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Civil Action No.	

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
))
Plaintiff,)
))
))
-against-)
))
NEW ENGLAND SERUM)
COMPANY, INC.)
))
Defendant.)
_____)

01 CV 11672 JLT

COMPLAINT AND
JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and national origin by New England Serum Company, Inc., (hereafter "Defendant"), and to make whole Ana Sierra, Yisela Sierra, Marcia Valdez, Gertrudis Amaya, and Iris Martinez (hereafter referred to collectively as "Charging Parties") and other similarly situated individuals affected by Defendant's discriminatory practices. As alleged in greater detail in paragraph 7 below, Defendant subjected Charging Parties to discrimination on the basis of sex, national origin, and protected activities by (1) creating and failing to remedy a hostile work environment on the basis of sex and national origin; and (2) terminating Charging Parties on the basis of their national origin and protected activities.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,

1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1) and (3).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court of Massachusetts.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant has continuously been a Massachusetts corporation doing business in the Commonwealth of Massachusetts, and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Charging Parties, all of Honduran National origin, filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least 1998, Defendant has engaged in unlawful employment practices in violation of Section 703 (a) of Title VII, 42 U.S.C. §2000e-(a) and (b). These practices included, but are not limited to, the following:

a) Gil Santiago ("Santiago"), Charging Parties' supervisor at defendant's distribution

center, subjected Charging Parties and other similarly situated women, both directly and/or indirectly, to offensive sexually harassing conduct including, but not limited to, the touching of buttocks and breasts, unwelcome embraces and kisses, sexually explicit language and gestures, demands for sexual favors, sexual intercourse, demeaning language, and other unwelcome and offensive conduct, which created a sexually hostile work environment.

b.) Paul McDonald (“McDonald”), Defendant’s distribution center manager, subjected Charging Parties and other similarly situated women to offensive and unwelcome sexually harassing conduct including, but not limited to, sexually explicit gestures, language, demands for sexual favors, demeaning language, and other unwelcome and offensive conduct, which created a sexually hostile work environment.

c.) Santiago, who was Puerto Rican, subjected Charging Parties and other similarly situated women to offensive harassing conduct on the basis of their national origin, including, but not limited to, repeatedly referring to Puerto Ricans as “my people” and to Central Americans like Charging Parties as “you people;” stating on numerous occasions that Central American people were stupid, not like “his people;” repeatedly referring to Charging Parties and other Honduran and Central American employees as “jibaros,” “mojados,” “guajiros,” and “indios,” all derogatory terms; periodically calling meetings of all workers and reprimanding the workers in Spanish only, despite the presence of white, English-only speaking workers who may have been responsible for the mistakes he was complaining about; assuming that all Central American workers, including Charging Parties, were undocumented. This conduct created a hostile environment based on national origin.

d.) Santiago and McDonald also created a sexually hostile work environment based on Charging Parties’ national origin.

e.) Defendant had no written policy in place to communicate to its non-English-speaking workers either that sexual and national origin harassment was unlawful or the remedial steps they could take to complain about unlawful harassment.

f.) Defendant failed to exercise reasonable care to prevent and correct promptly the harassing behavior.

g.) Defendant terminated Charging Parties' employment on the basis of their national origin and in retaliation for their opposition to the above-described harassment and disparate treatment on the basis of national origin.

8. Defendant's practices complained of in paragraph 7 above deprived Charging Parties and other similarly situated individuals of equal employment opportunities and otherwise adversely affected Charging Parties' employment, because of their sex, national origin, and protected activities.

9. Defendant's unlawful employment practices complained of in paragraph 7 above were intentional.

10. Defendant's unlawful employment practices complained of in paragraph 7 above were done with malice or with reckless indifference to the federally protected rights of the Charging Parties.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practices which discriminate on the basis of sex or national origin;

B. Order Defendant to institute and carry out policies, practices and programs which

provide equal employment opportunities for employees engaging in protected activity, and which eradicate the effects of Defendant's past and present unlawful employment practices;

C. Order Defendant to make whole all those individuals affected by the unlawful employment practices described above, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices;

D. Order Defendant to make whole all those individuals adversely affected by the unlawful employment practices described above by providing compensation for non-pecuniary losses, including pain, suffering, and humiliation in amounts to be determined at trial;

E. Order Defendant to pay all those individuals adversely affected by the unlawful employment practices described above, by providing compensation for past and future pecuniary losses in amounts to be determined at trial.

F. Order Defendant to pay all those individuals adversely affected by the unlawful employment practices described above punitive damages for its malicious and/or reckless conduct in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper.

H. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated: Boston, Massachusetts
September 28, 2001

Respectfully submitted,

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