

JOSEPHINE HAYNES, et al., Plaintiffs, v. SHONEY'S, INC., et al., Defendants.

Case No. 89-30093-RV

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
FLORIDA, PENSACOLA DIVISION**

January 25, 1993, Decided

January 25, 1993, Filed

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JUDGES: VINSON

OPINION BY: ROGER VINSON

OPINION

ORDER APPROVING CONSENT DECREE

On November 3, 1992, an order was entered herein provisionally approving a proposed Consent [*2] Decree agreed to by all the parties to this action. (See Doc. 1035). A fairness hearing was held on January 25, 1993. For the reasons discussed herein, the proposed Consent Decree is APPROVED as a fair, adequate, and reasonable settlement of this matter. I will first discuss the objections which have been made to the proposed Consent Decree and then set forth my rationale for its approval.

I. OBJECTIONS TO THE CONSENT DECREE.

Only four objections, including one on behalf of four

individuals, have been filed. Each is separately considered below.

(1) James Bland (doc. 1051) objects to the temporal limitations on the class of plaintiffs set out in the proposed Consent Decree. Bland's objection indicates that he left Shoney's employment in 1984, well before the beginning date of the class period. Since Bland is not a member of the settlement class, and his potential claims precede any relevant claims period covered by this litigation, Bland does not have standing to object to the Consent Decree. In addition, the beginning of the relevant class period was determined by encompassing possible claims which were not barred by failure to file EEOC charges or other limitations issues [*3] and which might have been tolled by the pending class action. Any claims which Bland might assert are not within this period of time. His objection is overruled.

Bland also contends that he was denied the opportunity to purchase franchise rights by Shoney's. Potential franchisees, or franchisees who claim to have been discriminated against, are not within the class of plaintiffs in this action. Any claims of alleged discrimination in the granting of franchises are not addressed by the terms of, or within the scope of, the Consent Decree. Therefore, Bland's right to pursue a claim against Shoney's for alleged discrimination in the granting of franchises is not affected by this settlement.

(2) Sandra Calhoun, Tisha Scott, Jo C. Smoot, and Erica B. Plunge object to the proposed Consent Decree and have moved to opt-out of the settlement. (Docs. 1047, 1048). These individuals state that they have claims against Shoney's for alleged race discrimination and alleged sexual harassment which they prefer to pursue individually against Shoney's. The proposed Consent Decree should be approved over these objections for two reasons.

First, the court's approval of the proposed Consent Decree would [*4] not affect these objectors' rights to pursue sexual harassment claims against Shoney's. The release provision of the proposed Consent Decree states that the Consent Decree specifically resolves any and all claims of class members against Shoney's concerning discrimination or retaliation on the basis of any person's race. The proposed Consent Decree does not preclude or

release claims of alleged discrimination based on sex, or claims of alleged sexual harassment. Thus, the objectors' argument that they prefer to pursue claims of sexual harassment against Shoney's individually provides no reason to withhold approval of this settlement of racial discrimination claims.

Second, these individuals raise no specific objection to the fairness of the proposed Consent Decree; instead, they merely state that they would prefer to pursue their claims individually against Shoney's. In the absence of any specific, substantive objection to the terms of the settlement, the "preference" of four individuals does not warrant disapproval of the proposed Consent Decree.

The motion to opt-out is also denied. The court's provisional order does not provide for an opt-out alternative. The notice of proposed [*5] settlement and Consent Decree sent to potential class members states that "Class members will not be allowed to exclude themselves from the terms of the Decree."

Nor is an opt-out alternative required in this action. For purposes of settlement, the court certified this action as a class action pursuant to *Rule 23(b)(2), Federal Rules of Civil Procedure*. (Doc. 1035, p. 4). The general rule is that members of a class certified under *Rule 23(b)(2)* have no automatic right to opt out of a settlement of the class action. *Howard v. McLucas*, 782 F.2d 956, 961 (11th Cir. 1986); *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1153 (11th Cir. 1983). See also, *Kincade v. General Tire & Rubber Co.*, 635 F.2d 501 (5th Cir. 1981), *aff'd without opinion*, 893 F.2d 347 (11th Cir. 1989). In exceptional cases, however, the right to opt-out must be provided: "The presence in the lawsuit of a significant number of atypical claims not common to the class activates a requirement that absent class members be given an opportunity to opt out of the class at the monetary relief stage of a [*6] Title VII lawsuit or settlement." *Holmes v. Continental Can Co.*, *supra*, 706 F.2d at 1155.

I find that there are *not* a significant number of atypical claims present in this action. Therefore, no opt-out procedure is required, particularly where, as is here the case and unlike in *Holmes*, the individuals who seek to opt-out have raised no objection to the fairness of the settlement. The expressed prohibition against opt-outs is a major condition of the settlement. I conclude that these four objectionors should not be allowed to opt-out. Again, I stress that the proposed Consent Decree does not affect any claims for sexual harassment which these four individuals might seek to assert against Shoney's.

(3) Philip Peavy, a class member, has submitted an objection. (Doc. 1052). As an initial matter, I note that Peavy's objection was untimely filed. Peavy's objection was filed on January 13, 1993, two days after the January 11th deadline for filing objections. This would be reason

enough to reject Peavy's objection.

Nevertheless, I will address the substance of Peavy's objection. Apparently Peavy is concerned that his participation in a prior lawsuit [*7] against Shoney's will somehow preclude him from asserting a claim as a class member in this action. However, the proposed Consent Decree lists Peavy as a special claimant who is eligible to participate in the settlement fund. (Proposed Consent Decree, Ex. A, p.5). Thus, I conclude that Peavy is eligible to recover under the terms of the proposed Consent Decree, notwithstanding any previous litigation he may have participated in against Shoney's. Finally, I note that Peavy's objection does not challenge the fairness of the terms of the proposed Consent Decree and, thus, offers no reason for me to withhold approval.

(4) Dennis Burris, who claims to be a member of the class, also filed an untimely objection. (Doc. 1053). Burris's objection was filed on January 14, 1993, three days after the January 11th deadline. Burris's sole objection is that the proposed Consent Decree provides for the payment of monetary relief on a time schedule. According to Burris, relief should be awarded in a lump sum. I find this objection to be completely without merit. In light of the magnitude of the amount of monetary relief to be paid by Shoney's, the lengthy claims resolution procedure, and the ongoing, [*8] lengthy affirmative relief provided for in the proposed Consent Decree, the payment schedule provided for is quite fair and reasonable.

II. FAIRNESS OF THE SETTLEMENT.

Rule 23(e), Federal Rules of Civil Procedure, provides that "[a] class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." I find that the results of the notice procedure employed by the parties in this case are extraordinary, and the terms of the settlement are both fair and reasonable.

A. Notice to the Class Members.

The procedure for giving notice of the proposed settlement was set forth in the Stipulation of Settlement and Order of Provisional Entry of Consent Decree, entered on November 3, 1992. (Doc. 1035). The procedure required mailed notice to class members who had been or were currently employed by Shoney's, required the publication in almost 300 newspapers of notice of the proposed settlement, and provided for the tracing of the current addresses where mailed notices had been returned as undeliverable. The notices informed class members [*9] of the terms of the proposed Consent Decree, including the right and obligation of applicant class members to file request for claim forms, and the right of class members to object to the terms of the

Consent Decree.

The notice required by the November 3rd order has been completed. First, mailed notice was sent to the last known address of every former or current Shoney's employee who is a potential class member. Every current or former employee who worked at any restaurant owned and operated by Shoney's or at Shoney's corporate headquarters between February 4, 1985, and November 3, 1992, identified as "black" on Shoney's personnel records or for whom there was no racial identity, was sent a mailed notice. Approximately 153,000 mailed notices were sent.

Second, the parties retained a computer tracing firm to locate, if possible, the current addresses of potential class members for whom the original mailed notices were returned as undeliverable. The parties traced approximately 54,000 addresses. Additional notices were sent to each of the 54,000 names and addresses disclosed by the tracing service. The total cost of sending the approximately 207,000 notices and for the use of the [*10] tracing service was about \$ 318,000.00. (The tracing alone cost almost \$ 160,000.)

In December 1992, the Equal Employment Opportunity Commission (the "EEOC") forwarded to class counsel and Shoney's a list of persons identified by the EEOC as charging parties who possibly had race discrimination claims pending against Shoney's. Although separate notice was not required by the November 3rd order, Shoney's also sent additional notices to approximately 300 persons listed by the EEOC for whom adequate address information was provided.

Third, large legal notices were published in nearly 300 newspapers in twenty-one states and the District of Columbia, on various dates beginning on Tuesday, November 24, 1992, and ending Sunday, December 20, 1992. Notices were published in the daily newspapers on four occasions and in the weekly newspapers on two occasions. The cost of this publication of notices in the newspapers was \$ 770,218.32, an amount that is indicative of the massive scope of this litigation.

Under the terms of the November 3rd order, only Applicant Claimants (a person who claims he was not hired after seeking employment with Shoney's) were required to file Request for Claim Forms. [*11] Current and former employees of Shoney's did not have to file Request for Claim Forms, since they would automatically receive claim forms if the proposed Consent Decree was approved. Request for Claim Forms were required to be postmarked no later than January 11, 1993. All objections to the approval of the proposed Consent Decree were required to be filed by January 11, 1993. As of the date of the fairness hearing, approximately 20,000 Request for Claim Forms had been received. Only four objections were filed, as discussed

above.

As discussed, the cost of providing, or attempting to provide, notice to potential claimants has exceeded \$ 1,000,000.00. Over 225,000 actual notices or requests have been handled by the parties. It has been a gargantuan undertaking and is clearly sufficient.

B. *Fairness of the Proposed Consent Decree.*

In determining whether to approve a proposed settlement, the court must find that the settlement is fair, adequate, and reasonable, and not the product of collusion between the parties. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). [*12] The Eleventh Circuit has identified a number of factors to be considered in assessing the fairness of a class action settlement: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the state of proceedings at which the settlement was achieved. *See Bennett v. Behring Corp.*, *supra*, 737 F.2d at 986.

I am mindful of the fact that, "particularly in class action suits, there is an overriding public interest in favor of settlement." *Cotton v. Hinton*, *supra*, 559 F.2d at 1331. In employment discrimination cases the policy favoring settlement is even stronger because of the emphasis placed upon voluntary compliance and settlement in Title VII. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44, 94 S. Ct. 1011, 39 L. Ed. 2d 147, 156 (1974). The district court is particularly suited to assess the fairness of the [*13] settlement of a Title VII class action, "since the trial judge is given broad discretion in the fashioning of the proper remedial relief to eliminate employment discrimination." *Cotton v. Hinton*, *supra*, 559 F.2d at 1330.

With these considerations in mind, and upon review of the terms of the proposed Consent Decree in light of the factors enumerated above, I conclude that the proposed Consent Decree is a fair and reasonable settlement of this mammoth litigation. First, I am convinced that this settlement was in no way the product of fraud or collusion. The sheer size of the record bears witness to the hotly-contested nature of this litigation. I have repeatedly noted and frequently commented upon, in conferences with the parties and in written opinions and orders, the extensive and sharply-contested nature of the proceedings. Thousands of pages of the deposition testimony of more than one hundred witnesses attest to the amount of discovery undertaken by the parties. Numerous summary judgment motions were submitted and considered. In anticipation of trial, the parties prepared and submitted findings of fact, agreement with

respect to undisputed findings [*14] of fact, and the identification of witnesses and exhibits. The docket sheet for this matter currently contains over one thousand entries.

The negotiation process which culminated in this settlement is itself deserving of comment. In August 1989, shortly after this case was commenced, the parties jointly moved for, and the court ordered, a stay of all litigation activity in order to permit the parties to exchange information pertinent to settlement negotiations and to attempt to negotiate a settlement. During this process, Shoney's provided class counsel with a substantial amount of personnel and other employment-related information, including statistical analyses. The parties exchanged analyses prepared by labor market economists, statisticians, and financial experts. This first round of negotiations did not produce an agreement, and the litigation moratorium ended in April 1990.

After submitting the pretrial briefs, proposed findings of fact and conclusions of law, and trial exhibits required by the Pretrial Order, the parties returned to the bargaining table in May 1992. This second round of negotiations initially proved unsuccessful. As a result, the parties adopted an earlier [*15] suggestion of the court and requested that the court approve the appointment of a mediator to assist in the negotiations. The court appointed R. Lawrence Ashe, Jr., as mediator. With the assistance of the mediator, the parties resumed negotiations in the summer of 1992. These negotiations with the mediator and subsequent negotiations between the parties resulted in the parties agreeing to this proposed Consent Decree. There is no evidence of, nor have I observed any suggestion of, fraud or collusion between the parties to the settlement.

Second, I am convinced that the relief afforded by settlement is fair and reasonable when the expense, complexity, and duration of the proceedings which would be necessary to carry this matter through trial is measured against the likelihood of recovery by the class plaintiffs. I need not comment further on the extent of the proceedings thus far. There is no dispute that further proceedings would be extremely lengthy, expensive, and complex.

A trial on the merits would surely require months of pretrial preparation and several months of trial time. Most likely, the trial would involve at least two separate phases. The first part of the trial would [*16] be held for a determination of the liability of the defendants. The complaint raises claims of disparate impact and disparate treatment, separate legal theories of liability, each with its own legal issues, defenses, and obstacles. Trial of liability issues would involve lengthy presentation of witnesses and exhibits, as well as litigation of the plaintiffs' individual discrimination claims and the defendants' defense of those claims.

If the plaintiffs were successful at trial on the issue of liability, the next phase of trial would require an analysis of the class-wide relief to be afforded and the possibility and types of individual relief to be awarded to potential class members. Potential class members could easily number in the tens of thousands. The consideration and determination of thousands of claims of individual class members would be an extremely protracted, complex, and expensive use of the resources of the parties and the court.

The risks for all parties should this case go to trial would be substantial. Each side of this case had strong evidentiary support for its position on the issues. It is possible that trial on the merits would result in a finding that the defendants [*17] had *not* engaged in the discriminatory practices alleged by plaintiffs. Such a finding would, of course, result in no relief for the class members. Similarly, it is possible that trial on the merits would result in a finding that the defendants *had* engaged in discriminatory practices. Such a finding would likely result in substantial relief for the class members, possibly exceeding the relief offered in the Consent Decree.

Based on my familiarity with the voluminous evidence of record, and the factual and legal obstacles facing both sides should this matter continue to trial, I am convinced that the settlement embodied in the proposed Consent Decree is a fair and reasonable compromise. It includes a comprehensive package of equitable relief, designed to eliminate any trace of unlawful racial discrimination in the defendants' recruitment, hiring, promotion, and treatment of employees. Highlights of the equitable relief embodied in the proposed Consent Decree are:

- (1) The designation by Shoney's of a senior management official to supervise Shoney's human resources and personnel functions. This official shall be responsible for monitoring and ensuring Shoney's compliance with [*18] the various remedial provisions which guarantee that no person is denied equal employment opportunities on the basis of race.

- (2) The designation by Shoney's of two equal employment opportunity managers. These individuals shall investigate and process complaints of employment discrimination and assist in the implementation of the fair employment and affirmative action provisions.

- (3) The designation by Shoney's of two recruitment administrators. These individuals shall recruit qualified black persons for jobs at Shoney's restaurants and at the corporate office and assist in training Shoney's employees in the recruitment and training of qualified black employees.

- (4) The establishment and publication by Shoney's of an internal procedure to receive and act upon

complaints of racial discrimination, harassment, and retaliation.

(5) The establishment of a disciplinary policy for racially discriminatory or retaliatory conduct.

(6) The establishment of hiring and promotion goals for black persons, to be applied to virtually all positions at Shoney's restaurants and in the corporate office.

(7) The creation of training and education programs. These include the production of videotapes [*19] and booklets which describe the various employment positions within Shoney's and the qualifications and promotional paths for each position, and advise employees of the training and assistance available to help them qualify for advancement. In addition, the training and educational programs will advise employees of Shoney's policy of encouraging the advancement of black persons within the company.

(8) The creation of, and the expansion of an existing, tuition reimbursement program. This program shall reimburse black employees for the costs of continuing education, adult basic education, and vocational training.

(9) The adoption and implementation of job qualification and performance standards, detailed in the proposed Consent Decree, which are designed to insure that equal employment opportunities are denied to no individual on account of race.

The equitable provisions set forth in the proposed Consent Decree, of which the above is but a summary, are arguably more comprehensive than what the court would order if this case proceeded to trial, and if the defendants were found to have engaged in systematic discrimination. In addition to comprehensive equitable relief, the proposed [*20] Consent Decree also provides monetary relief to individual class members. Pursuant to the Consent Decree, Shoney's will establish a settlement fund in the amount of \$ 105 million. Monetary relief is to be paid to individual class members in accordance with a formula, set forth in the proposed Consent Decree, which takes into account the number of allegedly discriminatory actions taken against an individual class member, the years in which the events allegedly took place, and the status of the individual as an applicant for employment with Shoney's or a current or former employee of Shoney's. Taking into account the likelihood of the plaintiffs' success at trial and the range of possible monetary recovery, I find that this settlement amount is both fair and reasonable.

My conclusion that the settlement is fair and reasonable is buttressed by the near-universal support for the proposed Consent Decree among those most directly affected by it - - the class members themselves. All of the named plaintiffs support the proposed Consent Decree. Over 200,000 direct mail notices of the

settlement have been sent to present and former employees. Approximately 20,000 other persons have filed [*21] Request for Claim Forms. Out of this number, only four objections, on behalf of a total of seven persons, have been received. Given the size of the class and the extent of the notice, I find it extraordinary that only seven persons have come forward to object to the proposed Consent Decree. For the reasons discussed above, none of the objections really challenges the fairness of the settlement.

C. Amendment of the Proposed Consent Decree.

The parties have jointly moved to amend the proposed Consent Decree in two respects. Upon consideration, the motion is GRANTED, the amendments of the proposed Consent Decree are approved, and the proposed Consent Decree is amended as follows:

(1) First, Section XVIII.0. of the proposed Consent Decree is hereby amended to extend the time for the mailing of the Claim Forms and instructions. Under the terms of the proposed Consent Decree, "within fifteen days following entry of the Decree, the Company shall mail the Claim Form and instructions" Since the provisional approval of the Proposed consent Decree, the parties have been working to prepare a computer database with the information necessary to respond to the thousands of Request [*22] for Claim Forms. The parties have informed the court that this task could not be completed in sufficient time for the Claim Forms and instructions to be mailed within fifteen days following entry of the Consent Decree. The parties have moved to extend the time for mailing of the Claim Forms from fifteen days to thirty days. Accordingly, Section XVIII.0. of the proposed Consent Decree is amended to require that the Claim Forms and instructions be mailed within thirty days following entry of the Consent Decree.

(2) Second, the parties have advised the court that, pursuant to Section XVIII.L.1. of the proposed Consent Decree, Class Counsel have selected Class Settlement Administrators, Inc., as the Claims Escrow Agent. The parties have jointly filed the instructions regarding the duties and responsibilities of the Claims Escrow Agent, as required by Section XVIII.L.1. of the proposed Consent Decree. Accordingly, Section XVIII.L.1. of the proposed Consent Decree is hereby amended to incorporate the designation of Class Settlement Administrators, Inc., as the Claims Escrow Agent, and is further amended to incorporate the instructions regarding the duties and responsibilities of the Claims [*23] Escrow Agent (set forth in Document 1059, Exhibit "A").

III. CONCLUSION.

Based upon my knowledge of the hotly-contested conduct of this litigation by all parties to it, I conclude without hesitation that this settlement has been achieved

in good faith through arms-length negotiations. Both sides have been represented by experienced and very competent counsel, who have professionally handled this matter in the best interests of their respective clients. The negotiations, and the litigation as a whole, have borne fruit in the form of a settlement which is fair and reasonable. The relief afforded, both to the class as a whole, and to class members as individuals, is comprehensive. The relief afforded is a fair compromise, given the costs and uncertainty of further litigation of this matter. I find that the proposed Consent Decree, as amended, is a fair, adequate, and reasonable settlement of this matter. It is hereby APPROVED, and shall be entered as final judgment in this case.

DONE AND ORDERED this 25th day of January, 1993.

ROGER VINSON

United States District Judge

ATTACHMENT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA PENSACOLA
DIVISION

JOSEPHINE [*24] HAYNES, DENISE RILEY,
DEWITT MICHAEL NELSON, CAROLYN COBB,
TERRELL FORTE, HELEN JONES, MELKANNAH
COCHRAN, ELAINE MILES, ARTHUR MANIGO,
and PAULA DEAN, individually and on behalf of all
other persons similarly situated, Plaintiffs, vs.
SHONEY'S, INC. and RAYMOND L. (RAY)
DANNER, Defendants.

No. PCA 89-30093-RV

CONSENT DECREE

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I

INTRODUCTION

This Consent Decree (hereinafter, the "Decree") resolves **Haynes, et al. v. Shoney's, Inc., et al.**, Civil Action No. PCA 89-30093-RV, pending in the United States District Court for [*27] the Northern District of Florida (the "Civil Action"). The Civil Action was filed on April 4, 1989 by nine named plaintiffs: Josephine Haynes, Denise Riley, Dewitt Michael Nelson, Buddy Bonsall, Billie Elliott, Henry Elliott, Lester Thomas, Leonard Charles Williams, and Donna Mongoven, individually and on behalf of all persons similarly situated pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e et seq. ("Title VII"), the Civil Rights Act of 1866, 42 U.S.C. Section 1981 ("Section 1981") and 42 U.S.C. Section 1985(3) ("Section 1985(3)").

The original defendants named in the lawsuit were Shoney's, Inc. (the "Company"), Robertson Investment Company ("RIC"), and Raymond L. Danner ("Danner"). On September 8, 1989, the Court granted the Plaintiffs' Motion to File a Second Amended Complaint adding Charles Robertson and Roger Danner as defendants.

On April 19, 1991, the Court approved the filing of the Third Amended Complaint, which added seven named plaintiffs, Carolyn Cobb, Terrell Forte, Helen Jones, Melkannah Cochran, Elaine Miles, Arthur [*28] Manigo, and Paula Dean. The sixteen named plaintiffs in the Civil Action are hereinafter collectively referred to as the "Original Named Plaintiffs". Plaintiffs Haynes, Riley, Nelson, Bonsall, Cobb, Forte, Jones, Cochran, Miles, Manigo and Dean are sometimes hereinafter collectively referred to as the "Shoney's Plaintiffs". Plaintiffs Billie Elliott, Henry Elliott, Thomas, Williams and Mongoven are sometimes hereinafter collectively referred to as the "RIC Plaintiffs".

The Third Amended Complaint alleges that the defendants utilized and maintained discriminatory employment practices against black individuals, including the Original Named Plaintiffs, in violation of Title VII, Section 1981 and Section 1995(3). The Third Amended Complaint further alleges that defendants retaliated against certain employees who declined to

engage in the alleged discriminatory employment practices involving black employees in violation of Title VII and *Sections 1981 and 1985(3)*.

The Original Named Plaintiffs have vigorously prosecuted the case and defendants have vigorously contested it. The parties have undertaken substantial discovery. In addition the parties have complied with the Court's Pretrial [*29] Order that required, *inter alia*, the presentation of detailed proposed findings of fact, agreement with respect to undisputed findings of fact, and the identification of witnesses and exhibits. Furthermore, the parties have filed with the Court more than 100 depositions of witnesses that are admissible as trial testimony.

The parties have engaged in extensive settlement negotiations. In August 1989, the parties jointly moved the Court to enter and the Court did enter an order establishing a moratorium upon litigation activity in order to permit the parties to exchange information pertinent to settlement negotiations and to attempt to negotiate a settlement.

As part of the negotiation process, the Company provided Class Counsel with a substantial amount of personnel and other employment related information, and statistical analyses. The settlement negotiations included the exchange of analyses prepared by labor market economists, statisticians, and financial experts. At that time the parties did not reach an agreement and the litigation moratorium ended in April 1990.

On June 22, 1992, the Court entered an Order conditionally certifying a class. On June 29, 1992, the Court ruled [*30] on various summary judgment motions. On July 7, 1992, the Court entered an order formally severing the claims against RIC, Charles Robertson and Roger Danner by the remaining RIC Plaintiffs.

In May 1992, after the filing of the documents required by the Pretrial Order, the parties once again entered into negotiations. The parties jointly requested and the Court approved the appointment of a mediator in June 1992. As a result of these negotiations, including those that have been assisted by the mediator, the parties reached an agreement that is contained in the Decree.

On these bases and the supporting documents on file herein, the parties agree, and the Court finds, that the formal and informal discovery conducted in the Civil Action, the trial depositions submitted to the Court, and the documents presented pursuant to the Pretrial Order are sufficient to assess the merits of the respective parties' positions and to compromise the issues on a fair and equitable basis.

The Company and Danner (hereinafter sometimes referred to collectively as "Defendants") and the

remaining Shoney's Plaintiffs Haynes, Nelson, Riley, Cobb, Forte, Jones, Miles, Cochran, Manigo, and Dean (hereinafter [*31] collectively "Plaintiffs") having agreed that the relief provided by the Decree is proper and appropriate and to the entry of the Decree without admission whatsoever by Defendants of any violation of Title VII or *Sections 1981 and 1985(3)*, and it appearing to the Court that the Decree is fair and reasonable in light of the evidence presented to the Court;

NOW THEREFORE,

It is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II

DEFINITIONS

The following terms (whether or not underscored) when used in this Decree, in addition to the terms defined elsewhere herein, shall, except when the context otherwise requires, have the following meanings (such meaning to be equally applicable to the singular and plural forms thereof):

"Applicant" means any Black person who was not hired after seeking employment with any of the Covered Concepts at any time during the Class Period.

"Area Director" means a multi-unit supervisor of Covered Concept restaurants, however designated by the Concept, immediately above Store Level Management.

"Best Efforts" means reasonable steps necessary to realize or comply with the specified objectives to which the best efforts are directed.

[*32] *"Black"* shall be used as defined in Appendix 4 of the current Instruction Booklet for completion of Standard Form 100, Employer Information Report EEO-1.

"Black Civilian Labor Force" means percentage of Black individuals in the civilian labor force in a particular county sixteen (16) years of age and older as defined by the U.S. Bureau of the Census based upon Census data or to such occupation and industry subcategory within such county's civilian labor force as may otherwise be specified.

"Black Server Employment Ratio" means, as of the end of any Fiscal Quarter, the result reached by dividing:

(a) the ratio of:

(i) the sum of the total number of Black servers at the Shoney's Concept Restaurants that appeared on the Company's payroll records for the last payroll period of that Fiscal Quarter;

to

(ii) the sum of the total number of servers at the

Shoney's Concept Restaurants that appeared on the Company's payroll records for the last payroll period of that Fiscal Quarter.

by

(b) the Concept Server Representative Percentage as of the end of that Fiscal Quarter.

"*Census*" means the information created by the U.S. Bureau of the Census as of 1980 [*33] until such time as data created by the U.S. Bureau of the Census as of 1990 is available, at which time such later information shall be utilized for the purposes of the Decree.

"*Civil Action*" has the meaning set forth in *Section I.* of the Decree.

"*Class Counsel*" means the Law Offices of Thomas A. Warren, of Tallahassee, Florida, and Saperstein, Mayeda, Larkin & Goldstein, P.C., of Oakland, California, the law firms designated under Rule 23 of the FRCP as adequate to represent the Settlement Classes.

"*Class Period*" means from February 4, 1985 until the date of entry of the order provisionally approving the Decree.

"*Code 435*", with respect to a particular county, means the waiter/waitress (Code 435) position in the private sector Eating and Drinking Places (Code 641) obtained from the public use micro data set (PUMS) as shown by the Census (or the Black Civilian Labor Force in the event census data is not available) for that county.

"*Company*" means Shoney's, Inc., a Tennessee corporation.

"*Concept*" means a division or type of business of the Company or any of its subsidiaries held out to the public with a particular designation and, as of the date hereof [*34] shall mean and include the following: (a) "Shoney's Restaurants", (b) "Captain D's", (c) "Lee's Famous Recipe", (d) "Pargo's", and (e) "Fifth Quarter". "Concept," however, shall not include any such business that is owned and/or operated by a franchisee or licensee of the Company.

"*Concept Server Representative Percentage*" means, as of the end of a Fiscal Quarter, the sum of the County Server Weighting Factors for those counties having Shoney's Concept Restaurants.

"*Constructive Applicant*" means any Black person who would have applied for employment with any of the Covered Concepts at any time during the Class Period but for the Company's allegedly racially discriminatory recruitment and/or hiring practices.

"*County Server Weighting Factor*" for any particular county means, as of the end of any Fiscal Quarter, the result reached by multiplying:

(a) the ratio of:

(i) the total number of servers at the Shoney's Concept Restaurants within that county that appeared on the Company's payroll records for the last payroll period ending immediately prior to the end of that Fiscal Quarter;

to

(ii) the total number of servers at the Shoney's Concept Restaurants that [*35] appeared on the Company's payroll records for the last payroll period ending immediately prior to the end of that Fiscal Quarter;

by

(b) the Black Civilian Labor Force for such county as shown by the Census.

"*Court*" means the United States District Court for the Northern District of Florida.

"*Corporate Office*" means non-officers/directors of the Company whose workplace is in the Company's principal executive offices in Nashville, Tennessee and who work within the following areas: Finance and Accounting, Corporate Human Resources, Shoppers, Management Information Systems and Real Estate and Development.

"*Covered Concepts*" means the Company's Shoney's Concept, Captain D's Concept, Lee's Famous Recipe Concept, Pargo's Concept and Fifth Quarter Concept restaurants and the Corporate Office.

"*Danner*" has the meaning set forth in *Section I.* of the Decree.

"*Decree*" has the meaning set forth in *Section I.* of the Decree.

"*Department Level Management*" means and includes the following positions for the respective Concept:

Shoney's Concept: Breakfast Bar Supervisor, Dining Room Manager, Night Dining Room Supervisor, Relief Manager, Kitchen Manager, [*36] Night Kitchen Manager, and Manager Trainee; and Captain D's Concept: Dining Room Manager, Night Dining Room Supervisor, Relief Manager, and Manager Trainee.

"*Discrimination*" means any policy, procedure, program, pattern, practice, act and/or omission that allegedly occurred and/or existed during the Class Period that arose out of, was related to or that allegedly affected, because of race, a Black person's employment or attempted employment with or by the Covered Concepts that, if proven, would: (i) violate any Employment Law; or (ii) otherwise be actionable, whether in tort, contract

or otherwise.

"Division Level Management" means any of the following positions above Store Level Management for Covered Concept restaurants: Area Director, City Manager, Area Supervisor, Area Training Supervisor, and Division Director and/or Regional Director.

"Employment Law" means any federal, state or local statutes, laws, ordinances or regulations having the force of law and in effect during the Class Period (including without limitation, Title VII, *Section 1981*, *Section 1985(3)* or the Civil Rights Act of 1991) prohibiting discrimination or retaliation on the basis of race with respect [*37] to one's employment.

"Fiscal Quarter" means any quarter of a Fiscal Year and, in the case of the Company's initial fiscal quarter of a Fiscal Year, means a period of sixteen consecutive weeks, in the case of each of the Company's second and third fiscal quarters of a Fiscal Year, means a period of twelve consecutive weeks and, in the case of the Company's final fiscal quarter of a Fiscal Year, means a period of twelve consecutive weeks if the Fiscal Year is comprised of fifty-two weeks and thirteen consecutive weeks if the Fiscal Year is comprised of fifty-three weeks.

"Fiscal Year" means any period of fifty-two or fifty-three consecutive calendar weeks ending on the last Sunday in October of each calendar year; references to a fiscal year with a number corresponding to any calendar year (e.g., the "1992 Fiscal Year") refer to the fiscal year ending on the last Sunday in October occurring during such calendar year.

"FRCP" means the Federal Rules of Civil Procedure.

"Fund" means the settlement fund established in *Section XVIII*.

"Incumbent" means any Black person who was employed at any of the Covered Concepts at any time during the Class Period.

[*38] *"Original Named Plaintiffs"* has the meaning set forth in *Section I* of the Decree.

"Payment Date" means the first day of each March, June, September and December of each year or, if any such day is not a business day, the next succeeding business day.

"Plaintiffs" has the meaning set forth in *Section I* of the Decree.

"Production Department Supervision" means all Department Level Management except for Service Department Supervision.

"Progress Report" means a report containing the documents and/or information required by *Section XX*,

with a certificate duly executed by the Senior H/R Official of the Company.

"Region" means a geographic group of restaurants within a single Covered Concept that function under a single Regional Director or Division Director (who may or may not be an officer of the Company).

"Regional Director" means a multi-unit supervisor of Shoney's Concept or Captain D's Concept restaurants immediately above Area Director having direct supervisory responsibility over a Region. A Regional Director also sometimes may be designated as a "Division Director" by the Company.

"Section 1981" and *"Section 1985(3)"* have the [*39] respective meanings set forth in *Section I* of the Decree.

"Senior H/R Official" means the most senior management person within the Company (who may or may not be an officer of the Company) whose responsibility consists of supervision of the Company's human resources and/or personnel functions.

"Service Department Supervision" means and includes the Dining Room Manager and Night Dining Room Supervisor positions within the Covered Concepts.

"Settlement Classes" means and includes Applicants, Constructive Applicants and Incumbents.

"Shoney's Plaintiffs" has the meaning set forth in *Section I* of the Decree.

"Special Claimants" means those persons listed on *Exhibit A* to the Decree.

"Store Level Management" means and includes the positions of Assistant Manager and Store Manager for each Covered Concept.

"Title VII" has the meaning set forth in *Section I* of the Decree.

III

JURISDICTION

The Court has subject matter jurisdiction of the Civil Action. The Third Amended Complaint asserts claims that, if proved, would authorize the Court to grant the monetary and equitable relief as set forth in the Decree.

The Court shall retain jurisdiction [*40] during the duration of the Decree as set forth in *Section V* to enforce the provisions of the Decree. The special procedures established in the Decree for enforcing its provisions are not intended to preclude the Court from enforcing any provision or purpose of the Decree by its contempt or any other power of the Court.

IV

EFFECT OF DECREE

A. The negotiation and entry of this Decree and the undertakings by the Company hereunder are in settlement of the claims of the Plaintiffs and members of the Settlement Classes based on alleged Discrimination. Upon entry of the Decree, the Company, each of its wholly-owned subsidiaries owning and/or operating Covered Concepts, each of their respective directors, officers, agents and employees, and Danner shall be, and hereby are, fully released and forever discharged from any and all claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, by the Plaintiffs, the Special Claimants or the Settlement Classes that arise out of or are related to alleged Discrimination. The entry of this Decree fully settles the allegations of Discrimination that have been, could have been, or in the future might be claimed [*41] or asserted against the Company and Danner in the Civil Action by the Plaintiffs, the Special Claimants and/or the Settlement Classes based on, arising out of, relating to or in connection with any of the allegations in the Civil Action and/or any fact, circumstance or inference asserted in or underlying the Civil Action. The entry of this Decree also fully resolves all issues between the Plaintiffs and the Settlement Classes and the Company and Danner relating to alleged Discrimination which were or could have been raised in the Civil Action, as well as any future effects of any such alleged Discrimination. This Decree is final and binding among the Plaintiffs, the Special Claimants, all members of the Settlement Classes, Class Counsel, the Company and Danner. The release in this *Section IV.A.* is intended to be a full and final binding release of all claims that were or could have been alleged or discovered in the Civil Action and shall be construed broadly to effect that purpose.

B. The settlement and release described in *Section IV.A.* shall survive any termination of the Decree.

V

DURATION OF DECREE

This Decree shall become effective upon the date of its entry by [*42] the Court and, except as otherwise provided herein, shall remain in effect for ten (10) years from such date. Notwithstanding the foregoing, the Company may petition the Court to terminate the Decree at any time after seven (7) years after the entry of the Decree provided that the Company has made all contributions required by *Section XVIII* and has not been held by the Court or the Special Master to have violated the Decree during the two (2) years immediately preceding the petition.

VI

PURPOSES OF THE DECREE

The Plaintiffs and Defendants have entered into the

Decree for the following purposes:

A. To increase the number of Blacks employed by the Company in its Shoney's Concept, Captain D's Concept, Lee's Famous Recipe Chicken Concept, Pargo's Concept, and Fifth Quarter Concept Restaurants, and in the Corporate Office and to increase the number of Blacks in all jobs and positions in these Concepts in which Blacks may be currently underrepresented;

B. To provide an expedited procedure for providing appropriate relief to members of the Settlement Classes;

C. To establish equal employment opportunity within the Company and to remove any barriers to the full utilization of [*43] Blacks in all jobs;

D. To prevent any retaliation against any employee who might oppose any illegal employment practices based on race;

E. To avoid further expensive and protracted litigation; and

F. To provide finality of claims and decisions.

VII

MISCELLANEOUS PROVISIONS

A. The provisions of the Decree are not intended to eliminate any rights otherwise available to the Plaintiffs or any members of the Settlement Classes for acts after the Class Period.

B. None of the obligations imposed upon the Company by this Decree may be discharged by bankruptcy or any other insolvency proceeding. Also, the entitlement of any member of the Settlement Classes, and the Company's monetary obligations under this Decree, cannot be defeated by any sale by the Company of all or substantially all of its assets. The Company is enjoined from selling all or substantially all of its assets with the intent, purpose, or effect of circumventing any of the provisions of the Decree.

C. In the event of bankruptcy or any other insolvency proceeding, the fund established in *Section XVIII* of the Decree is the property of the Plaintiffs and the Settlement Classes. The funds established in *Section [*44] XX* of the Decree are the property of Class Counsel.

D. The terms of the Decree shall be binding upon the Plaintiffs, members of the Settlement Classes, Danner, the Company, and their respective successors and assigns.

E. The Decree constitutes the complete understanding among the Company, Danner, the Plaintiffs, the Settlement Classes and Class Counsel with respect to the matters herein. The only obligations that

shall be imposed on the Company pursuant to the Decree are those expressly set forth herein; no additional obligations are to be imposed or implied.

F. By entering into this Decree, neither the Company nor Danner admit that the allegations of the Plaintiffs or of any members of the Settlement Classes are correct. Both the Company and Danner deny that any of their policies, procedures, programs, patterns, practices, acts or omissions have at any time violated any Employment Laws. The Decree shall not constitute evidence of any violation by the Company or Danner of any Employment Laws. The Decree shall not be admissible in any case other than the Civil Action or any action arising out of the rights and obligations of the Company or the Settlement Classes under this Decree. [*45] The provisions of the Decree are the product of negotiation between the parties and are not intended as precedent in similar cases concerning any of the Plaintiffs, Settlement Classes, Danner or the Company.

G. As herein used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders, unless the context would clearly not permit such construction. Section or paragraph headings are employed herein solely for convenience of reference, and such headings shall not be used in construing any term or provision of this Decree. All references herein to "Section" shall mean the appropriate numbered section of this Decree, except where reference is particularly made to some other instrument or document.

H. The Company's compliance with its obligations under the Decree shall not be interpreted to conflict with its legal obligations under any local, state, or federal law. The preceding sentence, however, is not intended to provide a basis for contravening any provision or purpose of this Decree. Nothing in the Decree shall be construed to reduce the Company's obligation to fully comply with Title VII and the regulations [*46] promulgated pursuant thereto, except that compliance with the Decree shall constitute compliance with Title VII with respect to the matters covered by the Decree for policies, procedures, programs, patterns, practices, acts and/or omissions occurring or existing during the Class Period.

VIII

SETTLEMENT CLASSES

The Court hereby approves and certifies pursuant to FRCP 23(b)(2) the following classes: (1) all Blacks who were Applicants or Constructive Applicants at any time during the Class Period, and (2) all Blacks who were employees of the Covered Concepts at any time during the Class Period.

IX

ENFORCEMENT OF THE DECREE BEFORE THE SPECIAL MASTER AND THE COURT

A. The Special Master

Within thirty days after entry of the Decree, the Company and Class Counsel shall make a good faith effort to select a Special Master. If the Company and Class Counsel are unable to reach agreement as to a Special Master, the Court, upon the motion of either the Company or Class Counsel, shall appoint a Special Master. The Special Master may be removed by the joint written request of Class Counsel and the Company, or by order of the Court upon motion of Class Counsel or the Company. [*47] In the event that the Special Master and/or his/her successor ceases to function as Special Master under the Decree due to death, voluntary resignation, the joint written request of Class Counsel and the Company, or an order of the Court, Class Counsel and the Company shall make a good faith effort to select a new Special Master by mutual agreement. If Class Counsel and the Company are unable to reach agreement as to a successor Special Master, the Court, upon motion of either the Company or Class Counsel, shall appoint a successor Special Master.

B. Purpose of the Special Master

The purpose of the Special Master is to provide an efficient and expeditious procedure for the resolution of any dispute that arises under the Decree consistent with the general purposes and specific language of the Decree, except those disputes that are set for resolution by the Claims Arbitrator pursuant to *Section XVIII*.

C. Duties and Responsibilities of the Special Master

The Special Master shall have plenary authority to resolve all disputes arising under the Decree except those disputes that are set for resolution by the Claims Arbitrator pursuant to *Section XVIII*.

Unless otherwise [*48] set forth in this Decree, the following procedures shall apply with respect to resolving disputes arising under the Decree. The Special Master is authorized to supplement these procedures in the interest of clarity, although any such supplementation shall not alter the primary purpose of using the Special Master, which is to resolve such disputes in an expeditious manner consistent with the general purposes and specific language of the Decree.

1. At the request of Class Counsel or the Company, Class Counsel and the Company shall confer, as necessary, to resolve any disputes regarding the interpretation or implementation of the Decree. Should either Class Counsel or the Company deem an issue, including whether the Company is in compliance with the Decree, to be in dispute, Class Counsel or the Company may proceed under *Section IX.C.2*.

2. Either Class Counsel or the Company shall have the right to file a motion with the Special Master to resolve any dispute or issue of compliance regarding any provision of the Decree, except for those disputes that are specifically for resolution by the Claims Arbitrator pursuant to *Section XVIII.F.*, as follows:

a. If Class Counsel or the [*49] Company has good reason to believe that a legitimate dispute exists, written notice shall be given to the other party regarding (a) the specific provisions of the Decree that is involved, (b) a factual statement of the issue, and (c) a brief statement of the arguments supporting the position of the moving party.

b. Within seven (7) days after receiving such notice, Class Counsel or the Company shall respond in writing to the statement of facts and argument set forth in the notice.

c. Class Counsel and the Company shall undertake good faith negotiations, which should include the exchange of relevant documents and/or information, to resolve the areas of dispute or alleged non-compliance.

d. If Class Counsel or the Company, after good faith efforts to resolve the matter have failed, determines that the matter has not been resolved, a motion may be filed with the Special Master, with a supporting brief, requesting resolution of the dispute or the issue of non-compliance.

e. A party will have fifteen (15) days to respond to any such motion.

f. The moving party may file a reply brief within ten (10) days of receipt of the response.

g. The Special Master, upon motion or otherwise, [*50] may permit either the Company or Class Counsel to take discovery as provided by the FRCP if the Special Master determines that the informal exchange of documents or information has not been sufficient in order for either Class Counsel or the Company to present the dispute upon a proper factual record.

h. The Special Master shall attempt within fifteen (15) days to resolve the dispute and may schedule a hearing or other proceeding, which may be conducted telephonically, to resolve the matter.

i. The Special Master shall have authority to withhold the adjudication of a dispute while informal or formal discovery is being conducted.

j. The decision by the Special Master regarding any issue under the Decree shall be final and non-appealable.

D. Fees and Expenses of the Special Master

All fees and expenses of the Special Master shall be paid by the Company.

E. Enforcement Proceedings Before the Court

1. Prior to filing a motion for contempt or other motion to enforce the Decree before the Court, Class Counsel and the Company shall follow the procedures in this *Section IX* in order that the parties may have an opportunity to negotiate or otherwise resolve the matter [*51] informally.

2. Except as provided in *Section IX.E.6*, prior to filing a motion to enforce the Decree with the Court, Class Counsel or the Company shall give written notice specifying (a) the particular provision that is sought to be enforced and (b) a concise, factual statement of each issue. The party receiving this notice shall respond in writing within twenty (20) days of receiving the notice.

3. Class Counsel and the Company shall undertake to resolve the matter in dispute by good faith negotiations.

4. If Class Counsel or the Company determine that the matter cannot be resolved or that efforts to resolve this matter have failed after the efforts described in *Section IX.E.3*, a motion for contempt or other motion to enforce the Decree may be filed before the Court. Before such motion is filed, a final written notice of intent to file shall be served on all parties. The motion may be filed at any time ten (10) days after the service of this final notice.

5. Any notices provided for in *Section IX.E* shall be served upon Class Counsel and the Company.

6. If irreparable harm may occur unless the Court orders relief, then Class Counsel or the Company may file a motion [*52] for contempt or other motion to enforce the Decree before the Court without following the procedures set forth in *Sections IX.E.2-5*.

X

MODIFICATION AND SEVERABILITY OF THE DECREE

A. Whenever possible, each provision and term of this Decree shall be interpreted in such manner as to be valid and enforceable; provided, however, that in the event any provision or term of this Decree should be determined to be or rendered invalid or unenforceable (by an Act of Congress, or otherwise), all other provisions and terms of this Decree and the application thereof to all persons and circumstances subject thereto shall remain unaffected to the extent permitted by law. If any application of any provision or term of this Decree to any person or circumstances should be determined to be invalid or unenforceable, the application of such provision or term to other persons and circumstances shall remain unaffected to the extent permitted by law.

B. The parties shall have the right to seek relevant

modification of the Decree to ensure that its purposes are fully effectuated following good faith negotiations as to such modifications. If unforeseen circumstances cause a specific provision or [*53] provisions of the Decree to be ineffectual, then a party may petition the Court for proper modification of the Decree in a manner consistent with the purposes of the Decree. If unforeseen circumstances place an unjust hardship upon a party, then that party may petition the Court for proper modification of the Decree in a manner consistent with the purposes of the Decree. The parties may jointly agree to modify the Decree with the approval of the Court.

XI

INJUNCTIVE RELIEF - GENERAL PROVISIONS

A. The Company and banner and their respective officers, agents and employees are enjoined and restrained from engaging in any act, policy or practice with the purpose of discriminating or retaliating against any Plaintiff or member of the Settlement Classes on the basis of race or because any Plaintiff or member of the Settlement Classes has opposed or might oppose any racially discriminatory employment practice of the Company or banner, respectively.

B. The Company and banner and their respective officers, agents and employees, shall not engage in or be party to any act, policy, or practice with the purpose of discriminating or retaliating in any manner against any Plaintiff, any member [*54] of the Settlement Classes, any employee of the Company or any applicant for employment with the Company, or any other person because he or she has furnished information or participated in any respect in the prosecution of the Civil Action, including, but not limited to, by giving written or oral testimony or furnishing other evidence to Plaintiffs, or because he or she has made charges, testified, asserted a claim, or participated in any manner in any investigation or proceeding.

C. The Company, its officers, agents and employees, shall not discriminate on the basis of race against any Black applicant or employee in making a job selection decision. The Company, its officers, agents and employees, shall consider all Black applicants for initial hire and Black employees available for promotion or any other employment opportunity on the same basis as it considers non-Black applicants and employees, unless otherwise provided for in this Decree. The Company, its officers, agents and employees, shall afford Black employees the same training and terms and conditions of employment including, but not limited to, assignments to jobs and facilities, assignments of work hours, shifts, and full-time [*55] stature, job assignments, stock options, bonuses and fringe benefits, and reductions-in-force, as it affords similarly situated non-Black employees, unless otherwise provided for in this Decree.

D. The Company and Danner and their respective officers, agents and employees, shall not take any adverse action or retaliate against any employee because the employee opposed, refused to implement, or otherwise objected to any practice, policy, or act of racial discrimination at the Company.

XII IMPLEMENTATION OF EEO PROCEDURES

A. Senior H/R Official

1. Within one month of the entry of this Decree, the Company shall designate a Senior H/R Official in accordance with the provisions in *Section XII.A.2*. In the event that an individual ceases to function as the Senior H/R Official during the term of this Decree, the Company will replace that individual as the Senior H/R Official as soon as possible pursuant to *Section XII.A.2*.

2. The following procedures shall apply in selecting the Senior H/R Official:

a. The Company shall use its Best Efforts to recruit individuals who are qualified to serve in this position.

b. Prior to appointing an individual for the position of [*56] Senior H/R Official, the Company shall provide Class Counsel with the resume of the individual that the Company intends to appoint to the position and a description of the reasons for the selection. Class Counsel may interview the individual. Within three weeks of receiving the resume and description of the basis for the selection, Class Counsel may provide their views as to the qualifications and suitability of the individual.

c. If, three months after an individual ceases to function as Senior H/R Official or if no person has been selected for the position of Senior H/R Official within one month of the entry of the Decree, then the Special Master shall select the Senior H/R Official within two months thereafter. The Company and Class Counsel may nominate persons for consideration by the Special Master. Both the Company and Class Counsel shall have the right to interview any nominated person before the person is selected by the Special Master and to present argument and evidence to the Special Master regarding the selection of the Senior H/R Official.

3. Class Counsel may request that an individual be removed as Senior H/R Official in the event that he/she failed to use Best Efforts [*57] to implement and/or comply with one or more provisions of the Decree.

4. Any request for removal of an individual from the position of Senior H/R Official pursuant to *Section XII A.3* shall set forth the grounds for the request in detail in writing. The Company may dispute the factual basis for Class Counsel's request and within ten (10) days of its receipt of Class Counsel's request, shall provide to Class

Counsel, in writing, any extenuating circumstances which it believes should be considered by Class Counsel. If the parties are unable to agree as to whether the then Senior H/R Official should be removed from that position, the matter shall be submitted to the Special Master, whose decision shall be final and non-appealable.

B. Duties, Responsibilities, Staff, and Support

1. The Senior H/R Official shall use his or her Best Efforts to assure compliance by the Company with the provisions of this Decree. Such efforts shall include, but not be limited to, the following:

a. Monitoring the establishment, implementation, and revision of hiring and/or promotion goals as provided for under the Decree.

b. Stating whether goals relating to hiring and promotion have been achieved [*58] and, if not, whether the failure to achieve each goal is justified pursuant to the terms of the Decree.

c. Ensuring implementation and monitoring of all recruiting and special recruiting programs provided for under the Decree.

d. Overseeing the development and implementation of the booklet, videotape and training programs provided for under the Decree.

e. Publicizing and overseeing the expanded tuition reimbursement program for the Company as provided for in the Decree.

f. Establishing a program so that individuals promoted to Store Level Management and Division Level Management positions receive training in equal employment and personnel matters within a reasonable period of time after they are promoted.

g. Submitting to Class Counsel the Progress Reports and other material specified in the Decree.

h. Ensuring the implementation of the internal complaint procedure set forth in Section *XIII.D*.

2. The Senior H/R Official shall be provided such support staff and funds as may be reasonably necessary to discharge the Company's obligations under the Decree.

3. The Senior H/R Official shall recommend that any individual whom he/she concludes has been the victim of a violation [*59] of the Decree or subjected to racial discrimination, harassment and/or retaliation be hired, rehired, promoted, transferred, or provided with other appropriate relief, including monetary relief. If the Company does not follow the Senior H/R Official's recommendation, a report shall be made by the Company to Class Counsel stating why the recommendation was not followed.

C. EEO Managers and Recruitment Administrators

1. EEO Managers

a. Within three months after entry of this Decree, the Senior H/R Official shall designate two EEO Managers. The Senior H/R Official may determine that more than two EEO Managers are necessary, but there shall be at least two EEO Managers.

b. The function of the EEO Managers shall be to investigate and process complaints of employment discrimination, harassment and/or retaliation and to assist in the implementation of the fair employment and affirmative action provisions of this Decree.

c. The persons designated as EEO Managers shall have prior experience or, in the reasonable judgment of the Senior H/R Official, have the ability to investigate and process discrimination complaints and to assist in the implementation of the fair employment [*60] and affirmative action provisions of this Decree.

d. At least ten (10) days prior to designating any person as an EEO Manager, the Senior H/R Official shall furnish Class Counsel with the identity and a copy of the resume of the person. Within the ten (10) day notice period, Class Counsel may provide the Company their views as to the qualifications and suitability of the person under consideration as EEO Manager.

e. If the Company, for more than four months, fails to designate an EEO Manager, Class Counsel may apply to the Special Master, who shall select an EEO Manager within two months after such application. The Company and Class Counsel may nominate persons for consideration by the Special Master. Both the Company and Class Counsel shall have the right to interview any person before the person is selected by the Special Master and to present argument and evidence to the Special Master regarding the selection of the EEO Manager. Any person chosen by the Special Master may be replaced by the Company only with the consent of the Special Master.

2. Recruitment Administrators

a. Within three months after entry of the Decree, the Senior H/R Official shall designate two Recruitment [*61] Administrators. The Senior H/R Official may determine that more than two Recruitment Administrators are necessary but, there shall be at least two Recruitment Administrators. No individual shall occupy the positions of Recruitment Administrator and EEO Manager at the same time.

b. The function of Recruitment Administrators shall be to recruit qualified Blacks for jobs at Shoney's Concept, Captain D's Concept, Lee's Famous Recipe Concept, Pargo's Concept, and Fifth Quarter Concept

restaurants and at the Corporate Office and to assist and assist in training other employees of the Company in recruiting and retaining qualified Black employees.

c. The persons designated as Recruitment Administrators shall have prior experience or, in the reasonable judgment of the Senior H/R Official, have the ability to recruit Black employees.

d. At least ten (10) days prior to designating any person as a Recruitment Administrator, the Senior H/R Official shall furnish Class Counsel with the identity and a copy of the resume of the person. Within the ten (10) day notice period, Class Counsel may provide the Company their views as to the qualifications and suitability of the person under consideration [*62] as a Recruitment Administrator.

e. If the Company, for more than four months during any period of time when rehired to do so, fails to designate a Recruitment Administrator, Class Counsel may apply to the Special Master, who shall select a Recruitment Administrator within two months after such application. The Company and Class Counsel may nominate persons for consideration by the Special Master. Both the Company and Class Counsel shall have the right to interview any person before the person is selected by the Special Master and to present argument and evidence to the Special Master regarding the selection of the EEO Manager. Any person chosen by the Special Master may be replaced by the Company only with the consent of the Special Master.

D. Internal Complaint Procedure

1. The Company shall internally publicize its company-wide policy prohibiting racial discrimination, harassment and/or retaliation. The policy shall provide that such conduct shall be subject to appropriate discipline up to and including discharge. The policy shall be posted in a prominent place in each employing location covered by this Decree and shall be set forth in the booklet provided for in *Section* [*63] *XVI*.

2. An internal complaint procedure shall be maintained by the Company whereby any employee or applicant who believes that any provision of the Decree has been violated with respect to his/her employment with or application to the Company or that he/she has been the subject of racial discrimination, harassment and/or retaliation in his/her employment with or application to the Company shall be encouraged to informally resolve the dispute. The internal complaint procedure may be initiated by an employee either by filing a written complaint with the Senior H/R Official or by calling a toll free 800-number which shall be established by the Company to receive such complaints.

3. Written and 800-number complaints of alleged violations of the Decree or of racial discrimination,

harassment or retaliation involving Shoney's Concept, Captain D's Concept, Lee's Concept, Pargo's Concept, or Fifth Quarter Concept restaurants, or the Corporate Office, which provide sufficient information to permit a meaningful investigation, shall be investigated and the employees/applicants, if identified, shall be advised of the results of that investigation. A written record of each complaint of alleged [*64] violations of the Decree or of racial discrimination, retaliation or harassment and of the investigation shall be created and maintained for the duration of this Decree. Complaints of alleged violations of the Decree or of racial discrimination, harassment or retaliation originating from the above-designated restaurants or Corporate Office shall be investigated by a management employee and/or attorney designated by the Senior H/R Official. The Senior H/R Official shall not designate any management employee to investigate a complaint if that particular management employee is the subject of the complaint. If the Senior H/R Official designates an attorney to investigate a complaint, neither the attorney-client privilege nor the work product doctrine may be used by the Company to deny Class Counsel access to the facts underlying the complaint that the Company must provide to Class Counsel pursuant to this Decree. The Company, however, is not required to provide any legal analysis done or opinions given by any attorney who investigates an internal complaint.

4. Any employee or applicant who submits a written or 800-number complaint of alleged violations of the Decree or of racial discrimination, [*65] harassment and/or retaliation involving the Covered Concepts set forth in *Section XII.D.3* and who is not satisfied with the initial resolution of that complaint may request that the matter be reviewed by the Senior H/R Official (or his/her designee). The employee or applicant requesting such a review shall be advised in writing (with a copy sent to Class Counsel) of the outcome of the review within three days of the decision. A written record of the review shall be created and maintained for the duration of this Decree.

5. The Senior H/R Official (or a designee under his/her supervision) shall receive and retain, during the duration of the Decree, copies of all written or 800-number complaints of alleged violations of the Decree or of racial discrimination, harassment and/or retaliation involving the Covered Concepts set forth in *Section XII.D.3*, the investigation undertaken in response to such complaints, the results of the investigation and, when utilized, the review and results of the review by the Senior H/R Official or his/her designee. A summary of this information regarding investigations and reviews during each Fiscal Quarter shall be provided to Class Counsel with [*66] the Progress Report for that Fiscal Quarter. That summary, at a minimum, shall specify the nature of the complaint, steps taken to investigate, and remedial and disciplinary measures, if any, imposed. Upon the written request of Class Counsel, a copy of the

investigation file for a complaining individual shall be provided.

6. The internal complaint procedure established in this *Section XII.D.* is not intended to affect the right of any applicant or employee to file a charge or complaint of discrimination or retaliation under any available municipal, state, or federal law.

E. Disciplinary Policy.

1. Within fourteen (14) days after the entry of the Decree, the Company shall provide to Class Counsel a proposed disciplinary policy for racially discriminatory or retaliatory conduct. The policy shall include:

a. A statement that racial discrimination and harassment is unacceptable and that such conduct may result in dismissal or other discipline.

b. A statement that retaliation against an employee or applicant for using the internal complaint procedure, contacting Class Counsel, or otherwise taking action in opposition to racial discrimination or harassment is unacceptable [*67] and that such conduct may result in dismissal or other discipline.

c. A statement that racially discriminatory treatment of employees or applicants in hiring, promotion, discharge, or other employment decisions is unacceptable and that such conduct may result in dismissal or other discipline.

d. A statement that the use of racial epithets or slurs is unacceptable and that such conduct may result in dismissal or other discipline.

e. A statement that a "tester" program may exist whereby employing locations within the Covered Concepts will be monitored for compliance with the terms of the Decree.

f. A description of specific disciplinary measures that may be imposed, such as reprimands, suspensions or dismissal.

g. A description of the procedure by which the disciplinary measures will be considered and imposed.

2. Within ten (10) days after receipt of the proposed disciplinary policy, Class Counsel shall make any suggestions to the Company with respect to the proposed disciplinary policy.

3. The disciplinary policy shall go into effect within sixty (60) days after the entry of the Decree. Copies of the policy shall be distributed in accordance with the provisions of *Section* [*68] *XII.D.1.*

4. The Senior H/R Official shall be responsible for the effective implementation of the disciplinary policy.

F. Incentive and Evaluation Programs.

1. The Company's incentive programs for management shall include consideration of the performance of those persons with respect to meeting the Company's obligations under the Decree. These incentive programs shall be submitted to Class Counsel. Class Counsel shall have the opportunity to comment on any incentive program prior to its implementation.

2. The Senior H/R Official or the Concept President shall evaluate, in writing, on at least an annual basis, the performance of every Regional Director of a Covered Concept with respect to his/her compliance with the requirements of this Decree. Each Regional Director shall evaluate, in writing, at least on an annual basis, the performance of each Division Level Management Employee within his/her Region with respect to his/her compliance with the requirements of the Decree.

3. Prior to the promotion of any person to a Division Level Management position or above, the Company shall consider the performance of the person with respect to meeting the Company's obligations under [*69] the Decree.

XIII

HIRING AND PROMOTION GOALS

A. General Principles

1. In order to provide equal opportunity for Black applicants and employees and to provide appropriate relief to members of the Settlement Classes, the Company shall use its Best Efforts to meet the selection goals set forth below. These goals do not establish maximum rates, but rather these goals establish levels that the Company shall use its Best Efforts to achieve.

2. In attempting to meet these goals, the Company shall not be required to employ or promote unqualified persons, or displace any current employee from his or her job position. These goals are not quotas, but goals designed to afford guidance as to whether equal employment opportunity and an appropriate remedy are being achieved as required by this Decree.

3. When the determination of a given goal by the procedures set forth in *Section XIII* would result in the placement of a fraction of a person, the goal shall be rounded up to one if it is less than one and if it is more than one it will be rounded to the nearest whole number with a fraction of one-half always being rounded up.

B. Positions within the Shoney's Concept.

*1. [*70] Server.*

a. The goal for the Shoney's Concept Restaurants shall be to have, after the end of the sixteenth full Fiscal Quarter ending after entry of the Decree and for the remainder of the term of the Decree, a Black Server

Employment Ratio of at least 110%.

b. (i) Within thirty (30) days after entry of the Decree, the Company shall deliver to Class Counsel a list of the fifty (50) Shoney's Concept Restaurants that, as of the end of the 1992 Fiscal Year, had the largest percentage point difference between the percentage of Black employees in the server position when compared with the percentage representation of Blacks within Code 435 for the county in which the restaurant is located. The goal for each of these restaurants shall be to have, at the end of the eighth full Fiscal Quarter ending after entry of the Decree, a percentage of Black employees in the server position of at least 125% of the percentage representation of Blacks within Code 435 for the county in question.

(ii) Within sixty (60) days after the end of the eighth full Fiscal Quarter ending after entry of the Decree, the Company shall deliver to Class Counsel a list of the fifty (50) Shoney's Concept Restaurants [*71] that, as of the end of the eighth full Fiscal Quarter ending after entry of the Decree, had the largest percentage point difference between the percentage of Black employees in the server position when compared with the Black Civilian Labor Force for the county in which the restaurant is located. The goal for each of these restaurants shall be to have, at the end of the sixteenth full Fiscal Quarter ending after entry of the Decree, a percentage of Black employees in the server position of at least the Black Civilian Labor Force for the county in question.

(iii) Within sixty (60) days after the end of the sixteenth Fiscal Quarter ending after entry of the Decree, the Company shall deliver to Class Counsel a list of the fifty (50) Shoney's Concept Restaurants that, as of the end of the sixteenth full Fiscal Quarter ending after entry of the Decree, had the largest percentage point difference between the percentage of Black employees in the server position when compared with 110% of the Black Civilian Labor Force for the county in which the restaurant is located. The goal for each of these restaurants shall be to

have, at the end of the twenty-fourth full Fiscal Quarter ending after [*72] entry of the Decree, a percentage of Black employees in the server position of at least 110% of the Black Civilian Labor Force for the county in question.

c. For purposes of selecting restaurants and determining whether a restaurant has attained the goals specified above in *Section XIII, B.1.b.*, the percentage of Black employees in the server position shall be computed by using averages of both the Black and total server population of each restaurant for the last four payroll periods of the designated Fiscal Quarters.

2. Dining Room Supervisor.

a. The goal for the Shoney's Concept Restaurants shall be to have, at the end of Fiscal Year 1996, a percentage of Black employees in the dining room supervisor/night dining room supervisor position of at least the percentage of Black employees in the server and host/hostess/cashier positions within the Shoney's Concept Restaurants that existed as of the end of Fiscal Year 1995.

b. The goal for the Shoney's Concept Restaurants shall be to have, at the end of Fiscal Year 1998, a percentage of Black employees in the dining room supervisor/night dining room supervisor position of at least the percentage of Black employees in [*73] the server and host/hostess/cashier positions within the Shoney's Concept Restaurants that existed as of the end of Fiscal Year 1997 and maintain that rate during the remainder of the term of the Decree.

3. Assistant Manager.

The goal for the Shoney's Concept Restaurants shall be to have a percentage of Black employees in the assistant manager position of at least the percentage set forth below at the end of the specified Fiscal Year:

Fiscal Year	Percentage
1994	19%
1995	20%
1998 and each Fiscal Year thereafter during the term of the Decree	22%

4. Store Manager.

The goal for the Shoney's Concept Restaurants shall

be to have a percentage of Black employees in the Store Manager position of at least the percentage set forth below at the end of the specified Fiscal Year:

Fiscal Year	Percentage
1993	9%
1994	11%
1995	13%
1996	15%
1997	16%
1998	18%
1999 and each Fiscal Year thereafter during the term of the Decree	20%

C. Positions within the Captain D's Concept.

1. Counter/Cashier.

a. (i) Within thirty (30) days after entry of the Decree, the Company shall deliver to Class Counsel a list of the fifty (50) Captain D's Concept [*74] Restaurants that, as of the end of the 1992 Fiscal Year, had the largest percentage point difference between the percentage of Black employees in the counterworker/cashier position when compared with the greater of: the Black Civilian Labor Force for the county in which the restaurant is located; or 80% of the percentage of Black employees in the cook position at the restaurant in question.

(ii) Within sixty (60) days after the end of the eighth full Fiscal Quarter ending after entry of the Decree, the Company shall deliver to Class Counsel a list of the fifty (50) Captain D's Concept Restaurants that, as of the end of the eighth full Fiscal Quarter ending after entry of the Decree, had the largest percentage point difference between the percentage of Black employees in the counterworker/cashier position when compared with the greater of: the Black Civilian Labor Force for the county in which the restaurant is located; or 80% of the percentage of Black employees in the cook position at the restaurant in question.

(iii) Within sixty (60) days after the end of the sixteenth full Fiscal Quarter ending after entry of the Decree, the Company shall designate the fifty (50) Captain D's [*75] Concept Restaurants that, as of the end of the sixteenth Fiscal Quarter ending after entry of the Decree, had the largest percentage point difference between the percentage of Black employees in the

counterworker/cashier position when compared with the greater of: the Black Civilian Labor Force for the county in which the restaurant is located; or 80% of the percentage of Black employees in the cook position at the restaurant in question.

(iv) The goal of each of the restaurants selected in (i) through (iii) above shall be to have, at the end of eight Fiscal Quarters after they are selected, a percentage of Black employees in the counter/cashier position at least equal to the greater of:

(a) eighty (80%) percent of the percentage of Black employees in the cook position at the restaurant in question as of the end of the eighth Fiscal Quarter ending after they are selected or

(b) the Black Civilian Labor Force within the county in question.

b. For purposes of selecting restaurants and determining whether a restaurant has attained its goals, the percentage of Black employees in the cook and counterworker/cashier positions shall be computed by using the average populations for [*76] the positions for the last four payroll periods of the designated Fiscal Quarters.

2. Store Manager.

The goal for the Captain D's Concept Restaurants shall be to have a percentage of Black employees in the Store Manager position of at least the percentage set forth below at the end of the specified Fiscal Year:

Fiscal Year	Percentage
1993	18%
1995	21%
1997 and each Fiscal Year	

Fiscal Year	Percentage
hereafter during the term of the Decree	23%

D. Division Level Management Positions.

1. Area Directors.

Beginning thirty (30) days after entry of the Decree, the Company, during the remainder of Fiscal Year 1993 and Fiscal Year 1994, shall fill vacancies in the position of Area Director within the Shoney's Concept Restaurants, Captain D's Concept Restaurants, Lee's Famous Recipe Concept Restaurants, Fifth Quarter Concept Restaurants and Pargo's Concept Restaurants at a rate of at least the percentage of Black employees in the Store Manager position within the Shoney's Concept Restaurants, Captain D's Concept Restaurants, Lee's Famous Recipe Concept Restaurants, Fifth Quarter Concept Restaurants and Pargo's Concept Restaurants that existed as of the end of Fiscal Year 1992. Thereafter, [*77] the Company, during each Fiscal Year during the remainder of the term of the Decree, shall fill vacancies in the position of Area Director within the Shoney's Concept Restaurants, Captain D's Concept Restaurants, Lee's Famous Recipe Concept Restaurants, Fifth Quarter Concept Restaurants and Pargo's Concept Restaurants at a rate of at least the percentage of Black Store Managers who have at least one year of service as Store Manager and who submit applications for the position of Area Director within the Shoney's Concept Restaurants, Captain D's Concept Restaurants, Lee's Famous Recipe Concept Restaurants, Fifth Quarter Concept Restaurants and Pargo's Concept Restaurants during the preceding Fiscal Year. For purposes of this goal, the term "vacancies" shall not include positions filled by lateral transfer or downgrades from other management positions.

2. Regional Directors.

On or prior to the end of Fiscal Year 1997, the Company shall have at least two (2) Black employees in the position of Regional Director within the Shoney's Concept Restaurants, Captain D's Concept Restaurants, Lee's Famous Recipe Concept Restaurants, Fifth Quarter Concept Restaurants and Pargo's Concept Restaurants, [*78] at least one of whom shall be within the Shoney's Concept Restaurants. On or prior to the end of Fiscal Year 1998, the Company shall have at least one (1) additional Black employee in the position of Regional Director within the Shoney's Concept Restaurants, Captain D's Concept Restaurants, Lee's Famous Recipe Concept Restaurants, Fifth Quarter Concept Restaurants and Pargo's Concept Restaurants.

E. Corporate Office.

Beginning thirty (30) days after entry of the Decree,

the Company, during each Fiscal Year during the remainder of the term of the Decree, shall fill vacancies in positions within the Corporate Office at a rate of at least equal to the percentage representation of Blacks within those persons who submit applications for positions within the Corporate Office.

F. Goals Review.

The Company's success in achieving its goals shall be reviewed at the end of each goal period established under the Decree.

The Company's failure to achieve a goal for a particular period will be excused if the Company has exercised its Best Efforts to meet the goal. In the event that the Company has failed to meet a goal for a particular Fiscal Year, then that goal will be the goal for [*79] the next Fiscal Year unless there is a higher goal that has been set for that Fiscal Year. As evidence of Best Efforts, the Company may demonstrate that:

1. A sufficient number of good faith offers were extended to meet the goal had such offers been accepted (no individual shall be counted more than once), and the proportion of offers to Blacks as compared to whites was at least as high as the goal;

2. The turnover patterns precluded achievement of the goal, provided that the turnover rate for Blacks was higher than the turnover rate for whites for the particular position in question; or that there was insufficient turnover to permit goal achievement;

3. As to server and counterworker/cashier goals in individual restaurants, the Company can demonstrate that employment patterns in the cook, busperson and salad bar attendant positions in Shoney's Concept restaurants and the cook position at Captain D's Concept restaurants reflect a similar theoretical "under-utilization" and can provide a non-discriminatory reason for that situation.

In the event the Company purchases new restaurants or operations during the term of the Decree, any goals which would be applicable to that operation [*80] shall become effective after the completion of four complete quarters after the purchase date.

XIV

STANDARDS FOR PROMOTION

A. Posting and Application Procedure.

1. At each employing location within the Covered Concepts, the Company shall cause to be posted and

maintained a notice to all employees identifying the job titles and minimum requirements as described in *Section XVII* for each waiter/waitress (server), Department Level Management position, Store Level Management position, and Division Level Management position.

2. At each employing location within the Covered Concepts, the Company shall cause to be posted and maintained a notice to all employees identifying the Company as an Equal Employment Opportunity Employer and encouraging all employees interested in being considered for promotional (or transfer) opportunities to identify themselves and the positions for which they are interested in being considered in writing on forms provided by the Company to their Area Director or to the Senior H/R Official if the employing location is the Corporate Office. A supply of the forms to be filled out by interested employees and a posted procedure for submission of the [*81] forms will be established and maintained at each employing location covered by the Decree. The Area Director shall forward a copy of each submitted form to the Regional Director whose Region encompasses the Area Director's locations.

B. The Use and Retention of Application Forms

1. Each Regional Director of employing locations covered by the Decree (or Senior H/R Official if the employing location is the Corporate Office) shall be responsible for retaining the copy of each submitted form forwarded to him/her pursuant to the provisions of *Section XIV.A.2* for a period of two (2) years from its receipt and for determining whether the incumbent applicant is minimally qualified for the positions sought.

2. It shall be the responsibility of the Regional Director to provide a written explanation to the Senior H/R Official of the reasons for classifying an individual as not minimally qualified. In the case of a Black employee, a copy of the written explanation shall be forwarded to Class Counsel. Any person determined not to be minimally qualified by a Regional Director (or Senior H/R Official, in the case of the Corporate Office) who wishes to appeal that determination may follow [*82] the internal complaint procedure described in *Section XII.D*.

3. The Regional Directors (or Senior H/R Official, in the case of the Corporate Office) shall utilize the forms submitted by qualified incumbent employees in order to identify potential candidates for promotion or transfer and as part of their Best Efforts to meet the goals established in *Section XIII*.

C. Mailed Application Procedure

1. At least annually, during the first three years of the Decree, the Company shall distribute postage-prepaid return postcards attached to the paycheck of each Black

employee of the Shoney's Concept, Captain D's Concept, Lee's Famous Recipe Concept, Fifth Quarter Concept and Pargo's Concept Restaurants and the Corporate Office. The postcard will encourage those interested in promotional consideration to complete and return the postcard. The return address on the postcard shall be the office of the Senior H/R Official. Upon receipt of the postcards, each then active employee returning a postcard will be contacted and asked to complete and submit an application for promotion if the employee has not already done so.

2. The Company shall utilize the returned mailed application [*83] forms submitted by qualified incumbent Black employees in order to identify potential candidates for promotion or transfer and as part of its use of Best Efforts to meet the goals established in *Section XIII*.

3. The Company shall retain a copy of each application form submitted pursuant to the mail procedure for a period of two (2) years from its receipt and record on each application whether the applicant was determined to be qualified, as set forth in *Section XVII*, and the job, if any, to which the applicant was promoted.

XV

STANDARDS FOR RECRUITMENT

A. Equal Opportunity Recruitment Practices

1. Any written announcement or advertisement reflecting that job positions are available at any employing location covered by this Decree shall clearly identify the Company as an Equal Opportunity Employer ("EOE").

2. With the assistance of the Recruitment Administrators, Regional Directors and Division Level Managers, the Senior H/R Official, within six (6) months of the entry of the Decree, shall prepare a "List of Recruitment Sources," such as high schools, junior colleges, colleges, trade or vocational schools, job fairs, and other sources that have a substantial [*84] Black enrollment or attendance level. This List shall be organized by Region and/or Division. The Company shall send this List to Class Counsel who may designate additions to the List. The List will be periodically updated. The Company shall send all such updates to Class Counsel.

3. Within seven months from the entry of the Decree and, from time to time thereafter, the List of Recruitment Sources shall be provided to each Regional Director. The List of Recruitment Sources shall be utilized by the Company to assist it in meeting its obligations under the Decree.

4. Each Progress Report shall detail the efforts made to recruit Blacks for the job positions in the Covered

Concepts (including, without limitation, those for which goals have been established by this Decree).

B. Recruitment Efforts Required if There Is a Failure To Meet Goals

1. In the event of the failure to meet a goal, the Senior H/R Official and a Recruitment Administrator shall assist in undertaking a special Black recruiting program during the following goal period. The special Black recruiting program shall be developed and implemented by the Senior H/R Official after considering alternatives as may be set [*85] forth on the List of Recruitment Sources. The Senior H/R Official shall also consider the use of advertisements or job announcements in appropriate media. The specific Black recruiting programs which the Senior H/R Official develops and implements shall be submitted to Class Counsel.

2. In the event that a restaurant, Division, or Region fails to meet a goal during four (4) consecutive Fiscal Quarters, the Company, with its next Progress Report, shall submit a proposed recruitment plan to Class Counsel. Class Counsel may propose adoption of one or more of the special recruiting methods reflected in the Progress Report and/or propose alternative recruiting mechanisms, and/or propose the adoption of all or part of the Company's suggested plan. If after good faith negotiations the Company and Class Counsel cannot agree upon a mandatory recruitment plan, either party may file a motion before the Special Master in order to resolve the dispute. The Special Master shall adopt the Company's proposal unless it is determined inconsistent with the Company's commitment to use its Best Efforts to meet its goals.

C. Recruitment Efforts In The Corporate Office

In the event that the percentage [*86] of Black applicants for positions within the Corporate Office is less than 20% in any Fiscal Year, the Company shall submit a proposed recruitment plan to Class Counsel. Class Counsel shall have the opportunity to comment on the proposed recruiting plan. In the event that the percentage of Black applicants for positions within the Corporate Office is less than 20% for two consecutive Fiscal Years, the Company shall submit a recruiting plan to Class Counsel. Class Counsel may propose adoption of alternative recruiting mechanisms, and/or propose the adoption of all or part of the Company's suggested plan. If after good faith negotiations Shoney's, Inc. and Class Counsel cannot agree upon a mandatory recruitment plan either party may file a motion before the Special Master in order to resolve the dispute. The Special Master shall adopt the Company's proposal unless it is determined inconsistent with the Company's commitment to use its Best Efforts to meet its goals

XVI

TRAINING AND EDUCATION

A. Development of Videotape and Booklet

1. Within six (6) months after entry of this Decree, the Company shall make available a videotape that verbally and/or visually describes (1) [*87] each employment position in each Covered Concept below Regional Director; (2) the qualifications and/or the promotional paths for each position; (3) the training or other assistance available to help individuals qualify for advancement; and (4) the policy of the Company to encourage advancement of Black persons. Copies of the videotape shall be made available on a reasonable basis to any interested employees for viewing during paid but nonworking hours on video replay equipment provided by the Company at its restaurants. A brief written description of the content of the tape and its availability shall be posted and maintained at each of the restaurants within the Covered Concepts during the duration of the Decree.

2. Within (8) eight weeks after the entry of the Decree, the Company shall provide Class Counsel with a copy of the script for the videotape described in *Section XVI.A.1*. Class Counsel shall have the opportunity to propose changes in the script or the plan for the videotape. If Class Counsel and the Company cannot agree upon the script and/or the plan for the videotape either party may move the Special Master to resolve the dispute.

3. Within three (3) months after [*88] entry of the Decree, the Company shall develop a booklet covering each of the topics which will be dealt with in the videotape referred to in *Section XVI.A.1*. In addition, the booklet will outline the non-monetary aspects of the Decree that fall outside the scope of the videotape referred to in *Section XVI.A.1*.

4. A draft of the booklet shall be submitted to Class Counsel for review prior to its printing. Class Counsel shall have the opportunity to propose changes in the booklet. If Class Counsel and the Company cannot agree upon the content of the booklet, either party may move the Special Master to resolve the dispute.

5. A brief written description of the booklet and a statement stating how a copy may be requested shall be posted and maintained at each employing location within the Covered Concepts and included in the "new hire" packet during the term of this Decree.

6. When the booklet is initially published, each then incumbent employee in the Covered Concepts will be given a copy.

B. Regional Management Training

Within two (2) weeks after entry of the Decree, if not previously conducted, a meeting or meetings shall be conducted for Regional Level Management [*89] of the

Covered Concepts to review the terms of the Decree and the Company's obligations and goals set forth in the Decree.

C. Division Level Management and Store Manager Training

1. At least twice each Fiscal Year during the term of this Decree, Division Level Management within each Region in each of the Covered Concepts shall attend a meeting scheduled and conducted by the Regional Director or, in his/her discretion, a representative of the Senior H/R Official. At these meetings, the following topics shall be reviewed and discussed: compliance with the Decree, equal employment opportunity, affirmative action, and other topics which the Company considers appropriate in order to encourage equal employment as well as affirmative action in recruiting, hiring, qualifying, and promoting Blacks. The meetings must occur in different Fiscal Quarters and must occur more than sixty (60) days apart.

2. At least once during each Fiscal Year during the term of this Decree, the Company shall conduct one or more business seminars for Division Level Management and Store Managers within each Region of the Covered Concept restaurants. The organization, scheduling and content of the seminar [*90] shall be the responsibility of the Senior H/R Official. Each such Regional business seminar shall include a program of not less than one half of the scheduled length of a regular one-day (generally six (6) hours) business seminar devoted to topics such as compliance with the Decree, equal employment opportunity, employee relations, race relations, affirmative action, employee recruitment and selection, management or communication.

D. Education Programs

1. The Company, during the term of the Decree, shall continue to make available to its employees its current tuition reimbursement program.

2. The Company shall expand the current tuition reimbursement program to include adult education, vocational or training school courses in basic math, and written and verbal communication skills for individuals with at least six (6) continuous months of employment with the Company.

3. The Company shall establish a tuition and education cost reimbursement program which shall be available to Black employees during the duration of this Decree. A Black employee who is performing satisfactorily in his/her job and who, with prior written approval of the Senior H/R Official, enrolls in a correspondence [*91] course in restaurant management or operation, or a course at any public or private vocational or training school which concerns skills, knowledge or experience necessary in restaurant

management or operation shall be eligible for reimbursement of the tuition and the costs of required textbooks and materials upon the successful completion of those courses, as provided for in the Company's current tuition reimbursement plan. Eligibility for this program shall be limited to Black individuals with at least six (6) continuous months of employment with the Company. The recipients of those benefits shall be approved by the Senior H/R Official from among those employees who meet the criteria set forth above.

XVII

QUALIFICATION AND PERFORMANCE STANDARDS

A. Job Relatedness Requirement

1. If the use of any of the qualifications set forth below has an adverse impact on Black applicants or employees, the Company shall discontinue use of the qualifications unless they can be shown to be job related by the validation procedures set forth in the Uniform Guidelines on Employee Selection Procedures (1978), 29 C.F.R. Part 1607, or otherwise justified by the provisions of those Guidelines.

[*92] 2. If the Company seeks to use qualification standards that have caused an adverse impact, the Company shall notify Class Counsel of its validation procedures or other justifications supporting the use of the qualifications. If Class Counsel and the Company do not agree that the uses of qualifications are in accordance with the Guidelines, then either Class Counsel or the Company may request that the Special Master resolve the dispute.

B. Qualification and Performance Standards for the Server Position

To be considered at least minimally qualified for a server position, an applicant must be at least sixteen (16) years of age and meet the minimum age requirements established by federal law and/or the state in which employment is being sought, including any student learner or similar program, for the type of position and hours of work available. In addition, applicants may be advised that a server must:

1. Be able to communicate verbally and in writing in understandable English;

2. Be willing and able to meet minimum grooming standards;

3. Be willing and able to deal with customers pleasantly;

4. Be willing and able to report for work on time for his/her scheduled [*93] working hours; and

5. Be able to remain on his/her feet during scheduled working hours and carry dishes (serving and clearing)

between the kitchen and service locations.

C. Qualification and Performance Standards for Department Level Management Positions

To be considered at least minimally qualified for a Department Level Management position, an applicant:

1. Must demonstrate ability and willingness to meet the minimum requirements for a server position outlined in *Section XVII.B.* above taking into consideration the nature of the position sought and hours of work available; and

2. Must have three or more months of continuous employment with the Company; and

3. May be advised that Department Level Management positions require the ability or the ability to learn to add, subtract and perform simple percentage calculations using a calculator or similar calculating device; and

4. May be advised that Department Level Management positions require the ability or the ability to learn to accurately and fully complete recordkeeping reports uniformly required of individuals incumbent in the position; and

5. Demonstrate ability and/or indicate the willingness to work [*94] varied and unpredictable hours as required by customer levels and personnel availability; and

6. For manager trainees, successfully complete the manager trainee program utilizing a written job content manual and weekly job function tests and possess or obtain a valid driver's license issued by his/her state of residence.

D. Qualification Standards for Promotion to Store Level Management

To be considered minimally qualified for a Store Level Management position, an applicant must:

1. Successfully complete the Company's manager trainee program or have three months continuous employment with the Company in Production Department Supervision; and

2. Have or obtain a valid driver's license issued by his/her state of residence;

3. Demonstrate the ability and willingness to meet the minimum requirements for a Department Level Management position outlined in *Section XVII.C.* taking into consideration the nature of the position and the hours of work available.

E. Qualification Standards for Promotion to Division Level Management

To be considered minimally qualified for a Division

Level Management position, an applicant must:

1. Demonstrate the ability and willingness [*95] to meet the minimum requirements for a Department and Store Level Management position outlined in *Sections XVII.C.* and *XVII.D.* taking into consideration the nature of the position and the hours of work available; and

2. Have six or more months continuous employment with the Company as a Store Manager or franchise field representative, or have been hired into a Department Level Management position with one (1) or more years of prior retail food industry experience.

F. Qualification Standards for New Hire into Department Level Management

To be considered minimally qualified as a new hire for a Department Level Management position, an applicant must have the ability and/or indicate the willingness, to the extent actual performance information is unavailable, to meet the Department Level Management requirements as outlined in *Section XVII.C.* (other than those relating to continuous service).

G. Miscellaneous Provisions Regarding Qualification and Performance Standards

1. The Senior H/R Official shall have the authority to grant exceptions to any of the continuous service requirements set forth in *Section XVII.*

2. Any qualifications set forth in *Section* [*96] *XVII* are subject to modification based upon applicable municipal, state and/or federal law or regulation, or by the Company as it may deem necessary and/or appropriate, in its good faith business judgment, for sound and efficient business operations. No modifications may be made by the Company that are not objective or comparable to the standards established in *Sections XVII.B.* through *XVII.F.* and without the prior notification to Class Counsel. If subsequent to any modification, a qualification causes an adverse impact on Black employees, *Section XVII.A.* shall apply with respect to the continuation of the use of such qualification.

3. The standards set forth in *Section XVII* do not and are not intended to establish any communication, grooming or other selection standard, either maximum or minimum, except for the minimum age, continuous employment, driver's license and completion of manager trainee program requirements.

XVIII

MONETARY RELIEF, NOTICE AND CLAIMS PROCEDURE

A. Contribution to Claims Fund.

The Company agrees to contribute, at the times and

in the respective amounts set forth in *Section XVIII.B*, to a settlement fund (hereinafter the "Fund"). [*97] The aggregate contributions to the Fund shall be \$ 105,000,000. Expenditures from the Fund shall be utilized exclusively for the following purposes:

1. To pay the Shoney's Plaintiffs and any members of the Settlement Classes in accordance with the provisions of this Section, including all applicable state and federal employment and income taxes payable by the employee specified in and based upon the allocation set forth in *Section XVIII.H*, and the Special Claimants listed in *Exhibit A*; and

2. To pay and/or reimburse the Company for the out-of-pocket costs (not including attorneys' fees, paralegal

fees, or any salaries or fees of employees of the Company or its attorneys) associated with seeking approval of the Decree, mailing and publishing the notices required in the Court's order provisionally approving the Decree, including use of tracing services, implementing the claims procedure in accordance with the provisions of this Section, mailing the claims forms, processing the claims and administering the Fund, to the extent that such out-of-pocket costs exceed \$ 2,000,000.

B. Establishment of Claims Fund

1. The Company shall contribute to the Fund at the times and [*98] in the amounts indicated below:

Date:	Amount
Within 30 Days After Entry of Decree	\$ 1,300,000
Second Payment Date After Entry of Decree	\$ 3,860,000
Fourth Payment Date After Entry of Decree	\$ 1,340,000
Fifth Payment Date After Entry of Decree	\$ 6,000,000
Sixth Payment Date After Entry of Decree	\$ 5,500,000
Seventh Payment Date After Entry of Decree	\$ 5,500,000
Eighth Payment Date After Entry of Decree	\$ 5,500,000
Ninth Payment Date After Entry of Decree	\$ 5,500,000
Tenth Payment Date After Entry of Decree	\$ 5,500,000
Eleventh Payment Date After Entry of Decree	\$ 5,500,000
Twelfth Payment Date After Entry of Decree	\$ 5,500,000
Thirteenth Payment Date After Entry of Decree	\$ 5,500,000
Fourteenth Payment Date After Entry of Decree	\$ 5,500,000
Fifteenth Payment Date After Entry of Decree	\$ 5,500,000
Sixteenth Payment Date After Entry of Decree	\$ 5,500,000
Seventeenth Payment Date After Entry of Decree	\$ 5,500,000
Eighteenth Payment Date After Entry of Decree	\$ 5,500,000
Nineteenth Payment Date After Entry of Decree	\$ 5,500,000
Twentieth Payment Date After Entry of Decree	\$ 5,500,000
Twenty-first Payment Date After Entry of Decree	\$ 10,000,000
Total Payments \$ 105,000,000	

[*99] The Company's payments to the Fund required by this Section shall be without interest and shall be deposited in an account with a national banking association designated by Class Counsel and approved by the Court (the "Account"). The amounts so deposited, together with any interest earned on said amounts while in the Account, shall be used exclusively for the purposes set forth in *Section XVIII.A*, except as provided in *Section XVIII.I*.

2. The Fund shall be allocated for payment of claims in the following manner: \$ 10,000,000 of the Fund shall be used to pay qualified Applicant claimants, \$ 89,840,000 of the Fund shall be used to pay qualified Incumbent claimants, and \$ 5,160,000 shall be allocated

for payment to the Special Claimants. The amount contributed to the Fund within thirty (30) days after entry of the Decree shall be allocated and paid to the Original Named Plaintiffs in the amounts set forth on *Exhibit A*. The amount contributed to the Fund on the Second Payment Date shall be allocated and paid to the remaining Special Claimants.

C. Basic Eligibility for Payments from Fund; Share Value

Eligibility for payments from the Fund to the Shoney's Plaintiffs [*100] and members of the Settlement Classes shall be made in accordance with the following and *Sections XVIII.D* and *XVIII.E*:

1. To initially qualify for any payment from the Fund, an individual must:

a. Return a completed claim form postmarked no later than the final date established by the Court for submitting claims; and

b. State (and, upon challenge based on reasonable grounds, establish) that he/she is either an Applicant or an Incumbent; and

c. Either:

(i) Be an Incumbent who worked at a Covered Concept during the Class Period; or

(ii) Be an Applicant who must:

(x) State under oath that he/she applied for employment at a Covered Concept during the Class Period; and

(y) Have been at least sixteen (16) years of age when applying for employment in an hourly position with the Company or at least eighteen (18) years of age when applying for employment in a supervisory position with the Company; and

(z) Identify the year(s) in which he/she applied, the type and location of the restaurants at which he/she applied, and the positions for which he/she applied.

2. Each of the Special Claimants will be considered eligible for payment from the Fund for the amounts [*101] set forth on *Exhibit A*. Any Special Claimant may also file a claim pursuant to this Section. Any amount that a Special Claimant received pursuant to this Section shall be offset against any amount that the person would be due as a result of the filing of a claim.

3. Qualified claimants shall receive payments from the Fund based upon the formulas set forth in *Sections XVIII.D. and XVIII.E.*

D. Qualified Applicant Claims

1. Each Applicant claimant who meets the basic eligibility requirements of *Section XVIII.C* shall be eligible to receive an award based on the date (by year) and number of applications submitted to the Company. The maximum amount a qualified Applicant claimant can receive is based on the year of his/her earliest application.

2. If an Applicant claimant submitted only one application during the Class Period, the claimant shall be eligible (subject to proration in the event the Applicant claims exceed the amounts allocated to pay qualified Applicant claimants) to receive the amount set forth in Column 1 of the Applicant Claim Chart below for the calendar year in which his/her application was made.

3. If an Applicant claimant submitted two applications [*102] during the Class Period, he/she shall be eligible to receive the amount set forth in Column 2 of the Applicant Claim Chart below for the calendar year in which the earliest application was submitted

4. If an Applicant claimant submitted three or more applications during the Class Period, he/she shall be eligible to receive the amount set forth in Column 3 of the Applicant Claim Chart below for the calendar year in which the earliest application was made.

5. If the total value of the claims of Applicant claimants exceeds the amount allocated for Applicant claims, the claimants shall be paid on a pro rata basis.

6. In addition to the monetary relief received, any qualified Applicant claimant who applied for employment during the calendar years 1990, 1991, and 1992 will be sent an application for employment, if requested in the claim form. Any claimant who returns the application will be considered for employment with the Company for job positions which the claimant is qualified to perform.

APPLICANT CLAIM CHART

Year of Application	Column 1	Column 2	Column 3
1985	\$ 20,000	\$ 25,000	\$ 30,000
1986	\$ 15,000	\$ 20,000	\$ 25,000
1987	\$ 12,000	\$ 17,000	\$ 22,000
1988	\$ 10,000	\$ 15,000	\$ 20,000
1989	\$ 8,000	\$ 12,000	\$ 16,000

APPLICANT CLAIM CHART			
Year of Application	Column 1	Column 2	Column 3
1990	\$ 4,000	\$ 10,000	\$ 13,000
1991	\$ 3,000	\$ 8,000	\$ 10,000
1992	\$ 2,000	\$ 5,000	\$ 8,000

[*103] E. *Qualified Incumbent Claims*

1. Each Incumbent claimant who meets the basic eligibility requirements set forth in *Section XVIII.C* and who states under oath that he/she experienced Discrimination and states a time period when the claims of Discrimination began shall be considered a qualified Incumbent claimant eligible to receive payment from the Fund.

2. Each qualified Incumbent claimant shall be entitled to a pro rata share of the Incumbent portion of the Fund based on his or her total length of employment as measured by days of employment with the Covered

Concepts between January 1, 1980 and December 31, 1992.

3. Subject to the limitations on the amount of individual claims set forth in *Section XVIII.E.8.*, the amount that will be paid to a qualified Incumbent claimant will be determined by establishing the value of a day of service and multiplying his/her days of service by the value of a day of service. In determining a claimant's days in service, the claimant's service shall be weighted based on years of service, as follows:

Calendar Year	Weighting Factor Per Day of Service
1980-84	1
1985	5
1986	5
1987	4
1988	4
1989	3
1990	3
1991	2
1992	1

[*104] 4. For each Incumbent, the total days of service in each calendar year shall be multiplied by the weighting factor designated above. After adjusting by the weighting factors, a qualified Incumbent claimant's total weighted days of service shall be determined. The value of a weighted day in service shall be determined by dividing that part of the Fund set aside for Incumbent claimants by the total number of weighted days of service that all qualified Incumbent claimants have worked.

5. Each Incumbent claimant who meets the basic eligibility requirements set forth in *Section XVIII.C* shall be entitled to participate in the Fund up to the appropriate maximum amount shown in Column A of the Incumbent

Maximum Claim Awards chart below based on the earliest date of discrimination disclosed in the claim form of the participating Incumbent claimant. If the value of claims of participating Incumbent claimants exceeds the maximum amount available from the Fund, each participating Incumbent claimant shall be paid on a pro rata basis.

6. If there are amounts remaining in the Fund after allocating payments for each participating Incumbent claimant up to the full amount for the year of his/her [*105] earliest of Discrimination, based on the Incumbent Maximum Claim Awards chart, Column A, then any Incumbent claimant, except for an Incumbent who only worked in years 1990, 1991, and 1992, who

submits a claim of enhanced value shall be entitled to participate in the Fund up to the maximum amount set forth in Column B or Column C of the Incumbent Maximum Claim Awards chart set forth below. To be eligible for an enhanced award from the Fund, if any such enhanced awards are available, an Incumbent claimant must:

(a) State on the claim form that he/she was denied or was not considered for promotion at a Covered Concept within the Class Period because of race, by indicating: (i) the year(s) in which he/she was denied or not considered; (ii) information about the positions sought; and (iii) the location of the restaurants;

(b) State on the claim form he/she was subjected to racial harassment and/or retaliation based on race while employed with the Covered Concepts during the Class Period, by indicating (i) if known, the persons or job title who allegedly subjected him/her to harassment and/or retaliation; (ii) the years in which the alleged harassment and/or retaliation occurred; and [*106] (iii) the restaurants at which the alleged harassment and/or retaliation occurred; or

(c) State on the claim form that he/she was terminated involuntarily from employment with the Covered Concepts during the Class Period as a result of race by indicating (i) the persons or job title, if known,

who allegedly terminated him/her; (ii) the years in which the termination occurred; (iii) the restaurant at which the termination occurred; and (iv) the circumstances of the termination.

Column B of the Incumbent Maximum Claim Awards chart shall apply to participating claimants who allege one instance of harassment or retaliation and Column C shall apply to participating claimants who allege two or more instances of racial harassment or retaliation, an instance of failure to promote because of race, or an instance of discharge because of race. If the value of claims of participating Incumbent claimants exceeds the amount remaining in the Fund after enhanced values are considered, each Incumbent claimant participating in the Fund shall be paid on a pro rata basis.

8. An Incumbent claimant shall be entitled to the highest amount he/she would receive from Column A, B, or C only according to the [*107] provisions above, based on the earliest year for a claim of discrimination, regardless of whatever the enhancing events occurred in a later year. In no event is any Incumbent claimant entitled to receive more than \$ 60,000 for aggregate claims of discrimination.

INCUMBENT MAXIMUM CLAIM AWARDS			
Year	Column A	Column B	Column C
1985	\$ 40,000	\$ 50,000	\$ 60,000
1986	\$ 35,000	\$ 45,000	\$ 55,000
1987	\$ 30,000	\$ 40,000	\$ 50,000
1988	\$ 25,000	\$ 35,000	\$ 45,000
1989	\$ 20,000	\$ 30,000	\$ 40,000
1990	\$ 10,000	\$ 15,000	\$ 20,000
1991	\$ 8,000	\$ 12,000	\$ 16,000
1992	\$ 5,000	\$ 10,000	\$ 13,000

F. Challenges to Claims

The Company may challenge the validity of any claim by notifying Class Counsel of the challenge. In the event that Class Counsel does not agree that the Company has a valid challenge to a claim, the Company may only defeat the claim by proving to the Claims Arbitrator, by clear and convincing evidence, that the failure to hire, failure to promote, alleged harassment and/or retaliation and/or discharge or other discrimination either did not occur or was not based on the race of the claimant.

*G. Priority and Proration of [*108] Payments*

1. During the time for payments as scheduled in *Section XVIII.B*, if the amount then in the Fund is not adequate to make the payments provided for in *Section XVIII.A* at the time such payments would otherwise be due, all payments under *Section XVIII.A.2* shall be made first then payments under *Section XVIII.A.1* shall be made, with interim payments being paid on a pro rata basis as funds become available, if necessary.

2. If any funds are available from the monies

allocated to the Incumbent claimants after payment of all amounts due under the fund procedures set forth in *Section XVIII.E.* and Applicant claimants have not been paid the full value of their respective claims established as described in *Section XVIII.D.*, the remaining monies from the Incumbent funds shall be used for the Applicant portion of the Fund and distributed to Applicant claimants according to *Section XVIII.D.*, until those claims are paid in full. If any funds are available from the monies allocated to the Applicant claimants after payment of all amounts due under the fund procedures set forth in *Section XVIII.D.*, and Incumbent claimants have not been paid the full value [*109] of their maximum possible claims as described in *Section XVIII.E.*, the remaining monies from the Applicant funds shall be used for the Incumbent portion of the Fund and distributed to Incumbent claimants according to *Sections XVIII.E.*, until those claims are paid in full. Any monies remaining after payment of Incumbent and Applicant claims shall be distributed according to *Section XVIII.I.*

H. *Allocation of Monetary Relief.*

All distributions from the Fund to qualified Applicants or Incumbents shall be allocated as follows: Sixty percent (60%) compensatory damages, twenty percent (20%) back pay, and twenty percent (20%) prejudgment interest. Before each distribution, the Company shall calculate the amount to be withheld for federal, state and local income taxes and the amount to be withheld for the employee's share of F.I.C.A., F.U.T.A., and S.U.T.A. from the back pay portion of the distribution and shall notify Class Counsel as to the amounts to be withheld from the distribution.

I. *Distribution Of Remaining Fund Monies.*

At the time when all claim values have been determined and if it can be determined that more than \$ 10,000,000 will remain in the Fund [*110] after payment of all claims and reimbursement to the Company of expenses and costs, if any, available in *Section XVIII.A.2.*, the Company shall be relieved of its obligation to make the payment due on the Twenty-First Payment Date. Any additional monies, including interest, remaining in the Fund in the event the Company has been relieved of its payment obligation for the Twenty-First Payment, shall be distributed on an equal basis to the following organizations: (1) United Negro College Fund, (2) Inroads, (3) Lawyers' Committee for Civil Rights Under Law, (4) Washington Lawyers' Committee for Civil Rights Under Law, and (5) Southern Poverty Law Center.

J. *Procedures for Disbursement of Funds*

Establishment and administration of the procedure for determining the manner of disbursements from the Fund shall be the responsibility of Class Counsel.

K. *Fund Authorization for Payment of Tax*

Obligations and Expenses

The national banking association holding monies in the Fund Account is hereby authorized and instructed to:

1. Withhold from any gross amount it is directed to disburse to a qualified claimant the amounts to be withheld pursuant to *Section XVIII.H* and to [*111] forward to the Company checks payable to the appropriate local, state and/or federal agencies for any amounts withheld for each such individual to be forwarded by the Company to such state or federal agencies as required by law; and

2. Send payments to claimants pursuant to the list approved by the Claims Arbitrator; and

3. Charge the Company or the Fund for its expenses, if any.

L. *Procedure for Review of Claims*

To ensure the appropriate and equitable distribution of the Fund to members of the Settlement Classes, the following procedure shall be utilized:

1. A Claims Escrow Agent shall be used to assist in the claims process. The Claims Escrow Agent shall be selected by Class Counsel. The instructions setting forth the duties and responsibilities of the Claims Escrow Agent shall be filed with the Court. These instructions may be amended by agreement of the parties and with the approval of the Claims Arbitrator or upon motion by Class Counsel or the Claims Escrow Agent to the Claims Arbitrator.

2. The Claims Escrow Agent shall be responsible for receiving all claim forms and shall provide Class Counsel and the Company with copies of all claim forms filed. After the claims [*112] filing deadline, Class Counsel shall initially review all Applicant claim forms and the Company and Class Counsel shall initially review all Incumbent claim forms to determine:

a. Which claimants are qualified to participate in the Fund; and

b. The potential amount of monies each eligible claimant is entitled to receive from the Fund.

3. It is within the discretion of Class Counsel and the Company to determine the order and timing in which specific claim forms will be reviewed and evaluated, the schedule for exchange of initial determinations with the Company, and the submission of disputed claims to the Claims Arbitrator. After the filing deadline, Class Counsel and the Company shall establish an initial schedule for claims processing and shall use their Best Efforts to expeditiously resolve the merits of all claims.

4. After Class Counsel and the Company have completed the review of which claimants are qualified

and the amount due to each claimant, Class Counsel and the Company shall create a list with the names of all claimants and the initial determination concerning qualifications for a monetary award and the identity of unqualified claimants, with a summary of the bases [*113] for determining that a claimant is not qualified to receive an award. Class Counsel may request supporting information and documents from the claimant to assess the validity of claimants. The failure of the claimant to respond to a request for additional information from Class Counsel within thirty (30) days shall result in the denial of the claim. The Company may for good cause, which may be challenged by a claimant or Class Counsel, request additional information or documents from a claimant. The failure of the claimant to respond to a request from the Company for additional information or documents within thirty (30) days may result in the denial of the claim. However, no claimant will have a claim denied for failing to respond to a request for information or documents from the Company unless the Claims Arbitrator determines that good cause was shown by the Company for requesting the information or documents, that the request was reasonable, and that it was not burdensome for a layperson to respond to the request.

5. The Company and Class Counsel shall confer or meet to resolve any objections or disputes on outstanding claims raised by either party. The Company and Class Counsel [*114] shall attempt to resolve any objections on claims but in the event the dispute or objection is not resolved within thirty (30) days of serving the initial objection, the objection shall be submitted to the Claims Arbitrator.

6. If Class Counsel and the Company determine that a claimant is not qualified, a notice shall be sent to the claimant which states the reason for the determination. This notice shall also inform such persons of their right to challenge such determination before the Claims Arbitrator. Any person wishing to file such challenge must do so by returning a written challenge to the Claims Escrow Agent postmarked no later than thirty (30) days of receipt of the notice. Any person who does not return a written challenge within forty-five (45) days of the mailing of this notice to him or her, regardless of whether the person received the notice, shall not be permitted to challenge the determination of lack of qualification for an award. The Claims Arbitrator shall attempt to expeditiously resolve all challenges within sixty (60) days of the filing date of each challenge, unless Class Counsel and the Company consent or the Court orders, on the motion of the Claims Arbitrator, [*115] that more time is required and permitted.

7. If Class Counsel and the Company determine that a claimant is qualified, then a notice shall be sent to the claimant which states the estimated gross value of the

claim and that a qualified claimant shall have the right to challenge such value determination before the Claims Arbitrator. Any person wishing to file such challenge must do so by mailing a written challenge to the Claims Escrow Agent postmarked no later than thirty (30) days of receipt of the notice. Any person who does not return a written challenge within forty-five (45) days of the mailing of this notice, regardless of whether the person received the notice, shall not be permitted to challenge the determination of value set forth in the Notice. The Claims Arbitrator shall attempt to expeditiously resolve all challenges within sixty (60) days of the date for filing such challenges, unless Class Counsel and the Company consent or the Court orders, on the motion of the Claims Arbitrator, that more time is required and permitted. The Claims Arbitrator shall deny any claim if the claimant is not a qualified Applicant or Incumbent.

8. After the Claims Arbitrator has resolved [*116] all objections raised by Class Counsel or the Company and all complaints or challenges made by claimants, Class Counsel and the Company shall present to the Claims Arbitrator for final approval the final list of qualified claimants with each claimant's individual respective share total and the gross dollar award. The Claims Arbitrator shall promptly determine if the calculations on the list are accurate and make any corrections, if necessary, and then approve the final list for payment in accordance with the provisions of the Decree.

M. Claims Arbitrator

1. Within ninety (90) days after entry of the Decree, the Company and Class Counsel shall make a good faith effort to select a Claims Arbitrator. If the Company and Class Counsel are unable to reach agreement as to the Claims Arbitrator, the Court, upon the motion of either the Company or Class Counsel, shall appoint a Claims Arbitrator. The Claims Arbitrator shall resolve all challenges, complaints, or disputes arising under this Section and shall also perform all duties and responsibilities assigned to the Claims Arbitrator in this Section. Subject to the reimbursement provisions of *Section XVIII.A.2.*, the fees and expenses [*117] of the Claims Arbitrator shall be paid by the Company on a monthly basis.

2. All determinations of the Claims Arbitrator are final, binding, and non-appealable.

3. In the event that the Claims Arbitrator resigns or is otherwise unable to perform his or her duties under the Decree, Class Counsel and the Company shall attempt in good faith to agree upon a new Claims Arbitrator. If the parties are unable to so agree within thirty (30) days of the resignation of the Claims Arbitrator or other notice of the unavailability of the Claims Arbitrator then the Court shall select the Claims Arbitrator upon motion of either

Class Counsel or the Company.

N. Releases

No individual shall be entitled to any distribution from any Fund until and unless he/she has executed and submitted a general and full release of all claims against the Company and Danner involving alleged Discrimination in the form attached hereto as *Exhibit B*.

O. Distribution of Claim Forms

Within thirty (30) days following entry of the Decree, the Company shall mail the claim form and instructions attached hereto as *Exhibit C* to all Applicants who have identified themselves in response to the notices that [*118] were published and/or mailed pursuant to the Order in which the Court provisionally approved the Decree. If a mailed claim form and instructions are returned as undeliverable, the Company shall have no further obligation to attempt to contact the potential claimant. The Company shall also mail to all Incumbents for whom the Company was successful in mailing the fairness hearing notice or for whom Class Counsel has traced an address the claim form and instructions attached hereto as *Exhibit D*. The Company shall not be required to send claim forms to any Incumbent to whom a previous notice was sent and returned as undeliverable and for whom Class Counsel has been unable to obtain a more current address.

P. Filing of Claim Forms

Members of the Settlement Classes shall have one hundred twenty (120) days from the date of mailing of the claim forms and instructions within which to file the completed claim form. The date of return shall be determined by postmark. Failure to return the completed claim form within one hundred twenty (120) days shall bar the potential claimant from having his/her claim considered or receiving a monetary award from the Fund. Persons filing claim [*119] forms shall have the right to amend their claim forms and the original filing date shall apply for such amendments. Within sixty (60) days of the claims filing deadline, the Company and Class Counsel shall attempt to agree on a deadline for amendment of claims. After the expiration of the sixty (60) day time period, the Company or Class Counsel may request that the Claims Arbitrator select the amendment deadline.

Q. Responsibilities of Claimants

It shall be the sole responsibility of each potential member of the Settlement Classes, potential claimant, claimant and qualified claimant to keep Class Counsel advised of any change of address. Except for members of the Settlement Classes employed by the Company at the time any notice is mailed, the Company shall have no obligation to attempt to locate or contact an individual if a mailing to that individual's last known address is

returned as undeliverable, unless Class Counsel has traced the address of the potential claimant.

R. Potential Employment

Any qualified Incumbent claimant who claims that he/she was discharged because of race during the calendar years 1990, 1991 and 1992 will be sent an application for employment, [*120] if requested in the claim form. Any claimant who returns the application will be considered for employment with the Company, if requested in the claim form, for the next available job position for which the claimant is qualified to perform.

XIX

REPORTING AND RECORDKEEPING REQUIREMENTS

A. Document Preservation

1. For each Covered Concept, the Company shall retain employment-related records for four (4) years from the date the record is created except as otherwise required in the Decree or by state or federal law, with applications maintained for two (2) years. The employment-related records shall be retained on either magnetic media (or similar process that is computer readable) or in hard copy. Class Counsel shall be entitled to review, upon reasonable request, all records required to be maintained by the Company pursuant to this Decree.

B. Reporting Obligations and Schedule

The Company shall provide a Progress Report to Class Counsel reporting on the Company's compliance with the requirements and goals of the Decree. The first Progress Report is due to be filed within sixty (60) days after the end of the first full Fiscal Quarter commencing after the approval of [*121] the Decree by the Court. Thereafter, for the duration of the Decree, the Company shall file Progress Reports within sixty (60) days after the end of each Fiscal Quarter.

C. Content of Progress Reports

The Progress Reports required by *Section XX.B* shall include the following information:

(1) For each Covered Concept, the Company shall provide an organizational chart, which lists all employees at the Area Director Level or above and the restaurants within their supervision, identifies all Regions and areas or divisions therein, and identifies the race of each employee on the chart.

(2) For each Covered Concept, the Company shall provide a chart that lists for all job positions up to and including Regional Directors, the total persons employed in each position for the previous Fiscal Quarter, the total Black persons employed in each position, the percentage

of Black persons to total persons employed in each position, the goal for each position, if applicable, and the number of Black persons under-utilized, if any.

(3) For each Covered Concept, the Company shall provide a chart that lists for all job positions up to and including Regional Directors, the total persons hired [*122] for each position for the previous Fiscal Quarter, the total Black persons hired for each position, the percentage of Black persons to total persons hired in each position, the goal for each position, if applicable, and the number of Black persons under-utilized, if any.

(4) For each Shoney's Concept restaurant contained on the list of fifty (50) Shoney's Concept restaurants subject to goals pursuant to *Section XIII.*, the Company shall provide a chart that lists the total number of persons employed in the server position for the preceding Fiscal Quarter, the total number of Black persons employed in the server position in the preceding Fiscal Quarter, the percentage of Black persons to total persons employed in server position, the goal for the server position, and the number of Black persons under-utilized, if any.

(5) For each Captain D's Concept restaurant contained on the list of fifty (50) Captain D's Concept restaurants subject to goals pursuant to *Section XIII.*, the Company shall provide a chart that lists the total number of persons employed on the counterworker/cashier position for the preceding Fiscal Quarter, the total number of Black persons employed in the counterworker [*123] position in the preceding Fiscal Quarter, the percentage of Black persons to total persons employed in counterworker/cashier position, the goal for the counterworker/cashier position, and the number of Black persons under-utilized, if any.

(6) The Company shall describe in detail any training in equal employment opportunity received by the Senior H/R Official, all EEO Managers, and all Recruitment Administrators. The Company shall describe in detail the training sessions held pursuant to *Sections XVI.B. and XVI.C.*, including the dates of such sessions, the topics discussed, and the number and jobs of all attendees at each session.

(7) The Company shall list for the preceding Fiscal Quarter the number of Black employees and non-Black employees who applied for tuition and costs reimbursement under the education programs described in *Section XVI.D.*, the amount of payments that went to Black employees and non-Black employees, respectively, and if any Black applicant for tuition or cost reimbursement was denied participation in the program, the name and reason for denial of participation of any such Black applicant. At least once during each Fiscal Year, the Company shall report [*124] the amount budgeted for education programs discussed in *Section XVI.D.*

(B) Pursuant to *Section XII.D.*, the Company shall provide a summary of all written and 800-number complaints of alleged violations of the Decree, racial discrimination, harassment and/or retaliation received in the preceding Fiscal Quarter involving the Covered Concepts that shall describe: the investigation undertaken in response to such complaints; the results of the investigation; when utilized, the review and results of the review of the Senior H/R Official or his/her designee; and remedial and disciplinary measures, if any, imposed.

(9) The Company shall list any changes made during the preceding Fiscal Quarter to the List of Recruitment Sources identified in *Section XV.2.*, if any. The Company shall detail the efforts made to recruit Black employees for the Covered Concepts. The report shall specifically detail the efforts of each Recruitment Administrator to recruit Black employees, including, but not limited to, efforts to recruit Black employees for any Covered Concept or restaurant that failed to meet a goal established in *Section XIII* and shall include an analysis of all efforts made [*125] to recruit Blacks at each Covered Concept, the number of Blacks recruited from various recruiting sources, the jobs for which they were recruited, and an evaluation of the effectiveness of the various recruitment methods, and suggestions, if any, for improving the recruitment process.

(10) The Company shall provide all performance evaluations for Division Level Management for compliance with the Decree.

(11) The Company shall list the name and race of any employee who the Senior H/R Official concludes has been subjected to a violation of the Decree or to racial discrimination, harassment and/or retaliation during the preceding Fiscal Quarter; shall detail the recommendation of the Senior H/R Official regarding remedial efforts for such employee; and shall state whether the Company followed the Senior H/R Official's recommendations and, if not, the reason such recommendation was not followed.

(12) For each Covered Concept the Company shall list the total number of persons who successfully completed the manager trainee program, the total number of Black persons who successfully completed the manager trainee program, the total number of persons who unsuccessfully completed the manager [*126] trainee program, and the total number of Black persons who unsuccessfully completed the manager trainee program, and a brief explanation of the reason for any Black persons' unsuccessful completion of the manager trainee program.

(13) The Company shall provide Class Counsel with copies of the payroll master computer tapes and employment history tapes for both in-store and out-of-store employees of all Covered Concepts for the

preceding Fiscal Quarter. The Company shall provide Class Counsel with sufficient documentation regarding the format of the computer tapes so that Class Counsel may retrieve all information contained on the computer tapes. The Company shall supply Class Counsel with all names and social security numbers of employees contained on the computer tapes.

(14) The Company shall list whether any Covered Concept restaurants are closed or opened during the preceding Fiscal Quarter and provide the address and store number for each closed or opened restaurant.

(15) For the preceding Fiscal Quarter, the Company shall describe how the consideration of the performance of Division Level Management in implementing the Decree has affected the incentive program under *Section [*127] XIII*.

(16) The Company shall provide copies of all promotional application written forms received pursuant to *Section XIV*, and all explanations received by the Senior H/R Official during the preceding Fiscal Quarter of any Regional Director regarding the classification of any Black individual as not minimally qualified for promotion pursuant to *Section XIV.B.2*. The Company shall supply Class Counsel with copies of all returned postage-paid postcards received pursuant to *Section XIV.C*, during the preceding Fiscal Quarter.

(17) If the Company uses any promotional offer as a defense to not meeting any goal contained in the Decree, then it shall submit all written offers of promotion for the pertinent position made and accepted or rejected during the preceding Fiscal Quarter.

(18) For the Corporate Office, the Company shall provide a chart that lists for the preceding Fiscal Quarter the total number of persons who applied for employment, the total number of Black persons who applied for employment, the total number of persons who were employed, the total number of Black persons who were employed, the percentage of Black applicants and the percentage of Blacks hired.

[*128] XX

ATTORNEYS' FEES, COSTS AND EXPENSES

A. Entitlement

1. Plaintiffs and the Settlement Classes are prevailing parties in the Civil Action. Plaintiffs, the Settlement Classes and Class Counsel are entitled to their reasonable attorneys' fees, litigation expenses, and costs in the Civil Action.

2. The Company has agreed to pay Class Counsel an award of reasonable attorneys' fees, litigation expenses, and costs for work performed through and including the date of approval of the Decree by the Court. The

Company agrees that it shall pay litigation expenses and costs in the amount of \$ 1,100,000, which is Class Counsel's best estimate of these expenses and costs through the approval of the Decree, and reasonable attorneys' fees in the amount of \$ 18,900,000 for legal work performed through and including the date of approval of the Decree by the Court. These amounts reflect the importance of the case, the high quality of representation, the undesirability of the case, the exceptional results obtained, including the size of the monetary award, the expenditure of time and resources, and the delay in payment of any compensation. These amounts satisfy any obligation the Company [*129] may have to pay reasonable attorneys' fees, litigation expenses, and costs for the Shoney's Plaintiffs and any members of the Settlement Classes for any and all work performed through and including the date of approval of the Decree by the Court. These awards shall be paid in accordance with *Section XX.B*.

3. The Company has agreed to pay Class Counsel an award of reasonable attorneys' fees, litigation expenses, and costs for work performed after the date of approval of the Decree by the Court. The Company agrees that Class Counsel shall be paid attorneys' fees, litigation expenses, and costs in the amount of \$ 5,500,000 for legal work performed after the date of approval of the Decree by the Court regarding the monitoring, administration and implementation (including, without limitation, for processing of claims under *Section XVIII*) of the Decree. This amount satisfies any obligation the Company may have to pay reasonable attorneys' fees, litigation expenses, and costs for the Shoney's Plaintiffs and any members of the Settlement Classes (including, without limitation, Class Counsel's fees and costs) for any and all work performed after approval of this Decree by the Court, [*130] including any appeal from approval of the Decree, and the monitoring, administration and implementation (including, without limitation, for processing of claims under *Section XVIII*) of the Decree. This amount is not intended to pay for any of Class Counsel's attorneys' fees, costs or litigation expenses incurred in any action brought by Class Counsel to enforce the Decree or in any action in which the Decree is challenged (other than an appeal from approval of the Decree) and Class Counsel is acting to defend the Decree. Class Counsel shall be paid for all reasonable attorneys' fees, costs and litigation expenses incurred in enforcing or defending the Decree. Any such fee request of Class Counsel shall be made to the Special Master if the parties cannot resolve the matter informally. The Special Master's decision will be final and non-appealable.

B. Payment.

1. The attorneys' fees, litigation expenses, and costs awarded and agreed to be paid by the Company pursuant

to *Section XX.A.2.* shall be paid by the Company at the times and in the amounts indicated below:

Date:	Amount
Within 30 Days After Decree is final	\$ 7,200,000
Second Payment Date After Decree is final	\$ 4,640,000
Third Payment Date After Decree is final	\$ 3,000,000
Fourth Payment Date after Decree is final	\$ 5,160,000

[*131] 2. The attorneys' fees, litigation expenses, and costs awarded and agreed to be paid by the Company pursuant to *Section XX.A.3.* shall be paid in one hundred twenty (120) monthly installments (on or before the 15th

day of each month) commencing with the first month after the entry of the Decree in the amounts indicated below:

Month:	Amount per Month:
Months 1 - 36	\$ 110,000
Months 37 - 48	\$ 60,000
Months 49 - 60	\$ 40,000
Months 61 - 120	\$ 5,666

Upon termination of the Decree prior to all of the payments required by this *Section XX.B.2.*, all of the then remaining payments shall become due and payable within thirty (30) days after such termination.

XXI

CERTIFICATION

The signatories certify that they are authorized to execute the Decree on behalf of their respective parties.

IT IS SO ORDERED, ADJUDGED, AND DECREED this 25th day of January, 1993.

ROGER VINSON

U.S. District Judge

Northern District of Florida

Executed for Shoney's Plaintiffs and the Settlement Classes:

THOMAS A. WARREN

SAM J. SMITH

501 E. Tennessee St., Suite D

Post Office Drawer 1657

Tallahassee, Florida 32302

(904) 222-1555

BARRY GOLDSTEIN

Saperstein, Mayeda, Larkin & Goldstein

[*132] 1300 Clay Street, 11th Floor

Oakland, California 94612

(510) 763-9800

JULIUS CHAMBERS

CORNELIA T.L. PILLARD

NAACP Legal Defense & Educational Fund, Inc.

99 Hudson Street, 16th Floor

New York, New York 10013

(212) 219-1900

Executed for Shoney's, Inc.

CHARLES A. POWELL, III

Powell, Talley & Frederick

New South Federal Building

2100 First Avenue North, Ste 700

2100 First Avenue North, Ste 700

Birmingham, Alabama 35201

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Zinober & McCrea

201 E. Kennedy Blvd., Suite 1750

Tampa, Florida 33602

(813) 224-9004

Executed for Raymond L. (Ray) Danner

DONALD H. PARTINGTON

Clark, Partington, Hart, Bond, Stackhouse & Stone

Post Office Drawer 13010

Pensacola, Florida 32591-3010

(904) 424-9200

AMENDMENT

INSTRUCTIONS REGARDING THE DUTIES AND RESPONSIBILITIES OF THE CLAIMS ESCROW AGENT

The Claims Escrow Agent, Class Settlement Administrators, Inc., shall have the following duties and responsibilities:

1. Claims Escrow Agent shall pay for and maintain United States Post Office Box 550600, Jacksonville, Florida 32255-0600 (hereinafter "the [*133] P.O. Box") for the sole and exclusive use of filing claim forms, objections, and any other documents in *Haynes et al. v. Shoney's, Inc., PCA 89-30093-RV ("Haynes")* until a reasonable time after the time period has expired for claimants to file objections to the determination of whether a claimant is qualified and challenges to the value determination of qualified claims pursuant to Section XVIII.L., Monetary Relief, Notice and Claims Procedure, from the Consent Decree entered in *Haynes*. The date certain shall be established by the Claims Arbitrator.

2. On a daily basis, except Saturdays, Sundays and any day the Jacksonville, Florida post office is closed, Claims Escrow Agent shall collect all documents received in the P.O. Box.

3. On a daily basis, except Saturdays, Sundays, and any day the Jacksonville, Florida post office is closed, Claims Escrow Agent shall date stamp each envelope or package received from the P.O. Box and the first page of any document contained therein.

4. On a daily basis, except Saturdays, Sundays, and

any day the Jacksonville, Florida post office is closed, Claims Escrow Agent shall Bate stamp each envelope received in P.O. Box and every page [*134] of each document contained therein. Envelopes or packages and their contents shall be Bates numbered sequentially.

5. On a daily basis, except Saturdays, Sundays, and any day the Jacksonville, Florida post office is closed, Claims Escrow Agent shall make two copies of the date stamped and Bates stamped envelopes or packages received in the P.O. Box and the contents of each. One copy shall be provided to Thomas A. Warren Law Offices, 501 E. Tennessee Street, Suite D, P.O. Drawer 1657, Tallahassee, Florida 32302 and one copy shall be provided to James G. Ramsey, Farris, Warfield & Kanaday, 3rd National Financial Center, Suite 1900, 424 Church Street, Nashville, Tennessee, 37219 or to another address designated by Shoney's, Inc.

6. Claims Escrow Agent shall keep a DOS compatible machine readable log of all envelopes and packages received from the P.O. Box and the contents contained therein (hereinafter "the log"). The log shall be numbered sequentially with each document received under separate cover having an entry number. The log shall list the date received, the name of the person sending the document, the type of document sent, and the Bates numbers of the envelopes or packages [*135] and documents received from the P.O. Box and their contents. Prior to copying envelopes and packages and their contents for transmittal to Class Counsel and Shoney's, Inc., the sequential log entry number shall be placed on the first page of each document.

7. As soon as copies are made of the original date stamped and Bate stamped envelopes or packages received in the P.O. Box and their contents, the originals shall be stored in a fireproof storage location in a manner such that originals may be retrieved by specifying the Bates numbers of documents, the date that the originals were received, or the log entry number.

8. On a weekly basis, two disk copies and two hardcopy printouts of the DOS compatible log of documents received in the P.O. Box shall be made. One copy shall be provided to Thomas A. Warren Law Offices, 501 E. Tennessee Street, Suite D, P.O. Drawer 1657, Tallahassee, Florida 32302 and one copy shall be provided to James G. Ramsey, Farris, Warfield & Kanaday, 3rd National Financial Center, Suite 1900, 424 Church Street, Nashville, Tennessee, 37219.

9. On a weekly basis, as soon as copies are made of the DOS compatible machine readable logs of the Bates stamped envelopes [*136] or packages received in the P.O. Box and their contents, a disk copy of the DOS compatible machine readable log and a printout of same shall be stored in a fireproof storage location in a manner such that they may be retrieved by specifying the Bates

numbers of documents, the entry number of the log, or the dates that the originals were received.

10. The Claims Escrow Agent shall maintain liability insurance that would insure Claims Escrow Agent for liability up to \$ 500,000 (five hundred thousand dollars) for receiving, processing, and maintaining claim forms, objections to the determination of whether a claimant is qualified and challenges to the value determination of qualified claims pursuant to Section XVIII.L., Monetary Relief, Notice and Claims Procedure, from the Consent Decree entered in *Haynes*, and any other documents received in the P.O. Box relating to *Haynes*.

11. The Claims Escrow Agent shall maintain premises insurance with \$ 15,000 (fifteen thousand dollars) coverage on the physical location of the building in which documents received from the P.O. Box are maintained.

12. The Claims Escrow Agent shall provide the services listed above in paragraphs 1-11 from [*137] the date any claim forms are mailed to claimants until the time period to be established pursuant to paragraph 1 has expired.

13. In the event that Claims Escrow Agent fails to conduct the duties listed in paragraph 1-12 above in a timely or orderly manner, the Claims Escrow Agent may be relieved of her duties by order of the Claims Arbitrator upon motion by Class Counsel or Shoney's, Inc.

14. In the event that the Claims Escrow Agent is relieved of her duties, Claims Escrow Agent shall transfer the keys or entry mechanism and the right of access to the P.O. Box to Class Counsel or their designee. Claims Escrow Agent shall notify the United States Post Office in Jacksonville, Florida that the right to access the P.O. Box has been transferred to Class Counsel or their designee. Claims Escrow Agent shall not remove any documents from the P.O. Box after the date of removal.

15. These instructions may be amended by agreement of the parties and with the approval of the Claims Arbitrator or upon motion by Class counsel or the Claims Escrow Agent to the Claims Arbitrator.

EXHIBIT A

SPECIAL CLAIMANTS	
NAMES	AMOUNT
Adams, Donald	\$ 20,000
Andrews, Anthony	\$ 20,000
Antwine, Erma	\$ 20,000
Atiba, Phyllis	\$ 20,000
Baagee, Faadee	\$ 20,000
Bailey, Daniel	\$ 40,000
Baker, Kathy	\$ 20,000
Barnes, James	\$ 20,000
Batson, Terrence	\$ 20,000
Beckham, Regina	\$ 30,000
Bell, Clifford	\$ 30,000
Billingsley, Charles	\$ 20,000
Bland, James R.	\$ 20,000
Bonneau, Annette	\$ 20,000
Bonner, Stacy	\$ 20,000
Bonsall, Buddy	\$ 100,000
Brantley, Vivian	\$ 20,000
Brown, Rosalee	\$ 30,000
Brown, James R.	\$ 20,000
Brown, Bruce	\$ 30,000
Brown, Janette	\$ 20,000
Brown, Howard	\$ 30,000
Brown, Roosevelt	\$ 20,000
Bryant, Barbara	\$ 20,000
Bunton, Charles	\$ 30,000
Bunzy, Karen	\$ 20,000
Burkes, Allen Isaac	\$ 30,000

SPECIAL CLAIMANTS	
NAMES	AMOUNT
Adams, Donald	\$ 20,000
Caldwell, Lynn	\$ 20,000
Campbell, Juanita	\$ 30,000
Cantrell, Lasonia	\$ 40,000
Carr, Debbie	\$ 20,000
Carter, Ricky	\$ 30,000
Cash, Julie	\$ 20,000
Childs, Emma	\$ 20,000
Coates, Richard	\$ 20,000
Cobb, Carolyn	\$ 100,000
Cochran, Melkannah	\$ 100,000
Cole, Christine	\$ 40,000
Collier, Ellen Camille	\$ 20,000
Cook, Gerald	\$ 40,000
Cooper, Terry	\$ 30,000
Cowan, Jerry	\$ 20,000
Cranford, Ursula	\$ 20,000
Crockett, William	\$ 20,000
Croslen, Ken	\$ 30,000
Cross, Madaline	\$ 40,000
Culberson, Coyce	\$ 30,000
Dade, Yolanda	\$ 20,000
Dailey, Eleanor	\$ 30,000
Davies, Gibril	\$ 30,000
Dean, Bill	\$ 20,000
Dean, Paula	\$ 100,000
Dicus, Sherry	\$ 20,000
Duncan, Kendra	\$ 20,000
Elliott, Henry	\$ 40,000
Elliott, Billie	\$ 40,000
Ferguson, Darren	\$ 30,000
Fleming, Joe	\$ 30,000
Forte, Terrell	\$ 100,000
Gantt, Jackie	\$ 30,000
George, Jonathan	\$ 20,000
Gibbs, Barbara	\$ 20,000
Gibson, Danny	\$ 20,000
Gill, Mark	\$ 30,000
Gillam, Sabrina	\$ 20,000
Gooden, Addie	\$ 20,000
Grayer, Eugene	\$ 20,000
Green, Leon	\$ 30,000
Green, Sharon	\$ 30,000
Guess, Betty	\$ 20,000
Hampton, Millicent	\$ 30,000
Hart, Satonia	\$ 20,000
Hassell, Howard	\$ 20,000
Haynes, Josephine	\$ 100,000
Henderson, Ericka Mattingly	\$ 30,000
Hicks, Jacqueline	\$ 30,000
Hightower, Donna Mongoven	\$ 40,000
Hines, Cheryl	\$ 30,000
Hunter, Darryl	\$ 30,000
Jackson, Pamela	\$ 20,000
Jacobs, Bruce	\$ 20,000

SPECIAL CLAIMANTS	
NAMES	AMOUNT
Adams, Donald	\$ 20,000
Jeffery, Larry	\$ 30,000
Jewett, Robert	\$ 30,000
Johnson, Sandra	\$ 20,000
Johnson, Kenny	\$ 40,000
Jones, Gwendolyn	\$ 20,000
Jones, Keithen	\$ 30,000
Jones, Kelvin	\$ 30,000
Jones, Helen	\$ 100,000
Kelsey, Jonathan	\$ 30,000
Kimble, James	\$ 20,000
Kirk, Dana Ingramn	\$ 30,000
Love, Linda	\$ 20,000
Manigo, Arthur	\$ 100,000
Martin, Patricia	\$ 30,000
Martin, Robert	\$ 20,000
Massey, Virgia	\$ 20,000
Maxwell, Derrick	\$ 30,000
Maxwell, Ramona Lane	\$ 20,000
Maxwell, Rodney	\$ 20,000
Maze, Valerie	\$ 20,000
McNeal, David	\$ 30,000
Miles, Elaine	\$ 100,000
Miles, Darryl	\$ 20,000
Moreland, Tyree	\$ 20,000
Mundy, Claude	\$ 30,000
Murphy, Patricia	\$ 20,000
Murray, Tracie D.	\$ 20,000
Murray, Tracey	\$ 30,000
Nelson, Dewitt	\$ 100,000
Nitzke, Deatrice	\$ 30,000
Norman, Pamela	\$ 20,000
Norwood, Mary E.	\$ 20,000
Owes, Felicia	\$ 30,000
Peavy, Phillip	\$ 40,000
Pendergrass, Yvette	\$ 30,000
Perry, Arthur	\$ 20,000
Ponds, Calvin	\$ 20,000
Pope, Emily	\$ 40,000
Powells, Terrie	\$ 20,000
Pruitt, Emma	\$ 30,000
Pruitt, Channell	\$ 20,000
Pryor, Wren Renee	\$ 30,000
Puryear, Dwayne	\$ 20,000
Rainey, Pamela	\$ 20,000
Rhodes, Dequan	\$ 20,000
Richards, LaTonya	\$ 20,000
Richey, Jerome	\$ 30,000
Riley, Denis	\$ 100,000
Roberts, Ray	\$ 20,000
Robinson, Frank	\$ 30,000
Robinson, Sherlena	\$ 20,000
Rothwell, George	\$ 30,000
Seaton, Joe	\$ 20,000
Sharpe, Melvin	\$ 30,000

SPECIAL CLAIMANTS	
NAMES	AMOUNT
Adams, Donald	\$ 20,000
Simmons, Earnest	\$ 30,000
Smith, Jerry	\$ 30,000
Smith, Sue	\$ 40,000
Spears, Lester	\$ 20,000
Spratling, Maria	\$ 30,000
Starkes, Brenda	\$ 20,000
Summey, Deidre	\$ 30,000
Taylor, Johnny	\$ 30,000
Taylor, Time	\$ 20,000
Taylor, Andre	\$ 30,000
Taylor, Lasonia	\$ 20,000
Theard, Rontraneice	\$ 30,000
Thomas, Deanna	\$ 30,000
Thomas, Lester	\$ 40,000
Thompson, Melanie	\$ 20,000
Todd, Pauline	\$ 20,000
Toney, Terry	\$ 20,000
Toney, Kevin	\$ 20,000
Toussaint, Mark	\$ 20,000
Triplett, William	\$ 30,000
Wallace, Mariano	\$ 30,000
Walton, Marilyn Hobdy	\$ 20,000
Wesley, Debora Cooks	\$ 20,000
West, Melvin	\$ 20,000
White, Revong	\$ 30,000
Whittico, Andrew	\$ 20,000
Wiggins, Lora	\$ 20,000
Wilkerson, Verlie	\$ 40,000
Williams, Cheryl	\$ 20,000
Williams, Patricia	\$ 20,000
Williams, Delores	\$ 20,000
Williams, Jerome	\$ 20,000
Williams, Leonard Charles	\$ 40,000
Wilson, Tim	\$ 20,000
Winn, Bobby	\$ 20,000
Winters, Donna	\$ 20,000

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