC with proof of payment in full as specified in this

1 paragraph by cancelled check, receipt, or by a written release, waiver, or acknowledgement of
2 satisfaction in full of Uncle Harry's monetary obligations required under this paragraph 15.

3 16. Uncle Harry's payments shall be considered timely if they are postmarked
4 within three days after the due date. In the event that any Claimant does not receive a payment
5 within five days after the due date, the EEOC shall give Uncle Harry's written notice of the alleged
6 default by certified mail, and thereafter Uncle Harry's shall have ten days within which to cure the
7 alleged default. In the event Uncle Harry's then makes payment of the amount in default within ten
8 days after it receives notice of the alleged default by certified mail, the payment schedule shall
9 remain in effect. In the event, however, that Uncle Harry's fails to make any payment within the
10 aforementioned ten days, EEOC may at its option, move the Court for entry of judgment against
11 Uncle Harry's in the amount of the unpaid balance of the One Hundred Fifty Thousand Dollars
12 settlement amount, plus interest on such unpaid amount at the rate of 10% per annum from the date
13 of the default only, less all amounts previously paid by Uncle Harry's. EEOC shall give notice of
14 any such motion for entry of judgment to Uncle Harry's and its attorneys. If judgment is entered
15 against Uncle Harry's on such motion, EEOC may enforce and collect the judgment.

16 **Specific Injunctive Relief**

17 **POSTING AND OTHER NOTICE TO EMPLOYEES**

18 17. Uncle Harry's will post a copy of this Consent Decree in a clearly visible
19 location frequented by employees at each location owned and/or operated by Uncle Harry's for 30
20 days following the lodging of this Decree with the Court.

21 18. Within ninety (90) days of the entry of this Decree, or as soon thereafter as
22 reasonable and practical, Uncle Harry's shall issue to all employees, supervisors and managers Uncle
23 Harry's sexual harassment policy and procedure statement, and each such person shall be asked to
24 sign an acknowledgment that they have received and read the policy. The same request to sign an
25 acknowledgment shall be required of all newly hired employees at the start of their employment.

26 19. Under the direction of an outside consultant paid by Uncle Harry's, Uncle
27 Harry's shall provide and require all current and new personnel to attend, sex discrimination and
28 sexual harassment training once every 365 days, commencing upon entry of this Consent Decree, the

1 first training to occur within a reasonable period mutually agreed upon by the parties, but no later
2 than one hundred (100) days after the entry of this Consent Decree. The purpose of said training will
3 be to give participants a thorough understanding of sex discrimination and sexual harassment issues,
4 including but not limited to theories of liability under Title VII, sources of legal protection of sexual
5 harassment victims, and the employer's obligation to take preventive, investigative and remedial
6 action with respect to sexual harassment complaints, and to review company policies (including
7 discipline policies) and practices related to sex harassment, sex discrimination and retaliation. This
8 training shall be designed and conducted, with specific reference to the sex discrimination and
9 sexual harassment policies of the Defendant, by an outside consultant in conjunction with company
10 personnel. Uncle Harry's agrees to allow the outside consultant to conduct significant portions of the
11 training programs. This consultant shall be selected by Uncle Harry's, subject to reasonable
12 disapproval by counsel for the Commission, and will be a person with established experience in
13 matters of sexual harassment training, and the applicable laws and regulations. Any change in
14 consultants during the terms of this Decree can be done only upon the joint approval of counsel for
15 the Commission and Uncle Harry's , or, if a dispute arises, upon Order of the Court.

16 20. Attached as Exhibit C and incorporated herein by this reference is an agreed
17 upon outline of the subject content of the above-referenced training sessions, method of training, and
18 proposed size of training classes. The content, method of training and size of training classes is
19 subject to change by Defendant upon prior approval by the Commission, which shall take into
20 consideration the Company's operational needs. The Parties have agreed that management and non-
21 management employees will be separated for purposes of said training. All training sessions will
22 take place during the employee's regular working hours. Uncle Harry's agrees to provide a
23 description of changes to the training programs, other than as set forth in Exhibit C, to counsel for
24 the Commission no later than ten (10) days before the training programs are scheduled to be held.

25 21. All persons attending mandatory sexual harassment training shall be asked to
26 sign an acknowledgment of their attendance at the training, the date thereof, and their position with
27 the company. The consultant shall retain the originals of these acknowledgment, and provide Uncle
28 Harry's with a copy thereof.

1 SEXUAL HARASSMENT POLICIES AND PROCEDURES

2 22. After consultation with the above-referenced consultant, and with the approval
3 of counsel for the Commission, within forty-five (45) days, the Defendant will determine if it shall
4 adopt, revise, modify or otherwise adapt their existing sex harassment policies, procedures and
5 associated notices and forms to more effectively carry out Uncle Harry's obligations under this
6 Decree only if they do not already do so. Upon the suggestion of the consultant, or as otherwise
7 deemed appropriate by Uncle Harry's, and with the approval of counsel for the Commission, these
8 policies and procedures may be further modified during the term of this Decree for the same reasons.

9 Other Injunctive Relief

10 23. Uncle Harry's acknowledge that Mark Allison is no longer employed by
11 Defendant. Uncle Harry's agrees not to rehire Mr. Allison in any capacity at any of its locations
12 during the term of this Decree. All store locations are listed in Exhibit D, attached hereto and
13 incorporated herein by this reference.

14 Dismissal of Action

15 24. Three (3) years after the entry of this Decree or after Defendant has satisfied
16 its obligations under this Decree, which ever is sooner, this lawsuit will be dismissed with prejudice.

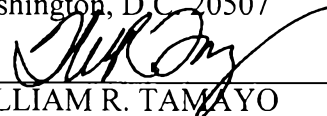
17 25. Headings are used herein for convenience only and shall have no force or
18 effect in the interpretation or construction of this Decree.

19 On Behalf of Plaintiff

20 NICHOLAS INZEO
21 Acting Deputy General Counsel

22 EQUAL EMPLOYMENT OPPORTUNITY
23 COMMISSION
24 1801 L. Street, N.W.
25 Washington, D.C. 20507

26 DATE: 3/9/03

27 
28 WILLIAM R. TAMAYO
Regional Attorney

DATE: _____

JONATHAN T. PECK
Supervisory Trial Attorney

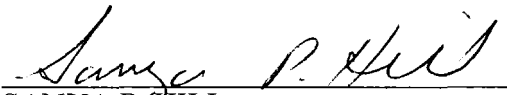
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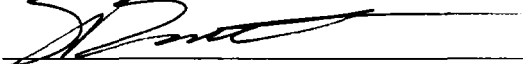
DATE: March 4, 2003

DATE: 3/7/03

IT IS SO ORDERED.

DATE: 3-13-03


SANYA P. HILL
Senior Trial Attorney


SHELLINE K. BENNETT
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
UNCLE HARRY'S NEW YORK BAGELRY, L.L.C.


THE HONORABLE OLIVER W. WANGER

United States District Court
for the
Eastern District of California
March 14, 2003

* * CERTIFICATE OF SERVICE * *

1:01-cv-06252

EEOC

v.

Uncle Harry's

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 14, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

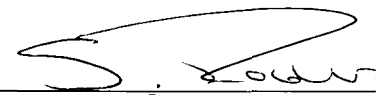
OWW SMS

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Jack L. Wagner, Clerk

BY:


Deputy Clerk