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13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF IDAHO

15 EQUAL EMPLOYMENT OPPORTUNITY)
16 COMMISSION,)

CIVIL NO. 04-478-E-BLW

17 Plaintiff,)

18 and)

19 SUZANNE YORGENSEN,)

20 Plaintiff Intervenor)

21 v.)

[Proposed] CONSENT DECREE
AND ORDER OF DISMISSAL

22 HOLLYWOOD ENTERTAINMENT)
23 CORPORATION,)

24 Defendant.)
25

I. INTRODUCTION

1. This action originated with a charge of discrimination filed by Suzanne Yorgensen with the Idaho Human Rights Commission ("IHRC"), alleging violations of Title I of the

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1 Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991 ("ADA").

2 2. The charge was initially investigated by IHRC and then transferred to the Equal
3 Employment Opportunity Commission ("EEOC") which issued a Determination finding
4 reasonable cause to believe that Hollywood Entertainment Corporation ("Hollywood
5 Entertainment" or "Defendant") discriminated against Suzanne Yorgensen, a qualified individual
6 with a disability, when it failed to provide a reasonable accommodation to her, failed to promote
7 her and then constructively discharged her because of her disability.

8 3. The EEOC filed this lawsuit in the United States District Court for the District of
9 Idaho on September 21, 2004. EEOC alleges that Hollywood Entertainment violated the ADA
10 by subjecting Ms. Yorgensen to unlawful discriminatory practices.

11 4. The Commission and Hollywood Entertainment want to fully and finally conclude all
12 claims arising out of the above charge without the expenditure of further resources and expenses
13 in contested litigation. They agree that entry of this Consent Decree will be in the interest of the
14 parties and will further the objectives of the anti-discrimination provisions under the ADA.

15 II. JURISDICTION AND VENUE

16 5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343
17 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans
18 with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference
19 Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1)
20 and (3) ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §
21 1981a. The employment practices alleged to be unlawful were committed within the jurisdiction
22 of the United States District Court for the District of Idaho.

23 III. NON-ADMISSION OF LIABILITY

24 6. This Consent Decree is not an adjudication or finding on the merits of this case, shall
25 not be admissible in any other action except one to enforce the provisions of this Consent Decree

1 and shall not be construed as an admission by Hollywood Entertainment of a violation of the
2 ADA.

3 IV. PURPOSE OF THE AGREEMENT

4 7. The parties have entered into this Consent Decree in order to achieve the following
5 purposes:

- 6 a. To assure the implementation of policies and procedures which prohibit
7 Hollywood Entertainment from discriminating and retaliating against employees
8 because of their disability.
- 9 b. To assure that Hollywood Entertainment implements and promotes an anti-
10 discrimination policy and complaint procedure to effectively prevent
11 discrimination and to address and correct such alleged discrimination.
- 12 c. To assure that Suzanne Yorgensen is compensated for alleged losses suffered
13 in connection with her employment by Hollywood Entertainment.
- 14 d. To avoid time, expense and uncertainty of further litigation.

15 V. GENERAL PROVISIONS

16 8. This Consent Decree is intended to and does effectuate the full, final, and complete
17 resolution of all allegations of unlawful employment practices and discrimination encompassed
18 by the original discrimination charge, and the EEOC Complaint filed in *EEOC v. Hollywood*
19 *Entertainment Corp.*, Civil No. 04-478-E-BLW.

20 9. This Consent Decree constitutes the complete understanding between the EEOC and
21 Hollywood Entertainment with respect to matters herein. It is expressly agreed that if EEOC
22 concludes that Hollywood Entertainment has failed to comply with this Consent Decree, the
23 Commission may bring an action in the United States District Court for the District of Idaho to
24 enforce the Consent Decree as provided in paragraph 21 below.
25

1 VI. MONETARY RELIEF

2 10. Hollywood Entertainment agrees to pay Suzanne Yorgensen \$70,000.00, representing
3 all monetary damages, attorney's fees, expenses and costs sought through the EEOC's Complaint
4 and Ms. Yorgensen's state court Complaint. Payment of the settlement amount will be handled
5 between Ms. Yorgensen's private counsel and counsel for Hollywood entertainment.

6 VII. INJUNCTIVE RELIEF

7 A. Compliance with the ADA

8 11. Hollywood Entertainment reaffirms its commitment to comply with the ADA and
9 other federal anti-discrimination statutes. In furtherance of the commitment, Hollywood
10 Entertainment will comply with the affirmative obligations of this Consent Decree. Hollywood
11 Entertainment agrees that it will not discriminate against any employee because of disability in
12 any employment decision.

13 12. Hollywood Entertainment will not retaliate against any employee for making a charge
14 of discrimination or for testifying, assisting, or participating in any investigation, proceeding, or
15 hearing associated with this lawsuit.

16 13. In recognition of its obligations under the ADA, Hollywood Entertainment will
17 institute the policies and practices set forth below.

18 B. Policy Against Discrimination

19 14. Hollywood Entertainment shall continue to maintain its current anti-discrimination
20 policies, procedures, and training for employees, supervisors, and management personnel and
21 will provide equal employment opportunities for all employees. Hollywood Entertainment will
22 work with its District Managers responsible for the Ammon, Idaho store and the Store Directors
23 at the Ammon, Idaho store in order to prevent discrimination in employment under the ADA and
24 so they understand the employer's obligation to engage in the interactive process, and to ensure
25 that they understand its Equal Employment Opportunity policies and how those policies define

1 and identify what constitutes discrimination. A written copy of Hollywood Entertainment's EEO
2 policy, including any policy prohibiting disability based discrimination, will be distributed to all
3 its employees employed at the Ammon, Idaho store. This policy will include information on the
4 alternative steps employees can take to request disability accommodation.

5 C. Training

6 15. Hollywood Entertainment will develop and present to the District Manager
7 responsible for the Ammon, Idaho Store and the Store Director at the Ammon, Idaho store ADA
8 training each year during the duration of this Consent Decree. The cost of the training shall be
9 borne by the company.

10 16. The training will focus on conducting individualized assessments of employees with
11 disabilities and handling requests for reasonable accommodation. The first training shall take
12 place within in ninety (90) days after entry of this Consent Decree.

13 17. Hollywood Entertainment will retain a record of the training programs, including
14 dates held and persons who attend.

15 D. Reporting

16 18. One year following the entry of this decree and every year thereafter for the duration
17 of the Decree, Hollywood Entertainment will report to the EEOC Seattle District Office. The
18 report will contain the following information:

19 a. Certification of the completion of the training (referenced in ¶ 16) each year, with a list
20 of attendees;

21 b. Certification that its EEO policy has been distributed to all Ammon, Idaho store
22 employees;

23 c. A list of any changes, modifications, revocations or revisions to its EEO policies and
24 procedures which concern or affect the subjects of discrimination based on disability and
25 reasonable accommodation; and

1 d. A summary of all complaints of disability based employment discrimination, if any,
2 which have been lodged by any applicant or current or former employee at the Ammon, Idaho
3 store internally, through a grievance system, or with any governmental agency, and the resolution
4 of each complaint.

5 E. Records

6 19. Hollywood Entertainment will remove any information related to Suzanne
7 Yorgensen's resignation, discrimination charge or lawsuit in her personnel file and will not add
8 any information or references regarding any charge of discrimination or this lawsuit to Ms.
9 Yorgensen's personnel File.

10 F. Posting of Notice

11 20. Within sixty (60) days after entry of this Consent Decree, Hollywood Entertainment
12 will post a copy of the Notice of Settlement (Attachment 1) at the Ammon, Idaho store in all
13 areas at this location where the Defendant posts information on employment policies and other
14 pertinent employee information, and will maintain this posting for the life of the Consent Decree.

15 VIII. ENFORCEMENT

16 21. If the EEOC concludes that Hollywood Entertainment has breached this agreement, it
17 may bring an action in the United States District Court for the District of Idaho to enforce this
18 Consent Decree. Before bringing an action for breach of the decree, the EEOC shall first give
19 Hollywood Entertainment ten (10) days notice of the perceived breach. The EEOC and
20 Hollywood Entertainment shall use that 10-day period for good faith efforts to resolve the matter.

21 IX. RETENTION OF JURISDICTION

22 22. The United States District Court for the District of Idaho shall retain jurisdiction over
23 this matter for the duration of the Consent Decree.

24 X. DURATION AND TERMINATION

25 23. This decree shall be in effect (2) two years, commencing with the date the decree is

1 filed. If the EEOC petitions the Court for breach of agreement, and the Court finds Hollywood
2 Entertainment to be in violation of the terms of the Consent Decree, the Court may extend this
3 Consent Decree for a reasonable period of time.

4 XI. CONCLUSION

5 24. The provisions of this Consent Decree are not binding on the parties until an
6 authorized representative of each party signs and the Court enters the Consent Decree.

7 The forgoing terms and conditions are agreed upon and stipulated to the 17th day of
8 February, 2006.

9
10 Respectfully submitted,

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Attorneys for Defendant

1
2 ORDER APPROVING CONSENT DECREE AND DISMISSING ACTION

3 The Court having considered the foregoing stipulated agreement of the parties, HEREBY
4 ORDERS THAT the foregoing settlement agreement is approved as the final decree of this Court
5 in full settlement action. This lawsuit is hereby dismissed with prejudice and without cost or
6 attorneys' fees to any party. The Court retains jurisdiction of this matter solely for purposes of
7 enforcing the Consent Decree approved herein.

8 DATED this _____ day of _____, 2006.
9

10 _____
11 UNITED STATES DISTRICT JUDGE
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NOTICE TO EMPLOYEES

The U.S. Equal Employment Opportunity Commission and Hollywood Entertainment Corporation d/b/a Hollywood Videos have agreed to a Consent Decree that has been entered pursuant to an Order of the United States District Court for the District of Idaho in the case of *EEOC & Yorgensen v. Hollywood Entertainment Corporation*, Civ. No. 04-478-E-BLW. This notice has been posted pursuant to the Order.

Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, and the Americans with Disabilities Act of 1990 are enforced by the EEOC and require the following:

That there be no discrimination against any employee or applicant for employment because of the employee's race, sex, color, religion, national origin, age (over age 40), or disability with respect to hiring, firing, compensation, or other terms, conditions or privileges of employment.

It is an unlawful employment practice for an employer to retaliate against any employees or applicants for employment because they have opposed a practice or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under these statutes.

Any employee who is found to have retaliated against any other employee because such employee participated in this lawsuit will be subject to substantial discipline up to and including immediate discharge.

Hollywood Entertainment Corporation has posted this notice because the company supports and will comply with these federal laws in all respects and will not take any retaliatory action against employees because they have exercised their rights under the law.

DATED

Hollywood Entertainment Corporation