

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 4:04-CV-109-HLM
v.)	
)	
CBOCS, INC., f/k/a)	
CRACKER BARREL OLD)	
COUNTRY STORE, INC.,)	
)	
Defendant.)	
)	

AGREED ORDER

INTRODUCTION

1. This Agreed Order (“Order”) supersedes the Consent Order entered in this case on May 4, 2004, which resolved the Complaint filed by Plaintiff United States against Defendant Cracker Barrel Old Country Store, Inc. (“CBOCS”)¹ alleging that the Defendant violated Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a et seq.

2. Defendant CBOCS, a Tennessee corporation with its principal place of

¹ When the case was filed on May 4, 2004, Cracker Barrel Old Country Store, Inc., was the name of the Defendant. However, on December 11, 2008, the Defendant’s name was formally changed to CBOCS, Inc. Thus, this Order references CBOCS, Inc., rather than Cracker Barrel Old Country Store, Inc. See Paragraph 71, infra.

business in Lebanon, Tennessee, conducts business in over 40 states, including the state of Georgia. CBOCS operates over 580 locations throughout the United States, each consisting of a “country style” restaurant with an attached retail store.

3. The Consent Order entered on May 4, 2004 by its own terms was set to expire on May 4, 2009, and was extended with the mutual consent of the parties.
4. As described in the Joint Motion submitted concurrently with this Order, the parties agree that CBOCS is in substantial compliance with many of the provisions of the May 4, 2004 Consent Order. Accordingly, the parties agree that the May 4, 2004 Consent Order shall expire. The parties’ consent to the expiration of the May 4, 2004 Consent Order was contingent upon entry of this Agreed Order by the Court addressing the remaining matters in this case.² Entry of this Order does not constitute an admission of wrongdoing by CBOCS, nor do the parties intend for it to be interpreted as such.

DEFINITIONS

² The May 4, 2004 Order expired contemporaneously with the entry of this Order.

5. “Complaint” includes any written or oral, formal or informal complaint, to any judicial, administrative or official body or to any officer, employee or agent of CBOCS.
6. “Customer discrimination” refers to treatment of customers or potential customers that violates Title II, including but not limited to the proscriptions of this Order.
7. “Effective date of this Order” refers to the date on which this Order is entered, after being signed by the District Judge. (Also referred to as “entry of this Order”).
8. “Employees” refers to all CBOCS employees.
9. “Managers” includes all Associate Managers, Senior Associate Managers, Retail Managers, General Managers, District Managers, Regional Vice Presidents, Directors, Managers in the Human Resources Department, Divisional Vice Presidents, Senior Vice Presidents, the General Counsel, Presidents, and Chief Operating Officers, as well as any other person having managerial or supervisory responsibility for CBOCS stores, for training, for complaint handling and/or investigation, and/or for customer service.
10. “Operations employees” refers to all CBOCS employees and/or agents, including both managers and non-managers, who work in CBOCS

restaurants and/or stores. It also includes the following employees in the corporate home office: 1) all those who have direct dealings with customers, including but not limited to all Guest Relations employees, and 2) all those who have responsibility for investigating complaints of customer discrimination, including but not limited to all Employee Relations and Investigation Department employees and all employees in the General Counsel's office who have duties related to this Order.

11. "PAR Materials" refers to the e-learning study aids CBOCS provides to its operations employees who have direct dealings with customers, in order to assist them in attaining promotional advancement.
12. "Store" refers to a single CBOCS location, which includes a restaurant.
13. "Testing" refers to a controlled process used to identify any differences on the basis of race or color in the treatment or service provided to customers of CBOCS.
14. "Title II" refers to Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a, et seq.

JURISDICTION AND SCOPE OF ORDER

15. The parties have agreed to the entry of this Order. To this end, the parties stipulate, and the Court finds, that:

1. CBOCS stores are places of public accommodation within the meaning of 42 U.S.C. §§ 2000a(b)(2), (b)(4);
 2. CBOCS's operations affect interstate commerce within the meaning of 42 U.S.C. §§ 2000a(c)(1), (c)(2), (c)(4); and
 3. This Court has personal jurisdiction over Defendant and jurisdiction over this action pursuant to 42 U.S.C. § 2000a-6 and 28 U.S.C. § 1345.
16. All provisions of this Order shall apply to Defendant, its officers, employees, agents, assigns, successors in interest in the ownership and/or operation of CBOCS stores, and anyone acting in whole or in part under the direction of any of them.

GENERAL INJUNCTION

17. CBOCS will implement the provisions described below to ensure its compliance with Title II. These provisions focus on the development and implementation of an improved system for investigating, responding to and tracking complaints of alleged customer discrimination based on race or color; and ensuring complete training of employees, investigators and managers relating to this system.
18. CBOCS is hereby enjoined from violating Title II of the Civil Rights Act of

1964, 42 U.S.C. §§ 2000a, et seq., in any manner, including, but not limited to: denying or providing inferior service or food to any person because of race or color; engaging in or allowing seating or service assignments on the basis of race or color; discouraging, or allowing any employee to discourage, any person from enjoying food or service because of race or color; treating customer complaints differently on the basis of race or color; or retaliating against any officer, employee or agent for opposing or reporting alleged violations of Title II or this Order.

COMPLIANCE PROVISIONS

Complaint and Investigation Process

19. CBOCS's Investigation Department³ shall: (1) investigate allegations of, or allegations that suggest, discrimination on the basis of race or color against customers (whether such allegations were reported by customers or by CBOCS employees); (2) regularly review the Guest Relations database referenced in Paragraph 48, infra, and other relevant company data, including but not limited to complaint data, for trends that could be indicative of customer discrimination based on race or color; and (3) develop appropriate written policies and procedures ("investigation

³ The Investigation Department is currently called Guest Resources.

manual”) for the investigation of complaints potentially alleging customer discrimination based on race or color, including written procedures applicable to managers.

20. CBOCS will fund the Investigation Department through a line item in its budget in a manner that will provide sufficient staff, funds, and resources to perform the functions required by this Order.
21. The head of the Investigation Department shall: (1) report directly to CBOCS’s Senior Vice-President for Human Resources; (2) review and provide input into all customer nondiscrimination policies and procedures and changes thereto; (3) review and provide input into all customer nondiscrimination training and changes thereto; and (4) within 30 days of entry of this Order, make, in consultation with the United States and the consultants, appropriate modifications to the policies and procedures manual for investigations of complaints potentially alleging customer discrimination based on race or color to clarify the role of managers in complaint investigations, the handling of evidence, and the obligations and rights of employees and witnesses, as well as setting forth standards and procedures for the closure of complaints that do not allege a violation of Title II. See Paragraph 33, infra. Other staff shall include dedicated

investigators charged with investigating allegations of, or allegations that suggest, customer discrimination based on race or color. Investigation Department staff shall be evaluated based on their competency in following the policies and procedures for investigations.

FILING A COMPLAINT

22. CBOCS shall accept complaints potentially relating to alleged customer discrimination in person or by telephone, mail, e-mail, or facsimile transmission. Anonymous complaints will be accepted.
23. CBOCS will make the investigation manual, as modified per Paragraphs 21 and 33, available for inspection by employees both at its headquarters and at each CBOCS location.
24. Whenever a complaint potentially involving customer discrimination is received in the CBOCS corporate offices, CBOCS will send a letter to the complainant notifying him or her that the complaint was received and providing a summary of the complaint investigation and determination process. Any changes to this summary shall be reviewed and approved by the United States before they are used.
25. CBOCS shall continue to make available its complaint form at CBOCS headquarters and at all stores. However, complainants shall not be required

to file a complaint "form" to initiate an investigation. All complainants shall be requested to provide all information available to them that would assist CBOCS in identifying the employee(s) involved and the incident(s) giving rise to the complaint, including the reason(s) the customer suspects race or color may have motivated the incident. CBOCS shall continue to follow procedures in the manual for conducting follow-up inquiries when additional information is necessary to determine whether or not a complaint potentially involves alleged customer discrimination on the basis of race or color. Also, CBOCS shall maintain on its website a link using the word "complaint" in the line above the text box of its contact page (labeled "Drop Us a Line") that invites customers to make a request, suggestion or question.

26. All CBOCS employees shall accept complaints potentially relating to alleged customer race or color discrimination from both alleged victims, witnesses of alleged misconduct, and employees. Any CBOCS employee receiving such a complaint shall record all available information on the complaint form and refer it to the Investigation Department within 24 hours. There shall be no discretion by any CBOCS employee to not accept a complaint.
27. CBOCS shall require employees to report observed or suspected customer

discrimination based on race or color by employees, as well as any complaints of alleged customer discrimination based on race or color discrimination made to that employee (including complaints against that same employee). Such potential misconduct shall be reported to a CBOCS manager or to CBOCS's Investigation Department. Any CBOCS manager receiving such a complaint shall record all available information on the complaint form and refer it to the Investigation Department within 24 hours. CBOCS managers may attempt to address the concerns of customers who make complaints potentially relating to alleged discrimination based on race or color. Whether or not the manager is successful at addressing the concerns of such a customer, the manager shall obtain all relevant information relating to the alleged discriminatory conduct from the customer and transmit such information, including all relevant documents, for each complaint he or she receives to CBOCS's Investigation Department within 24 hours. Managers' reports of such complaints shall also describe the race of each customer and witness (based either on a report from the customer and/or witness or on the manager's own determination of race) and detail all efforts to address the customers' concerns and shall document whether such efforts were successful. A manager shall be disciplined for

any proven complaints of customer race or color discrimination that were not handled appropriately by that manager. However, managers shall not be disciplined for reporting complaints or suspicions of customer discrimination based on race or color to the Investigation Department and other CBOCS management personnel if the manager also takes appropriate actions to address the complaints.

28. CBOCS shall provide a quarterly summary of the complaints received at each store to the United States in the form of a spreadsheet.⁴ Such information will be derived from the database maintained by CBOCS's Investigation Department or its equivalent. See Paragraph 48, infra.
29. In order to obtain information on the race of complainants, each person who calls CBOCS corporate offices to lodge a complaint shall be asked at the end of the phone call to provide demographic information, including race, on a voluntary basis, and that information shall be recorded in the Guest

⁴ This spreadsheet shall continue to include: the ticket number assigned to each complaint; the date of receipt; the store location, district and region; discrimination type (e.g., race); race of guest (e.g., African American); the status of the investigation (e.g., "concluded"); the disposition of the complaint (e.g., "policy violation found"); whether the complainant alleged discriminatory statements, conduct, or both; whether alleged discriminatory statements were "admitted" or "corroborated;" whether there were violations of the Order by employees; the name of the investigator; date of resolution; and any remedial actions taken.

Relations database. Similarly, whenever Guest Relations or other CBOCS employees call a person who reports a complaint to CBOCS corporate offices by letter or email, that person shall be asked, at the end of the phone call, to provide demographic information, including race, on a voluntary basis, and that information shall be recorded in the Guest Relations database. In both cases, the complainant shall be told that providing the information about race is voluntary, that the information will be used only to assist in compliance with federal law, and that the complaint will be fully investigated, regardless of whether or not the person provides information about race.

30. CBOCS's Investigation Department shall notify the manager(s) of any employee that a complaint has been filed against such employee alleging customer discrimination based on race or color. The Investigation Department shall make investigation files and records relating to the operations employee against whom the complaint has been filed available to managers who are responsible for that employee's training, counseling, or discipline, after the investigation has been finally concluded.
31. If a manager is allegedly involved in the discrimination, the manager's supervisor shall be notified after the investigator has been assigned and has

commenced the investigation.

INVESTIGATING MISCONDUCT

32. CBOCS's Investigation Department shall be responsible for investigating all customer complaints involving or suspected to involve alleged discrimination based on race or color and for the progress and completeness of all investigations. The Investigation Department shall fully investigate all such complaints except as specified in this paragraph and Paragraph 34, infra. The Investigation Department shall ask complainants for corroborating information. If the facts alleged in a complaint, even if taken as true, are insufficient to support a violation of Title II or this Order, the head of the Investigation Department, in consultation with CBOCS's in-house counsel, may determine that no further action on the complaint is required and the investigation may be closed. Any such determination shall be reported to the consultants referenced in Paragraph 64, infra, in the time and manner specified by them. Such determinations shall also be reflected in the complaint database required by Paragraph 48, infra, recorded by CBOCS in the quarterly summary of complaints referenced in Paragraph 28, supra, and described in the status reports referenced in Paragraph 63, infra. Should the consultants conclude, upon review, that further action on a

complaint is required, they shall notify the head of the Investigation Department and the investigation shall be reopened.

33. CBOCS and the consultants referred to in Paragraph 64, infra, shall, subject to the approval of the United States, develop guidelines and procedures for closure of complaints under the standard set forth in Paragraph 32. These guidelines and procedures shall be incorporated into the investigation manual and shall be followed as if set forth in this Order.
34. If a complainant fails to contact the CBOCS Investigation Department after reasonable attempts at contact (as defined in Paragraph 35, infra) have been made and there is not sufficient independent information to proceed, no further action on the complaint is required and the investigation may be closed. Any such determination shall be reported to the consultants referenced in Paragraph 64, infra, in the time and manner specified by them. Such determinations shall be reflected in the complaint database required by Paragraph 48, infra, recorded by CBOCS in the quarterly summary of complaints referenced in Paragraph 28, supra, and described in the status reports referenced in Paragraph 63, infra. Should the consultants conclude, upon review, that further action on a complaint is required, they shall notify the head of the Investigation Department and the investigation shall be

reopened.

35. For each complaint involving or suspected to involve alleged customer discrimination based on race or color, the Investigation Department shall interview all involved employees, all employee witnesses, and all managers on duty at the time of the alleged incident, and shall attempt to interview all complainant(s), individuals in the complainant's party, and other persons identified from witness interviews. In attempting to contact such persons, investigators shall utilize all available contact information, including addresses, telephone numbers and e-mail addresses, and shall respond to all written and telephonic messages and e-mails sent by complainants or witnesses. A reasonable attempt to contact a complainant or witness shall be no fewer than one written communication and four telephone calls, made at different times of day, during a two week period, not including attempts to contact in response to voice mail messages, e-mails or other communications from the complainant or witnesses.
36. CBOCS shall ensure that investigators may be reached directly via a dedicated telephone number, which shall be provided to all complainants and witnesses. Interviews of complainants or non-employee witnesses may be conducted by telephone, and if complainants or non-employee witnesses

are unavailable to be interviewed during business hours, investigators shall offer to interview them at alternate times, including during reasonable weekend or after business hours. If complainants request to be interviewed in person, investigators shall make reasonable efforts to accommodate such requests. CBOCS's Investigation Department shall not close an investigation without rendering a disposition solely because the complainant is unavailable to make a statement; provided, however, that CBOCS may close an investigation for the reasons described in Paragraphs 32-34.

37. Investigators from CBOCS's Investigation Department shall not conduct group interviews unless a complainant or witness requests to be interviewed with someone else present. CBOCS employees shall be required to give an oral or written statement to representatives of CBOCS's Investigation Department, and the Investigation Department shall not accept a written statement from any employee in lieu of an interview. If an employee no longer works for CBOCS, the Investigation Department will use its best efforts to locate and interview that individual, including locating and utilizing contact information contained in personnel records. Current employees shall be interviewed at home or outside the store at the employee's request, and managers shall provide every employee who is

interviewed a private place (with no one else present) to conduct such telephone calls if they occur at a CBOCS store. Employees shall be compensated for their time if the interview occurs outside working hours.

All employee witnesses shall be asked to whom they have spoken about the incident(s) under investigation.

38. CBOCS's Investigation Department investigators shall have the authority to question all interviewees and to challenge their version of the facts.
39. Managers on duty at the time of incidents that result in an investigation of allegations of customer discrimination based on race or color shall be required to cooperate with investigators, to collect all relevant information and to describe in detail their handling of the situation during and after the alleged incident and their observations of the complainant and involved employees or managers. If a manager receives a complaint involving or suspected to involve alleged customer discrimination based on race or color, the manager shall preserve all records that might pertain to that complaint, including credit card, seating, staffing and ordering records, to the extent such records exist. Managers may not submit summaries, descriptions or characterizations of information contained in documents in lieu of the documents themselves.

40. To ensure thorough interviews of employees who are the subject of complaints regarding alleged customer discrimination, CBOCS's Investigation Department investigators shall obtain, at a minimum, the following information regarding the accused employee(s): prior complaints, performance evaluations, assignment history at other stores, and all customer service-related training/qualification records. CBOCS shall provide investigators with access to the relevant portion of the involved employee's personnel files and/or relevant computerized databases containing such information.
41. CBOCS's Investigation Department shall collect all relevant records, including those provided or authorized by the customer (e.g., credit card records), in order to gather information as soon as possible after receiving a complaint of misconduct, where the information on hand is insufficient to conduct a complete investigation of the complaint. Investigators shall not require complainants or other witnesses to provide evidence that CBOCS itself can obtain.
42. At the conclusion of each investigation, CBOCS's Investigation Department shall issue a final report describing the alleged customer discrimination based on race or color, any other misconduct identified during the course of

the investigation, a summary of all evidence gathered during the investigation (including an explanation for the absence of any evidence), the basis for all credibility determinations, its findings with respect to all potential misconduct, the involved employee's complaint history, and the analysis supporting its findings. The final report shall be made a part of the investigation file. All documentary evidence that is referenced or relied upon in reaching any finding or conclusion (including documents described in Paragraphs 40-41, supra) shall be attached to the final report and scanned into the electronic file so that it is available to the Investigation Department and persons reviewing the investigation.

43. Neither CBOCS nor any of its employees or agents shall retaliate against or harass any employee (including employees acting on behalf of CBOCS's Investigation Department) who in good faith reports, investigates, or opposes alleged customer discrimination based on race or color. Employee complaints of retaliation or harassment for reporting, investigating, or opposing alleged customer discrimination based on race or color or pressure from fellow employees or managers to engage in any form of customer discrimination based on race or color shall be handled using the same procedures described in the investigation manual and in this Order.

DECIDING THE COMPLAINT

44. CBOCS's Investigation Department shall make findings based on a “preponderance of the evidence” standard. CBOCS's investigation manual shall specify the possible dispositions, which shall include a specific disposition, e.g., “not resolved”) for those investigations where insufficient information is available to either substantiate or disprove the alleged customer discrimination based on race or color.
45. There shall be no automatic preference of an employee's statement over a complainant's statement or vice versa. In making credibility determinations, CBOCS's Investigation Department shall consider the employee's tenure, history of complaints and disciplinary records, as well as any relevant information about the complainant.
46. Final authority and responsibility for determining the disposition of a complaint potentially involving alleged customer discrimination shall rest with CBOCS's Investigation Department. The accused employee's supervisors and senior CBOCS management shall not have the authority to modify or reverse any Investigation Department disposition of a complaint. For each complaint where discrimination is found, the Investigation Department shall forward the investigative file, final report, and disposition

to the appropriate District Manager and Regional Vice President. The District Manager or Regional Vice President shall be responsible for taking appropriate remedial action, including imposing discipline up to and including termination, and ordering remedial procedures and/or training at the affected location.

47. Nothing in this Order shall affect the right of the United States to investigate independently any complaint received from any source alleging unlawful customer race or color discrimination by CBOCS.

QUALITY ASSURANCE

48. CBOCS's Investigation Department shall continue to maintain a computerized database ("database") for all complaints and investigations of misconduct involving suspected customer discrimination based on race or color. The database shall maintain the available information on past complaints and investigations as well as all pertinent information on all complaints and investigations occurring after the execution of this Order. This database shall include, at a minimum: (a) the number of the store involved; (b) the name, race, and/or gender of all complainants and involved employees; (c) contact information for all relevant employees and complainants; (d) a textual description of the allegations; (e) significant

dates; (f) a description of the investigation made, including scanned images or summaries of the statements made by all persons interviewed; (g) any manager-initiated efforts to resolve the complaint; (h) the disposition of the complaint; and (i) the information required in Paragraph 28, supra.

49. CBOCS's Investigation Department shall issue to the United States, the consultants referenced in Paragraph 64, infra, and the relevant Regional Vice Presidents quarterly statistical reports of all complaints and investigations of suspected customer discrimination based on race or color received by CBOCS, broken down by region and store. Such reports shall include each investigation's significant dates, general allegations, disposition, any resulting discipline, and all information required under Paragraph 28, supra.
50. The physical investigation files shall be maintained for at least five years from the date of the disposition of the complaint. All information in the database related to a particular CBOCS employee investigated for customer race discrimination shall be maintained during that employee's employment with CBOCS and for three (3) years after the employee leaves CBOCS.
51. Within sixty (60) days of the modifications to the policies and procedures manual for complaint investigations referenced in Paragraph 21, supra, (i.e.,

within 90 days of entry of this Order) CBOCS shall provide appropriate investigation training for all operations employees responsible for conducting the investigations described in Paragraphs 19-47, supra, including Investigation Department investigators and any contractors or managers who undertake such investigations. Such training shall be conducted by CBOCS in conjunction with the consultants referenced in Paragraph 64, infra. See also Paragraph 53, infra. All newly-hired operations employees or contractors who may be conducting complaint investigations will receive similar training within 30 days of their hire date. This training shall be consistent with the changes to the policies and procedures manual referenced in Paragraph 21, and shall include, but not be limited to: training on the proper investigation of complaints of customer discrimination based on race or color, including how to identify suspected discrimination based on race or color and what questions to ask of complainants, employees, and other potential witnesses; proper techniques for gathering information and questioning individuals; the investigation manual described in Paragraph 21 and each of the investigative components described in Paragraphs 19-47; and training on record-keeping and reporting requirements. The consultants shall spot check the work of all

investigators.

52. CBOCS will provide the Investigation Department with routine access to all copies of customer complaints logged on its Investigation Department computer database which are related to seating or service issues, whether or not these complaints allege customer discrimination based on race or color. The Investigation Department shall review these complaints to determine whether CBOCS has appropriately categorized any complaints which potentially involve alleged customer discrimination based on race or color, conducted the appropriate follow-up inquiry to determine whether the complaints involved alleged customer discrimination based on race or color, or otherwise complied with the provisions of this Order. The Investigation Department may, in its discretion, request all documents related to a complaint, which shall be provided promptly by any and all responsible employees. The United States, at its discretion, may review the investigation of these complaints and proffer recommendations to the Investigation Department. In addition, the United States shall, on request, be permitted to inspect and/or receive copies of records of seating and service complaints and employee counseling reports concerning those complaints that are kept at CBOCS stores.

Internal Education Program

53. To effectuate the requirements of this section, the consultants referenced in Paragraph 64, infra, will work with CBOCS to develop and conduct additional training for all members of its Investigation Department and all contractors conducting investigations. The training will include, but not be limited to, the requirements set out in the revised procedures manual referenced in Paragraph 21.
54. Within 90 days of entry of this Order, all CBOCS managers must attend, either in person or by e-learning module, a managers' training workshop, developed in conjunction with the consultants referenced in Paragraph 64, infra. The training workshop will discuss managers' duties under Title II and this Order, including 1) instruction regarding requirements of reporting customer complaints internally, including specific instruction on eliciting information from customers to determine appropriately whether a complaint "involves or is suspected to involve alleged discrimination based on race or color;" 2) training in dealing with customer complaints made in the store, and 3) instruction on the revised procedures manual referenced in Paragraph 21, supra. This workshop shall spend not less than forty-five (45) minutes

discussing these topics.

55. All CBOCS managers who are newly promoted to their managerial positions during the term of this Order must attend in person or by e-learning module, within ninety (90) days of their promotion, the managers' training workshop described in the previous paragraph.
56. All CBOCS operations employees who are not managers and who begin their employment or agency relationship during the term of this Order shall, within sixty (60) days of the commencement of their employment or agency relationship, take a nonmanagers' training workshop that includes instruction regarding requirements of reporting customer discrimination complaints internally, including instruction on eliciting information from customers to determine appropriately whether a complaint involves or is expected to involve alleged discrimination based on race or color. Operations employees who are not managers may attend such training in person, may view a videotape of such training or may complete an e-learning module covering the same material. The videotape or e-learning module shall also include a statement by a senior manager that he/she has taken similar training and considers it important.
57. All newly-hired Investigation Department employees who have

responsibility for receiving customer complaints will receive appropriate training on the proper handling of customer complaints potentially involving alleged customer discrimination within 30 days of their hire date. This training shall include, but not be limited to, training on the proper intake of customer complaints, including how to identify suspected race discrimination, what questions to ask of complainants and other witnesses, and how to respond when race discrimination is alleged; training on how to code complaints of suspected discrimination; and record-keeping and reporting requirements.

58. All Investigation Department employees and employees covered by the preceding paragraph shall be required to complete a written or e-learning test to assess their knowledge of CBOCS's customer discrimination policy. At the beginning of any training required by paragraphs 51 and/or 57, each such employee shall complete a pre-assessment test to help identify gaps in the employee's knowledge of CBOCS's policy. Trainers shall review these pre-assessment tests and ensure that the training program addresses those gaps. At the completion of each training required by this Order, each such employee shall complete a post-assessment test. The post-assessment test shall be corrected at the training and the employee shall be immediately re-

trained on any questions that were not answered correctly. The pre- and post-assessment tests shall be developed in consultation with the United States.

Testing

59. The United States may take steps to monitor CBOCS's compliance with this Order, including performing its own testing at its own expense at any time and at any CBOCS location. If the United States' testing finds evidence of disparate treatment based on race or color, the United States shall so notify CBOCS and CBOCS shall respond appropriately.

DISPUTE RESOLUTION PROCEDURE

60. If differences arise between the parties regarding CBOCS's compliance with, interpretation of, or implementation of the terms of this Order, the parties shall endeavor to resolve such differences themselves before seeking the intervention of the Court.
61. In the event of a failure by CBOCS to perform in a timely manner any act required by this Order or otherwise to act in conformance with any provision thereof, and if attempts to resolve such differences are unsuccessful, the United States may move this Court to impose any remedy authorized by law or equity.

NOTICES

62. For purposes of this Order, all notices and communications addressed to the United States shall be delivered by overnight mail to: U.S. Department of Justice, Civil Rights Division, Chief -Housing and Civil Enforcement Section, 1800 G Street NW, Washington, DC 20006, with the note: “Attention: DJ 167-19-205.” Such notices and communications shall also be delivered by fax to the United States, Chief-Housing and Civil Enforcement Section, at fax number 202-514-1116, or by e-mail. All notices and other communications addressed to CBOCS under this Order shall be in writing and delivered by United States mail to CBOCS, Inc., P.O. Box 787, Hartmann Drive, Lebanon, TN 37088, for the attention of Michael Zylstra, General Counsel, and by fax at fax number (615) 443-9107. The parties may from time to time change their addresses and/or telephone numbers for the purposes of this section by providing written notice of such changes to the other parties.

REPORTING, RECORDKEEPING AND ACCESS

63. Ninety (90) days following entry of this Order and every three (3) months thereafter, but not including the final three (3) months of the term of this

Order, CBOCS shall provide the United States a status report delineating all steps taken during the reporting period to comply with each provision of this Order, including the information required under Paragraphs 28 and 49, supra, and the recommendations of the consultants referenced in Paragraph 64, infra.

64. The parties shall jointly agree upon and hire consultants to review complaint investigations and determinations on a quarterly basis and issue biannual reports to CBOCS and the United States based on those reviews. The reports shall be submitted seven (7) and twelve (12) months after entry of this Order. The consultants shall include in their reports specific findings regarding CBOCS's compliance with the provisions of this Order and specific recommendations for achieving compliance based on those findings. In addition, the consultants shall provide to the parties additional written feedback on their reviews at least every two months. Such written feedback may take the form of e-mails and/or other correspondence to CBOCS that is copied to the United States and shall not be required during months in which the consultants provide their biannual reports. CBOCS shall pay one-half of the cost of such consultants; shall make available to them electronic access to the Investigation Department database and the

information required in Paragraph 28; and shall take all other reasonable steps to facilitate the consultants' review as described in this Order.

65. During the term of this Order, CBOCS shall maintain all documents and/or records (including electronic, video, audio, and/or computerized documents and/or records as well as written and/or printed documents and/or records) that are created, generated, or received that pertain to the subject matter or the implementation of this Order, including any documents provided to CBOCS.
66. For the duration of this Order, the United States shall have full access to all nonprivileged records related to compliance with the Order. CBOCS shall make all such records available to the United States for inspection and copying upon request of the United States.

TERM AND ADMINISTRATION OF CONSENT ORDER

67. This Agreed Order shall become effective upon the entry of the Order by the Court and for a period of fifteen (15) months thereafter. The consultants shall include in their second biannual report referenced in Paragraph 64, supra, specific recommendations to achieve substantial compliance with all of the complaint investigation and resolution provisions of the Order by the end of the 15-month term. Within two weeks after the consultants have

submitted their 12-month report, the parties shall meet and confer to discuss the consultants' recommendations and the status of compliance. At that time, the parties shall determine, based on the consultants' recommendation, whether, and to what extent, CBOCS shall provide additional information to the consultants, including but not limited to the information described in Paragraphs 28, 32, 34 and 49. The Court shall retain jurisdiction for the duration of this Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Order if CBOCS has not achieved substantial compliance.

68. Any time limits for performance imposed by this Order may be extended by the mutual agreement of the parties.
69. This Order constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and there are no covenants, terms or conditions, express or implied, other than as set forth or referred to herein. No party has made any representation, oral or written, modifying or contradicting the terms of this Order.
70. The parties acknowledge that certain information provided pursuant to this Order is required for the sole purpose of enforcing CBOCS's compliance

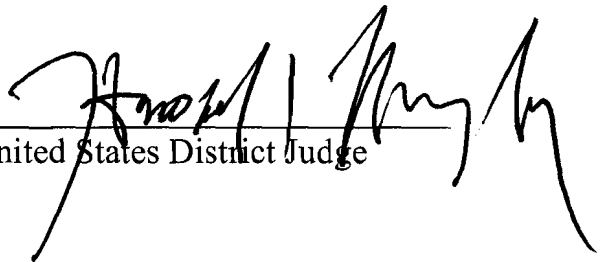
with Title II of the Civil Rights Act and this Order. All such records, reports and other documents maintained or produced pursuant to the terms of this Order shall be kept confidential, except that they may be used and/or disclosed solely for the purposes of this Order, including any proceedings before the Court. CBOCS and the United States share an interest in the candid discussion of matters related to the implementation of this Order. As such, they shall not disclose such information to any person not a party to this Order, except as is reasonably necessary to monitor or enforce the provisions of this Order or to comply with otherwise applicable laws. If any person not a party to this Order seeks to obtain any such material from the United States under the Freedom of information Act, the Civil Rights Division will assert all applicable exemptions pursuant to 5 U.S.C. § 552, 28 C.F.R. part 16 and the Privacy Act of 1974. Any inadvertent disclosure of such confidential information to a person not a party to this Order shall not constitute a violation of this Order unless such disclosure was willful. If CBOCS receives any requests to disclose these confidential communications (whether written or oral) during the term of this Order or for a period of three years thereafter, CBOCS may move this Court to rule on those requests, regardless of the forum in which such a request is made,

provided that CBOCS provides appropriate notice to the requestor.

LEAVE TO REFER TO DEFENDANT BY ITS NEW NAME

71. The parties agree and are hereby granted leave to refer to Defendant by its new name, CBOCS, Inc., in this Order and in all subsequent pleadings.

It is so ORDERED this 18th day of May, 2009.


United States District Judge

The parties consent to the entry of this Order as indicated by the signatures of counsel below:

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