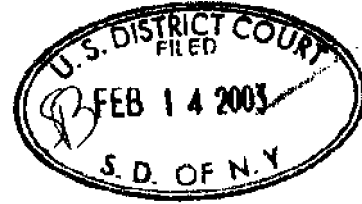


Case closed
2/14/03

100 # 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION;

Plaintiff,

LISA VAN COTT,
CATHERINE BRUEGGER,
SHAWN HUXFORD WRAY,
LINDA KOHLER,
AND JENNIFER RICHARDS,

Intervenor-Plaintiffs,

v.

SOUTH BEACH BEVERAGE COMPANY, INC.
AND PEPSICO, INC.,

Defendants.
-----X

CIVIL ACTION NO: 02-10136 HB

CONSENT DECREE & JUDGMENT

WHEREAS, this action was filed on December 23, 2002, by the Equal Employment Opportunity Commission (hereinafter the "EEOC" or "the Commission"), an agency of the United States Government, alleging that from January of 1997 to the present South Beach Beverage Company, Inc. and its predecessor, South Beach Beverage Company LLC (together, "SoBe") violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 by subjecting Shawn Huxford ("Huxford"), Lisa Van Cott ("VanCott"), Catherine Bruegger ("Bruegger"), Linda Kohler ("Kohler"), Jennifer Richards ("Richards") (collectively, the "Charging Parties") and other similarly situated female employees to a hostile work environment

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because of their sex. The Commission also alleges in this action that PepsiCo, Inc. ("PepsiCo") violated Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 by not taking adequate steps to eliminate the unlawful practices at SoBe following its acquisition of SoBe in January of 2001; and

WHEREAS, the Charging Parties, who are represented by counsel, intervened as Plaintiffs in this lawsuit and have alleged that SoBe violated the Equal Pay Act by discriminating against them in setting their compensation and awards of stock and stock options prior to PepsiCo's acquisition of SoBe. The Charging Parties allege that SoBe and PepsiCo (together, the "Defendants") retaliated against them. Finally, the Charging Parties allege that SoBe's conduct and PepsiCo's conduct violated the Connecticut Fair Employment Practices Act; the Connecticut Wage Law, Connecticut common law and NY Exec. Law s. 190 et seq, NY Labor Law s. 194, and

WHEREAS, prior to the commencement of this action, the EEOC conducted an investigation into the administrative charges filed by the Charging Parties, with the full, good faith cooperation and assistance of SoBe and PepsiCo; and

WHEREAS, SoBe and PepsiCo deny all of the allegations of the EEOC and the Charging Parties, including but not limited to the claim that the Charging Parties and other similarly situated, current and former employees of SoBe have been subjected to discriminatory or retaliatory treatment and the claim that PepsiCo is properly a party to the action; and

WHEREAS, the EEOC, the Charging Parties, SoBe and PepsiCo (collectively, the "Parties") desire to settle this action, and therefore do hereby stipulate and consent to the entry of this Decree as final and binding between the Parties, who are the signatories hereto, and their

successors or assigns. The Parties have agreed that this Decree is being entered into without Findings of Fact and Conclusions of Law having been made and entered by the Court.

NOW THEREFORE, in order to avoid the uncertainties and expenses of continued litigation, and in consideration of the mutual promises, agreements and consideration contained herein, the EEOC, the Charging Parties, South Beach Beverage Company, Inc. and PepsiCo, Inc., collectively with its divisions and subsidiaries, agree, the Court finds appropriate, and therefore it is ORDERED, ADJUDGED AND DECREED that:

1. Resolution: This Decree resolves all issues raised in EEOC Charge Numbers 161A1048-E, 161A10468, 161A10469, 161A10470, and 161A10471, all issues that were presented by the EEOC's August 2002 determinations of reasonable cause on such charges, all issues raised in the charges filed by the Charging Parties with the Connecticut Commission on Human Rights and Opportunities, numbered 0220185, 0220186, 0220187, 0220188 and 0220189, and all claims presented by the EEOC's complaint as well as the complaint and intervention filed by the Charging Parties. This Decree in no way affects the EEOC's right to process any future charges that may be filed against SoBe or PepsiCo, in accordance with standard EEOC procedures, and to commence civil actions on any such charges, except where such charges present claims that are resolved by this Decree.

2. Jurisdiction: The Parties agree and the Court finds that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met. No party shall contest the validity of this Decree, or the jurisdiction of the federal district court to enforce this Decree and its terms.

3. No Determination On The Merits: This Decree is being issued with the consent of the parties and does not constitute an adjudication or finding by this Court on the merits of the allegations of the Complaint. Nothing contained in this Decree shall be construed as an admission of liability on the part of Defendants, who have denied and continue to deny the allegations of the Complaint asserting sex-based discrimination and retaliation.

4. Non-Discrimination. SoBe and PepsiCo will not unlawfully discriminate against any employee of SoBe because of his or her sex, subject employees of SoBe to unlawful differential treatment regarding the terms and conditions of employment because of their sex, engage in sex-based harassment toward any employee of SoBe, or engage in retaliation against any employee of SoBe for asserting her or his rights under Title VII. SoBe and PepsiCo also agree to institute and carry out policies, practices, and programs which provide equal opportunities for employee of SoBe to work in an environment free of unlawful discrimination and provide affirmative relief necessary to eradicate the effects of any past and/or present unlawful employment practices at SoBe. SoBe and PepsiCo agree not to retaliate against any individual who has participated in this matter in any way, given testimony in this matter, or asserted her or his rights under Title VII, including, but not limited to, the Charging Parties and witnesses interviewed by EEOC.

5. Charging Parties: In settlement of this dispute, and in exchange for releases duly executed by the Charging Parties, SoBe and PepsiCo shall pay a total of nine hundred and fifty eight thousand dollars (\$958,900) to the Charging Parties, divided as follows: VanCott - two hundred forty-seven thousand two hundred and fifty dollars (\$247,250), Bruegger - one hundred eighty-eight thousand seven hundred and fifty dollars (\$188,750), Kohler - two hundred forty-

seven thousand two hundred and fifty dollars (\$247,250), Richards - one hundred sixty-eight thousand dollars (\$168,000), and Huxford - one hundred and seven thousand six hundred and fifty dollars (\$107,650). SoBe and PepsiCo also shall pay a total of two hundred eighty-one thousand one hundred dollars (\$281,100) to Vladeck, Waldman, Elias & Englehard, P.C., for the Charging Parties' attorneys' fees. Such payments shall be made to the Charging Parties and their counsel within fourteen (14) days after the entry of this Decree by the Court. Copies of the checks and appropriate Forms 1099 shall be sent to Arnold Lizana, Trial Attorney, EEOC, Boston Area Office, simultaneously with the delivery to the Charging Parties and Anne L. Clark, Esq. of Vladeck, Waldman, Elias & Englehard, P.C. The Charging Parties shall not be considered prevailing parties for any purpose. The Charging Parties and their counsel are solely responsible for any and all taxes due on the payments under this paragraph.

6. Claimants' Fund: SoBe and PepsiCo shall pay five hundred and fifty thousand dollars (\$550,000) (the "Claimants' Fund") to compensate women, who at any time from January 1, 1997 to the entry of this Decree were employed by SoBe and who, pursuant to the procedure defined in paragraph 7 of this Decree, submit credible evidence demonstrating that during their employment at SoBe, SoBe subjected them to discrimination because of their sex or retaliation in violation of Title VII of the Civil Rights Act of 1964 or the Connecticut Fair Employment Practices Act. No individual who submits a claim pursuant to paragraph 7 of this Decree shall receive more than \$300,000.

7. Claims Process: The following process shall govern awards of compensation from the Claimants' Fund:

a. The EEOC shall have complete discretion to make awards from the Claimants' Fund,

pursuant to this Decree.

b. Within 10 days of the entry of this Decree by the Court, SoBe shall provide the EEOC with the names, and last known addresses of all women who at any time from January 1, 1997 to the present were employed, in any location, by SoBe (the "Potential Claimants").

Within 20 days thereafter, the EEOC shall provide the following notice to the Potential Claimants, via certified mail, return receipt requested:

A Consent Decree has been entered by the United States District Court for the Southern District of New York, in an action commenced by the Equal Employment Opportunity Commission ("EEOC") and five former employees of South Beach Beverage Company, Inc. ("SoBe") against SoBe and PepsiCo, Inc. to resolve certain claims of sexual harassment, sex discrimination and retaliation. Pursuant to that Decree, women who were employed by SoBe or South Beach Beverage Company LLC, in any location, at any time from January 1, 1997 to [the entry date of this decree], and who believe that they were subjected to unlawful harassment or discrimination because of their sex, or unlawful retaliation for complaining of such conduct, may present their claims in writing to the EEOC. The EEOC is authorized to award compensation to any such women who demonstrate that they are entitled to recover for unlawful harassment or discrimination.

If you believe that you have such a claim, you must contact Arnold Lizana, Trial Attorney, United States Equal Employment Opportunity Commission, Boston Area Office, John F. Kennedy Federal Building, Room 475, Government Center, Boston, MA 02203-0506, and make such claim in writing on or before March 31, 2003. If Mr. Lizana has not received notification from you in writing by March 31, 2003, you will not be allowed to make any such claim for compensation and any claims you might have will be barred. SoBe and PepsiCo will not take any adverse action against any current or former employees for making such a claim.

c. On or before April 30, 2003, the EEOC shall deliver to SoBe and PepsiCo, or their designated representative, its list of proposed awards from the Claimant's Fund. SoBe and PepsiCo, or their designated representative, shall have an opportunity to submit to the EEOC statements in writing, along with any other competent proof, in response to the

proposed awards (the "SoBe Responses"). The EEOC shall cooperate with SoBe and PepsiCo, or their designated representatives, to allow SoBe and PepsiCo to fairly review the proposed awards. The EEOC maintains complete discretion to determine the final awards.

d. On or before May 30, 2003, the EEOC shall submit to SoBe and PepsiCo a list of the final awards. The EEOC shall notify each Claimant of her award only and SoBe shall provide each Claimant who has been awarded compensation an Acknowledgment-Release, in the form attached hereto as Exhibit A. No Claimant shall be entitled to an Award unless she signs and returns to SoBe the Acknowledgment-Release, and no Claimant shall be considered a prevailing party for any purpose whatsoever.

e. Within fourteen days after receiving a fully executed Acknowledgment-Release form from each Claimant who has been awarded compensation, SoBe and PepsiCo shall deliver to that Claimant a check in the amount determined by the EEOC and an appropriate Form 1099 reflecting such payment. SoBe and PepsiCo shall simultaneously deliver copies of the checks and Forms 1099 to Arnold Lizana, Trial Attorney, EEOC, Boston Area Office. The Claims Process shall be completed upon delivery of checks to all claimants who have been awarded compensation.

8. Notice: No later than 10 days after receiving notice of the Court's entry of this Decree, and for the Effective Period, SoBe shall conspicuously post at SoBe's facilities the following notice, printed on SoBe letterhead, signed by SoBe's president, Thomas Bene:

This notice to all employees of the South Beach Beverage Company, Inc. is being posted and provided as part of a Consent Decree between South Beach Beverage Company, Inc. ("SoBe"), PepsiCo, Inc. ("PepsiCo") and the U.S. Equal

Employment Opportunity Commission. SoBe will not discriminate against any individual employed by SoBe because of the individual's sex, subject such persons to differential treatment regarding the terms and conditions of employment because of their sex, or engage in sex-based harassment toward any employee of SoBe.

Federal law requires, and SoBe policy provides, that there be no discrimination against any employee or applicant for employment because that person made a complaint of discrimination because of sex, race, national origin, color, age, disability, sexual orientation or religion with respect to hiring, compensation, promotion, discharge, or other terms, conditions or privileges of employment.

SoBe reiterates its commitment to comply with such Federal law in all aspects, and reiterates that it will not take any action against employees because they have exercised their rights under the law by filing charges or cooperating with the U.S. Equal Employment Opportunity Commission or by otherwise opposing employment practices made unlawful under federal law.

SoBe maintains an Open Door policy through which employees may, and are encouraged to, raise any concerns regarding their employment, including any issues relating to perceived discrimination or harassment. Employees may use the Open Door by discussing the matter with their supervisor, manager or the human resources manager, or by calling the SPEAKUP line a 1-866-729-4888.

The Equal Employment Opportunity Commission maintains offices throughout the United States. Its toll-free telephone number is 1-800-USA-EEOC.

9. EEO/Anti-Harassment/Anti-Retaliation: SoBe and PepsiCo shall revise SoBe's policies on Equal Employment Opportunity, Employee Harassment and Retaliation to contain the following elements: (1) a detailed complaint procedure that includes: (a) a clear explanation of prohibited conduct; (b) the assurance that employees who make complaints of discrimination or provide information related to such complaints will not be retaliated against; (c) a clearly described complaint process that provides multiple, accessible avenues of complaint; (d) the assurance that SoBe and PepsiCo will accept any and all complaints from employees who wish to file complaints internally with the Companies; (e) the assurance that SoBe and PepsiCo will protect the confidentiality of complaints to the extent possible; (f) a complaint process that

provides a prompt, thorough, and impartial investigation; and (g) the assurance that SoBe and PepsiCo will take immediate and appropriate corrective action when it determines that discrimination has occurred; and (2) a statement notifying all SoBe employees of their rights under Federal anti-discrimination laws to oppose practices they consider to be unlawfully discriminatory and to participate in protected activity under these laws, which sets forth clearly the following: (a) an explanation of conduct which is protected under the relevant statutes; (b) the assurance that employees who make complaints of retaliation will not be retaliated against or that employees who provide information related to complaints of discrimination will not be retaliated against under said policy; (c) the assurance that the employer will accept any and all complaints from employees of SoBe who wish to file complaints internally with SoBe or with PepsiCo; and (d) the assurance that SoBe and PepsiCo will take immediate and appropriate corrective action when either determines that retaliation has occurred at SoBe. This revised policy will be included in materials distributed in the ordinary course of business to SoBe employees. SoBe and PepsiCo shall distribute to all the management staff employed at SoBe, in all its facilities, a written statement regarding sex-based discrimination and harassment, which shall be approved by the EEOC. SoBe and PepsiCo will submit to the EEOC a written description of such statement, and if within thirty days of that submission the EEOC does not comment or object to such statement, then such statement will be deemed approved for use under this Decree. Within 60 days of the entry of this Decree, SoBe and PepsiCo shall distribute the policy to all current SoBe employees. For the Effective Period, the policy shall also be distributed to all new employees within 10 days of hire.

10. Training:

a. PepsiCo shall ensure that all management and supervisory employees of SoBe attend a training program of at least three (3) hours regarding equal employment opportunity rights and responsibilities, with a focus on sex-based discrimination, harassment and complaint reporting procedures. Within ninety (90) days of the entry of this Decree, PepsiCo shall submit for EEOC approval a general outline of the curriculum for this training. A certificate or other proof of completion of this training by all applicable employees shall be provided by PepsiCo to the EEOC no later than August 1, 2003. All new management employees at SoBe shall receive this training within ninety (90) days of hire or promotion into management. SoBe and PepsiCo will submit to the EEOC a written description of such training, and if within thirty days of that submission the EEOC does not comment or object to such training, then such training will be deemed approved for use under this Decree.

b. PepsiCo shall ensure that all new non-management and non-supervisory employees of SoBe attend a training program of at least two (2) hours regarding equal employment opportunity rights and responsibilities, with a focus on sex-based discrimination, harassment and the procedures for reporting complaints of discrimination. A certificate or other proof of completion of this training by all applicable employees shall be provided by PepsiCo to the EEOC no later than nine (9) months from the entry of this Decree by the Court. All new non-management employees at SoBe's facilities shall receive this training within ninety (90) days of hire.

11. References: If asked to provide a reference for the Charging Parties, witnesses or Claimants, Defendants will provide only the dates of employment and the position held. All requests for a reference shall be directed to SoBe's or PepsiCo's Human Resources Manager.

12. Monitoring: The EEOC has the right to monitor and review compliance with this Decree. Accordingly:

a. On or before nine (9) months from the entry of this Decree by the Court, PepsiCo and SoBe shall submit written proof via affidavit to the EEOC that they have complied with the requirements set forth in the Decree. Such proof shall include, but not be limited to, a sign-in sheet or certificate or other proof of completion of the training, and an affidavit stating that the notice described in paragraph eight (8) of the Decree was conspicuously posted in SoBe's facilities.

b. Defendants shall also submit to the Court and EEOC quarterly reports indicating whether any written complaints of harassment or discrimination on the basis of gender have been received by the Human Resources Departments of SoBe and PepsiCo from SoBe employees during the Effective Period (the "Reports").

1. The Reports shall also indicate the date on which complaints, if any, are received, describe the actions taken by the Defendants to investigate such complaints, and state the resolution of any such complaints. Copies of any written complaints shall be attached to the Reports for review by the Court.
2. The Defendants shall also provide copies of the Reports to Arnold Lizana, Trial Attorney, EEOC Boston Area Office. The EEOC shall maintain the Reports in a confidential manner and not disclose the Reports unless required to by law. In the event that the EEOC receives any request for disclosure of the Reports, it shall, as soon as is reasonably practicable, give written notice to the Defendants of such a request, and in any event before the disclosure of the Reports. This does not

apply, however, to any request for information received from Congress or any other federal agency or official to whom the EEOC has reporting responsibility.

3. The Reports shall be submitted to the Court and to the EEOC on or before the following dates: June 1, 2003, September 1, 2003, December 1, 2003, March 1, 2004, June 1, 2004, September 1, 2004, December 1, 2004, and March 1, 2005.
4. The parties to this Decree acknowledge and the Court finds that, in this instance, the privacy rights of those individuals who may submit complaints to the Defendants may outweigh the presumption of public access to judicial documents. In the event that such individual chooses that her complaint be kept confidential, the complainant shall so note in writing on her complaint, and the complaint shall then be submitted under seal. Such complaints will remain under seal at all times. The Clerk of the Court shall take all necessary steps to ensure that such complaints are not disclosed to the public. In the event that the complaining individual does not affirmatively indicate that the written complaint should be kept confidential, such complaint shall not be filed under seal.

c. The EEOC, throughout the Effective Period and upon reasonable notice, shall retain the right to request and review records of complaints made by SoBe employees regarding discrimination or harassment on the basis of sex following the date of this Decree.

d. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that Defendants fail to perform the promises and representations contained herein; provided, however, that prior to seeking judicial relief, the EEOC shall provide the

opposing party with notice of the alleged failures; and shall afford at least twenty (20) business days within which to cure any alleged non-compliance.

13. Effective Period: This Decree will remain in effect for two (2) years from the date upon which it is entered by the Court.

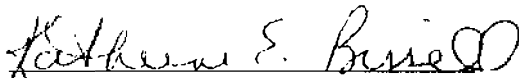
SO ORDERED, ADJUDGED AND DECREED.

Signed this 12 day of February, 2003.


UNITED STATES DISTRICT JUDGE

APPROVED IN FORM AND CONTENT:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

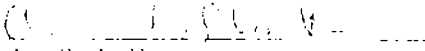
By: 
Katherine E. Bissell
Regional Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004-2112
(212)336-3620

Arnold J. Lizana
Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Boston Area Office
John F. Kennedy Federal Building, Room 475
Boston, MA 02203-0506
(617) 565-3210

**THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 2/24/03**

COPIES MAILED

FOR SHAWN HUXFORD WRAY, LISA VAN COTT,
CATHERINE BRUFGGER, LINDA KOHLER
AND JENNIFER RICHARDS

By: 
Anne L. Clark, Esq.
Tara Crean, Esq.
Vladeck, Waldman, Elias & Engelhard, P.C.
1501 Broadway
New York, N.Y. 10036
(212) 403-7300

SOUTH BEACH BEVERAGE COMPANY,
INC. AND PEPSICO, INC.

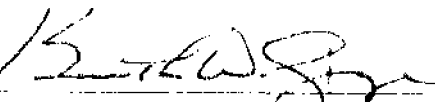
By: 
Kenneth W. Gage, Esq. (K0044)
Day, Berry & Howard LLP
One Canterbury Green
Stamford, CT 06901
(203) 977-7384

EXHIBIT A

December 23, 2002

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Jane Doe
123 Anywhere St.
Norwalk, Connecticut

Re: Notification of Award and Release of Claims

Dear Ms. Doe:

I am writing to inform you that the EEOC has reached a determination on the claim filed by you against South Beach Beverage Company, Inc. ("SoBe") and PepsiCo, Inc. under the terms of the Consent Decree in EEOC and VanCott, et al. v. South Beach Beverage Company, Inc. et al., No. [] .

Pursuant to the Consent Decree entered by the Court on [date], you are to receive the sum of _____ Dollars (\$ _____). In order to receive that sum, you must read this letter, sign it in the presence of a notary public and return it to me on or before [date]. You will not be eligible to receive the sum awarded to you unless and until you agree to the terms of this letter.

In consideration for you signing this letter and complying with the promises made in it, SoBe will pay you the amount listed above, within fourteen (14) business days after SoBe receives your signature on this letter. You understand and agree that you would not receive this amount, except for the Consent Decree and your agreement with the terms of this letter. You are responsible for any taxes that may be due on such amount, so you should consult a tax advisor.

By signing this letter, you are knowingly and voluntarily giving up any claims that you have or may have had for sex discrimination or sex harassment against SoBe, its predecessor, South Beach Beverage Company LLC ("South Beach LLC") and PepsiCo, Inc., collectively with its divisions and subsidiaries, for events occurring up to the [entry date of the Decree]. Specifically, you are releasing and forever discharging SoBe, its predecessor in interest, and PepsiCo, Inc., collectively with its divisions and subsidiaries (hereinafter collectively referred to as the "Released Entities"), of and from all claims, demands, complaints, causes of action, and charges for sex discrimination or sex harassment, in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Connecticut Fair Employment Practices Act, that exist or may exist as a result of any act, incident, event or omission that occurred in the course of your employment with SoBe or its predecessor, South Beach Beverage Company LLC on or before the [entry date of the Decree].

Except to enforce this award, you may not file or make, or permit to be filed or made on your behalf, a lawsuit, charge, complaint, or other claim asserting any claim for sex discrimination or sex harassment against the Released Entities which is within the scope of the referenced Consent Decree. You understand that this letter may be used by the Released Entities as a full and complete defense to, and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or maintained in breach of this



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

Katherine E. Bissell
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33 Whitehall Street, 5th Floor
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Phone: (212) 336-3620
TTY: (212) 336-3622

February 13, 2003

Honorable Judge Baer
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1213

RE: EEOC and Van Cott, et al. v. South Beach Beverage Company, Inc. and Pepsico, Inc.
02 CV 10136 (HJB)

Dear Judge Baer:

Enclosed please find the Amended Consent Decree in the above captioned case. The Amended Consent Decree contains the changes you requested and has been signed by all the parties.

If you have any questions please call me at 212-336-3690.

Sincerely,

A handwritten signature in cursive script that reads "Katherine E. Bissell".

Katherine E. Bissell
Regional Attorney

cc: Tara Crean, Esq.
Kenneth Gage, Esq.
Arnold Lizana, Esq.