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# EEOC v. Apple Core Enterprises, Inc., et al.

Judge Daniel L. Hovland

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# EEOC v. Apple Core Enterprises, Inc., et al.

**Keywords**

EEOC, Apple Core Enterprises, 1:10-cv-048, Consent Decree, Retaliation, Sexual Harrassment, Sex, Female, Hospitality, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Equal Employment Opportunity  
Commission,

Plaintiff,

vs.

Apple Core Enterprises, Inc., and  
Food Management Investors, Inc.,  
d/b/a Applebee's Neighborhood  
Grill & Bar,

Defendants.

**CONSENT DECREE AND ORDER**

Case No. 1:10-cv-048

**INTRODUCTION**

Plaintiff Equal Employment Opportunity Commission (hereinafter the "Commission" or "EEOC") has filed a Complaint captioned *EEOC v. Apple Core Enterprises, Inc., and Food Management Investors, Inc., d/b/a Applebee's Neighborhood Grill & Bar*, Civil No. 1:10-cv-00048 (DLH/CSM), alleging that Defendants Apple Core Enterprises, Inc. ("ACE") and Food Management Investors, Inc. ("FMI"), (collectively "Defendants"), discriminated against Charging Parties Megan Espeland, Kristin Grossman, Shelly Kadrmas, Nicole Vick, Lisa Tomek and a class of other women (collectively known herein as "Claimants") by subjecting them to unlawful employment practices on the basis of sex, female, including sexual harassment, and retaliation in violation of Section 706(f)(1) and (3) and Section 707(f)(1) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII").

The Defendants denied the allegations in the Complaint, and maintained that they did not discriminate against the Claimants in violation of Title VII. Defendants asserted various affirmative

defenses to the allegations raised by the EEOC, and maintained that they fully complied with the requirements of Title VII.

In agreeing to the terms of this Consent Decree, the EEOC and Defendants, acting by and through their counsel, engaged in arms' length negotiations and a significant exchange of information. The parties have obtained sufficient information to assess reliably the relative merits of the claims and defenses. Throughout this process, the EEOC and Defendant were represented by counsel knowledgeable in this area of the law.

**THEREFORE**, upon the consent of the parties, and upon review by the Court of these terms, it is

**ORDERED, ADJUDGED, and DECREED** that the following terms are given approval as set forth herein:

**I. JURISDICTION, FINDINGS, AND DEFINITIONS**

**A. Jurisdiction**

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. This Court has jurisdiction over the Guaranty (Attached hereto as **Exhibit D**) and over the Guarantors (as defined in the Guaranty) for the sole purpose of enforcing the Guaranty or resolving any dispute arising thereunder.
3. The Court shall retain jurisdiction of this action during the duration of this Decree for the purposes of entering all orders, judgments, and decrees that may be necessary to implement the relief and enforcing compliance with the terms provided herein.

**B. Findings**

It is the finding of this Court, made on the pleadings and on the record as a whole and upon agreement of the parties, that: (i) the requirements of Title VII of the Civil Rights Act of 1964 will be carried out by the implementation of this Consent Decree, (ii) the terms of this Consent Decree constitute a fair and equitable settlement of all issues raised in the EEOC's Complaint, and (iii) this Consent Decree is intended to and does resolve claims of the EEOC pursuant to Title VII that are contained in its First Amended Complaint. (Docket No. 14).

**C. Definitions**

1. "ACE," as used and unless otherwise limited herein, means Defendant Apple Core Enterprises, Inc.'s operations and facilities nationwide.
2. "FMI," as used and unless otherwise limited herein, means Defendant Food Management Investors, Inc.'s operations and facilities nationwide.
3. "Defendants," as used and unless otherwise limited herein, means Defendants' restaurant and management services operations nationwide.
4. "EEOC" or "Commission," as used herein, means the United States Equal Employment Opportunity Commission.
5. "Parties," as used herein, shall refer to the Defendants and the EEOC jointly.
6. "Charging Parties" mean the individuals who filed the following charges of discrimination with the EEOC:
  - a. Megan Espeland, who filed EEOC Charge of Discrimination No. 444-2008-00192;
  - b. Kristin Grossman, who filed EEOC Charge of Discrimination No. 444-2008-00197;

c. Nicole Vick (f/k/a Nicole McGarvey), who filed EEOC Charge of Discrimination No. 444-2008-00193;

d. Shelly Kadrmas, who filed EEOC Charge of Discrimination No. 444-2008-00194; and

e. Lisa Tomek, who filed EEOC Charge of Discrimination No. 444-2008-00195.

7. For purposes of the monetary relief provided in this Decree, the “Claimants” consists of twelve female former employees of Defendants’ Bismarck South Applebee’s Neighborhood Grill & Bar restaurant located in Bismarck, ND. Individual Claimants are identified on **Exhibit C**, attached hereto.

8. The term “employer” as used herein shall mean an employer as defined and interpreted under Title VII of the Civil Rights Act of 1964.

9. “Effective Date” as used herein shall mean the date upon which the District Court grants final approval of this Consent Decree.

10. “Action” as used herein shall mean and refer to the litigation brought by the EEOC against Defendants titled *EEOC v. Apple Core Enterprises, Inc., and Food Management Investors, Inc., d/b/a Applebee’s Neighborhood Grill & Bar*, Case No. 1:10-cv-00048 (DLH/CSM)(D. N.D.).

## **II. SCOPE AND DURATION OF THE CONSENT DECREE**

A. The provisions and agreements contained herein are effective immediately upon the Effective Date of this Decree. This Consent Decree shall remain in effect for a period of three (3)

years from the Effective Date, or the date of the last payment by Defendants pursuant to this Decree, whichever is later. This Consent Decree can only be extended for good cause shown.

B. The Charging Parties and the Claimants shall recover monetary awards pursuant to this Consent Decree. Monetary awards to the Charging Parties and the Claimants will be allocated in the sole discretion of the EEOC. Persons who recover a monetary award under this Decree shall be required to sign the Release and Waiver attached as **Exhibit A** as a condition precedent to obtaining monetary relief under this Decree.

C. This Decree shall be binding on and enforceable against Defendants and their officers, directors, agents, successors and assigns.

D. Nothing in this Decree shall be construed to limit or reduce Defendants' obligation to comply fully with Title VII or any other federal employment statute.

E. This Decree in no way affects the EEOC's right to bring, process, investigate or litigate other charges that may currently be pending before it or may later arise against Defendants.

### **III. DECREE ENFORCEMENT**

A. If the EEOC has reason to believe that Defendants have breached this Decree, the EEOC may bring a motion to enforce the Decree.

B. Prior to initiating such action, the EEOC will notify Defendants and their legal counsel of record, in writing, of the nature of the dispute and identify the provision(s) that the EEOC believes the Defendants have breached. Absent a showing by either party that the delay will cause irreparable harm, Defendants shall have fifteen (15) days from the date of notice ("Dispute Resolution Period") to attempt to resolve or cure the breach. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

C. After the expiration of the Dispute Resolution Period, the EEOC may initiate an enforcement action in this Court, seeking all available relief or remedies, including an extension of the duration of the Decree to correlate with such time as the Defendants are shown to be in breach of the Decree.

D. The EEOC may petition this Court for compliance with this Decree at any time during which the Court maintains jurisdiction over this action. Should the Court determine that the Defendants have not complied with this Decree, in whole or in part, it may impose appropriate relief, including an extension of the duration of this Decree and other relief the Court deems appropriate.

#### **IV. MONETARY RELIEF**

A. Defendants agree to pay a total of One Million Dollars (\$1,000,000.00) in full resolution of this Action to be distributed amongst the Charging Parties and Claimants who sign the waiver, attached as **Exhibit A**. The monetary relief shall be paid as follows:

1. A down payment of Five Hundred Thousand Dollars (\$500,000.00), to be paid within fifteen (15) business days of Defendants' receipt of signed waivers and releases provided by the EEOC pursuant to **Section IV(C)**.
2. A second payment of One Hundred Sixty-Six Thousand Dollars (\$166,000.00), to be paid within one (1) calendar year of the down payment in Section IV(A)(i).
3. A third payment of One Hundred Sixty-Seven Thousand, Dollars (\$167,000.00), to be paid within two (2) calendar years of the down payment in Section IV(A)(i).

4. A fourth payment of One Hundred Sixty-Seven Thousand Dollars (\$167,000.00), to be paid within three (3) calendar years of the down payment in Section IV(A)(I).

5. Payments made under Section IV(A) shall be made directly to the individual Charging Parties and Claimants members in accordance with the amounts identified to the Defendants (hereafter “the Distribution List”).

B. In the event of any default in the payment of any installment payments required by Section IV(A)(ii-iv), *supra*, time being of the essence hereof, the EEOC may, without notice or demand, declare the entire remaining principal sum then unpaid immediately due and payable.

C. The Defendants agree that the facts as alleged in the EEOC’s Complaint (Document No. 1) initiating this litigation shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding. Defendants do not agree that the facts as alleged in the EEOC’s Complaint (Document No. 1) initiating this litigation shall be taken as true for any other purpose. Within three (3) business days of the Effective Date of the Decree, the EEOC shall, by certified mail, send copies of the waiver and release attached as **Exhibit A** to the five Charging Parties and the twelve Claimants identified on **Exhibit C**. The EEOC shall include in this correspondence a letter detailing an individualized estimate of their settlement amount. The EEOC shall include a pre-paid, pre-addressed return envelope. The Charging Parties and Claimants shall have thirty (30) calendar days from the date the waivers and releases are mailed to review, consider and return a signed copy of the waiver and release. All signed waivers must be actually received by the EEOC within the thirty (30) calendar day consideration period to be considered timely. Any monetary settlement amount designated for an individual who fails to sign a waiver and release in the time period required pursuant to **Section IV(C)** shall be reallocated to the remaining Charging

Parties and Claimants on a pro rata basis consistent with the EEOC's Distribution List. The EEOC will provide Defendants with a revised Distribution List in the event that one or more Charging Parties or Claimants fail to return a signed waiver and release.

D. The distribution to the Charging Parties and Claimants shall be made in amounts determined at the sole discretion of the EEOC and subject to approval by the Court. The EEOC shall provide Defendants with a Distribution List of the name and address to which the monetary relief to the Charging Parties and Claimants should be delivered (hereafter "Distribution List"). Where indicated on the EEOC's Distribution List, Defendants payments to the Charging Parties shall be directed to the Charging Parties' attorneys.

E. Within three (3) business days of the deadline for Charging Parties and Claimants to return signed waivers and releases, the EEOC shall forward to Defendants' counsel a copy of all signed waivers and releases and the EEOC's Distribution List. At the time the EEOC forwards the Distribution List to the Defendants, the EEOC shall file with the Court a copy of its Distribution List as **Exhibit E** to the Consent Decree.

F. Within fifteen (15) business days of the Defendants' receipt of the EEOC's Distribution List, Defendants shall forward, via certified mail, a check to each individual in the amount identified on the EEOC's Distribution List. The EEOC and Defendants agree that the monies to be paid to the Charging Parties and Claimants are in settlement of claims for physical injuries and emotional distress and that the Payments referenced in Section IV of this Consent Decree therefore constitute non-wage compensation under Title VII. As a result, Defendants and the EEOC agree that no tax withholdings shall be made. Defendants shall make appropriate reports to the Internal Revenue Service and any other applicable tax authorities. Defendants shall be solely responsible for any costs associated with the issuance and distribution of the settlement checks and

all appropriate tax reporting forms to each of the Charging Parties and Claimants. Nothing in this Decree constitutes tax advice nor purports to replace the Charging Parties' and Claimants' responsibility to consult a tax expert with any relevant tax questions.

G. Within three (3) business days of the issuance of each settlement check, Defendants shall submit a copy of each check, related tax form(s) and related correspondence to the EEOC.

**V. GENERAL INJUNCTIVE RELIEF**

**A. Non-Discrimination**

1. Defendants, their officers, agents, management (including any and all employees with supervisory authority), successors, assigns, and all those in active concert or participation with them, or any of them, shall not: (a) discriminate against persons on the basis of sex in the hiring, discipline, discharge, termination, or terms and conditions of employment by creating or participating in the creation of a sexually hostile working environment; (b) engage in or be a party to any action, policy or practice that is intended or is known to them to have the effect of harassing or intimidating any employee on the basis of sex; and (c) create, facilitate, or permit the existence of a sexually hostile work environment.

2. Defendants, their officers, agents, management (including any and all employees with supervisory authority), successors, assigns, and all those in active concert or participation with them, or any of them, shall not engage in, implement or permit any action, policy or practice with the purpose or effect of retaliating against any current or former employee or applicant of Defendants because he or she has in the past, or during the term of this decree: (a) opposed any practice made

unlawful under Title VII; (b) filed a charge of discrimination alleging such practice with a federal or state law enforcement agency; (c) testified or participated in any manner in any investigation (including without limitation, any internal investigation undertaken by either or both of the Defendants) or proceeding in connection with this case and/or relating to any claim of a Title VII violation; (d) was identified as a possible witness, claimant or potential victim of sexual harassment and/or retaliation in this action or the EEOC's administrative investigation preceding this action; (e) asserted any rights under this Decree; or (f) sought and/or received any relief in accordance with this Decree.

**VI. SPECIFIC INJUNCTIVE RELIEF REMEDIES**

**A. Charging Party and Claimant Specific Relief**

1. Within ten (10) days of the Effective Date of this Decree, Defendants shall:
  - a) Remove from any personnel files of each Charging Party and all Claimants and, to the extent applicable, their supervisors maintained by Defendants, all negative complaints, reports, criticisms, and any other documents reflecting negatively on her job performance issued or recommended by Defendants' former General Manager Michael Cordova for the time period from January 1, 2002 until the date of Cordova's termination, and any references to the charges of discrimination filed against the Defendants or their participation in this Action;
  - b) To the extent Defendants must keep records of the charges of discrimination or the Charging Parties' or Claimants' involvement in this

Action in order to effectuate this Decree, Defendants shall maintain any such records at the offices of Defendants' counsel;

c) Refrain from providing negative references and limit employment reference inquiries related to Charging Parties or Claimants to verifying whether the identified Claimant was employed by the Defendants, and the time period(s) of such employment;

d) To the extent they continue to or return to work for Defendants, ensure that any Charging Parties or Claimants are not subject to harassment and retaliation; and

e) Change any and all personnel records reflecting a termination of any Charging Parties or Claimants to a voluntary resignation.

**B. Posting and Publication**

1. Within ten (10) business days of the Effective Date of this Decree, Defendants shall post and cause to remain posted the posters required to be displayed in the workplace by EEOC regulation 29 C.F.R. §1601.30 at its facilities nationwide.

2. Within ten (10) business days of the Effective Date of this Decree, Defendants shall post and for the term of this Decree shall post and cause to remain posted **Exhibit B** (attached hereto). This posting shall be made at Defendants' Applebee's Neighborhood Grill & Bar restaurant locations nationwide, Apple Core Enterprises, Inc.'s corporate headquarters, and Food Management Investors, Inc.'s corporate headquarters in a clearly visible place where employee notices are typically posted.

3. Within ten (10) business days of the Effective Date of this Decree, President/CEO Myron Thompson and COO/Executive Vice President Abe Sakak will publish a statement to all of Defendants' employees nationwide that Defendants will not tolerate sexual harassment and retaliation in the workplace by posting that statement in a clearly visible place where employee notices are typically posted at all of Defendants' facilities.

**C. Creation of Ombudsperson Position**

1. Defendants will create a position of Ombudsperson. The Ombudsperson will be responsible for monitoring, soliciting, and resolving complaints of employees relating to the working conditions at Defendants' restaurants, specifically complaints of sexual harassment, retaliation or other discrimination. The Ombudsperson will be responsible for conveying any and all complaints or concerns to Defendants Human Resources personnel, President/CEO Myron Thompson and COO/Executive Vice President Abe Sakak on a monthly basis for the term of this Decree. Defendants may, in their discretion, assign additional duties to the Ombudsperson.

2. The Ombudsperson must have training in applicable federal and state antidiscrimination laws, with preference given to candidates who have experience investigating sexual harassment claims in the restaurant industry. The Ombudsperson may be part of the Human Resources department of Food Management Investors, Inc., the management company for Defendants' Applebee's Neighborhood Grill & Bar restaurants. The Ombudsperson shall be provided a copy

of this Consent Decree immediately upon beginning his or her role as Ombudsperson.

3. The Ombudsperson will visit each of Defendants' restaurants at least once during the term of this Decree. The purpose of these visits will be to monitor the working conditions of employees and solicit employee concerns and complaints. Employees shall be provided advance notice of the visits of the Ombudsperson and, if the visits coincide with a scheduled work shift, shall be allowed paid time to meet with the Ombudsperson. Employees not scheduled to work during the Ombudsperson's visit shall be permitted to come to the restaurant to visit with the Ombudsperson. Meetings between the Ombudsperson and employees shall be treated as confidential to the extent possible to protect the privacy of the employee and shall be held in a private office. Meetings between the Ombudsperson and employees shall not be supervised or monitored by any other member of management.

4. In addition to the visits required under the preceding paragraph, the Ombudsperson shall visit the Bismarck South Applebee's Neighborhood Grill & Bar at least once every three months during the first year of this Decree to monitor the working conditions of employees and solicit employee concerns and complaints. After the first year of this Decree, the Ombudsperson shall visit the Bismarck South Applebee's Neighborhood Grill & Bar twice a year for the duration of this Decree.

5. The visits by the Ombudsperson to Defendants restaurant that are required under this section of the Decree are intended to establish a minimum number of visits. Nothing in this Decree is intended to prevent Defendants from requiring the Ombudsperson to visit its restaurants more often.

**D. Dedicated Harassment and Retaliation Hotline/E-Mail**

1. Within sixty (60) days of the Effective Date of this Decree, Defendants shall ensure that they have a sexual harassment/retaliation Hotline telephone number and e-mail address. This Hotline shall be dedicated and publicized to Defendants' employees solely as a means of reporting sexual harassment or retaliation. The telephone component of the Hotline shall be toll-free and operational twenty-four (24) hours a day, seven (7) days a week. The e-mail component of the Hotline shall be maintained on a secure server accessible to Defendants' Human Resources personnel and all e-mails transmitted via this component shall be preserved in such a format as to enable their immediate, complete and native format production for the duration of this Decree. The Hotline shall be operated by a third-party vendor. A record of all telephone calls, their subject matter and any relevant information shall be provided by the third-party Hotline operator to a member of Defendants' Human Resources personnel.

2. Each of Defendants' restaurants shall publish the Hotline telephone number and e-mail address on every employee's pay stub, in the employee handbook, in its sexual harassment and retaliation policies, and in a clearly visible place where employee notices are typically posted. Any notice listing the sexual harassment/retaliation Hotline number and e-mail address shall be immediately preceded by the phrase: "REPORT SEXUAL HARASSMENT OR RETALIATION."

3. Defendants shall further notify all management and hourly employees that any reports to the sexual harassment/retaliation Hotline will be treated confidentially

and complaints may be made anonymously. Defendants shall also notify all management and hourly employees that they will not be subject to retaliation for using the sexual harassment/retaliation Hotline.

**E. Computer Use and Abuse Policy**

1. Defendants shall establish and disseminate a Computer Use and Abuse policy to its employees and managers governing the use of company property and company provided electronics (i.e. computers, company provided phones or smart-phones, etc) that prohibits the viewing and/or dissemination (i.e. e-mail, text messages) of pornography or sexually explicit material. Defendants' Computer Use policy shall inform employees that employees or managers who violate this policy will be subject to disciplinary action, up to and including termination.

**F. Training**

**1. Area Directors and Management at the Bismarck South Store**

a) Within ninety (90) days of the Effective Date of this Decree, all of Defendants' managerial/supervisory employees at its South Bismarck store and all of Defendants' Area Directors nationwide shall attend an in-person or live training program. This training shall be at least two (2) hours in duration. This training shall be conducted by an outside organization(s) or person(s), approved by the EEOC. Thereafter, for the remaining term of the Decree, this training shall be conducted in-person annually for two (2) hours. Defendants shall retain an outside trainer for subsequent training sessions.

b) The training shall include coverage of the subjects of equal employment opportunity rights and responsibilities, harassment, retaliation and Defendants' policies and procedures for reporting and handling complaints of harassment and retaliation.

c) The training for supervisors, general managers, assistant managers and any employee with management authority shall include: (1) training on how to identify harassment and retaliation, (2) their responsibilities under Title VII of the Civil Rights Act of 1964 and state law; (3) how to properly handle complaints of harassment and/or retaliation, and (4) their obligation to prevent and to take corrective measures.

d) For the remaining term of this Decree, all new managers at South Bismarck store and all new Area Directors nationwide shall receive this two (2) hour training within sixty (60) days of hire or promotion. This training for new hires or recently promoted managers can be provided online or by video, with the understanding that he/she will attend a two (2) hour live training the next time it is offered.

e) All employees required to attend such training shall verify their annual attendance in writing. This training shall be provided in English, or, where necessary, offered in Spanish or a language that all employees understand.

f) No later than twenty (20) days prior to the date of each training event given under this Decree, Defendants shall submit to the EEOC the identity of the trainer(s), a copy of the training agenda and copies of all documents

to be used in the training. Defendants shall also include the date, time and location of each training program provided pursuant to this Decree, and an EEOC representative may attend any such program.

**2. Restaurant Management and Supervisors**

a) Defendants' supervisors, general managers, assistant managers and all employees with management authority serving in one or more of Defendants' Applebee's Neighborhood Grill & Bar restaurants nationwide who are not subject to the training requirements of the preceding section, Section VI(f)(1), shall be provided the training described under this section within ninety (90) days of the Effective Date of this Decree and on an annual basis thereafter for the duration of this Decree.

b) The initial training provided by this section shall be conducted by an outside trainer, approved by the EEOC. New employees hired into positions with management authority after the Effective Date of this Decree shall be given the training described in this section at the time of hire and thereafter on an annual basis with other restaurant management employees. The training for new hires can be provided online or by video, with the understanding that he/she will attend a live training the next time it is offered. All restaurant management employees shall be paid their regular hourly wage for the duration of their participation in any training required under this Decree.

c) The training for supervisors, general managers, assistant managers and any employee with management authority shall include: (1) training on how to identify harassment and retaliation, (2) their responsibilities under Title VII of the Civil Rights Act of 1964 and state law; (3) how to properly handle complaints of harassment and/or retaliation, and (4) their obligation to prevent and to take corrective measures.

d) All employees required to undergo such training shall verify their annual participation in writing. This training shall be provided in English, or, where necessary, offered in Spanish or a language that all employees understand.

**3. Human Resources Personnel**

a) Any personnel designated by Defendants to be involved in the investigation of sexual harassment and/or retaliation complaints at Defendants' operations nationwide shall receive the training outlined in Section VI(E)(1), and an additional three hours of specialized training on how to effectively investigate complaints of harassment and retaliation. In addition to training on the general subject matter of investigating complaints of harassment and retaliation, this training shall include the following topics: (1) investigating complaints made anonymously; (2) identifying sexual harassment and retaliation situations unique to restaurant or food service working environments; and (3) implementing effective corrective measures following an investigation. The trainer for this aspect of the training shall be

selected from an outside organization/vendor, approved by the EEOC, and shall not be a current or former employee of ACE or FMI, and must have specialized training on how to conduct sexual harassment investigations in compliance with Title VII of the Civil Rights Act of 1964.

b) This training shall be completed once for all affected employees within sixty (60) days of the Effective Date of this Decree. All new employees designated by Defendants to be involved in the investigation of sexual harassment and/or retaliation complaints at Defendants' operations nationwide and all employees recently promoted to a position with Defendants in which they are designated by Defendants to be involved in the investigation of sexual harassment and/or retaliation complaints at Defendants' operations nationwide shall receive this two (2) hour training within sixty (60) days of hire or promotion. The two (2) hour Investigation Training shall be conducted at least once during the term of this Decree for personnel covered by this Section. Unless and until this training is taken, no individual who has not already received the Investigation Training under this section shall be allowed to investigate complaints of sexual harassment and/or retaliation under this Decree. Defendants may require additional employees beyond those identified in this Consent Decree to participate in the investigation training under this section.

**4. Hourly Employees**

a) Defendants' hourly employees (e.g. servers, cooks, hosts, etc.) shall be provided the training described under this section within ninety (90) days of the Effective Date of this Decree and on an annual basis thereafter for the duration of this Decree. The initial training provided by this section shall be conducted by an outside trainer, approved by the EEOC. New hourly employees hired after the Effective Date of this Decree shall be given the training described in this section at the time of hire and thereafter on an annual basis with other hourly employees. The training for new hires can be provided online or by video, with the understanding that he/she will attend a live training the next time it is offered. All hourly employees shall be paid their regular hourly wage for their attendance at any training required under this Decree.

b) All of Defendants' hourly employees shall be trained on the subjects of equal employment opportunity rights and responsibilities, with an emphasis on sexual harassment, retaliation and Defendants' policies and procedures for reporting and handling complaints of harassment, discrimination or retaliation. The training should focus aiding employees in the following: (1) identifying what is harassment and retaliation; (2) what to do if a manager or other supervisory employee is subjecting them to harassment or retaliation; (3) explaining Defendants' expectations of holding managers accountable for maintain a safe and harassment-free working environment; and (4) identifying external means, like the EEOC or state and

local fair employment practices agencies, where they can complain about harassment, retaliation or other discrimination.

**5. Message to Employees**

a) Before each training event, Defendants shall deliver a message from their President/CEO Myron Thompson, approved by the EEOC, emphasizing Defendants' zero tolerance for sexual harassment and retaliation and stating that it is unacceptable to retaliate against any employee for complaining about sexual harassment, for assisting in the investigation of a complaint, or for otherwise assisting in the use of Defendants' complaint procedures.

**G. Performance Evaluations**

1. Defendants shall develop, implement, or revise its performance evaluation criteria for managers, assistant managers, supervisors, human resources personnel and executive level employees to include measures for performance compliance with EEO laws and with Defendants anti-discrimination and retaliation policies and procedures. This shall specifically include holding managers and supervisors accountable for failing to report and/or take appropriate action with respect to sexual harassment, retaliation or other discrimination as required under Defendants' policies and procedures, applicable state laws, or Title VII of the Civil Rights Act of 1964. Managers and supervisors shall be held accountable for the harassment of any employees by personnel under their supervision. Managers and supervisors shall

also be held accountable for any mishandling of complaints or investigations by personnel under their supervision.

**H. Recordkeeping**

1. Defendants shall establish a recordkeeping procedure that provides for the centralized tracking of all complaints (including those made via the Hotline) of unfair treatment, unwelcome or offensive conduct, sexual harassment, retaliation and any other type of discrimination made by any applicant to or employee of Defendants. Such a tracking system shall be generated into a report that includes, at a minimum, the following information: (a) the identity of the complaining employee(s) or applicant(s), (b) the nature of the allegations, (c) the complaining employee's position, (d) the location(s) of the incident, (e) the date of the complaint, (f) the employer's response time, (g) whether an investigation was conducted, (h) a written record of all investigatory steps taken during the investigation, (i) the position and name of the alleged perpetrator(s), (j) the results of the investigation including a description of any determination made and witnesses interviewed, (k) the corrective or disciplinary action taken as a result of the investigation, (l) whether the alleged perpetrator had been previously accused of wrongdoing and/or disciplined for similar conduct, (m) a certification that the results of the investigation were communicated to the complaining party, (n) whether and how any managers, supervisors or other supervisory employees are being held accountable, and (o) the identity of the person(s) who investigated or resolved each complaint. Defendants

may choose to keep track of other types of employee complaints or grievances in addition to the complaints tracked by this system.

2. The records identified in the preceding Section shall be compiled into a Monthly Report.<sup>1</sup> A copy of the Monthly Report shall be provided to Defendants' President/CEO Myron Thompson and COO/Executive Vice President Abe Sakak within one week of the end of each month for the term of this Decree. Within one week of receipt of the Monthly Report, President/CEO Myron Thompson and COO/Executive Vice President Abe Sakak shall signify their receipt and review of each Monthly Report by signing a copy of each. Signed copies of each Monthly Report shall be kept for the term of this Decree.

3. Defendants shall also maintain the following records for the term of the Decree:

a) All documents generated in connection with any complaint, investigation, or resolution of a complaint of unfair treatment, unwelcome or offensive conduct, sexual harassment, retaliation and any other type of discrimination;

b) All forms acknowledging employees' receipt of information about Defendants' Sexual Harassment and Retaliation Hotline, Defendants' internal complaint procedures, and Defendants' anti-discrimination and anti-retaliation policies;

<sup>1/</sup> If no result or determination has been reached for a given complaint or investigation at the time the Monthly Report is due, the result shall be included in the next Monthly Report.

c) All documents verifying the occurrence of all training sessions, including the names and positions of all attendees for each session, as required under this Decree;

d) All documents generated in connection with the counseling, discipline or termination of employees suspected of or determined to have engaged in behavior that violates Defendants' policies against sexual harassment and retaliation;

e) All documents generated in connection with the establishment or review of performance evaluation measures detailed in Section IV(F) of this Decree.

4. The Defendants shall make the aforementioned records available to a representative of the EEOC within ten (10) business days following a written request by the EEOC at any time during the term of this Decree. Within ten (10) business days following such notice, Defendants shall allow representatives of the EEOC to review Defendants' compliance with this Decree by inspecting and photocopying relevant documents and records, interviewing employees and management officials on its premises, and inspecting its premises.

**I. Reporting**

To demonstrate its compliance with this Decree, Defendants shall submit to the EEOC periodic reports as outlined herein:

1. Within ninety (90) days of the Effective Date of this Decree, Defendants shall submit to the EEOC an Initial Report which contains:

- a) A statement confirming that all required notices of the terms of this Decree have been posted in Defendants' facilities and distributed to Defendants' employees;
  - b) Defendants' current anti-discrimination and anti-retaliation policies;
  - c) Confirmation of the establishment and implementation of the Sexual Harassment and Retaliation Hotline;
  - d) A statement confirming that all employees received the sexual harassment and retaliation policy and notice of the Sexual Harassment and Retaliation Hotline;
  - e) Confirmation of the establishment and implementation of the centralized complaint tracking system identified in Section IV(H)(1) of this Decree, and a detailed description of the same;
  - f) Signed copies of all Monthly Reports provided in Section IV(H)(2) of this Decree that have been completed by the time of the Initial Report under this Section;
  - g) Confirmation that the Claimant-Specific Injunctive Relief in Section IV(A) of this Decree has been carried out;
  - h) A copy of the training materials used in all training sessions required under this Decree that occurred prior to the initial reporting period;
  - i) A copy of all performance evaluation forms or criteria that modified pursuant to Section IV(G) of this Decree.
2. After the Initial Report, Defendants shall provide the EEOC with annual reports confirming its continued compliance with the terms of this Decree, including:

- a) Confirmation that all posting and notices required by this Decree have been or continue to be posted;
- b) Confirmation that any injunctive relief that has been implemented since the time of the Initial Report has in fact been complete during the preceding reporting period;
- c) Signed copies of all Monthly Reports created pursuant to Section IV(H)(2) during the preceding reporting period;
- d) Confirmation and identification of all training sessions administered pursuant to this Decree that occurred during the reporting period;
- e) Identification of the person(s) and/or organization(s) conducting all training programs during the reporting period.

**VI. COSTS OF ADMINISTRATION AND IMPLEMENTATION OF CONSENT DECREE**

Defendants shall bear all costs associated with its administration and implementation of its obligations under this Consent Decree.

**VII. COSTS AND ATTORNEYS FEES**

Each party shall bear that party's own costs and attorney's fees.

**VIII. MISCELLANEOUS PROVISIONS**

Unless otherwise stated, all notices, reports and correspondence required under this Decree shall be delivered to the attention of Nicholas J. Pladson, Trial Attorney, U.S. Equal Employment Opportunity Commission, Minneapolis Area Office, 330 Second Avenue South, Suite 720, Minneapolis, MN 55401.

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION**

P. David Lopez  
General Counsel  
James Lee  
Deputy General Counsel  
Gwendolyn Young Reams  
Associate General Counsel  
Equal Employment Opportunity Commission  
131 M Street NE  
5th Floor  
Washington, D.C. 20507

Dated: August 29, 2011

/s/ John C. Henrickson  
John C. Hendrickson  
Regional Attorney

/s/ Jean P. Kamp  
Jean P. Kamp  
Associate Regional Attorney  
Equal Employment Opportunity Commission  
Chicago District Office  
500 West Madison Street, suite 2000  
Chicago, Illinois 60661  
Telephone: (312) 869-8116  
Facsimile: (312) 869-8124

/s/ Nicholas J. Pladson  
Nicholas J. Pladson (#0388148)  
Trial Attorney  
Equal Employment Opportunity Commission  
Minneapolis Area Office  
330 Second Avenue South, Suite 720  
Minneapolis, MN 55401  
(612) 335-4047  
nicholas.pladson@eeoc.gov

**ATTORNEYS FOR THE PLAINTIFF**

Dated: August 29, 2011

/s/ Joseph G. Schmitt  
Nilan Johnson Lewis PA  
120 S. 6th Street, Suite 400  
Minneapolis, MN 55402  
(612) 305-7500  
jschmitt@nilanjohnson.com

**ATTORNEY FOR THE DEFENDANTS**

**IT IS SO ORDERED**

Dated: September 1, 2011.

/s/ Daniel L. Hovland  
Daniel L. Hovland, District Judge  
United States District Court

**EXHIBIT A**

*DRAFT*

**RELEASE AND WAIVER**

In consideration for \$\_\_\_\_\_ paid to me jointly by Apple Core Enterprises, Inc. and Food Management Investors, Inc. in connection with the resolution of EEOC v. Apple Core Enterprises, Inc. and Food Management Investors, Inc. d/b/a Applebee's Neighborhood Grill & Bar, Civ. No. 1:10-cv-00048 DLH/CSM, (D. N.D.), I waive my right to recover for any claims of sexual harassment or retaliation arising under Title VII of the Civil Rights Act of 1964 that I had against Apple Core Enterprises, Inc. or Food Management Investors, Inc. or their owners, shareholders, subsidiaries or affiliates at the time or prior to the date of this Release and Waiver, and which were the subject of the Consent Decree in EEOC v. Apple Core Enterprises, Inc. and Food Management Investors, Inc. d/b/a Applebee's Neighborhood Grill & Bar, Civ. No. 1:10-cv-00048 DLH/CSM, (D. N.D.).

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

**EXHIBIT B**

**NOTICE TO EMPLOYEES**

This Notice is posted pursuant to a Consent Decree resolving a lawsuit brought by the **U.S. Equal Employment Opportunity Commission**, ([www.eeoc.gov](http://www.eeoc.gov)), against the owner and operator of this Applebee's Neighborhood Grill & Bar restaurant.

The EEOC is the agency of the United States Government that is responsible for investigating and eliminating employment discrimination, including sexual harassment and retaliation

The EEOC's lawsuit alleged that the company discriminated against female servers by failing to protect them from sexual harassment and retaliation committed by a former General Manager.

The three-year Consent Decree resolving this lawsuit provides monetary relief to 17 former servers and the following non-monetary provisions:

- The Company shall provide training to all employees on the Title VII of the Civil Rights Act of 1964 and its prohibitions against sexual harassment and retaliation including the requirement that employers promptly investigate complaints of sexual harassment and take measures to prevent and correct sexual harassment.
- The Company will establish a dedicated **Sexual Harassment and Retaliation Hotline** for employees like you to report confidentially any sexually hostile or unwelcome behavior. These reports may be made anonymously.
- The Company will comply with Federal law prohibiting sexual harassment, and will not retaliate against any individual for complaining about sexual harassment, retaliation, unwelcome conduct or any other discriminatory employment practices.

*/s/ Daniel L. Hovland*  
Daniel L. Hovland, District Judge  
United States District Court

**EXHIBIT C**

**ELIGIBLE SETTLEMENT CLASS MEMBERS**

Laura Beattie  
Lindsay Carter  
Stacey Etter  
Codi Feland  
Meggan Gates  
Brittany Hagensen  
Jenna Kasper  
Janelle Martell  
Kari Messer  
Camika Michaelsohn  
Ashley Rasch  
Vicki Richter

**EXHIBIT D**

**GUARANTY**

The undersigned, Myron D. Thompson and Abe S. Sakak, (“Guarantors”), in consideration of the settlement of the claims alleged by the U.S. Equal Employment Opportunity Commission (the “EEOC”) in the matter of *EEOC v. Apple Core Enterprises, Inc. and Food Management Investors, Inc. d/b/a Applebee’s Neighborhood Grill & Bar*, Case Number 1:10-cv-00048 (D. N.D.)(DLH/CSM)(the “Lawsuit”), for which they hold ownership interests in the Defendant entities, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, do hereby unconditionally guarantee the monetary settlement obligations of Defendants Apple Core Enterprises, Inc. and Food Management Investors, Inc.. The Guarantors unconditionally guarantee payments provided for in the Consent Decree entered into as part of this Lawsuit totaling \$500,000.00 in three yearly installments in amounts of \$166,000.00, \$167,000.00, and \$167,000.00, respectively. Guarantors unconditionally agree to be held jointly and severally liable for the payments they are guaranteeing in the Consent Decree.

Guarantors acknowledge, represent, and warrant that Defendants Apple Core Enterprises, Inc.’s and Food Management Investors, Inc.’s agreement to the Consent Decree with Guarantors’ guaranty of payment is in the best interest of Guarantors, and that the EEOC’s agreement to the Consent Decree with the guaranty of payment by Guarantors constitutes good and sufficient consideration for such Guaranty by Guarantors.

It is recognized and agreed that this Guaranty is a substantial part of the consideration for the signing of the Consent Decree by the EEOC and that the EEOC would not agree to any deferred payment under the Consent Decree without the agreement of Guarantors to execute this Guaranty.

In the event that Defendants Apple Core Enterprises, Inc. and Food Management Investors, Inc., for any reason whatsoever, including bankruptcy, reorganization, or dissolution, do not pay or cause to be paid any installment payments described in Section IV of the Consent Decree, or any part thereof, on the date said payment is scheduled to be made and such non-payment continues for fourteen (14) days (a “Default”), then within seven (7) days after the EEOC provides written notice of Default, Guarantors agree to pay all amounts then due and owing under Section IV of the Consent Decree, without further act or deed by any person, and without further notice to or order of the Court. Any bankruptcy, reorganization or dissolution of Defendants Apple Core Enterprises, Inc. and/or Food Management Investors, Inc. or any successor or assign shall have no effect on the obligation of Guarantors to make all payments due and owing under this Guaranty. Nothing herein shall obligate Guarantors to make any payment before such payment would otherwise be due and owing under the Consent Decree.

Guarantors also agree that the EEOC is not required to first enforce against any other person or entity any or entity any liability, obligation or duty guaranteed by this Guaranty before seeking enforcement thereof against Guarantors; Guarantors acknowledge that this is a guarantee of payment and not a guaranty of collection.

Guarantors acknowledge and agree that that an action may be brought and maintained against Guarantors by the EEOC to enforce any liability, obligation or duty guaranteed by this Guaranty without the necessity of joining Defendants Apple Core Enterprises, Inc or Food Management Investors, Inc. or any other person or entity in such action. Guarantors agree to pay all costs and fees reasonably and necessarily incurred by the EEOC in enforcing the Guaranty.

Guarantors hereby agree to the jurisdiction of the United States District Court for the District of North Dakota under the Consent Decree for the limited purpose of enforcing this Guaranty, or resolving any dispute arising hereunder.

**EXECUTED** to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**GUARANTORS: MYRON D. THOMPSON ABE S. SAKAK**

**NAME (printed):** \_\_\_\_\_

**SIGNATURE):** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_