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## Equal Employment Opportunity Commission v. Mothers Work, Inc., d/b/a Motherhood

Judge Timothy J. Corrigan

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## Equal Employment Opportunity Commission v. Mothers Work, Inc., d/b/a Motherhood

### Keywords

EEOC, Mothers Work Inc., Motherhood, 3:05-CV-990-J-32TEM, Consent Decree, Disparate Treatment, Retaliation, Sex, Female, Retail, Employment Law, Title VII

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

and

LASHONDA BURNS,

CASE NO. 3:05-CV-990-J-32TEM

Plaintiff-Intervenor,

v.

MOTHERS WORK, INC., d/b/a  
MOTHERHOOD,

Defendant.

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**CONSENT DECREE**

1. This Consent Decree (“Decree”) is made and entered into by and between Plaintiff, the United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”), LaShonda Burns (“Plaintiff-Intervenor” or “Burns”) and Defendant, Mothers Work, Inc. d/b/a Motherhood (“Defendant” or “Motherhood”). The Commission, LaShonda Burns, and Defendant are collectively referred to as the “Parties” throughout this Decree.

2. The Commission filed this action on September 28, 2005 under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq.* (“Title VII”) and Title I of the Civil Rights Act of 1991 alleging unlawful employment practices on the basis of sex, female and pregnancy, and retaliation and to provide appropriate relief to LaShonda Burns and other similarly situated individuals who were

adversely affected by such practices. On November 30, 2005, Defendant filed its Answer to the Commission's Complaint denying the allegations. During the litigation, EEOC named Aimee Tart, Lakevia Rollins and Jackie Ciardiello as similarly situated individuals (the "Claimants").

3. The Court granted Ms. Burns Motion to Intervene in this action. Like the EEOC, the Plaintiff-Intervenor alleged that Defendant violated Title VII and Title I. Ms. Burns' Complaint also alleged that Defendant violated the Florida Civil Rights Act of 1992, Fla. Stat. Sec. 760.01, et seq., and the Florida Whistleblower Act. Defendant denies all of these allegations.

4. Nothing contained in this Decree shall be construed as an admission of liability on the part of the Defendant of any kind that any of its directors, officers, employees, or agents have violated or not been in compliance with the provisions of Title VII, Title I, or any other applicable laws, order, or regulations. Defendant has maintained throughout the course of this litigation that it provides equal employment opportunities to all employees and applicants.

5. All parties and their counsel recognize that, in the absence of an approved settlement, they face a long litigation course, including extensive formal discovery, motions for summary judgment, and trial and potential appellate proceedings, that will consume time and resources and present each of them with ongoing litigation risks and uncertainties. The parties wish to avoid these risks and uncertainties, as well as the consumption of time and resources, through amicable settlement pursuant to the terms and conditions of this Decree. Therefore, as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding on the Parties, their successors and assigns.

6. The Parties agree that this Decree resolves all claims against Defendant alleged in EEOC Charge Number 150-2004-04281 and the EEOC and Plaintiff-Intervenor's Complaints filed in this action with regard to the Motherhood Maternity stores in Florida. The Parties further agree that this Decree does not resolve any Charges of Discrimination that may be pending with the EEOC other than the Charge referred to in this paragraph.

## I. FINDINGS

7. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, 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. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of EEOC to bring an enforcement suit upon alleged breach of any term(s) of this Decree.

c. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of LaShonda Burns, the Claimants, and the public interest are adequately protected by this Decree.

d. This 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 Decree will further the objectives of Title VII and will be in the best interests of LaShonda Burns, the Claimants, Motherhood, EEOC and the public.

e. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, and officers of Motherhood.

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

## II. GENERAL INJUNCTIVE PROVISIONS

8. Defendant, its officers, managers, employees, agents and partners, successors and assigns, are enjoined from engaging in conduct that discriminates on the basis of pregnancy in violation of Title VII of the Civil Rights Act of 1964, as amended.

9. Defendant, its officers, managers, agents and partners, successors and assigns, and all persons acting in concert with it agree that they will not discriminate nor retaliate against any employee because he or she has opposed any of Defendant's practices which the employee believed to be a violation of Title VII, filed a charge of discrimination with the EEOC alleging violation(s) of such statute, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

### **III. ANTI-DISCRIMINATION POLICY**

10. As part of the training outlined in Section IV below, Defendant shall create a new anti-discrimination policy against sex discrimination, female and pregnancy, and retaliation ("Policy"). The Policy shall clearly define prohibited conduct and specifically prohibit failing to hire qualified female applicants because of their pregnancy, specifically prohibit terminating an employee because of her pregnancy or because she is believed to be pregnant, and specifically prohibit terminating an employee because of his or her complaints about pregnancy discrimination. The Policy shall also specify that prohibited behavior will not be tolerated from its employees, customers, clients and any other persons present at any of its facilities. The Policy shall provide that complaints of pregnancy discrimination may be made to any person in the chain of command above an employee or directly to human resources personnel; employees who make complaints of pregnancy discrimination and/or harassment or provide information related to such complaints will be protected against retaliation; employees will not be required to complain of pregnancy discrimination to a person against whom they allege pregnancy discrimination; the employer will protect the confidentiality of pregnancy discrimination complaints to the extent possible; the employer will take immediate and appropriate corrective action if and when it determines that pregnancy discrimination has occurred; employees who violate the Policy are subject to discipline up to and including discharge. Defendant agrees to distribute the Policy to all current and future employees at all its Motherhood Maternity stores in Florida as part of the Training described in

Section IV below.

11. A copy of the Policy shall be forwarded to EEOC within thirty (30) calendar days of entry of this Consent Decree. This and any other submissions, reports, certifications, notices, or other materials that are required to be submitted to EEOC shall be mailed to: Motherhood Settlement, c/o Senior Trial Attorney Cheryl Cooper, United States Equal Employment Opportunity Commission, 1 Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

12. The Policy shall be distributed to all of Defendant's employees and management staff at all its Motherhood Maternity stores in Florida as part of the training describe in Section IV below and shall be included in any relevant policy or employee manuals kept by Defendant's businesses. The Policy shall be kept and maintained in the policy and procedure manual which is located and easily accessible for the employees at Motherhood Maternity stores in Florida and printed in a font that is easily legible (at least 12 point font).

13. A copy of the Policy shall be distributed to each new permanent or temporary employee at the Motherhood Maternity stores in Florida on the day the employee is hired. The manager responsible for distributing the Policy to each new employee at the Motherhood Maternity stores in Florida shall review the Policy with the employee. Motherhood Maternity shall maintain records demonstrating that each new employee at the Motherhood Maternity stores in Florida discussed the Policy with the responsible manager.

#### **IV. TRAINING**

14. During each of the three (3) years covered by this Decree, Defendant shall provide up to a four (4) hour annual interactive training to all Motherhood Maternity Regional Managers and District Managers with supervisory responsibility over personnel who are employed at Motherhood Maternity's stores in Florida (the "Supervisor Training"). Defendant agrees that the District Managers

and/or any managers and other supervisory personnel who attended the annual training will then train all the employees at Motherhood Maternity stores in Florida in that District Manager's District in Florida within sixty (60) calendar days after receiving the Supervisor Training. The annual training will specifically focus on equal employment opportunity laws (including pregnancy), and retaliation and the Defendant's anti-discrimination policies, and the proper procedure to be followed if Defendant's managers and/or supervisory personnel become aware of sex discrimination (including pregnancy) and retaliation in the workplace and/or if they receive a complaint of such discrimination. Defendant will provide the EEOC with at least two (2) weeks notice before it conducts its Supervisor Training session(s), with the date(s) and location(s) of the training, the identification of the training materials to be used at the training session, and the name and job title of the employees who will be in attendance at the training. The Supervisor Training shall be conducted by an organization mutually agreed upon by the EEOC and Defendant. Additionally, Defendant agrees that EEOC shall, at the EEOC's discretion, be in attendance at each Supervisor Training session. The first Supervisor Training session shall take place within sixty (60) calendar days of entry of this Decree. The subsequent Supervisor Training sessions shall take place annually throughout the duration of the Decree and no later than March 30<sup>th</sup> of each year throughout the duration of the Decree.

15. Defendant agrees that the training described in paragraph 14 shall be given to all new managers and supervisors, who did not attend the annual training, within thirty (30) calendar days of being placed in a management or supervisory position at Motherhood Maternity stores in Florida. This training may be conducted by the Regional or District Managers who were previously a participant in a Supervisor Training session.

16. Upon reasonable request, Motherhood agrees to provide EEOC with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

## **V. POSTING**

17. Within five (5) business days after entry of this Decree, Motherhood shall post an eleven (11) inches by fourteen (14) inches laminated copy of the Notice attached as Exhibit A to this Decree. The notice shall be posted at all Motherhood Maternity stores in Florida for the duration of this Decree in a conspicuous location accessible to all employees (i.e. employee bulletin board or lunch room). The Notice shall remain posted for three (3) years from the date of entry of this Decree. Defendant shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Motherhood shall certify to EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted.

## **VI. RECORD KEEPING**

18. For a period of three (3) years following entry of this Decree, Motherhood shall maintain and make available for inspection and copying by EEOC records (including name, age, social security number, address, home telephone number, mobile number, complaint and resolution of the complaint) of each person complaining about discrimination on the basis of pregnancy at Motherhood Maternity stores in Florida.

19. Motherhood shall make all documents or records referred to in Paragraphs 12, 13, and 16, available for inspection and copying within ten (10) business days after EEOC so requests. In addition, Motherhood shall provide the last known home address, and home telephone number for all persons within its employ during the term of the Decree whom EEOC requests and identifies for purposes of verifying compliance with this Decree within ten (10) business days of EEOC's request. Moreover, Motherhood shall permit employees whom EEOC requests to interview for the purposes of verifying compliance with this Decree to speak confidentially with EEOC. In the event that EEOC is unable to contact an employee for purposes of verifying compliance with this Decree, it shall notify

Motherhood and Motherhood shall, within ten (10) business days, provide EEOC with the employee's scheduled hours of work over the next fourteen (14) day period so that EEOC can conduct interviews at employee breaks, at the end of the day, or at some other time convenient to the employee and EEOC. Motherhood agrees that it will not discourage employees from participating in these interviews.

20. Nothing contained in this Decree shall be construed to limit any obligation Motherhood may otherwise have to maintain records under Title VII or any other law or regulation.

## **VII. REPORTING**

21. Motherhood shall furnish to EEOC the following written reports twice annually for a period of three (3) years following entry of this Decree. The first report shall be due no later than June 1, 2007 and thereafter by December 1<sup>st</sup> and June 1<sup>st</sup> annually. Each such report shall contain:

a. A description of each complaint of pregnancy discrimination at Defendant's Motherhood Maternity stores in Florida, including the names, age, social security number, home address and home and mobile phone number of the complaining parties and witnesses and the resolution of such complaint, occurring within the six (6) month period preceding the report. Information identifying Motherhood employees produced pursuant to this Decree will only be used to facilitate compliance with this Decree.

b. A certification by Motherhood that the Notice required to be posted in Paragraph 17, above, remained posted during the entire six (6) month period preceding the report.

## **VIII. EXPUNGEMENT OF ENTRIES FROM PERSONNEL RECORDS**

22. Defendant agrees to remove from LaShonda Burns' and Aimee Tart's personnel files any termination warnings, reports, or disciplinary documents regarding Ms. Burns and Ms. Tart within

ten (10) business days of the entry of this Decree. The Defendant further agrees to give LaShonda Burns and Aimee Tart a letter of reference, attached as Exhibit B, within ten (10) business days from the entry of this Decree. Defendant agrees to verify the reference given to LaShonda Burns and Aimee Tart attached as Exhibit B if asked to do so by a prospective employer performing a reference check. In addition, consistent with Exhibit B, Defendant will limit its disclosure of information regarding Ms. Burns' and Ms. Tart's personnel files solely to the information contained in Exhibit B. Moreover, if a Third Party requests a copy of Ms. Burns' or Ms. Tart's personnel files, Defendant will notify Ms. Burns and Ms. Tart directly as follows: [REDACTED]

#### IX. MONETARY RELIEF

23. Defendant shall pay a lump sum in the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000) to resolve this litigation as described in attached Exhibit C. All payments shall issue within fifteen (15) calendar days from the Court's execution of this Decree, by certified mail to [REDACTED]

[REDACTED] A copy of the payments and I.R.S. Form 1099 shall be forwarded to the attention of Cheryl A. Cooper, Senior Trial Attorney, U.S. Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

24. If Defendant fails to tender the payment described in paragraph 23 above, and Exhibit C in violation of this Decree, then Defendant shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC and any additional costs and attorney's fees incurred by LaShonda Burns and

Johnston & Hammond, P.A. caused by the non-compliance or delay of the Defendant.

#### **X.DISPUTE RESOLUTION**

25. In the event that EEOC has a good faith belief that Defendant has failed to comply with any provision(s) of the Decree, EEOC shall have the right to seek Court intervention. In the event that Defendant has failed to comply with any provision(s) of paragraphs 22 and 23 of the Decree that are applicable to LaShonda Burns or Johnston & Hammond, P.A., they shall have the right to seek Court intervention, and fees and costs if they prevail. Additionally, no party shall contest the Court's jurisdiction to hear a dispute arising from the Decree nor challenge EEOC's ability to bring an action to enforce the terms of the Decree in this Court.

#### **XI. COSTS**

26. Each Party shall bear its own costs, expenses and attorney's fees associated with this litigation, except as otherwise provided in Exhibit C herein.

#### **XII. DURATION OF CONSENT DECREE**

27. All provisions of this Decree shall be in effect for a period of three (3) years immediately following entry of the Decree.

**SO ORDERED, ADJUDGED AND DECREED**, this 5th day of January, 2007.

  
**TIMOTHY J. CORRIGAN**  
United States District Judge

AGREED TO:  
FOR THE PLAINTIFF,  
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: \_\_\_\_\_ Date: \_\_\_\_\_  
Gregory Gochanour, Esquire  
Acting Regional Attorney  
U.S. Equal Employment Opportunity Commission  
Miami District Office  
One Biscayne Tower, Suite 2700  
2 South Biscayne Boulevard  
Miami, Florida 33131  
Telephone: (305) 808-1852  
Facsimile: (305) 808-1835

AGREED TO:  
FOR THE PLAINTIFF-INTERVENOR  
LASHONDA BURNS

by: \_\_\_\_\_ Date: \_\_\_\_\_  
Ada Hammond, Esquire  
Charles Johnston, Esquire  
The Law Offices of Johnston & Hammond  
2223 Oak Street  
Jacksonville, FL 32204  
Telephone: (904) 358-7400  
Facsimile: (904) 246-7448

AGREED TO:  
FOR THE DEFENDANT  
MOTHERS WORK, INC. d/b/a MOTHERHOOD

by: \_\_\_\_\_ Date: \_\_\_\_\_  
Dan W. Matthias  
Chief Executive Officer

Mothers Work, Inc. d/b/a Motherhood  
456 North Fifth Street  
Philadelphia, PA 19123  
Telephone: (215) 873-2200

and

by: \_\_\_\_\_

Mark E. Zelek, Esquire  
Morgan, Lewis, Bockius, LLP  
5600 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131-2339  
Telephone: (305) 415-3488  
Facsimile: (305) 415-3001

Date: \_\_\_\_\_

**EXHIBIT A**  
**NOTICE TO ALL EMPLOYEES**  
**POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE**  
**UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**AND**  
**MOTHERS WORK, INC. D/B/A MOTHERHOOD**

This notice is being posted pursuant to a Consent Decree entered by the Court in EEOC v. Mothers Work, Inc. d/b/a Motherhood, Case No. 3:05-CV-990-J-32TEM. The United States Equal Employment Opportunity Commission ("EEOC") filed this suit alleging that Defendant discriminated against an employee and other similarly situated individuals because of her sex, female and pregnancy. Mothers Work, Inc. ("Motherhood") has adopted a policy that prohibits discrimination against employees based pregnancy in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, and/or sex. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. Motherhood will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, pregnancy discrimination.

Furthermore, Motherhood assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC. Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. If you believe you have been discriminated against, you may telephone the Miami District Office of the Equal Employment Opportunity Commission at (305) 808-1740. EEOC charges no fees and has employees who speak languages other than English.

This Notice must remain posted for three (3) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice of compliance with its terms may be directed to: Motherhood Settlement, c/o EEOC, 1 Biscayne Tower, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
DAN W. MATTHIAS  
CHIEF EXEXECUTIVE OFFICER  
MOTHERS WORK, INC. D/B/A MOTHERHOOD

DO NOT REMOVE BEFORE \_\_\_\_\_ 2009.

**EXHIBIT B - 1**

Mothers Work, Inc. Letterhead

[DATE]

To Whom It May Concern:

This letter will confirm that LaShonda Burns was employed with Mothers Work, Inc., also doing business as Motherhood Maternity, from November 14, 2001 through August 6, 2004. Ms. Burns was initially hired as a part time Sales Associate and then was promoted to a full time Assistant Store Manager on March 3, 2003 for the St. Augustine Outlet Mall Motherhood Store, in St. Augustine, Florida. Ms. Burns' last rate of pay was \$10.16 per hour.

On her last performance evaluation, on September 27, 2003, Ms. Burns was an Assistant Store Manager and received a "meets requirements" rating, defined as performance at what is expected of a fully qualified and experienced person in the position. As such, she is considered rehirable.

Sincerely,

Julie Marini  
Vice President Human Resources  
Mothers Work, Inc.

**IT IS MOTHERHOOD MATERNITY'S POLICY NOT TO PROVIDE ANY INFORMATION REGARDING ITS EMPLOYEES AND FORMER EMPLOYEES EXCEPT THE INFORMATION PROVIDED ABOVE.**

**ANY FURTHER INFORMATION REGARDING EMPLOYMENT SHOULD BE OBTAINED FROM THE NAMED FORMER EMPLOYEE.**

**EXHIBIT B - 2**

Mothers Work, Inc. Letterhead

[DATE]

To Whom It May Concern:

This letter will confirm that Aimee Tart was employed with Mothers Work, Inc., also doing business as Motherhood Maternity, from February 28, 2004 through April 16, 2004. Ms. Tart was hired as a part time Sales Associate for the St. Augustine Outlet Mall Motherhood Store, in St. Augustine, Florida. Ms. Tart's last rate of pay was \$7.00 per hour, and is considered rehireable.

Sincerely,

Julie Marini  
Vice President Human Resources  
Mothers Work, Inc.

**IT IS MOTHERHOOD MATERNITY'S POLICY NOT TO PROVIDE ANY INFORMATION REGARDING ITS EMPLOYEES AND FORMER EMPLOYEES EXCEPT THE INFORMATION PROVIDED ABOVE.**

**ANY FURTHER INFORMATION REGARDING EMPLOYMENT SHOULD BE OBTAINED FROM THE NAMED FORMER EMPLOYEE.**

**EXHIBIT C**

**ALLOCATION OF MONETARY RELIEF**

Motherhood agrees to distribute the monetary relief referenced in paragraph 23 as follows:

1. A check made payable to LaShonda Burns in the amount of Fifty Thousand Dollars (\$50,000), less all applicable payroll and other taxes, withholdings and other deductions required by law paid in settlement of claims for lost wages. Motherhood shall issue Ms. Burns a W-2 for this amount;

2. A check made payable to LaShonda Burns in the amount of One Hundred and Thirty-Five Thousand Dollars (\$135,000), with no deductions or withholdings, in settlement of claims for punitive and compensatory damages that are not wages. Motherhood shall issue Ms. Burns a 1099 for this amount;

3. A check made payable to Aimee Tart in the amount of Twenty Thousand Dollars (\$20,000), with no deductions or withholdings, in settlement of claims for punitive and compensatory damages that are not wages. Motherhood shall issue Ms. Tart a 1099 for this amount;

4. A check made payable to Lakevia Rollins in the amount of Twenty Thousand Dollars (\$20,000), with no deductions or withholdings, in settlement of claims for punitive and compensatory damages that are not wages. Motherhood shall issue Ms. Rollins a 1099 for this amount; and

5. A check made payable to Jackie Ciardiello in the amount of Twenty Thousand Dollars (\$20,000), with no deductions or withholdings, in settlement of claims for punitive and compensatory damages that are not wages. Motherhood shall issue Ms. Ciardiello a 1099 for this amount; and

6. A check made payable to Johnston & Hammond (Tax ID #59-3294360), Ms. Burns' private counsel in the amount of One Hundred and Thirty Thousand Dollars (\$130,000) representing Ms. Burns' attorney's fees and costs. Motherhood shall issue Johnston & Hammond a 1099 for this amount.