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FILED
CLERK, U.S. DISTRICT COURT
FEB 27 2003
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

5 Attorneys for Defendant
6 Beverly Holdings, Inc., dba
The Beverly Hilton Hotel

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 U.S. EQUAL EMPLOYMENT) CASE NO. CV 01-08316 LGB (PJWx)
12 OPPORTUNITY COMMISSION,)
13 Plaintiff,)
14 vs.)
15 THE BEVERLY HILTON, and DOES)
16 1-10, Inclusive,)
17 Defendants.)
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) CONSENT DECREE AND ORDER
) Date: August 22, 2002
) Time: 10:00 AM
) For Settlement Conference
) By: U.S. Magistrate Judge
) Patrick J. Walsh
) Judge: Hon. Lourdes G. Baird
) Courtroom: 827A

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I.

INTRODUCTION

This is an employment discrimination action brought by the United States Equal Employment Opportunity Commission (the "EEOC" "Commission") under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621 et M., (the "ADEA"), to correct alleged unlawful employment practices on the basis of age and to provide appropriate relief to the Charging Party, Brenda Ngoho ("Ms. Ngoho" or "Charging Party") and a class of similarly situated persons who were age forty (40) or above at the time they applied for and were denied employment with Defendant's Coconut Club restaurant. The Commission alleges that the Defendant failed to hire Ms. Ngoho and a group of similarly situated persons over age forty (40) on the basis of their ages to work at the Coconut Club, in violation of the ADEA. Defendant denies any wrongdoing.

II.

JURISDICTION

The Court has jurisdiction over the parties and the subject matter of this lawsuit. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sections 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to section 7(b) of the ADEA, 29 U.S.C. § 626(b), which incorporates by reference sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 216(c) and 217.

The Complaint asserts claims that, if proven, would authorize the Court to grant the monetary and equitable relief

1 set forth in this Decree against Defendant. This Decree conforms
2 with the Federal Rules of Civil Procedure and the ADEA and is not
3 in derogation of the rights and privileges of any person. The
4 Court shall retain jurisdiction of this action for the duration
5 of the Decree for the purpose of entering all orders, judgments,
6 and decrees which may be necessary to implement the relief
7 provided herein.

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9 III.

10 PURPOSE OF THE CONSENT DECREE

11 The parties have entered into this Decree for the following
12 purposes:

13 A. To avoid the time, risk, and expense of protracted
14 litigation;

15 B. To provide appropriate monetary and equitable relief
16 for all class members;

17 C. To provide an appropriate and effective mechanism for
18 reporting and investigating discrimination in the workplace; and

19 D. To provide a final and binding settlement upon the
20 parties as to all claims alleged in the Complaint filed by the
21 EEOC on behalf of Charging Party Brenda Ngoho and the
22 similarly situated class members in this action.

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24 IV.

25 NON-ADMISSION OF LIABILITY

26 This Decree represents the compromise of disputed claims
27 which the parties recognize would require protracted and costly
28 litigation. The entry into this Decree is not, and may not be

1 used, by any person or agency as an admission of wrongdoing by
2 Defendant or as evidence that the Commission has established that
3 Defendant has engaged in discriminatory employment practices.
4 Defendant specifically denies the allegations of the Complaint
5 and by entering into this Decree is not in any way admitting
6 liability in this action.

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V.

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PARTIES

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A. Plaintiff

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Plaintiff the United States Equal Employment Opportunity
Commission is an agency of the United States of America charged
with the administration, interpretation and enforcement of ADEA
and is expressly authorized to bring this action under § 7(b) of
the ADEA, 29 U.S.C. § 626(b), as amended by section 2 of
Reorganization Plan No. 1 of 1978, 92 Stat. 3781 and by Public
Law 98-532 (1984) 98 Stat. 2705.

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B. Defendant

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The Defendant in this action is Beverly Holdings, Inc. dba
The Beverly Hilton Hotel.

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VI.

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BENEFICIARIES

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A. Charging Party

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The EEOC filed this action after investigating the Charge of
Discrimination filed by Charging Party Brenda Ngoho against
Defendant.

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B. Class Members

1 The EEOC also sought relief on behalf of a class of alleged
2 similarly situated individuals who: (i) were allegedly denied
3 employment at the Defendant's Coconut Club restaurant on the
4 basis of being over age 40 at the time she or he applied and/or
5 was considered for employment; and (ii) were identified by the
6 EEOC as of the date of the Settlement Conference in this action,
7 August 22, 2002.

8 This Decree and the Releases contained herein are intended
9 to cover and apply to all existing and potential Eligible Class
10 Members, as that term is defined herein.

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12 VII.

13 DEFINITIONS

14 A. **Claim Share** - Claim Share refers to the portion of the
15 Class Fund payable to the Charging Party and each Eligible Class
16 Member, as determined by the EEOC in accordance with the terms
17 hereof.

18 B. **Class Distribution List** - The Class Distribution List
19 is the list of Eligible Class Members who have submitted timely
20 and qualifying claims and Individual Releases (as defined below),
21 and the amount of each such Class Member's Claim Share.

22 C. **Class Fund** - The sum of \$220,000 which is to be paid by
23 Defendant in accordance with the terms hereof in full settlement
24 of all claims for monetary relief to Eligible Class Members.

25 D. **Class Liability Period** - The Class Liability Period is
26 the date that an opening for the Coconut Club was first posted or
27 otherwise publicized, on or about November 15, 1997, through the
28 date that the Coconut Club closed, July 2, 2001.

1 **E. Class Positions** - The Class Positions are defined as
2 servers in Defendant's Coconut Club restaurant located at the
3 Beverly Hilton Hotel.

4 **F. Date of Final Approval** - The Date of Final Approval is
5 the date upon which the Court gives final approval to the Decree
6 after hearing, if required.

7 **G. Effective Date of Decree** - The Effective Date of this
8 Decree is the date upon which the Court gives final approval to
9 the Decree.

10 **H. Eligible Class Members** - All persons, including, but
11 not limited to, the Charging Party and the Class Members, who (i)
12 applied and/or were considered for a position with the Coconut
13 Club at Defendant's Beverly Hilton Hotel during the period of
14 November 15, 1997 through July 2, 2001; (ii) were age 40 or older;
15 and (iii) the Commission has identified as an Eligible Class
16 Member regardless of whether such individual has previously opted
17 out as a Class Member in this litigation. As of August 22, 2002,
18 the date of the Settlement Conference in this matter, the
19 Commission has identified fifteen (15) eligible Class Members
20 after exhausting and completing a search for class members.
21 Therefore, the Commission has agreed that following the date of
22 the Settlement Conference in this matter, August 22, 2002, there
23 will be no further communications of any kind by the Commission
24 soliciting or requesting the participation of any individuals as
25 Class Members in this litigation.

26 **I. Initial Eligible Class Members** - Those Eligible Class
27 Members who have been identified by the EEOC as of the date of
28 the Settlement Conference. The EEOC identified approximately

1 fifteen claimants to draw from the Class Fund. The amount to be
2 awarded to each claimant is at the sole discretion of the EEOC.

3 J. Subsequent Eligible Class Members - Those Eligible
4 Class Members who are identified by the EEOC subsequent to the
5 Date of Final Approval and prior to the expiration of the three
6 year period set forth herein for the distribution of the Class
7 Fund.

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9 VIII.

10 RELEASE OF CLAIMS

11 A. This Decree fully and completely resolves and releases
12 Defendant from any and all class issues, claims and allegations
13 concerning Defendant's alleged discriminatory hiring practices at
14 the Coconut Club based upon age or any other protected category.
15 The EEOC will take no further action against Defendant based upon
16 any of the released claims herein or otherwise on the basis of
17 Defendant's hiring practices at the Coconut Club. The EEOC shall
18 take no further action against and hereby does release any and
19 all of Defendant's related and unrelated entities and persons in
20 this action from claims released herein including but not limited
21 to Defendant's predecessors, successors, partners, shareholders,
22 owners, parents, subsidiaries, officers, directors, managers,
23 employees, attorneys and agents and specifically including, but
24 not limited to, Mr. Merv Griffin, The Griffin Group, Inc.,
25 Grifftel Management, Inc., The Hilton Hotels Corporation, and
26 their respective affiliates.

27 B. Nothing in this Decree shall be construed to alter
28 Defendant's obligations to fully comply with the ADEA.

1 C. The parties shall use their best efforts to defend this
2 Decree from any legal challenge whether by appeal, collateral
3 attack or objection.

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IX.

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NON-DEROGATION OF EEOC RIGHTS

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MODIFICATION AND SEVERABILITY

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A. This Decree and its Exhibits constitute the complete understanding of the parties with respect to the matters contained within it. No waiver, modification or amendment of any provision of this Decree will be effective unless made in writing and signed by an authorized representative of each of the parties.

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B. If one or more provisions of the Decree are rendered unlawful or unenforceable, the parties shall make good faith efforts to agree upon appropriate amendments to this Decree in order to effectuate the purposes of the Decree. If the parties are unable to reach agreement, the Court shall order appropriate alternative provisions in order to effectuate the purposes of the Decree. Should one or more provisions of this Decree be deemed

1 unlawful, all other lawful and enforceable provisions will remain
2 in full force and effect.

3 XI.

4 DECREE ENFORCEMENT

5 A. Parties Authorized to Enforce Decree - The EEOC or
6 Defendant may bring an action before this Court to enforce the
7 Decree. The Parties agree to submit any such matter for
8 resolution to Judge Lourdes G. Baird.

9 B. Requirement of Informal Resolution Efforts

10 1. Prior to initiating an action to enforce the
11 Decree, the party bringing the action will notify the other
12 party, in writing, of the nature of the dispute.

13 This notice shall specify the particular provision(s) believed to
14 have been breached and a statement of the issues in dispute. The
15 notice may also include a reasonable request for documents or
16 information relevant to the dispute.

17 2. Within fourteen (14) days of the notice, the
18 responding party will provide written responses to the notice
19 setting forth their positions. They will also provide the
20 requested documents or information.

21 3. After receipt of the responses, the parties will
22 schedule a telephone or in-person meeting to attempt to resolve
23 the dispute resolution.

24 4. A thirty (30) day dispute resolution period will
25 be provided from the date of notice prior to the institution of
26 any legal proceeding. After the expiration of the thirty (30)
27 day dispute resolution period, an action to enforce the Decree
28 may be brought in this Court.

1 5. The moving party's papers shall explain the facts
2 and circumstances that necessitate immediate Court action. If a
3 party brings a matter before the Court requiring immediate Court
4 action, the opposing party shall be provided with appropriate
5 notice under the Local Rules of the Court and the Federal Rules
6 of Civil Procedure.

7 6. The provisions of this section do not prevent
8 either party from bringing an issue before the Court when the
9 facts and circumstances require immediate Court action.

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XII.

EFFECTIVE DATE AND DURATION OF DECREE

13 This Decree shall be deemed effective as of the Date of
14 Final Approval of this Decree by the Court. The Date of Final
15 Approval means the date upon which the Court approves the Decree.
16 This Decree shall remain in effect for a three (3) year period
17 following the Date of Final Approval.

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XIII.

INJUNCTIVE RELIEF

21 **A. Management Training**

22 Within sixty (60) days of the Effective Date of the Consent
23 Decree, Defendant shall conduct non-discrimination training
24 programs for supervisory, human resources and management
25 personnel responsible for hiring at the Beverly Hilton Hotel,
26 with the participation of Defendant's labor counsel and an EEO
27 consultant to be selected by Defendant from a list provided by
28 the Commission. Such training shall take place in three to four

1 hour sessions, and the EEO consultant may provide training
2 materials for the sessions. Thereafter, on a bi-annual basis for
3 the duration of the Decree, the Defendant shall conduct
4 subsequent training sessions with the participation of
5 Defendant's labor counsel and the EEO consultant.

6 Within thirty (30) days of completion of each such training
7 session, Defendant shall cause to be delivered to the EEO
8 consultant a certification that such training occurred in
9 accordance with the terms hereof.

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XIV.

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MONETARY RELIEF

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In settlement of all monetary claims of the Charging Party
14 and the Eligible Class Members, Defendant shall pay the
15 following:

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A. Class Monetary Relief

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In full settlement of all claims for monetary relief,
18 Defendant shall pay the sum of \$220,000 ("Class Fund") within a
19 period of three years following the Effective Date of Decree.

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B. Taxes

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Defendant shall prepare and distribute 1099 tax reporting
22 forms to each Eligible Class Member to whom payment from the
23 Class Fund is made. Each Eligible Class Member shall be solely
24 responsible for payment of her or his share of taxes owed to any
25 governmental authority for her or his individual distributions
26 from the Class Fund, and each shall defend and hold Defendant
27 harmless from any and all tax liabilities or penalties arising
28 from the non-payment of taxes pertaining to the receipt of Class

1 Funds.

2 XV.

3 CLASS FUND DISTRIBUTION

4 A. Eligibility for Class Fund Distribution

5 The EEOC shall identify and solely determine who shall be an
6 Eligible Class Member, subject to the terms set forth herein.
7 The EEOC shall inform Defendant of the identity, social security
8 number and amount to be paid to each Eligible Class Member. To
9 be eligible to participate in the distribution of the Class Fund,
10 an Eligible Class Member must have signed a separate General
11 Release which is mutually agreeable to Defendant and the Eligible
12 Class Member.

13 B. Identification of Individual Claims Shares

14 Within thirty days of the Date of Final Approval, the EEOC
15 shall provide Defendant's counsel at Jeffer, Mangels, Butler &
16 Marmaro ("Defendant's counsel") with computer readable list(s)
17 showing the names, addresses, and social security numbers for all
18 Initial Eligible Class Members and the amounts payable to each.
19 Thereafter, the EEOC shall provide such information to
20 Defendant's counsel with respect to, and within one hundred
21 twenty (120) days after its identification of, any Subsequent
22 Eligible Class Members.

23 Defendant agrees that it shall, within fourteen (14) days
24 after its counsel's receipt of notification identifying the
25 amount of the Class Fund payment to any Initial Eligible Class
26 Member and Subsequent Eligible Class Member, and receipt of the
27 executed General Release, whichever is later, pay the amount(s)
28 identified therein to such person(s). Copies of the checks and

1 cover letters sent to Initial Eligible and Subsequent Eligible
2 Class Members shall be concurrently mailed to the EEOC.

3 The EEOC shall deliver to Defendant's counsel no less
4 frequently than once per month a copy of the Class Distribution
5 List then in effect, reflecting all known Eligible Class Members
6 and all payments made by Defendant as of such date in accordance
7 with the terms hereof until the Class Fund is depleted or, if
8 earlier, expiration of the three year period set forth herein.

9 **C. Distribution of Unclaimed Portion of Class Payment**

10 All portions of the Class Fund that are undistributed by the
11 end of the three year term of this Decree shall be anonymously
12 donated to ChildHelp USA ("Wickenburg Village"), a charitable
13 organization.

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XVI.

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ATTORNEY'S FEES AND COSTS

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Each party shall bear its own attorneys' fees and costs in
connection herewith, except that Defendant shall bear the costs
for the hiring of the EEO consultant and the administration and
payment of claims to all Eligible and Subsequent Eligible Class
Members.

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XVII.

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PRESS RELEASE/PUBLICITY

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The parties have agreed to issue a positive Joint Press
Release, attached hereto as Exhibit "A." The Parties will make
best efforts such that any further public communications about this
matter are favorable, consistent with the Joint Press Release,

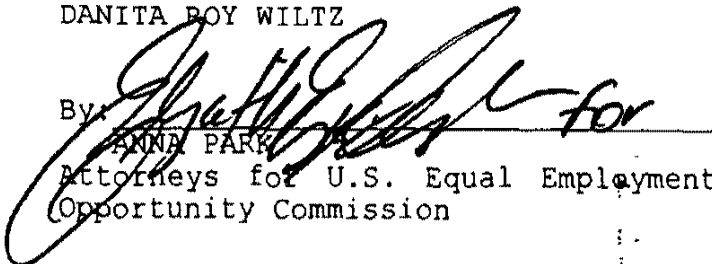
1 while recognizing that the parties cannot strictly control press
2 coverage.

3 XVIII.

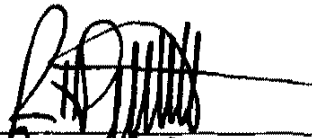
4 FAXED SIGNATURES

5 For the purposes of this Stipulation, a faxed signature will
6 have the same force and effect as a signature penned in ink.

7
8 DATED: December 20, 2002 U.S. EQUAL EMPLOYMENT OPPORTUNITY
9 COMMISSION
10 ANNA PARK
11 SUE NOH
12 DANITA ROY WILTZ

13 By:  for
14 ANNA PARK
15 Attorneys for U.S. Equal Employment
16 Opportunity Commission

17 DATED: ~~December~~, 2002 BEVERLY HOLDINGS, INC.
18 February 18, 2003

19 By: 
20 ROBERT H. PERKINS, JR.
21 VP & General Counsel, Grifflet
22 Management, Inc., manager


23 IT IS SO ORDERED
24 Dated February 26, 2003
25 
26 United States District Judge
27
28

EXHIBIT "A"

For Immediate Release
[insert date of release]

CONTACT: For EEOC
Anna Y. Park
(213) 894-1080
Olophius Perry
(213) 894-1112
TTY: (213) 894-1118

**EEOC AND THE BEVERLY HILTON HOTEL SETTLE
ALLEGATIONS OF AGE DISCRIMINATION**

LOS ANGELES-The U.S. Equal Employment Opportunity Commission (EEOC) and Beverly Holdings, Inc. announced today that they settled an age discrimination lawsuit against Beverly Holdings, Inc. focusing on the hiring practices at the Coconut Club, a supper club formerly located at the Beverly Hilton Hotel, which Beverly Holdings owns and operates.

Pursuant to the terms of the Consent Decree in U.S. EEOC v. The Beverly Hilton Hotel in the U.S. District Court for the Central District of California, the Hotel has agreed to compensate certain applicants who were age 40 or older and who were not hired for employment at the Coconut Club. The terms of the agreement include a monetary settlement in the amount of \$220,000 to be distributed to approximately 15 applicants identified by the EEOC who allegedly suffered age discrimination, out of the approximately 3,000 applicants contacted by the EEOC during its investigation. The Beverly Hilton Hotel has agreed to implement more extensive human resources training programs for its managers in cooperation with its labor counsel, Jeffer, Mangles, Butler & Marmaro and an outside consultant.

"The Commission is pleased that the Hotel has agreed to enhance its management training to add specific focus on age diversity in hiring practices," said Olophius Perry, Director of the EEOC's Los Angeles District Office.

The Beverly Hilton Hotel is the largest employer in Beverly Hills, employing approximately 650 employees constituting a highly diverse workforce with more than 50% of its employees being over the age of 40. The EEOC commends the Beverly Hilton Hotel for its achievements in workforce diversity.

Anna Y. Park, Regional Attorney of the Agency's Los Angeles office, said, "We hope that other employers follow the Beverly Hilton's lead in valuing our older workers who have committed their long careers to food service."

In addition to enforcing the Age Discrimination in Employment Act which prohibits employment discrimination against persons age forty and older on the basis of their age, the EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based upon race, color, religion, sex and national origin, the Americans with Disabilities Act, the Equal Pay Act, and sections of the Civil Rights Act of 1991. Further information about the Commission is available at www.eeoc.gov.

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