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Dorman v. Winn-Dixie Stores, Inc

Judge Virginia M. Hernandez Covington

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Dorman v. Winn-Dixie Stores, Inc

Keywords

Dorman, Winn Dixie Stores, Inc., 3:99-cv-722-J-33MCR, Consent Decree, Disparate Impact, Disparate Treatment, Retaliation, Sexual Harassment, Assignment, Compensation, Constructive Discharge, Evaluation, Sexual Harassment, Subjective Decision Making, Termination, Terms and Conditions, Training/ Advancement, Retail, Sex, Female, Race, African American or Black, Employment Law, Title VII

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SANDI DORMAN; PAMELA BRIGGS;
YOLANDA THOMAS; MARY McGAHEE;
BARBARA MITCHELL; AMBROSE DANCY;
TERRY WYATT; ANGELA KIRCUS;
ANGELA HUBBARD; TAMRAH L. HARRIS;
MARVIN BROWN; HENRY DUBOSE;
RANOLDO BOSTON, individually and on
behalf of all other persons similarly situated,

Plaintiffs

v.

CASE NO. 3:99-cv-722-J-33MCR

WINN-DIXIE STORES, INC.; WINN-DIXIE
CHARLOTTE, INC.; WINN-DIXIE RALEIGH,
INC.; WINN-DIXIE TEXAS, INC.; WINN-DIXIE
MIDWEST, INC.; WINN-DIXIE ATLANTA,
INC.; WINN-DIXIE MONTGOMERY, INC.; and
WINN-DIXIE LOUISIANA, INC.,

Defendants

AMENDED CONSENT DECREE

I. INTRODUCTION

On January 27, 2000, this Court entered a Consent Decree (Docket No. 81), fully and finally resolving all the litigation pending between the above-referenced parties. Before the Court entered the Consent Decree, the parties met and reached voluntary agreement on the entire contents of the Consent Decree, assisted by a well-qualified employment class action mediator with particular experience in the retail grocery chain industry. The Consent Decree

was set to expire on February 26, 2007, but this Court has extended the Consent Decree until June 30, 2007. (See Docket Nos. 92, 94 and 96.)

During the pendency of the Consent Decree, the parties have complied with all of its terms. Despite the parties' adherence to the terms of the Consent Decree, certain funds set aside by Winn-Dixie under the Consent Decree remain unspent or unredeemed. The parties agree that the Court should enter this Amended Consent Decree, which extends certain provisions of the Consent Decree's "Monetary Awards Procedure" and permits the use of a portion of these unspent funds for updating Winn-Dixie's job posting system so as to enhance notice of job opportunities for class members and other employees. Furthermore, the parties agree that, especially in light of Winn-Dixie's recent bankruptcy status, the Court should relieve Winn-Dixie of certain administrative requirements of the Consent Decree.

II. PURPOSES OF THE AMENDED CONSENT DECREE

A. The parties have entered into this Amended Consent Decree for the following purposes:

B. To provide for continued monetary awards (promotion achievement awards and reimbursable moving expenses for female and African-American employees who achieve certain promotions—see Section XV.A.3. and XV.C. of Consent Decree);

C. To ensure equal employment opportunity for female and African-American persons working within Winn-Dixie's retail operations;

D. To assist Winn-Dixie in achieving its commitment to gender and racial diversity in the workplace, consistent with its associates' (employees') appropriately informed, freely expressed and documented job interests;

E. To increase the awareness of females and African-Americans concerning the various career options available to them in Winn-Dixie's retail stores, and to ensure that they are fully and fairly considered for promotional opportunities in which they are interested; and

F. To reallocate portions of unspent money originally set aside as monetary compensation to the Class for use in a manner consistent with the goals of the Consent Decree.

III. DEFINITIONS

The following terms, when used in this Amended Decree, in addition to the terms defined elsewhere in the Decree, shall have the following meanings:

A. "Amended Decree" means this Amended Consent Decree.

B. "Approval Date" means the date upon which the Court signs this Amended Decree, after having determined that it is fair, adequate and reasonable to the Class as a whole.

C. "Best Efforts" means implementing a plan reasonably designed to comply with the specified objectives to which the best efforts are directed.

D. "Class" and "Settlement Class" are defined in Sections VII.A and VII.B of the Consent Decree, respectively.

E. "Class Counsel" means the Law Offices of Whatley, Drake & Kallas, L.L.C. of Birmingham, Alabama, the Law Offices of Wiggins, Childs, Quinn & Pantanzis, L.L.C. of Birmingham, Alabama, and The Gardner Firm, of Birmingham, Alabama, and their successors, if any, as defined by the presence of lead counsel: Joe R. Whatley, Jr., Robert F. Childs, Jr., Ann C. Robertson, Frederick T. Kuykendall, III and Candis A. McGowan.

F. "Class Representatives" means Sandi Dorman, Pamela Briggs, Yolanda Thomas, Mary McGahee, Barbara Mitchell, Ambrose Dancy, Terry Wyatt, Angela Kircus, Angela Hubbard, Tamrah L. Harris, Marvin Brown, Henry Dubose and Renaldo Boston, who were certified by this Court to represent the Class pursuant to Fed. R. Civ. P. 23, for settlement purposes only.

G. "Court" means the United States District Court for the Middle District of Florida, Jacksonville Division.

H. "Final Approval" means the signing of this Amended Decree on the Approval Date by the United States District Court for the Middle District of Florida, and either: (1) the expiration of the time for filing of a direct appeal from the Court's approval of the Decree without the filing of a notice of appeal, or (2) if a timely direct appeal is filed, the final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Amended Decree.

I. "Final Approval Date" is the date upon which Final Approval of this Amended Decree is attained, as set forth in ¶ III.H., above.

J. "Gender Discrimination" or "Racial Discrimination" or "Discriminating on the basis of Gender or Race" means unlawful discrimination against associates on the basis of their sex, gender and/or race, including, but not limited to, retaliation against an associate because he or she has opposed practices he or she believes in good faith to constitute unlawful sex, gender and/or race discrimination or has participated in processes designed to obtain relief for alleged unlawful sex, gender or race discrimination. For all purposes of this Amended Decree, "Gender Discrimination" or "Race Discrimination" and "Discriminating on the basis of Gender" or "Race" shall not include: (1) sexual or racial harassment; (2)

retaliation for opposing or complaining about alleged sexual or racial harassment; (3) retaliation for participating in a process designed to obtain relief for alleged sexual or racial harassment, and/or (4) discrimination with respect to not being hired by Winn-Dixie.

K. "Liability Period" means the period between June 23, 1993 and the Preliminary Approval Date for the original Consent Decree for employees of Winn-Dixie's retail stores. The Preliminary Approval Date for the original Consent Decree is the date upon which the Court entered an Order preliminarily approving the original Consent Decree.

L. Solely for purposes of this Amended Decree (and for no other purpose whatsoever), the term "Winn-Dixie" means: (a) Winn-Dixie Stores, Inc. ("Stores"); (b) each retail operating division of Winn-Dixie Stores, Inc., and (c) the various Winn-Dixie retail operating companies, consisting of Winn-Dixie Supermarkets, Inc., Winn-Dixie Raleigh, Inc., Winn-Dixie Montgomery, Inc. and Dixie Spirits, Inc. (each of which is referred to as "an operating company" and all of which are collectively referred to as "the operating companies").

M. "Term of this Amended Decree" is the period from the Approval Date until the expiration of the Decree pursuant to Section VI.

IV. LITIGATION BACKGROUND

The background of this litigation, leading up to the entry of the original Consent Decree (Docket No. 81), is set forth in Section IV of the Consent Decree. Several events since the entry of the Consent Decree now prompt the parties to modify and, as modified, extend the terms of the Consent Decree.

Since entry of the Consent Decree, the parties have complied with all of the terms of the Consent Decree, including provisions related to injunctive remedies and monetary

compensation to the Classes. Winn-Dixie has also complied with administrative and record-keeping requirements of the Consent Decree.

The Consent Decree is scheduled to expire on June 30, 2007, pursuant to Court Order dated May 25, 2007 (Docket No. 96). Upon expiration of the Consent Decree, approximately \$2,553,442 in unredeemed checks, debit and/or discount cards distributed to the Classes will expire, with no provision for the allocation of these unredeemed amounts. Also, Winn-Dixie expects that approximately \$794,588 will remain as unused funds set aside for promotion achievement awards for female and African-American employees who achieve certain promotions (*see* Section XV.A.3. and XV.C. of Consent Decree) and/or for moving expense reimbursement payments for certain employees. Finally, on February 22, 2005, during the term of the original Consent Decree, Winn-Dixie filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. As a result, Winn-Dixie is now half the size it once was when the Consent Decree was originally entered.

Accordingly, the parties now have an interest to (1) extend the Consent Decree for the purpose of exhausting the remaining funds set aside for monetary awards to Class Members, including promotion achievement awards and moving expense reimbursements; (2) modify the terms of the Decree to permit the use of up to \$1,000,000 of the remaining funds to update Winn-Dixie's Job Request System and Job Posting System, (3) continue the Winn-Dixie Diversity Awards Program, and (4) relieve Winn-Dixie of certain of the administrative and record-keeping requirements of the Consent Decree. In the event that a portion of the \$1,000,000 is not needed to pay for the Job Request System and Job Posting System update, Winn-Dixie shall use the remainder for promotion achievement awards pursuant to section XV.C.2 of the original Consent Decree. The parties have agreed that the language of this

Amended Consent Decree accomplishes these four goals in a manner that is both consistent with the intent of the original Consent Decree and is fair to all parties.

V. JURISDICTION

For purposes of reviewing and approving this Amended Consent Decree, the Court has jurisdiction over the parties and the subject matter of this action. *See* Section V.

“JURISDICTION” of the Consent Decree. This Court shall retain jurisdiction of this action during the duration of the Amended Decree solely for the purpose of entering all orders authorized hereunder which may be necessary to implement the relief provided herein.

VI. EFFECTIVE DATES AND DURATION OF CONSENT DECREE

A. Unless provided otherwise, the provisions of this Amended Consent Decree are effective for five (5) years following the Approval Date.

1. Unless earlier terminated by the Court pursuant to Section VI.A.2, or unless an extension is granted by the Court pursuant to Section VI.A.3, this Amended Decree shall expire without further action by the parties at midnight on the fifth anniversary of the Approval Date.

2. Notwithstanding the foregoing, at any time on or after the first anniversary of the Approval Date, Stores and/or any operating company or division, as applicable, may petition the Court to terminate the Amended Decree as to it, and all or any of its provisions, provided that during the year immediately preceding the petition to terminate jurisdiction Stores and/or the relevant operating company or division: (a) has not been held by the Court to have materially violated the Amended Decree (as opposed to isolated incidents of demonstrated non-compliance), which holding has not been vacated or reversed.

(b) has exhausted the remaining funds pursuant to Section XIV.B. and XIV.C. below. Upon review of all the materials submitted by the parties, and a hearing thereon if the Court should so desire, the Court shall grant the petition seeking early termination if the Court is persuaded that the standards set forth in this paragraph have been met in relevant respects.

3. If the Amended Decree has not earlier been terminated pursuant to Section VI.A.2, Class Counsel may petition the Court to extend the Amended Decree's terms wholly or in respect to one or more terms and/or retail operating companies or divisions. No extension of this Amended Decree shall be granted unless Class Counsel demonstrates that, during the final year of the five years of the term, the relevant operating company or division has materially violated the Amended Decree (as opposed to isolated incidents of demonstrated non-compliance), and such violations are unremedied. In such event, only those terms of the Amended Decree and the operating company or division as to which such a showing has been made shall be subject to extension by the Court for such appropriate additional period as may be necessary to secure compliance, but not in any case to exceed two (2) years following the original five-year duration of the Amended Decree.

VII. SETTLEMENT CLASS

A. For purposes of this Amended Decree, including distribution of promotional achievement awards, moving expense reimbursements, and the equitable and declaratory provisions of this Amended Decree, the Settlement Class consists of all female and/or African-American management and non-management employees of Stores or any operating company who have worked at any time on or after June 23, 1993 through the Preliminary

Approval Date of the original Consent Decree, in retail operations, except those females and African-Americans who have worked only in a licensed position in pharmacy operations.

B. The provisions of the original Consent Decree governing individuals who have opted out of the Settlement Class remain in full effect.

VIII. RELEASE OF CLAIMS

Section VIII. ("RELEASE OF CLAIMS") of the original Consent Decree is hereby incorporated, in its entirety, by reference.

IX. MISCELLANEOUS PROVISIONS

A. Calculation of Time.

In computing any period of time prescribed or allowed by this Amended Decree, unless otherwise stated, such computation or calculation shall be made consistent with Federal Rule of Civil Procedure 6(a) as it exists at the time at issue.

B. No Admission of Liability. This Amended Decree represents the compromise of disputed claims that the parties recognize would require protracted and costly litigation to determine. Stores and each of the operating companies deny that any of them has engaged in any policy, procedure, pattern or practice of unlawful Gender and/or Race Discrimination, and their respective entry into this Amended Decree is not, and may not be used by any person or entity as, an admission or evidence that Stores or any of the retail operating companies has on any occasion engaged in discriminatory employment practices, such being expressly denied. Stores and the retail operating companies have voluntarily entered into this Amended Decree in order to focus on achieving their Mission, and because the actions they have agreed to undertake demonstrate their strong commitment to equal

employment opportunity and diversity. Further, nothing herein shall be deemed to constitute an admission or evidence that the Northern District of Alabama had or has personal or subject matter jurisdiction or is a proper venue for Stores or any of the retail operating companies other than Winn-Dixie Montgomery, Inc., such being contested and denied by Stores and each such operating company. Plaintiffs contend to the contrary.

C. Modification and Severability of the Amended Consent Decree

1. Whenever possible, each provision and term of this Amended Decree shall be interpreted in such a manner as to be valid and enforceable; provided, however, that in the event that after Final Approval hereof any provision or term of this Amended Decree should be determined to be or rendered unenforceable on collateral review, all other provisions and terms of this Amended 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 Amended Decree to any specific person or circumstance should be determined to be invalid or unenforceable, the application of such provision or term to other persons or circumstances shall remain unaffected to the extent permitted by law.

2. Class Counsel and Stores and/or any operating company may jointly agree to modify the Amended Decree. In the event that changed circumstances make a modification of the Decree necessary to ensure its purposes are fully effectuated, but good-faith negotiations seeking such modification are unsuccessful, any party to the Amended Decree shall have the right to move this Court (and no other) to modify this Amended Decree. Such motion shall be granted only upon the movant proving to the Court by clear and convincing evidence that changed circumstances make such modification necessary and

that the modification will not materially increase the cost to Stores or one or more of the retail operating companies of compliance (out-of-pocket or otherwise), after an opportunity for the other parties to be heard on the motion. Any such modification to this Amended Decree by the Court shall be ordered in such a fashion that will minimize the cost to Stores and the retail operating companies (out-of-pocket or otherwise) to the extent possible consistent with effectuating the purposes of this Amended Decree. The procedures for negotiations about modifying this Amended Decree (and, if necessary, for resolution of disputes by the Court) shall be the same as those set forth in Section XI regarding Amended Decree enforcement.

D. Duty to Support and Defend the Amended Decree. The Class Representatives, Class Counsel, Stores and the retail operating companies each agree to abide by all of the terms of this Amended Decree in good faith and to support it fully and shall use their respective Best Efforts to defend this Amended Decree from any legal challenge, whether by appeal or collateral attack.

X. GENERAL EQUITABLE PROVISIONS

A. General Injunctive Provisions

For the Term of this Amended Consent Decree,

1. Stores, the retail operating companies and divisions and their respective officers, agents and management or supervisory employees shall not engage in any policy, practice or procedure which has the purpose of discriminating or causes unlawful adverse impact against any Class Representative or member of the Settlement Class on the basis of gender and/or race.

2. Stores, the retail operating companies and their respective officers, agents and management or supervisory employees shall not engage in or be a party to any act, policy, practice or procedure which discriminates, retaliates, or has the purpose of discriminating or retaliating against any Class Representative, any member of the Settlement Class, any employee of Winn-Dixie or any other person because he or she furnished information, gave testimony or participated in any respect in the prosecution of this litigation, or in any of the individual charges of Gender and/or Race Discrimination filed with the EEOC Prior to the Preliminary Approval Date of the original Consent Decree by the Class Representatives or members of the Settlement Class, or filed an award request form pursuant to Section XV of the Consent Decree.

3. Winn-Dixie, and its officers, agents and management or supervisory employees shall make available to female and African-American employees the same employment opportunities and terms and conditions of employment, including but not limited to assignments to jobs and facilities, compensation, training, education, skills and career development, performance appraisals, and promotions, as Stores and the retail operating companies afford similarly-situated white male employees.

4. Nothing herein should be construed as any finding or admission that Stores or any of the retail operating companies previously has failed to act in the manner described in the complaint, such being expressly denied by Stores.

5. Associates complaining of alleged violations of the provisions set forth in this Section may utilize Stores' or the respective retail operating companies' internal complaint procedures (as applicable) and/or may file charges with the EEOC, or the state or local fair employment practices ("FEP") agency. The parties mutually intend that the

enforcement provisions of this Amended Decree shall not be utilized as an alternative method for class members to litigate entitlement to individual relief for claims of alleged Gender or Race Discrimination. Individual complaints of such alleged violations, as distinguished from pattern or practice allegations, shall not be considered to raise an issue of compliance or non-compliance with this Amended Decree, except insofar as the conduct of a Stores (or one of the retail operating companies) officer, manager or supervisor is of the level and nature necessary for the issuance of a contempt citation under Section X.B.

6. As of the Approval Date of the Amended Decree, and pursuant to the Court's authority under the All Writs Act and the Anti-Injunction Act, 28 U.S.C. §§ 1651, 2283, and Federal Rule of Civil Procedure 23, each and every Class Representative and each and every Settlement Class member who has not filed a timely request to opt out shall be and hereby is permanently enjoined from bringing any claims released pursuant to Section VIII in any court, agency or adjudicative body, whether federal, state or local.

B. Standard for Judicial Enforcement by Contempt

1. Class Counsel may petition the Court to hold Stores, and/or one of the retail operating companies and/or one or more of their respective officers, managers or supervisors in contempt, but only after: (a) having exhausted the dispute resolution procedures set forth in Section XI without having obtained reasonably effective remedial action, and (b) having, after a reasonable investigation, concluded in good faith that the standards for a contempt citation described below have been met.

a. Officers, managers or supervisors of Stores and/or one of the retail operating companies shall not be held in contempt unless the United States District Judge in the U.S. District Court for the Middle District of Florida (Jacksonville Division)

finds, by clear and convincing evidence, that either: (i) there has been an intentional disregard or intentional violation of a term or terms of the Amended Decree by that officer, manager, or supervisor; (ii) such officer, manager, or supervisor had knowledge of such a violation of this Amended Decree committed by one of his or her subordinate managers or supervisors but failed to take reasonably effective remedial action, or (iii) there is an intentional or reckless disregard by such officer, manager or supervisor of the fact that a Stores or retail operating company policy, practice or procedure has an unlawful adverse impact on female or African-American associates in violation of this Amended Decree and such policy, practice, or procedure is not otherwise lawful under applicable Title VII law; and, as to any of the foregoing, reasonably effective remedial action has not been taken by Stores or the relevant retail operating company.

b. Neither Stores nor one or more of the retail operating companies shall be held in contempt unless the United States District Judge in the U.S. District Court in the Middle District of Florida (Jacksonville Division) finds, by clear and convincing evidence, that either: (i) there has been an intentional disregard or intentional violation of a term or terms of the Amended Decree by one or more agents of Stores or an operating company at the level of officer or above; (ii) one or more agents of Stores or an operating company at the level of officer or above had knowledge of such a violation of this Amended Decree by an officer, manager or supervisor of Stores or an operating company but failed to take reasonably effective remedial action, with respect to a matter within his or her area of responsibility, or (iii) there is an intentional or reckless disregard by one or more agents of Stores or an operating company at the level of officer or above of the fact that a policy, practice, or procedure of Stores or an operating company has an unlawful adverse

impact on female and/or African-American associates in violation of this Amended Decree and such policy, practice, or procedure is not otherwise lawful under applicable Title VII law; and, as to any of the foregoing, reasonably effective remedial action has not been taken by Stores or the relevant retail operating company.

2. Third parties shall not have standing to petition any Court to hold Stores, an operating company or one of their respective officers, managers, agents, employees or supervisors in contempt. Rather, any individual concerned about compliance with this Amended Decree may so notify Class Counsel and request that they fulfill their responsibility to examine compliance and to seek such relief, if any, as may be appropriate in the U.S. District Court for the Middle District of Florida (Jacksonville Division).

C. Prevention of Sexual and Racial Harassment

1. Stores and each of the retail operating companies shall continue its implementation and maintenance of enforcement procedures for the "Company Policy Statement on Harassment" attached as Exhibit "B" to the Original Consent Decree (the "Harassment Policy"). Stores and/or the retail operating companies may amend the Harassment Policy from time to time as it may deem necessary, as long as the amended policy has the same substantive import as the Harassment Policy and is reasonably designed to achieve the same effect as the Harassment Policy in meeting the Purposes of the Amended Decree.

2. The Harassment Policy attached as Exhibit "B" to the Original Consent Decree applies to harassment on bases in addition to race and gender; however, the provisions of Section X.C.1 apply only to the "sexual" and "racial harassment" provisions of the Harassment Policy.

3. Associates complaining of alleged sexual or racial harassment may utilize the internal complaint procedures of Stores or the relevant retail operating company or may file charges with the EEOC or with state or local FEP agencies. Individual complaints and any related individual retaliation claims shall not be considered to raise an issue of compliance or non-compliance with this Amended Decree. Only a complaint that Stores or an operating company, as a matter of policy, practice or procedure, has not adopted or is not implementing or maintaining enforcement procedures for the Harassment Policy regarding complaints of alleged sexual or racial harassment shall raise an issue of compliance or non-compliance with Section X.C.1 of this Amended Decree. The substantive results of any sexual or racial harassment investigation undertaken by Stores or any operating company pursuant to the Harassment Policy are outside the scope of this Amended Decree, and shall not be the subject of any enforcement proceeding or reporting obligation hereunder.

D. Internal Mechanisms for Ensuring Compliance

1. Continued Designation of Compliance Official

a. Each retail operating company (and division) of Stores shall continue to designate a Compliance Official who shall be charged with overall responsibility for monitoring compliance with the terms of the Amended Decree in that retail operating company or division. The Compliance Official shall either be the Manager of Human Resources or another individual who shall maintain a matrix reporting relationship to the President of that retail operating company (or division).

b. In the event that a Compliance Official ceases to function in that role, the retail operating company (or division) shall designate a replacement

Compliance Official as soon as practicable but no later than thirty (30) days after that Compliance Official ceases to function in that role.

2. Duties of the Compliance Official of an Operating Company/Division

The Compliance Official of an operating company or division shall use his or her Best Efforts to ensure that retail operating company's (or division's) implementation of and compliance with the provisions of this Decree.

a. Stores shall designate a Stores corporate officer generally to monitor the retail operating company Compliance Officials in order to ensure that they are fulfilling the duties and responsibilities listed in Section X.D.2.a of the Amended Decree. Such responsibility is solely for purposes of compliance with this Amended Decree and shall not constitute any indication or evidence of common or joint employment or employer.

b. Each retail operating company or division shall provide such support staff, funds and other resources as may be reasonably necessary to discharge that retail operating company's or division's obligations under the Amended Decree.

3. Internal Complaint Procedure

a. Stores and each retail operating company shall internally publicize its respective policies prohibiting Gender and Race Discrimination, either separately or in conjunction with its overall policy prohibiting discrimination.

b. The policy shall provide that persons engaging in such conduct will be subject to appropriate discipline, up to and including discharge. The policy shall be posted in a prominent place for associates in each employing location covered by this Amended Decree.

c. Stores and each retail operating company shall maintain an internal complaint procedure for the purpose of resolving "covered complaints." The phrase "covered complaint" shall mean any complaint by a female or African-American associate asserting that: (1) any provision of this Amended Decree has been violated with respect to that associate's employment, or (2) that the associate has been the subject of Gender and/or Race Discrimination. Consistent with the definition of Gender and Race Discrimination in this Amended Decree, the phrase "covered complaint" shall not include complaints of sexual and/or racial harassment. At its election, however, Stores or any operating company may extend the operation of the internal complaint procedure to other types of complaints, including but not limited to sexual and racial harassment complaints, without broadening its obligations hereunder, which are strictly limited to complaints about Gender and Race Discrimination and compliance with this Amended Decree. The internal complaint procedure shall not preclude an associate's right to file charges with the EEOC or with state or local FEP agencies. In addition, Winn-Dixie will continue to publicize a toll-free number through which complaints, covered or otherwise, may be made.

4. Disciplinary Policy

a. The published disciplinary policies shall include the following elements:

i. A statement that gender and race discrimination in hiring, job assignment, promotion, compensation or benefits, discharge, or other employment decisions is unacceptable;

ii. A statement that it is unacceptable to retaliate against an associate for using the internal complaint procedure established herein, or for otherwise opposing Gender and/or Race Discrimination, and

iii. A statement that such alleged conduct, if substantiated, will result in appropriate discipline, up to and including discharge.

XI. DISPUTE RESOLUTION PROCEDURES

A. Unless otherwise directed by the U.S. District Court for the Middle District of Florida, or provided by the Amended Decree, either the United States District Judge or the assigned United States Magistrate Judge for the Middle District of Florida, Jacksonville Division, shall have authority to resolve all disputes arising under the Amended Decree, subject to the various limitations on enforcement, and to the pertinent enforcement standards, as set forth in this Amended Decree.

B. At the request of Class Counsel or Winn-Dixie, Class Counsel and Winn-Dixie shall confer as necessary, and the parties shall use their Best Efforts to resolve promptly any differences or any disputes regarding the interpretation or implementation of the Amended Decree, including compliance by Stores and/or an operating company or division with the Amended Decree. The parties may use the services of the mediator if they jointly agree to do so.

C. Class Counsel or Winn-Dixie shall have the right to file a motion with the Court to resolve any dispute or issue of compliance regarding any provisions of the Amended Decree, subject to the same enforcement limitations and standards set forth herein. The procedure for resolution of such issues shall be as follows:

1. If Class Counsel or Winn-Dixie has good reason to believe that a legitimate dispute exists, the initiating party or parties shall promptly give written notice to the other party or parties, including: (a) a reference to all specific provisions of the Amended Decree that are involved; (b) a specific statement of each issue; (c) a statement of the remedial action sought by the initiating party, and (d) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party;

2. Within twenty days after receiving such notice, the non-initiating party or parties shall respond in writing to the statement of facts and argument set forth in the notice and shall each provide its written position, including the facts and arguments upon which it relies in support of its position;

3. Class Counsel and Winn-Dixie shall undertake good-faith negotiations, which should include a meeting by telephone or in person and the exchange of relevant documents and/or other information, to attempt to resolve the areas of dispute or alleged noncompliance;

4. The assigned Judge of this Court, upon motion, may permit either Class Counsel or Winn-Dixie to take discovery as provided by the Federal Rules of Civil Procedure, but only as to clearly relevant and necessary documents and/or witnesses, if the Judge determines that the informal, exchange of documents or information has not been sufficient to allow either Class Counsel or Winn-Dixie to present the dispute upon a factual record adequate for the determination required hereunder;

5. If good-faith efforts to resolve the matter have failed, and after written notice of "impasse" to the non-initiating party or parties, Class Counsel or Winn-Dixie may file a motion with the Court, with a supporting brief, requesting resolution of the dispute or

the issue of non-compliance, provided, however, that such motion shall be limited to the dispute(s) and/or issues(s) as to which the “meet and confer” provisions herein have been exhausted;

6. The non-moving party or parties will have fifteen days to respond to any such motion. Reply pleadings to such response are permitted only by consent of the opposing party or by specific leave of the Court, and

7. The Court shall attempt within fifteen days after filing of the final brief to resolve the dispute and may schedule a hearing or other proceeding, which any party may attend telephonically unless otherwise ordered by the Court, to resolve the matter.

D. The provisions of this Section do not prevent Class Counsel or Winn-Dixie from promptly bringing an issue before the United States District Judge in the Middle District of Florida (Jacksonville Division) when exigent facts and circumstances require immediate Court action to prevent a serious violation of the terms of this Amended Decree, which otherwise would be without meaningful remedy. The moving papers shall explain the facts and circumstances that allegedly necessitate immediate action by the U.S. District Court for the Middle District of Florida (Jacksonville Division). If any such matter is brought before the U.S. District Court for the Middle District of Florida (Jacksonville Division) requesting immediate Court action, the opposing party or parties shall be provided with appropriate actual notice, and an opportunity to be heard in opposition to the motion; pursuant to the Local Rules of the Court and the Federal Rules of Civil Procedure. The Court in its discretion may set such procedures for emergency consideration as are appropriate to the particular facts and circumstances, but no such matter may be conducted on an ex parte basis.

XII. JOB REQUEST SYSTEM AND JOB POSTING PROCEDURES

A. Purposes of the Job Request System and Job Posting Procedures

The purposes of the Job Request System (“JRS”) and Job Posting Procedures (“JPP”) include the following: (i) to provide information to operations management of Stores and the retail operating companies when making their respective promotion and associate development decisions; (ii) to provide a systematic retail operating company method, consistent with equal employment opportunity, for associates to make informed and documented decisions about their career preferences; (iii) to provide a systematic retail operating company framework, consistent with equal employment opportunity, within which Stores and the retail operating companies will incorporate such associate preferences into its retail store promotion and associate development decisions.

B. Continued Use of the Job Request System and Job Posting Procedures

Winn-Dixie shall continue to use JRS and JPP consistent with the parameters of Section XII.A of this Amended Consent Decree. Winn-Dixie’s JRS and JPP shall:

1. Allow the posting of all retail positions (except those in pharmacy) below the District Manager level for three days;
2. Include annual job fairs and permit five (5) job requests per Associate per year;
3. Exclude all pharmacy positions and any positions in pilot programs.

XIII. WINN-DIXIE DIVERSITY AWARDS

A. Stores and each of its retail operating companies and divisions will continue to distribute monetary awards, designated the “Winn-Dixie Diversity Award,” to be awarded no

more frequently than annually to a District Manager in each retail operating company (division) who, in the judgment of that organization, has demonstrated success in the following areas:

(i) meeting equal opportunity goals, described in this Amended Consent Decree, in the stores under his or her supervision;

(ii) maintaining a working environment which is free from discrimination and which values diversity; and

(iii) achieving both relative and absolute economic success within his or her area of responsibility.

B. Similar awards shall be made to the best-performing Store Director in each District, to the best performing Human Resources Manager, and to the best-performing operating company or division President.

C. Awards made under this Section shall be limited to a total of \$500,000 of the remaining funds.

XIV. MONETARY AWARDS PROCEDURE

A. Monetary Awards to Class Members Under Original Consent Decree

1. Winn-Dixie has attempted to distribute the entire monetary award to members of the Settlement Class defined in Section VII.A. of the original Consent Decree. As of May, 2007, however, approximately \$2,553,442 in checks, unredeemed debit and/or discount cards distributed to the Class will expire, with no provision for the allocation of these uncollected funds.

2. To encourage and compensate female and African-American employees for being promoted into positions where they arguably have been underutilized and for which they claim to have been deterred and/or excluded, under the original Consent Decree Winn-Dixie agreed to pay bonuses and reimburse specified moving expenses totaling Eleven Million Dollars (\$11,000,000.00). A cumulative total of Five Hundred Thousand Dollars (\$500,000.00) of this amount was earmarked for reimbursement of specified moving expenses. A total of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00) was reserved for bonuses, one-third in debit cards (\$3,500,000.00) and two-thirds (\$7,000,000.00) in checks, less required withholding. As of May, 2007, approximately \$794,588 remained in unused funds set aside for promotion achievement awards for female and African-American employees who achieve certain promotions (*see* Section XV.A.3. and XV.C. of Consent Decree) and/or for moving expense reimbursement payments for certain employees.

B. Use of Remaining Funds

Upon expiration of the original term of the Consent Decree, approximately \$3,384,030 will remain in unused funds set aside under the Consent Decree. Of these remaining funds, Stores shall use up to \$1,000,000 to update the existing Job Request System ("JRS") and Job Posting Procedures ("JPP") in a manner that updates those systems to a goal of industry best-in-class human resources systems. Any modifications to JRS or JPP must be consistent with the Goals of the Consent Decree and this Amended Consent Decree. Stores shall use up to \$500,000 for Winn-Dixie Diversity Awards, as described in Section XIII, above. The remaining funds shall be used for monetary awards described in Section XIV.C.

C. Continued Monetary Awards to Class Members Under Amended Decree

1. During the term of this Amended Decree, Winn-Dixie agrees to continue to pay promotional achievement awards to African-American and female employees promoted to the following positions, allocated in gross amount as set forth below and subject to required withholding:

Position	Award Amount	Term
Meat & Seafood Specialist	\$5,000.00	1 year(s)
Produce & Floral Specialist	\$5,000.00	1 year(s)
Center Store Specialist	\$5,000.00	1 year(s)
Deli & Bakery Specialist	\$5,000.00	1 year(s)
Retail Systems Specialist (Region Systems)	\$5,000.00	1 year(s)
District Manager	\$5,000.00	1 year(s)
Customer Service Specialist	\$5,000.00	1 year(s)
Front-End District Supervisor	\$2,000.00	1 year(s)
Store Director	\$2,500.00	3 year(s)
Co-Director	\$2,500.00	1 year(s)
Center Store Manager	\$2,500.00	1 year(s)
Front-End Manager	\$1,500.00	1 year(s)
Inventory Control Manager	\$1,000.00	3 year(s)
In-Store Coordinator	\$1,000.00	4 year(s)
Liquor Store Manager	\$1,000.00	3 year(s)
Field Training Coordinator	\$2,000.00	1 year(s)

To receive such an award, an employee must serve for twelve months in the position and

receive an evaluation of at least 3.75 on the current performance appraisal system.¹ Winn-Dixie agrees to evaluate each such person not later than promptly after the end of the twelve-month period.

To the extent a person performs below the level of 3.75 (or the subsequent system actual median) in the first twelve months, they shall retain the ability to earn up to the maximum number of yearly awards by performance at the required level. These awards will be paid in addition to all other salary, benefits and other bonuses available to the employee. Employees shall be eligible for successive levels of awards and shall receive the higher level, but not both, for bridged service where at least three months has been spent in the higher level job. The value of the bonuses will be paid one-third in debit cards and two-thirds in checks, less required withholding. Once Employees have earned a promotional award in a particular position, he/she will no longer be eligible for the award if they return to the position thereafter. Such awards shall be paid until the remaining funds set aside under the Consent Decree (less up to \$1,000,000 to update Stores' JRS and JPP and less \$500,000 for Winn-Dixie Diversity Awards) are exhausted, or until the expiration of this Amended Consent Decree.

2. Moving Expenses. During the term of the Amended Decree, Winn-Dixie agrees to reimburse specified moving expenses to female and African-American employees who must move their primary residences more than fifty miles to accept a position of Store Director or higher position up to a District Manager-level position. Winn-Dixie will pay specified actual, documented expenses to a maximum of Five Thousand Dollars (\$5,000.00) for such a move. The payment will be made in a check under Winn-Dixie's

¹ If the system changes during the Decree, above the new median actual rating will be the substitute requirement.

move expense reimbursement policy. Class members otherwise eligible for reimbursement shall receive whichever is the greater of the two. Such payments shall be made until the remaining funds set aside under the Consent Decree (less up to \$1,000,000 to update Stores' JRS and JPP and less \$500,000 for Winn-Dixie Diversity Awards) are exhausted, or until the expiration of this Amended Consent Decree.

D. Allocation of Payments

This settlement has established several types of payments which have different tax effects. The promotional achievement awards provided for in Section XIV.C.1. shall be 75 percent (75%) compensatory damages and 25 percent (25%) backpay. The moving expenses are designed to reimburse specified expenses that are actually incurred up to the prescribed Five Thousand Dollars (\$5,000.00) limit.

XV. Reporting Schedule

By June 15 of each year throughout the Term of this Amended Consent Decree, Winn-Dixie shall provide annual Progress Reports for the preceding calendar year to Class Counsel concerning Winn-Dixie's compliance with the Amended Decree's requirements. Winn-Dixie shall provide said reports except for good cause shown.

A. Contents of the Annual Progress Reports

The Annual Progress Reports shall include the following information:

1. A description and accounting of any revisions to JPP/JRS pursuant to XIV. B. of this Amended Consent Decree except those of an administrative nature.
2. A description of any revisions to any retail store job descriptions that are implemented during the reporting period, including the addition of any new job classifications.

3. A description of any revisions to the Policy Prohibiting Harassment, Including Sexual and Racial Harassment, attached as Exhibit "B" to the Original Consent Decree.

4. A chart or charts displaying the number of associates who received Winn-Dixie Diversity Awards during the current reporting period identified by operating entity, district, store, position, sex, and race (as applicable).

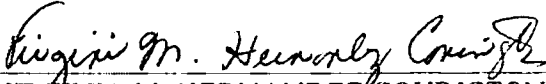
6. A chart or charts displaying the number of associates who received promotional awards during the current reporting period identified by operating entity, district, store, position, sex, and race (as applicable).

E. Address for Reporting

All reports and documents that Equitable is required to deliver or serve on Class Counsel shall be mailed to:

Robert F. Childs, Jr.
Wiggins, Childs, Quinn & Pantanzis, LLC
301 19th Street North
Birmingham, Alabama 35203

DONE AND ORDERED, at Jacksonville, Florida, this 27th day of June, 2007.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of record