

COPY

NOV 13 2009

1 TERRY GODDARD
2 Attorney General
3 Firm No. 14000
4 Rose A. Daly-Rooney, No. 015690
5 Cathleen M. Dooley, No. 022420
6 Assistant Attorneys General
7 Civil Rights Division
8 400 West Congress, Suite S-215
9 Tucson, AZ 85701-1367
Telephone: (520) 628-6756
CivilRights@azag.gov
Attorneys for Plaintiff

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11
12 IN AND FOR THE COUNTY OF PIMA

13
14 THE STATE OF ARIZONA ex rel. TERRY
15 GODDARD, the Attorney General, and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

No. C20090304

CONSENT JUDGMENT

17 Plaintiff,

18 vs.

(Assigned to Hon. Kenneth Lee)

19
20 CEO FOODS, INC. d/b/a/ EEGEES; EEGEE'S,
21 INC. d/b/a EEGEES,

22 Defendants.
23

24
25 On January 16, 2009, Plaintiff, the State of Arizona ("State") filed the above-captioned
26 Complaint in Pima County Superior Court against Defendants CEO Foods, Inc. and Eegee's,
27 Inc. operating fast food restaurants in Tucson, Arizona under the trade name, Eegee's, alleging
28

1 that Defendants discriminated against Bernadette Grijalva in violation of A.R.S. §§ 41-
2 1463(B)(1) and A.R.S. § 41-1464. In their Answer and during this litigation, Eegee's has
3 denied and continues to deny the allegations in the State's lawsuit.

4 During discovery, it was determined that Miller Administration, LLC was an entity that
5 employed the individuals who worked in the Eegee's restaurants owned and operated by
6 Eegee's Inc., and CEO Foods, Inc. At the time of settlement, the State had not yet moved to
7 amend the complaint to add Miller Administration, LLC as a party. Miller Administration LLC,
8 consents to be bound by this agreement. For purposes of this Agreement, Defendants Eegee's
9 Inc. and CEO Foods, Inc. and Millers Administration, LLC will hereinafter be collectively
10 referred to as Eegee's.

11 After the State filed the lawsuit under the Arizona Civil Rights Act, Bernadette Grijalva
12 requested that the U.S. Equal Employment Opportunity Commission ("EEOC") perform a
13 substantial weight review under Title VII of the Civil Rights Act of the State's finding
14 regarding Ms. Grijalva's charge of employment discrimination. On July 29, 2009, the EEOC
15 adopted the State's findings and offered to participate in conciliation to resolve the Title VII
16 charge of discrimination.

17 **COMPROMISE OF DISPUTED CLAIMS**

18 The State, the EEOC, Charging Party Bernadette Grijalva, and Eegee's desire to
19 resolve the issues raised in the underlying Title VII charge of discrimination and the State's
20 Complaint to avoid the time, expense, and uncertainty of further contested litigation. The
21 parties to this Agreement expressly acknowledge that this Consent Judgment is the
22 compromise of disputed claims, that Eegee's denies all the claims, and that there has been no
23 adjudication of any claim or finding of any liability on the part of Eegee's. Without admitting
24 any liability for the claims made in the underlying charge of discrimination or the State's
25 Complaint filed in this matter, Eegee's, the State, the EEOC, and Bernadette Grijalva, agree to
26 be bound by this Consent Judgment and to not contest that it was validly entered into in any
27 subsequent proceeding to implement or enforce its terms. The parties therefore have
28

1 consented to its entry, waiving trial, finding of facts, and conclusions of law.

2 It appearing to the Court that entry of this Consent Judgment will further the objectives
3 of the Arizona Civil Rights Act ("ACRA") and that its terms fully protects the parties and the
4 public with respect to the matters within its scope, **IT IS ORDERED, ADJUDGED AND**
5 **DECREED AS FOLLOWS:**

6 **JURISDICTION**

7 This Court has jurisdiction over the subject matter of this action and over the parties, and
8 venue in Pima County is proper. The allegations of the underlying charge and the State's
9 Complaint, if proved, are sufficient to state claim upon which relief could be granted against
10 Eegee's under ACRA.

11 **RESOLUTION OF THE UNDERLYING TITLE VII CHARGE AND THE**
12 **STATE'S COMPLAINT**

13 2. This Consent Judgment resolves all issues set forth in the underlying Title VII
14 charge and the State's Complaint. Satisfaction of the terms of the Consent Judgment also
15 satisfies conciliation with the EEOC for resolution of Bernadette Grijalva's Title VII charge
16 of discrimination.

17 **NO RETALIATION**

18 3. Eegee's agrees that there shall be no discrimination or retaliation of any kind against
19 any person who participated in any investigations of the underlying charge of discrimination
20 and Complaint at issue in this case.

21 **POLICY CHANGES**

22 4. Within ninety (90) days of the entry of this Consent Judgment, Eegee's shall update
23 their personnel policies and procedures, as agreed between the parties. As part of the updating
24 of policies and procedures, Eegee's agrees to include written procedures which address the
25 following:

26 a. Designation of position or person to whom complaints of harassment and
27 discrimination may be brought who have the authority to investigate allegations of harassment
28

1 and discrimination in a neutral and confidential manner;

2 b. A statement that the employee may report the discrimination or harassment to
3 a designated person outside of their direct chain of management should the employee believe
4 managers in the chain of command have a conflict of interest, are implicated in the allegations,
5 or may not adequately investigate the complaint.

6 c. A statement that all forms of harassment, including sexual harassment,
7 whether engaged in by management, supervisors, or third parties and customers, are prohibited
8 and will not be tolerated;

9 d. A statement that Eegee's will thoroughly investigate all complaints of
10 harassment and discrimination;

11 e. A statement that employees and other individuals may raise concerns or
12 complaints (without retaliation) about matters, whether alleged, perceived, or actual, made
13 unlawful by Title VII and/or the Arizona Civil Rights Act;

14 f. A statement that Eegee's managers and supervisors must comply with
15 Eegee's' policies and procedures and the laws addressing discrimination and harassment; and
16 that any manager or supervisor who violates any such policies, procedures, or law shall be
17 subject to appropriate disciplinary action, up to and including termination;

18 g. A statement that retaliation against alleged victims of harassment and
19 discrimination and witnesses will not be tolerated;

20 h. A statement of the Eegee's intent to handle complaints of harassment as
21 confidentially as appropriate under the circumstances; and

22 i. Provision of information regarding the employee's right to file a charge of
23 discrimination with the Arizona Civil Rights Division and the Equal Employment Opportunity
24 Commission.

25 Eegee's agree to provide a copy of the revised policy to the State prior to publishing it to its
26 employees. Within twenty-one (21) days of receipt of the policy, the State agrees to review the
27 revised policy and notify Eegee's in writing whether the State agrees the revised policy satisfies
28

1 the minimum requirements set forth in this paragraph. The State's written notice will include
2 whether the State concludes that the policy satisfies the minimum requirements and if not, the
3 specific requirements that have not been satisfied and the basis for that determination.

4 5. Within one hundred twenty (120) days of the entry of the Consent Judgment,
5 Eegee's will publish the new or revised policy, as referenced in ¶ 4. "Publish" as used in this
6 paragraph means that Eegee's will provide a copy of the policy in English or Spanish, as
7 applicable, to all new and existing employees, post a copy of the new or revised policy in each
8 of the Eegee's restaurants in the same place where it posts the required EEO posters, and make
9 it available on Eegee's intranet website for employees. Brief and intermittent problems with
10 Eegee's intranet website will not be deemed non-compliance with this term. For compliance
11 with the reporting requirements in ¶ 18, Eegee's agrees to provide copies of signed
12 acknowledgement forms from employees receiving the revised policy and a copy of the final
13 policy in English or Spanish, as applicable.

14 TRAINING

15 6. Within one hundred twenty (120) days of the entry of the Consent Judgment,
16 Eegee's agrees to train all of employees about unlawful harassment.

17 a. In consultation with Lia Keller, or another mutually agreeable qualified trainer,
18 Eegee's current training coordinator will expand its existing training program on sexual
19 harassment to provide training to its assistant managers, restaurant managers, shift leaders,
20 supervisors, and district managers about unlawful harassment, including sexual harassment,
21 that is interactive and includes hypothetical situations, a question and answer session, a
22 discussion of Eegee's harassment policy, and a method of testing the training participants'
23 successful completion of the unit. This training will provide general, authoritative coverage
24 of what constitutes unlawful harassment, an employer's obligation to undertake investigation
25 and prompt corrective action to make a workplace free of unlawful harassment, and
26 information about how managers must respond to complaints of unlawful harassment. During
27 the duration of this Agreement, all newly-hired or newly-assigned supervisory and managerial
28

1 personnel shall receive the same training within sixty (60) days of the date of hire or
2 assignment to a supervisory or management position. Training undertaken to satisfy this
3 subparagraph will consist of at least sixty (60) minutes of instruction.

4 b. In consultation with Lia Keller, or another mutually agreeable qualified trainer,
5 Eegee's current training coordinator will expand Eegee's existing training on sexual
6 harassment to provide training to its non-supervisory employees that is interactive and
7 includes hypothetical situations and an explanation of Eegee's harassment policy. This
8 training will provide general information about what constitutes unlawful harassment and an
9 employer's appropriate response to allegations of unlawful harassment, including its
10 complaint procedures. During the duration of this Agreement, all newly-hired employees shall
11 receive the same training within sixty (60) days of the date of hire. Training undertaken to
12 satisfy this subparagraph will consist of at least thirty (30) minutes of instruction.

13 Eegee's agrees to pay for any costs associated with such training. Eegee's shall
14 maintain a list of persons attending the training sessions required by this Agreement. When
15 reporting compliance as required by ¶ 18, Eegee's will provide the State with the name and
16 address of the trainer, the qualifications of the trainer, and the attendance records of
17 employees attending the training.

18 7. Within one hundred twenty (120) days of the entry of this Consent Judgment,
19 Eegee's will appoint an appropriate and qualified employee and an alternate employee to be
20 responsible for (a) receiving and investigating complaints of harassment; (b) evaluating and, if
21 appropriate, disciplining or terminating employees for violation of Eegee's' harassment
22 policies; and (c) evaluating whether employees understand Eegee's anti-discrimination/equal
23 employment opportunity policies; and will arrange, at its own expense, for the designated
24 employees to attend a training seminar by a qualified external training vendor on how to
25 conduct workplace investigations of harassment. When reporting compliance as required by ¶
26 18, Eegee's agrees to confirm that the training has taken place, the name and position of
27 employee(s) designated to conduct workplace investigations of harassment, a copy of the title
28

1 sheet of the reference materials provided, and the date(s) when the training occurred. During
2 the duration of the Consent Judgment, Eegee's will appoint other employees to fulfill the
3 duties outlined in this paragraph as necessary because of vacancies created by personnel
4 actions or changes.

5 **COMPLIANCE WITH ACRA**

6 8. Eegee's agrees it will continue to abide by the Arizona Civil Rights Act and Title VII.

7 **MODIFICATION**

8 9. There shall be no modification of this Consent Judgment without the written consent
9 of all the parties and the further order of this Court. In the event of a material change of
10 circumstances, Eegee's and the State agree to make a good faith effort to resolve this matter. If
11 the parties are unable to reach agreement, either party may ask the Court to make such
12 modifications as are appropriate.

13 **CONTINUING JURISDICTION OF THE COURT**

14 10. The Court shall retain jurisdiction over both the subject matter of this Consent
15 Judgment and the State and Eegee's for two years from the date of its entry to effectuate and
16 enforce it. The State may, for good cause shown, petition this Court for compliance with this
17 Consent Judgment at any time during the period that this Court maintains jurisdiction over this
18 action. Should the Court determine that Eegee's have not complied with its terms, appropriate
19 relief, including extension of this Consent Judgment for such period as may be necessary to
20 remedy its non-compliance, may be ordered. In the event the parties have not stipulated and the
21 court has not ordered an extension of this Consent Judgment, the Consent Judgment shall
22 automatically expire and the Court shall lose jurisdiction over this action two years after entry
23 of the Consent Judgment.

24 **RELIEF TO CHARGING PARTY**

25 11. Eegee's and Bernadette Grijalva have entered into a separate settlement agreement
26 that provides fair relief for Ms. Grijalva. The State is not a party to that separate settlement
27 agreement. Bernadette Grijalva and Eegee's agree to abide by the terms of the settlement
28

1 agreement. Eege's will provide proof of compliance with the settlement agreement to the
2 State pursuant to ¶ 18. If at any time any party to this Consent Judgment believes a party to the
3 settlement agreement is in breach of the settlement agreement, the settlement agreement may be
4 filed with the Court under seal and the issue may be brought to the attention of the Court.

5 12. Eege's agrees to remove all references from Bernadette Grijalva's personnel file, if
6 any, concerning the charge of discrimination and non-eligibility for rehire. Eege's further
7 agrees to provide a neutral reference when furnishing oral or written references about
8 Bernadette Grijalva to other employers. For purposes of this provision, a neutral reference
9 means provision of dates of employment and position, and specifically does not include
10 eligibility for rehire.

11 **RELEASE**

12 13. Except for the obligations of Eege's that are expressly set forth in this Judgment,
13 Eege's and its past, present, and future officers, employees, agents, affiliates, parents,
14 successors and assigns are released from any and all civil liability to Bernadette Grijalva, the
15 EEOC, and the State for the counts alleged in the underlying charge of employment
16 discrimination and the State's Complaint in this matter.

17 **MISCELLANEOUS PROVISIONS**

18 14. The Consent Judgment shall be binding on Bernadette Grijalva, EEOC, and the
19 State, and Eege's, as well as its agents, employees, successors, assigns and all persons in active
20 concert or participation with Eege's.

21 15. The State, EEOC, Bernadette Grijalva, and Eege's represent that they have read
22 this Consent Judgment in its entirety and are satisfied that they understand and agree to all of its
23 provisions, and represent that they have freely signed this Consent Judgment without coercion.

24 16. This Consent Judgment shall be governed in all respects by the laws of the State of
25 Arizona.

26 17. The State, EEOC, Bernadette Grijalva, and Eege's shall bear their respective
27 attorneys' fees and costs incurred in this action up to the date of entry of this Judgment. In any
28

1 action brought to assess or enforce the State's, EEOC's, Bernadette Grijalva's, and Eegee's
2 compliance with the terms of this Judgment, the Court may in its discretion award reasonable
3 costs and attorneys' fees to the prevailing party.

4 **COUNTERPARTS**

5 18. Counterparts. This Agreement may be executed in any number of counterparts,
6 each of which shall, when executed, be deemed to be an original and all of which shall be
7 deemed to be one and the same instrument. The Parties agree that an electronic or facsimile
8 transmission of this signed Agreement shall have the same force and effect as a signed original
9 of the Agreement.

10 **NOTICE OF COMPLIANCE**

11 19. Eegee's agrees to submit letters outlining compliance efforts within six months of
12 the filing of this Consent Judgment and every six months thereafter until it expires.
13 Submission of letters reporting compliance activities related to ¶¶ 4-11, notices or other
14 materials to be submitted to the State, those materials shall be mailed to: Rose Daly-Rooney or
15 Cathleen Dooley, Assistants Attorney General, Office of the Attorney General, 400 West
16 Congress, Suite S-215, Tucson, Arizona 85701, or their successors.

17 **EFFECTUATING CONSENT JUDGMENT**

18 20. The parties agree to the entry of this Consent Judgment upon final approval by the
19 Court. The effective date of this Consent Judgment shall be the date that it is entered by this
20 Court.

21 ENTERED AND ORDERED this 13th day of November 2009.

22
23 
24 _____
25 Honorable Kenneth Lee
26 Pima County Superior Court
27
28 *copy*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONSENT TO JUDGMENT

1. On behalf of Defendants Eegee's Inc. and CEO Foods, Inc. as well as Miller Administration LLC, I acknowledge that I have read the foregoing Consent Judgment, and that Eegee's Inc., CEO Foods, Inc. and Miller Administration LLC are aware of its right to a trial in this matter and has waived that right.

2. Eegee's Inc., CEO Foods, Inc. and Miller Administration LLC agree to the jurisdiction of the Court, and consents to entry of this Consent Judgment.

3. Eegee's Inc., CEO Foods, Inc. and Miller Administration LLC states that no promise of any kind or nature whatsoever (other than the terms of this Consent Judgment) was made to induce it to enter into this Consent Judgment, that it has entered into this Consent Judgment voluntarily, and that this Consent Judgment constitutes the entire agreement between the parties.

4. I, Thomas W. O'Connor, am the President and Chief Executive Officer of Eegee's Inc., the President of CEO Foods, Inc., and a managing member of Miller Administration LLC, and, as such, am authorized by each entity to enter into this Consent Judgment for and on their behalf.

5. I further state that Eegee's Inc., CEO Foods, Inc. and Miller Administration LLC have been represented by counsel in this case, and that the terms of this Consent Judgment have been explained to me to my satisfaction, and are fully understood by me.

DATED this ____ day of _____, 2009.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM AND CONTENT

TERRY GODDARD
Attorney General

U.S. Equal Employment Opportunity
Commission

By Cathleen M. Dooley
Rose A. Daly-Rooney
Cathleen M. Dooley
Assistant Attorneys General

By _____
Rayford O. Irvin
Acting District Director
Phoenix District Office

Date 11/16/09

Date _____

RYAN TURCHIK P.C.

LAW OFFICE OF PAUL RELICH P.C.

By Merle Joy Turchik
Merle Joy Turchik, Esq.
Attorney for Charging Party Bernadette
Grijalva

By Paul A. Relich
Paul A. Relich, Esq.
8230 East Broadway Blvd., Suite E8
Tucson, AZ 85710-4002
Attorney for Defendants Eege's Inc. and
CEO Foods, Inc. and Miller Administration
LLC

Date 11/3/09

Date: November 6, 2009

#560551v6

1 APPROVED AS TO FORM AND CONTENT

2 TERRY GODDARD
3 Attorney General

U.S. Equal Employment Opportunity
Commission

4 By Cathleen M. Dooley
5 Rose A. Daly-Rooney
6 Cathleen M. Dooley
7 Assistant Attorneys General

By Rayford O. Irvin
Rayford O. Irvin
Acting District Director
Phoenix District Office

8 Date 11/16/09

Date 9/1/09

9 RYAN TURCHIK P.C.

LAW OFFICE OF PAUL RELICH P.C.

10
11 By Merle Joy Turchik
12 Merle Joy Turchik, Esq.
13 Attorney for Charging Party Bernadette
14 Grijalva

By Paul A. Relich
Paul A. Relich, Esq.
8230 East Broadway Blvd., Suite E8
Tucson, AZ 85710-4002
Attorney for Defendants Eege's Inc. and
CEO Foods, Inc. and Miller Administration
LLC

15 Date 11/3/09

Date: November 6, 2009

20 #560351V6