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## EEOC and Maria Torres v. The Restaurant Company dba Perkins

Judge John R. Tunheim

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## EEOC and Maria Torres v. The Restaurant Company dba Perkins

### Keywords

EEOC, Maria Torres, The Restaurant Company dba Perkins, 05-1656 JRT/FLN, Consent Decree, Sexual Harassment, Retaliation, Sex, Female, Hospitality, Employment Law, Title VII

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

**Civil No. 05-1656 JRT/FLN**

and

MARIA TORRES,

Plaintiff-Intervenor,

**CONSENT DECREE AND ORDER**

v.

THE RESTAURANT COMPANY d/b/a  
PERKINS RESTAURANT AND  
BAKERY,

Defendant.

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1. This Consent Decree (the “Decree”) is made and entered into by and between Plaintiff, United States Equal Employment Opportunity Commission (hereinafter “EEOC”) and Defendant, The Restaurant Company (succeeded by Perkins & Marie Callender’s, Inc.) d/b/a Perkins Restaurant and Bakery (“Perkins”)(EEOC and Perkins are collectively referred to herein as “the Parties”).

2. On August 4, 2005, EEOC initiated this action by filing its Complaint against Perkins alleging Perkins violated Title VII of the Civil Rights Act of 1964, as amended, (“Title VII”), when Maria Torres was sexually harassed by her supervisor, and retaliated against after she complained.

3. Perkins filed an Answer denying EEOC’s allegations.

4. The Parties have agreed that this action should be finally resolved by entry of this Decree. This Decree shall not constitute an adjudication and/or finding on the merits of the case, nor shall it constitute an admission by either party of the allegations or defenses raised in the

pleadings.

5. This Decree constitutes the complete agreement between EEOC and Perkins with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Decree shall be effective unless made in writing, approved by all parties to this Decree and approved by the Court or ordered by the Court.

**NOW, THEREFORE**, the Court having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the Parties, it is **ORDERED, ADJUDGED, AND DECREED THAT:**

6. This Court has jurisdiction over the subject matter of this action and over the Parties for purposes of entering and enforcing this Decree.

7. The terms of this Decree are adequate, fair, reasonable, equitable and just.

8. This Decree conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII, and will be in the best interests of the Parties, those for whom EEOC seeks relief, and the public.

9. This Decree resolves all claims arising out of the Charge of Discrimination filed by Maria Torres against Perkins, Charge No. 265-2004-01894, and constitutes a complete resolution of all claims under Title VII that EEOC made or could have made in this action.

**SCOPE OF CONSENT DECREE**

10. The duration of this Decree shall be two (2) years from the date of entry of the Decree. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate its purposes. The provisions of this Decree shall apply to the restaurants

operated by Perkins within its recognized Region 2 (of Area 1).

#### **GENERAL INJUNCTIVE PROVISION**

11. **Sexual Harassment**. During the term of this Consent Decree, Perkins and its officers, agents, and managers (including supervisory employees), and all those in active concert or participation with them, are hereby enjoined from: (a) engaging in or being a party to any action, policy or practice that is intended to or is known to them to have the effect of harassing or intimidating any female employee on the basis of her gender in violation of Title VII; and/or (b) creating, facilitating or permitting the existence of a work environment that is hostile to female employees in violation of Title VII.

12. **Retaliation**. During the term of this Consent Decree, Perkins and its officers, agents, and managers (including supervisory employees), and all those in active concert or participation with them, are hereby enjoined from engaging in, implementing or permitting any action, policy or practice with the purpose of retaliating against any current or former employee of Perkins because he or she opposed any practice of sexual harassment made unlawful under Title VII; filed a Charge of Discrimination alleging any such practice; testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Perkins), proceeding, or hearing in connection with this case and/or relating to any claim of sexual harassment and/or race harassment; was identified as a possible witness in this action; asserted any rights under this Consent Decree; or sought and/or received any monetary and/or non-monetary relief in accordance with this Consent Decree.

#### **TRAINING & POLICIES**

13. Perkins agrees that it shall provide mandatory annual training regarding sex

harassment and retaliation to all employees, including training sessions in Spanish for those employees who wish to receive training in Spanish. The training shall be completed by one or more experienced trainers and shall include at a minimum, training in regard to: Title VII, including, but not limited to, sex harassment; retaliation; complaint procedures for reporting sex harassment and retaliation; techniques for investigating and stopping sex harassment and retaliation; Perkins' duty not to permit sexual harassment in the work place; Perkins' duty not to retaliate against employees who complain; and Perkins' sex harassment and retaliation policies. The notice setting forth the date and time of the annual training shall be in English and Spanish. The initial training shall be completed within 60 days of entry of this Decree. With regard to the managers, supervisors and human resources personnel, the training shall be repeated once per calendar year thereafter until the expiration of this Decree. Perkins must, within 60 days of completion of the annual training, provide EEOC's Milwaukee Area Office with a list of those trained. An agenda for the training and an identification of the trainees shall be provided to the undersigned counsel of the EEOC at least seven (7) calendar days before the training. Within that time, EEOC may provide notice concerning any aspect of the training that it believes is not in compliance with this Decree. For the length of this Decree, Perkins will include during new employee orientation training regarding sexual harassment and retaliation, including Perkins' policies on these issues.

14. If requested, Perkins will provide a Spanish-language interpreter for performance evaluation reviews. Perkins will provide a Spanish language interpreter if requested by the employee involved, before finalizing any disciplinary action.

#### **POSTING**

15. Perkins shall place a public notice, in a conspicuous place, for a period of two (2)

years from the date of entry of this Consent Decree and Order. The notice shall be in the form attached hereto as Exhibit A and captioned "Official Notice To All Employees of "Perkins." In addition, Perkins shall post in a conspicuous place a copy of its policies regarding sexual harassment and retaliation in both Spanish and English, including a hotline number employees can call to report any concerns about sexual harassment and retaliation.

### **RECORD KEEPING**

16. For two (2) years from the date of this Consent Decree, Perkins shall document and maintain records related to every Complaint that it or any manager or supervisor receives alleging sexual harassment and retaliation.

### **REPORTING**

17. Perkins shall provide the undersigned counsel for the Commission every six (6) months for the duration of this Decree, the following information regarding every complaint of sexual harassment or retaliation it receives: the name, address, and telephone number of all employees who rendered a Complaint; the date and nature of each Complaint; the identity of each person to whom each Complaint was made; and the action taken by Perkins in response to each Complaint. The Commission may inspect and copy documents maintained by Perkins underlying each complaint. The Commission shall give written notice to Perkins regarding the Commission's intent to inspect the documents, and Perkins shall have ten (10) days to comply with such request. In addition, if upon review of the complaint information, the Commission has reason to believe that the investigation was not conducted properly, it has, at its discretion, the right, upon reasonable notice, to interview the witnesses. Nothing contained herein shall constitute a waiver by Perkins of its right to assert the attorney-client privilege.

**MONETARY RELIEF**

18. Perkins agrees, within thirty (30) days of signature of this Consent Decree, Order by the Court, and execution by Maria Torres of settlement documentation pertaining to her individual claims, to pay Maria Torres \$127,000.00, in compensatory damages under the Civil Rights Act of 1991, 42 U.S.C. § 1981a, simultaneously mailing a copy of the check to counsel for EEOC. With respect to such payment, Perkins shall issue to Ms. Torres an IRS Form 1099, evidencing payment to her on account of her claims for compensatory damages.

**COSTS AND NOTICES**

19. Perkins agrees to pay all of its costs associated with the administration of this Decree, except as is specifically provided otherwise in this Decree.

20. Each Party shall bear its own litigation costs and attorneys' fees associated with this litigation, except as otherwise provided for in this Decree, and neither Party shall seek reimbursement for any outstanding litigation costs.

21. Except as is otherwise provided for in this Decree, all notifications, reports and communications to the Parties required under this Decree shall be made in writing and shall be sufficient as hand-delivered or sent by first class mail to the following persons:

For EEOC:

Deborah J. Powers, Esq.- EEOC  
310 West Wisconsin Avenue, Suite 800  
Milwaukee, Wisconsin 53203  
Facsimile: (414) 297-3146  
E-Mail: [deborah.powers@eeoc.gov](mailto:deborah.powers@eeoc.gov)

For Perkins:

Andy Whiteley, Esq.  
Senior Counsel  
Perkins & Marie Callender's Inc.  
6075 Poplar Ave. – Suite 800  
Memphis, TN 38119

Any party may change such addresses by written notice to the other parties, setting forth



a new address for this purpose. Notwithstanding the provisions for notification contained in this paragraph, the Parties may send each other such notifications, reports and communications by facsimile transmission or e-mail.

**SO ORDERED, ADJUDGED AND DECREED this 2nd day of August, 2007.**

s/John R. Tunheim  
United States District Court Judge

Agreed to in form and content:

/s Deborah J. Powers  
Milwaukee Area Office  
310 W. Wisconsin Ave., Suite 800  
Milwaukee, WI 53203-2292  
Phone: (414)297-3983  
Fax:(414)297-3146  
Deborah J. Powers  
Senior Trial Attorney  
deborah.powers@eoc.gov

/s Charles Conine  
Charles Conine  
Executive Vice President, Human Resources  
and Administration  
Perkins & Marie Callender's Inc.  
6075 Poplar Ave. – Suite 800  
Memphis, TN 38119

FOR THE DEFENDANT PERKINS

FOR THE PLAINTIFF, EQUAL  
EMPLOYMENT OPPORTUNITY  
COMMISSION

Exhibit A

NOTICE TO ALL EMPLOYEES  
AT THE PERKINS RESTAURANT

This Notice is posted pursuant to a Consent Decree entered into between Perkins 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 discriminate against an employee on the basis of sex, including sexual harassment, in the recruitment, hiring, promotion, firing, compensation, assignment, or other terms, and conditions or privileges of employment.

It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Perkins shall not discriminate against any employee on the basis of sex and shall not retaliate against any employee for complaining about sex discrimination.

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

Equal Employment Opportunity Commission  
Minneapolis Area Office  
330 Second Avenue south, Suite 430  
Minneapolis, MN 55401  
Telephone: 612.335.4040  
Website: [www.eeoc.gov](http://www.eeoc.gov)

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