

1 WILLIAM R. TAMAYO, SBN 084965
 2 DAVID F. OFFEN-BROWN, SBN 063321
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 4 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
 5 San Francisco District Office
 6 350 The Embarcadero, Suite 500
 7 San Francisco, CA 94105-1260
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 10 e-mail: dana.johnson@eeoc.gov

11 Attorneys for Plaintiff EEOC

12 UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 Equal Employment Opportunity
 15 Commission,

16 Plaintiff,

17 vs.

18 Catholic Charities CYO,

19 Defendant.

)
) Case No. C 08-04374 SI

)
) **CONSENT DECREE**

20 The United States Equal Employment Opportunity Commission (“EEOC” or
 21 the “Commission”) filed this action against Catholic Charities CYO (“Defendant”)
 22 in order to enforce the Age Discrimination in Employment Act (“ADEA”). In the
 23 Complaint, the EEOC alleged that Defendant discriminatorily terminated Mr.
 24 Gilbert Brigham’s (“Brigham’s”) employment as a case manager in violation of
 25 Section 4(a) of the ADEA, 29 U.S.C. § 623(a), because of his age, 71. Defendant
 26 denies these charges and any liability in connection therewith.

27 In the interest of resolving this matter, and as a result of having engaged in
 28 comprehensive settlement negotiations, the EEOC and Defendant (collectively

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 26 denies these charges and any liability in connection therewith.

27 In the interest of resolving this matter, and as a result of having engaged in
 28 comprehensive settlement negotiations, the EEOC and Defendant (collectively

1 “Parties”) have agreed that this action should be finally resolved by entry of this
2 Decree. The Parties enter into this Consent Decree by way of compromise of
3 Plaintiff’s allegations only, and without admission of guilt or liability by any Party.
4 The Parties do not object to the jurisdiction of the Court over this action and waive
5 their rights to a jury trial and the entry of findings of fact and conclusions of law,
6 only to the extent specifically set forth herein. The parties agree that this Consent
7 Decree is fair, equitable, and reasonable, and does not violate the law or public
8 policy.

9 It is hereby **ORDERED, ADJUDGED AND DECREED:**

10 1. This Decree resolves all claims of the Plaintiff against Defendant,
11 including claimed back pay, compensatory and punitive damages, interest, and
12 injunctive relief arising out of the issues in this lawsuit. Agreement to and entry of
13 this Decree is made expressly contingent and conditioned on execution by Brigham
14 of the release of claims, attached hereto as Exhibit A. It is expressly understood
15 by the Parties that this settlement and compromise, including entry of this Consent
16 Decree, represents a full and complete settlement and compromise of all claims
17 alleged in Plaintiff’s Complaint. Furthermore, Gilbert Brigham shall not have a
18 right to reinstatement to employment by Defendant to his former position and
19 Defendant shall not be required to reinstate Brigham to his former or any position
20 in settlement of the above-captioned lawsuit. However, nothing in this Decree bars
21 Gilbert Brigham from applying for employment with Defendant in the future.

22 2. This Decree in no way affects the EEOC’s right to bring, process,
23 investigate or litigate other charges that may be in existence or later arise against
24 Defendant in accordance with standard EEOC procedure. Notwithstanding
25 Paragraphs 3 and 16, the EEOC will process any pending or subsequent charges of
26 age discrimination against Catholic Charities in accordance with its standard
27 procedures, and Defendant shall retain its usual rights, both substantive and
28 procedural, to defend against such charges as provided by the ADEA.

INJUNCTION

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2 3. Defendant and its officers, agents, employees, successors, assigns, and
3 all persons in active concert or participation with it, both at the time that this
4 Decree becomes effective and for the duration of this Decree, are enjoined from:
5 (a) unlawfully discriminating against any employee or prospective employee due
6 to his or her age; or (b) retaliating against any employee or former employee,
7 including but not limited to Mr. Brigham, because he or she: (i) opposes or
8 opposed alleged discriminatory practices made unlawful by the ADEA; (ii) files or
9 filed a charge of discrimination or assists, assisted, participates, or participated in
10 the filing of a charge of discrimination; or (iii) assists, assisted, participates or
11 participated in an investigation or proceeding brought under the federal laws
12 prohibiting discrimination or retaliation.

MONETARY PAYMENT

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14 4. Defendant shall pay the gross sum of \$30,000.00 to Mr. Brigham by
15 settlement check no later than twenty days from the Court's entry of the Consent
16 Decree. The settlement check shall be made payable to Mr. Gilbert Brigham and
17 mailed to the address provided by the Commission. The payment to Mr. Brigham
18 represents settlement of claimed back pay in the amount of \$20,000 and \$10,000 in
19 interest. Defendant will pay to the proper tax authorities all of the employer's
20 share of payroll tax withholdings on the claimed back wages (\$20,000) for the tax
21 year during which payment is made and said employer's share will not be deducted
22 from the amount to be paid Mr. Brigham. Defendant shall, however, deduct from
23 the payment to Mr. Brigham and remit to the proper tax authorities any employee
24 payroll tax withholdings owed on the backpay amount. No withholdings shall be
25 made on the interest amount. Defendant shall issue to Brigham a W-2 for the
26 backpay amount and a 1099 for the interest amount.

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1 investigators and that appropriate corrective action will be taken by Defendant to
2 make victims whole and to eradicate the unlawful conduct.

3 F. A description of the consequences, up to and including
4 termination, which will be imposed upon violators of the policies proscribing age
5 discrimination.

6 G. An assurance of maximum feasible confidentiality for persons
7 who believe that they have been subjected to unlawful discrimination based on age.

8 H. An assurance of non-retaliation for persons and witnesses who
9 report to Defendant that they believe they have been subjected to unlawful
10 discrimination because of their age.

11 If revisions to existing policy are necessary to include the items set forth
12 herein, then the revised policy shall be distributed to all of Defendant's employees
13 within one hundred twenty days of the entry of this Decree. These policies also
14 shall be distributed to new employees when hired. These policies also shall be
15 posted in a prominent place at Defendant's job site.

16 TRAINING

17 8. Defendant shall provide equal employment opportunity training to all
18 managers, all human resources and benefits managers at Defendant's OMI Senior
19 Center located at 1948 Ocean Avenue, San Francisco, CA 94127, specifically on
20 the subjects of the prohibition of age discrimination, anti-retaliation, and other
21 forms of unlawful discrimination applicable to Defendant. Said training shall be
22 held once per year during the term of this Consent Decree, such year to be
23 measured from the entry of the Consent Decree in this matter, and shall be no less
24 than two hours duration per session. Said training will include discussion of an
25 employer's obligation not to discriminate on account of age and the employer's
26 policies prohibiting age discrimination and retaliation. Defendant agrees to
27 provide the name of the entity or person selected to do the training, a description of
28 the content of each training program, and a copy of any materials to be used during

1 the training to counsel for the EEOC no later than twenty (20) days before the
2 training programs are scheduled to be held. If the Commission has not objected to
3 the entity or person selected to conduct the training or the description of the
4 content of the training or the training materials within ten (10) days of the above
5 notice, such non-response shall be deemed an acknowledgment that the EEOC
6 does not object to them. The EEOC agrees not to unreasonably object.

7 **DISCIPLINE**

8 9. Defendant shall take immediate, appropriate corrective action to
9 discipline employees, including managers, who engage in age discrimination,
10 through consequences that include termination under appropriate circumstances.

11 **INVESTIGATION PROCEDURES**

12 10. Defendant shall promptly and appropriately investigate all complaints
13 of age discrimination.

14 11. The investigation shall include a finding of whether age
15 discrimination occurred; a credibility assessment, if necessary; interviews of all
16 potential victims and witnesses identified; and concurrent notes of the
17 investigation.

18 12. Defendant shall take immediate appropriate corrective action to
19 discipline violators and to eradicate the discrimination. Defendant shall follow up
20 on complainants at appropriate intervals to ensure that age discrimination does not
21 recur.

22 **EVALUATION OF MANAGERS' PERFORMANCE**

23 13. Defendant shall institute, if not already in place, a procedure
24 that evaluates supervisors and managers on their performance in responding to any
25 employee complaints of age discrimination.

26 14. The procedure shall include a provision that supervisors and managers
27 will be disciplined for failing to enforce Defendant's policies to prevent and
28 remedy age discrimination.

REPORTING BY DEFENDANT

1
2 15. In addition to any other reporting requirements set forth herein,
3 Defendant shall provide the following information in writing, confirmed by
4 affidavit, to the Regional Attorney of the Commission's San Francisco District
5 Office at the address set forth above beginning six (6) months from the date of the
6 entry of this Decree and thereafter every six (6) months for the duration of the
7 Decree:

8 A. Upon its completion, a copy of any new or revised policies created in
9 accordance with the requirements of this Decree;

10 B. A confirmation that the policies required by this Decree were posted
11 and distributed to each current and new employee, and the dates of posting and
12 distribution.

13 C. The name, address, position, and telephone number of any individual
14 working for Defendant at Defendant's OMI Senior Center located at 1948 Ocean
15 Avenue, San Francisco, CA 94127, who has brought allegations of age
16 discrimination, against Defendant or Defendant's personnel, formal or informal,
17 including, but not limited to, management officials, vendors, agents, employees
18 and/or customers, during the six months preceding the report. The nature of the
19 complaint, the investigation by Defendant and the corrective action taken, if any,
20 shall be specified;

21 D. The name, address, position, telephone number and date of birth of
22 any individual terminated from Defendant's employment (in Brigham's position)
23 during the six months preceding the report and the name and date of birth of the
24 person who replaced the terminated employee, if any.

25 E. During the time that this Decree is in effect, the Commission, upon
26 reasonable notice and agreement, shall have the right to enter and inspect
27 Defendant's premises, work sites and records to ensure compliance with this
28 Decree.

1 **PROCEDURES AND REMEDIES FOR NON-COMPLIANCE**

2 16. In the event that the Commission believes that Defendant has failed to
3 comply with any provision(s) of this Consent Decree, it shall notify Defendant in
4 writing of the non-compliance by fax and by overnight mail to the counsel and the
5 corporate officer who signed this Decree on Defendant's behalf, or to his or her
6 successor, and afford Defendant twenty days after service of the notice to remedy
7 the non-compliance.

8 17. If Defendant has not remedied the alleged non-compliance in twenty
9 (20) days after service of notice, the EEOC may petition this Court to enforce the
10 terms of the Decree at any time during its duration.

11 **NOTIFICATION**

12
13 18. All notification pertaining to enforcement of this Decree should be sent by
14 certified mail to:

15
16 On Behalf of Catholic Charities CYO:

17 Larry Jannuzzi, Esq.
18 Associate Legal Counsel
19 The Archdiocese of San Francisco
20 One Peter Yorke Way
21 San Francisco, CA 94109-6602

22 On Behalf of Equal Employment
23 Opportunity Commission :

24 Regional Attorney,
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REPORTING BY DEFENDANT

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5 Office at the address set forth above beginning six (6) months from the date of the
6 entry of this Decree and thereafter every six (6) months for the duration of the
7 Decree:

8 A. Upon its completion, a copy of any new or revised policies created in
9 accordance with the requirements of this Decree;

10 B. A confirmation that the policies required by this Decree were posted
11 and distributed to each current and new employee, and the dates of posting and
12 distribution.

13 C. The name, address, position, and telephone number of any individual
14 working for Defendant at Defendant's OMI Senior Center located at 1948 Ocean
15 Avenue, San Francisco, CA 94127, who has brought allegations of age
16 discrimination, against Defendant or Defendant's personnel, formal or informal,
17 including, but not limited to, management officials, vendors, agents, employees
18 and/or customers, during the six months preceding the report. The nature of the
19 complaint, the investigation by Defendant and the corrective action taken, if any,
20 shall be specified;

21 D. The name, address, position, telephone number and date of birth of
22 any individual terminated from Defendant's employment (in Brigham's position)
23 during the six months preceding the report and the name and date of birth of the
24 person who replaced the terminated employee, if any.

25 E. During the time that this Decree is in effect, the Commission, upon
26 reasonable notice and agreement, shall have the right to enter and inspect
27 Defendant's premises, work sites and records to ensure compliance with this
28 Decree.

1 **PROCEDURES AND REMEDIES FOR NON-COMPLIANCE**

2 16. In the event that the Commission believes that Defendant has failed to
3 comply with any provision(s) of this Consent Decree, it shall notify Defendant in
4 writing of the non-compliance by fax and by overnight mail to the counsel and the
5 corporate officer who signed this Decree on Defendant's behalf, or to his or her
6 successor, and afford Defendant twenty days after service of the notice to remedy
7 the non-compliance.

8 17. If Defendant has not remedied the alleged non-compliance in twenty
9 (20) days after service of notice, the EEOC may petition this Court to enforce the
10 terms of the Decree at any time during its duration.

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16 On Behalf of Catholic Charities CYO:

17 Larry Jannuzzi, Esq.
18 Associate Legal Counsel
19 The Archdiocese of San Francisco
20 One Peter Yorke Way
21 San Francisco, CA 94109-6602

22 On Behalf of Equal Employment
23 Opportunity Commission :

24 Regional Attorney,
25 Equal Employment Opportunity Commission
26 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260
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DURATION

19. This Court shall retain jurisdiction of this action for a period of 24 months after entry of the Decree. This Decree shall expire by its own terms at the end of 24 months after entry of the Decree, without further action by the parties or the Court. Upon expiration of the Decree, the suit shall be dismissed with prejudice without further action of either of the parties.

20. The parties agree to the entry of this Decree subject to final approval by the Court.

DATED this 17th day of June , 2009



Honorable Susan Illston
United States District Judge

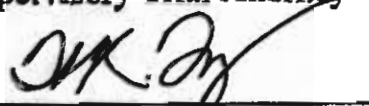
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APPROVED AND CONSENTED TO:

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

WILLIAM R. TAMAYO
Regional Attorney

DAVID F. OFFEN-BROWN
Supervisory Trial Attorney



WILLIAM R. TAMAYO
DAVID F. OFFEN-BROWN
DANA C. JOHNSON

Attorneys for Plaintiff

Dated: 6/16/09

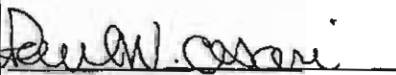


On Behalf of Catholic Cha

Jeffrey V. Bialik
(Print Name of Represente

Dated: 5/26/2009

Approved as to form:



PAUL N. CESARI, ESQ.
JOSE A. MONTALVO

Attorneys for Defendant

EXHIBIT A

RELEASE OF CLAIMS

KNOW ALL PERSONS BY THESE PRESENTS:

1. That the undersigned, Gilbert Brigham, being of lawful age, for sole consideration of Thirty Thousand and 00/100 Dollars (\$30,000.00) less the amount of Mr. Brigham's employee taxes as delineated in the Consent Decree on page 3, paragraph 4, of which is to be paid to Gilbert Brigham, he does hereby and for his heirs, executors, administrators, successors and assigns, release, acquit and forever discharge Catholic Charities CYO (hereinafter referred to as the "Released Party") of any demands, rights, damages, costs, attorneys' fees, backpay, front pay, retirement benefits, expenses, interest, and compensation whatsoever arising from any or all of the claims alleged in Brigham's Charge of Discrimination filed with the EEOC against the Released Party; and/or any claims alleged in the EEOC's Complaint against the Released Party entitled Equal Employment Opportunity Commission vs. Catholic Charities CYO, Case No. C08-4374 SI (hereinafter referred to as "Complaint").

2. It is understood and agreed that this settlement is the compromise of a disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releasee denies liability therefore and intend merely to avoid litigation and buy its peace.

3. WHEREAS, the Released Party and Gilbert Brigham wish to settle and have agreed to settle and compromise the disputes and differences between them, with regard to the matters set forth in the Complaint.

The undersigned, Gilbert Brigham, has read the foregoing Release, and attests that he fully understands and accepts its provisions in their entirety and without reservation.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Executed at San Francisco, California, this _____ day of _____ 2009.

GILBERT BRIGHAM