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Equal Employment Opportunity Commission v. Hollywood Entertainment Corp, d/b/a Hollywood Video Stores

Judge Robert S. Lasnik

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Equal Employment Opportunity Commission v. Hollywood Entertainment Corp, d/ b/a Hollywood Video Stores

Keywords

Equal Employment Opportunity Commission, E.E.O.C., EEOC, Hollywood Entertainment Corporation, Hollywood Entertainment Corp., Hollywood video Stores, Employment Law, Consent Decree, Title VII, ADEA, Compensation, Disparate Treatment, Sex, Female, Media, C01-0230L

CC TO JUDGE DJ
 FILED ENTERED
 LODGED RECEIVED
 APR 15 2003 APR 14 2003 DJ

BY *[Signature]* DEPUTY WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON DEPUTY

Honorable Robert S Lasnik

ORIGINAL

UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

v

HOLLYWOOD ENTERTAINMENT CORP,
 d/b/a Hollywood Video Stores,

Defendant

Case No C01-0230L

[Barcode]
 CV 01 00230 #00000014

EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

v

HOLLYWOOD ENTERTAINMENT CORP,
 d/b/a Hollywood Video Stores,

Defendant

Case No C01-1531L

CONSENT DECREE AND ORDER
 [PROPOSED]

I. INTRODUCTION

1 These actions originated with a charge of employment discrimination filed with
 21 the Equal Employment Opportunity Commission ("the Commission") on September 28, 1999 by
 22 Suzanne Adams and a subsequent amendment to that charge ("Charge") The Charge, which was
 23 the basis for C01-0230L, alleged that Hollywood Entertainment Corp, ("the Company")
 24 discriminated against Ms Adams on the basis of her age in violation of the Age Discrimination
 25 in Employment Act of 1967, 29 U S C § 601 *et seq.*, ("ADEA"), by paying her less in wages
 26 than similarly situated younger employees The Charge, which was also the basis for C01-
 27 1531L, further alleged that the Company discriminated against Ms Adams and a class of
 28 similarly situated female employees in violation of Title VII of the Civil Rights Act of 1964, 42

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1 U S C § 2000e (“Title VII”), and the Equal Pay Act, 29 U S C §§ 206(d)(1) and 215(a)(2)
2 (“EPA”), by paying its female Store Directors and Assistant Directors less in wages than male
3 employees performing substantially equal work because of their sex. The Company denies that it
4 discriminated against Ms Adams or any other employee in any manner

5 2 Following the issuance of a Letter of Determination and the failure of conciliation
6 efforts, the Commission filed a lawsuit under the ADEA on behalf of Ms Adams on February 15,
7 2001 (C01-0230L) The Commission subsequently filed a class lawsuit under Title VII and the
8 EPA against the Company on September 27, 2001 Both lawsuits were consolidated into this
9 case (“the consolidated case ”)

10 3 The parties want to conclude the claims arising out of the charge, the
11 Commission’s determination with regard to the charge, and all lawsuits arising from the charge,
12 *without expending further resources in contested litigation.*

13 **II. NONADMISSION OF LIABILITY AND**
14 **NONDETERMINATION BY THE COURT**

15 4 This Consent Decree is not an adjudication or finding on the merits of this case
16 and shall not be construed as an admission by the Company of a violation of any law

17 **III. SETTLEMENT SCOPE**

18 5 This Consent Decree is the final and complete resolution of all allegations of
19 unlawful employment practices included in the Charge, in the Commission’s Letter of
20 Determination and in the Commission’s complaints filed in the consolidated case that were or
21 could have been brought based on the administrative charges, including all individual and all
22 class claims, as well as claims by the parties and/or class members for attorney fees and costs.
23 The injunctive relief provisions of this Consent Decree apply to all of the Company’s store
24 locations in the Seattle metropolitan area that are identified in the listing attached as Exhibit 1,
25 and is final and binding as to all such issues and claims

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1 **IV. MONETARY RELIEF**

2 6 In settlement of this suit, the Company agrees to pay Eighty-Seven Thousand
3 Dollars and No Cents (\$87,000 00) to the class members in settlement and satisfaction of all
4 claims for monetary relief which were or could have been asserted in the consolidated case by
5 any individual and/or class members. The allocation of the settlement proceeds to the class
6 members will be determined by the Commission. Payment of settlement proceeds to class
7 members will be made in the following manner:

8 a No later than **May 15, 2003**, the Commission will provide to the Company
9 a list of all class members entitled to receive proceeds and the amounts to
10 which they are entitled. The Company will determine the last known
11 addresses and social security numbers for those persons based on the
12 Company's records.

13 b Ms. Adams will be required to sign a separate "Settlement Agreement and
14 Release of All Claims" in the form of the release attached as **Exhibit 2-A**.
15 No later than **May 30, 2003**, the Company will send to each class member
16 a "Settlement Agreement and Release of All Claims" in the form of the
17 release attached as **Exhibit 2-B**. Class members shall be required to return
18 their executed "Settlement Agreement and Release of All Claims" to the
19 Company on or before **July 30, 2003**.

20 c No later than **August 15, 2003**, the Company shall issue a payroll check in
21 an amount representing back pay, reduced by all payroll withholdings and
22 *FICA contributions required by law for all persons returning an executed*
23 *release*. The Company will also timely issue to each recipient an IRS W-2
24 Form representing back pay payments. Checks shall be mailed by first
25 class mail to class members at their last known address as maintained by
26 the Company in its records.

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d No later than **August 20, 2003**, the Company will verify the mailing by providing to the EEOC a list of the Claimants and addresses to whom the checks were mailed with the amounts of those checks, copies of the checks, and a Declaration of an appropriate company official attesting that the Company mailed the checks in compliance with the Decree, along with a list of class members whose original releases were returned as “undeliverable ”

e. No later than **August 29, 2003**, the Company will submit the list of class members whose original releases were returned as “undeliverable” to an electronic locator service The electronic locator service will have 60 days (until **October 30, 2003**) to provide the Company with updated information The Company will resubmit releases to any new addresses no later than **November 15, 2003** Class members to whom these releases are mailed will have until **January 15, 2004**, to submit to the Company an executed release If a class member has not negotiated any check within 180 days following **January 15, 2004 (July 15, 2004)**, the funds represented by such checks shall be forfeited and shall be donated by the Company to a charitable organization mutually agreeable to the parties identified in Exhibit 3 The Company shall include a Notice, jointly drafted by the parties and attached as Exhibit 4, that notifies potential Claimants of the possible forfeiture of their monetary relief if they fail to timely negotiate any check awarded to them

f Individuals receiving payments under the Decree bear the ultimate responsibility for the tax consequences of the payments received The Notice will notify them of this responsibility

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1 **V. INJUNCTIVE RELIEF**

2 **A. General Provisions**

3 7 The Company reaffirms its commitment to continue to comply with the
4 requirements of the ADEA, Title VII, the EPA and all other federal laws against discrimination
5 in its employment decisions. To further this commitment, it shall monitor its affirmative
6 obligations under this Consent Decree

7 8 The Company shall not retaliate against any current or former employee for
8 opposing any practice made unlawful by the ADEA, Title VII or the EPA. Nor shall the
9 Company retaliate against any current or former employee for making a charge or for testifying,
10 assisting, or participating in any investigation, proceeding, or hearing associated with the
11 consolidated case

12 **B. Establishment of Policy and Procedures to Prevent Discrimination**

13 9 In recognition of its obligations under the ADEA, Title VII and the EPA, the
14 Company has agreed to the Commission's review of its current equal employment opportunity
15 policies to insure compliance therewith. The Company will provide these materials within forty-
16 five (45) days after entry of the Decree. Within thirty (30) days after receipt of these materials,
17 the Commission shall recommend any changes or modifications to the policies. The Company
18 agrees to make reasonable revisions suggested by the Commission pursuant to such review

19 10 Following entry of the Consent Decree, and within ninety (90) days after the
20 receipt of any proposed revisions from the Commission to its equal employment opportunity
21 policies, the Company shall ensure the distribution of the policies in all store locations, and
22 ensure that all new employees, both management and non-management, receive a copy of the
23 revised policies. These policies shall be posted on a centrally located bulletin board at all store
24 locations where notices to employees are normally posted or where employees will see the
25 notice

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C. Training

11 To further the purposes and requirements of this Consent Decree, the Company will continue its regular training of all managers and employees in the area of employment discrimination during the term of the Consent Decree To help accomplish this goal, the Company agrees to provide its training materials to the Commission within forty-five (45) days after entry of the Decree Within thirty (30) days after receipt of these materials, the Commission shall recommend any changes or modifications to the training materials The Company agrees to implement all reasonable suggestions The Company agrees that within ninety (90) days after completion of that review to provide training to all employees and managers in the areas of discrimination, harassment and retaliation

D. Reporting

12 Six (6) months after entry of this Consent Decree and thirty (30) days after the conclusion of the term of the Consent Decree, the Company shall provide a report to the Commission on the Company's compliance with the Consent Decree That report shall include copies of the attendee lists, evaluations, and materials for the training required by this Decree If the Company has not complied with any term of the Consent Decree, the statement shall specify the areas of noncompliance, the reason for the noncompliance, and the steps taken to bring the Company into compliance

VI. ENFORCEMENT

13 13. The United States District Court for the Western District of Washington shall retain jurisdiction over this matter for the duration of the Consent Decree If the Commission concludes that the Company has breached any of the above provisions, it shall promptly notify the Company providing a written statement of the alleged breach The parties shall attempt to resolve the dispute for a period not to exceed thirty (30) days after the Commission's notification of the alleged breach If the Commission is unable to resolve the dispute to its satisfaction, the Commission may bring an action to enforce this Decree

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1 **VII. TERMINATION OF DECREE**

2 14 This Consent Decree shall be in effect for one (1) year commencing with the date
3 the Consent Decree is entered by the Court. If the Commission petitions the Court and the Court
4 finds the Company to have violated the terms of the Consent Decree, the Court may extend the
5 period of the Consent Decree and award the Commission its costs in bringing an enforcement
6 action.

7 15 The EEOC and the Company have agreed to issue a joint press release, attached as
8 Exhibit 5, announcing the full and final settlement of all claims brought by the EEOC in these
9 cases.

10
11 DATED this 14th day of April, 2003

12 A LUIS LUCERO, JR
Regional Attorney

GWENDOLYN YOUNG REAMS
Associate General Counsel

13 JOHN F STANLEY
Acting Supervisory Trial Attorney

14 WESLEY KATAHIRA
Senior Trial Attorney

15
16 BY *A. Luis Lucero Jr*
17 EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
18 Seattle District Office
909 First Avenue, Suite 400
19 Seattle, Washington 98104
Telephone (206) 220-6883

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Office of the General Counsel
1801 "L" Street NW
Washington, DC 20507

20 Attorneys for Plaintiff

21
22 FOR HOLLYWOOD ENTERTAINMENT CORP

23 By *[Signature]*
24 REX DARRELL BERRY
LIVINGSTON & MATTESICH LAW
CORPORATION
25 1201 K Street, Suite 1100
Sacramento, CA 95814
26 (916) 442-1111

Attorneys for Defendant

EXHIBIT 1

Capital Hill
Lake Forest Park
Seattle/Woodinville
Westwood
Rainier
Wallingford
Redmond
Seattle/23rd Avenue S
Seattle/Alaska St
Seattle/32nd Avenue
Seattle/Redmond/28th Avenue

EXHIBIT 2-A

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

By and Between
SUZANNE ADAMS
and
HOLLYWOOD ENTERTAINMENT CORP

This Settlement Agreement and Release of All Claims arises out of all events leading to the lawsuits entitled "Equal Employment Opportunity Commission, Plaintiff, v Hollywood Entertainment Corp., Defendant", denominated as United States District Court for the Western District of Washington, Cause Number C01-0230L and "Equal Employment Opportunity Commission, Plaintiff, v Hollywood Entertainment Corp., Defendant", denominated as United States District Court for the Western District of Washington, Cause Number C01-1531L

The parties agree as follows

A HOLLYWOOD agrees to pay to SUZANNE ADAMS the sum of _____ Dollars and _____ Cents (\$ _____)

B SUZANNE ADAMS agrees:

(1) SUZANNE ADAMS agrees that in consideration of the terms stated herein, she releases and forever discharges HOLLYWOOD, and any parent companies, affiliated companies, representatives, agents, managers, supervisors, officers, owners and/or employees of HOLLYWOOD (collectively "Releasees"), from any and all claims, causes of action, or liabilities of age and sex discrimination in the payment of wages that I have or otherwise could have alleged in the above-titled lawsuits

(2) Other than receiving monetary relief in settlement of the present lawsuits, SUZANNE ADAMS knowingly waives her right to file or share in any relief resulting from any other grievance, claim, lawsuit, arbitration, charge, complaint, or cause of action against any of the Releasees based upon any claim of sex and age discrimination in the payment of wages which was, or could have been brought in these lawsuits. This includes but is not limited to any alleged violation of the following statutes, laws, and ordinances: Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act and the Age Discrimination in Employment Act of 1967

C

(1) The parties jointly agree that no party admits any wrongdoing or violation of law by offering or entering into this Settlement Agreement and Release of All Claims. Instead, it is offered and accepted as an amicable resolution of all past and present matters between the parties

(2) SUZANNE ADAMS understands that she may be permitted by the Older Workers Benefit Protection Act to consider this Agreement for 21 days. SUZANNE ADAMS acknowledges that she has an opportunity to consult with legal counsel in regard to this Settlement Agreement and Release of All Claims. This Agreement may be revoked by SUZANNE ADAMS within seven (7) days after its execution. Such revocation must be in writing. If no revocation is made, this Agreement becomes effective on the eighth (8th) day after its execution

HOLLYWOOD ENTERTAINMENT CORP

BY _____

Date _____

SUZANNE ADAMS

Date _____

EXHIBIT 2-B

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

By and Between

and

HOLLYWOOD ENTERTAINMENT CORP

This Settlement Agreement and Release of All Claims arises out of all events leading to the lawsuit entitled "Equal Employment Opportunity Commission, Plaintiff, v Hollywood Entertainment Corp, Defendant", denominated as United States District Court for the Western District of Washington, Cause Number C01-1531L.

The parties agree as follows

A HOLLYWOOD agrees to pay to _____ the sum of _____ Dollars and _____ Cents (\$ _____)

B _____ agrees

(1) _____ agrees that in consideration of the terms stated herein, she releases and forever discharges HOLLYWOOD, and any parent companies, affiliated companies, representatives, agents, managers, supervisors, officers, owners and/or employees of HOLLYWOOD (collectively "Releasees"), from any and all claims, causes of action, or liabilities of sex discrimination in the payment of wages that I have or otherwise could have alleged in the above-titled lawsuit

(2) Other than receiving monetary relief in settlement of the present lawsuit, _____ knowingly waives her right to file or share in any relief resulting from any other grievance, claim, lawsuit, arbitration, charge, complaint, or cause of action against any of the Releasees based upon any claim of sex discrimination in the payment of wages which was, or could have been brought in the lawsuit. This includes but is not limited to any alleged violation of the following statutes, laws, and ordinances: Title VII of the Civil Rights Act of 1964, as amended, and the Equal Pay Act

C The parties jointly agree that no party admits any wrongdoing or violation of law by offering or entering into this Settlement Agreement and Release of All Claims. Instead, it is offered and accepted as an amicable resolution of all past and present matters between the parties

HOLLYWOOD ENTERTAINMENT CORP

BY _____

Date _____

Date _____

EXHIBIT 3

Charitable organization to which Hollywood Entertainment Corp will donate any unclaimed backpay funds:

Starlight Foundation of Washington
4536 150th Ave, NE
Redmond, WA 98052

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EXHIBIT 4

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	Case No C01-0230L
)	
)	
Plaintiff,)	
)	
v)	
)	
HOLLYWOOD ENTERTAINMENT CORP ,)	
d/b/a Hollywood Video Stores,)	
)	
Defendant)	

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	Case No C01-1531L
)	
)	
Plaintiff,)	NOTICE OF SETTLEMENT
)	
v)	
)	
HOLLYWOOD ENTERTAINMENT CORP ,)	
d/b/a Hollywood Video Stores,)	
)	
Defendant)	

NOTICE THIS NOTICE AND THE ENCLOSED "SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS" ARE IMPORTANT LEGAL PAPERS YOU HAVE BEEN IDENTIFIED BY THE PARTIES AS A POTENTIAL CLASS MEMBER ENTITLED TO RECEIVE MONETARY RELIEF IF YOU FAIL TO SIGN AND RETURN THE ENCLOSED "SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS" BY NOT LATER THAN JULY 30, 2003 YOU WILL NOT RECEIVE ANY PAYMENT OF MONEY UNDER THE SETTLEMENT

1 1 Background On September 27, 2001, the United States Equal Employment
2 Opportunity Commission ("EEOC") sued Hollywood Entertainment Corp ("the Company")
3 alleging that it paid female Assistant Store Directors and Store Directors in the Seattle
4 metropolitan area less in wages than similarly situated males. The EEOC and the Company
5 have identified you from Company records. If you return a signed "SETTLEMENT
6 AGREEMENT AND RELEASE OF ALL CLAIMS" you are entitled receive a payment of
7 money from the Company.

8 2 The EEOC and the Company have now agreed to settle the dispute
9 with a Consent Decree to avoid further costs and delay that would result if the parties
10 continued with the case. The United States District Court for the Western District of
11 Washington has approved this settlement and Consent Decree. The amount of money that
12 you may receive is included in the enclosed "SETTLEMENT AGREEMENT AND
13 RELEASE OF ALL CLAIMS."

14 3 Money Payments The Court has already approved how the EEOC and the
15 Company will decide how much money a person receives. In making that decision, EEOC
16 and the Company have considered: (1) the dates you worked for the Company as either an
17 Assistant Store Director or Store Director in the Seattle metropolitan area and (2) the length of
18 time you were employed in either position.

19
20 YOU MUST SIGN AND TIMELY RETURN THE "SETTLEMENT AGREEMENT
21 AND RELEASE OF ALL CLAIMS" TO RECEIVE ANY MONEY UNDER THE
22 SETTLEMENT AGREEMENT. YOU WILL NOT RECEIVE ANY MONEY IF
23 YOU FAIL TO RETURN A SIGNED "SETTLEMENT AGREEMENT AND
24 RELEASE OF ALL CLAIMS" BY THE DATE LISTED ABOVE. IF YOU
25 RECEIVE ANY MONEY, YOU MUST ALSO CASH THE SETTLEMENT
26 CHECKS WITHIN SIX (6) MONTHS FROM THE DATE IT IS ISSUED TO YOU.

27 The Company will withhold all required payroll taxes from the back pay checks. You
28 will be responsible for all taxes on any payments you receive.

29 4 Money payments will not be mailed until
30 after the Company receives your signed "SETTLEMENT AGREEMENT AND RELEASE
31 OF ALL CLAIMS." If you return a signed "SETTLEMENT AGREEMENT AND

1 RELEASE OF ALL CLAIMS," you will receive your checks by first class mail. If you
2 change your address at any time after you return your completed "SETTLEMENT
3 AGREEMENT AND RELEASE OF ALL CLAIMS," you must fill out the attached Change
4 of Address Form and send it to the Company at the address listed above.

5 7 Questions? If you have any questions about this settlement or to ask for a copy
6 of the Consent Decree, please contact Kim Howard, the Settlement Fund Administrator at
7 Hollywood Entertainment Corp, 9275 S W Peyton Lane, Wilsonville, OR 97070, (503) 570-
8 1696

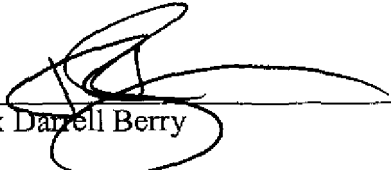
9
10 NOTICE. THIS NOTICE AND THE "SETTLEMENT AGREEMENT AND RELEASE
11 OF ALL CLAIMS" ARE IMPORTANT LEGAL PAPERS. IF YOU FAIL
12 TO COMPLETE, SIGN AND RETURN THE RELEASE OF CLAIMS BY
13 **JULY 30, 2003** YOU WILL NOT RECEIVE ANY MONEY PAYMENTS

14 DATED this 9th day of April, 2003

15 EQUAL EMPLOYMENT
16 OPPORTUNITY COMMISSION

LIVINGSTON & MATTESICH
Attorneys for Hollywood Entertainment Corp

17 
18 Wesley Katahura


Rex Darrell Berry

19
20
21
22
23
24 i:\03665-001\notice of settlement.doc

EXHIBIT 5

For Immediate Release

Contact A Luis Lucero, Jr
(206) 220-6878
John F. Stanley
(206) 220-6896

March, 2003

SEATTLE - The U S Equal Employment Opportunity Commission (EEOC) and Hollywood Entertainment Corp ("Company") announced today that they have settled two federal discrimination lawsuits filed in Seattle under the Age Discrimination in Employment Act of 1967 ("ADEA") and Title VII of the Civil Rights Act of 1964 ("Title VII") for eighty-seven thousand dollars (\$87,000.00) and injunctive relief

The age discrimination case, Civil No CV C01-0230L, alleged that the Company discriminated against a former, older female Assistant Director by paying her less in wages than similarly situated younger employees. The sex discrimination case, CV C01-1531L, alleged that the Company discriminated against a class of female Assistant Directors and Store Directors in the Seattle metropolitan area by paying them less in wages than male employees performing substantially equal work because of their gender. The Company denied in each lawsuit that it had discriminated against any employee in any manner.

Under the terms of the Consent Decree, the Company agrees to pay up to 63 class members a total of \$87,000. The Company also agrees to reaffirm its commitment to its Equal Employment Opportunity policies, will continue to comply with requirements of the ADEA, Title VII and the EPA, and will continue to provide anti-discrimination training to all managers and employees.

According to Jeanette Leino, District Director of the EEOC's Seattle District Office "We are pleased with the settlement and Hollywood Entertainment Corp.'s willingness to work cooperatively with the Commission to resolve these lawsuits. We expect that this settlement will help inform employers in the Pacific Northwest about their obligations to pay their employees without regard to their age or gender."

The Company maintains that their pay policies are fair and do not discriminate on any basis. It settled the case to avoid the expense and distraction of protracted class action litigation.

The EEOC enforces Title VII of the Civil Rights Act of 1964 which prohibits employment discrimination based on race, color, religion, sex or national origin, the Age Discrimination in Employment Act, the Equal Pay Act, prohibitions against discrimination affecting individuals with disabilities in the federal sector, sections of the Civil Rights Act of

1991, and Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments.

###