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10-29-2004

## U.S. Equal Employment Opportunity Commission v. Kirch-Lo, Inc. d/b/a Crabby Kims, Inc.

Judge Ruben Castillo

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**U.S. Equal Employment Opportunity Commission v. Kirch-Lo, Inc. d/b/a Crabby Kims, Inc.**

**Keywords**

EEOC, Kirch-Lo Inc., Crabby Kims Inc., 04C2936, Consent Decree, Disparate Treatment, Terms and Conditions, Termination, Race, National Origin, Hispanic, Black, Service, Employment Law, Title VII

## United States District Court, Northern District of Illinois

<b>Name of Assigned Judge or Magistrate Judge</b>	Ruben Castillo	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	04 C 2936	<b>DATE</b>	10/29/2004
<b>CASE TITLE</b>	U.S. Equal Employment Opportunity Commission vs. Kirch-Lo, Inc. d/b/a Crabby Kims, Inc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

**DOCKET ENTRY:**

- (1)  Filed motion of [ use listing in "Motion" box above.]
- (2)  Brief in support of motion due \_\_\_\_\_.
- (3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).
- (10)  [Other docket entry] Enter Consent Decree.

(11)  [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	U.S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS 2004 OCT 29 PM 4:28 FILED-03114	number of notices <b>NOV 01 2004</b> date docketed GMA docketing deputy initials date mailed notice	Document Number 12
RO	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

U.S. EQUAL EMPLOYMENT )  
 OPPORTUNITY COMMISSION, )  
 )  
                                   Plaintiff, )  
 v. )  
 )  
 KIRCH-LO, INC. d/b/a CRABBY KIMS, INC., )  
 )  
                                   Defendant. )  
 \_\_\_\_\_ )

Civil Action No. 04 C 2936

Hon. Judge Castillo  
Magistrate Bobrick

**DOCKETED**  
NOV 01 2004

**CONSENT DECREE**

**Introduction**

1. Plaintiff U.S. Equal Employment Opportunity Commission ( the “EEOC” or “Commission”), filed this action alleging that Kirch-Lo, Inc. d/b/a Crabby Kims, Inc. (“Defendant”), discriminated against Tracey A. Crumble (“Crumble”) and classes of Black and Hispanic employees by subjecting them to racial and national origin harassment, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission alleges further that defendant discriminated against Crumble in that it subjected her to unequal terms and conditions of employment and terminated her employment, on account of her race (Black) in violation of Title VII.

2. Defendant Kirch-Lo, Inc. d/b/a Crabby Kims (“Crabby Kims”) has denied the material allegations in the complaint and has filed a Summary Judgment Motion herein challenging jurisdiction.

3. In the interest of resolving this matter, and as a result of comprehensive settlement

negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree. This Consent Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC in this action regarding Defendant's Crabby Kims, Inc. facility.

4. Settlement of this matter does not constitute an admission on the part of Crabby Kims of any wrong doing, but rather a resolution of all issues before the Court in an amicable fashion.

**FINDINGS**

5. Having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, records and stipulations of the parties, the Court finds the following:

- a. This Court has jurisdiction of the subject matter of this action and of the parties.
- b. The terms of this Consent Decree are adequate, fair, reasonable, equitable and just. The rights of the parties and the public interest are adequately protected by this Consent Decree.
- c. This Consent Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Consent Decree will further the objectives of Title VII and will be in the best interests of the parties and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

**INJUNCTION AGAINST EMPLOYMENT DISCRIMINATION**

6. Defendant, its officers, agents, employees, assigns, and all persons acting in concert

with it shall not discriminate by engaging in any employment practice which discriminates against any employee at its Crabby Kims facility on the basis of race and national origin.

Defendant, its officers, agents, employees, assigns and all persons acting in concert with it shall not retaliate against any person because that person has, opposed any policy or practice made unlawful under Title VII, has filed a charge with EEOC, or because of the person's participation in or cooperation with, the initiation, investigation, litigation, resolution and/or administration of any case under Title VII or asserted rights under this Consent Decree.

### **MONETARY RELIEF**

7. Within twenty (20) days of the date Defendant receives the Release Agreements attached hereto as Exhibit A executed by Tracey Crumble and Melvio Menendez, Defendant shall forward to Crumble a cashier's check for compensatory damages via certified mail made payable to her in the amount of \$7,500.00, and Defendant shall forward to Menendez a cashier's check for compensatory damages via certified mail made payable to him in the amount of \$2,500.00. Defendant shall also provide copies of both cashier's checks to June Wallace Calhoun, counsel for EEOC.

### **POSTING OF NOTICE**

8. Within five (5) business days after entry of this Consent Decree, Defendant shall post a same-size copy of the Notice attached as Exhibit B to this Consent Decree in a location at Defendant's Crabby Kims facility, where notices to employees and applicants for employment at such facility are normally posted. The Notice shall remain posted until that date which is two (2) years from the date of entry of this Consent Decree. Defendant shall take all reasonable steps to

ensure that its posting is not altered, defaced or covered by any other material. Defendant shall certify to the EEOC in writing within ten (10) days after the date of such posting that the copy of the Notice has been properly posted. Defendant shall permit a representative of the EEOC to enter its premises for purposes of verifying compliance with this Paragraph at any time during normal business hours.

### **RECORD KEEPING**

9. For a period of two (2) years following entry of this Consent Decree, Defendant shall document and maintain and make available for inspection and copying by the EEOC records of each complaint received by Defendant (whether written or oral) alleging that Defendant has discriminated on the basis of race or national origin at its Crabby Kims facility (including the name, social security number, address, and telephone number of the complainant; details of the complaint of Defendant's discrimination on the basis of race and/or national origin; and details of all actions taken in response to the complaint of Defendant's discrimination on the basis of race and/or national origin).

10. Defendant shall make all documents or records referred to in paragraph 7, above, available for inspection and copying within five (5) business days after the EEOC so requests in writing. In addition, Defendant shall make available all persons within its employ whom the EEOC requests for purposes of verifying compliance with this Consent Decree and shall permit a representative of the EEOC to enter its premises for such purposes on five (5) business days advance written notice by the EEOC. Notices as provided herein shall be as follows:

Defendant: Kirch-Lo, Inc. d/b/a Crabby Kims  
Kim Kirchoff  
3655 North Western Ave.  
Chicago, Il. 60618

Copy to: Robert A. Egan  
Robert A. Egan, P.C.  
203 N. LaSalle Street, Suite 2300  
Chicago, Il. 60601

11. Nothing in this Consent Decree shall be construed to limit any obligation Defendant may otherwise have to maintain records under Title VII or any other law or regulation, if applicable.

### **REPORTING**

12. Defendant shall furnish to the EEOC the following written reports semi-annually for a period of two (2) years following entry of this Consent Decree. The first report shall be due six (6) months after entry of this Consent Decree. The subsequent report shall be due six months thereafter until that date which is two (2) years after the date of entry of this Consent Decree. Each such report shall contain (a) the information required to be maintained pursuant to paragraph 7, above, and (b) a certification by Defendant that the Notice required to be posted pursuant to paragraph 6, above, remained posted during the entire six (6) month period preceding the report.

These reports shall be provided to June Wallace Calhoun at the U.S. Equal Employment Opportunity Commission, Chicago District Office, 500 W. Madison Street, Suite 2800, Chicago, Il. 60661.

### **POLICIES**

13. Defendant shall provide in its personnel policies to include an anti-harassment policy which complies with the provisions of Title VII.

### **TRAINING**

14. Defendant shall provide training on Title VII to all employees (management and non-management) at its Crabby Kims facility within thirty (30) days of the entry of this Consent Decree. Defendant shall thereafter also provide training to all of its new employees (management and non-management) at its Crabby Kims facility, such training shall be provided within thirty (30) days of the beginning of their employment. With respect to both of the foregoing, Defendant shall provide the EEOC with the identification of the trainer, a description of the training, and a copy of any training materials used. Defendant shall adjust its training to accommodate any objections of EEOC.

### **DISPUTE RESOLUTION**

15. In the event that either party to this Consent Decree believes that the other party has failed to comply with any provision(s) of the Consent Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

**DURATION OF DECREE AND RETENTION OF JURISDICTION**

16. All provisions of this Consent Decree shall be in effect (and the Court shall retain jurisdiction of this matter to enforce this Consent Decree) for a period of two (2) years immediately following entry of the Consent Decree, provided, however, that if, at the end of the two (2) years period, any disputes under paragraph 15, above, remain unresolved, the term of the Consent Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Consent Decree) until such time as all such disputes have been resolved.

**MISCELLANEOUS PROVISIONS**

17. Each party to this Consent Decree shall bear its own expenses, costs and attorneys' fees.

18. The terms of this Consent Decree are and shall be binding upon the present and future representatives, agents, directors and assigns of Defendant.

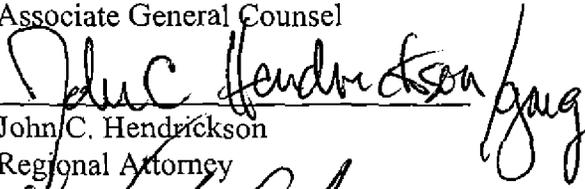
19. When this Consent Decree requires the submission by Defendant of reports, certifications, notices or other materials to the EEOC, they shall be mailed to June Wallace Calhoun, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661. When this Consent Decree requires submission by the EEOC of materials to Defendant they shall be mailed to: Attn: Kim Kirchoff, Kirch-Lo, Inc. d/b/a Crabby Kims, 3655 North Western Avenue, Chicago, Il., with a copy to its attorney, Robert A. Egan, P.C. 203 North LaSalle Street, Suite 2300, Chicago, Il. 60601.

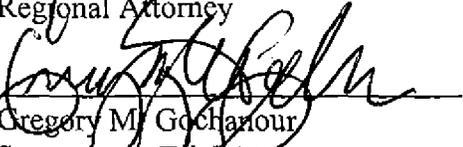
For the EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
500 West Madison Street, Suite 2800  
Chicago, Illinois 60661  
(312) 353-7259

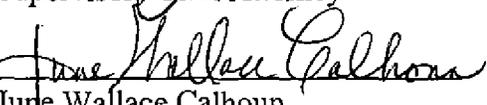
ERIC S. DREIBAND  
General Counsel

JAMES LEE  
Deputy General Counsel

GWENDOLYN REAMS  
Associate General Counsel

  
John C. Hendrickson  
Regional Attorney

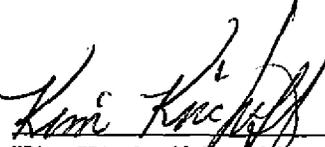
  
Gregory M. Gocharov  
Supervisory Trial Attorney

  
June Wallace Calhoun  
Trial Attorney

ENTER:

  
U.S. District Court Judge Castillo

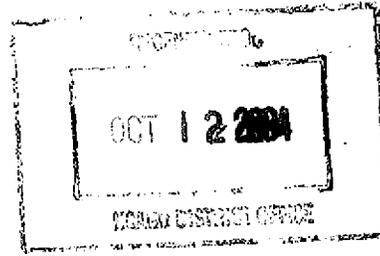
For Kirch-Lo, Inc. d/b/a Crabby Kims

  
Kim Kirchoff, President

Dated: 10/25/02

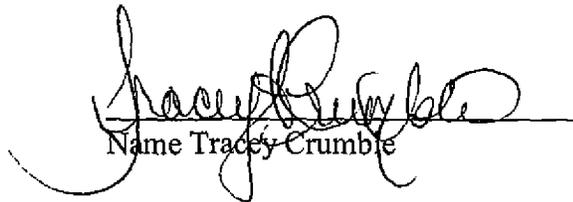
Exhibit A

RELEASE AGREEMENT



I, Tracey A. Crumble for and in consideration of the sum of \$7,500.00 pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Kirch-Lo, Inc. d/b/a Crabby Kims, Inc., 04 C 2936 (N.D.Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit and discharge Kirch-Lo, Inc. d/b/a Crabby Kims. and all its past and present shareholders, officers, agents, employees and representatives as well as all successors and assigns of Kirch-Lo, Inc. d/b/a Crabby Kims from any and all claims and causes of action of any kind which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Kirch-Lo, Inc. d/b/a Crabby Kims, Inc., 04 C 2936.

10/7/04  
Date

  
Name Tracey Crumble

Address:

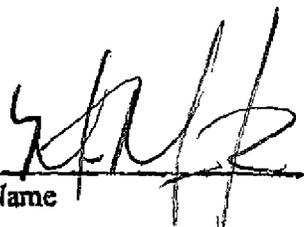
424 West Diversey Parkway  
Unit # 321  
Chicago, Illinois 60614

**Exhibit A**

**RELEASE AGREEMENT**

I, Melvio Menendez for and in consideration of the sum of \$2,500.00 pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Kirch-Lo, Inc. d/b/a Crabby Kims, Inc., 04 C 2936 (N.D.Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit and discharge Kirch-Lo, Inc. d/b/a Crabby Kims. and all its past and present shareholders, officers, agents, employees and representatives as well as all successors and assigns of Kirch-Lo, Inc. d/b/a Crabby Kims from any and all claims and causes of action of any kind which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Kirch-Lo, Inc. d/b/a Crabby Kims, Inc., 04 C 2936.

10/06/04.  
Date

  
Name

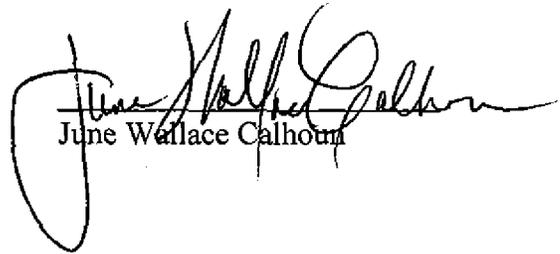
Address:

9250 S.W. 19<sup>th</sup> Street  
Miami, Florida 33165

**CERTIFICATE OF SERVICE**

I, June Wallace Calhoun, an attorney, do hereby certify that I caused a true and correct copy of the foregoing **Plaintiff EEOC's Consent Decree** to be served by U.S. Mail and facsimile this 27<sup>th</sup> day of October, 2004, on the following counsel of record.

Robert A. Egan  
203 North LaSalle Street  
Suite 2300  
Chicago, Illinois 60601  
(312) 782-5110 (facsimile)

  
June Wallace Calhoun