

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

CASE NO.: 11-CIV-80766-DMM

UNITED STATES EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff, and)
)
STACY SORENSON)
)
Plaintiff-Intervenor,)
)
v.)
)
441 S.B. LLC, d/b/a Hurricane Grill & Wings)
)
Defendant, and)
)
Hurricane Wings Management of)
Royal Palm Beach, LLC.)
)
Defendant.)
_____)

CONSENT DECREE

INTRODUCTION

1. This Consent Decree (“Decree”) is made and entered into by the Equal Employment Opportunity Commission (“the Commission”), Defendant 441 S.B. LLC d/b/a Hurricane Grill & Wings (“441 S.B.”) and Hurricane Wings Management of Royal Palm Beach, LLC. (“Hurricane”) The Commission, 441 S.B., and Hurricane are collectively referred to as the “Parties” throughout this Decree.
2. The Commission filed this action on July 5, 2011 under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, (“Title VII”) to correct unlawful employment practices on the basis of sex and retaliation, and to provide relief to

Charging Party Stacey Sorenson and a class of similarly situated females who were adversely affected by discriminatory practices. Stacey Sorenson was granted permission to intervene in this action and filed her Complaint on September 23, 2011. The Parties stipulated to adding Hurricane Wings Management of Royal Palm Beach, LLC as a party for purposes of complying with this Consent Decree due to its role as successor in interest which relates to the subject of this action and the Court's ability to accord complete relief among the existing parties.

3. Charging Party Stacey Sorenson and a class of similarly situated females worked at 441 S.B.'s Royal Palm Beach Hurricane Grill & Wings location as servers. While employed with 441 S.B., they were subjected to sexual harassment by a regular customer, Palm Beach County Sheriff's Deputy Commodore Bradford. The female servers complained to management officials but the patron's offensive conduct did not stop. 441 S.B. failed to take immediate corrective action to stop the conduct and the women were subjected to further harassment. After receiving Sorenson's complaint, management retaliated against Sorenson when it changed her schedule and terminated her without a legitimate, non-discriminatory reason. Defendant denies the allegations.
4. 441 S.B. LLC's business, located at 11071 Southern Blvd., Royal Palm Beach, FL 33411 was sold in October 2011 and is now operated by Hurricane Wings Management of Royal Palm Beach LLC, an entity unrelated to the original Defendant in this action.

DEFINITIONS

5. **Effective Date** - The Effective Date of this Decree is the date on which the Court gives final approval to the Decree by entering it on the Court docket after motion, and hearing if required.

6. **Claimants** – Individual members of the class on whose behalf the Commission is seeking relief.
7. **Class** – The class is defined as female servers that were employed at 441 S.B.’s Royal Palm Beach location since April 2009 who were subjected to a sexually hostile work environment while employed with 441 S.B. resulting from it’s failure to stop the sexual harassment directed toward them by regular customer Commodore Bradford .
8. **Class Settlement Fund** - The sum of money paid by 441 S.B. in full settlement of all claims for relief made by the Commission on behalf of eligible members of the class.
9. **Eligible Class Members** – Claimants, as defined in paragraph 6 above, who are determined by the Commission to be female servers formerly or currently employed by 441 S.B. since April 2009 who were subjected to sexual harassment and/or a hostile work environment based on sex by Commodore Bradford.
10. **Claim Share** - The amount of money from the Settlement Fund that the Commission determines will be paid to a particular “Eligible Class Member.”

GENERAL PROVISIONS

11. **Term of Consent Decree** - This Decree shall remain in effect for 3 years after the effective date, as defined in paragraph 5. In the event the terms and obligations outlined in this Decree are not completed within 3 years, the Parties shall meet and confer concerning all matters that are alleged to constitute noncompliance. The Commission reserves the right to file an enforcement action to extend the Decree for whatever period is necessary to allow 441 S.B. and/or Hurricane to comply fully with the terms of this Decree.

12. **Compliance with Federal EEO Laws** - Nothing in this Decree shall be construed to limit or reduce Hurricane's obligation to comply with the statutes enforced by EEOC: Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §2000e *et seq.*, Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, as amended, the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§621-633a, the Equal Pay Act ("EPA"), 29 U.S.C. §206(d) and the Genetic Information Nondiscrimination Act of 2008 ("GINA"), 42 U.S.C. § 2000f.
13. **Effect of Consent Decree** - This Decree fully and finally resolves claims asserted by the Commission in the Complaint filed in this action styled *EEOC v. 441 S.B., LLC*, Case No. 9:11-CIV-80766-DMM (S.D.Fla.) which arose from EEOC Charge No. 510-2010-03329. The Parties acknowledge that this Decree does not resolve any Charges of Discrimination that may be pending with the Commission against 441 S.B. and/or Hurricane other than the Charge referred to in this paragraph.
14. **Complete Consent Decree** - This Decree constitutes the complete understanding between the Parties with respect to the matters herein. A separate settlement agreement may be executed between Plaintiff Intervenor and Defendant 441 S.B. which shall not supersede this Decree.
15. **Severability** - If one or more provisions of this Decree are rendered unlawful or unenforceable, the Parties shall attempt to agree upon what amendments to this Decree, if any, are appropriate to effectuate the purposes of this Decree. In any event, the unaffected provisions will remain enforceable.

FINDINGS

16. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction over the subject matter of this action and the Parties;

b. No party shall contest the jurisdiction of this Federal Court to enforce this Decree and its terms or the right of the Commission to bring an enforcement suit upon alleged breach of any term(s) of this Decree;

c. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of Charging Party, prospective claimants and the public interest are adequately protected by this Decree;

d. The new operator, Hurricane Wings Management of Royal Palm Beach, LLC agrees to perform the injunctive requirements as a successor in interest but is not responsible for the monetary relief requirements as ordered.

e. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Hurricane.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

INJUNCTIVE RELIEF

17. 441 S.B., Hurricane, and their respective officers, managers, employees, agents, partners, successors, and assigns, are enjoined from permitting, allowing, encouraging, and/or ignoring conduct by their customers, clients, patrons, managers or employees that discriminates on the basis of sex in violation of Title VII including, but not limited to, the creation of a hostile work environment based on sex involving sexually explicit conduct, comments and/or unwanted physical contact.

18. 441 S.B., Hurricane, and all of their respective officers, managers, employees, agents, partners, successors, and assigns, are enjoined from engaging in any form of retaliation against current or former employee/servers who complained about or were subjected to a hostile work environment based on their sex by 441 S.B.'s customer, Palm Beach County Sheriff's Deputy Commodore Bradford, because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

MONETARY RELIEF

19. In settlement of this lawsuit, 441 S.B. shall pay a total of \$200,000.00. This two-hundred thousand dollars shall be the full and final amount 441 S.B. shall pay to settle claims brought by the Commission in this lawsuit under EEOC Charge of Discrimination No. 510-2010-03329.
20. **Charging Party Stacy Sorenson.** Within thirty (30) days from the Effective Date, 441 S.B. shall pay \$75,000.00 (seventy-five thousand dollars) to Stacy Sorenson by check payable to the Trust Account of Christopher C. Copeland, P.A., which shall constitute compensation for all damages, compensatory, punitive or otherwise, costs and attorney's fees. 441 S.B. will issue a Form 1099 to Stacey Sorenson at the following address: 218 Cordoba Circle, Royal Palm Beach, Florida 33411. The payment described in this paragraph shall be mailed by Certified Mail (Return Receipt) to Christopher C. Copeland, Esq., Christopher C. Copeland, P.A., 4242 W. Main Street, Jupiter, FL 33458. A photocopy of the check described in this paragraph shall be contemporaneously sent to Regional Attorney Robert E. Weisberg. Re: Hurricane Grill & Wings Consent Decree.

Equal Employment Opportunity Commission, One Biscayne Tower, Suite 2700, 2 South Biscayne Boulevard, Miami, Florida 33131 as proof of compliance with this Decree.

21. **Class Fund.**

- a. In addition to the relief set forth in paragraph 20 , 441 S.B. agrees to establish and/or set aside a Class Settlement Fund in the amount of \$125,000.00 (one hundred twenty-five thousand dollars). 441 S.B. shall be solely responsible for any and all costs and/or fees associated with the creation and maintenance of the Class Settlement Fund, if any.
- b. Within twenty (20) days from the Effective Date, 441 S.B. shall provide to the Commission a list of all current and former female employees employed as servers at 441 S.B.'s Royal Palm Beach location at any time since April 1, 2009. The list shall include names, social security numbers, last known addresses and all last known phone numbers (including cell phone numbers);
- c. Within ninety (90) days from the Effective Date, the Commission will provide 441 S.B.'s counsel, Daniel Kunkel, Esq., with a settlement distribution list identifying all Eligible Class Members whom the Commission has determined in its sole discretion are entitled to relief from the Class Settlement Fund. The list will include the individuals' names, addresses, and the amount of compensation to which each individual is entitled. The Commission's determination of each individual's eligibility and entitlement to relief and the amount of each individual's share is final, and 441 S.B. agrees that it will neither participate in, nor object to the Commission's determinations.

d. Within twenty (20) days of receiving the Commission's settlement distribution list, 441 S.B. shall prepare and mail checks drawn from the Settlement Fund payable to the identified eligible class members in the specific amounts established by the Commission.

i. Each check shall be sent by certified mail, return receipt requested.

ii. All amounts distributed from the Settlement Fund shall constitute "compensatory damages" under the Civil Rights Act of 1991, 42 U.S.C. §1981a. 441 S.B. shall issue IRS Form 1099's to each eligible class member for all payments disbursed from the Settlement Fund. No taxes will be withheld by 441 S.B.

iii. Photocopies of the checks described in this paragraph shall be contemporaneously sent to Regional Attorney Robert E. Weisberg, Re: Hurricane Grill & Wings Consent Decree, Equal Employment Opportunity Commission, One Biscayne Tower, Suite 2700, 2 South Biscayne Boulevard, Miami, Florida 33131 as proof of compliance with this Decree.

22. All deadlines established in paragraphs nineteen (19) to twenty-one (21) of this Consent Decree may be modified by written agreement of the parties, without notification of the Court.

23. If 441 S.B. fails to tender the payments described in paragraphs nineteen (19) to twenty-(21) above, 441 S.B. will pay interest on the defaulted payment(s) at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the non-compliance or delay of 441 S.B.

ADOPTION AND DISTRIBUTION OF POLICY AGAINST DISCRIMINATION

24. Hurricane agrees to amend its current anti-discrimination policy ("Amendments") to be distributed to all current employees and current managers within thirty (30) calendar days after entry of this Decree. Hurricane will distribute the Anti-Discrimination Policy to all future employees at time of hiring.
25. The Amendments will clearly define prohibited conduct and will specifically prohibit discriminating against employees on basis of sex, including prohibiting harassment and retaliation. The Amendments will include a statement that discrimination based on sex by customers is prohibited.
26. The Amendments will provide specific examples of harassment, which includes but is not limited to, sexual harassment by customers.
27. The Amendments will specify that prohibited behavior will not be tolerated from Hurricane's managers, employees, customers, clients or any other persons present at Hurricane's facilities. The Amendments will provide that:
 - a. a discrimination complaint, may be made to any manager or directly to human resources personnel;
 - b. Hurricane will not retaliate against employees who make such complaints, or provide information related to such complaints;
 - c. employees need not complain of discrimination to the alleged perpetrator of such discrimination;
 - d. Hurricane will treat discrimination complaints confidentially, to the extent possible while conducting a thorough investigation which includes but is not limited to interviewing witnesses, reviewing surveillance and retaining proper

evidence;

- e. Hurricane will take immediate and appropriate action to stop discrimination and prevent it from recurring; and
- f. anyone who violates Hurricane's Policy are subject to discipline up to and including discharge and/or being banned from facility.

- 28. A copy of the Amendments will be provided to the Commission for review.
- 29. The Amendments will be included in any relevant policy or employee manuals kept by Hurricane's business within forty-five (45) calendar days from the Effective Date of this Decree. The Amendments shall also be kept and maintained in a conspicuous and accessible place for all employees at all of Hurricane's existing facilities or any facilities opened during the duration of this decree and printed in a font that is easily legible (at least 11 point font).
- 30. Hurricane shall maintain records demonstrating that each new employee discussed the amended policies with the responsible manager.

TRAINING

- 31. During each of the three (3) years covered by this Decree, Hurricane will provide four (4) hours of annual training for all of its employees, including all management personnel, with specific emphasis on sexual harassment and retaliation. Management personnel will have an additional one (1) hour of training each year with specific emphasis on complaint procedures, investigations of complaints and appropriate corrective measures.
- 32. The training shall be conducted by an organization mutually agreed upon with the Commission. The initial training will take place within ninety (90) calendar days of entry of this Decree. The remainder of the training sessions shall take place annually and no

later than December 31st of each year throughout the duration of the Decree. Additionally, Hurricane agrees that the Commission may, at the Commission's discretion, attend each training session. Hurricane shall provide the Commission with at least two (2) weeks written notice before conducting each training session pursuant to this Decree.

33. Within ten (10) days of the completion of training, Hurricane will notify the Commission of the dates the training was conducted, the name and job title of each person who attended the training and date attended. Hurricane will provide the Commission with any and all copies of pamphlets, brochures, outlines, or other written materials provided to the participants of the training sessions.

NOTICE

34. Within ten (10) business days after entry of this Decree, Hurricane will post laminated copies of the Notice attached as Exhibit A to this Decree at Hurricane's Royal Palm Beach location. Notices will be at least eleven (11) inches by fourteen (14) inches and will be laminated. The Notices will be posted in a conspicuous location easily accessible to and commonly frequented by Hurricane's employees. The Notice will remain posted for three (3) years from the Effective Date. Hurricane will take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material.
35. Hurricane will certify to the Commission in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted.

STAY-AWAY ORDER

36. Within twenty (20) days of the Effective Date of this Decree, Hurricane agrees to formally request that Deputy Sherriff Commodore Duane Bradford remain at least 200

feet from the Hurricane Royal Palm Beach location at all times, unless he is working in his official capacity as a deputy and enters the facility on official police business.

- a. The formal request should be in writing, signed and dated by Hurricane's Owner and mailed to Deputy Commodore Bradford via certified mail, return receipt requested; and
 - b. A copy of said request must be mailed to the Commission to the attention of EEOC Regional Attorney Robert E. Weisberg, Re: Hurricane Grill & Wings Consent Decree, within twenty-five (25) days of the Effective Date.
37. If Deputy Bradford refuses or otherwise fails to comply with Hurricane's request, Hurricane agrees to seek a No Trespass Order in state court in Palm Beach County and/or to file a formal, written complaint with the Palm Beach County's Sherriff's Office. If either of these actions becomes necessary, Hurricane will immediately provide copies of any court action or formal complaint to EEOC Regional Attorney Robert E. Weisberg.

MONITORING AND REPORTING

38. Hurricane will provide to the Commission the following written reports twice annually for a period of three (3) years following the Effective Date of this Decree. The first report will be due by June 30, 2012 and December 31, 2012, and thereafter on June 30 and December 31 annually. Each report shall contain:
- a. A description of each discrimination complaint made by an employee, including the names, addresses and current telephone numbers of the complaining parties and any witnesses identified by the complaining party, and the resolution of such complaint;
 - b. A description of any and all action Hurricane took in response to each

complaint and any written statements obtained or provided by the person bringing the complaint and/or provided by any witnesses;

- c. A certification that the Notice required to be posted pursuant to paragraphs 33-34 of this Decree remained posted during the entire six (6) month period preceding the report.

- 39. Hurricane will make all employees available to the Commission for interviews in connection with any information reported pursuant to paragraph 37 of this Decree, or for purposes of determining and/or monitoring Hurricane's compliance with this Decree.
- 40. Any submissions, reports, certifications, notices, or other materials that are required to be submitted to the Commission shall be mailed to: Regional Attorney Robert E. Weisberg, Re: Hurricane Grill & Wings Consent Decree, United States Equal Employment Opportunity Commission, One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, Miami, Florida 33131.

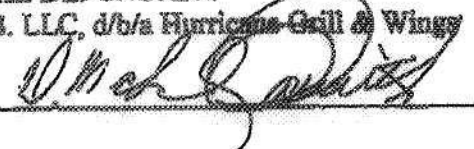
NOTIFICATION OF SUCCESSORS

41. Hurricane shall provide prior written notice to any potential purchaser of its business, or a purchaser of all or a portion of Hurricane's assets, and to any other potential successor, of the Commission's lawsuit, the allegations raised in the Commission's complaint and the existence and contents of the Decree.
42. Hurricane will notify the Commission in writing, to the attention of EEOC Regional Attorney Robert E. Weisberg, of any transfer of ownership to successor at least thirty (30) days prior to transfer of ownership.

SO ORDERED, ADJUDGED AND DECREED, this _____ day of February 2012.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

AGREED TO:
FOR THE DEFENDANT
441 S.B. LLC, d/b/a Hurricane Grill & Wings

By: 

Date: 2.14.2012

D. MICHAEL GARABITH
Print Name

OWNER
Title

As to form: 

Daniel Kunkel
Kunkel Miller & Hamant
Orange Professional Center
235 North Orange Avenue, Suite 200
Sarasota, FL 34236
Telephone: (941)365-6006
Facsimile: (941)365-6209

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AGREED TO:
FOR THE SUCCESSOR IN INTEREST
Hurricane Wings Management of Royal Palm Beach, LLC

By: _____

Date: _____

John C. Melz
Print Name

Managing Member
Title

As to form: Greg Scott

Greg Scott
Nason, Yeager, Gerson, White & Lioca, P.A.
1645 Palm Beach Lakes Blvd., Suite 1200
West Palm Beach, FL 33401
Tel.: (561) 686-3307
Fax: (561) 686-5442
Email: GScott@masonyeager.com

EXHIBIT A
NOTICE TO ALL HURRICANE WINGS MANAGEMENT
OF ROYAL PALM BEACH, LLC. EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the U.S. District Court in EEOC v. 441 S.B. LLC, d/b/a Hurricane Grill & Wings, Case No.: 11-80766-CIV-MIDDLEBROOKS (S.D. Fla.) In this case, the Plaintiff, U.S. Equal Employment Opportunity Commission (the "Commission") alleged that 441 S.B.LLC., the former owner of this location, d/b/a Hurricane Grill & Wings violated the law when it permitted a regular customer to enter the facility, sexually harass and physically touch female servers. The Commission further alleges that when one of the female employees complained, her scheduled was changed and she was eventually terminated.

Nevertheless, we reaffirm that Title VII protects individuals from employment discrimination because of their color, race, religion, national origin or sex. Hurricane Wings Management of Royal Palm Beach, LLC will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, sexual harassment by customers. It is the policy of Hurricane Wings Management of Royal Palm Beach, LLC, to offer employment opportunities to all qualified employees and applicants, regardless of sex, race, color, religion, national origin, age, or disability. There will be no intentional discrimination in violation of the provisions of Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act (ADEA), Genetic Information Nondiscrimination Act of 2008 (GINA); or the Equal Pay Act (EPA) of 1963, or the Americans with Disabilities Act, as amended (ADA).

Hurricane Wings Management of Royal Palm Beach, LLC assures its employees that it will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with EEOC or government agencies. Appropriate corrective action, up to and including termination, based upon the circumstances involved, shall be taken against any employee (including management personnel) found to have violated Hurricane's policies prohibiting discrimination and retaliation.

The Commission enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. If you believe you have been discriminated against, you may contact EEOC at (305) 808-1740. EEOC charges no fees and has employees who speak languages other than English.

This Notice must remain posted for three (3) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or the Consent Decree may be directed to: Hurricane Grill & Wings Consent Decree, c/o Robert E. Weisberg, Regional Attorney, EEOC, One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, Miami, Florida 33131.

Date:

Manager
Hurricane Wings Management of Royal Palm LLC.