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FILED
CLERK, U.S. DISTRICT COURT
SEP - 2 2004
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

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14
15
16 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

17 EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

Case No. CV 03-5544 ABC(VBKx)

19 Plaintiff,

[PROPOSED] CONSENT DECREE

20 v.

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

21 CHURCHILL DOWNS
22 INCORPORATED; CHURCHILL
23 DOWNS CALIFORNIA COMPANY
24 DBA HOLLYWOOD PARK RACE
25 TRACK; and DOES 1-10, inclusive

26 Defendants.

27 ENTERED
28 CLERK, U.S. DISTRICT COURT
SEP - 3 2004
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

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I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) and Defendant Churchill Downs California Company d/b/a Hollywood Park Race Track (“Hollywood Park”) hereby stipulate and agree to entry of this Consent Decree to resolve the EEOC’s Complaint, filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The EEOC’s Complaint alleges that Hollywood Park retaliated against Bob Pepevnik by discharging him from his employment because he participated in an EEOC investigation, in violation of Title VII. Hollywood Park denies liability for any of the alleged harms.

II.

JURISDICTION

The Court has jurisdiction over the parties and the subject matter of this lawsuit, pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343, 1345, 1367 and 42 U.S.C. 2000e-5(f). The Court shall retain jurisdiction of this action during the duration of the Decree for the purposes of entering all orders, judgments and decrees which may be necessary to implement and/or enforce the relief provided herein or to otherwise effectuate the purposes of the Decree.

III.

PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The parties to this Consent Decree (“Decree”) are the EEOC and Hollywood Park (the “Parties”). This Decree shall be binding on and enforceable against Hollywood Park and its officers, directors, agents, successors and assigns.

B. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the Parties have agreed that this action

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1 should be finally resolved by entry of this Consent Decree ("Decree"). The Parties
2 have entered into this Decree for the following purposes:

- 3 1. To avoid expensive and protracted costs incident to this litigation;
- 4 2. To provide a final and binding settlement upon the Parties as to all
- 5 Title VII claims alleged by the EEOC in the Complaint;
- 6 3. To provide monetary and injunctive relief;
- 7 4. To ensure that Hollywood Park's employment practices comply
- 8 with federal law;
- 9 5. To ensure training for Hollywood Park's managers and employees
- 10 with respect to their obligations under Title VII; and
- 11 6. To provide an appropriate and effective mechanism for preventing
- 12 retaliation in the workplace.
- 13

14 IV.

15 **EFFECTIVE DATE AND DURATION OF DECREE**

16 A. The provisions and agreements contained herein are effective
17 immediately upon the date on which this Decree is entered by the Court ("the Effective
18 Date").

19 B. Except as otherwise provided herein, the Decree shall remain in effect for
20 three years after the Effective Date.

21 V.

22 **FINDINGS**

23 Having examined the terms and provisions of this Decree and based on the
24 pleadings, record and stipulation of the Parties, the Court finds the following:
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1 A. The Court has jurisdiction over the Parties and the subject matter of this
2 action. The Complaint assert claims that, if proven, would authorize the Court to grant
3 the relief set forth in this Decree.

4 B. The terms and provisions of this Decree are adequate, fair, reasonable,
5 equitable and just. The rights of the EEOC, Hollywood Park, Bob Pepevnik, and the
6 public interest for which the EEOC seeks redress are protected adequately by this
7 Decree.

8 C. This Decree conforms with the Federal Rules of Civil Procedure and Title
9 VII and is not in derogation of the rights and privileges of any person. The entry of
10 this Decree will further the objectives of Title VII and will be in the best interest of the
11 Parties.
12

13 VI.

14 **RESOLUTION OF CLAIMS**

15 A. The Parties agree that this Decree resolves all issues and claims arising
16 out of EEOC Charge No. 340A202066 and the Complaint filed in this action, and this
17 Decree shall be binding and final as to all such issues and claims.

18 B. Nothing in this Decree shall be construed to limit or reduce Hollywood
19 Park's obligation to comply fully with Title VII or any other federal employment
20 statute.

21 C. This Decree in no way affects the EEOC's right to bring, process,
22 investigate or litigate other charges that may be in existence or may later arise against
23 Hollywood Park in accordance with standard EEOC procedures.
24

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VII.

MODIFICATION AND SEVERABILITY

A. This Decree constitutes the complete understanding of the Parties with respect to the matters contained herein. 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.

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. In any event, the remaining provisions will remain in full force and effect unless the purposes of the Decree cannot, despite the Parties' best efforts, be achieved.

C. By mutual agreement of the Parties, this Decree may be amended or modified in the interests of justice and fairness in order to effectuate the provisions of this Decree.

VIII.

COMPLIANCE AND DISPUTE RESOLUTION

A. If the EEOC believes that Hollywood Park has failed to comply with any provision of this Consent Decree, the EEOC may petition this Court to enforce the Decree. Prior to initiating such petition, the EEOC will notify Hollywood Park and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the EEOC believes has/have been breached. Absent a showing by either party that the delay will cause irreparable harm, Hollywood Park shall have thirty days to attempt to resolve or cure the breach.

B. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute referenced in the EEOC notice.

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1 C. After thirty days have passed with no resolution or agreement to extend
2 the time further, the EEOC may petition this Court for compliance with this Decree,
3 seeking all available relief, including, but not limited to, the imposition of attorneys'
4 fees and costs and an extension of the term of the Decree for such period of time as
5 Hollywood Park is shown to be in breach of the Decree.

6 IX.

7 MONETARY RELIEF

8
9 A. Within ten business days after the Effective Date or ten business days
10 after Hollywood Park received a IRS Form W-9 from Bob Pepevnik, whichever is
11 later, Hollywood Park shall mail to Bob Pepevnik, at 3816 Beethoven Street, Unit 207,
12 Mar Vista, CA 90066, via Certified Mail, Return Receipt Requested, a check made
13 payable to him in the amount of \$60,000 as compensation for emotional distress
14 allegedly suffered by Mr. Pepevnik in the form of personal injury, and shall
15 simultaneously mail a copy thereof to the attention of Anna Y. Park, Regional
16 Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street,
17 Fourth Floor, Los Angeles, CA 90012.

18
19 B. At the end of the year in which the check is issued, Hollywood Park shall
20 issue to Bob Pepevnik the appropriate 1099 form or the equivalent as required by law
21 for the payment made to him.

22 X.

23 INJUNCTIVE RELIEF

24 A. Non-Retaliation

25 Hollywood Park, its officers, agents, management (including all supervisory
26 employees), successors, assigns, and all those in active concert or participation
27 with them, or any of them, hereby agree not to engage in, implement or permit any
28

1 action, policy or practice with the purpose of retaliating against any current or
2 former employee of Hollywood Park, or either of them, because he or she has in the
3 past, or during the term of this Decree: (a) opposed any practice made unlawful
4 under Title VII; (b) filed a charge of discrimination alleging such practice; (c)
5 testified or participated in any manner in any investigation (including without
6 limitation, any internal investigation undertaken by Hollywood Park), proceeding
7 in connection with this case and/or relating to any claim of a Title VII violation; (d)
8 was identified as a possible witness or claimant in this action; (e) asserted any
9 rights under this Decree; or (f) sought and/or received any relief in accordance with
10 this Decree.
11

12 **B. Posting**

13 Within ten business days after the Effective Date and throughout the term of
14 this Decree, Hollywood Park shall post a full-sized copy of the Notice attached
15 hereto as Appendix A, in a clearly visible location frequented by employees (e.g.,
16 breakrooms) at its facilities.

17 **C. Equal Employment Opportunity Consultant**

18 Within forty-five days after the Effective Date, Hollywood Park shall
19 designate or retain an Equal Employment Opportunity Consultant ("Consultant")
20 with demonstrated experience in the area of employment discrimination and
21 retaliation issues, to implement and monitor Hollywood Park's compliance with
22 Title VII and the provisions of this Decree, and shall notify EEOC of its choice.
23 The Consultant chosen shall be subject to the EEOC's approval, which shall not be
24 unreasonably withheld. If the EEOC does not approve Hollywood Park's proposed
25 Consultant, the EEOC shall provide Hollywood Park with a list of at least three
26 suggested candidates acceptable to the EEOC from which Hollywood Park must
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1 choose and retain one within fifteen days of receipt of the list. In the event that the
2 Consultant becomes unavailable, Hollywood Park shall follow the above-described
3 process to chose a replacement. Hollywood Park shall bear all costs associated
4 with the selection and retention of the Consultant and the performance of his/her/its
5 duties.

6 The Consultant's responsibilities shall include:

7 1. Assisting Hollywood Park in maintaining a procedure to
8 effectively communicate discrimination and retaliation complaints to people who
9 are trained and equipped to investigate, handle, and track the complaints, including
10 followup to assure that any discriminatory behavior is eradicated and that
11 retaliation is not occurring;

12 2. Assisting Hollywood Park in conducting regular periodic
13 training of existing employees and new employees regarding the policy, with
14 particular emphasis on issues of discrimination and retaliation;

15 3. Assisting Hollywood Park in conducting regular periodic
16 training of managerial staff on effective handling of complaints of discrimination
17 and the prohibition against retaliation;

18 4. Ensuring that all reports required by this Decree are accurately
19 compiled and timely submitted;

20 5. Assisting Hollywood Park in maintaining appropriate and
21 consistent disciplinary policies to hold employees and managers accountable for
22 engaging in conduct prohibited under this Decree; and

23 6. Further ensuring compliance with the terms of this Decree.

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1 **D. Policies Concerning Discrimination and Harassment**

2 Within sixty days after the Effective Date, Hollywood Park shall confirm
3 that its policy on discrimination and retaliation include:

- 4 1. A strong and clear commitment to a workplace free from
5 discrimination and retaliation;
- 6 2. A clear and comprehensive description, including concrete
7 examples, of prohibited discrimination and retaliation;
- 8 3. A description of the possible consequences, up to and including
9 termination, that will be imposed upon violation of the policy against
10 discrimination and retaliation;
- 11 4. A statement encouraging employees to come forward if they
12 believe that they have been discriminated or retaliated against for complaining
13 about discrimination or otherwise engaging in protected activity;
- 14 5. An assurance that persons who in good faith complain about
15 discrimination or retaliation they experienced or witnessed will not be subject to
16 retaliation;
- 17 6. A clearly described complaint process that provides accessible
18 avenues of complaint;
- 19 7. Assurance that the employer will protect the confidentiality of
20 complaints to the extent possible;
- 21 8. A complaint process that provides a prompt, thorough, and
22 impartial investigation;
- 23 9. Assurance that Hollywood Park will take immediate and
24 appropriate corrective action if it determines that discrimination or retaliation have
25 occurred;
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1 10. A statement that Hollywood Park's policy against
2 discrimination and retaliation applies to all persons, including but not limited to
3 Hollywood Park's owners, directors, officers, other management officials,
4 supervisors, vendors, suppliers, third parties, and customers; and

5 11. The contact information, including name, address, and
6 telephone number of persons both internal (e.g., human resources personnel or
7 managers) and external (e.g., EEOC and the Consultant) to whom employees may
8 report discrimination and retaliation.
9

10 The policy shall be distributed on an annual basis to all of Hollywood Park's
11 employees, including management and supervisory staff, and shall be included in
12 any relevant policy or employee manuals distributed thereafter to employees by
13 Hollywood Park. Hollywood Park shall collect acknowledgments from each
14 employee who receives the revised policy. Throughout the term of this Decree,
15 Hollywood Park shall also post its policy in a place that is conspicuous and
16 accessible to all employees, in a legible font that is a minimum of 14 points in size.
17

18 **E. Training**

19 1. Within forty-five days after the Effective Date or fifteen days
20 after hiring the Consultant, whichever is later, Hollywood Park shall submit to the
21 EEOC a description of the training provided as required herein.

22 2. Within six months of the Effective Date, all of Hollywood
23 Park's managerial and staff/hourly employees shall be required to attend a training
24 program of at least three hours for managerial employees and two hours for
25 staff/hourly employees. The training shall be mandatory and shall be conducted in
26 such a manner that it can be readily understood by the employees (e.g., given in
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1 Spanish or with the aid of a Spanish interpreter for those who cannot understand
2 the training in English).

3 a. All employees' training shall include coverage of the
4 subjects of equal employment opportunity rights and responsibilities,
5 discrimination, retaliation, and Hollywood Park's policies and procedures for
6 reporting and handling complaints of discrimination and retaliation.

7 b. The training of managerial employees shall additionally
8 include training on how to receive and investigate or report to designated officials
9 complaints of discrimination or retaliation in a neutral manner, how to take
10 preventive and corrective measures against discrimination, and how to recognize,
11 prevent, and correct retaliation.

12 c. For the remainder of the term of this Decree, all new
13 employees and all employees recently promoted from a staff/hourly to a managerial
14 position shall receive Hollywood Park's anti-discrimination and anti-retaliation
15 policy, and shall be provided an in-person overview of said policies with a member
16 of Hollywood Parks Human Resources department, within thirty days of hire or
17 promotion.

18 d. All managerial employees shall receive the training at
19 least annually thereafter for the remainder of the term of this Decree. All non-
20 managerial employees shall receive the training once every other year thereafter for
21 the remainder of the term of this Decree. Additionally, Hollywood Park's anti-
22 discrimination and anti-retaliation policy shall be redistributed to all non-
23 managerial employees annually.

24 e. Within 30 days of each training, Hollywood Park shall
25 provide the EEOC with (1) a confirmation that the training took place; (2) the
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1 materials used during the training; and (3) the attendance records of the training.
2 In the event that the EEOC determines that the materials provided are insufficient
3 for monitoring purposes, it shall notify Hollywood Park that it intends to attend the
4 next scheduled training. In that case, Hollywood Park shall provide the EEOC with
5 a minimum of ten business days' advance written notice of the date, time and
6 location of the next scheduled training program provided pursuant to this Decree,
7 and agrees that an EEOC representative may attend said training program.

8
9 **F. Neutral References**

10 In the event that any prospective employers contact Hollywood Park
11 regarding its employment of Bob Pepevnik, Hollywood Park shall comply with its
12 stated policy to provide only a neutral reference, including confirming Bob
13 Pepevnik's dates of employment and position held.

14 **XI.**

15 **RECORDKEEPING AND REPORTING**

16 **A. Recordkeeping**

17 Hollywood Park shall work with the Consultant to maintain a recordkeeping
18 procedure that provides for the centralized tracking of complaints of discrimination
19 and the monitoring of such complaints to prevent retaliation. The records to be
20 maintained during the period of this Consent Decree shall include:

21
22 1. All documents generated in connection with any complaint,
23 investigation into, or resolution of every complaint of discrimination or retaliation
24 for the duration of the Decree and the identities of the parties involved;

25 2. All forms acknowledging employees' receipt of Hollywood
26 Park's policy against discrimination and retaliation;

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1 3. A database or other documentation of the dates of trainings that
2 have been given as required under this Decree that shows the names, positions,
3 dates of hire and dates of promotion from non-managerial staff positions to
4 managerial positions, where applicable, of all attendees for each one; and

5 4. A list of current employees of Hollywood Park, showing their
6 dates of hire, position currently held, and date of most recent promotion from non-
7 managerial staff position to managerial position, where applicable; and

8 5. A list of any employees who have been alleged to engage in
9 discriminatory acts during the term of the Consent Decree.
10

11 Hollywood Park shall make the aforementioned records available to the
12 EEOC within ten business days following a written request by the EEOC.

13 **B. Reporting**

14 In addition to the notices to the EEOC specified above, Hollywood Park
15 shall provide the following reports to the EEOC in writing, by mail or facsimile:

16 1. Within ninety days after the Effective Date, Hollywood Park
17 shall submit to the EEOC an initial report which contains:

18 a. A copy of the policy against discrimination and
19 retaliation;

20 b. A summary of the procedures and recordkeeping methods
21 for centralized handling, tracking, and monitoring of complaints of discrimination
22 and retaliation; and
23

24 c. A statement confirming that the Notice required by this
25 Decree and the policy have been posted:

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1 2. Hollywood Park shall also provide the following reports
2 annually throughout the term of this Decree, beginning thirty days after the first
3 training and annually thereafter:

4 a. A list of the names and positions of employment of each
5 employee who attended each training required under this Decree that took place
6 during the previous year, classified by the date and type of training (management
7 versus non-managerial staff);

8 b. A list of the names and positions of employment of all
9 employees hired or promoted from non-managerial staff to management positions
10 during the previous year; and

11 c. A brief description of all discrimination and/or retaliation
12 complaints made since the submission of the immediately preceding report required
13 by this Consent Decree (or the Effective Date, if it is the first report). This
14 description shall include the names of the individuals alleging discrimination or
15 retaliation, the nature of the discrimination or retaliation alleged, the names of the
16 alleged perpetrators, the dates of the alleged acts of discrimination or retaliation, a
17 brief summary of how each complaint was resolved (if resolved by the time of the
18 report), and the identity of the person(s) who investigated or resolved (if resolved
19 by the time of the report) each complaint. If a complaint of discrimination or
20 retaliation has not been resolved as of the time of the report, the result shall be
21 included in the next report.

22 d. A description of any changes that have been made to
23 Hollywood Park's policy against discrimination and retaliation in the previous
24 year.

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3. Hollywood Park shall provide a report to the EEOC detailing any changes of the procedures or recordkeeping methods for centralized tracking of discrimination or retaliation complaints and the monitoring of such complaints thirty days before implementing such changes.

XII.

COSTS OF ADMINISTRATION AND IMPLEMENTATION OF CONSENT DECREE

Hollywood Park shall bear all costs associated with its administration and implementation of its obligations under this Consent Decree, including the costs of the Consultant.

XIII.

COSTS AND ATTORNEYS' FEES

Each party shall bear its own costs of suit and attorneys' fees.

ORDER

This Consent Decree is hereby APPROVED AND ENTERED.

Date: Sept. 1, 2004

Audrey B. Collins
 Hon. Audrey B. Collins
 JUDGE OF THE UNITED STATES
 DISTRICT COURT

Respectfully submitted,

Date: 08/31/04

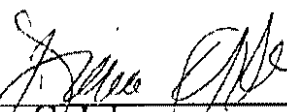
By: [Signature]
 For Defendant Hollywood Park

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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Anna Y. Park
Gregory L. McClinton
Dana C. Johnson

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Date: Sept 6, 2004

By: 
Dana C. Johnson
Trial Attorney
Attorneys for Plaintiff

SCANNED



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Los Angeles District Office**

255 E TEMPLE STREET, 4TH FLOOR
LOS ANGELES, CALIFORNIA 90012
1-800-669-4000
(213)894-1000
TDD (213) 894-1121
FAX (213) 894-1118

FILE

NOTICE OF CONSENT DECREE

TO: ALL EMPLOYEES OF CHURCHILL DOWNS CALIFORNIA COMPANY
doing business as HOLLYWOOD PARK RACE TRACK:

The U.S. Equal Employment Opportunity Commission ("EEOC") filed a lawsuit in the United States District Court for the Central District of California entitled EEOC v. Churchill Downs, Inc., et al., Case Number CV 03-5544 ABC(VBKx). The EEOC's lawsuit alleged that Hollywood Park Race Track retaliated against Charging Party Bob Pepevnik when he cooperated in an EEOC investigation into charges of employment discrimination. Hollywood Park Race Track denied any wrongdoing or liability.

The parties resolved the matter by entering into a "Consent Decree." Pursuant to the Consent Decree, Hollywood Park Race Track is providing notice to you that it is committed to a workplace free from discrimination and retaliation. Hollywood Park Race Track's policy against discrimination and retaliation applies to all persons at Hollywood Park Race Track, including its owners, directors, officer, other management officials, supervisors, vendors, suppliers, third parties and customers. Alleged violations of Hollywood Park Race Track's policy against discrimination and retaliation will be promptly, thoroughly and impartially investigated. Individuals found to have violated that policy will be subject to discipline up to and including termination of employment.

Regardless of whether you complain internally to Hollywood Park Race Track, you have a right to file a charge with the EEOC if you feel that you have been discriminated against in violation of federal anti-discrimination laws such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990 or the Equal Pay Act of 1963. In particular, if you feel that you have been retaliated against because of the filing of a charge of discrimination, giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing concerning discrimination, you should contact the EEOC immediately, at:

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
255 East Temple Street, 4th Floor
Los Angeles, CA 90012
TELEPHONE NUMBER: (800) 669-4000

-over-



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Los Angeles District Office**

255 E. TEMPLE STREET, 4TH FLOOR
LOS ANGELES, CALIFORNIA 90012
1-800-669-4000
(213)894-1000
TDD (213) 894-1121
FAX (213) 894-1118

This Notice shall remain posted in a clearly visible location frequented by employees (e.g., breakrooms) at Hollywood Park Race Track's facilities for three years from the date upon which the Court signs this Notice.

It is so ORDERED this _____ day of _____, 2004.

Honorable Aubrey B. Collins
UNITED STATES DISTRICT JUDGE