

CONSENT DECREE

PART 1

GENERAL PROVISIONS

Section 101

Introduction

Civil Action No. IP00-1452-C-B/G was instituted by the Equal Employment Opportunity Commission (“EEOC” or “Commission”) under the authority granted to it under Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). The Commission’s action was brought to correct alleged unlawful employment practices on the basis of sex. The Commission's Amended Complaint alleges that Jillian's of Indianapolis, IN Inc., Jillian's Entertainment Holdings Inc. and Jillian’s Entertainment Corporation (“Jillian's”) have maintained sex segregated job classifications on a nationwide basis and have failed to hire and/or transfer Bret David, Aaron Jones, Nickey Ussery, Michael Harvey and other similarly situated males to more lucrative “server” and less demanding “hostess” positions, because of their sex, in violation of Sections 703(a)(1) and (2) and 709(c) of Title VII, 42 U.S.C. § 2000e-2(a) (1)and (2), § 2000e-8(c). The Commission additionally alleges that Defendants have violated the recordkeeping requirements of Title VII. Although on June 13, 2003, the Court granted partial summary judgment, limiting this action to Jillian’s Indianapolis facility and there is a Motion for Reconsideration pending, this Decree resolves all claims in the EEOC’s Amended Complaint.

Section 102

Jurisdiction

The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties for the duration of this Agreement, and any extensions thereof, and that venue is proper.

Section 103 Intent of Parties

The Commission and Jillian's (hereinafter "the Parties") have entered into this Decree:

1. to avoid unnecessarily protracted, expensive and disruptive litigation;
2. to provide final and preclusive effect to the sex claims (male) that were raised or could have been raised in Civil Action No. IP00-1452-C-B/G with respect to hiring/placement decisions for server positions between 1998 and the effective date of this Agreement at all Jillian's facilities;
3. to provide a procedure for distributing settlement proceeds to qualified Indianapolis class claimants.
4. This Consent Decree does not constitute an admission of liability of any kind by Jillian's in this matter.

Section 104 Provisions of Decree

A. This Decree constitutes the complete understanding and agreement between Jillian's and the Commission with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Decree will be effective unless made in writing and approved by all Parties to this Decree, or ordered by a court of competent jurisdiction. Neither Jillian's nor the Commission will withhold its approval of proposed modifications or amendments that are reasonably calculated to expedite the administration of claims filed hereunder, unless such proposed modification or amendment increases the financial burden on the Company or the Commission.

B. If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act, or a decision by a court of competent jurisdiction, the Parties shall

endeavor to agree upon which amendments to this Decree, if any, are appropriate to effectuate the intent of the Parties. To the extent the remaining provisions of this Decree are not rendered unlawful, unenforceable, or incapable of performance as a result of such legislative act or court decision, such remaining provisions shall remain in full force and effect, and the Parties' responsibilities shall not abate as to any and all provisions that have not been rendered unlawful or unenforceable.

C. The provisions of this Decree are the product of negotiation between the Parties hereto.

Section 105 The Effective Date and Duration of the Decree

A. Unless otherwise apparent from a provision's context, the effective date of the Decree shall be the date of the Court's entry of an order approving the Decree ("Effective Date"). Unless extended by the Court for good cause, and except as discussed below in Sections 105.B. and 301, the Decree shall continue in force and effect for a period of three (3) years from the Effective Date, after which time the Decree shall be void. Prior to its expiration, either party may move the Court for an extension of the obligations of any part of the Decree that such party contends not to have been complied with or completed, and the Decree shall remain in effect only as to such provisions until the Court rules on the motion or otherwise orders.

B. If, during the period of this Decree, either prior to or after the confirmation of Jillian's plan of reorganization, there are relevant and material changes in the organizational structure of Jillian's, including asset sales of particular Jillian's facilities, Jillian's will promptly report such changes to the Commission in accordance with Sections 301 and 311 below. It is

expressly agreed that the terms of this Consent Decree only apply to the corporate entities named herein. No provision of this Consent Decree will apply to any other corporate entity or to any facility that is sold or otherwise acquired by any other corporate entity, whether or not the new entity or facility continues the use of the Jillian's brand name.

Section 106 Breach of Decree

Consistent with the Parties' intent described in Section 103, this Decree resolves all allegations, issues, claims, demands and causes of action arising out of the EEOC charges filed by Bret David, Nickey Ussery, Aaron Jones or Michael Harvey, or asserted in or which could have been asserted by the Commission, in its Amended Complaint. If either party violates the terms of this Decree during the period of time this Decree is in effect, Jillian's and the Commission agree that the non-breaching party may seek enforcement for breach of this Decree. If the non-breaching party elects to seek judicial enforcement, such enforcement action shall be filed in the United States District Court for the Southern District of Indiana, Indianapolis Division. In any proceeding which seeks enforcement of any provision of the Decree, the remedies shall be limited to enforcement of only those terms or provisions of this Decree then in effect which the Court may find to have been violated, and recovery of court costs. Prior to commencing any Court proceeding, the Commission and the Company agree first to comply with the requirements of Section 601 of this Decree. The Commission or the Company may choose to summon or subpoena a Claimant, a former or current employee of the Company, or any other person as a witness in any proceeding that the Commission initiates to enforce the Decree.

PART TWO

DEFINITIONS

For purposes of this Decree, the following definitions will apply:

1. EEO Officer(s) - shall mean that individual(s) appointed by Jillian's to prepare periodic reports for the EEOC on the implementation of this Decree.
2. Claims Officer(s) -shall mean those individual(s) appointed by the EEOC to distribute, collect, and process claim forms.
3. Claimant - shall mean any individual who returns a Claim Form to the EEOC.
4. Class members - shall mean those claimants who have filed a timely Claim Form and have been determined by the EEOC to be entitled to relief under this Decree.

PART THREE

INJUNCTIVE RELIEF

Section 301 Bankruptcy Confirmation and Sale of Assets

The parties acknowledge Jillian's Chapter 11 bankruptcy filing. The injunctive relief enumerated in this Section shall continue at all Jillian's locations until Jillian's bankruptcy confirmation; provided, however, if a particular Jillian's location(s) is sold or otherwise acquired by any other corporate entity prior to confirmation, then pursuant to Section 105 of this Decree, the injunctive relief enumerated herein shall cease as to such location(s) immediately following the completion of such sale(s) or acquisition(s). To the extent that any Jillian's facility is sold or otherwise acquired prior to the bankruptcy confirmation, Jillian's shall provide written notice to

the EEOC, including nature of sale, date of sale and identity of buyer, within fourteen days of the sale. To the extent that the bankruptcy confirmation occurs prior to the sale of all of Jillian's facilities, Jillian's will provide written notice to the EEOC of the bankruptcy confirmation within fourteen days of the confirmation. Should the EEOC have questions about the sale, the EEOC shall notify Jillian's in writing, upon receipt of a sale notification.

Section 302 Post "Notice of Non-Discrimination"

Commencing within seven calendar days following the effective date of this Decree, Jillian's shall post both on the employee bulletin board at each of its facilities and prominently at the front entrance of each facility, a Notice of Non-discrimination, attached as Exhibit 1. This Notice of Non-discrimination will remain posted at the facility for the duration of this Decree, subject to the limitation addressed in Section 301.

Section 303 Distribute "Notice of Non-Discrimination in Hiring"

Within seven calendar days following the effective date of this Decree, Jillian's shall distribute to each of its Operations Directors, General Managers, Assistant General Managers, Assistant Unit Managers and Trainers, a Notice of Non-discrimination in Hiring, attached as Exhibit 2. This Notice shall also be distributed to all General Managers, Assistant General Managers, Assistant Unit Managers and Trainers who are hired during the duration of this Decree, subject to the limitation addressed in Section 301.

Section 304 Inclusion of Non-Discrimination Clause in Advertising

Upon the effective date of this Decree and throughout this Decree, subject to the limitation addressed in Section 301 above, any advertising used by Jillian's to recruit/locate

employees, whether by newspaper, sign, radio or otherwise, must contain the following clause:

“Jillian’s is an equal opportunity employer. We hire without regard to sex, race, age, religion, national origin or disability. All applicants will be considered for all positions, regardless of sex, race, age religion, national origin or disability.”

Section 305 Non-Discrimination Attachment For Employment Applications

Upon the effective date of this Decree and throughout this Decree, Jillian’s shall append to all employment applications distributed at its facilities, the attachment, attached hereto as Exhibit 3, which advises applicants of its non-discrimination in hiring and placement and advises them of the steps to follow if they believe that they have been discriminated against.

Section 306 EEO Training

Jillian’s has conducted an Equal Employment Opportunity training for all new and present managers. The company agrees to continue this training program throughout the duration of this Decree, subject to the limitation addressed in Section 301 above. From the date of the Entry of this Decree, this program shall specifically address Title VII and the prohibition against placing applicants in positions based on sex, age or race. As part of its periodic reporting responsibilities, the Company shall periodically provide the Commission lists evidencing its employees' attendance at these training sessions.

Section 307 Handling of Hiring/Placement Discrimination Complaints

All hiring or placement discrimination complaints, brought by males claiming they have been denied server position opportunities, which arise at Jillian’s during the pendency of this Decree, subject to the limitation addressed in Section 301 above, will be handled by Vernessa

Gates, Vice President of Human Resources, or her successor. All applicants and employees will be notified of this procedure via distribution of the Notice of non-discrimination and complaint procedure, attached as Exhibit 3, at the time of application, time of hire or (for current employees) upon the entry of this Decree. Pursuant to Section 311 below, Jillian's will report to the EEOC on all complaints brought by males claiming they have been denied server position opportunities, that it has received pursuant to this procedure.

Section 308 Job Titles and Descriptions

A. "Server" position: Jillian's shall prepare or revise the job description for the server position assuring that it is sex neutral. Within fourteen (14) calendar days following the effective date of this Decree, Jillian's shall send a copy of the job description to the EEOC.

B. "Door host" position: Jillian's shall prepare or revise the job description for the door host position assuring that it is sex neutral. Within seven calendar days following the effective date of this Decree, Jillian's shall send a copy of the job description to the EEOC.

C. "Beer tub girl" position: Jillian's shall change the title of this position to "beer tub server" and shall prepare a job description for this position assuring that it is sex neutral. Within seven calendar days following the effective date of this Decree, Jillian's shall send a copy of the job description to the EEOC.

D. Jillian's agrees to review its job descriptions for all the server, door host and beer tub girl positions at its facilities and make modifications, if necessary, to assure that such job descriptions are sex neutral.

Section 309 Application and Hiring Procedures and Standards

Jillian's shall hire for all positions without regard to sex. Jillian's will continue to maintain applicant flow logs and applications at all of its facilities for the duration of this Decree, subject to the limitation addressed in Section 301 above.

Section 310 Retention and Review of Records

Jillian's agrees to maintain all employment records as required by law. In order to demonstrate its compliance with the provisions of this Decree, Jillian's will maintain for the duration of this Decree the records described in Section 309. From time to time, the Commission may request the opportunity to review a specified portion of these records. Such records will be made available to the Commission by Jillian's within two (2) weeks of the request, assuming the request may be reasonably addressed within such period.

Section 311 Content and Schedule of Progress Reports

Pursuant to the terms of the reporting schedule described below in SubSection F, Jillian's agrees to provide written reports containing the following information:

- A. The dates of all EEO training and the attendees and a copy of all new materials used at these trainings which address the prohibition against sex segregated job classifications.
- B. Copies of all job advertisements for server positions at Jillian's facilities, including the date and name of newspaper.
- C. Copies of sex neutral job descriptions for the server, door host and beer tub positions.
- D. Copies of all sex discrimination complaints received pursuant to Section 307

above and the resolution thereof.

E. Pursuant to Section 301 above, notification on the sale of any Jillian's facilities.

F. Except as provided otherwise, the Company agrees to submit periodic reports to the attention of Laurie A. Young, Regional Attorney, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, IN 46204, concerning its implementation of the terms of this Decree. The Reports are due to the Commission in accordance with the following schedule:

1. The First Report is due six (6) months after the Effective Date of the Decree.
2. The Second Report is due twelve (12) months after the Effective Date of the Decree.
3. The Third Report is due twenty-two (22) months after the Effective Date of the Decree.
4. The Fourth Report, also known as the Final Report is due thirty-two (32) months after the Effective Date of the Decree.

To the extent any Jillian's facility is sold prior to the expiration date of this Decree, that facility shall be relieved from further reporting as of the date of the sale. The Commission will acknowledge receipt of each report and may, to the extent necessary and with prior notice to Jillian's counsel, directly contact the EEO Officer from time to time to seek clarifications regarding the report's contents as well as the general implementation of the Decree.

PART FOUR AFFECTED CLASS MONETARY RELIEF

Section 401 Affected Class

The affected class (“class members”) eligible for monetary relief shall include: (1) all male employees or former employees in non-server positions who were denied server positions at Jillian’s Indianapolis during 1999 and who meet the requirements enumerated in Section 408.E. below; (2) all male applicants who were denied server positions at Jillian’s Indianapolis during 1999 and who meet the requirements enumerated in Section 408.E. below; (3) all males who were deterred from applying for server positions at Jillian’s Indianapolis during 1999 and who meet the requirements enumerated in Section 408.E. below; and (4) all males who were employed as servers at Jillian’s Indianapolis during 1999 or 2000 and who were afforded less favorable server shifts, areas and/or parties than female servers and who meet the requirements enumerated in Section 408.E. below.

Section 402 General

In an effort to compensate the class members, as defined in Section 401, above, the parties agree to the claims provisions set forth below.

Section 403 Advertising

The EEOC will advertise in order to locate class members. The advertisement attached as Exhibit 4 shall be run in the Indianapolis Star (twice per week for two consecutive weeks) and NUVO (once per week for three consecutive weeks). Jillian’s shall pay for the costs of this advertising, subject to Section 501, below.

Section 404 Class I Members

Class I members shall include all males, excluding those actually hired as servers, who: (1) applied at least two times for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999 and had server experience listed on their application;

or (2) applied for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999, had server experience listed on their application, were hired for a non-server position (other than bartender) and who unsuccessfully requested a transfer to a server position during 1999; or (3) applied for a position other than server at Jillian’s Indianapolis facility during 1999, but orally requested a server position at the time of application, had server experience listed on their application, were hired for a non-server position (other than bartender) and who unsuccessfully requested a transfer to a server position during 1999.

Section 405 Class II Members

Class II members shall include all males, excluding those actually hired as servers, who: (1) applied once for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999, and had server experience listed on their application; or (2) applied for a position other than server at Jillian’s Indianapolis facility during 1999, but orally requested a server position and had server experience listed on their application; or (3) requested a transfer to a server position at Jillian’s Indianapolis facility during 1999 and had server experience; or (4) applied for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999, had no server experience listed on their application, were hired for a non-server position (other than bartender) and who unsuccessfully requested a transfer to a server position during 1999; or (5) applied for a position other than server at Jillian’s Indianapolis facility during 1999, but orally requested a server position at the time of application, had no server experience listed on their application, were hired for a non-server position (other than bartender) and who unsuccessfully requested a transfer to a server position during 1999.

Section 406 Class III Members

Class III members shall include all males, excluding those actually hired as servers, who:

(1) applied once for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999 and had no server experience listed on their application; or (2) applied for a position other than server at Jillian’s Indianapolis facility during 1999 but orally requested a server position and had no server experience listed on their application; or (3) were deterred from applying for a server position at Jillian’s Indianapolis during 1999; or (4) requested a transfer to a server position at Jillian’s Indianapolis facility during 1999 and had no server experience.

Section 407 Class IV Members

Class IV members shall include all males who were employed as servers at Jillian’s Indianapolis facility during 1999 or 2000, who timely certify and prove, through an in person interview, that they were afforded less favorable shifts, areas and/or parties than female servers, during their employment at Jillian’s which impacted their earnings.

Section 408 Damages Fund

It is the understanding of the parties that the bankruptcy court must issue an order approving the use of funds from Jillian’s Employment Practices Liability Insurance Policy to provide the monetary relief outlined in Sections 408 and 501 of this Decree. Defendants agree to seek this order within 3 days of the Entry of this Decree and to provide the EEOC with a copy of their Motion and any and all correspondence from the bankruptcy court concerning this motion. This Consent Decree is contingent upon obtaining bankruptcy court approval of the use of funds from Jillian’s Employment Practices Liability Insurance Policy to provide the relief outlined in

Sections 408 and 501 of this Decree.

The Parties have agreed that the Company will pay the amount of \$350,000 in compensatory damages (hereinafter the “Damages Fund”), to be distributed, at the discretion of the EEOC, and subject to a fairness hearing, to all class I, class II, class III and class IV members who are to be identified by the Commission in accordance with applicable provisions of this Decree. Within three (3) days of obtaining an order from the bankruptcy court approving the use of funds from Jillian’s Employment Practices Liability Insurance Policy, the \$350,000 shall be deposited with the Court Clerk, United States District Court Southern District of Indiana, Indianapolis Division (“Court Clerk”), pursuant to Rule 67 of the Federal Rules of Civil Procedure, in an interest bearing account. Jillian’s shall have no ownership interest in the Damages Fund after the transfer date. The Court Clerk will prepare and tender damages checks and 1099 forms for accrued interest, if necessary, to persons determined to be class members in accordance with the provisions hereafter noted.

Section 409 Identification of qualified class members in addition to Advertising

A. A Notice of Proposed Settlement and a claim form (attached as Exhibits 5 and 6 to this Decree), shall be mailed by the EEOC to each male who the EEOC has been able to identify and locate who applied once for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999 and has not already indicated to the EEOC a lack of interest in the server position at the time they applied in 1999.

B. A Notice of Proposed Settlement and a claim form (attached as Exhibits 5 and 6 to this Decree), shall be mailed by the EEOC to each male who the EEOC has been able to identify and locate who worked at Jillian’s during 1999 or 2000 as a server.

C. A Notice of Proposed Settlement and a claim form (attached as Exhibits 5 and 6 to this Decree), shall be mailed by the EEOC to each individual who requests same, telephonically.

D. Filing of claims by class members:

1. Any person wishing to preserve his rights under this Decree to obtain any benefit as a class member must file a timely claim. Such claims shall be made on the form entitled "EEOC v. Jillian's Claim Form" attached hereto as Exhibit 6.

2. On the Claim Form, all claimants shall be notified of their responsibility to advise the Claims Officer of any changes in their name, home address and/or telephone number(s). If a claimant fails to notify the Claims Officer of said change(s) in the manner specified by the Commission, and the Commission is unable to locate the claimant, the claimant may be disqualified from receiving any relief under this Decree. Failure to notify shall mean not advising the Claims Officer of the address change by no later than two weeks before the settlement checks are scheduled to be distributed.

3. Claim Forms will be returned to the Claims Officer. A claim will be considered timely filed if it is postmarked the earlier of 4 weeks from the date of mailing or 4 weeks from the last advertisement. The Claim Form (Exhibit 6) shall specifically reflect this date.

4. The envelope for each completed Claim Form indicating its postmark date, shall be retained and appended to the claim form.

5. An interview by an EEOC paralegal or other representative shall be required for the following claimants: (1) those who claim that they were deterred from applying

for a server position at Jillian's; (2) those for whom no application can be located; (3) those whose application indicates the desire for a position other than server; (4) those who claim that they sought a transfer to a server position; and (5) those who were hired by Jillian's as servers but who claim that they were afforded less favorable shifts/areas. Any claimant who fails to respond to an EEOC letter requesting that an interview be set up or who fails to show up for a scheduled interview, without calling in advance, shall not be entitled to any monetary relief.

E. Claims certification:

1. Class I: a class I claimant is eligible for monetary relief pursuant to the terms of this Decree if the Commission determines that claimant satisfies each of the following conditions:

- a. The claimant is a male and was not hired as a server.
- b. A timely claim has been submitted.
- c. The claimant has attended an interview, if requested by the EEOC, in accordance with Section 409. D.5., above.
- d. The claimant meets the qualifications in any of the three paragraphs listed below.

- 1. The claimant: (1) applied two times during 1999 for a "server," "waiter," "any," "all," or "open" position(s) at Jillian's Indianapolis facility during 1999; (2) had server experience listed on their application; (3) has certified that he requested a server position; and (4) has certified that he did not reject a server job offer at Jillian's; or

2. The claimant: (1) applied for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis during 1999; (2) had server experience listed on his application; (3) was hired for a non-server position (other than bartender); and (4) has certified that he unsuccessfully sought a transfer to a server position during 1999; or
3. The claimant: (1) applied for a position other than server at Jillian’s Indianapolis facility during 1999; (2) provides credible proof that he orally requested a server position at the time of application; (3) had server experience listed on his application; (4) was hired for a non-server position (other than bartender) and (5) who certifies that he unsuccessfully sought a transfer to a server position during 1999.

2. Class II: a class II claimant is eligible for monetary relief pursuant to the terms of this Decree if the Commission determines that claimant satisfies each of the following conditions:

- a. The claimant is a male.
- b. A timely claim has been submitted.
- c. The claimant has attended an interview, if requested by the EEOC, in accordance with Section 409.D.5., above.
- d. The claimant meets the qualifications in any of the five paragraphs listed below.

1. The claimant: (1) applied once for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999; (2) had server experience listed on his application; (3) has certified that he would have accepted a server position; and (4) has certified that he did not reject a server job offer at Jillian’s; or
2. The claimant: (1) applied for a position other than server at Jillian’s Indianapolis facility during 1999; (2) had server experience listed on his application; (3) certifies that he requested a server position; and (4) has certified that he did not reject a server job offer at Jillian’s; or
3. The claimant: (1) provides credible proof that he requested a transfer to a server position at Jillian’s Indianapolis facility during 1999; and (2) had server experience; or
4. The claimant: (1) applied for a server position at Jillian’s Indianapolis facility during 1999; (2) had no server experience listed on their application; (3) was hired for a non-server position (other than bartender); and (4) unsuccessfully requested a transfer to a server position during 1999; or
5. The claimant: (1) applied for a position other than server at Jillian’s Indianapolis facility during 1999; (2) orally requested a server position at the time of application; (3) had no server experience listed on his

application; (4) was hired for a non-server position (other than bartender); and (5) unsuccessfully requested a transfer to a server position during 1999.

3. Class III: a class III claimant is eligible for monetary relief pursuant to the terms of this Decree if the Commission determines that claimant satisfies each of the following conditions:

- a. The claimant is a male and was not hired as a server.
- b. A timely claim has been submitted.
- c. The claimant has attended an interview, if requested by the EEOC, in accordance with Section 409.D.5., above.
- d. The claimant meets the qualifications in any of the four paragraphs listed below.

1. The claimant: (1) applied once for a “server,” “waiter,” “any,” “all,” or “open” position(s) at Jillian’s Indianapolis facility during 1999; (2) had no server experience listed on his application; (3) has certified that he would have accepted a server position; and (4) has certified that he did not reject a server job offer at Jillian’s; or

2. The claimant: (1) applied for a position other than server at Jillian’s Indianapolis facility during 1999; (2) provides credible proof that he sought a server position; (3) had no server experience listed on his application; and (4) has certified that he did not reject

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a server job offer at Jillian's; or

3. The claimant provides credible proof that he was deterred from applying for a server position at Jillian's during 1999; or

4. The claimant: (1) provides credible proof that he requested a transfer to a server position at Jillian's Indianapolis facility during 1999 and (2) had no server experience.

4. Class IV: a class IV claimant is eligible for monetary relief pursuant to the terms of this Decree if the Commission determines that claimant satisfies each of the following conditions:

- a. The claimant is a male.
- b. A timely claim has been submitted.
- c. The claimant has attended an interview, if requested by the EEOC, in accordance with Section 409.D.5., above.
- d. The claimant: (1) was employed as a server at Jillian's Indianapolis facility during 1999 or 2000; and (2) provides credible proof that he was afforded less favorable shifts, areas and/or parties than female servers, during his employment at Jillian's which impacted his earnings.

SECTION 410 COMPUTATION OF AWARD FOR CLAIMANTS

A. In addition to class I-IV awards, the charging parties in this case shall be awarded the following additional sums from the damages fund:

- 1. Bret David (lead charging party) \$10,000

2. Michael Harvey	\$5,000
3. Aaron Jones	\$5,000
4. Nickey Ussery	\$5000

B. The remaining \$325,000 of the damages fund shall be distributed among the class members, by class, at the sole discretion of the EEOC.

C. The Commission shall make all determinations as to computation of damages for each class member.

SECTION 411 Notice of class member status/damages award

Within eight weeks of the EEOC's final receipt of Claim Forms, the EEOC or a third party contractor retained by the EEOC will furnish to all claimants and class members, notification of whether they have been determined to be a class member, and if so, their proposed award. (Exhibit 7) A schedule of class members and their proposed awards shall also be sent to Jillian's.

SECTION 412 Fairness Hearing

Claimants and class members will be given four weeks from the date of the letters referenced in Section 411 above, to submit letters to the court indicating any disagreement they may have with their claimant or class member status or the proposed monetary awards and their reasons for their objections. The claimant and class members must also send copies of any objections forwarded to the Court to the EEOC.

This procedure will be the sole means by which claimants or class members may challenge their claimant or class member status, the handling of their claim and their proposed monetary award, if any. A cut off date for objections shall be listed on the letters. A copy of the

form letter to be sent to putative claimants and class members is attached as Exhibit 7.

If no objections are filed with the Court, the Court will issue an order approving the distribution of the settlement fund to class members (“final order of distribution”) If any objections are filed, the Court shall schedule a fairness hearing before issuing the final order on distribution. The Court’s final order of distribution shall be sent to all parties and to the Court Clerk and shall state: (1) the amount that each class member is entitled to, upon return of an executed release; (2) that no settlement checks may be tendered until the EEOC notifies the Court Clerk in writing, of the receipt of executed releases or the court issues a revised final order of distribution, pursuant to Section 413 of this Decree; and (3) that all accrued interest on the Damages Fund shall be distributed to class members on an equal basis in conjunction with the issuance of the settlement checks.

SECTION 413 Distribution of award

Within two (2) weeks of the court's final order of distribution, the EEOC shall send to each class member eligible for monetary relief, a release form attached as Exhibit 8 and Notice, attached as Exhibit 9, indicating the Court's approval of the settlement, the amount to be received and the requirement to return the enclosed Release of Claims. Jillian’s shall provide the District Court Clerk with a 1099 form for each class member, for the amount of the settlement check, excluding any accrued interest.

If a class member does not return the fully executed Release of Claims within thirty (30) days after the date upon which the Notice and Release were mailed to him, the EEOC will send the class member, at the address provided on the class member’s Claim Form as supplemented

pursuant to Section 403.B.3, a written notice, Certified Mail, Return Receipt Requested, that unless the class member returns the fully executed Release of Claims within fourteen (14) calendar days of his receipt of the notice, his claim will be disallowed. In the event that the EEOC does not receive the fully executed Release of Claims within the fourteen (14) calendar day period, the class member will be ineligible for relief of any kind pursuant to this Decree and will be so notified by the Commission in a letter to be agreed upon by the Commission and Jillian's. Any funds that are not claimed shall be donated to The Urban League of Indianapolis. The EEOC shall seek an order from the court revising the final order of distribution, directing that the unclaimed funds be paid to the Urban League of Indianapolis and directing that all checks be immediately tendered.

PART 5 ADMINISTRATION OF THE DECREE

SECTION 501Expenses /Labor

A. The Company agrees to pay \$10,000 for administrative expenses, including but not limited to expenses associated with the advertising detailed in Section 403.A., postage, mailing and labor expenses.

B. The \$10,000 administrative expense fund shall be placed into a trust fund maintained by Jillian's agents upon the entry of this Decree or within three days of approval by the bankruptcy Court.

C. The EEOC shall instruct Jillian's or its agents with respect to checks to be issued. Jillian's or its agents shall write checks up to the amount of \$10,000, as directed by the EEOC but its monetary obligations with respect to the administration of this Decree shall not exceed

\$10,000.

D. Jillian's or its agents shall issue all checks within three weeks of a request by the EEOC.

SECTION 502 Extension of Time Limits Due to Good Cause .

In various sections of this Decree the Parties are required to take certain actions within certain designated time periods. The party whose action is limited thereby must comply with the stated time period, unless that party has good cause for requesting an extension of time. In such event, the party wishing to extend the time period must, not less than seven (7) calendar days prior to the expiration of the applicable time period, notify the other party in writing of: (i) the date by which such action will be taken; and (ii) the asserted good cause that supposedly justifies such extension. If the party who receives such notice wishes to challenge the existence of good cause or the reasonableness of the extension, it may invoke the Dispute Resolution Procedure in Section 601.

PART 6 **DISPUTE RESOLUTION**

SECTION 601. Dispute Resolution Procedure

In the event that any dispute arises between the Parties regarding the interpretation or application of this Decree or any provision thereof and the Decree does not provide for its unilateral resolution by one of the parties, the party claiming a dispute (hereinafter "Aggrieved Party") shall notify the other party (hereinafter "Respondent") in writing of the nature of the disputed matter, the provision of the Decree to which it relates and the factual details forming the basis of such dispute. The parties agree that either party has the right to invoke these Dispute

Resolution Procedures with respect to any such disputed matter, at any time, even though the designated part, section or subsection of the Decree may not expressly authorize the use of such procedures. In any instance wherein a dispute arises, the Respondent shall have thirty (30) days from receipt of the written notice to investigate, correct or refute the position of the Aggrieved Party, or cure the alleged breach or accept the interpretation or contention of the Aggrieved Party. If the Aggrieved Party is not satisfied with the cure, prior to the commencement of an action for breach of this Decree pursuant to Section 106, the parties shall meet and confer in a joint effort to resolve the dispute. In the event a party does not make itself available for a meeting within 10 days of notice that a satisfactory cure has not been offered, the meeting requirement is waived. All such meetings shall be scheduled at a date and time chosen by mutual agreement of the parties. The thirty (30) day period may be extended by written consent of the parties, which consent shall not be unreasonably withheld. Resort to any of these procedures will not justify the suspension of any other obligation under this Decree. With respect to any such dispute, if the Respondent or the Aggrieved Party determines that, for practical or other reasons, it is more expedient to comply with the other party's position but nevertheless wishes to obtain a judicial determination with respect to the disputed issue, such party may notify the other party that it will accept the other party's position "under protest" and that such party intends to seek judicial relief pursuant to the terms of this Decree. The Court, in its discretion, may award either party some or all of its reasonable costs incurred in seeking enforcement of this Agreement.

SECTION 602 Limitation on Relief Available Under This Decree

In no event shall any claimant or class member, under any circumstance, be entitled to

costs, attorneys' fees or any other type of relief, other than the relief provided for in this Decree.

In the event that the Company, the Commission or one or more claimants or class members seeks judicial relief as a result of an alleged breach by the Company of this Decree, the Company, the Commission and/or any such claimants' and/or class members' relief from the Court shall not go beyond the remedies and relief granted by this Decree, as such remedies and relief are limited and qualified by the terms of this Decree.

PART 7 **ENTIRE AGREEMENT**

SECTION 701

Each of the Parties to this Decree expressly acknowledges that this Decree was the product of open and frank negotiations of all subjects deemed to be pertinent to the captioned charge, the findings of the Commission related thereto and the remedial issues associated therewith. Other than as reflected herein, no other representations, inducements or promises have been made by either party to the other with respect to the subject matter of this Decree. Accordingly, the written provisions of this Decree and all exhibits and attachments thereto represent the complete understanding of the Parties and sole source of their obligations with respect to the subject matter of this Decree.

PART 8 **MISCELLANEOUS**

SECTION 801 Notice

All documents required to be forwarded to the Parties or their counsel shall be mailed, delivered or telefaxed to counsel at the addresses shown below:

Nancy Dean Edmonds
Senior Trial Attorney
Indianapolis District Office

Equal Employment Opportunity Commission
101 W. Ohio St., Suite 1900
Indianapolis, IN 46204
(317) 226-7229
ATTORNEY FOR THE COMMISSION

Brenda H. Feis
Jeffrey K. Ross
Seyfarth Shaw
55 E. Monroe St., Suite 4200
Chicago, IL 60603
ATTORNEY FOR THE COMPANY

PART 9 **EXECUTION AND AUTHORITY TO ACT**

SECTION 901

The date that the Decree was executed by the Court is the effective date of the Decree.

SECTION 902

This Decree shall not be effective until such time as it is signed by authorized representatives of both the Commission and the Company, and entered by the Court. The Commission and the Company warrant and represent to each other that the persons signing this Decree are fully authorized to act and sign this Decree on behalf of the respective parties, Jillian's Entertainment Holdings Co. Inc. and the Equal Employment Opportunity Commission.

SECTION 903

This Decree may be executed in one or more counterparts, all of which together shall constitute one instrument.

SECTION 904

The Court shall retain jurisdiction of this cause throughout the duration of this Decree for purposes of monitoring compliance with this Decree and entry of such further orders as may

be necessary or appropriate.

JILLIANS ENTERTAINMENT

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

APPROVED this _____ day of _____, 2004.

U.S. DISTRICT COURT JUDGE
SARA EVANS BARKER
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA