

United States v. TW Servs., Inc.

United States District Court for the Northern District of California
April 1, 1993, Decided ; April 1, 1993, Filed; April 2, 1993, Entered
CIV. No. C-93-20208 JW

Reporter: 1993 U.S. Dist. LEXIS 7882

UNITED STATES OF AMERICA, Plaintiff, v. TW SERVICES, INC. and DENNY'S, INC., Defendants.

Counsel: [*1] For United States of America, Plaintiff: James P. Turner, Acting Assistant Attorney General, Paul F. Hancock, Brian F. Heffernan, Fernando M. Olguin, Christopher T. Shaheen, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 65998, Washington, D.C. 20035-5998, (202) 514-8034. John A. Mendez, United States Attorney, Stephen L. Schirle, Chief, Civil Division, Assistant United States Attorney, 450 Golden Gate Avenue, San Francisco, CA 94102.

Judges: Ware

Opinion by: JAMES WARE

Opinion

CONSENT DECREE

The United States files this Consent Decree ("Decree") simultaneously with its complaint against defendants TW Services, Inc. ("TW Services") and Denny's, Inc. ("Denny's"), alleging violations of Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a *et seq.* ("Public Accommodations Act"). Defendant TW Services is a Delaware corporation with its principal place of business in Spartanburg, South Carolina. Denny's is a California corporation with its principal place of business in Spartanburg, South Carolina. TW Services, through its subsidiary Denny's, conducts business in, among other places, the State of California.

The complaint [*2] of the United States alleges that Denny's, a subsidiary of TW Services, has engaged in a pattern or practice of denying to black persons, on the basis of their race or color, the use and enjoyment of the facilities, services, and accommodations of Denny's Restaurants on the same basis as they make such available to non-black persons. More specifically, the United States alleges that Denny's: (1) implemented terms and conditions for service to black persons that are less favorable than the terms and conditions for service to white persons; (2) treats black customers less favorably than white customers; and (3) discourages black persons from visiting its restaurants.

Denny's and TW Services deny the allegations set forth in the complaint of the United States. However, the parties have

agreed that, in order to avoid protracted and costly litigation, this controversy should be resolved voluntarily.

As indicated by the signature of counsel at the end of this document, the parties have consented to the entry of this Consent Decree. However, to further the public interest, a description of the United States' contentions and the evidence on which it would rely if this case were adjudicated [*3] will be recited below in section II.

II.

THE UNITED STATES' CONTENTIONS

The United States contends that it would produce, at a minimum, testimonial evidence at trial substantially as follows, and that, if such testimony were elicited as described, it would demonstrate a violation of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000c:

A. As of the date of this Consent Decree, Denny's Inc., a subsidiary of defendant TW Services, owns, operates and franchises Denny's Restaurants in, among other places, the State of California.

B. The testimony would establish that defendants required prepayment and/or cover charges as a precondition for black persons to receive service at defendants' restaurants. In one such incident, a group of approximately eighteen (18) black high school and college students visited a Denny's Restaurant in San Jose, California. The group was told by defendants' manager that, prior to being seated, they would have to pay for their meals in advance and/or a \$ 2.00 "cover charge" or "minimum." During this visit, there was a group of white students in defendants' restaurant that had not been asked to prepay and/or pay a cover [*4] charge. The black students, despite their offer to break up into smaller groups, were denied service by defendants.

C. The testimony would further establish that at a Denny's Restaurant in San Diego, California, a group of eleven (11) black persons, most of them related, were required to prepay for their meals in advance. Witnesses observed several non-black persons pay at the cash register.

D. The testimony would further establish that on two separate occasions at a Denny's Restaurant in San Jose,

California, two different groups of black persons were required to prepay prior to being served. The first group consisted of seven (7) to ten (10) black students. The second group, which consisted of approximately fifteen (15) to (20) black high school students, waited for more than an hour without having their orders taken. A waitress finally came over and told the group that they would have to pay for their meals before they could be served. Approximately half of the group left the restaurant. A few minutes later, the other half of the group was escorted out of the restaurant by police at defendants' restaurant's request.

E. The same restaurant referenced in paragraph D above was responsible [*5] for the removal from the restaurant by the police of a group of four female high school students, three black and one East Indian. The females, who were not allowed to finish their meals, were removed because, according to the testimony that would be provided, there were "too many of you people here."

F. The testimony would further establish that at one of defendants' restaurants in Santa Clara, California, a black person was required to prepay and treated poorly by the waiter on duty, while a white male was seated--without prepayment--by the same waiter.

G. The evidence and testimony would further establish that at a Denny's Restaurant in Sacramento, California, black customers were required to prepay for their meals and provide identification prior to being allowed into the restaurant.

H. The evidence and testimony would further establish that a black family of five (two parents and three children) who visited one of defendants' restaurants in Vallejo, California, to celebrate the birthday of one of the children was denied a "free birthday meal." The family was made to wait an excessively long period of time for service, was treated discourteously, and required to produce burdensome [*6] proof of their child's date of birth. The family eventually left the restaurant because of the embarrassment and humiliation they had suffered.

I. The evidence and testimony would further establish that a Denny's Restaurant in San Jose also does not provide "free birthday meals" to black customers on the same terms and conditions as those provided to non-black customers.

ORDER

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

III.

DEFINITIONS

The following terms (whether or not underscored) when used in this Decree, in addition to the terms defined elsewhere in this Decree, shall have the following meanings:

A. "Agent" shall mean any person including, but not limited to, security personnel, involved in the treatment and service of customers at Denny's Restaurants.

B. "Complaint" includes any written, formal or informal complaint, to any administrative or official body or to any officer, employee or agent of any defendant.

C. "Denny's" shall refer to Denny's Inc. and all company-owned "Denny's Restaurants."

D. "Testing" shall refer to a controlled process that is used to identify and document any differences on the basis of race or color in the treatment and/or service provided [*7] to customers of Denny's Restaurants. For purposes of this Decree, at least two different groups of people (e.g., one black and one white group) must visit a restaurant within a relatively short period of time to constitute one test.

IV.

JURISDICTION AND SCOPE OF INJUNCTION

A. The parties have consented to the entry of this Decree. To this end, the parties stipulate and the Court finds that: (1) Denny's Restaurants are places of public accommodation within the meaning of 42 U.S.C. § 2000a(b)(1); (2) Denny's Restaurants' operations affect interstate commerce within the meaning of 42 U.S.C. § 2000a(c)(1); and (3) this Court has personal jurisdiction over defendants and jurisdiction over this action pursuant to 42 U.S.C. § 2000a-6 and 28 U.S.C. § 1345.

B. The provisions of this Decree shall apply as follows:

1. All provisions of this Decree shall apply to Denny's, its subsidiaries, officers, employees, agents, assigns, successors in interest in the ownership and/or operation of Denny's restaurants, and anyone acting in whole or in [*8] part under the direction of Denny's or any of Denny's subsidiaries.

2. Section V shall apply to TW Services and Denny's, and all their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the Decree by personal service or otherwise.

3. Sections VIII B1. and VIII C4. shall apply to TW Services, its subsidiaries, officers, employees, agents, assigns, and successors in interest, or anyone acting in whole or in part under the direction of TW Services or any of TW Services' subsidiaries.

V.

GENERAL NONDISCRIMINATORY PROVISIONS

TW Services and Denny's, together with their respective subsidiaries, officers, employees, agents, assigns, successors in interest in the ownership and/or operation of their respective places of public accommodation, and those persons in active concert or participation with them who receive actual notice of the Decree by personal service or otherwise, are HEREBY PERMANENTLY ENJOINED from:

A. Denying to any person, on the ground of race or color, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of its restaurants;

[*9] B. Denying service, or offering less favorable terms and conditions of service, to any person on the ground of race or color;

C. Requiring prepayment, a cover charge or identification as a condition of service, on the ground of race or color;

D. Implementing different terms and conditions, on the ground of race or color, concerning Denny's offer of "free birthday meals" or any other promotional offers;

E. Making statements, on the ground of race or color, that would discourage a reasonable person from visiting defendants' restaurants;

F. Instructing or encouraging employees or staff members to discourage any person, on the ground of race or color, from visiting defendants' facilities or from enjoying the full benefits of defendants' facilities;

G. Making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the service or equal enjoyment of defendants' restaurants that indicates any preference, limitation, or discrimination based on race or color, or an intention to make any such limitation or discrimination;

H. Representing to any person, because of race or color, that service or enjoyment of defendants' facilities [*10] is not available, when such is in fact so available; and

I. Denying service, or offering less favorable terms or conditions of service, to any nonblack customers who patronize defendants' facilities as part of a group which includes black customers.

VI.

COMPLIANCE PROVISIONS

Defendant Denny's shall take the following steps to insure that its restaurants are operated in a nondiscriminatory manner:

A. General Compliance

Denny's shall implement the plan described below to ensure compliance with federal law by Denny's, its subsidiaries, franchisees, agents, officers and employees. The plan includes, but is not limited to, provisions for the development and implementation of a training program for personnel, the hiring of a Civil Rights Monitor ("Monitor"), testing of Denny's franchise and company-owned restaurants to monitor and ensure compliance with this Decree, and notifying the public that Denny's Restaurants will operate in a nondiscriminatory manner. In order that compliance with this Decree may be monitored appropriately, Denny's shall maintain appropriate records and serve periodic reports upon the United States. Denny's and its entities shall cooperate with the United States [*11] in providing complete, accurate and current information regarding its restaurants and compliance with this Decree.

B. Written Policies

Within sixty (60) days after the retention of the Civil Rights Monitor, as provided in section VIII below, Denny's, in consultation with the Monitor, shall review and, if appropriate, revise its written policies to ensure that they are consistent with the non-discriminatory provisions of section V above. A copy of such policies shall be submitted for review and approval to counsel for the United States ¹ no later than ten (10) days thereafter. If the United States does not object within fifteen (15) days of receipt of the proposed written policies, Denny's may implement such policies. If the United States objects, the parties shall endeavor, in good faith, to resolve all issues concerning the written policies before bringing such matters before the Court. The United States, as the objecting party, shall bring the matter before the Court in the form of a motion that shall be accompanied by a certification that the parties have conferred in an attempt to resolve the matter. Such policies shall be uniformly

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applied to all customers, regardless of their [*12] race or color.

This Decree shall not restrict Denny's from revising or modifying its policies concerning the treatment and service of customers, provided the revisions or modifications do not discriminate on the basis of race or color. Defendant Denny's, through its Monitor, shall submit to counsel for the United States all such proposed revisions or modifications. If the United States does not object within fifteen (15) days of receipt of the proposed revisions or modifications, Denny's may implement the revised or modified policies. If the United States objects, the parties shall endeavor, in good faith, to resolve all issues concerning the proposed revisions or modifications before bringing such matters before the Court. The United States, as the objecting party, shall bring the matter before the Court in the form of a motion [*13] that shall be accompanied by a certification that the parties have conferred in an attempt to resolve the matter.

C. Notice to Employees and Agents and Training and Education Program

1. Notification to Employees and Agents

(a) Within sixty (60) days of the effective date of this Decree, Denny's shall send each of its officers, employees and agents employed in the State of California: (a) a Summary of the Decree as set forth in Exhibit A and (b) a copy of the Notice set forth in Exhibit B, explaining the employee's and/or agent's duties and obligations under Title II of the Civil Rights Act of 1964 and this Consent Decree. In addition, Defendant Denny's shall inform its officers, employees and agents that any breach of, or failure to comply with, the terms and conditions set forth in section in of this Decree shall subject him or her to dismissal or other appropriate disciplinary action. Each person receiving the Summary and Notice shall execute a statement acknowledging that he or she has received and read the Summary and Notice, and that he or she agrees to act in accordance therewith. Such statement shall be in the form of Exhibit C to this Decree and copies thereof shall [*14] be retained at the individual restaurant where the employee works or, in the case of district, regional, or divisional leadership, at the divisional office, or, in the case of corporate officers, at Denny's corporate office. During the term of this Decree, copies of such statements shall be made available, upon ten (10) days notice, to counsel for the United States.

(b) Within sixty (60) days of the effective date of this Decree, Denny's shall inform its current officers, employees and agents in the State of California that if the officer, employee or agent wants a copy of the Consent Decree, one will be provided to him or her at Denny's

expense. Where this Decree requires defendant to provide its officers, employees or agents a copy of a document (e.g., Exhibit B), the officers, employees or agents are entitled to keep permanently a copy of that document. Merely showing the officer, employee or agent a copy of the document does not comply with the requirements of this Decree.

(c) Within sixty (60) days of the effective date of this Decree, Denny's shall inform each current officer, employee and agent employed in the State of California that Denny's cannot and will not reprimand, [*15] penalize, or otherwise retaliate in any way against any officer, employee or agent who provides information to any law enforcement agency official, the Monitor, or TW Services and/or Denny's management official regarding Denny's compliance with Title II and/or this Consent Decree. This notice may be a separate document or incorporated as a part of Exhibit B, concerning the employee's or agent's duties and obligations under Title II.

(d) With respect to new officers, employees or agents employed in the State of California, Denny's shall comply with the provisions of subparagraphs (a), (b) and (c) above within seven (7) days of commencement of employment of the new officer, employee or agent.

(e) Within one-hundred and twenty (120) days of the effective date of this Decree, Denny's shall send each of its officers, employees and agents employed outside the State of California a copy of the Notice set forth in Exhibit D, explaining the employee's and/or agent's duties and obligations under Title II of the Civil Rights Act of 1964 and this Decree. In addition, the Notice shall inform the officers, employees and agents that: (i) any breach of, or failure to comply with, the terms and conditions [*16] set forth in section V of this Decree shall subject him or her to dismissal or other appropriate disciplinary action; and (ii) Denny's cannot and will not reprimand, penalize, or otherwise retaliate in any way against any officer, employee or agent who provides information to any law enforcement agency official, the Monitor, or TW Services and/or Denny's management official regarding Denny's compliance with Title II and/or this Consent Decree. Proof that compliance with this subparagraph has been completed shall be provided to counsel for the United States no later than one-hundred and fifty (150) days after the effective date of this Decree. Proof that compliance with this subparagraph has been completed shall be in the form of an affidavit from the appropriate corporate personnel.

(f) All Denny's officers, employees and agents shall be notified of the entry of this Decree in the first issue of the Denny's Newsletter ("Denny's Today"), published

subsequent to the effective date of this Decree. However, such publication shall not be later than six (6) months following the effective date of this Decree. The notice shall be printed on the cover page of the Denny's Newsletter. The notice [*17] shall be submitted to counsel for the United States within thirty (30) days of the effective date of this Decree. If the United States does not object within fifteen (15) days of receipt of the proposed notice, Denny's may publish the proposed notice. If the United States objects, the parties shall endeavor, in good faith, to resolve all issues concerning the proposed notice before bringing such matters before the Court. The United States, as the objecting party, shall bring the matter before the Court in the form of a motion that shall be accompanied by a certification that the parties have conferred in an attempt to resolve the matter.

2. Training of Employees and Agents

(a) Within sixty (60) days subsequent to the hiring of the Monitor, Denny's, through its Monitor, shall submit to the United States for comment and approval a proposed training program for the instruction of all currently employed personnel designated in subparagraphs 2(b) and 3(b) below regarding their duties and obligations under Title II of the 1964 Civil Rights Act and this Consent Decree, and identify the persons or organizations who will conduct such training. The program shall be created by or under [*18] the supervision of the Monitor and other persons experienced in handling interracial problems or who have received or will receive instruction or training to handle such problems. If the United States does not object within fifteen (15) days of receipt of the proposed training program to the program or to the person or organization conducting the training program, Denny's may implement the training program. If the United States objects, the parties shall endeavor, in good faith, to resolve all issues concerning the proposed training program before bringing such matters before the Court. The United States, as the objecting party, shall bring the matter before the Court in the form of a motion that shall be accompanied by a certification that the parties have conferred in an attempt to resolve the matter.

At a minimum, the training program shall include the following: (i) instruction on the requirements of all applicable federal public accommodations laws; (ii) a review of the company's non-discrimination policies and of the specific requirements of this Consent Decree; (iii) notice that the company cannot and will not reprimand, penalize, or otherwise retaliate in any way against any [*19] employee who provides information to any law enforcement agency official, Denny's or TW Services management personnel, regarding the company's compliance with Title II and/or this Decree; (iv) instruction in procedures designed to ensure that neither race nor color enters, either directly or indirectly, into the process

of making decisions concerning the operations of the restaurants and service to customers; (v) a discussion of the business advantages of serving all persons on a non-discriminatory basis; (vi) training in racial sensitivity and more general management issues which impact on issues of race; and (vii) provided the training program is presented live, a question and answer session for the purpose of reviewing each of the foregoing areas.

The training program may be provided via the use of videotape, provided: (i) the videotape is developed in consultation with the Monitor; (ii) the tape is approved by counsel for the United States and (iii) the employees are provided with the opportunity to contact, via telephone or letter, a person who has been trained to respond to the employees' questions or concerns regarding the training. The Monitor shall provide the persons with [*20] the training that the Monitor deems appropriate to satisfy the question-and-answer requirement of this paragraph. In California, the first training session in each Region shall be attended by the Monitor to ensure compliance with the Decree.

The videotape shall be submitted to counsel for the United States within sixty (60) days following the approval of the training program by the United States. If the United States does not object within fifteen (15) days of receipt of the videotape, Denny's may utilize the proposed videotape. If the United States objects, the parties shall endeavor, in good faith, to resolve all issues concerning the proposed videotape before bringing such matters before the Court. The United States, as the objecting party, shall bring the matter before the Court in the form of a motion that shall be accompanied by a certification that the parties have conferred in an attempt to resolve the matter.

(b) Within thirty (30) days of the approval of the videotape by the United States, Defendant Denny's, with the assistance of the Monitor, shall implement the training program required by subparagraph (a) above. The training shall be provided to all Denny's officers, [*21] Division Leaders, Region Leaders, District Leaders, General Managers, Restaurant Managers, Managers in Training, Servers, Hosts/Hostesses, bus persons and security personnel. Receipt of such training shall be a necessary condition for the continued employment of such persons.

(c) Each newly hired officer, employee or agent designated in subparagraph (b) above shall also receive training of the type described in subparagraph (a) above. The additional training shall be provided within thirty (30) days of the new officer, employee or agent's commencement date.

(d) Each officer, employee or agent who participates and receives instruction through the training program set forth

in subparagraphs (a) - (c) above shall sign a statement in the form of Exhibit E to this Consent Decree, acknowledging that they have participated in and completed the training program.

(e) For a period of four (4) years from the effective date of this Decree, Denny's also shall include instruction regarding the company's duties and obligations under Title II of the 1964 Civil Rights Act, and this Consent Decree, in all written training materials and training sessions dealing with treatment of the public provided [*22] in the ordinary course of business to the persons designated in subparagraphs 2(b) and 3(b) above. Such instruction shall be developed by the Monitor and include a statement that the company cannot and will not reprimand, penalize, or otherwise retaliate against any officer, employee or agent who provides information to any law enforcement agency official, the Monitor, or TW Services and/or Denny's management official regarding Defendant Denny's compliance with Title II and/or this Consent Decree.

(f) Articles selected by the Monitor on the subjects of diversity, racial sensitivity and/or race relations shall be published a minimum of twice per year in the Denny's Newsletter ("Denny's Today") during the period in which this Decree is in effect.

3. Notice to and Training of Franchisees

(a) Within thirty (30) days of the entry of this Decree, Denny's shall provide each and every one of its franchisees nationwide with a copy of the Decree (and obtain a return receipt) and a letter informing them of their obligation to comply with Title II of the Civil Rights Act of 1964. The letter shall explain that Denny's has entered into the Decree and is committed to a policy of non-discrimination. [*23] The letter shall explain the requirements of the Decree and, specifically, that appropriate employees of the franchisees will be required to attend training sessions as set forth in the Decree.

(b) Pursuant to the appropriate section of the Denny's Franchise Agreement, Denny's shall apply the training program requirements set forth in subsections 2(a) - (d) above to its franchisees. Accordingly, within thirty (30) days of the implementation of the training program outlined in subsections 2(a) - (d) above, Denny's shall give each franchisee written notice, pursuant to the appropriate section of the Franchise Agreement, of the commencement of such training program. Denny's shall require that all existing and newly hired franchise General Managers, Restaurant Managers, Managers in Training, Servers, Hosts/Hostesses, buspersons and security personnel attend the training program as set forth in subsections 2(a) - (d). Denny's shall impose no charge on the franchisees for the provision of such training program.

(c) The United States shall not seek to hold Denny's in violation of the Consent Decree for the refusal of a franchisee to participate in the training program set forth above, provided [*24] that Denny's has made best efforts to secure compliance on the part of the franchisee. However, Denny's shall provide the United States with the name and location of any Denny's franchisee which refuses or fails to participate in the training sessions within thirty (30) days of when Denny's first receives knowledge of such refusal or failure.

D. Notice to the Public and Advertising

Defendant Denny's shall inform the public generally and all potential customers specifically of their non-discrimination policies as follows:

1. Within thirty (30) days of the effective date of this Decree, Denny's shall post at each public entrance to its restaurants and in a location clearly visible to patrons, a sign indicating that the facility is open and that service will be provided to all persons without regard to race or color. The sign shall have dark letters at least one inch (1") high on a contrasting background. Denny's or any successor in interest shall maintain these signs at all times during the period in which this Decree is in effect.

2. Pursuant to the appropriate provision of the Franchise Agreement, when the sign referred to in paragraph 1 has been displayed in seventy percent (70%) [*25] of Denny's restaurants, Denny's shall require each of its franchise restaurants to display the sign in accordance with the requirements of paragraph 1. The United States shall not seek to hold Denny's in violation of the Consent Decree for the refusal of a franchisee to display the sign, provided that Denny's has made best efforts to secure compliance on the part of the franchisee. However, Denny's shall provide the United States with the name and location of any Denny's franchisee which refuses or fails to display the sign within thirty (30) days of such refusal or failure.

3. With the exception of highway billboards, Department of Transportation highway signs, and advertisements or promotional materials that appear solely inside or on individual Denny's restaurants or are created at the individual unit level, the nondiscrimination statement described above in paragraph 1 shall be readily legible in all written media (newspapers, magazines, posters, brochures, fliers, etc.). The statement shall appear in a type size that conforms to the following requirements:

(a) Where other parts of the advertisement or promotional statement appear in only one type size, the nondiscrimination [*26] statement must also appear in the same type size;

(b) Where other parts of the advertisement or promotional statement appear in two sizes, the nondiscrimination statement may appear in either type size; and

(c) Where other parts of the advertisement or promotional statement appear in three or more type sizes, the nondiscrimination statement shall appear in the next to smallest type size.

Notwithstanding the foregoing, Denny's may exhaust the inventory of promotional materials (e.g., coupons, direct mail pieces, rolodex cards, frequency cards, book marks, menu samplers, etc.) on hand as of March 19, 1993. This exhaustion exception shall expire as of November 15, 1993.

4. All menus and nationally distributed brochures (e.g., Denny's Travel Guide), which go to press one hundred and twenty (120) days subsequent to the effective date of this Decree, shall contain the nondiscrimination statement described in paragraph 1 above. The statement shall appear in a type size that conforms to the requirements set forth in subparagraphs 3(a)-(c) above.

5. To help ensure that both black and non-black persons are notified that they are welcome as customers of Denny's Restaurants, Denny's, for a [*27] period of four (4) years from the effective date of this Consent Decree, in consultation with the Civil Rights Monitor, shall place newspaper advertisements for Denny's Restaurants in the *San Jose Mercury News*, *San Francisco Chronicle*, *Sacramento Bee*, *Oakland Tribune*, *San Diego Union*, and *Los Angeles Times*, that comply with paragraph 1 above. The first set of advertisements shall be developed no later than sixty (60) days following the retention of the Monitor. The placement of such advertisements shall begin no later than thirty (30) days following the development of the advertisements, and shall be run for four (4) days at least two (2) times per year. The size of the advertisement shall equal or exceed a quarter of a page. The advertisements containing the nondiscrimination statement may be of the type and nature customarily used by Denny's to advertise its products and/or services.

6. Beginning with the effective date of this Decree, a minimum of twenty-five percent (25%) of the aggregate total of human persons appearing annually in all television commercials, newspaper advertisements, and all other promotional materials including, but not limited to, brochures, flyers, [*28] coupons or any other materials (collectively "advertisements") that depict human persons shall be identifiably non-white. At least twenty percent (20%) of the aggregate total shall be identifiably black. With the exception of advertisements that feature a sole spokesperson, advertisements that solely feature

non-white persons shall not be utilized in the computation of the above percentages. The computation of the percentage shall specifically exclude the "Corlick Sisters."

With respect to television commercials, the aggregate total of persons appearing in such advertisements shall be arrived at by reference to the total number of impressions made by each commercial. "Impression" is defined as the total number of times a specific commercial is seen (including multiple viewings by the same person). The total number of impressions made by a commercial is determined by a computation which involves the number of times the commercial is run, the gross rating points of the time slot when the commercial is aired and the number of viewers in the market where the commercial is aired. The gross rating points on which the impressions are based are those provided by independent rating services [*29] (e.g. Nielsen). Denny's shall provide the total number of impressions and other information specified in section VIII.C.1 below to the United States in accordance with the reporting provisions of this Decree (section VIIC).

7. All advertisements called for in this section shall be distributed in a nondiscriminatory manner to convey the message that both black persons and non-black persons are welcome as customers at all Denny's Restaurants.

VII.

TESTING

A. The Civil Rights Monitor shall develop and implement a testing program to monitor Defendant Denny's practices at its restaurants in California during the term of this Consent Decree. No less than 200 tests--50 per year--must be conducted during the term of this Decree.

B. No less than 100 of the tests shall be conducted by an independent qualified civil rights organization selected by Denny's. Within sixty (60) days after retention of the Monitor, Denny's shall advise the United States of the identity of the organization which it proposes to select to conduct the testing. If the United States does not object within fifteen (15) days of receipt of this information, Denny's may select the organization. If the United States objects, [*30] the parties shall endeavor, in good faith, to resolve all issues concerning the appropriateness of the organization before bringing such matter before the Court. The United States, as the objecting party, shall bring the matter before the Court in the form of a motion that shall be accompanied by a certification that the parties have conferred in an attempt to resolve the matter. The costs and expense of all tests shall be paid by Denny's.

C. The Monitor shall have the discretion to choose when, where and how the remaining 100 tests shall be conducted,

and to contract with any other qualified entities or persons to conduct such tests. The Monitor shall also be given the discretion to conduct non-testing, on-site investigations designed to ensure compliance with this Decree. Such non-testing investigations may include, but not be limited to, on-site observation of Denny's Restaurants and the treatment and service provided to customers.

D. Nothing in this Decree shall prevent the United States from utilizing its own testers to monitor Denny's practices during the term of this Decree. The United States also shall not be prevented from conducting non-testing investigations that include, [*31] but are not limited to, on-site observation of Denny's Restaurants and the treatment and service provided to customers, provided such investigations do not interfere with the normal business operations of the unit.

E. Alleged discriminatory test results shall be reported to counsel for defendants, the United States, and the Monitor. The parties shall engage in good faith efforts to resolve informally such potential breaches of this Decree prior to making any application to the Court for additional relief and/or sanctions under the Decree.

VIII.

MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

A. Civil Rights Monitor

1. In order to ensure equal access to Denny's Restaurants for all persons on a nondiscriminatory basis, Denny's, no later than seventy-five (75) days from the effective date of this Decree, shall recruit and submit to counsel for the United States the name and resume of the person it proposes to hire as the Civil Rights Monitor. The hiring of the Monitor shall be subject to the approval of the United States, which approval shall not be unreasonably withheld. The United States may, at its discretion and expense, interview the person proposed by Denny's. If the United [*32] States has any objection to Denny's proposed appointment, it shall notify Denny's within ten (10) days of receipt of the name and resume. If any disputes arise concerning the appointment of the Monitor, the parties shall attempt to resolve them voluntarily before presenting them to the Court for resolution.

2. The Monitor's qualifications shall include, but not be limited to, the following: (1) a minimum of ten years work experience in the civil rights field, specifically in the areas of race and ethnicity; and (2) a minimum of five years of experience in personnel development and training. If Denny's is unable to locate a person who satisfies the above qualifications, Denny's shall certify that it has made

a diligent effort to locate someone suitably qualified. The certification shall set forth in detail the steps Denny's took in attempting to locate someone for the Monitor's position. After such certification has been filed with the Court, the parties shall meet within fourteen (14) days of the filing of such certification to discuss revision of the qualifications and/or other candidates who may be suitable for the Monitor's position. If the parties are unable to reach an agreement [*33] as to the qualifications and/or hiring of the Monitor, the United States shall file a motion with supporting memorandum setting forth its position. Denny's shall file its response to the motion pursuant to the Local Rules of this District. The United States may file a Reply pursuant to the Local Rules of this District.

3. The Monitor's job duties shall include, but not be limited to, the following: (1) preparation of all reports called for under the terms of this Consent Decree; (2) in-house monitoring and supervision of progress towards compliance with this Decree; (3) development, implementation and monitoring of a testing program; (4) investigating complaints by customers and/or third parties who believe they have been discriminated against, or subjected to unequal treatment due to their race or color, or witnessed others being discriminated against due to the race or color of those persons; (5) investigating complaints by Denny's employees who believe they have witnessed discriminatory actions of other Denny's employees and/or managers or believe they have themselves been pressured to discriminate by other Denny's employees and/or managers; (6) providing counsel for the United [*34] States any relevant information under any provision of this Decree upon reasonable request; (7) preparing a written semi-annual report for submission to counsel for the United States on or before December 1, 1993, and every six (6) months thereafter, which shall describe the activities and/or investigations of complaints, if any, undertaken by the Monitor in the preceding six months, and set objectives for the next six months to eliminate any concerns of discrimination which the Monitor has identified; and (8) meeting and conferring with counsel for the parties to consider suggestions for implementing the spirit and letter of this Decree and to clarify any information contained in the Monitor's reports.

B. Record-Keeping

For a period of four (4) years from the effective date of this Decree, the Civil Rights Monitor shall maintain the following records (or other computerized counterparts):

1. Records of all formal and informal complaints of discrimination on the basis of race or color filed or submitted by any customer, potential customer, or employee, concerning Denny's service and treatment of customers. This paragraph shall apply to all complaints,

letters, or notices filed or submitted [*35] to any of Denny's or TW Services' officers, employees or agents, including, but not limited to, all complaints submitted to TW Services' corporate headquarters and divisional offices.

2. All records relating to written, video or oral training materials, including but not limited to, training program materials, instructions, directives, guidelines, policy statements, and formal training sessions provided to those persons designated in section VI.C2.(b) above.

3. Representative copies of all advertisements and promotional materials in all media and all records relating to the dates and/or times and media where such advertisements or promotional material appeared and where and how such materials were disseminated and distributed.

4. All records and results derived from and refuting to any and all tests conducted pursuant to section VII of this Decree.

5. All records relating to implementation of any provision of this Consent Decree.

For a period of four (4) years from the effective date of this Consent Decree, counsel for the United States shall, upon fifteen days' (15) notice, be permitted to inspect and copy any of the records described in the Record-Keeping provisions of this Consent [*36] Decree.

C. Reporting Provisions

No later than December 1, 1993, and every six (6) months thereafter for a period of four (4) years from the effective date of the Decree, Defendant Denny's, through the Monitor, shall serve on the United States a report containing the following information:

1. A list of all advertisements and promotional materials which were published, printed, disseminated or aired during the reporting period, together with a statement indicating the dates and media where it appeared and where and how promotional materials were disseminated or distributed. With respect to television commercials, Denny's shall verify the depiction of human persons by providing the United States with the following information:

- (a) A list of all commercials produced during the year;
- (b) The total number of persons depicted in each commercial, broken down by race;
- (c) The number and location of markets in which each of the commercials aired;
- (d) The total number of impressions made by each commercial.

2. The first report shall include a certification that the training program required in section VI.C2.(a)-(e) above has been or is scheduled for completion, and the whereabouts of copies [*37] of all employee acknowledgments required by this Decree.

3. Each report thereafter shall contain a description of all training activity conducted pursuant to section VI.C2. above which has occurred during the reporting period along with copies of all written materials distributed or any videotapes produced.

4. Each report shall contain full details of any complaint received charging or alleging discrimination, on the ground of race or color, with respect to service or treatment at any Denny's Restaurant (both in and outside of California), including a description of any action taken in response to such complaint together with all documents relating to such complaint.

IX.

NOTICES

All notices and other communications required under this Decree shall be in writing and delivered either personally or by depositing the same postage prepaid, in the United States mail, addressed to the party hereto, to whom the same is directed at the following addresses:

TO: *Plaintiff United States of America*
 Chief, Housing and Civil Enforcement Section
 U.S. Department of Justice
 P.O. Box 65998
 Washington, D.C. 20035-5998
 TO: *TW Services, Inc. and Denny's Inc.*
 General Counsel
 TW Services, Inc. [*38]
 203 East Main Street
 MS P-12-4
 Spartanburg, S.C. 29319

The parties may from time to time change their address for the purposes of this section by providing written notice, return receipt requested, of such change to the other parties.

X.

TERM AND ADMINISTRATION OF CONSENT DECREE

A. The parties shall endeavor to resolve informally any differences regarding interpretation and compliance with this Decree prior to bringing such matters to the Court for resolution. Before any party brings before the Court any matter regarding this Consent Decree, the moving party shall file with the Court a certification that the parties have conferred in an attempt to resolve the dispute.

B. The provisions of this Decree are effective immediately upon the entry of the Decree by the Court. The Decree shall be effective for a period of four (4) years from the

date of entry of the Decree by the Court. The period of this Decree shall be extended, as appropriate, by the Court for any dispute that must be resolved by the Court.

C. Absent any extensions by the Court or objections by the United States, defendants TW Services and Denny's may move for dismissal of this case at the close of the four (4) year [*39] period.

It is so ORDERED this 1st day of April, 1993.

James Ware

United States District Judge