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EEOC v. Kobra Associates, Inc. d/b/a Jack in the Box

Judge Morrison C. England Jr.

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EEOC v. Kobra Associates, Inc. d/b/a Jack in the Box

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1 William R. Tamayo, SBN (CA) 084965
2 David Offen-Brown, SBN (CA) 063321
3 Dana C. Johnson, SBN (CA) 187341
4 U.S. EQUAL EMPLOYMENT
5 OPPORTUNITY COMMISSION
6 350 The Embarcadero, Suite 500
7 San Francisco, CA 94105-1260
8 Telephone: (415) 625-5697
9 Facsimile: (415) 625-5657
10 E-mail: dana.johnson@eoc.gov

11 Attorneys for Plaintiff EEOC

12 Pankaj Bhatia
13 BHATIA & ASSOCIATES
14 445 South Figueroa Street, Suite 2600
15 Los Angeles, CA 90071
16 Telephone: (213) 426-2112
17 Facsimile: (213) 426-2146
18 E-mail: pbbhatia@bhatialaw.com

19 Attorneys for TBS Foods, Inc.

20
21 **UNITED STATES DISTRICT COURT**
22 **EASTERN DISTRICT OF CALIFORNIA**
23

24 U.S. EQUAL EMPLOYMENT
25 OPPORTUNITY COMMISSION,

26 Plaintiff,

27 vs.

28 KOBRA ASSOCIATES, INC. d/b/a
JACK IN THE BOX,

Defendant.

Case No.: 2:09-CV-03546-MCE-JFM

CONSENT DECREE AND ORDER

1 Plaintiff U.S. Equal Employment Opportunity Commission (“Commission”
2 or “EEOC”) brought this lawsuit under Title VII of the Civil Rights Act of 1964
3 and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment
4 practices on the basis of sexual harassment and to make whole Tammy Bright and
5 other similarly situated women, who were aggrieved by the alleged unlawful
6 practices. Plaintiff EEOC alleged that defendant Kobra Associates, Inc. d/b/a Jack
7 in the Box (“Defendant Kobra”) unlawfully subjected Bright and similarly situated
8 women to a hostile work environment because of their sex, female. TBS Group,
9 (“TBS” or the “Company”) is in the process of acquiring Defendant Kobra’s Store
10 513, located at 6729 Skyway Street, Paradise, CA 95969 (“Store 513”), and
11 intends to continue to operate Defendant’s Store 513, which is the store where
12 Bright and the similarly situated women had been employed. TBS is acquiring
13 Store 513 free and clear of all claims, interests or encumbrances through a sale
14 approved by the Bankruptcy Court, with the sole exception of this Consent Decree
15 (“Decree”). TBS consents to this Court’s jurisdiction during the term of this
16 Decree solely for purposes of compliance with this Decree.

17 In the interest of resolving this matter and as a result of comprehensive
18 settlement negotiations, the Commission and TBS (hereinafter “Parties to the
19 Decree”) have agreed that the EEOC’s claim for non-monetary injunctive relief in
20 connection with the above-captioned lawsuit (the “Lawsuit”) should be finally
21 resolved by entry of this Decree. This Decree shall not constitute an adjudication
22 of or a finding on the merits of the Lawsuit. Nor does it resolve the EEOC’s
23 claims for monetary relief against Defendant Kobra, which claims, once liquidated,
24 will be administered through the bankruptcy court proceedings.

25 This Decree constitutes a complete resolution between the Parties to the
26 Decree of all claims that were made or could have been made by the Commission
27 against TBS as they relate to successor liability on behalf of Ms. Bright or
28 similarly situated women based upon Ms. Bright’s charge of discrimination, EEOC

1 Charge No. 550-2007-02024. This Decree does not, however, prevent or affect the
2 filing or resolution of any charges filed after entry of this Decree. Currently, the
3 EEOC knows of no pending charges against TBS.

4 This Decree comprises the full and exclusive agreement of the Parties to the
5 Decree with respect to the matters discussed herein. No waiver, modification or
6 amendment of any provision of this Decree shall be effective unless made and
7 approved in writing by the Parties to the Decree, and any substantive change,
8 modification or amendment of any provision of this Decree shall also require
9 approval by the Court.

10 The Court has reviewed this consent decree in light of the pleadings, the
11 record herein, and now approves this consent decree. THEREFORE, IT IS
12 ORDERED, ADJUDGED AND DECREED:

13 GENERAL PROVISIONS

14 1. This Court has jurisdiction over the subject matter and the
15 Parties to this Lawsuit. This Court will retain jurisdiction over this Decree for all
16 purposes until the expiration of the Company's obligations as set forth herein.

17 2. This Decree is final and binding upon the Parties to the Decree,
18 their successors and assigns.

19 3. The Parties to the Decree shall each be responsible for its own
20 costs and attorneys' fees.

21 GENERAL INJUNCTIVE RELIEF

22 4. Retaliation: TBS and its officers, agents, managers (including
23 supervisory employees), successors and assigns, are enjoined from engaging in,
24 implementing or permitting any action with the purpose of retaliating against
25 Tammy Bright because she (a) opposed any practice of harassment made unlawful
26 under Title VII, (b) filed a Charge of Discrimination alleging any such practice, (c)
27 participated in the EEOC's investigation into claims of harassment, or (d) was
28 identified as a possible witness in connection with this Lawsuit. If the EEOC

1 believes that TBS has violated this provision, it will provide TBS with written
2 notice and a sixty (60) day period in which to engage in good faith efforts to
3 resolve the issue, as set forth in Paragraph 15a, prior to petitioning the Court.

4 SPECIFIC INJUNCTIVE RELIEF

5 5. Zero-Tolerance

6 The Company affirms the following Statement of Zero-Tolerance
7 Policy and Equality Objectives:

8 “The Company is firmly committed to maintaining a zero-tolerance
9 policy concerning discriminatory harassment and retaliation against individuals
10 who report harassment in the company’s workplace; to reasonably swiftly and
11 appropriately respond to any acts of harassment and retaliation of which the
12 Company becomes aware; to impose discipline designed to strongly deter future
13 acts of harassment or retaliation; and to conduct training, distribute at hire the
14 Company’s policy prohibiting harassment, and train managers and supervisors on
15 their duties regarding workplace harassment, in order to ensure tolerance, respect
16 and dignity for all employees.”

17 6. EEO and Harassment Policies

18 TBS shall present to the EEOC its EEO & harassment policies, within
19 sixty (60) days of signing the Decree, such that the policies will: (i) include
20 definitions of discriminatory harassment; (ii) include examples to supplement the
21 definitions of sexual harassment; (iii) provide for appropriate discipline and/or
22 corrective action for incidents of discriminatory harassment designed to deter
23 future acts of harassment; (iv) include strong non-retaliation language; (v) provide
24 for appropriate discipline for incidents of retaliation designed to deter future acts of
25 retaliation; (vi) provide express options, as stated in the employee handbook, for
26 making oral or written complaints of harassment and/or retaliation; (vii) provide
27 for a prompt investigation after a complaint is made or received and for appropriate
28 remedial action, if warranted, to be taken upon conclusion of an investigation; and

1 (viii) indicate that, upon the conclusion of the investigation of a complaint, the
2 Company will communicate to the complaining party the results of the
3 investigation and that remedial action was taken, if any. TBS is not required by
4 this Decree to inform the complaining party of the nature of the discipline
5 imposed, if any.

6 The Company shall ask each person who receives the policies to sign
7 an acknowledgment that they have received and read the policy.

8 7. Complaint Procedure

9 a. The Company shall implement a complaint procedure designed
10 to encourage employees to come forward with complaints about violations of its
11 harassment policy. As part of the policy, the Company shall provide its employees
12 with convenient, confidential and reliable mechanisms for reporting incidents of
13 harassment and retaliation. The Company's complaint procedure and harassment
14 policy shall notify employees that they can lodge a complaint with their immediate
15 supervisor, or a Company Corporate Officer or designee, and shall provide the
16 name and telephone numbers for such individuals. Contact information for the
17 Company Corporate Officer or designee shall also be continuously posted at Store
18 513.

19 b. The Company shall undertake reasonable efforts to maintain
20 anonymity of complainants and confidentiality of complaints in a manner
21 consistent with applicable law.

22 8. Training of Employees

23 The Company shall provide mandatory annual anti-harassment
24 training for each year during the term of the Decree to all employees who are
25 employed at Store 513 at the time of the training. Failure of an employee to attend
26 is only excused for legitimate reasons. TBS will not be in default of the Decree if
27 it substantially complies with this provision. The purpose of said training shall be
28 to give participants an understanding of harassment issues, particularly sexual

1 harassment, including but not limited to what constitutes sexual harassment,
2 sources of legal protection for sexual harassment victims, the employees'
3 obligation to report sexual harassment, the employer's obligation to take
4 preventive, investigative and remedial action with respect to harassment
5 complaints, and to review company policies (including disciplinary policies) and
6 practices related to sexual harassment and retaliation with Company employees.

7 9. Training Logistics

8 The content, persons providing training, method of training and size
9 of training under Paragraph 8, above, is subject to review by the EEOC. The
10 EEOC will consider qualified Jack in the Box, Inc. personnel as trainers to perform
11 this function. The annual trainings will be conducted by live trainers. The
12 Company agrees to provide the qualifications of the trainer(s) and a description of
13 each training program and the date, time and location of the training to counsel for
14 the Commission no later than twenty (20) days before each of the training
15 programs are scheduled to be held.

16 10. Acknowledgment of Training Attendance

17 All persons attending mandatory anti-harassment training pursuant to
18 this Decree shall sign an acknowledgment of their attendance at the training and
19 the date thereof. The Company shall retain these acknowledgments and provide
20 the EEOC with a copy thereof each year that the Decree remains in effect.

21 11. Reports to the Commission

22 Within forty-five (45) days of completion of the training required by
23 this consent decree, the Company will send the EEOC verification of its
24 completion of harassment training for its employees.

25 12. Harassment Complaint Reports

26 During the term of the Decree, TBS shall provide to the EEOC reports
27 concerning internal complaints of harassment containing the following
28 information: (1) a description of the complained-of events, (2) the name of the

1 complaining employee, and (3) the resolution that TBS reached in connection with
2 the complaint. At the EEOC's request, TBS shall provide the EEOC with the
3 complaining party's last known telephone number or shall provide the EEOC with
4 a statement signed by the complaining party that he or she does not want his or her
5 telephone number to be provided to the EEOC.

6 On the twenty-fifth day of January and June of each year during the duration
7 of this Decree, TBS shall mail to counsel for the Commission a report containing
8 the above information.

9 13. Policies Designed to Promote Supervisor Accountability

10 a. Communication of Potential Discipline for Engaging in
11 Harassment

12 TBS shall impose appropriate discipline, up to and including
13 termination, suspension without pay or demotion, upon any supervisor or manager
14 who engages in harassment or knowingly permits any such conduct to occur in his
15 or her work area or among employees under his or her supervision, or who
16 retaliates against any person who complains or participates in any investigation or
17 proceeding concerning such conduct. The Company shall communicate this policy
18 to all of its supervisors and managers via the employee handbook.

19 b. Communication of Duty to Monitor Worksite.

20 The Company shall advise all managers and supervisors via the
21 employee handbook of their duty to monitor their work areas to ensure employee
22 compliance with the company's anti-harassment policy, and to report any incidents
23 and/or complaints of harassment and/or retaliation of which they become aware to
24 the individuals charged with handling such complaints.

25 14. Notice of Decree to Potential Purchasers

26 In the event that TBS sells Store 513 during the term of the Decree, it shall
27 provide the purchaser with a copy of the Decree at least fifteen (15) days before the
28 sale takes place.

1 15. Retention of Jurisdiction and Expiration of Decree

2 a. For purposes of enforcing the provisions of this Decree, and
3 pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 551 U.S. 375, 381-82
4 (1994) and *Flanagan v. Arnaiz*, 143 F.3d 540, 543-44 (9th Cir. 1998), this Court
5 will retain jurisdiction of the instant lawsuit until the expiration of the Decree.
6 This Decree shall terminate two (2) years from the date of entry by the Court,
7 unless the Commission petitions this Court for an extension of the Decree because
8 of substantial noncompliance by the Company. If the Commission determines that
9 the Company has not complied with the Decree, the Commission will provide
10 written notification of the alleged breach to the Company, and will not petition the
11 Court for enforcement sooner than sixty (60) days after providing written
12 notification. The sixty-day period following written notice shall be used by the
13 Parties to the Decree for good faith efforts to resolve the issue. If the Commission
14 petitions the Court and the Court finds the Company to be in substantial violation
15 of the terms of the Decree, the Court may extend this Decree.

16 b. Except as provided in the preceding paragraph 9, two (2) years
17 after the entry of this Decree, this lawsuit will be deemed to have been dismissed
18 with prejudice, provided that the Company has complied substantially with the
19 terms of this Decree. The Company will be deemed to have complied substantially
20 if the Court has not made any findings or orders during the term of this Decree

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1 that the Company has failed to comply with any of the terms of this Decree. The
2 Decree will automatically expire without further Court Order.

3
4 Dated: May 5, 2010

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

6 By: /s/
7 William R. Tamayo

8 Attorney for Plaintiff EEOC

9
10 Dated: _____, 2010

TBS FOODS, INC.

11 By: /s/
12 Ben Nematzadeh


13 President, TBS Foods, Inc.

14
15 **ORDER**

16 In accordance with the parties' stipulation, the foregoing Consent Decree is
17 hereby approved. The instant matter is hereby dismissed, with prejudice, and the
18 Clerk of Court is directed to close the file. The pending Motions to Dismiss
19 (Docket No. 6) and to stay these proceedings (Docket No. 12) are accordingly
20 denied as moot. Pursuant to the terms of the Consent Decree, however, the Court
21 will retain jurisdiction over this matter for a period of two (2) years to ensure
22 compliance with the terms of the settlement reached between the parties as set
23 forth above.

24 **IT IS SO ORDERED.**

25 Dated: May 18, 2010

26 
27 MORRISON C. ENGLAND, JR.
28 UNITED STATES DISTRICT JUDGE