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EEOC v. Cracker Barrel Old Country Store, Incorporated

Judge Martha Vazquez

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EEOC v. Cracker Barrel Old Country Store, Incorporated

Keywords

EEOC, Cracker Barrel Old Country Store, Incorporated, 06-0920 MV/WDS, Consent Decree, Disparate Treatment, Retaliation, Sexual Harassment, Sex, Female, Retail, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

CRACKER BARREL OLD COUNTRY
STORE, INCORPORATED,

Defendant.

No. CIV-06-0920 MV/WDS

CONSENT DECREE

The United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against Defendant Cracker Barrel Old Country Store, Incorporated to enforce Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. In the Complaint, the Commission alleged Jennifer Jackson, Lorraine Provencio, and a class of female employees were discriminated against by Defendant when they were sexually harassed by Daniel Guzman, an associate manager at Cracker Barrel Store No. 253. The Commission also alleged Ms. Jackson, Ms. Provencio, and other female employees at Store No. 253 were retaliated against because they opposed the harassment. The parties agree that this decree shall not in any way be construed or interpreted as an admission of liability or wrongdoing by Cracker Barrel as to the claims brought in this litigation, any such liability or wrongdoing being expressly denied.

The parties 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. This decree does not constitute an adjudication on the merits of the allegations of the complaint.

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

1. This decree resolves all claims of the Commission against Defendant arising out of the issues in this lawsuit, including all claims for back pay, compensatory and punitive damages, interest, injunctive relief, attorney's fees and costs.

INJUNCTION

2. For three years following entry of this decree, Defendant, its managers and supervisory employees, agents, officers, successors and assigns and all persons in active concert or participation with it, are enjoined from discriminating against any employee at Store No. 253 because of sex, including subjecting employees at Store No. 253 to a hostile work environment based on sexual harassment. Further, Defendant, its managers and supervisory employees, agents, officers, successors and assigns and all persons in active concert or participation with it, are enjoined from retaliating against any individual who: (a) opposes practices made unlawful by Title VII or a state equal employment opportunity statute; (b) makes a charge of discrimination or assists or participates in an investigation or proceeding under Title VII or a state equal employment opportunity statute; or (c) files an internal complaint of gender discrimination, including sexual harassment. This injunction shall in no way serve to increase or decrease Defendant's rights or obligations under the law.

MONETARY RELIEF TO CHARGING PARTIES AND CLASS MEMBERS

3. In accordance with this decree, Defendant shall pay the amount of two hundred seventy thousand dollars and zero cents (\$270,000.00), which shall be distributed as follows:

A. Charging Party Jennifer Jackson will receive from Defendant compensatory damages in the amount of \$20,000.00, back pay in the amount of \$20,000.00, and attorney's

fees in the amount of \$20,000.00, for a total of \$60,000.00;

- B. Charging Party Lorraine Provencio will receive from Defendant compensatory damages in the amount of \$15,000.00, back pay in the amount of \$25,000.00, and attorney's fees in the amount of \$20,000.00, for a total of \$60,000.00;
- C. Class Member Jessica Tuton will receive from Defendant compensatory damages in the amount of \$50,000.00, and back pay in the amount of \$10,000.00, for a total of \$60,000.00;
- D. Class Member Summer Irvin will receive from Defendant compensatory damages in the amount of \$55,000.00; and
- E. Class Member Cynthia Barela will receive from Defendant compensatory damages in the amount of \$35,000.00.

5. Lawful employee payroll deductions for social security and withholding taxes shall be deducted from the back pay amounts paid to Charging Parties Jennifer Jackson and Lorraine Provencio and Class Member Jessica Tuton, and the deductions shall be itemized. Defendant's share of payments for FUTA and FICA shall be paid by Defendant and shall not be deducted from the settlement payments. Defendant will issue a United States Internal Revenue Service Form 1099 to the Charging Parties and Class Members for the amounts designated by EEOC as compensatory damages.

6. Within ten (10) business days of entry of the decree and receipt of an executed copy of the Release Agreement attached as Exhibit C and Agreement as to Tax Consequences attached as Exhibit D from the Charging Parties and Class Members Defendant shall separately mail checks, via certified mail, at the addresses provided by the Commission, to Ms. Jackson, Ms. Provencio, Ms. Tuton, Ms. Irvin, Ms. Barela, and the attorney(s) for Ms. Jackson and Ms. Provencio for the individual amounts designated in Paragraph 4. Within five (5) business days of the issuance of these checks, Defendant will submit a copy of the checks and related correspondence to the Regional

Attorney, Equal Employment Opportunity Commission, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

7. Defendant shall not condition the receipt of this individual relief on the Charging Parties' or Class Members' agreement to: (a) maintain as confidential the terms of this decree or other matters on the public record; (b) waive their statutory right to file a charge with any federal or state anti-discrimination agency; or (c) waive their right to apply for a position with Defendant.

8. In response to any employment inquiries or reference checks concerning the Charging Parties and Class Members, consistent with its representation of its customary practice, Defendant shall only provide the individual's dates of employment, last position held, and job duties. Claimants shall direct all such inquiries or reference checks to Defendant's home office, at 800-333-9566, and Defendant's home office shall promptly respond to such inquiries or reference checks. This provision shall remain in force for so long as the Charging Parties and Class Members use Defendant as a reference and is not limited to the duration of this decree. Additionally, Defendant will provide a neutral letter of introduction to the Charging Parties and Class Members which includes each individual's dates of employment, last position held, and job duties.

9. Defendant shall not take any action against the Charging Parties, Class Members, or witnesses in this case in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

10. Within ten (10) business days of entry of this decree, Defendant shall provide Jennifer Jackson, Lorraine Provencio, Jessica Tuton, Summer Irvin, and Cynthia Barela with a letter in the form of Exhibit A.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

11. For three years from the entry of the decree, Defendant shall enforce policies and practices at its Store No. 253 that are designed to provide a work environment free from sex

discrimination in accordance with Title VII, including policies and practices designed to prevent sexual harassment of its employees, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual, without retaliation.

12. Within fifteen (15) business days of entry of the decree, Defendant shall review its existing policies on sex discrimination, policies on sex discrimination, including sexual harassment, and make any changes necessary to ensure that its policies comply with Title VII, are designed to be easily understood and provide a convenient, confidential and reliable procedure for reporting incidents of sex discrimination, including sexual harassment.

13. Within fifteen (15) business days of entry of the decree, and for three years from the entry of the decree, Defendant shall confirm that all of its employees in Store No. 253 have received a copy of the Defendant's policy prohibiting sexual harassment and providing for the reporting of perceived sex discrimination, including sexual harassment, and that any new employees hired at Store No. 253 during this three-year period receive such policy within five (5) business days of employment. The policy shall be provided in at least English or Spanish as needed by the employee.

14. Within fifteen (15) business days of entry of the decree, and for three years from the entry of the decree, Defendant shall designate one or more employee relations representative(s) who will serve as an investigative resource for sexual harassment or related retaliation issues arising in Store No. 253. Defendant shall post in Store No. 253 contact information for these individuals. If the contact information for these investigative officers changes, Defendant will immediately notify its employees in Store No. 253 of the change.

15. Within thirty (30) days of entry of the Decree, Cracker Barrel Old Country Store, Inc. shall certify that this/these employee relations representative has received at least eight (8) hours of training concerning the investigation of discrimination, harassment and/or retaliation complaints within the past year. Should other employee relations representatives become responsible for

overseeing sexual harassment or related retaliation complaints arising in Store No. 253 for two years from the entry of this decree, within thirty (30) days of assuming such duties, Defendant shall also certify that s/he has received such training. For three years from the entry of the decree, complaints related to sexual harassment or retaliation arising out of Store No. 253 will be accepted by Defendant in writing or orally, and all such complaints will be taken seriously and investigated.

16. For three years from the entry of the decree, managers or supervisors in Store No. 253 who learn or suspect that individuals in the work place may be engaging in sexual harassment or retaliation will be responsible for immediately reporting such conduct to the investigative officer(s) referred in Paragraph 14, above. Managers or supervisors who fail to report such activity will be advised by Defendant that corrective action, including termination, may result.

17. For three years from the entry of the decree, only those who have an immediate need to know, including, but not limited to, the person(s) referenced in Paragraph 14, above, the alleged target(s) of harassment or retaliation, the alleged harasser(s) or retaliator(s), and any witness, may find out the identity of a complainant.

18. For three years from the entry of the decree, during an investigation of a sexual harassment complaint of an employee in Store No. 253, the person identified in Paragraph 14, above, shall promptly interview all affected individuals and available witnesses to the alleged harassment.

19. For three years from the entry of the decree, all parties contacted in the course of an investigation will be advised that any retaliation or reprisal against an individual who is an alleged target of sexual harassment or related retaliation, who has made a complaint, or who has provided information in connection with such a complaint, will not be tolerated and could result in disciplinary action.

20. For three years from the entry of the decree, the person(s) referenced in Paragraph 14, above, will recommend remedial measures, if appropriate, based upon the results of the

investigation and Defendant will promptly act upon such recommendations. If no remedial measures are recommended, the person(s) referenced in Paragraph 14 will document the reason(s) for such recommendation.

21. For three years from the entry of the decree, the person(s) referenced in Paragraph 14, above, will maintain or cause to be maintained a file on the original complaint which will include complete documentation of all activity related to investigations and remedial measures taken and recommended, including identification of all individuals accused of sexual harassment and/or retaliation, and/or involved in taking subsequent remedial measures taken (if any).

22. For three years from the entry of the decree, the person(s) referenced in Paragraph 14, above, will faithfully record all witness interviews and statements related to such investigations.

23. Defendant's employees in Store No. 253, including managers and supervisors, who engage in sexual harassment or related retaliation, who fails to cooperate with company-sponsored investigations of sexual harassment or related retaliation, or who refuse to implement remedial measures, will be advised that they may be sanctioned severely by suspension without pay or dismissal.

24. Daniel Guzman is not currently eligible to be rehired by Defendant. Should Defendant rehire Mr. Guzman, Defendant shall within thirty (30) days of hire provide Mr. Guzman with the training referenced in Paragraph 26, as well as at least six (6) hours of counseling with a certified counselor on gender sensitivity. All costs associated with Mr. Guzman's training and counseling shall be paid by Defendant.

POSTING OF A NOTICE

25. Within five (5) business days of the entry of this decree, Defendant shall post and continuously post for three years from the entry of this decree, in one or more prominent places frequented by employees in Defendant's Store No. 253, a Notice as attached to this decree as Exhibit

B. This Notice shall be the same type, style and size as in Exhibit B, and shall be provided in at least English and Spanish, as appropriate.

TRAINING

26. Defendant shall provide training on sex discrimination, including sexual harassment, and retaliation according to the following terms:

- A. Defendant shall provide at least three (3) training sessions within two years of the entry of this decree. All managers, supervisors and employees at Defendant's Store No. 253 shall attend the training. Duplicative sessions may be held to accommodate staffing needs. Defendant shall be responsible for all costs associated with this training. The training provided pursuant to this Paragraph 26 is in addition to the training provided to employees as part of new hire orientation.
- B. The first training session shall be conducted within six months of the entry of this decree. The second training session shall take place in the year 2008, and the third training session shall take place in the first six months of 2009.
- C. Defendant currently intends to conduct this training via a computer ("e-learning") module and live trainer. Defendant shall submit the trainer's name, resume, the electronic training agenda and the date(s) of the proposed training to the Regional Attorney of the Albuquerque Area Office of the Equal Employment Opportunity Commission within forty-five days of the entry of this decree for the first session of the first year. During the second and third training sessions, the information shall be submitted to the Regional Attorney of the Albuquerque Area Office of the EEOC at least forty-five days prior to the seminar-training session. The Commission shall have twenty-one days from the date of receipt of the information described above to reject the proposed trainer and/or the contents of the seminar. In the event the

Commission does not approve Defendant's designated trainer, Cracker Barrel Old Country Store, Inc., within ten days, shall designate another trainer acting in close consultation with the EEOC.

- D. The training shall include a minimum of one (1) hour of instruction, and up to one-half hour of questions and answers, as needed. The registry of attendance shall be retained by Defendant during the two-year term.
- E. The training, at a minimum, shall include the subjects of: what constitutes sex discrimination, including sexual harassment, and retaliation; that sex discrimination and retaliation in the terms, conditions or privileges of employment and retaliation violate Title VII; how to prevent sex discrimination and retaliation; how to provide a work environment free from sex discrimination and retaliation; and to whom and by what means employees may complain, including complaining to the EEOC, if they feel they have been subjected to sex discrimination and retaliation.
- F. Immediately following the training sessions, a management official with oversight in or over Store No. 253 shall speak to store employees about: (1) potential discipline that can be taken against supervisors, managers and employees who commit acts of sex discrimination or retaliation, or who allow sex discrimination or retaliation to occur in the workplace; (2) the importance of maintaining an environment free of sex discrimination and retaliation; and (3) the employer's policies regarding sex discrimination and retaliation. This time shall not be counted toward the one hour minimum instruction time required in Paragraph 26(D).

REPORTING BY DEFENDANT AND ACCESS BY EEOC

27. Defendant shall certify in writing to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189,

by December 31, 2007, by December 31, 2008, and again by June 30, 2009, the following information:

- A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of sex discrimination and retaliation.
 - B. The name, address, position, and telephone number of any employee who, during the six months preceding the report, has brought allegations of sex discrimination or related retaliation arising from activities in Defendant's Store No. 253 against Defendant or their personnel, including, but not limited to, management officials, vendors, agents, or employees. The nature of the complaint and the corrective action taken, if any, shall be specified.
 - C. The registries of persons attending each of the seminar-training sessions required in Paragraph 26(D) of this decree and a list of current employees on the day of the seminar-training sessions.
 - E. A certification in writing from Defendant that the training required in Paragraph 26 of this decree was conducted. The written certification shall be provided within thirty (30) days after the each training session was conducted.
 - F. A certification in writing from Defendant stating the Notice required in Paragraph 25 of this decree was posted and the location(s) where it was posted.
28. The Commission, upon reasonable notice, shall have the right to enter and inspect the premises of Defendant's facilities to ensure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION

29. Except as explicitly provided in Paragraphs 3(A) and (B), each party shall bear its costs and attorney's fees incurred as a result of this action through the entry of this decree.

30. The duration of this decree shall be three (3) years from its entry, with the exception of a portion of Paragraph 15 and Paragraph 26, each of which is two (2) years in duration from entry of the decree and the first two sentences of Paragraph 8, which shall be indefinite in duration. This Court shall retain jurisdiction of this action for these durations, during which the Commission may petition this Court for compliance with this decree. Should the Court determine that Defendant 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.

31. This decree shall expire by its own terms at the end of the durations set forth in Paragraph 30, above, after entry, without further action by the parties.

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

ENTERED AND ORDERED this 24th day of August, 2007.



HONORABLE JUDGE MARTHA VASQUEZ
CHIEF UNITED STATES DISTRICT COURT JUDGE

APPROVED AND CONSENTED TO:

Ronald S. Cooper
General Counsel

James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel

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Blaine T. Mynatt, Esq.
HOLT, BABINGTON, MYNATT, P.C.
1660 Hickory Loop
Las Cruces, NM 88004-2699
Telephone: (505) 524-8812

Private Attorney for Charging Parties
Jennifer Jackson and Lorraine Provencio

Charging Party's or Class Member's Name

Address

Re: Your Cracker Barrel Employment

Dear Ms. _____

On behalf of Cracker Barrel Old Country Store, Inc. and myself personally, I wish to express my sincere apology that you found your experience while employed at Cracker Barrel to be objectionable.

Thank you for the contributions you made while employed at Cracker Barrel, and we wish you nothing but success in your future endeavors.

Very truly yours,

(Name)
General Manager

EXHIBIT A

**NOTICE TO ALL EMPLOYEES OF
CRACKER BARREL OLD COUNTRY STORE, INC.**

This Notice is posted pursuant to a Consent Decree entered into between Cracker Barrel Old Country Store, Inc. and the Equal Employment Opportunity Commission (EEOC).

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

It is also unlawful under federal law (Title VII of the Civil Rights Act of 1964) and state law to retaliate against any employee 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 and state law or who files a grievance alleging discrimination.

If you believe you have been discriminated against because of sex, including sexual harassment, or retaliated against in your workplace, you always have the right to seek assistance from:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)
505 Marquette N.W., Suite 900
Albuquerque, New Mexico 87102,
TOLL FREE: 1-800-669-4000

or

NEW MEXICO DEPARTMENT OF LABOR
Human Rights Division
1596 Pacheco St., Suite 103
Santa Fe, New Mexico 87505
TELEPHONE: (505) 827-6838

**YOU HAVE A RIGHT TO FILE A CHARGE WITH THE EEOC OR THE
DEPARTMENT OF LABOR IF YOU BELIEVE YOU ARE BEING
DISCRIMINATED AGAINST.**

EXHIBIT B

RELEASE AGREEMENT

I, _____, for and in consideration of the sum of \$ _____ payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Cracker Barrel Old Country Store, Inc., No. CIV-06-0920 MV/WDS (D. N.M.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge Cracker Barrel Old Country Store, Inc. (“Defendant”), and all past and present shareholders, officers, agents, employees, and representatives of Defendant, as well as all successors and assignees of Defendant from any and all claims and causes of action of any kind (including, but not limited to, claims for attorneys’ fees or expenses of litigation) which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Cracker Barrel Old Country Store, Inc., No. CIV-06-0920 MV/WDS (D. N.M.)

Signature

Date

EXHIBIT C

Agreement as to Tax Consequences

I, _____, agree that I am ultimately and solely responsible for paying the correct amount of taxes owed by me on amounts I receive in connection with the Consent Decree entered in EEOC v. Cracker Barrel Old Country Store, Incorporated, CIV-06-0920 D.NM. I further agree to hold Cracker Barrel Old Country Store, Incorporated harmless from all expenses, penalties, damages, fees, and/or interest charges I may individually incur resulting from my non-payment of taxes on amounts paid to me under the Consent Decree.

Signature

Date

EXHIBIT D