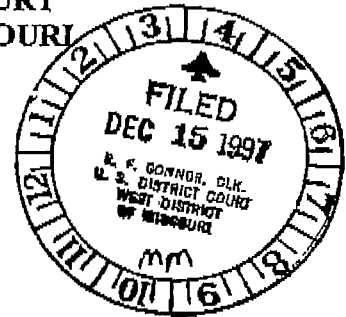


**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**



AILEEN VILLANUEVA, Individually)
 And on behalf of others similarly situated)
)
 Plaintiffs,)

vs.)

Case No.

WOODBINE HEALTHCARE LIMITED)
 PARTNERSHIP,)
 Serve: Spenserv, Inc.)
 1000 Walnut, Suite 1400)
 Kansas City, MO 64106)

97-1607-CV-W-Saw

ROBERT NORCROSS, an individual)
 Serve: 2900 Kendallwood Parkway)
 Gladstone, Missouri 64119)

DENNY BARNETT, an individual)
 Serve: 2900 Kendallwood Parkway)
 Gladstone, Missouri 64119)

Defendants.)

CLASS ACTION COMPLAINT

Plaintiffs, for their causes of action against defendant Woodbine Health Care Limited Partnership ("Woodbine"), Robert Norcross ("Norcross") and Denny Barnett ("Barnett") state and allege as follows:

1. This class action is based upon violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 and the Missouri Human Rights Act, R.S.Mo. § 213.055 et seq. This action is brought on behalf of plaintiff Villaneuva individually and on behalf of a class of others similarly situated, as defined more specifically herein, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

ORIGINAL

2. The members of this class are so numerous as to make it impracticable to bring all of them before this Court. Upon information and belief, there are approximately 60-80 present or former employees of defendant Woodbine who are within the class definition.

3. The class representative and all members of the class are all non-white and are of the same ancestry and national origin, Filipino. The class representative and all members of the class were recruited by defendant Woodbine to work as registered nurses and are present or former employees of defendant Woodbine. Thus, the class representative will fairly and adequately protect the interests of the class.

4. There are common questions of law and fact presented herein, and the class representative's claims are typical of the claims of all class members.

5. The prosecution of separate actions by individual members of the class in various state and/or federal courts would create a risk of inconsistent or varying adjudication with respect to individual members of the class that would establish incompatible standards of conduct for defendants with respect to members of the class.

6. The prosecution of separate actions by individual members of the class would create a risk of adjudication with respect to individual members of the class which as a practical matter would be dispositive of interests of other members of the class not parties to the adjudication or would substantially impair or impede their ability to protect their interests.

7. Defendants have acted uniformly with respect to all of the class members in that they have consistently and intentionally discriminated against defendant Woodbine's employees who are non-white and of Filipino national origin and ancestry with respect to assignment, compensation, promotion, firing and classification of employees and in the terms and conditions

of their employment. Therefore, final declaratory and other ancillary relief would be appropriate for the class as a whole.

8. Questions of law and fact are common to the class and predominate over any questions affecting individual members only.

9. Plaintiff Aileen Villanueva was born in the Philippines, and is a legal resident of the United States, currently residing in Kansas City, Missouri. Plaintiff was recruited by defendant Woodbine and was employed by Woodbine from August 1994 through March 1996. During the course of her employment with defendant Woodbine, plaintiff suffered discrimination based upon her race, ancestry and national origin in numerous ways including but not limited to:

a. Plaintiff was not given assignments comparable to caucasian registered nurses employed by defendant Woodbine even though she was qualified to hold a registered nurse position by virtue of her Commission on Graduates of Foreign Nursing Schools ("CGFNS") certification and her Missouri registered nurse license. In fact, prior to coming to the United States, plaintiff Villaneuva had already received her diploma, completed the licensing requirements of a nurse and was certified as a registered nurse in the Philippines.

b. Plaintiff was not compensated at the rate promised to her as a registered nurse, despite her requests for such compensation and her qualifications.

c. Defendant Woodbine's Director of Nursing, defendant Norcross, threatened to have plaintiff deported if she complained of the conditions of her employment.

d. Plaintiff was denied the same benefits as white, non-Filipino full time employees. Plaintiff was required to cover her shift before approval for vacation and was forced to return from her vacation on one occasion in order to work her shift. No such requirement was

applicable to non-white full-time employees. Further, plaintiff was denied paid sick leave despite defendant Woodbine's company policy.

10. Defendant Woodbine is a corporation registered to do business in the state of Missouri. Defendant Woodbine currently is doing business as Woodbine Healthcare Center, 2900 Kendallwood Parkway, Kansas City, Missouri 64119.

11. Defendant Robert Norcross ("Norcross") is an individual who is an agent of and employed by defendant Woodbine as a Director of Nursing.

12. Defendant Denny Barnett ("Barnett") is an individual who is an agent of and employed by defendant Woodbine as an Administrator, acting within the scope of his employment with defendant Woodbine, with full supervisory authority over plaintiff.

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because plaintiff has presented federal claims under Title VII and 42 U.S.C. § 1981.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

15. The class of plaintiffs is defined as all employees of defendant Woodbine who are non-white, whose ancestry and national origin is Filipino, and who worked at defendant Woodbine's Gladstone health center.

16. Plaintiffs were recruited by defendant Woodbine in the Philippines to relocate to the Gladstone area to work as registered nurses in their Gladstone health center. Plaintiffs were promised that upon obtaining a Missouri registered nurses license they would be employed as a registered nurse and compensated at the rate of \$12.50 per hour.

17. However, upon obtaining the Missouri registered nurses license, defendants failed and refused to employ plaintiffs as registered nurses at the rate of \$12.50 per hour. Plaintiffs

were required, instead, to perform the duties of a certified nurses assistant at the rate of \$7.00 per hour solely because of their race, ancestry and national origin.

18. Plaintiffs were required to arrange for their own shift coverage prior to obtaining approval for vacation time. White, non-Filipino nurses were not required to obtain their own shift coverage. Further, plaintiffs were denied paid sick leave despite defendant Woodbine's sick leave policy covering full time employees.

19. Plaintiffs were threatened by defendants with deportation if they complained of their working conditions. In fact, such threats and intimidation by defendants prevented some plaintiffs from exercising their civil rights.

20. Defendants have engaged in a pattern and practice of discrimination against nurses of plaintiff's race, ancestry and national origin. Defendant Woodbine intentionally recruits and hires qualified nurses from the Philippines solely to enable them to pay less for their services and to intimidate them during the course of their employment.

COUNT I
(Violation of 42 U.S.C. § 1981)

21. Plaintiffs incorporate by reference herein paragraph numbers 1 through 20 as though fully set forth therein.

22. Defendants have intentionally discriminated against plaintiff Villaneuva and other members of the plaintiff class because of their race, ancestry and national origin with respect to the assignment, compensation, classification, firing and other terms and conditions of their employment, as set forth previously herein.

23. Defendants' intentional discrimination against plaintiff Villaneuva and members of the plaintiff class has created a hostile working environment for plaintiffs. The hostile environment created by defendants' intentional discrimination has the purpose or effect of

creating an intimidating, hostile and offensive working environment and it has interfered with the work performance of plaintiff Villaneuva and members of the plaintiffs class. The hostile environment created by defendants' intentional discrimination has seriously affected the individual employment opportunities of plaintiff Villaneuva and members of the plaintiff class. The hostile work environment that has been created by defendants' intentional discriminatory treatment of plaintiff Villaneuva and members of the plaintiff class is severe and pervasive and has altered the class members' conditions of employment and has created an abusive working environment.

24. Because of defendants' intentional discrimination against plaintiff Villaneuva and the class members based upon their race, ancestry and national origin, plaintiff Villaneuva and members of the plaintiff class have suffered actual economic damages and are entitled to an appropriate award of back pay.

25. Because of defendants' intentional discrimination against plaintiff Villaneuva and the class members based upon their race, ancestry and national origin, plaintiff Villaneuva and members of the plaintiff class are entitled to reinstatement, promotions or transfers, as the case may be, and are entitled to back pay, overtime pay, bonuses and fringe benefits, and interest where appropriate.

26. Because of defendants' intentional discrimination against plaintiff Villaneuva and the class members based upon their race, ancestry and national origin, plaintiff Villaneuva and members of the class are entitled to front pay to compensate them for lost employment opportunities.

27. Because of defendants' intentional discrimination against plaintiff Villaneuva and the class members based upon their race, ancestry and national origin, plaintiff Villaneuva and

members of the class are entitled to other compensatory damages including future pecuniary losses, past and future emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses.

28. Because of defendants' intentional discrimination against plaintiff Villaneuva and the class members based upon their race, ancestry and national origin, plaintiff Villaneuva and members of the class are entitled to affirmative injunctive relief to remedy the employment discrimination set forth herein.

29. Because defendants' discriminatory practices have been practiced and performed with malice or reckless indifference to the federally protected rights of plaintiff Villaneuva and the class members, plaintiff Villaneuva and members of the class are entitled to an award of punitive damages.

WHEREFORE, plaintiff Villaneuva and the class members pray for judgment against defendants for equitable relief preventing defendants from engaging in a pattern and practice of discrimination against plaintiff and the class members on the basis of their race, ancestry and national origin; for a judgment for damages for appropriate back pay, front pay and interest; for a judgment for other compensatory damages for the intentional discrimination practiced by defendants which has resulted in pecuniary loss and past and future emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life to plaintiff and the class members; for a judgment for punitive damages because defendants' discrimination against plaintiffs has been practiced and performed with malice or reckless indifference to the federally - protected rights of plaintiff and the class members; for an award of attorney's fees and expert's fees pursuant to 42 U.S.C. § 1988(b) and (c); and for such further and other relief as the Court may deem appropriate or just and equitable under the circumstances.

COUNT II
(Violation of Title VII of the Civil Rights Act of 1964,
42 U.S.C. § 2000e, et seq. and the Missouri Human Rights Act)

30. Plaintiffs incorporate by reference herein paragraphs 1 through 29 as though fully set forth herein.

31. Defendant Woodbine is engaged in an industry affecting commerce and employs more than 15 people.

32. Plaintiff Villaneuva has exhausted the administrative remedies of Title VII by filing a timely charge with the Equal Employment Opportunity Commission, by receiving a right-to-sue letter from the EEOC, attached as Exhibit 1, and by filing this lawsuit within 90 days from the date she received her right to sue letter.

33. Plaintiff Villaneuva has exhausted the administrative remedies of the Missouri Human Rights Act by filing a timely charge of discrimination with the Missouri Commission on Human Rights, by receiving a right-to-sue letter from the MHRC, attached as Exhibit 2, and by filing her lawsuit within 90-days from the date she received her right to sue letter.

34. Plaintiff Villaneuva will fairly and adequately protect the interest of all members of this class.

35. Defendants have intentionally discriminated against plaintiff Villaneuva and all other members of the plaintiff class because of their race, ancestry and national origin with respect to assignment, compensation, promotion, firing and classification of employees and in the terms and conditions of their employment, as set forth previously herein.

36. Defendants have engaged in a pattern and practice of discrimination against plaintiff Villaneuva and other members of the class because of their race, ancestry and national

origin with respect to the assignment, compensation, promotion, firing and classification of employees and in the terms and conditions of their employment, as set forth previously herein.

37. Defendants' intentional discrimination against plaintiff Villaneuva and other members of the plaintiff class has created a hostile working environment for plaintiff Villaneuva and members of the plaintiff class. The hostile environment created by defendants' intentional discrimination has the purpose or effect of creating an intimidating, hostile and offensive working environment and it interfered with plaintiff Villaneuva's individual work performance and the work performance of other members of the plaintiff class. The hostile environment created by defendants' intentional discrimination has seriously affected plaintiff Villaneuva's employment opportunities and the individual employment opportunities of other members of the plaintiff class. The hostile work environment that has been created by defendants' intentional discriminatory treatment of plaintiff Villaneuva and other members of the plaintiff class is severe and pervasive and has altered the class members' conditions of employment and has created an abusive working environment.

38. Because of defendant's intentional discrimination based upon race, ancestry and national origin, plaintiff Villaneuva and other members of the plaintiff class have suffered actual economic damages and are entitled to an appropriate award of back pay.

39. Because of the defendants' intentional discrimination based upon race, ancestry and national origin, plaintiff Villaneuva and other members of the plaintiff class are entitled to reinstatement or promotions, as the case may be, and are entitled to back pay, overtime pay, bonuses and fringe benefits and interest where appropriate.

40. Because of defendants' intentional discrimination based upon race, ancestry and national origin, plaintiff Villaneuva and members of the plaintiff class are entitled to front pay to compensate them for lost employment opportunities.

41. Because of defendants' intentional discrimination based upon race, ancestry and national origin, plaintiff Villaneuva and members of the plaintiff class are entitled to other compensatory damages including future pecuniary losses, and past and future emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses.

42. Because defendants' discriminatory practices have been practiced and performed with malice or reckless indifference to the federally protected rights of plaintiffs, plaintiff Villaneuva and other members of the plaintiff class are entitled to an award of punitive damages.

43. Because of defendants' intentional discrimination based upon race, ancestry and national origin, plaintiff Villaneuva and other members of the plaintiff class are entitled to affirmative injunctive relief to remedy the employment discrimination set forth above.

WHEREFORE, plaintiff Villaneuva and the class members pray for judgment against defendants for equitable relief preventing defendant from engaging in a pattern and practice of discrimination against plaintiff and the class members on the basis of their race, ancestry and national origin; for a judgment for damages for appropriate back pay, front pay and interest; for a judgment for other compensatory damages for the intentional discrimination practiced by defendants which has resulted in pecuniary loss and past and future emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life to plaintiff and the class members; for a judgment for punitive damages because defendants' discrimination against plaintiffs has been practiced and performed with malice or reckless indifference to the federally protected

rights of plaintiff and the class members; for an award of attorney's fees and expert's fees pursuant to 42 U.S.C. § 2000e-5(k); and for such further and other relief as the court may deem appropriate or just and equitable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury in this action of all issues so triable as a matter of right and hereby designates Kansas City, Missouri as place of trial.

ANDERSON PLATTS LAW FIRM, L.L.C.

By Jennifer H. McCoy
Denise M. Anderson #39598
Jennifer H. McCoy #37905
305 The Stilwell
104 West Ninth Street
Kansas City, Missouri 64105
(816) 472-1441
(816) 472-4114 (FAX)

ATTORNEYS FOR PLAINTIFFS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE
(Issued on request)

To:

Aileen Villanueva
4508 N. Locust
Kansas City, MO 64116

From: Kansas City Area Office EEOC
400 State Ave., 9th Floor Gateway Tower II
Kansas City, KS 66101

On behalf of a person aggrieved whose identity is **CONFIDENTIAL**
(29 C.F.R. 1601.7(a))

Charge Number
281970079

EEOC Representative
JoAnn Jackson

Telephone Number
913-551-5847

(See the additional information attached to this form)

TO THE PERSON AGGRIEVED: This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.

- More than 180 days have expired since the filing of this charge.
- Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its process within 180 days from the filing of the charge.
- With the issuance of this NOTICE OF RIGHT TO SUE, the Commission is terminating its process with respect to this charge.
- It has been determined that the Commission will continue to investigate your charge.
- ADEA:** While Title VII and the ADA require EEOC to issue this notice of right to sue before you can bring a lawsuit you may sue under the Age Discrimination in Employment Act (ADEA) any time 60 days after your charge was filed until 90 days after you received notice that EEOC has completed action on your charge.
- Because EEOC is closing your case, your lawsuit under the ADEA must be brought within 90 days of your receipt of this notice. Otherwise, your right to sue is lost.
- EEOC is continuing its investigation. You will be notified when we have completed action and, if our notice will include notice of right to sue under the ADEA.
- EPA:** While Title VII and the ADA require EEOC to issue this Notice of Right to Sue before you can bring a lawsuit, lawsuit you already have the right to sue under the Equal Pay Act (EPA) (You are not required to complain to any enforcement agency before bringing an EPA suit in court). EPA suits must be brought within 2 years (3 years for willful violations) of the alleged EPA underpayment.

I certify that this notice was mailed on the date set out below.

September 16, 1997
(Date Mailed)

On Behalf of the Commission


Clifford Hill

Enclosures

Information Sheet
Copy of Charge

cc: Respondents

EXHIBIT

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

MISSOURI COMMISSION ON HUMAN RIGHTS



Mel Carnahan
Governor

Alvin A. Plummer
Commission Executive Director

David Mliehem
Acting Department
Director



- Commissioners
- Ronald P. Grelman
Chairperson
- Ronald W. Johnson
1st District
- Glenda W. Bryant
2nd District
- Robert
3rd District
- Susan Lee Pentlin
4th District
- Susan C. Powell
5th District
- Jack D. McCall
6th District
- I. Elise Crain
7th District
- Lawrence C. George
8th District
- Lancy J. Reynolds
9th District
- Merling Adams
10th District

Mrs. Aileen Villanueva
4508 N. Locust
Kansas City, MO 64116

NOTICE OF RIGHT TO SUE

RE: Villanueva v. Woodbine Healthcare Center
FE-10/96-27214; 281970079

Dear Mrs. Villanueva:

This is your NOTICE OF RIGHT TO SUE pursuant to Section 213.111 RSMo.

If, after one hundred eighty days from the filing of a complaint alleging an unlawful discriminatory practice, the commission has not completed its administrative processing and the person aggrieved so requests in writing, the commission shall issue to the person claiming to be aggrieved a letter indicating their **right to bring a civil action within 90 days of such notice** against the respondent named in the complaint. Such an action may be brought in any circuit court in any county in which the unlawful discriminatory practice is alleged to have occurred, either before a circuit or associate circuit judge. Upon issuance of this notice, the commission shall terminate all proceedings relating to the complaint. No person may file or reinstate a complaint with the commission after the issuance of a notice under this section relating to the same practice or act. Any action brought in court under this section shall be filed within ninety days from the date of the commission's notification letter to the individual but **no later than two years after the alleged cause occurred** or its reasonable discovery by the alleged injured party (emphasis added).

The above-referenced complaint was filed on October 22, 1996; thus more than 180 days have elapsed since the filing and the Missouri Commission on Human Rights has not completed its administrative processing. Further, as you have duly requested in writing, you are hereby notified of your right to sue the Respondent(s) named in your complaint in state circuit court. **THIS MUST BE DONE WITHIN 90 DAYS OF THE DATE OF THIS NOTICE OR YOUR RIGHT TO SUE IS LOST.**

You are also notified that the Executive Director is hereby administratively closing this case and terminating all MCHR proceedings relating to it. No person may file or reinstate a complaint after the issuance of notice of right to sue.

On behalf of the Commission:

Alvin A. Plummer
Executive Director

4-28-97
Date

CERTIFIED MAIL

c: Woodbine Healthcare Center
Attn: Chief Executive Officer
2900 Kendallwood Parkway
Gladstone, MO 64119

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Relay Missouri: 1-800-735-2466 (Voice) 1-800-735-2966 (TDD)

