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22 Chapter 11 Trustee of Defendant and
23 Debtor Kobra Associates, Inc.,
24 Beverly N. McFarland

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

19 U.S. EQUAL EMPLOYMENT
20 OPPORTUNITY COMMISSION,

21 Plaintiff,

22 vs.

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

26 Defendant.

27 } Case No. **2:09-CV-03546-MCE-JFM**

28 }
29 } **STIPULATION AND ORDER TO**
30 } **REOPEN CASE AND STAY**
31 } **ACTION FOR SIXTY DAYS**

INTRODUCTION

On December 22, 2009, Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”), filed suit against Defendant Kobra Associates, Inc. (“Defendant”), alleging that Defendant permitted a sexually harassing environment to develop in its Paradise, California store, in violation of Title VII of the Civil Rights Act of 1964, as amended. 43 U.S.C. § 2000e *et seq.* The EEOC’s complaint contained a request for a jury trial, and a prayer for both monetary damages and non-monetary injunctive relief.

After filing its complaint in the District Court, the EEOC filed a proof of claim in an estimated amount of \$930,000.00 with the bankruptcy court in which Defendant had filed for bankruptcy protection.¹ The EEOC's monetary claim is contingent and unliquidated. The EEOC believes that, absent a stipulation of the parties on liability, the appropriate mechanism to remove the contingency and liquidate the claim is through a jury finding of liability for the sexually hostile environment and an award of damages in a specific amount; the duly appointed Chapter 11 Trustee for Defendant debtor disagrees such relief is required before the EEOC's monetary claims can be liquidated.

On May 13, 2010, the EEOC filed a consent decree with the Court in which the purchaser of Defendant's Paradise, California store, TBS Foods, agreed to perform certain acts over the next two years satisfying the EEOC's prayer for non-monetary injunctive relief. (Docket No. 15) This Court signed the Consent Decree on May 18, 2010. (Docket No. 17) It concurrently ordered the entire action to be dismissed with prejudice, notwithstanding that the consent decree expressly resolved only the non-monetary injunctive claim and did not address the issue of

¹ *In re Kobra Associates, Inc.*, Case No. 09-40068, filed in the Bankruptcy Court for the Eastern District of California, Sacramento Division, subsequently consolidated with three related cases to be jointly administered in the same venue as *In re Food Services Management, et al.*, Case No. 09-40066.

1 Defendant's liability or the EEOC's monetary claim against it. (See Docket No.
2 17, 2:18-24).

3 The EEOC and Defendant, through its duly appointed Chapter 11 Trustee,
4 (collectively, the "Parties") hereby stipulate as follows:

5 WHEREAS, this Court's dismissal of the above-captioned lawsuit with
6 prejudice in its entirety deprives the EEOC of the mechanism it seeks by which
7 liability and monetary damages on its claim may be determined;

8 WHEREAS, the Parties believe that events expected to take place in the
9 bankruptcy court proceeding within the next sixty days may further a mutually
10 agreeable resolution of the above-captioned action;

11 THEREFORE, the Parties stipulate and respectfully request that this Court,
12 pursuant to Federal Rules of Civil Procedure 60(a), (b)(1) or (b)(6), issue an Order
13 reversing its dismissal of the above-captioned action with prejudice as to the issues
14 of liability and monetary damages, and Order that the action be reinstated; and

15 FURTHERMORE, the parties stipulate and respectfully request that this
16 Court stay all proceedings in this matter for sixty (60) days from entry of this
17 Order, including Defendant's motion to dismiss (Docket No. 6).

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Respectfully submitted,

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Dated: June 2, 2010

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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By: _____ /s/

Dana C. Johnson

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Attorney for Plaintiff EEOC

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Dated: June 1, 2010

WINSTON & STRAWN LLP

1 By: /s/ as authorized by Jeffrey Bosley
2 on 6/1/10)

3 Jeffrey S. Bosley

4 Attorney for the Duly Appointed Chapter 11
5 Trustee of Defendant Kobra Associates,
6 Inc., Beverly N. McFarland

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8 IT IS SO ORDERED.

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10 Dated: 06/04/2010

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12 MORRISON C. ENGLAND, JR
13 UNITED STATES DISTRICT JUDGE