

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

| | | |
|-----------------------------------|--|------------------------------|
| -----X | | |
| EQUAL EMPLOYMENT OPPORTUNITY : | | CIVIL ACTION NO. |
| COMMISSION, : | | 06-40190-FDS |
| : | | |
| Plaintiff, : | | |
| : | | |
| v. : | | |
| : | | <u>AMENDED COMPLAINT AND</u> |
| PREFERRED LABOR LLC, : | | <u>JURY TRIAL DEMAND</u> |
| d/b/a PREFERRED PEOPLE STAFFING : | | |
| and PREFERABLE PEOPLE, LLC, : | | |
| as successor in interest, : | | |
| : | | |
| Defendants. : | | |
| -----X | | |

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 to provide appropriate relief to Catherine Darensbourg and a class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred Labor LLC d/b/a Preferred People Staffing (hereinafter “Preferred”), who are and were affected by such practices. As alleged with greater particularity below, Defendant Preferred subjected Catherine Darensbourg and female job applicants who applied for temporary employment with Defendant Preferred to repeated sex-based discrimination by failing to refer individuals for temporary employment based on their sex and by complying with discriminatory requests for temporary employees based on sex made by one or more of its clients, and subjected Catherine Darensbourg to unlawful retaliation. Defendant PreferAble People, LLC (“PreferAble”)

purchased Defendant Preferred on April 17, 2007 and is a successor corporation to Defendant Preferred.

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) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

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

PARTIES

3. Plaintiff, 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 Preferred was continuously doing business in the State of Massachusetts and the city of Worcester, Massachusetts and continuously had at least fifteen employees.

5. At all relevant times, Defendant Preferred was continuously 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).

6. At all relevant times, Defendant Preferred procured employees for employers and was an employment agency within the meaning of section 701(c) of Title VII, 42 U.S.C. § 2000e(c).

7. At all relevant times, Defendant PreferAble has continuously been doing business in the State of Massachusetts and the city of Worcester, Massachusetts and continuously employs at least fifteen employees.

8. At all relevant times, Defendant PreferAble 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).

9. At all relevant times, Defendant PreferAble has procured employees for employers and is an employment agency within the meaning of section 701(c) of Title VII, 42 U.S.C. § 2000e(c).

10. Defendant PreferAble purchased Defendant Preferred on or about April 17, 2007 and is a legal successor to Preferred.

11. Defendant PreferAble purchased and obtained most of Defendant Preferred's real property, tangible assets, client service contracts, supervisory employees, non-supervisory employees, temporary employees as well the exclusive right to use Defendant Preferred's trade names.

12. Since its purchase of Defendant Preferred, Defendant PreferAble has continued to engage in the same business as Defendant Preferred, the provision of temporary labor, out of the same physical facility.

13. There has been a substantial continuity of business operations by Defendant PreferAble of the business operations of Defendant Preferred, since the date of purchase of Defendant Preferred by Defendant PreferAble.

14. Defendant PreferAble had actual notice of this action at the time it purchased Preferred, and the lawsuit was listed in the Purchase Agreement between the two Defendants.

15. Preferred cannot provide all of the relief sought in this matter.

16. Defendant PreferAble is liable in this matter under the principles of successor liability.

STATEMENT OF CLAIMS

17. More than thirty days prior to the institution of this lawsuit, Catherine Darensbourg filed a charge with the Commission alleging violations of Title VII by Defendant Preferred. All conditions precedent to the institution of this lawsuit have been fulfilled.

18. Since at least May of 2005 through the date operations were taken over by Defendant Preferable, Defendant Preferred has engaged in unlawful employment practices at its facilities in Worcester, Massachusetts, in violation of Section 703(a)(1),(2) and 703 (b) of Title VII, 42 U.S.C. § 2000e-2(a)(1),(2) and (b). These practices include, but are not limited to, the following:

(a) Defendant Preferred discriminated against female job applicants because of their sex.

(b) Defendant Preferred furnished temporary employees in job fields such as construction, light industrial, warehouse stocking, distribution, freight handlings, hospitality, catering, and light janitorial and unlawfully classified jobs on the basis of sex as men's jobs or

women's jobs and refused to refer female job applicants for temporary employment in jobs classified by Defendants Preferred as men's jobs.

(c) Defendant Preferred complied with discriminatory requests for temporary employees based on sex made by one or more of its clients.

(d) Defendant Preferred discriminated against Catherine Darensbourg and a class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred by failing to refer them for temporary employment because of their sex, female.

(e) Defendant Preferred retaliated against Catherine Darensbourg after she engaged in protected activity and complained about Defendant Preferred's discriminatory conduct by refusing to consider her for job opportunities.

19. The effect of the practices complained of above is and has been to deprive Catherine Darensbourg and a class of similarly situated female employees of equal employment opportunities and otherwise adversely affect their status as employees on the basis of sex, inflict emotional pain and suffering and humiliation and embarrassment upon them, and cause them to suffer financial losses and otherwise adversely affect them.

20. The unlawful employment practices complained of above are and were intentional.

21. The unlawful employment practices complained of above are and were done with malice or with reckless indifference to the federally protected rights of Catherine Darensbourg and a class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, its officers, successors, assigns and all persons in active concert or participation with Defendant, from engaging in any employment practice which discriminates on the basis of sex.

B. Order Defendants to institute and carry out policies, practices, and programs which provide equal opportunities for women and which eradicate the effects of Defendant Preferred's' past unlawful employment practices.

C. Order Defendants to make whole Catherine Darensbourg and the class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred and were unlawfully denied employment opportunities based on sex by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and by providing other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to instating, reinstating, or otherwise making whole Catherine Darensbourg and the class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred and were unlawfully denied employment opportunities based on sex.

D. Order Defendants to make whole Catherine Darensbourg and the class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred and were unlawfully denied employment opportunities based on sex by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including but not limited to job search expenses that may have been incurred, in amounts that will be determined at trial.

E. Order Defendants to compensate Catherine Darensbourg and the class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred

and were unlawfully denied employment opportunities based on sex for past and future nonpecuniary losses resulting from the unlawful employment practices described above, including but not limited to emotional pain, suffering and inconvenience, loss of enjoyment of life, humiliation and embarrassment, in amounts to be determined at trial.

F. Order Defendants to pay Catherine Darensbourg and the class of similarly situated female job applicants who applied for temporary employment with Defendant Preferred and were unlawfully denied employment opportunities based on sex punitive damages for its conduct described above, in amounts to be determined at trial.

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

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.

July 21, 2008

Respectfully submitted,

Ronald S. Cooper
General Counsel

James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

Elizabeth Grossman
Regional Attorney

Robert D. Rose
Supervisory Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
New York District Office
33 Whitehall Street, 5th Floor,
New York, New York 10004-2112
Tel.(212)336-3708
Fax.(212)336-3623
robert.rose@eeoc.gov
judy.keenan@eeoc.gov

/s/Arnold J. Lizana III

Arnold J. Lizana III
Bar No. MA 646161
Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Boston Area Office
John F. Kennedy Federal Building,
Room 475
Boston, MA 02203-0506
Tel.(617) 565-3210
Fax.(617) 565-3196
arnold.lizana@eeoc.gov