

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

NOV 26 1996

DEC 02 1996

MICHAEL N. MILBY, Clerk of Court

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

V.

KPMG PEAT MARWICK LLP,

Defendant.

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Michael N. Milby, Clerk
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CIVIL ACTION NO.

H 96 - 4076

CONSENT DECREE

The Equal Employment Opportunity Commission (hereinafter the "Commission") found reasonable cause that KPMG Peat Marwick LLP, a limited liability partnership, Houston office (hereinafter "Peat Marwick") has engaged in a pattern of unlawful employment discrimination at its Houston, Texas facility. Specifically, the Commission alleges that Peat Marwick has willfully discriminated against a class of qualified individuals who are forty (40) years of age or older who applied for vacant Assistant Accountant and Assistant Tax Specialist positions by failing and refusing to hire them because of their ages. The Commission contends that Peat Marwick's hiring practices violate Section 4(a)(1) of the Age Discrimination in Employment Act of 1967 (hereinafter "ADEA"), as amended, 29 U.S.C. § 623(a)(1).

In accordance with its administrative findings of discrimination, the Commission seeks to recover compensation for identified victims of willful age discrimination, including backpay

damages, liquidated damages, rightful-place instatement where applicable and other affirmative relief.

Peat Marwick specifically denies that it has willfully engaged in any pattern of unlawful employment discrimination. Peat Marwick specifically denies that it has willfully discriminated against persons forty (40) years of age or over in recruiting or hiring for entry-level accountant positions or that it violated the ADEA. Peat Marwick also specifically denies the allegations of employment discrimination raised in the Commission's Letter of Determination. Neither the voluntary consent of Peat Marwick to this Consent Decree, nor any of its terms, shall constitute an admission of any ADEA violation by Peat Marwick.

IT IS THEREFORE AGREED:

SECTION I - SCOPE AND DURATION OF THE CONSENT DECREE

A. This Consent Decree (hereafter either "Decree" or "Consent Decree") is voluntarily entered in full and complete settlement of any and all claims arising out of or contained in EEOC Charge No. 330-93-3898 and Kathryn Hartsell's EEOC Charge No. 36A-94-0118 (hereafter "charges") and to assure continuing Federal Court jurisdiction. Unless otherwise noted, all undertakings shall commence within twenty (20) business days after entry of this Decree, and Peat Marwick's specific responsibilities hereunder, other than general compliance with the law, shall terminate two and one-half (2 1/2) years from the date of entry of the Decree.

SECTION II - DEFINITIONS

A. The term "Applicant" as defined in this Consent Decree means "a recent graduate from a program in accounting or a recent graduate who has at least the requisite hours of

accounting courses necessary to sit for the CPA examination, a student in the last year of his or her degree studies (one who at the time of application has reason to believe that he/she shall graduate from an accredited college or university program in accounting within twelve (12) months after application) or one who has completed or will complete the requisite hours of accounting credit hours necessary to sit for the CPA examination prior to application and who completes an application for an entry level Assistant Accountant and/or Assistant Tax Specialist position at Peat Marwick." Except as noted below, the term "Applicant" as defined in this Consent Decree does not include any individuals who are interviewed and/or hired for tax or accounting positions in Peat Marwick's Houston Tax Compliance Centers (hereafter "HCC"). The exclusion of HCC applicants and/or hires from benefits herein provided does not include or extend to any of the class members listed in Appendix A.

B. The term "Entry Level Accounting and/or Audit Position" as defined in this Consent Decree means "Assistant Accountant" or "Assistant Tax Specialist" positions for which at least a recognized degree from an accredited college or university with a minimum number of accounting hours necessary to sit for the CPA examination. All class members listed in Appendix A are deemed to have applied for these entry level positions.

C. The term "Instatee" as defined in this Consent Decree means "a class member who is offered and accepts a full time position of Assistant Accountant or Assistant Tax Specialist in Peat Marwick's Houston Office."

SECTION III - AGREEMENTS BY PEAT MARWICK

A. Peat Marwick agrees that it, its agents, officials, partners, managers, officers, supervisors and persons authorized to act on its behalf in "Entry Level Accounting and/or Audit

Position" recruiting shall not discriminate against or retaliate in any manner against any individual because he or she has made a charge, testified, provided information, assisted, received any benefit or participated in any manner in the administrative investigation by the Commission in connection with these charges.

B. Peat Marwick agrees to review its recruitment and hiring practices for Entry Level Accounting and/or Audit Positions to ensure that its practices fully comply with the requirements of the ADEA.

SECTION IV - PEAT MARWICK'S STATUTORY AND/OR REGULATORY OBLIGATIONS NOT AFFECTED BY THE CONSENT DECREE

A. Peat Marwick's compliance with its obligations under this Consent Decree shall not be interpreted to conflict with its legal obligations under the ADEA or any other federal or state laws, regulations and rules. Nothing in the Consent Decree shall be construed to reduce Peat Marwick's obligation to fully comply with the ADEA and the regulations promulgated pursuant thereto, except that compliance with the Consent Decree shall constitute compliance with the ADEA with respect to the matters covered by the Consent Decree.

B. The Consent Decree in no way affects the Commission's right to process charges other than the instant charges against Peat Marwick giving rise to this Consent Decree. Any other charges, if any, will be handled in accordance with standard Commission procedures. This Consent Decree does not inhibit commencement of civil actions pursuant to the ADEA and other statutes except as regards the instant charges.

SECTION V - SEVERABILITY OF PROVISIONS

A. If one or more provisions of the Consent Decree are rendered unlawful or unenforceable by an Act of Congress, or otherwise, all other provisions of the Consent Decree shall remain in full force and effect. If necessary to give effect to the objectives of this Decree, the parties will negotiate modifications that may be useful in the event that any provision or provisions are countermanded by Act of Congress or otherwise.

B. The provisions of the Consent Decree are the product of negotiation between the parties and are not intended as precedent in other similar charges concerning either the Commission and/or Peat Marwick. The Consent Decree is entered into in full and complete settlement of Charge Nos. 330-93-3898 and 36A-94-0118 and does not preclude the Commission from processing other charges against Peat Marwick in accordance with standard Commission procedures.

SECTION VI - SIZE OF CLASS AND TYPES OF RELIEF PROVIDED BY THE CONSENT DECREE

The monetary and affirmative relief agreed to herein are made in full and final settlement of the ADEA hiring discrimination claims asserted by the Commission on behalf of the class of twenty-four (24) individuals (identified in Appendix A) denied employment by Peat Marwick. The parties stipulate that at least eighteen (18) unnamed class members have chosen to forego employment opportunities with Peat Marwick and at least seven (7) class members have fully mitigated all backpay liability.

SECTION VII - MONETARY RELIEF AND PAYMENT PROCEDURES

A. The total settlement amount is \$600,000.00, and is specifically allocated in Appendix A. Within seven (7) business days of Peat Marwick's receipt of the individual class member's mailing address and social security number (provided by the Commission), Peat Marwick shall tender to the class members whose names are listed in Appendix A, "Release in Full" which shall include a confidentiality clause approved by the Commission. Each class member shall have at least twenty-one (21) days after receipt to consider the release and settlement and the release shall expressly encourage the class member to consult legal counsel. Each class member shall have seven (7) days after execution of the Release in which to revoke it in writing. Within twenty-one (21) business days after expiration of the revocation period, Peat Marwick shall tender to the class member his/her share of the fund (as set forth in Appendix A) (hereinafter "settlement fund" or "fund"), which includes monetary awards comprised of backpay, liquidated damages, the CPA bonus, if any, front pay, lump sum payment, demonstrable health insurance losses, if any, and front pay, if any, all as set forth in Appendix A. If less than one-half of the class members accept the settlement amounts to which they are entitled pursuant to the terms of the Consent Decree, either party may declare the Decree null and void and this action shall proceed on the underlying claim, in which case no consideration shall be paid to any claimant hereunder. Peat Marwick shall be responsible for the withholding of and transmittal of applicable federal and state withholding taxes and social security withholdings to the United States Internal Revenue Service, state taxing authorities, and Social Security Administration and for payment of the additional monies required for its contribution to the FICA payments attributable to the backpay, CPA bonus, front pay and lump

sum payment. With respect to liquidated damages and demonstrable health insurance losses, a form 1099 will be filed with the Internal Revenue Service at the end of the calendar year for each recipient who received these payments. If a class member rejects or revokes his/her Release in Full, the amount of the fund attributable to him/her shall not be disbursed and the overall settlement fund shall be reduced by such amount.

B. In calculating the net amount of the portion of the settlement attributable to backpay, CPA bonus, if any, front pay and lump sum payment as set forth in Appendix A, to be distributed to the respective class members, Peat Marwick shall withhold twenty-eight percent (28%) from each class member's backpay, front pay, CPA bonus and lump sum payment as shown on Appendix A as federal withholding taxes. The amount of each class member's check will be the net sum after such deductions, plus the amount of liquidated damage amount equal to 80% of the gross backpay award and demonstrable health insurance losses, if any. Peat Marwick shall remit the withheld taxes to the Internal Revenue Service and shall provide each class member with an individualized withholding form (W-2) at the end of the calendar year mailed to his or her last known address, as provided by the Commission. Peat Marwick shall send each class member an explanatory transmittal in the form as set forth in Appendix B with his or her settlement check.

C. Whenever Peat Marwick sends a check to a class member in accordance with this Consent Decree, it shall simultaneously send a copy of that transmittal to the Commission to document that event. Within ten (10) business days after bank notification, it shall report to the Commission in any instance that a class member does not deposit said check within 90 days of its mailing.

SECTION VIII - UNCONDITIONAL OFFERS OF EMPLOYMENT AND PROCEDURES

A. Within sixty (60) business days after execution of this Decree, Peat Marwick shall begin the process of offering positions to three (3) class members from the Preferential Hiring List of those class members who seek instatement as identified in Appendix A and who have executed the Release in Full. Peat Marwick shall invite the selected class members in for an interview if desired, and conduct its standard background check. The selected class members, subject to a satisfactory background check, will be provided a standard written offer of full-time employment in the Houston office on the terms which are set forth below and in the relevant appendix (or appendices) to each of the class members to whom it offers a position. These terms shall include offering the position of either "Assistant Accountant" or "Assistant Tax Specialist" based on the expressed preference of the applicant and his/her qualifications in relation to Peat Marwick's documented job requirements for the accountant and audit positions. Peat Marwick shall mail the written offers of employment in the form set forth as Appendix C to class members whose names appear on the Commission's Preferential Hiring List (no more than six (6) individuals as shown on Appendix A) to achieve the hiring of at least three (3) class members, hereinafter referred to as Instatees at mailing addresses provided by the Commission. If Peat Marwick is unsuccessful in hiring the three (3) Instatees from the Commission's Preferential Hiring List, it shall actively recruit and attempt to hire qualified applicants in the protected age group for Assistant Accountant and Assistant Tax Specialist positions pursuant to Section IX below. Each class member to whom a written offer of employment is sent shall have thirty (30) days from receipt of the written offer to accept or reject the position in writing. All Instatees who accept Peat Marwick's offer of employment shall commence full-time employment

in the respective job with the next entering group of newly hired assistant tax specialists and assistant accountants. All notices of intent to commence work shall be presented to Peat Marwick in writing and may be sent by mail, delivery service or telefax to the following address:

A. J. Harper II
Fulbright & Jaworski L.L.P.
1301 McKinney Ave., Suite 5100
Houston, Texas 77010-3095

Peat Marwick shall keep a list of all offers of employment which are made, noting whether each offer was accepted or rejected, the reason(s) for acceptance or rejection of the offer, if given. This list shall be sent to the Commission Regional Attorney on a monthly basis until the hiring of the three (3) class members has been completed. As rejections are received by Peat Marwick (or timely acceptances do not occur), Peat Marwick shall continue to make additional bona fide offers of employment to those class members whose names remain on the Commission's Preferential Hiring List until three (3) class members have been hired or until documented offers of employment have been made to all class members whose names are on the list, whichever occurs first.

B. Peat Marwick shall insure that no reference to the EEOC charge and/or the involvement of the class member in the investigation and/or conciliation of the charge is reflected in his/her personnel file. Peat Marwick shall maintain and submit to the Regional Attorney of the Commission on a semi-annual basis a report on the class members who were hired. The report shall contain the following information: Specifics as to any change in status (demotion, promotion, resignation, termination, transfer) during the period in which the Decree

is in force. This remedial hiring shall not excuse any discrimination against other older applicants from this time onward.

C. Peat Marwick agrees that the Instatees shall be treated on a comparable basis with other similarly performing colleagues and receive regular salary increases, benefits and promotions comparable to similarly performing colleagues. In the event that Peat Marwick decides, during the term of this Consent Decree, that any Instatee shall be terminated or asked to resign, or be suspended, demoted, or denied a periodic salary increase or promotion (hereinafter "adverse action"), Peat Marwick shall notify the Commission as well as the affected Instatee. Any disagreement with such action may be processed under Section XI, Dispute Resolution, of the Consent Decree. Peat Marwick acknowledges that this Consent Decree in no way affects the independent legal right of any Instatee to challenge any proposed adverse employment action and to invoke a charge investigation by the Commission or other authorized agency.

D. Instatees shall be given training to the same extent and in the same manner and fashion as other entry level assistant accountant and assistant tax specialist hires. Peat Marwick agrees to extend to all Instatees equal terms, benefits, conditions and privileges of employment, as made available to other persons with the same position titles at the same time as are the Instatees offered and accepting employment hereunder. Peat Marwick shall adjust the seniority date for the Instatees so that each is properly credited with retroactive seniority back to the initial date during the relevant period when Peat Marwick failed to select the class member for the sole purpose of personal day accrual (vacation and sick pay) and to pay such Instatee at the

average salary level of a second year Assistant Tax Specialist or Assistant Accountant entering their second year of employment.

SECTION IX - AFFIRMATIVE RELIEF

A. Peat Marwick shall inform its nationwide management committee of the terms of the Consent Decree by sending copies of the Decree and the Commission's Letter of Determination to the committee. Peat Marwick has developed a policy statement, with Commission input, setting forth its commitment to ensure that all of its hiring decisions are in compliance with the ADEA and other applicable laws enforced by the Commission and its commitment to encourage the application and hiring of qualified applicants who are older than the traditional college senior, and applicants who have previous accounting experience. Peat Marwick's administrative manual shall contain this statement and the name of Peat Marwick's EEO officer. Peat Marwick shall issue this policy statement to partners, recruitment staff, managers, supervisors, personnel officials and new employees. They shall acknowledge receipt of the policy statement in writing and copies of these written acknowledgments shall be sent to the Commission on an annual basis. A copy of the policy statement is attached as Appendix D.

B. Peat Marwick shall post a non-discrimination notice on Peat Marwick stationary, signed by the managing partner of the Houston office, for a period of two and one half years from the date of entry of Decree. The notice summarizes the major employment practices prohibited by the ADEA and reflects Peat Marwick's continuing commitment to ensure that its employment practices fully comply with the ADEA. A copy of the non-discrimination notice is attached as Appendix E.

C. Peat Marwick shall conduct training at least two weeks prior to the beginning of each college recruiting season for all of its employees and managers who participate in its college recruiting and hiring process for Assistant Accountant and Assistant Tax Specialist positions. Peat Marwick shall provide the EEOC with copies of all agenda and materials distributed at these training sessions. The training shall emphasize each attendee's specific responsibilities to assure compliance with Title VII, the Age Discrimination in Employment Act and the Americans With Disabilities Act. Everyone involved in Peat Marwick's recruitment process has the affirmative duty to report to the EEO Officer (see Section X(A) below) any suspicion of observed actions in violation of the Age Discrimination in Employment Act or the other statutes listed above. In the training, the attendees shall be advised 1) that discriminatory treatment of older applicants and/or employees may lead to sanctions including but not limited to impeding or otherwise adversely affecting the promotability of the staff person or manager who has discriminatorily treated the person(s) in question; 2) that assumptions regarding the older applicants which have any tendency to impede their hiring can constitute a basis for finding that discriminatory treatment has occurred. For example, any denigration, discouragement or downgrading of an older applicant based on an assumption that he or she will not accept supervision by a younger manager, will not work hard, or will not learn or adjust as quickly or as successfully as a younger applicant or employee gives rise to a presumption of discriminatory treatment. Peat Marwick shall provide to the Commission the sign-in lists containing the typed names, signatures and job titles of the attendees at each training session and the name(s) of the school(s) at which each attendee participates in recruitment.

D. Peat Marwick shall resume conducting interviews for a period of two and one half years from the date of entry of the Consent Decree at the University of Houston - University Park. Thirty (30) days prior to the commencement of the next college recruiting season, Peat Marwick shall send a letter in the form set forth in Appendix F to the Dean of the University Accounting Department setting forth Peat Marwick's commitment to non-discriminatory recruitment. During the two and one half year period from the date of entry of the Decree, Peat Marwick will not limit or cease its recruitment at the University of Houston - University Park for any reason including, but not limited to, a contention that its ability to pre-screen some or all of its applicants has been limited by any policy or practice of the school's placement office or other entities or individuals. Peat Marwick shall exert reasonable efforts to assure that age thirty-eight (38) year old or other candidates are affirmatively included within this process of recruitment and consideration for hire. During the two and one half year period in which this Decree is in effect, in lieu of on-campus interviewing at the University of Houston - Clear Lake, Peat Marwick shall on a yearly basis send a letter and notice in the form set forth in Appendix G to the Dean of Accounting Department and the placement office soliciting resumes and applications from qualified students and conveying that the Firm is serious about recruiting older accountants and applicants with previous accounting and/or business experience. That letter and notice shall be disseminated pursuant to IX.G. in a timely manner to facilitate receipt of applicant's materials before Peat Marwick has extended any job offers to other candidates and before Peat Marwick has offered to interview other candidates in its Houston office. If any timely resumes and/or applications are received from students at the University of Houston - Clear Lake, they shall be screened on a non-discriminatory basis and selected candidates who

met Peat Marwick qualifications invited to an office interview. Peat Marwick shall exert reasonable efforts to assure that age thirty-eight (38) or older candidates are affirmatively included within this process of recruitment and consideration for hiring. It may not be inferred from this Decree that the Commission has decided that a recruitment program limited to recent college graduates is presumptively valid under the ADEA.

E. Peat Marwick shall make and keep a list of all applicants seeking employment as Assistant Accountants and Assistant Tax Specialists indicating the following: the date of application, best estimate of the age of each applicant at the time of application, the evaluation of the applicant during his/her interview, whether the applicant was offered a position, the reason(s) why the applicant was chosen or not for an office interview and/or offered a position and, if the position was offered, whether or not it was accepted by the applicant. In addition, Peat Marwick shall specifically explain all instances when it does not offer a campus interview and/or an office interview and/or does not hire anyone age thirty-eight (38) or older at the time of application for Assistant Accountant and/or Assistant Tax Specialist positions and shall provide the name and position of each decision-maker who made the decision(s) not to interview, invite to the office and/or hire the applicant. All lists, explanations and other reports generated to comply with this provision of the Consent Decree should be forwarded to the Commission on a semi-annual basis for review and comment as specified in paragraph X(B) below.

F. Whenever an applicant thirty-eight (38) years old or older applies for an Assistant Accountant or Assistant Tax Specialist and who otherwise would be considered a candidate for employment (one who has timely submitted a resume and/or application, and after internal screening, is invited into the office for an initial interview and thereafter viewed as a candidate

for a second interview) advises any authorized representative (those engaged as a recruiter) of Peat Marwick's Houston staff that he or she prefers to work for any of Peat Marwick's Texas operating office(s) other than Houston, the EEO Coordinator shall be informed and facilitate referring that request to the other office(s). At a minimum, facilitation shall include having the Houston office primary recruiter contact the specific office as to which that applicant has expressed a preference and advise that office's recruitment coordinator of the positive nature of the candidate's qualifications.

G. Thirty (30) days prior to the commencement of the college recruiting season during the next two and one half years in which this Decree is in effect, at any college or university at which it recruits for Assistant Accountant or Assistant Tax Specialist, Peat Marwick shall send the college's or university's placement office a letter and notice setting forth its commitment to hiring without regard to race, religion, color, sex, age, national origin or a non-disqualifying disability. A copy of the letter and notice is attached as Appendix H. Peat Marwick shall request that this notice be posted at least ten (10) days prior to the date that prospective applicants are required to sign up for interviews. Peat Marwick shall abide by each university's or college's screening policy. Peat Marwick shall encourage the universities, colleges and accounting departments to bring its non-discrimination policy to the attention of their students.

H. Before the commencement of each college recruiting season occurring during the two and one half year period in which this Decree is in effect, Peat Marwick shall send letters and notices to the dean or chair of each college's accounting program at which Peat Marwick plans to recruit and to his/her counterpart, if any, and to faculty teaching accounting courses at

any law schools at which Peat Marwick plans to recruit during the upcoming season soliciting resumes and applications for qualified students and conveying that the Firm is serious about recruiting older Assistant Accountants and Assistant Tax Specialists with previous accounting and/or business experience. These letters shall be modeled after the letter attached as Appendix H.

I. After each recruiting season, during the next two and one half year period in which this Decree is in effect, the Commission shall evaluate Peat Marwick's recruitment and hiring of members of the protected age group in relation to their availability and the diversity of Peat Marwick's recruitment process for Assistant Accountant or Assistant Tax Specialist positions. The Commission reserves the right to assess the relevant records at Peat Marwick's Houston Office, or have copies of all records delivered, at Peat Marwick's expense, to the Commission's Houston Office for examination within fifteen business days notice. After each evaluation is completed, the Commission shall determine and notify Peat Marwick whether it believes additional recruitment efforts should be undertaken, i.e., letters and notices to placement offices, deans or department chairs of accounting departments and faculty members in the accounting or business department where Peat Marwick recruits, setting forth Peat Marwick's non-discriminatory policy; placement of display advertisements which set forth commitment to non-discriminatory recruitment and hiring in college or university newspapers where Peat Marwick conducts recruitment activities, and activation of additional recruitment efforts to solicit applications for applicants in the protected age group, specifically placing advertisements in college accounting department bulletins.

SECTION X - REPORTING OBLIGATION AND SCHEDULE

A. Peat Marwick designates and assigns Sara Lou Brown, Partner, to function as the EEO Coordinator for the purpose of monitoring compliance with Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act and this Decree. Peat Marwick acknowledges that Ms. Brown is a Partner. If during the Consent Decree period, a new EEO Coordinator is named, the Commission shall be informed.

B. The EEO Coordinator shall assure that semi-annual reports are submitted to the Commission to the attention of the Commission Regional Attorney with a copy to the managing partner pursuant to the reporting provisions of the Consent Decree. The first report, specifying the steps which have been undertaken to comply with this Decree, shall be due forty-five business days after the entry of this Consent Decree. The next ensuing report shall be provided to the Commission no later than December 1st and thereafter on June 1st and December 1st of each year in which such reports are required by the Consent Decree. In the likelihood that the recruiting cycle and time frame for hiring decisions change, Peat Marwick must notify the Commission of these changes and the Commission reserves the right to unilaterally change the dates, upon three (3) months advance written notice, when reports are required. In the reports to the Commission, the EEO Coordinator has an affirmative duty to certify that the reports are filed accurately, to insure that they are filed timely and to disclose any non-compliance with the terms of the Consent Decree, whether or not the report is signed by Peat Marwick's attorney. The EEO Coordinator shall report to the managing partner regarding her responsibilities under the Consent Decree. Copies of the semi-annual reports to the Commission shall be sent to the managing partners. Within ten (10) business days after the Consent Decree is signed, Peat

Marwick shall provide to the Commission the phone number of the EEO Coordinator and, thereafter, the person, if any, who assumes her responsibilities in her absence and all subsequent incumbents. If the final report is received by the Commission no earlier than two months before this Decree's termination date, the parties agree to extend its term for an additional two months to afford the Commission full opportunity to exercise its oversight rights and, if need be, invoke dispute resolution and court enforcement.

C. Peat Marwick shall maintain such records as are necessary to demonstrate its compliance with the provisions of the Consent Decree and to verify any reports it is required to submit pursuant to the terms of the Decree. These records must be stored in the following manner; initially separated by recruiting year with further divisions established for: 1) the university from which the application was timely submitted (with a separate category being established for timely mail-in applications or any other timely non-campus-initiated applications); 2) individual recruiter; 3) position applied for (specifically Assistant Accountant or Assistant Tax Specialist); 4) those applications pre-screened and not afforded an on-campus interview; 5) those applications who were only afforded a campus interview, but not an office interview; 6) those applicants chosen for an office visit, but not extended a job offer; 7) those applicants who have rejected a job offer; 8) those applicants extended a job offer and who have accepted such offer. Within each of these categories, applicants shall be separated into two groups: (a) applicants 38 years of age or older if possible to identify, and (b) all other applicants. Further, all Peat Marwick records pertaining to a particular applicant (application and/or resume, transcript and interview form) shall be stored as one document. If the Commission chooses not to examine these records or documents at Peat Marwick's Houston Office, Peat Marwick shall deliver the

requested records or documents, at its own expense, to the Commission no later than thirty (30) business days after receiving such request. The requirement that these specific documents be retained does not serve to abrogate any other legal obligation(s) that Peat Marwick may have to maintain these or any other records. Should the Commission need additional relevant records or documents, the Commission shall make such requests in writing. These records shall be submitted or made available to the Commission by Peat Marwick upon fifteen (15) business days advance notice at Peat Marwick's expense. If the parties mutually agree to delay record production, the records shall be submitted or made available to the Commission by Peat Marwick at such time as mutually agreed upon. The status report shall contain the following information: specifics as to any changes in status (demotion, promotion, quit, resignation, termination, transfer) of any of the instatees and/or any Assistant Accountants or Assistant Tax Specialists age thirty-eight (38) or older hired by Peat Marwick from the execution date of this Decree onward.

SECTION XI - DISPUTE RESOLUTION

A. This Consent Decree shall remain in effect for two and one half years from the date of entry of the Decree. During that period, the Court shall retain jurisdiction to assure compliance with this Decree and to permit entry of such further orders or modifications as may be appropriate.

B. It is expressly agreed that if the Commission or Peat Marwick concludes that the Consent Decree has been materially breached, a motion to enforce the Decree may be filed in the United States District Court for the Southern District of Texas. Such motion must be brought within ninety (90) days of receipt of a notice of non-compliance and only after

undertaking the steps set forth below. The parties agree that neither will challenge the jurisdiction of the aforesaid court to entertain a motion to enforce the Decree and to order any remedy for any breach determined to have existed or currently exist. Nor will either party claim that venue should be placed other than in the Southern District of Texas.

C. Prior to the institution of any court action, an opportunity to explain and/or correct all areas of dispute shall be afforded as provided in this subsection.

- (1) If the Commission or Peat Marwick believes that the Consent Decree has been materially breached, written notice shall be given specifying (a) the particular provision that has allegedly been materially breached and (b) a concise, factual statement of each issue. Written notice of such failure shall be sent to the party alleged to be in breach who shall have thirty (30) days to respond in writing.
- (2) Peat Marwick and the Commission shall undertake to resolve the areas of alleged material breach through discussion, conference, investigation, correspondence or other appropriate means; and
- (3) After the efforts described in Section 2 above have been utilized, should Peat Marwick or the Commission determine that the matter cannot be resolved or that efforts to resolve the matter have failed, a final written notice of intent to seek judicial enforcement of the Consent Decree shall be provided to all parties regarding (a) the specific provision alleged to have been materially breached and (b) a concise factual statement of the issue. Written notice of such failure shall be sent by Certified Mail, Return Receipt Requested, to the party alleged to be in breach which shall have fifteen (15) business days to respond in writing. If the

response is not satisfactory, a motion to enforce the Decree may be filed. If a party seeks court involvement to resolve a dispute under this Section, each party shall bear its own attorney's fees and costs.

D. In the event that a motion alleging non-compliance has been filed prior to the date on which the Consent Decree terminates, the parties agree to permit the Court to determine whether or not a breach has occurred and to effect an appropriate remedy, which may include extending the temporal scope of the Decree.

SECTION XII - CLAIMS EXPENSES

A. Peat Marwick shall provide necessary staffing and bear the expenses for the administration of the claims procedure and for any photocopying and delivery of documents provided in response to a Commission request.

B. Whenever a party, its legal representative, or a class member (all hereinafter "stake holders") must advise another stake holder or must provide notice to a stake holder, said notice must be sent by first class mail, transmitted by delivery service or telefaxed to the respective person(s).

C. Other than as noted above, the parties shall bear their own costs and attorney's fees.

SECTION XIII - PUBLICITY

A. The text of a comprehensive press release attached as Appendix I announcing the terms of the Decree shall be distributed to the news media at the time the Court enters the Decree. The parties agree that their comments to the media will be consistent with the press release and matters of public record with respect to the implementation or operation of the

Consent Decree. If requested, the Commission may advise the requester to obtain the complaint from the clerk's office or, in the alternative, may provide a copy of the complaint to the requester.

SECTION XIII - CONFIDENTIALITY

A. Except insofar as disclosing the total amount of class-wide compensation and the specific elements of said relief, the Commission, class members and Peat Marwick agree to take all reasonable steps to assure that the terms in Appendix A of this Decree shall be strictly maintained as confidential and not disclosed to any other person or entity.

SECTION XIV - SURVIVAL OF CLAIMS

A. In the event that a class member has died or dies during the term of the Decree, his/her settlement check(s) as specified in Appendix A shall be distributed to the estate based on information provided by the Commission. The estate is entitled to receive compensation for backpay, liquidated damages, CPA bonus, if any, lump sum payment and demonstrable health insurance losses, if any, and front pay, if any, so long as the claimant would have been eligible for these elements of relief if not for his or her demise.

B. In the event that a class member has become incompetent or becomes incompetent during the term of this Decree, 1) any fact as to which he or she would have had the burden of proof or production is deemed to be established such that his or her claim will thereby be established and 2) he or she shall not be eligible for reinstatement but shall be fully compensated for backpay, liquidated damages, CPA bonus, if any, and demonstrable health insurance losses, if any, and front pay, if any, as specified in Appendix A.

SECTION XV - CERTIFICATION

A. The signatories certify that they are authorized to approve the Consent Decree on behalf of their respective parties. This Decree may be signed in counterparts.

SECTION XVI - NOTICES

A. All documents required to be forwarded to the parties or their counsel shall be mailed, delivered or telefaxed to counsel at the addresses shown below:

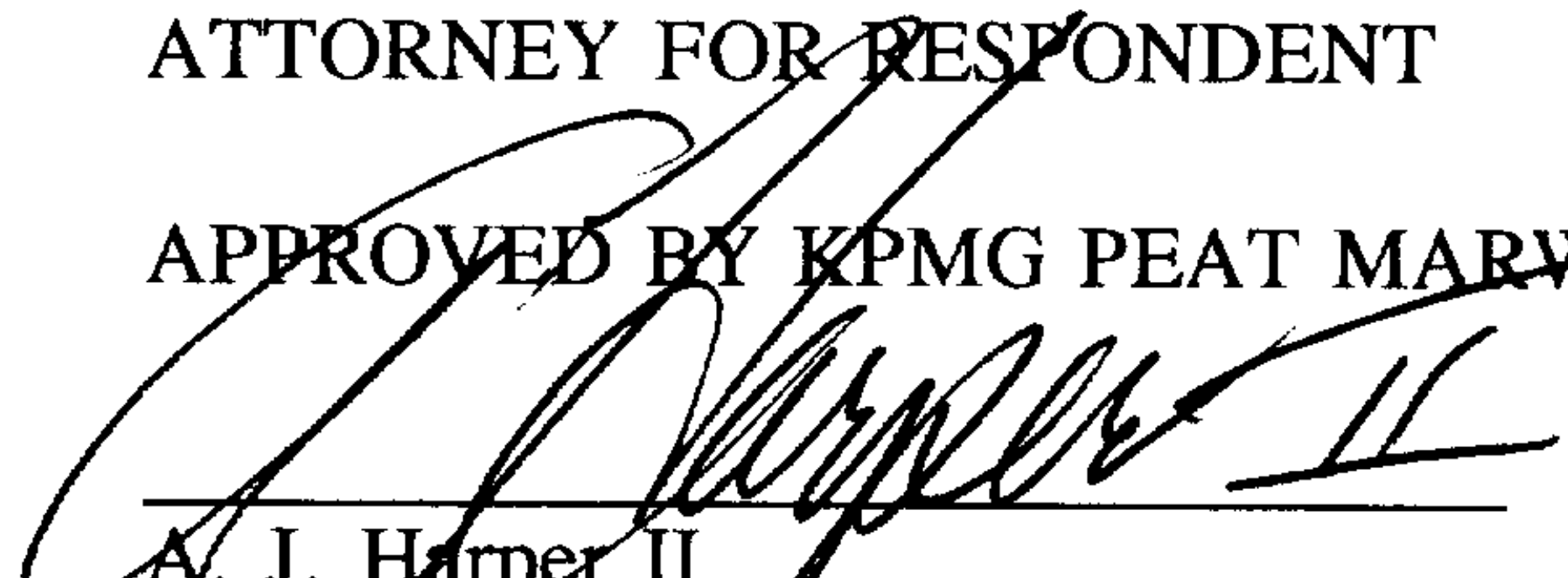
Jim Sacher
Regional Attorney
Houston District Office
Equal Employment Opportunity Commission
1919 Smith Street, 7th Floor
Houston, Texas 77002
(713) 653-3401

ATTORNEY FOR PLAINTIFF

A.J. Harper II
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(713) 651-5151

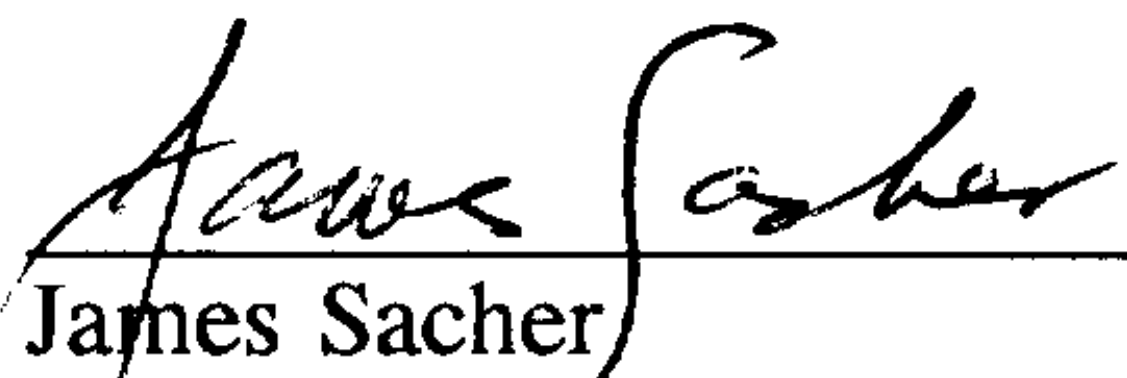
ATTORNEY FOR RESPONDENT

APPROVED BY KPMG PEAT MARWICK LLP


A. J. Harper II
Attorney-in-Charge
Fed. I.D. No. 5158
Texas Bar No. 09031000

Date: November 26, 1996

APPROVED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION


James Sacher

Regional Attorney

Fed. I.D. No. 13536

Texas Bar No. 17503300

Date: November 26, 1996

Mary O'Boyle Lyons

Attorney-in-Charge

Fed. I.D. No. 7042

Texas Bar No. 12743900

Equal Employment Opportunity Commission

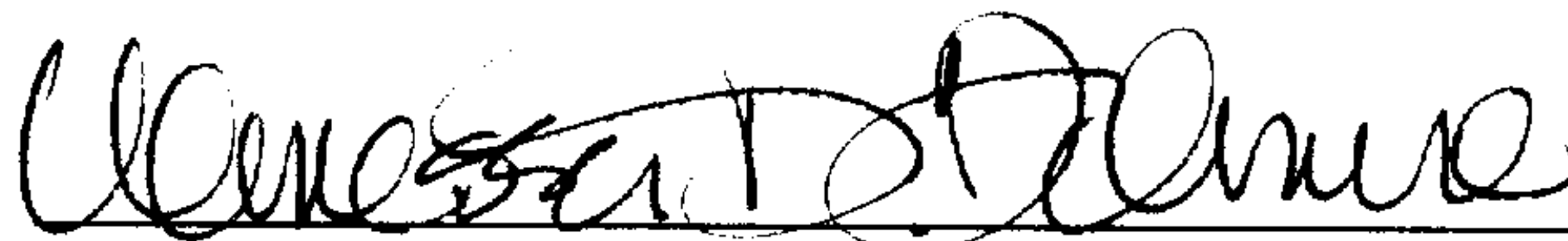
Houston District Office

1919 Smith Street, 7th Floor

Houston, Texas 77002

(713) 653-3401

Signed on November 27, 1996 at Houston, Texas.



United States District Judge

APPENDIX A

APPENDIX "A" IS SUBMITTED UNDER SEAL.

APPENDIX B

[KPMG Peat Marwick LLP letterhead]

RE: EEOC v. KPMG Peat Marwick LLP
Charge No. 330-93-3898

Dear _____:

This letter transmits our payment to you of \$_____ in full settlement of the claim made on your behalf by the Equal Employment Opportunity Commission ("EEOC") in the above matter. An enclosed recapitulation provides additional specifics regarding this settlement. If you have any questions, though, please contact Mary Lyons at the EEOC at or (713) 209-3395.

Sincerely,

KPMG Peat Marwick LLP

Encls.: 1. Check
2. Recapitulation

Date

NAME
ADDRESS

Dear Mr./Ms. XXX:

On behalf of KPMG Peat Marwick LLP ("KPMG"), I am pleased to offer you the position of assistant accountant (or assistant tax specialist) in our Houston office, effective START DATE. Your annualized starting salary will be \$XXXXXX, paid biweekly.

You will be entitled to 20 annual personal days, accrued biweekly, to use for vacation, illness or any other personal absence. These personal days are in addition to eight firm-designated holidays. As a full-time employee, you will also be eligible to participate in our Personal Benefits Program. This program will be discussed with you in detail during orientation on your first day.

There are a number of important items we wish to cover in this letter. Please read the following and call us with any questions you may have. Documents indicated by an asterisk (*) should be signed and returned along with this letter.

- Please read the enclosed Employment Affidavit* carefully. Signing the Affidavit is a condition of employment. As noted therein, employment with KPMG is not for a specific term and may be terminated by you or by the firm at any time, for any reason, with or without cause.
- All client service professionals are required to follow the firm's Independence policy, a copy of which is enclosed. After reviewing the policy, if there are any issues that need to be discussed, please call me immediately.
- In compliance with the Immigration Reform and Control Act, federal law requires employers to verify work authorization upon hire. You will need to bring verifying on your first day of employment with KPMG.
- Employment with KPMG is contingent upon completion of the firm's employment screening process. This may include a public source background inquiry and receipt of

satisfactory information regarding your employment history. An Authorization for Release of Background Information* is enclosed for your signature.

The items in this letter and the Employment Affidavit represent KPMG's entire offer of employment to you. Our offer of employment will remain in effect for 30 days from the date of this offer letter.

Mr. or Ms. XXX, we look forward to having you join us. We will have a great deal of additional information to share with you during orientation. In the meantime, please return the forms requested along with your signed offer letter in the enclosed envelope. If you have any questions, please do not hesitate to contact _____ at _____.

Very truly yours,

KPMG Peat Marwick LLP

NAME
TITLE

Enclosures

ACCEPTED BY: _____ DATE: _____

EMPLOYMENT AFFIDAVIT

A. Equal Employment

KPMG Peat Marwick LLP maintains that there should be no discrimination because of race, age, sex, sexual orientation, color, religion, national origin, handicap, or veteran status with respect to terms, conditions, or privileges of employment with the firm. It is our intent to desire that race, age, sex, color, religion, national origin, handicap, or veteran status shall not be a factor in consideration of the following:

- Recruitment or employment
- Promotion or transfer
- Compensation
- Benefits
- Selection for training
- Assignments
- Demotion or separation

I acknowledge that I have read and understand the firm's Policy on Equal Employment Opportunity/Sexual Harassment signed by the chairman.

In adherence to 41 CFR (July 1, 1983) sections 60.250.5(c) and 60.741.5(d), any employee who wishes to review KPMG Peat Marwick's Affirmative Action Plan, or who qualifies under its handicap and veteran provisions, should contact the affirmative action coordinator in his/her office.

B. References

I authorize any and all persons, schools, companies and other organizations to supply KPMG Peat Marwick with any information they have concerning me and release them from liability with respect thereto. I agree that if KPMG Peat Marwick finds I have made any misrepresentation or is dissatisfied with the result of any investigation of me, any offer of employment may be withdrawn or my employment terminated, without obligation on its part except payment to me for services rendered.

C. Independence

I agree that as an employee of KPMG Peat Marwick, I will abide by the applicable independence rules of the AICPA, SEC, and other authoritative bodies as well as the policies of the firm. I will not accept favors, direct or indirect, from clients of KPMG Peat Marwick or associate with client personnel in a manner that would impair the independence or objectivity of the firm. In addition, I will not use, disclose, or exploit any information concerning KPMG Peat Marwick, its clients, nonclients, or other persons or entities that comes to my attention during the course of employment.

D. Duty to Maintain Confidentiality

I understand that as an employee of KPMG Peat Marwick, I may come into possession of Confidential Information concerning the firm, its clients, nonclients, or others. I further understand that at times it may become difficult for me to determine whether information I learn is confidential or publicly known. As a condition to my employment, I agree to consider all work done and information received during the course of my employment as confidential and further agree not to use, disclose, or otherwise discuss such information outside the firm or with any unauthorized person.

I further acknowledge being informed that the federal securities laws prohibit any person while in possession of material nonpublic information from either trading in a security or disclosing such information to another in connection with a securities transaction.

E. Professional Services

I understand that while the firm's employ, I shall perform professional services only for and on behalf of the firm and only for clients of the firm.

F. Termination of Employment

Notwithstanding anything contained in any KPMG Peat Marwick literature or any representations to the contrary, I understand that my employment with KPMG Peat Marwick may be terminated by either me or the firm for any reason or no reason whatsoever by giving written notice of not less than one day during the first three months of service and written notice of not less than two weeks thereafter.

G. Affidavit Commitment

I understand that nothing contained herein may be changed or modified except in written documentation signed by the chairman of the firm and me.

Signature: _____ Date: _____

Policy on Equal Opportunity Employment

KPMG reaffirms its long-standing policy of providing equal opportunity for all applicants and employees regardless of their race, color, religion, age, sex,, national origin, individuals with disabilities, or veteran status.

This policy extends to recruiting, recruitment advertising and/or other communications media, hiring, rates of pay and other compensation, benefits, overtime, job classifications and assignments, training, work conditions, promotions, transfers, demotions, layoffs or terminations, recalls, disciplinary and other employee treatment, and all other terms, conditions, or privileges of employment.

Overall responsibility for the Peat Marwick's Equal Employment Opportunity (EEO) policy has been assigned to Julia McIlheran, director of human resources and Sara Lou Brown, partner. Both will report directly to me.

If you have a suggestion or problem, feel free to follow the firm's open-door communication system. You can contact Ms. McIlheran, Ms. Brown or me. Every employee is welcome to access this confidential system without fear of reprisal.

MANAGING PARTNER - HOUSTON

APPENDIX D

APPENDIX E

KPMG PEAT MARWICK LLP HOUSTON OFFICE BULLETIN

TO: ALL EMPLOYEES

SUBJECT: POLICIES REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Peat Marwick has and will continue to be an equal opportunity employer. We would like to reaffirm the commitment of this office to the policies and programs which make equal employment opportunity a fact as well as a concept. To assure full implementation of the policies of Peat Marwick, we would like to repeat here that:

- (a) Employment decisions on all persons whom we recruit and hire for all positions will be made without regard to age, race, color, religion, sex, national origin or non-disqualifying disability.
- (b) We will base decisions regarding promotion on the same principles of equal employment opportunity by ensuring that such decisions are based solely on an individual's qualifications for the positions being filled.
- (c) We will continue to ensure that all personnel actions related to compensation, benefits, transfers, training and education will be administered without regard to age, race, color, religion, sex, national origin or non-disqualifying disability.

We will continue to monitor all of our personnel actions to ensure compliance with the objectives set forth above. To ensure implementation and monitoring of these policies, we designate Sara Lou Brown as our Equal Employment Opportunity Coordinator.

We continue to believe that our policies regarding equal employment opportunities are necessary not only to comply with federal and state laws and obligations but represent a valid business requirement and contribution to the community in which we work.

We ask your continued assistance and support of our program and policies of fostering equal employment opportunities.

Date

Managing Partner - Houston

(THIS NOTICE SHALL BE POSTED FOR TWO AND ONE HALF YEARS FROM THE DATE OF SIGNATURE.)

APPENDIX F

// KPMG PEAT MARWICK LLP LETTERHEAD //

DATE

Dear [Dean of the University of Houston - University Park Accounting Department] [Recruiting Office]

We have recently settled an action alleging age discrimination with the Houston District Office of the Equal Employment Opportunity Commission. A copy of the press release announcing this agreement is enclosed for your reference.

As a reaffirmation of our commitment to you to comply with the provisions of the Age Discrimination in Employment Act and as part of this settlement, we will be conducting interviews during the regular recruiting season of accounting students at the university during the next two and one half years. We are most anxious that graduating candidates are aware of our employment policy to interview and hire employees without regard to race, religion, color, sex, age, national origin or non-disqualifying disability.

We would appreciate it very much if you would make our attached policy regarding non-discrimination in employment known to everyone in the accounting and business departments who may be in contact with students. We especially encourage students with previous accounting and/or business experience to interview with us for Assistant Accountant and Assistant Tax Specialist positions. We appreciate your cooperation in this matter and look forward to our relationship with your school.

We will abide by the pre-selection criteria your school uses.

If you have any questions, please do not hesitate to call _____ or me at _____.

Sincerely,

Houston Office Primary Recruiter

encl. Press Release
Non-Discrimination Policy

APPENDIX G

// KPMG PEAT MARWICK LLP LETTERHEAD //

DATE

Dear [Dean of the University of Houston - Clear Lake Accounting Department] [Placement Office]:

We will not be conducting interviews at your school this year. However, we are most anxious that qualified graduating candidates realize that they can still apply for Assistant Accountant or Assistant Tax Specialist positions by timely submitting a resume and application (a supply of which is enclosed) to Peat Marwick's Houston office recruiter. These resumes/applications, if received between _____, 199__ and _____, 199__, will be screened in accordance with our usual standards and selected candidates will be invited for an interview. We wish to reaffirm to you our commitment to comply with the provisions of the Age Discrimination in Employment Act. We are most anxious that graduating candidates are aware of our employment policy to interview and hire employees without regard to race, religion, color, sex, age, national origin or non-disqualifying disability.

We would appreciate it very much if you would make our policy known to everyone in the accounting and business departments who may be in contact with students. We especially encourage students with previous accounting and/or business experience to submit resumes and applications. We appreciate your cooperation in this matter and look forward to our relationship with your school.

If you have any questions, please do not hesitate to call _____ or me at _____.

Sincerely,

Houston Office Primary Recruiter

encl.

cc: All Accounting Societies at the College

APPENDIX G

// KPMG PEAT MARWICK LETTERHEAD //

NOTICE

KPMG Peat Marwick LLP is committed to hiring without regard to race, religion, color, sex, age, national origin or a non-disqualifying disability. KPMG Peat Marwick is looking for talented entry level Assistant Accountants or Assistant Tax Specialists of any age, of both sexes, and of all races, religions and national origins. If you are an ambitious, able and a qualified accounting graduate interested in employment in public accounting, please consider Peat Marwick in making your career plans. Applications and/or resumes will be accepted by the KPMG Peat Marwick during the specified application period.

[FOR POSTING ON PLACEMENT OFFICE/ACCOUNTING BULLETIN BOARDS]

APPENDIX H
// KPMG PEAT MARWICK LETTERHEAD //

DATE

Dear _____:

Enclosed are our Audit and Tax recruiting schedules for _____, 199__.

Another recruiting year has begun and we want to take this opportunity to express in writing our employment policy to interview and hire employees without unlawful discrimination because of race, religion, color, sex, age, national origin or non-disqualifying disability. We have maintained this policy for years but we want to reaffirm this commitment to you once again. KPMG Peat Marwick also reaffirms its commitment to comply with the provisions of the Age Discrimination in Employment Act.

We would appreciate it very much if you would make our policy known to everyone in your department who may be in contact with students. We appreciate your cooperation in this matter and look forward to continuing our relationship with your school this coming year.

We will abide by the pre-selection criteria your school uses.

If you have any questions, please do not hesitate to call _____ or me
at _____.

Sincerely,

Houston Office Primary Recruiter

cc: Placement Office
All Accounting Societies at the College

APPENDIX H

// KPMG PEAT MARWICK LETTERHEAD //

NOTICE

KPMG Peat Marwick LLP is committed to hiring without regard to race, religion, color, sex, age, national origin or a non-disqualifying disability. Peat Marwick is looking for talented entry level Assistant Accountants or Assistant Tax Specialists of any employable age, of both sexes, and of all races, religions and national origins. If you are an ambitious, able and a qualified accounting graduate interested in employment in public accounting, please consider Peat Marwick in making your career plans. Applications and/or resumes will be accepted by the Placement Office during the specified application period.

[FOR POSTING ON PLACEMENT OFFICE/ACCOUNTING BULLETIN BOARDS]

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE

November , 1996

Contact:

For the Equal Employment Opportunity Commission:

Harriet Joan Ehrlich, District Director

Houston District Office

(713) 209-3373 or (713) 209-3379

Jim Sacher, Regional Attorney

Houston District Office

(713) 209-3401 or (713) 209-3398

Mary O'Boyle Lyons, Senior Trial Attorney

Houston District Office

(713) 209-3395

For KPMG Peat Marwick LLP:

George J. Ledwith

65 East 55 Street, 35th Floor

New York, New York 10022

(212) 909-5310

FAX (212) 909-5088

**EEOC HOUSTON OFFICE, KPMG REACH
AGREEMENT TO SETTLE LOCAL ACTION**

HOUSTON, TEXAS--The Houston District Office of the Equal Employment Opportunity Commission ("EEOC") and KPMG Peat Marwick LLP today announced they have entered into a Consent Decree that settles an age discrimination suit brought on behalf of 24 individuals involving the firm's Houston office.

The EEOC charged that the firm's local office had not hired certain applicants over 40 years of age who were seeking entry level assistant accountant positions. While agreeing to the settlement, KPMG asserted that no discriminatory acts occurred in its hiring and recruitment process. The firm said settlement had been reached to avoid lengthy and costly litigation. KPMG said it does not tolerate discrimination of any kind and remains committed to providing equal opportunities to all applicants and employees.

Jim Sacher, Regional Attorney of the Houston EEOC office, said he "believes that this settlement will stimulate employment

APPENDIX I

opportunities for accounting students past the traditional college age."

Terry Strange, Partner in KPMG's Houston office, said "We are pleased that this matter could be resolved with the EEOC, and we look forward to continued recruitment of top quality personnel, regardless of age."

The Decree establishes a \$600,000 settlement fund for distribution to approximately two dozen applicants who were 40 years of age or over when they sought entry level accountant positions at the firm's Houston office. As a further demonstration of KPMG's commitment to equal employment opportunity, it has agreed to resume its recruitment of qualified applicants at the University of Houston - University Park, where a number of students over 40 are pursuing accounting degrees.

"Through the cooperative spirit of this settlement, KPMG and the EEOC are demonstrating to students entering the accounting profession, as well as to accounting schools, that the firm is actively seeking the best-qualified applicants without regard to age, race, color, religion, sex, national origin, disability or veteran status," said Harriet Joan Ehrlich, District Director of the EEOC's Houston District Office.

The EEOC enforces the Age Discrimination in Employment Act as well as Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, which prohibit employment discrimination based on race, color, religion, sex or national origin, and prohibited actions taken by employers in retaliation against those who oppose employment practices made illegal by Title VII; the Equal Pay Act; prohibitions against discrimination affecting individuals with disabilities in the federal sector; and the Americans With Disabilities Act, which prohibits discrimination against individuals with disabilities in the private sector and state and local governments.