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EEOC v. SPS Temporaries, Inc., et al.

Keywords

EEOC, SPS Temporaries, Inc., 04-CV-0052E(SC), Consent Decree, Disparate Treatment, Retaliation, Race, Sex, National Origin, Age, Assignment, Hiring, Termination, African American or Black, Hispanic, Female, Other, Employment Law, Title VII

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

-----X
**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

against

SPS TEMPORARIES, INC.;
**PROFESSIONAL PERSONNEL
MANAGEMENT CORPORATION;**
**JAMESTOWN CONTAINER LOCKPORT,
INC, doing business as JAMESTOWN
CONTAINER COMPANIES; JAMESTOWN
CONTAINER CORP. doing business as
JAMESTOWN CONTAINER COMPANIES;**
**and WHITING DOOR MANUFACTURING
CORP.,**

Defendants.
-----X

04-CV-0052E(SC)

CONSENT DECREE

*Between Plaintiff Equal Employment Opportunity Commission and
Defendants SPS Temporaries, Inc. and Professional Personnel Management Corporation*

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PART I GENERAL PROVISIONS

Section 101 Introduction

The Plaintiff Equal Employment Opportunity Commission (“EEOC” or “Commission”) and Defendants SPS Temporaries, Inc. (“SPS”) and Professional Personnel Management Corporation (“PPMC”)(collectively “Defendants” or “SPS/PPMC”) have agreed to resolve this action by the terms of this Consent Decree (“Decree”) as set forth below.

On January 27, 2004, the Commission brought this action under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, the Americans with Disabilities Act and the Age Discrimination in Employment Act to correct unlawful discrimination on the basis of race, sex, pregnancy, national origin, disability and age and to make whole James Sciandra, Michelle Alberts, Tammi Iser and the class of individuals who were discriminatorily denied temporary employment by one or more Defendants.

The EEOC’s complaint alleges that SPS/PPMC failed to refer individuals for temporary employment based on their race, sex, pregnancy, national origin, disability and age. The complaint further alleges that SPS/PPMC complied with discriminatory requests made by their clients for temporary employees based on race and sex.

The EEOC’s complaint alleges that SPS/PPMC required all applicants for temporary employment to complete a pre-employment medical questionnaire that elicited information regarding potential disabilities. It further alleges that SPS/PPMC denied employment to James Sciandra because they regarded him as disabled due to information he provided on the SPS/PPMC pre-employment medical questionnaire. Additionally, SPS/PPMC discriminated against a class of qualified individuals with disabilities by failing to refer them for temporary employment based on their answers on the pre-employment medical questionnaire.

The EEOC's complaint alleges that SPS/PPMC terminated permanent employee Tammi Iser based on her pregnancy. It also alleges that SPS/PPMC retaliated against permanent employee Michelle Alberts by taking adverse action against her, and ultimately terminating her, after she questioned SPS/PPMC's discriminatory practices. Finally, the complaint alleges that SPS/PPMC committed record keeping violations by destroying and altering documentary evidence during the EEOC's investigation.

Through this action, the Commission seeks injunctive relief and monetary damages for all individuals affected by Defendants' discriminatory acts.

Section 102 Purpose of the Decree

A. This Decree pertains only to the EEOC and Defendants SPS and PPMC. Throughout this Decree, the term "Defendants" shall refer only to Defendants SPS and PPMC. The terms of settlement between the EEOC and the other Defendants are contained in separate consent decrees. The EEOC and Defendants SPS/PPMC 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 and their successors, assigns, and any other corporation or other entity into which SPS and/or PPMC may merge or with which either or both of them may consolidate. SPS/PPMC shall provide notice and a copy of this Consent Decree to any successors, assigns, and any other corporation or other entity into which SPS and/or PPMC may merge or with which either or both of them may consolidate.

B. This Consent Decree resolves all issues raised in EEOC Charge Numbers 165-A1-0610, 165-A1-0616, 165-A1-0615, 165-A1-0617, 165-A1-0499, 16G-A-08156, and 165-A1-0176, which served as the jurisdictional prerequisites in this case. The Decree does not resolve

any charge of discrimination currently pending before the EEOC, or any charge that may be filed in the future, other than those charges listed above. The Commission reserves all rights to proceed regarding matters not covered in this Consent Decree.

C. The terms of this Consent Decree represent the full and complete agreement of the parties. The parties agree that this Decree may be entered into without Findings of Fact and Conclusions of Law being made and entered by the Court.

D. This Consent Decree does not constitute an admission by SPS/PPMC to any violations of Title VII of the 1964 Civil Rights Act, the ADEA or the ADA.

Section 103 Prohibited Conduct and Injunction to Not Discriminate

A. SPS/PPMC, their successors, assigns and managers, officers and agents acting on behalf of SPS and/or PPMC are hereby enjoined from the discriminating against any individual because of the individual's race, sex, pregnancy, national origin, disability and/or age. This injunction shall include, but is not limited to the following:

1. Complying with discriminatory requests for temporary employees made by their clients;
2. Discouraging pregnant applicants from applying for temporary work and refusing to send out temporary employees for assignments after they become pregnant;
3. Requiring applicants for temporary employment to complete pre-employment questionnaires containing questions that may reveal information about actual or potential disabilities.

B. SPS/PPMC, their successors, assigns and managers, officers and agents acting on behalf of SPS and/or PPMC are hereby enjoined from retaliating against any individual because

that individual is a beneficiary of this Decree, has filed a complaint, or has provided information, assistance, or participated in any other manner in the investigation or litigation of this matter.

C. Nothing in this Consent Decree shall be construed to limit or reduce SPS/PPMC's obligations to comply with the statutes enforced by the Commission: Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.*, Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, and Equal Pay Act, 29 U.S.C. §206(d).

Section 104 Consent to Jurisdiction

A. The EEOC and SPS/PPMC agree that this Court has jurisdiction over the subject matter of this litigation and the parties for the duration of this Decree, that venue is proper, and 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.

B. The Court shall retain jurisdiction over this action for the duration of the Decree for all purposes including, but not limited to, the entering of all orders, judgments, and decrees as necessary to implement the relief provided herein. In any action to enforce the terms of this Decree, the Court will have full authority to order any remedy the Court deems appropriate including, but not limited to, specific performance during or after the Decree's four (4) year term.

Section 105 Implementation of the Decree

The EEOC and SPS/PPMC agree to take all steps that may be necessary to fully effectuate the terms of this Consent Decree.

Section 106 Amendments to the Decree

By mutual consent of the parties, this Consent Decree may be amended in the interest of justice and fairness and to facilitate execution of the Decree's provisions. No waiver, modification or amendment of any provision of this Consent Decree shall be effective unless made in writing, approved by all Parties to this Decree.

Section 107 Duration of the Decree

The Consent Decree shall remain in effect for four (4) years from the effective date of the Decree. The effective date of the Decree shall be the date it is signed and executed by the Court.

Section 108 Severability

If one or more provisions of this Decree are rendered unlawful or unenforceable as a result of a legislative act or a decision by a court of competent jurisdiction, the following shall apply to insure that the Decree continues to effectuate the intent of the Parties. The provisions of this Decree which are not rendered unlawful, unenforceable or incapable of performance as a result of such legislative act or court decision, shall remain in full force and effect, and the Parties' responsibilities shall not abate as to any and all provisions that have not been rendered unlawful or unenforceable, except to the extent that the intent of the Decree would be undermined.

Section 109 Breach of Decree

The parties agree that they will cooperate to effectuate and implement all terms and

conditions of this Decree, and exercise good faith efforts to accomplish the terms and conditions of this Decree. The Commission and SPS/PPMC agree to confer regarding any dispute arising from the implementation of this Decree. In the event the parties are unable to resolve this dispute, any action relating to this Decree shall be filed in the Court that approves this Decree. This Decree shall be construed under applicable federal law.

Section 110 Notices

Except as otherwise provided for in this Decree, all notifications, reports and communications to the Parties required under this Decree shall be made in writing and shall be sufficient as hand-delivered, faxed or sent by express, certified or registered mail to the following persons (or their designated successors):

For the EEOC: Robert D. Rose
 U.S. EEOC
 33 Whitehall Street
 5th floor
 New York, NY 10004
 Fax: 212.336.3623

For SPS/PPMC: Robert A. Doren
 Bond, Schoeneck & King, LLP
 40 Fountain Plaza, Suite 600
 Buffalo, New York 14202
 Fax: 716.566.2808

A party may change such addresses by written notice to the other parties that sets forth a new address for this purpose. Notwithstanding the provisions for notification contained in this paragraph, the Parties may, after agreement memorialized in writing, send each other such notifications, reports and communications by email.

PART II SYSTEMIC RELIEF

Section 201 Posting and Distribution of Notices

A. Notice of Resolution

Within ten (10) days of the execution of this Decree, SPS/PPMC shall conspicuously post and maintain a “Notice of Resolution” regarding this lawsuit on the EEOC letterhead (attached as Exhibit A), in all of its offices in all prominent places where employee notices are posted. This Notice shall remain posted for the four (4) year duration of the Decree.

B. Distribution of Notices and Memos to Applicants For Employment

A copy of the Notice of Resolution (Exhibit A) and a memo setting forth the coverage of federal employment discrimination laws (Exhibit B) shall be distributed to every applicant for temporary and full-time employment at SPS/PPMC during the application process for the duration of the Decree. Applicants for temporary and full-time employment shall be instructed by SPS/PPMC to read this notice (Exhibit A) and memo (Exhibit B) and shall be given time to read the notice during the application process. SPS/PPMC shall provide the notice in Spanish to applicants who speak Spanish as their first language and the Notice of Resolution form (Exhibit A) shall indicate in Spanish that the form is available in Spanish.

C. Distribution of Notices and Memos to Current Full-time and Temporary Employees

SPS/PPMC shall provide a copy of the Notice of Resolution (Exhibit A) and a memo setting forth the coverage of federal employment discrimination laws (Exhibit B), to all current full-time employees and temporary employees by issuing both documents along with each employee’s paycheck for the first eight (8) payroll cycles following the execution of the Decree.

For the duration of the Decree, SPS/PPMC shall provide the same Notice of Resolution

(Exhibit A) and memo (Exhibit B) to all future full-time and temporary employees at the commencement of their employment.

D. Notices to SPS/PPMC Clients

Within ten (10) days of the effective date of this Decree, SPS/PPMC shall provide a memo (Exhibit C) to all of their current clients setting forth the obligations of SPS/PPMC and their clients under federal anti-discrimination laws and emphasizing SPS/PPMC's commitment to abide by such laws. SPS/PPMC shall provide the EEOC with written certification that they have fulfilled their obligations under this sub-paragraph within ten (10) days of doing so. This memo shall be provided to all new clients obtained by SPS/PPMC during the duration of the Decree.

E. EEO Posters

SPS/PPMC will post EEO posters in places visually accessible to applicants and employees of SPS/PPMC as required by federal regulations.

Section 202 Non-Discrimination Policy and Complaint Procedures

A. Required Content of Policies and Procedures

Within ten (10) days of the effective date of the Decree, SPS/PPMC shall adopt the attached Policy on Discrimination and Anti-Harassment in Employment (Exhibit D). Under no circumstances has the EEOC, by reviewing and approving SPS/PPMC's Policy on Discrimination and Anti-Harassment in Employment, waived its right to investigate or litigate any alleged violation of federal law enforced by the EEOC, related to or resulting from the implementation of any such policy.

B. Issuance of Policies and Procedures

SPS/PPMC shall issue their Policy on Discrimination and Anti-Harassment in Employment (Exhibit D) to all full-time employees within thirty (30) days of the effective date of this Decree along with a letter from SPS/PPMC's President affirming their commitment to maintaining a work environment free of discrimination. SPS/PPMC shall provide all new full-time employees with copies of their Policy on Discrimination and Anti-Harassment in Employment within five (5) days of the commencement of their employment.

C. Modification of Policies and Procedures

If SPS/PPMC wishes to modify their Policy on Discrimination and Anti-Harassment in Employment during the term of the Decree, they shall do so only after submitting the modified policy to the EEOC for approval and receiving such approval in writing. Under no circumstances shall the EEOC, by commenting or electing not to comment on SPS/PPMC's Policy on Discrimination and Anti-Harassment in Employment, be deemed to have waived its right to investigate or litigate any alleged violation of federal law enforced by the EEOC, related to or resulting from the implementation of any such policy.

Section 203 EEO Coordinator

A. Appointment of EEO Coordinator

Within ten (10) days of the Effective Date of this Consent Decree, SPS/PPMC will appoint an existing employee who is knowledgeable and experienced in federal anti-discrimination laws and appropriate investigation practices and techniques to serve as EEO Coordinator. SPS/PPMC has identified Denise Urich, the Operations Manager, to serve initially in the capacity of EEO Coordinator under this Decree. Should the person serving as EEO

Coordinator cease to do so for any reason, SPS/PPMC shall provide written notice to the EEOC stating the reason(s) why the outgoing coordinator is leaving and the identity of the person designated to assume the role of EEO Coordinator within 21 days of SPS/PPMC's becoming aware of the need to designate a new EEO Coordinator.

B. Responsibilities of EEO Coordinator

The EEO Coordinator is to have day-to-day responsibility for coordinating SPS/PPMC's compliance with anti-discrimination laws and SPS/PPMC's compliance with this Decree, and maintaining records required by the Decree. The EEO Coordinator is to receive, investigate and resolve all complaints of discrimination. The EEO Coordinator is to promulgate and promote SPS/PPMC's anti-discrimination policies and procedures and to train (or arrange for the training of) all employees regarding SPS/PPMC's anti-discrimination policies and procedures and the laws described therein. The EEO Coordinator is to retain reports and documents of all investigations conducted and any findings and/or resolutions thereto. The EEO Coordinator shall regularly attend trainings and take other steps to keep abreast of developments in federal anti-discrimination laws.

Section 204 Training

A. Initial Training

1. Approval by the EEOC

Within sixty (60) days of the effective date of the Decree, SPS/PPMC shall conduct the initial training programs for all a) full-time non-supervisory employees, b) full-time management employees, and c) full-time service coordinators and the EEO coordinator, as set forth in Exhibits E and F. The trainings shall be conducted by an employment law attorney of Bond,

Schoeneck & King, PLLC. The failure of SPS/PPMC to conduct initial training programs for all employees within sixty (60) days of the effective date of the Decree shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

2. Confirmation of Training

Within ten (10) days of each training session, SPS/PPMC shall provide the EEOC with an attendance sheet that includes the date, the names of those in attendance and the signatures of those in attendance. The failure of SPS/PPMC to provide attendance sheets within ten (10) days of any training session shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

B. Annual Training for Non-Supervisory Employees

1. Annual Training for Non-Supervisory Employees

On an annual basis, SPS/PPMC will provide all full-time non-supervisory employees with at least two (2) hours of EEO training as described below in §204.B.4. The failure of SPS/PPMC to provide two (2) hours of annual training to all non-supervisory employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

2. Annual Training for Management Employees

On an annual basis, SPS/PPMC will provide all full-time management employees with at least four (4) hours of EEO training as described below in §204.B.4. The failure of SPS/PPMC to provide four (4) hours of annual training to all full-time management employees shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

3. Annual Training for Service Coordinators and EEO Coordinator

On an annual basis, SPS/PPMC will provide all service coordinators and the EEO coordinator with at least eight (8) hours of EEO training as described below in sub-paragraph 4.

The failure of SPS/PPMC to provide eight (8) hours of annual training to all service coordinators and the EEO coordinator shall be deemed a material breach of the Decree and the Court shall be notified of the breach.

4. Required Subjects of Annual Training

The EEO annual training programs shall include:

a. For non-supervisory, management, service coordinators and the EEO coordinator, instruction on the requirements of applicable equal employment opportunity laws including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Pregnancy Discrimination Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, and a review of Defendant's non-discrimination policies and procedures with particular emphasis on the complaint procedure.

b. For management, service coordinators and the EEO coordinator, instruction on any policies and requirements related to this Consent Decree and instruction on the specific requirements of this Consent Decree and the proper procedures for responding to complaints of discrimination or harassment. An employment law attorney of Bond, Schoeneck & King, PLLC shall provide the training on policies and requirements related to this Decree.

C. Reporting Requirements for Training

All employees attending any training session described in the above paragraphs shall print and sign their full name on an attendance sheet. Within ten (10) days of the completion any trainings described in the preceding paragraph, SPS/PPMC shall provide the Legal Unit of the EEOC, New York District Office, 33 Whitehall Street, 5th floor, New York, New York 10004 (attention: Robert D. Rose), with copies of all attendance sheets.

D. Pre-Training Notification Requirement

At least thirty (30) days prior to any scheduled training under this Section, SPS/PPMC will provide the EEOC notice of the date, time and location of the scheduled training. The EEOC, at its discretion, may attend and observe one or more of the training sessions and may provide recommendations to be implemented by the trainer.

Section 205 Monitoring and Reporting

A. Monitoring by the EEOC

The EEOC may monitor SPS/PPMC's compliance with the Consent Decree for a period of four (4) years from the effective date of the Decree through the inspection of SPS/PPMC's premises upon reasonable notice, records and interviews with employees at reasonable times. EEOC shall conduct compliance review efforts in a manner that minimizes interference with SPS/PPMC's daily operations. It is understood that some of the records that the EEOC may wish to review are used on a daily basis by SPS/PPMC and that those records may have to be examined outside of normal business hours, absent emergency circumstances. SPS/PPMC does not agree to pay for copying related to EEOC's compliance efforts.

B. Reporting Requirements for Discrimination Complaints

For the duration of this Decree, every six (6) months, SPS/PPMC shall provide a written report to the Legal Unit of the EEOC, New York District Office (attention: Robert D. Rose), with information regarding any verbal or written complaints of discrimination from employees or applicants which were received during the preceding six months. The report shall include the name of the complainant, the name of the alleged harasser or discriminator, a list of each step taken by Defendant during the investigation, a summary of the complaint, the location, the results of any investigation of the complaint, and any remedial action taken by SPS/PPMC. The

report shall include all open complaints and all complaints closed or resolved within the prior six months. The first report shall be due six months after the filing date of the Decree.

C. Temporary Employee Report and Data

1. For the duration of the Decree, every six (6) months, SPS/PPMC shall provide a written report to the EEOC containing a breakdown of all applicants for temporary employment by race, sex, age, national origin and disability status for the preceding six (6) months. SPS/PPMC will affirmatively seek the information required for the report from all applicants for temporary employment and inform the applicants that the provision of the information is voluntary. The first report shall be due six months after the filing date of the Decree.

2. At any time while the Decree is in effect, the EEOC may request that SPS/PPMC provide a list of all temporary employees referred to work assignments, along with up-to-date contact information for all of them, for any two month period selected by the EEOC. SPS/PPMC shall provide the information within fifteen (15) days of a request by the EEOC and may provide it in the form of payroll records containing the name and address of the temporary employees referred during the specified time period. The EEOC may contact the temporary employees on the list provided by SPS/PPMC to obtain information regarding the race, gender, national origin, age and disability status of those temporary employees.

Section 206 Compliance with Record-keeping Requirements

A. Record Retention

For the duration of the Decree, SPS/PPMC agrees to maintain such records as are necessary to demonstrate their compliance with the Decree and 29 C.F.R. §1602 *et seq.* and to

verify that the reports submitted pursuant to the Decree are accurate.

B. Specific Documents to be Retained

For the duration of the Decree, and for three (3) years following the termination of the Decree, SPS/PPMC shall retain the following hard-copy and computer records:

1. All job advertisements and/or any other documents used to solicit applicants for temporary employment;
2. All applications for temporary employment and all other documents submitted or completed as part of the application process including, but not limited to, applications received in-person, by mail, by fax and by electronic means;
3. All records regarding the selection and placement of temporary employees;
4. All personnel files including all performance evaluations, discipline and termination records for full-time employees, and all employee notices, I-9s, tax forms, employee release forms, application forms, job selection forms and other related documents for temporary employees;
5. All advertisements for any open positions;
6. All complaints of discrimination or harassment and all records relating to the investigation and remediation of such complaints;
7. All complaints of retaliation prohibited by statutes enforced by the EEOC, and all records of the investigation(s) of those complaint(s);
8. All computerized payroll data;
9. All customer and job profile forms.

Section 207 Miscellaneous

A. Job Advertising

SPS/PPMC shall place job advertisements for temporary employees in the following publications with the goal of increasing applications for temporary employment from African-American and/or Black individuals, Latinos, females, disabled individuals, persons forty (40) years old and over and other underrepresented populations: Buffalo News, Niagara Gazette, and Lockport Union Sun and Journal. The job advertisements shall be placed at least each time SPS/PPMC recruits for temporary positions in the distribution area, but no less than forty-five (45) times per year, for the four (4) year duration of the Decree. All job advertisements placed by SPS/PPMC shall contain the term “Equal Opportunity Employer” or “EOE.”

B. Job Recruitment

Once every sixty (60) days commencing with the effective date of the Decree, SPS/PPMC shall send a job notice to the organizations listed in Exhibit G. The job notice shall state that Defendants are an equal opportunity employer and encourage African-American and/or Black individuals, Latinos, females, disabled individuals, persons forty (40) years old and over, and individuals in other underrepresented groups to apply for temporary employment with SPS/PPMC. The job notice shall contain clear instructions regarding the procedures for applying for temporary employment with SPS/PPMC. SPS/PPMC shall request that the organizations post the notice for two months through whatever means the organizations normally use to publicize job opportunities. This recruiting policy shall continue at least for the four (4) year duration of the Decree.

C. Management Evaluation and Accountability Policy

At least once per year for the duration of the Decree, SPS/PPMC shall evaluate managers and service coordinators regarding their performance in contributing to compliance with this Decree, compliance with SPS/PPMC's discrimination policies and procedures, and with federal anti-discrimination laws. Such evaluations shall be made in writing and discussed with the managers and supervisors. Every twelve (12) months, SPS/PPMC shall provide the EEOC with all copies of evaluations reflecting this criteria that were given to managers and service coordinators in the previous twelve (12) months.

PART III MONETARY RELIEF FOR CLASS MEMBERS

Section 301 Claims Fund

A. Payment to the Fund

SPS/PPMC shall pay the gross sum of \$500,000 into a Claims Fund (the "Fund" as defined below) in resolution of the EEOC's complaint of discrimination based on race, color, national origin, sex, pregnancy, age and disability. SPS/PPMC shall make payments into the Claims Fund as follows:

1. Within five (5) days of the signing of the Decree by the Court, SPS/PPMC shall pay \$125,000 into the Fund.
2. SPS/PPMC shall make monthly payments of \$7,812.50 to the Fund for the duration of the Decree. The first monthly payment shall be due on the first day of

the month following the effective date of the Decree. All subsequent monthly payments shall be due on the first of the month. SPS/PPMC shall pay a late fee of five percent (5%) of the monthly payment amount for any monthly payment that is received after the tenth of any month.

3. SPS shall submit all payments in accordance with the instructions of the EEOC and/or the Administrator.

B. Administrator

At EEOC's sole discretion, CAC Services Group, LLC shall act as the Administrator for the claims process in this case. The Administrator shall be responsible for establishing, managing and making distributions from the Claims Fund solely in accordance with the EEOC's instructions. The Administrator shall be paid from the Claims Fund and/or by the EEOC, in accordance with an agreement between the EEOC and the Administrator.

C. Establishment and Control of the Fund

The Administrator shall establish an interest bearing account into which all Claims Fund payments shall be deposited. The Administrator shall establish, maintain and make distributions from the Fund in accordance with the EEOC's instructions. All funds in the account shall be used to pay damages to class members and charging parties as defined and set forth below and to pay the Administrator, except that any funds remaining in the account after all distributions to class members and charging parties have been made shall be distributed in accordance with section §305.D below.

D. Payments to Class Members

Class members shall receive a share of the Claims Fund as determined by the EEOC. Any undistributed and/or unclaimed monies in the Claims Fund shall be disbursed in accordance

with §305.D below.

Section 302 Notice to Potential Class Members

A. Definition of Potential Class Members

Any person who claims to have applied for temporary employment with SPS/PPMC between January 1, 1999 and the effective date of the Decree shall be considered a potential class member.

B. Form of Notice

The EEOC shall provide notice of the settlement and claims process by placing public announcements in Buffalo area newspapers and radio stations. The public announcements shall instruct potential class members to call a phone number (the “claims hotline”), or respond to an email address to be established by the EEOC or the Administrator. The claims hotline shall be set up by the EEOC or the Administrator to receive messages from potential class members providing their names and contact information. All public announcements shall be completed within the six (6) month period commencing with the date of the placement of the first announcement except that the parties may agree to extend the time period and the EEOC may request an extension of the time period from the Court for just cause. The deadline for potential class members to contact the EEOC or the Administrator shall be sixty (60) days after the final public announcement is placed, although the EEOC in its discretion may consider the claims of potential class members who contact the EEOC or the Administrator after the deadline under compelling circumstances.

C. Distribution of Claims Forms

Any potential class member who contacts the EEOC or the Administrator and provides

their contact information shall be sent a Potential Class Member Cover Letter (Exhibit H) and Claim Form (Exhibit I) by regular mail. The deadline for the submission of Claims Forms by potential class members shall be sixty (60) days after the deadline specified in §302.B above for contacting the EEOC or the Administrator, although the EEOC in its discretion may consider late Claim Forms under compelling circumstances.

Section 303 Processing of Claims from Potential Class Members

A. Determination of Eligibility

The EEOC shall have sole discretion to determine the eligibility of potential class members based on the Claim Form, the potential class member's credibility and, if necessary, through interviews and a review of additional information and documents. SPS/PPMC will make good faith efforts to comply within fifteen (15) days with requests from the EEOC for information regarding potential class members. The time limit for responding to such requests may be extended depending on the volume and nature of the information requested.

B. Notification of Eligibility

All potential class members determined to be eligible by the EEOC shall be deemed "class members" and receive a Notice of Eligibility (Exhibit J) and a Class Member Release Form (Exhibit L) by regular mail. Class members shall have forty-five (45) days from the date of the mailing of their Notice of Eligibility to sign and return the Class Member Release Form. The submission of a signed Class Member Release Form by a class member shall indicate their acceptance of the approximate monetary award to be paid from the Claim Fund. Any class member who fails to return the Class Member Release Form by the deadline will be deemed to have declined to participate in this settlement and shall not receive a share from the Claims Fund,

although the EEOC in its discretion may consider late Class Member Release Forms under compelling circumstances.

C. Notification of Ineligibility

All potential class members determined to be ineligible by the EEOC shall receive a Notice of Ineligibility (Exhibit K).

D. Objections by Class Members and Potential Class Members

A class member or potential class member may raise an objection to the EEOC's determination of eligibility by delivering to the Court and the EEOC a written explanation of the basis for the objection. Objections must be filed within forty-five (45) days of the EEOC's mailing of the Notices of Eligibility and Ineligibility, although the EEOC and the Court may consider late objections under compelling circumstances.

Section 304 Fairness Hearing

After the deadline for submitting objections, the EEOC shall submit a list of all unresolved objections to the Court. The Court will conduct a fairness hearing to decide any unresolved objections. At least seven (7) days prior to the fairness hearing, the EEOC will provide a proposed Class Distribution List to the Court and SPS/PPMC including any changes resulting from the informal resolution of any objections. The Court may approve the proposed Class Distribution List, or order modifications based on any objections.

Section 305 Payments to Class Members

A. Distribution of Funds

The Class Fund shall be distributed in two installments. The first installment shall be

paid on or about two years after the execution date of the Decree. The second installment shall be paid upon the expiration of the Decree or upon the final payment by SPS/PPMC, whichever occurs first. As per the EEOC's instructions, the Administrator shall distribute the funds by check to class members.

B. Release Forms

The EEOC or the Administrator shall provide copies of the Class Member Release Forms to SPS/PPMC after the second installment checks have been sent to class members.

C. Preparation and Distribution of IRS Form 1099s by SPS/PPMC

All payments to class members shall be considered as non-pecuniary, compensatory damages for employment discrimination and not as wages. The Administrator shall issue an IRS form 1099 to all class members with each check.

D. Distribution of Undistributed and Unclaimed Portions of Class Fund

If the Claims Fund contains any undistributed and/or unclaimed funds ninety (90) days after the mailing of the second installment payment to class members, those funds shall be donated to the Buffalo City Mission at 100 East Tupper Street, Buffalo, New York 14203. The EEOC will donate the funds to one or more other 501(c)(3) organizations selected by the EEOC if the Buffalo City Mission does not accept the distribution.

Section 306 Miscellaneous Provisions Regarding Monetary Relief for Class Members

A. Expenses Related to Claims Process

SPS/PPMC will not be responsible for any expenses related to the claims process.

B. Cooperation by SPS/PPMC with Claims Process

SPS/PPMC will cooperate with the claims process and provide timely assistance as

necessary in response to reasonable requests from the EEOC and/or its agents and the Administrator.

C. Assistance from Administrator or Other Agents

In EEOC's sole discretion, the Administrator described in §301.B above may assist with any or all aspects of the claims process. The EEOC also may hire another administrator or other agent at its discretion to assist with any or all aspects of the claims process.

PART IV MONETARY AND OTHER RELIEF FOR INDIVIDUALSSection

401 Payments to Charging Parties

A. Michelle Alberts

Michelle Alberts shall receive \$60,000 pursuant to the Decree.

B. Tammi Iser

Tammi Iser shall receive \$45,000 pursuant to the Decree.

C. James Sciandra

James Sciandra shall receive \$20,000 pursuant to the Decree.

D. Form and Method of Payment

The three Charging Parties listed above shall be paid from the Claims Fund as defined in §301 above and shall receive full payment within thirty (30) days of the execution of the Decree or within fifteen (15) days of providing a Release Form pursuant to §401.E below, whichever is later.

E. Release Forms

Charging parties Michelle Alberts, Tammi Iser and James Sciandra shall be required to provide Release forms (Exhibit M) prior to receiving payment pursuant to the Decree.

SPS/PPMC shall pay five hundred dollars (\$500) each to Michelle Alberts and James Sciandra to enable them to obtain legal advice related to the Release forms.

E. IRS Form 1099

The Administrator shall issue an IRS Form 1099 for each Charging Party in conjunction with the monetary payments made to them from the Claims Fund. Each Charging Party shall be responsible for any taxes owed concerning these payments.

Section 402 References Provided to Individuals

SPS/PPMC agrees to answer any and all inquiries by prospective employers regarding any class member or charging party by informing the prospective employer only of the class member or charging party's dates of employment, title(s) and salary and nothing more.

SPS/PPMC shall not mention this action, or any other matter related to this action or the underlying charge of discrimination, to prospective employers enquiring about any class member's or charging party's employment with SPS/PPMC.

PART V SIGNATURES

Each signatory to this Decree represents that each is fully authorized to execute this Decree and to bind the parties on whose behalf each signs.

Dated: _____, 2005

Dated: _____, 2005

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

SPS TEMPORARIES, INC.

By:

Elizabeth Grossman
Acting Regional Attorney

Paul Alberti
President

Lisa D. Sirkin
Supervisory Trial Attorney

PROFESSIONAL PERSONNEL
MANAGEMENT, INC.

By:

Robert D. Rose
Senior Trial Attorney

Paul Alberti

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(212) 336-3708

Date: _____, 2005

Hon. John T. Elfvin
United States Judge