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MAR 24 2004  
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OFFICE OF  
DISTRICT JUDGE TENA CAMPBELL  
DEPUTY CLERK


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION  
**RECEIVED CLERK**  
MAR 24 2004  
U.S. DISTRICT COURT

Equal Employment Opportunity  
Commission,  
  
Plaintiff,  
  
vs.  
  
JB's Family Restaurants, Inc., a Delaware  
corporation; Summit Family Restaurants,  
Inc., a Delaware corporation,  
  
Defendants.

Civil No. 2:01CV00439C

**CONSENT DECREE BETWEEN  
PLAINTIFF EEOC AND  
DEFENDANT SUMMIT FAMILY  
RESTAURANTS, INC.**

Judge Tena Campbell

Entered on docket  
3-29-04 by:  
  
Deputy Clerk

**INTRODUCTION**

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against Summit Family Restaurants, Inc. ("Summit") 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 its Third Amended Complaint, the Commission alleges Summit discriminated against Carla Hart and a class of female employees (collectively, "class members") on the basis of their sex by subjecting them to a pattern or practice of unlawful sexual harassment. The Commission also alleges Summit retaliated against employees who complained about the sexual harassment, and that as a result of the sexual harassment and retaliation, Ms. Hart and other female employees were constructively discharged and/or terminated from their employment in violation of Title VII. Summit denies the Commission's allegations.

The Commission and Summit do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

03

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

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This Decree resolves all claims of the Commission and all class members identified in Attachment A to this Decree against Summit, including back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs arising out of the issues in this lawsuit.

#### **INJUNCTION**

2. Summit, and its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, both at the time that this Decree becomes effective and for the duration of this Decree, are permanently enjoined for the duration of the Decree from: (a) sexually harassing any employee or applicant; (b) retaliating against any employee or applicant because he or she: (i) opposes or opposed discriminatory practices made unlawful by Title VII; (ii) files or filed a charge of discrimination or is assisting or has assisted or participated or is participating in the filing of a charge of discrimination; or (iii) assists, assisted, participates or participated in an investigation or proceeding brought under the Federal or State laws prohibiting discrimination or retaliation.

#### **MONETARY RELIEF**

3. Judgment is entered in favor of the Commission and against Summit in the amount of one hundred thirty-five thousand dollars (\$135,000.00).

4. Summit shall pay the total gross sum of one hundred thirty-five thousand dollars (\$135,000.00), to be distributed in four equal annual installments commencing March 26, 2004 and each year thereafter until the aggregate sum of \$135,000 is paid to the aggrieved persons listed in Attachment A. Summit shall not condition the receipt of

the individual relief on a class member's agreement to: (a) maintain as confidential the terms of this Decree; (b) waive her statutory right to file a charge with any federal or state anti-discrimination agency; or (c) waive her right to apply for a position with Summit.

5. Summit shall pay the settlement amounts by check, cashier's check or money order, for which sufficient funds exist, in accordance with Paragraphs Three (3) and Four (4) of this Decree. Summit's obligation hereunder is not satisfied until each check issued is negotiated for readily available funds. The payments described in Paragraphs Three (3) and Four (4) of this Decree represent settlement of compensatory damages. By January 31 of each year while this Decree is in effect commencing in 2005, Summit shall issue United States Internal Revenue Service Form 1099 to each class member for all such applicable payments.

6. Summit shall mail a copy of the checks provided for in Paragraphs Three (3) and Four (4) of this Decree and any related correspondence to the Regional Attorney, United States Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

7. Summit acknowledges that it has paid the amounts it owed to JB's Family Restaurants, Inc. ("JB's") in accordance with the Compromise Agreement for Settlement of Past and Future Royalty Fees between Summit, as licensee and JB's as licensor, which has been approved by the United States Bankruptcy Court for the District of Arizona, Case No. B-02-03349 PHX GCG.

#### **OTHER RELIEF**

8. Summit shall provide Carla Hart and the class members identified in Attachment A with the written apology letter attached hereto as Attachment C. The apology letter shall be delivered within thirty (30) days of the entry of this Decree and shall be signed and printed on letterhead utilized by Summit for its JB's Restaurants and signed by Robert Wheaton, current President of Summit.

9. Summit's JB's Restaurants operating in Utah ("Summit") shall carry out policies and practices that help assure a work environment free from sexual harassment of its employees and that allow employees to raise concerns or complaints without retaliation about matters made unlawful by Title VII. To assist Summit in its efforts to assure a work environment free of sexual harassment and retaliation, Summit shall take the actions provided in Paragraphs Twelve (12) - Eighteen(18) of this Decree.

10. Summit shall make written, bona fide offers of employment to each of the class members identified in Attachment A, based upon positions available at the time of the offers. Such offers of employment shall include an offer to return the individual to substantially the same position, with the same seniority and benefits, as she would have held if she had continued working for Summit. Such offers also shall include the title of the position offered, store location(s), salary, benefits and expected hours per week of employment.

11. The identified class members shall have thirty (30) days from receipt of the written offer to accept or reject the position. For any class member who accepts a position with Summit, for the duration of this Decree, Summit shall notify the Commission in writing when it takes any adverse employment action against that class member. Such notification shall include the reason(s) for the adverse employment action and identify by full name, position title, social security number, telephone number and address of the person(s) responsible for making the decision to take the adverse employment action. Such notification also shall include the full name, position title, last known home telephone number and address of the class member against whom such action was or will be taken.

#### **DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES**

12. Summit shall post, for the duration of this Decree, a notice of its sexual harassment and anti-retaliation policies, in both English and Spanish, in a prominent place

frequented by its employees at its facilities located in the State of Utah at the time that this Decree becomes effective and for the duration of this Decree.

13. Summit shall provide training to the employees, supervisors and managers of its facilities in the State of Utah on sexual harassment and retaliation, according to the following terms:

A. Summit shall provide consultation and training to its employees, supervisors and managers of its Utah facilities for a period of three (3) years from the date of this Decree. During each of the next three (3) years, the consultant/trainer shall conduct one live seminar training session each year, during which Summit shall ensure that an officer of Summit will make either a live or a videotaped statement regarding the severe consequences of sexual harassment and of the failure to investigate and take seriously complaints of unlawful harassment, including the fact that managers and supervisors are evaluated, in part, on their enforcement of Summit's anti-discrimination policies and the handling of discrimination complaints, and that such individuals may be subjected to discipline, up to and including termination, for violation of Summit policies against sexual harassment and retaliation.

All Summit employees, supervisors and managers employed or having responsibility for its Utah facilities shall attend the live session or the videotaped showing of the live session in each year for the duration of this Decree. Summit may at its election have duplicate videotaped sessions to accommodate staffing needs.

B. During the first year, 2004, the seminar-training session shall be conducted within four months of the entry of this Decree. For the other years, the seminar-training session shall be conducted between 10 and 12 months after the completion of the preceding session.

C. The seminar-training sessions shall be approximately one and a half hours, plus 15-30 minutes of questions and answers. All personnel, designated in

Paragraph Thirteen (13) (A), shall both register and attend the seminar-training session. The registry of attendance shall be retained by Summit for the duration of this Decree.

D. The seminars shall include the subjects of what constitutes sexual harassment and retaliation; that sexual harassment and retaliation in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment violates the law; how to prevent sexual harassment and retaliation; how to provide a work environment free from sexual harassment and retaliation; how to conduct an effective sexual harassment investigation; and to whom and by what means employees may complain if they feel they have been subjected to sexual harassment or retaliation in the workplace. The session shall also review and explain Summit policies set out in Paragraph Sixteen (16) (A)-(K) of this Decree.

E. During each training session, Summit shall ensure that an officer of Summit will speak either live or via videotape to the employees, supervisors and managers about the discipline that can be taken against supervisors, managers and employees of Summit who commit acts of sex harassment or retaliation or allow sex harassment or retaliation to occur in the workplace; the importance of maintaining an environment free of sexual harassment and retaliation; and Summit policy in regard to sexual harassment and retaliation referred to in Paragraph Sixteen (A)-(K) of this Decree.

14. The Commission may designate Commission representatives to attend and participate in the seminar-training sessions. The representatives shall have the right to attend and fully participate in the sessions.

15. Summit shall designate, for the duration of this Consent Decree, person(s) at Summit to receive and forward complaints of discrimination from its employees within the State of Utah.

16. Summit shall maintain written policies, in English and in Spanish concerning sexual harassment and retaliation, that conform with the law. Summit

represents that its written policies substantially conform with Paragraphs A-K below:

A. A strong and clear commitment to a workplace free of sexual harassment;

B. Clear and complete definitions of sexual harassment and of retaliation, with at least four relevant examples;

C. A clear and strong encouragement of persons who believe they have been sexually harassed to come forward and make management aware of the harassment;

D. A description of the consequences, up to and including termination, that will be imposed upon violators of the policies;

E. A promise of maximum feasible confidentiality for persons who believe that they have been sexually harassed;

F. An assurance of non-retaliation for persons who believe they have been sexually harassed, and for witnesses;

G. That sexual harassment by any person, including management officials, supervisors, co-workers, customers and third parties is prohibited and will not be tolerated;

H. The identification of specific individuals, with their telephone numbers, to whom employees who believe that they have been sexually harassed can report the sexual harassment, including a written statement that the employee may report the harassment to designated persons outside of their chain of management. This information also shall be posted in a conspicuous place at Summit's facilities in the State of Utah;

I. That employees are not to discuss sexual conduct and/or sexual jokes while at work;

J. That no sexually oriented materials or objects shall be brought on the premises of Summit;

K. Assurances that Summit will investigate sexual harassment allegations promptly, fairly, thoroughly and impartially by using appropriate investigators and that appropriate corrective action will be taken by Summit to eradicate the sexual harassment.

17. These policies, referred to in Paragraph Sixteen (A)-(K) above, shall be transmitted to employees, supervisors and managers of Summit Utah facilities by an officer of Summit and distributed to each current employee of Summit's Utah facilities within thirty (30) days of the entry of this Decree. These policies shall be distributed, in English and Spanish, to all new employees of Summit Utah facilities when hired and reissued, in English and Spanish, to each employee once a year for the term of this Decree. The sexual harassment policies also shall be posted, in English and Spanish, in a prominent place frequented by the employees and shall include a phone number for employees to complain and/or ask questions.

18. Summit shall promptly and appropriately investigate all complaints of sexual harassment by employees of its Utah facilities. Where the complaint is substantiated, Summit shall take immediate appropriate corrective action to discipline sexual harassers, and to eradicate the sexual harassment. If Summit determines that a victim of sexual harassment has been denied a tangible employment benefit as a result of the harassment, Summit shall restore the compromised benefit and take such actions as are reasonably necessary to place the employee in the position the employee would have been absent the discrimination or retaliation.

19. Summit shall not retain documents related to the investigation in the personnel file of any employee who complains of harassment. All disciplinary actions taken against employees, supervisors and managers of Summit Utah facilities for violation of Summit sexual harassment policy shall be retained in that employee's personnel file where a violation is found and discipline is imposed.



**REPORTING BY DEFENDANT AND ACCESS BY EEOC**

20. Summit shall report in writing to the Regional Attorney of the Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix, Arizona 85012, 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. Any changes, modifications, revocations, or revisions to its policies which concern or affect the subject of sexual harassment or retaliation.

B. The registry of persons attending the seminars required in Paragraph Thirteen (13) of this Decree and a list of current personnel employed by Summit at its Utah facilities on the day of the seminar-training session.

C. Confirmation that: (i) the Notice required in Paragraph Twelve (12) of this Decree was posted, in English and in Spanish, and the locations where it was posted, (ii) the policies required in Paragraph Sixteen (A)-(K) of this Decree were distributed to each current and new employee of Summit Utah facilities, and posted.

D. A copy of the polices referred to in Paragraph Sixteen (A)-(K) of this Decree will be provided with the first report.

E. A copy of each apology letter mailed pursuant to Paragraph Eight (8) of this Decree will be provided with the first report.

21. The Commission shall have the right to enter and inspect Summit premises located in Utah upon ten (10) days written notice to Summit counsel, to ensure compliance with this Decree and Title VII's prohibition of sexual harassment and retaliation.

**COSTS, DURATION AND PENALTIES FOR NON-COMPLIANCE**

22. The parties shall each bear their own costs, and the Commission and Summit shall each bear their own attorneys' fees incurred as a result of this action

through the filing of this Decree.

23. The duration of this Decree shall be three (3) years from its entry or until Summit has completely distributed the total payment of one hundred thirty-five thousand dollars (\$135,000.00) to the class members, as set forth in Paragraphs Four and Five above. This Court shall retain jurisdiction over this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this Decree.

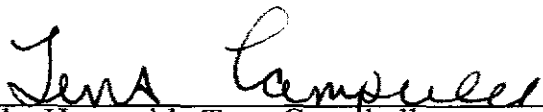
24. In the event that the Commission believes that Summit has failed to comply with any provision(s) of the Decree, the Commission shall:

- (a) Notify Summit in writing of the alleged non-compliance, which notice shall state that it is being given pursuant to this Paragraph Thirty (30) (a) of this Decree and shall be sent by fax and by first-class mail both to the counsel and the corporate officers who sign this Decree on behalf of Summit, using the fax numbers and addresses shown in connection with their signatures below

25. Should the Court determine that Summit has not complied with this Decree, appropriate relief may be ordered. This Decree shall expire by its own terms at the end of thirty-six (36) months from the date of entry, without further action by the parties.

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

DATED this 26 day of March, 2004.

  
\_\_\_\_\_  
The Honorable Tena Campbell  
United States District Court Judge

APPROVED AND CONSENTED TO:

ERIC S. DREIBAND

General Counsel

JAMES L. LEE

Deputy General Counsel

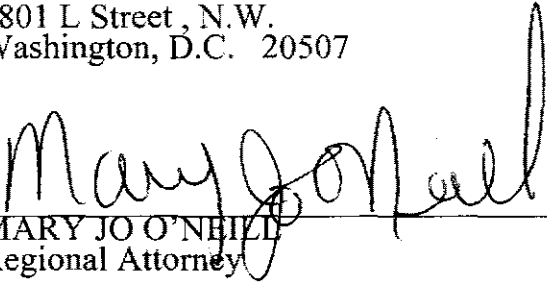
GWENDOLYN YOUNG REAMS

ASSOCIATE General Counsel

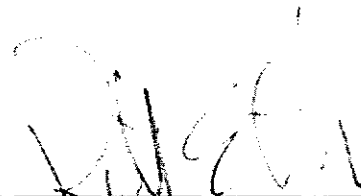
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

1801 L Street, N.W.

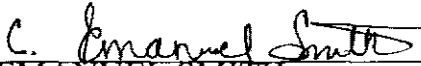
Washington, D.C. 20507



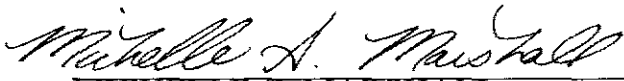
MARY JO O'NEILL  
Regional Attorney



ROBERT WHEATON  
President  
Summit Family Restaurants, Inc.



C. EMANUEL SMITH  
Supervisory Trial Attorney



MICHELLE G. MARSHALL  
Trial Attorney

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Phoenix District Office  
3300 N. Central Ave., Suite 690  
Phoenix, Arizona 85012  
(602) 640-5020  
Attorneys for Plaintiff

# **ATTACHMENT A**

CLASS MEMBER NAME	AMOUNT
1. Carla Hart	\$51,750
2. Deanna Bingham	\$11,250
3. Jamie Bledsoe	\$2,250
4. Anne Jackson	\$11,250
5. Heather Boyd Jackson	\$2,250
6. Twila Pace	\$13,500
7. Jeni Miller	\$9,000
8. Rachelle Parsons	\$6,750
9. Amy Thomas	\$9,000
10. Katherine Ungerman Patane	\$2,250
11. Lisa Van Fleet	\$4,500
12. Valerie Bodine	\$11,250

# **ATTACHMENT B**

## **NOTICE TO ALL EMPLOYEES OF SUMMIT FAMILY RESTAURANTS, INC.**

This Notice is posted pursuant to a Consent Decree entered into between Summit Family Restaurants, Inc. (Summit) and the Equal Employment Opportunity Commission (EEOC).

It is unlawful under federal law, Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of sex, including sexual harassment, in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. Sexual harassment includes unwelcome or offensive sexual advances or touching, requests for sexual favors, or other verbal or physical conduct directed at a person because of her/his sex. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC or the Utah Anti-discrimination and Labor Division (UALD).

Summit shall not discriminate against any employee on the basis of sex, including sexual harassment, and shall not retaliate against any employee for complaining about sexual harassment.

If you believe you have been discriminated against or sexually harassed, you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012  
Telephone: (602) 640-5000  
TTY: (602) 640-5072  
Website (national): [www.eeoc.gov](http://www.eeoc.gov); or
- (2) UALD Mailing Address: P.O. Box 146630, Salt Lake City, Utah 84114; Physical

Address: 160 East 300 South, 3<sup>rd</sup> Floor, Salt  
Lake City, Utah 84111  
Telephone: (801) 530-6801 or 1-800-222-1238  
TDD: (801) 530-7685  
Fax: (801) 530-7609  
Website: <http://laborcommission.utah.gov>

You have the right to file a charge with the EEOC or UALD if you believe you are being discriminated against, retaliated against or sexually harassed.

No Retaliation Clause. It is against the law for any action to be taken against you by any supervisory or management official of Summit for: (1) opposing sexual harassment or other discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the UALD at the addresses or telephone numbers listed above.



# **ATTACHMENT C**

[SUMMIT LETTERHEAD]

Dear \_\_\_\_\_:

As you are aware, a lawsuit was filed by the Equal Employment Opportunity Commission against Summit, alleging sexual harassment and retaliation against female employees of the Company.

Please accept my sincere apology, on behalf of Summit and its management for any offensive or objectionable language or conduct you experienced during your employment with Summit. Please accept my commitment that the Company will take whatever steps are necessary to ensure that current and future Summit employees work in an environment free of discrimination, retaliation and harassment.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Wheaton". The signature is written in a cursive style with some loops and flourishes.

Robert Wheaton  
President  
Summit Family Restaurants, Inc.

United States District Court  
for the  
District of Utah  
March 29, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:01-cv-00439

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Lois A. Baar, Esq.  
JANOVE BAAR ASSOC  
9 EXCHANGE PL STE 1112  
SALT LAKE CITY, UT 84111  
EMAIL

Ms. Heidi E Leithead, Esq.  
PARR WADDOUPS BROWN GEE & LOVELESS  
185 S STATE ST STE 1300  
PO BOX 11019  
SALT LAKE CITY, UT 84147  
EMAIL

Maggie H. Abuhaidar, Esq.  
US ATTORNEY'S OFFICE  
, 84111  
EMAIL

Michelle G. Marshall, Esq.  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
PHOENIX DISTRICT OFFICE  
3300 N CENTRAL AVE STE 690  
PHOENIX, AZ 85012-1848  
EMAIL