

DEC 05 2005

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

**MATTHEW J. DYKMAN**  
CLERK

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

NO. CIV 04-00716 WJ/DJS

CIRCLE S STORES, INC., and  
CIRCLE S GROCERY, INC., d/b/a  
CIRCLE S GROCERY STORE,

Defendants.

**CONSENT DECREE**

The United States Equal Employment Opportunity Commission ("the Commission" or "EEOC") filed this action against Circle S Stores, Inc., and Circle S Grocery, Inc., d/b/a Circle S Grocery Store ("Circle S"), to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Commission's Complaint, the Commission alleges that Circle S failed or refused to hire Charging Party Myron Smith and a class of men for cashier/clerk positions because of their sex. The Commission also alleges that Circle S failed to make and preserve employment records as required by Section 709(c) of Title VII.

This Decree does not constitute an admission of liability by Circle S, nor an adjudication on the merits of the allegations in the Complaint. The Parties do not object to the jurisdiction of the Court over this action and waive their rights to a jury trial.

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In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action should be finally resolved by entry of this Decree.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. This Decree resolves all claims asserted by the Commission on behalf of Myron Smith, Michael Hanley, Peter Cergizan, Joseph Garcia, Randy Lovell, Nathan Castiana, Japeth Morgan, and David Montoya, identified as having claims against Circle S, including claims for back pay, compensatory and punitive damages, interest, injunctive relief, attorneys' fees and costs arising out of the issues in this lawsuit.

**INJUNCTIVE RELIEF**

2. Circle S, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, are enjoined for the duration of this Decree from engaging in or following any policy, act or practice which has the effect of discriminating against any individual, applicant or employee on account of his or her sex or gender and in violation of Title VII. This injunction will remain in effect for the duration of the Decree at any facility operated by Circle S in New Mexico.

3. Circle S, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, are enjoined for the duration of the Decree from violating Title VII by failing or refusing to recruit, consider, and hire males for positions of clerk or cashier because of their sex.

4. Circle S, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, are enjoined for the duration of the Decree from

retaliating against Myron Smith, Michael Hanley, Peter Cergizan, Joseph Garcia, Randy Lovell, Nathan Castiana, Japeth Morgan, and David Montoya, or any witnesses in this case for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

5. Circle S, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, are hereby ordered to make and preserve all records relevant to the determination of whether unlawful employment practices have been or are being committed in accordance with the provisions of Section 709(c) of Title VII.

**RELIEF TO CHARGING PARTY AND THE CLASS**

6. Circle S agrees to pay sixty thousand dollars (\$60,000.00) (the "Settlement Amount") to resolve this lawsuit. The Commission retains the discretion to determine the amounts of the Settlement Amount to be distributed by Circle S to Charging Party Myron Smith, Michael Hanley, Peter Cergizan, Joseph Garcia, Randy Lovell, Nathan Castiana, Japeth Morgan, and David Montoya. Within ten (10) days after this Consent Decree is entered by the Court, Circle S shall mail, via certified mail, checks payable to the Charging Party Myron Smith, Michael Hanley, Peter Cergizan, Joseph Garcia, Randy Lovell, Nathan Castiana, Japeth Morgan, and David Montoya, at the addresses provided by the Commission and in the amounts designated by the Commission. Circle S shall issue all claimants a Form 1099 for their respective amounts designated as compensation for compensatory damages. Within five (5) days of issuance of the checks required by this Decree, Circle S will submit a copy of the checks and related correspondence to the Regional Attorney, Equal Employment

Opportunity Commission, Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102.

**CIRCLE S' CORRECTIVE POLICIES AND PRACTICES**

7. Circle S reaffirms that it shall maintain and carry out policies and practices that promote a work environment free from sex or gender discrimination. To assist Circle S in its effort to provide a work environment free of sex or gender discrimination, Circle S shall take the actions provided for in Paragraphs 8 through 12 below.

8. Within thirty (30) days of the entry of this Decree, Circle S shall review its existing policies on sex discrimination and its existing policies relating to recruiting, screening, considering, and hiring applicants for employment. Within forty-five (45) days of the entry of this Decree, Circle S will make any changes necessary to assure that its policies and procedures comply with Title VII and do not contain any provisions that would discourage males from making application for available cashier or clerk positions at Circle S. Within sixty (60) days of the entry of this Decree, Circle S shall revise the policies and procedures on sex discrimination, recruiting, screening, considering and hiring applicants for employment and shall distribute the policies and procedures to all Circle S employees, including all individuals with responsibility for recruiting, screening and hiring applicants for employment. Circle S will assure that any revised policies and procedures, at a minimum, shall include provisions incorporating the following:

A. A statement notifying applicants and employees that Circle S is an equal opportunity employer and that all employment decisions, including hiring decisions, will be made by Circle S without regard to sex, race, color, religion or national origin;

B. A statement that it is not the policy or practice of Circle S to exclude males from the clerk or cashier positions; and

C. A statement notifying applicants, employees and managers that Circle S will take appropriate disciplinary action against any individual who deprives individuals of equal employment opportunities or who otherwise violates Circle S policies and procedures for nondiscriminatory recruiting, screening, considering, and hiring.

### **RECRUITMENT**

9. In addition to the commitment of Circle S as stated in Paragraph 7 of this Consent Decree, Circle S will endeavor to increase diversity in its workforce by undertaking recruitment activities that will assure that its policies providing for equal employment opportunity in the recruitment, screening, consideration and hiring of applicants for employment have the widest possible dissemination. In attempting to increase male representation in its workforce, Circle S will not be required to increase its pay scale for the positions of cashier/clerk. Circle S will also voluntarily take the following actions:

A. Every six (6) months for the duration of this Decree, Circle S will place an advertisement in the Farmington newspaper with the largest circulation describing that Circle S is an equal employment opportunity employer and that employment decisions at Circle S, including hiring decisions, are made without regard to sex, race, color, religion, national origin or any other status protected by law; and

B. Additionally, each time Circle S uses newspaper advertisement to announce a job opening, Circle S will assure that its job announcements as advertised include a

statement that Circle S is an equal employment opportunity employer and that all applications are received, screened, and considered without regard to an individual's sex, race, color, religion, national origin or any other status protected by law.

### **TRAINING**

10. To assist Circle S in its efforts to comply with Title VII, Circle S will provide training on Title VII prohibitions relating to sex discrimination and Circle S nondiscriminatory policies and procedures relating to hiring, according to the following terms:

A. Circle S will provide and pay for a trainer or trainers who shall provide consultation and training for one seminar-training session for employees each year this Decree is in effect. If available, Circle S may use qualified trainers provided at no cost by the New Mexico Human Rights Division. All Circle S employees in the State of New Mexico shall attend this annual employee training which shall be at least two hours in duration. Videotaped or duplicative sessions may be used to satisfy the Decree's requirements related to employee training. Circle S shall be responsible for any additional costs to provide such duplicative sessions.

B. Circle S shall also assure that each owner, manager and other personnel with responsibility for hiring in Circle S facilities attends a separate and additional annual training session specifically designed for hiring officials of Circle S. This hiring official training shall include not only prohibitions on discrimination in employment, but shall also include discussion of Circle S efforts to recruit males for positions of cashier/clerk. The hiring official training shall be a minimum of two hours in duration and it must be

provided at least once each year for the duration of this Decree. Duplicate or videotaped sessions may be held to accommodate staffing needs. Circle S shall be responsible for any additional costs to provide such duplicative sessions.

C. The first seminar-training sessions for all employees shall be conducted within three (3) months of the entry of this Decree. Seminar-training sessions in subsequent years may be held at Circle S' convenience; provided, however, that Circle S must certify to the Commission that all employee training was conducted at least once each year of this Decree.

D. The first seminar-training session for hiring officials shall be conducted within three (3) months of the entry of this Decree. Hiring official training in the subsequent years of this Decree shall occur within one year of the prior training and in the last year of the Decree such training must occur at least six (6) months prior to expiration of the Decree.

E. The trainer(s) providing training to employees and hiring officials pursuant to this Decree shall be a person(s) acceptable to the Commission. Circle S shall submit the name(s), address(es), telephone number(s), and resume(s) of the proposed trainer(s), together with the dates of the proposed seminar-training sessions and the details of the contents of the training, to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within thirty (30) days of the entry of this Decree. The Commission shall have thirty (30) days from the date of receipt of the information described above to accept or reject the proposed trainer and/or the contents of the training. In the event the Commission does not approve the designated trainer, the Commission shall designate the trainer, who shall be paid by Circle S at a cost not to exceed

\$1,000.00 per seminar-training session. In subsequent years, the Commission shall be given the training information and identity of trainer at least sixty (60) days before the scheduled seminar-training session.

F. All employees designated in Paragraph 10(A) and (B) shall both register and attend the seminar-training session(s) as required in Paragraph 10(A) and (B). The registry(s) of attendance shall be retained by Circle S for the duration of the Decree.

G. The training shall include the subject of what constitutes sex discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment in violation of Title VII and how to prevent sex discrimination in hiring, firing, and all other terms, conditions or privileges of employment.

H. Within ten (10) days of their hire, Circle S' new management employees and/hiring officials in New Mexico shall attend any seminar-training sessions required by this Decree; such employees hired after the seminar-training sessions are presented shall view a video tape of the training and/or a professional training tape which covers the topics set forth in Paragraph 10 (G) and shall be given any written material disseminated at the seminar-training sessions for the duration of this Decree.

11. The Commission, at its discretion, may designate Commission representatives to attend and participate in the seminar-training sessions described above, and the representatives shall have the right to attend and fully participate in the sessions.

12. Circle S shall post within thirty (30) days of the entry of this Consent Decree and continuously for a period of thirty-six (36) months, in prominent places frequented by applicants for employment and employees of Circle S' New Mexico facilities, the



Notice attached to this Decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A. At each training session for managers or hiring officials held pursuant to this Decree, this Notice shall be distributed to attendees.

**REPORTING BY CIRCLE S AND ACCESS BY EEOC**

13. Circle S shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102, beginning six (6) months from the date of the entry of this Decree, and thereafter every six (6) months for the duration of the Decree, the following information:

A. The changes, modifications, revocations, or revisions to its policies and procedures that concern or affect the subject of employment discrimination, including gender discrimination and nondiscriminatory recruitment, screening and hiring;

B. The registries of employees and hiring officials attending each of the seminar-training sessions required in Paragraph 10 of this Decree and a list of current employees and hiring officials who are employed on the day of the seminar-training session;

C. A written report indicating the following information for the period of the report:

1. the number of male applicants for clerk or cashier positions during the reporting period;

2. the number of male applicants for clerk or cashier positions who were interviewed for clerk or cashier positions during the reporting period;

3. the number of male applicants for clerk or cashier positions who were offered clerk or cashier positions during the reporting period but who declined such offers; and

4. the number of male applicants for clerk or cashier positions who were actually hired for clerk or cashier positions during the reporting period.

D. An Affidavit signed by the highest-ranking Circle S managerial official that the Notice required by Paragraph 12 of this Decree was posted for the relevant reporting period.

14. The Commission, upon reasonable notice to Circle S, shall have the right to enter and inspect the facilities of Circle S to ensure compliance with this Decree and federal anti-discrimination laws.

#### **COSTS AND DURATION**

15. Each party shall bear its costs and attorney's fees incurred as a result of this action through the filing of this Decree.

16. The duration of this Decree shall be three (3) years from its entry. This Court shall retain jurisdiction of this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this Decree. Should the Court determine that Circle S has not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered.

17. This Decree shall expire by its own terms at the end of three (3) years after entry, without further action by the parties.

18. The parties agree to entry of this Decree and judgment subject to final approval by the Court.

ENTERED AND ORDERED this 5<sup>th</sup> day of December, 2005.

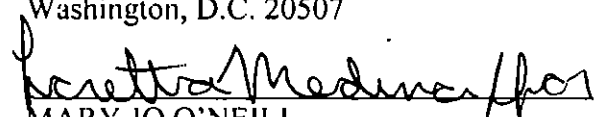
  
WILLIAM P. JOHNSON  
U. S. DISTRICT JUDGE

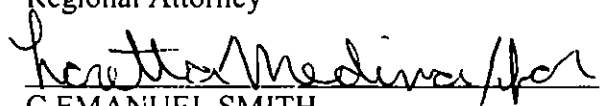
APPROVED AND CONSENTED TO THIS 29<sup>th</sup> DAY OF November, 2005.

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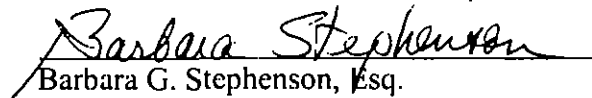
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Attorneys for Circle S

## **NOTICE TO ALL EMPLOYEES OF CIRCLE S STORES**

This Notice is posted pursuant to a Consent Decree entered into between Circle S Stores, Inc., and Circle S Grocery, Inc., and the Equal Employment Opportunity Commission (EEOC) in the matter of *EEOC v. Circle S*, CIV-04-716 WJ/DJS in the United States District Court for the District of New Mexico.

It is unlawful under the federal law (Title VII of the Civil Rights Act of 1964) and state law to discriminate against an employee on the basis of sex, either male or female, in hiring, firing, compensation or other terms, and conditions or privileges of employment.

Circle S prohibits all forms of sex discrimination, including any policy, practice, or act which under Title VII discriminates or has the effect of discriminating against any individual, applicant or employee because of his or her sex or gender.

Circle S shall not discriminate on the basis of sex and shall not retaliate against any individual who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a grievance alleging discrimination.

If you believe you are being discriminated against or retaliated against, you should report this to the Circle S designated investigative officer at your workplace who may be contacted at \_\_\_\_\_.

If you believe you have been discriminated against or retaliated against by Circle S, you always have the right to seek assistance from:

(1) Equal Employment Opportunity Commission (EEOC), 505 Marquette, Suite 900, Albuquerque, New Mexico 87102, (505) 248-5201.

or

(2) The New Mexico Department of Labor, Human Rights Division, 1596 Pacheco St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838.

You have the right to file a charge with the EEOC or the Department of Labor if you believe you are being discriminated against.

**EXHIBIT A**