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9-19-2006

## Equal Employment Opportunity Commission et al., v. Love's Travel Stops & Country Stores, Inc.,

Judge Aleta Trauger

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## Equal Employment Opportunity Commission et al., v. Love's Travel Stops & Country Stores, Inc.,

### Keywords

EEOC, Love's Travel Stops and Country Stores Inc., 3:05-cv00768, Consent Decree, Hostile Work Environment, Disparate Treatment, Sexual Harassment, Retaliation, Termination, Sex, Female, Retail, Title VII, Employment Law

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY** )  
**COMMISSION,** )  
 )  
 **Plaintiff,** )  
 )  
**and** )  
 )  
**TRACIE LEWELLEN,** )  
 )  
 **Intervening Plaintiff,** )  
 )  
**and** )  
 )  
**MICHELLE MEDINA,** )  
 )  
 **Intervening Plaintiff,** )  
 )  
**v.** )  
 )  
**LOVE'S TRAVEL STOPS & COUNTRY** )  
**STORES, INC.,** )  
 )  
 **Defendant.** )

**Civil Action No.: 3:05-cv-00768**

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**CONSENT DECREE**

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This action was instituted by the Equal Employment Opportunity Commission (hereinafter the "Commission") pursuant to §706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq., and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a, against Defendant, Love's Travel Stops and Country Stores, Inc., (hereinafter the "Defendant").

The Amended Complaint alleges that Defendant violated Section 703(a) of Title VII, 42 U.S.C. § 2000e, *et seq.*, by discriminating against Michelle Medina, Tracie Lewellen and other

female employees because of sex (female) by subjecting them to sexual harassment in the workplace and by discharging Ms. Medina and Ms. Lewellen because of sex and in retaliation for opposing unlawful discrimination. Ms. Medina and Ms. Lewellen subsequently exercised their rights to intervene in this action pursuant to 42 U.S.C. § 2000e-5(f)(1). Defendant has denied all allegations brought by the Commission, Ms. Medina and Ms. Lewellen. The parties, being desirous of settling this action, stipulate to the jurisdiction of this Court.

This Consent Decree does not and shall not constitute a finding upon the merits of the case or an admission by Defendant of any violation of Title VII or any other law, rule, or regulation dealing with or in connection with equal employment opportunities. All parties have consented to the entry of this Decree to avoid the burdens of further litigation.

In the event this proposed Consent Decree is not approved or does not become final, it shall not be admissible in evidence in any subsequent proceeding.

The Court has reviewed the terms of the proposed Consent Decree in light of the applicable laws and regulations, the statements and representations of counsel for all parties, and hereby approves the Consent Decree.

**NOW, THEREFORE,** the Court being fully advised in the premises, it is hereby **ORDERED, ADJUDGED AND DECREED:**

#### **I. JURISDICTION**

The United States District Court for the Middle District of Tennessee, Nashville Division, has jurisdiction over the parties and subject matter of this lawsuit, and will retain jurisdiction over this decree for purposes of enforcement and dispute resolution.

## **II. SCOPE AND DURATION OF DECREE**

A. This Decree resolves all claims and issues arising out of Charge Nos. 253-2004-02864 and 250-2004-02896, the Commission's Amended Complaint, the Complaint in Intervention by Michelle Medina and the Complaint in Intervention by Tracie Lewellen. This agreement shall pertain only to matters arising from the aforementioned charges and Complaints and shall not be in any manner dispositive of any other charge pending before an office of the Commission.

B. The provisions of this Consent Decree will be effective on the date the Decree is entered by the Court and shall continue to be effective and binding upon the parties to this action for a period of two years from the date of the entry of this Decree.

## **III. INJUNCTIVE RELIEF**

A. Defendant, its officers, agents, employees, and all persons acting in concert with Defendant agree not to engage in any employment practice which has the purpose or effect of discriminating against any employee on the basis of sex pursuant to Title VII of the Civil Rights Act of 1964, as amended.

B. In accordance with 42 U.S.C. § 2000e, and all other applicable federal and state statutes, Defendant, its officers, agents, employees, and all persons acting in concert with Defendant agree not to retaliate against any person because that person has complained of or otherwise opposed an allegedly discriminatory employment policy or practice, filed a charge with the EEOC or any state or local fair employment practices agency, or participated or cooperated in any proceeding under Title VII, including, but not limited to, the initiation, investigation, litigation, or administration of this case or this Consent Decree.

#### **IV. GENERAL RELIEF**

A. Defendant shall review and revise as necessary its anti-harassment policy to insure that the policy disseminated to employees states at a minimum:

1. A strong and clear commitment to a workplace free of gender and sexual harassment;
2. A clear and complete definition of gender and sexual harassment;
3. A clear encouragement of persons who believe they have been harassed to report it;
4. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;
5. A statement that, to the extent possible, confidentiality will be observed for persons who report their belief that they have been harassed;
6. An assurance of non-retaliation for persons who report their belief that they have been sexually harassed, and for anyone who participates in an investigation of such a report;
7. A declaration that harassment by all persons, including management officials, supervisors, vendors, suppliers, third parties, and customers, is prohibited and will not be tolerated;
8. The identification of a specific corporate manager, with telephone number and job title, to whom employees who have been harassed can report the harassment;
9. Assurances that Love's will investigate harassment allegations promptly, fairly and effectively, and that appropriate corrective action will be taken by Love's to eradicate sexual harassment.

B. This policy shall continue to be disseminated to all new employees of Defendant when hired. Each new employee will be required to read and sign an acknowledgement of this policy, and Love's will continue to post the policy in a prominent place frequented by and readily accessible to employees.

C. Defendant shall retain a qualified consultant with specialized knowledge of employment discrimination law to review and, if necessary, supplement its current mandatory Love's University general manager training on Love's policies and procedures for eliminating and preventing gender discrimination, sexual harassment, and retaliation in the workplace. This

training shall be mandatory for new general managers and shall be incorporated in the Love's University training agenda within ninety (90) days of entry of this Decree.

D. The training shall include (1) the subject of what constitutes gender and sexual harassment and retaliation; (2) that Title VII is violated by gender and sexual harassment and retaliation with respect to any terms, conditions or privileges of employment; (3) how to prevent gender and sexual harassment and retaliation and provide a work environment free from unlawful discrimination; and (4) to whom and by what means employees may complain if they feel they have been subjected to gender or sexual harassment or retaliation in the workplace.

E. Defendant shall maintain in its Human Resources Department a record of each person trained pursuant to paragraph C.

#### **V. INDIVIDUAL RELIEF**

A. This Decree is intended to resolve all claims of the Commission and Plaintiff Intervenors against Defendant, including alleged, back pay, front pay, compensatory and punitive damages, interest, injunctive relief (including, but not limited to, reinstatement), attorneys' fees and costs arising out of the issues in this lawsuit.

B. In order to resolve all issues and claims of employment discrimination and alleged damages to Ms. Jamie Edwards which arose or could have arisen from the Amended Complaint filed by the Commission, Defendant agrees to pay \$42,000.00 (Forty Two Thousand Dollars) in compromise of the disputed claim within ten (10) working days of entry of this Decree.

C. In order to resolve all issues and claims of employment discrimination and alleged damages to Ms. Catrina Elvington which arose or could have arisen from the Amended Complaint filed by the Commission, Defendant agrees to pay \$27,000.00 (Twenty Seven

Thousand Dollars) in compromise of the disputed claim within ten (10) working days of entry of this Decree.

D. In order to resolve all issues and claims of employment discrimination and alleged damages to Ms. Tracie Lewellen which arose or could have arisen from Charge No. 253-2004-02896, the Amended Complaint filed by the Commission, and the Complaint in Intervention filed by Ms. Lewellen individually, Defendant agrees to pay \$112,250.00 (One Hundred Twelve Thousand Two Hundred Fifty Dollars) in compromise of the disputed claim within ten (10) working days of entry of this Decree.

E. In order to resolve all issues and claims of employment discrimination and alleged damages to Ms. Michelle Medina which arose or could have arisen from Charge No. 253-2004-02864, the Amended Complaint filed by the Commission, and the Complaint in Intervention filed by Ms. Medina individually, Defendant agrees to pay \$72,250.00 (Seventy Two Thousand Two Hundred Fifty Dollars) in compromise of the disputed claim within ten (10) working days of entry of this Decree.

F. A portion of the above amounts paid to Ms. Lewellen and Ms. Medina shall be attributable to alleged back pay, subject to standard withholdings, and for which a Form W-2 shall issue. The remainder shall be reported on IRS Form 1099, and the recipients of such proceeds shall be responsible for tax ramifications, if any, as a result of receiving such funds.

## **VI. OTHER RELIEF**

A. Defendant agrees to provide Michelle Medina, Tracie Lewellen, Jamie Edwards and Catrina Elvington neutral reference letters substantially identical to the form attached as Exhibit A. Medina, Lewellen, Edwards and Elvington agree to refer any potential employers to Love's Human Resources Department (1-800-388-0983 #6790) for verification of their



employment at Love's. No mention of the charges of discrimination filed by Ms. Medina or Ms. Lewellen, the participation of Jamie Edwards or Catrina Elvington, or the action filed by the Commission on behalf of these aggrieved employees shall be disclosed as part of any job reference. Pursuant to its existing policy, no individual store employee is authorized by Love's to provide job reference information.

B. Defendant agrees that the personnel files of Mses. Medina, Lewellen, Edwards and Elvington shall not contain: (a) references to any charge of discrimination filed against Defendant that formed the basis of this action; (b) references to their participation in this action; (c) any derogatory document which relates to complaints or investigation of complaints of sexual harassment.

#### **VII. NOTICE**

A. At all times Defendant shall continue to post and maintain at each of its store locations, in a place conspicuous and accessible to all applicants and employees, the poster summarizing pertinent provisions of Title VII required by Section 711 of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-10(a).

B. Defendant shall post and maintain at its Christiana store location (#314), in a place conspicuous and accessible to all employees, the notice attached hereto as Exhibit B for the term of this Decree.

#### **VIII. REPORTING REQUIREMENTS**

A. Within one hundred twenty (120) days of entry of this Decree, Defendant shall provide the Commission with written verification that the requirements under Section IV (General Relief) have been satisfied.

B. Copies of the checks (front and back) to Ms. Edwards and Ms. Elvington shall be mailed to Celia S. Liner, Senior Trial Attorney for the Equal Employment Opportunity Commission, 1407 Union Avenue, Suite 621, Memphis, Tennessee 38104.

C. Love's will submit a report to Celia Liner at the address indicated above, six months after the entry of this decree, and every six months thereafter during the duration of this decree. Each report will describe all complaints received during the six month reporting period from employees of Love's working in the State of Tennessee concerning sexual harassment at work, including the name, home address, and home telephone number (if known) of each employee who complained, the nature of the complaint, what action, if any, was taken in response to the complaint, and if no action was taken an explanation of why no action was taken.

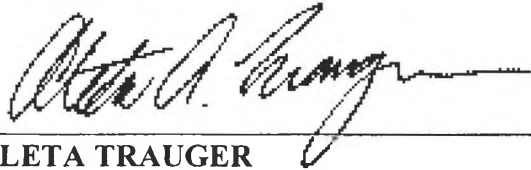
#### **IX. ENFORCEMENT**

If at any time during the duration of this Decree it is alleged that a violation of its terms has occurred, or a dispute arises over its interpretation, prior to taking any action seeking judicial relief to enforce this Decree or resolve any dispute over compliance with its terms, the party claiming an alleged failure to comply will notify the other party in writing of the alleged failure, will afford at least twenty (20) days within which to respond to and/or cure any alleged non-compliance, and will attempt in good faith to informally resolve those concerns. Notice shall be made to undersigned counsel for Defendant and also to Carl Martincich, Director of Human Resources, Love's Travel Stops and Country Stores, Inc., 10601 North Pennsylvania, Oklahoma City, OK 73120.

**X. COSTS**

The parties shall bear their own costs in this action.

19th                      September  
SO ORDERED THIS \_\_\_ DAY OF \_\_\_\_\_, 2006.

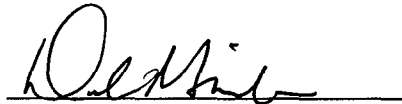


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**ALETA TRAUGER  
UNITED STATES DISTRICT JUDGE**

**BY CONSENT:**

**FOR DEFENDANT:**



**DELAINE R. SMITH**  
FORD & HARRISON, LLP  
795 Ridge Lake Blvd.  
Suite 300  
Memphis, Tennessee 38120  
(901) 291-1500

**FOR PLAINTIFF LEWELLEN &  
FOR PLAINTIFF MEDINA:**



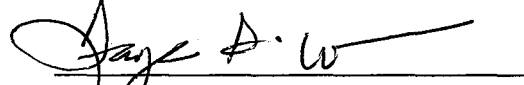
**DONNA L. ROBERTS**  
**BARBARA J. MOSS**  
STITES & HARBISON  
424 Church St., Suite 1800  
Nashville, Tennessee 37219  
(615) 782-2200

**FOR PLAINTIFF EEOC:**

**RONALD COOPER**  
General Counsel

**JAMES L. LEE**  
Deputy General Counsel

**GWENDOLYN YOUNG REAMS**  
Associate General Counsel



**FAYE A. WILLIAMS,**  
TN Bar No. 011730  
Regional Attorney



**TERRY BECK,** TN Bar No. 9346  
Supervisory Trial Attorney



**CELIA S. LINER,** AR Bar. No. 90183  
Senior Trial Attorney  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
1407 Union Avenue, Suite 621  
Memphis, Tennessee 38104  
(901) 544-0075

To Whom It May Concern:

Ms. \_\_\_\_\_ was employed with Love's Travel Stops & Country Stores, Inc. from (Date of Hire) until (Date of Termination) at our store in Christiana, Tennessee. Her last job was that of (job title). Company policies do not permit us to give out any other information concerning Ms. \_\_\_\_\_'s employment.

Very truly yours,

[Signature]

Title: \_\_\_\_\_

Love's Travel Stops & Country Stores, Inc.

**EXHIBIT A**

NOTICE

This Notice is being posted as part of an agreement between the United States Equal Employment Opportunity Commission and Love's Travel Stops & Country Stores, Inc.

Federal law requires an employer to maintain a workplace free from harassment based on sex (gender), as well as race, color, religion, national origin, age (40 or older), or disability with respect to working environment or terms and conditions of employment. It is also a violation of Title VII of the Civil Rights Act, 42 U.S.C. §2000e, *et seq.*, to subject any employee to sexual harassment.

Love's Travel Stops & Country Stores, Inc. will comply with this Federal law in all respects and will not take any action against employees or applicants for employment because they have exercised their rights under the law.

Love's Travel Stops & Country Stores, Inc. does not tolerate or condone sexual harassment against any employee or applicant for employment. Sexual harassment is a violation of company policy as well as federal law. Violation of this company policy by anyone employed by Love's Travel Stops & Country Stores, Inc. will result in disciplinary action up to and including termination.

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Title:  
Love's Travel Stops & Country Stores, Inc.

**EXHIBIT B**