

0324 S.W. Abernethy, Portland, Oregon 97239 Phone: (503)-224-9133 Fax: (503)-827-5060

2. At all times relevant to the issues of this case, defendant NCS Pearson, Inc. was a Minnesota corporation, doing business in Oregon.

3. Defendant is an employment agency within the meaning of the discrimination statutes set forth herein.

4. The amount in controversy for economic and non-economic damages exceeds \$75,000 plus interest and costs for each plaintiff.

5. This court has jurisdiction over this case under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1332 (diversity of citizenship).

6. All plaintiffs have timely filed complaints with the EEOC and received right to sue letters.

#### **B. VENUE**

7. Most of the acts complained of took place in or near the Portland International Airport (PDX) although some took place at or near other airports located in the District of Oregon.

#### **C. FACTUAL ALLEGATIONS**

8. Prior to October of 2002, plaintiffs were employees of Huntleigh USA Corporation (Huntleigh) screening airline passengers and luggage at Oregon airports and were not retained when airport screeners became federal employees. Screeners who were employed by Huntleigh in Oregon prior to October of 2002 are referred to in this Complaint as "the Huntleigh Screeners." The Huntleigh Screeners were experienced in the work of screening passengers and baggage and in security issues at the airports.

9. On approximately November 1, 2001, Congress passed a law creating the Transportation Security Administration (TSA) in the United States Department of Transportation and requiring that all airport screeners be federal employees.

10. Between November 1, 2001 and October of 2002, TSA told the Huntleigh Screeners that TSA would give the Huntleigh Screeners preference in hiring and that if the

Huntleigh Screeners passed the hiring test they would be guaranteed employment as federal screeners. TSA also assured the Huntleigh Screeners that they would have no problem passing the test given their level of experience. TSA also promised the Huntleigh Screeners that they would be given a bonus if they stayed at their posts during the changeover to federal screeners.

11. In exchange for TSA's promises alleged above, including the promise that the Huntleigh Screeners would be given preference in selection as federal screeners, plaintiffs agreed that they would not attend job fairs to find new employment and would not leave their posts at the airport for early testing by Pearson. An agreement was formed between TSA and the Huntleigh Screeners, including plaintiffs, based upon these promises.

12. Alternatively, plaintiffs had the prospective economic advantage of expected employment with TSA as federal screeners.

13. In or about 2002 TSA hired NCS Pearson, Inc. (Pearson) to do a fair testing and hiring of the Huntleigh Screeners and new applicants, thereby making Pearson the agent of TSA to perform testing and placement of federal screeners. On information and belief, plaintiffs allege that Pearson was aware that there was an agreement between TSA and plaintiffs for plaintiffs to receive preference. On information and belief, plaintiffs further allege that providing preference to the Huntleigh Screeners was a term of the agreement between TSA and Pearson.

14. Alternatively, if Pearson did not do a fair non-discriminatory testing and hiring of existing Huntleigh screeners, it was not acting within the scope of its employment with TSA in that fair and non-discriminatory testing was a term of the agreement between TSA and Pearson.

15. Pearson did not engage in a fair screening process and instead used the testing process to disqualify plaintiffs in order to justify to TSA that Pearson had not given

preference to the existing screeners. Instead of honoring the agreement between TSA and the Huntleigh Screeners, and in breach of its own agreement with TSA, Pearson filled the screeners' positions with applicants other than the existing screeners before the Huntleigh Screeners, including plaintiffs, were given an opportunity to take Pearson's tests.

14. All Huntleigh screeners were terminated or told they would be terminated before the transition to federal screening occurred. Thereafter, the Huntleigh Screeners were tested, although most of the jobs were already filled.

15. Defendant discriminated against protected classes. Among the Huntleigh Screeners, the following statistics are available.

- a. Gender. 129 males passed, 73 males failed, 67 females passed and 93 failed.
- b. Age. The average age of those who failed was 47; precise information of the average age of those who passed is not available without discovery.
- c. Race and national origin combined with gender – 2 African-American women passed and 13 failed; 3 Asian women passed and 24 failed.

16. Many plaintiffs on disability or medical hold were denied the opportunity of either being tested or fairly tested. Those screeners who were placed on medical hold were perceived to be disabled.

17. The profile of the typical federal screener at PDX when the screeners were transferred to federal employee status was a white male under the age of 45.

18. TSA paid the Huntleigh Screener applicants who were hired less salary than paid to new employees.

19. The claims of discrimination of the individual plaintiffs are summarized on the chart attached hereto as Exhibit 1.

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20. The testing process put in place by Pearson for the Huntleigh Screeners was a pretext to accomplish discrimination against protected classes and to retaliate against incumbent screeners who complained about the process. The intention or result was to make it difficult for the Huntleigh Screeners to pass, in order to avoid new applicants who had been hired having to be replaced. The techniques used to accomplish this result included:

- a. Using unqualified personnel to administer the testing, many of whom were obtained from temporary employment agencies with no training to administer these tests;
- b. Highlighting in advance names of the Huntleigh Screeners who were to be failed;
- c. Making part of the testing process subjective;
- d. Giving the Huntleigh Screeners less time to take and complete the testing process than provided to new applicants;
- e. Testing the Huntleigh Screeners for supervisor positions and failing them, even though they had only applied for screeners positions;
- f. Telling individual Huntleigh applicants such things as:
  1. that he was too old;
  2. that the assessor saw something he did not like so the applicant failed, but applicant was not told what that was;
  3. that she failed because she was not born in this country and was of a different culture;
  4. he was disqualified for talking about a subject unrelated to the test; and
  5. that her English was not perfect even though the applicant had advanced graduate degrees from a foreign country.

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- g. asking intimidating questions which were not job related;
- h. grabbing an applicant and yelling at her, and then throwing her out the back door;
- i. pulling headphones off the head of an applicant from behind; and
- j. failing and refusing to tell applicants why they failed.

21. Pearson and TSA did a massive job of public relations, telling the public that a new elite workforce, called "the best of the best," was now on the job, and disparaging the Huntleigh employees who were not hired. This conduct made it more difficult for Huntleigh screeners to find new employment because of the stigma of being terminated and then not rehired for a similar sensitive federal job, with an implication of being incompetent, a security risk and not trustworthy, and causing each of them severe humiliation and emotional distress.

#### **D. DAMAGES**

22. Plaintiffs have suffered economic damages in lost wages and some have economic damages of medical and pharmacy bills. Plaintiffs have suffered non-economic damages of emotional distress and humiliation. The exact amount of economic and non-economic damages will be set forth after investigation and discovery.

#### **E. STATEMENT OF CLAIMS**

FOR THEIR FIRST CLAIM FOR RELIEF, the plaintiffs enumerated on Exhibit 1 hereto allege as follows:

##### **(Discrimination)**

23. The conduct of Pearson violated the employment agency sections of Title VII of the Civil Rights Act of 1969 as amended. 42 U.S.C § 2000e-2(b); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623 (b); and the Americans with Disabilities Act, 42 U.S.C. 12111(7).

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24. Plaintiffs have been required to retain attorneys for the prosecution of this action and are entitled to reasonable attorneys' fees, costs and other expenses under the discrimination statutes.

FOR THEIR SECOND CLAIM FOR RELIEF, plaintiffs allege as follows:

**(Intentional Interference with Contract)**

25. Pearson interfered with plaintiffs' agreement with TSA in that Pearson failed to provide the required preference and then devised subjective testing as an excuse for TSA not to hire plaintiffs. Alternatively, Pearson interfered with plaintiffs' prospective advantage of employment with TSA as federal screeners.

26. Pearson used the following improper means for interfering with plaintiffs' contract or prospective advantage:

- a. Pearson used subjective and unfair testing; and
- b. Pearson told TSA and the public that plaintiffs were not competent in order to conceal the fact that Pearson had failed to provide fair testing and the required preferences to plaintiffs.

27. Plaintiffs have been damaged as alleged in paragraph 22 above.

WHEREFORE, plaintiffs pray for a judgment against Pearson as follows:

1. For their first and third claims, for the economic and non-economic damages for each plaintiff in amounts to be proven at trial but at any event in excess of \$75,000, plus interest and costs per plaintiff;

2. For their second claim, for the damages plaintiffs have suffered as a result of Pearson's breach of its contract with TSA;

3. For their first claim, for their reasonable attorney's fees, costs and other expenses; and

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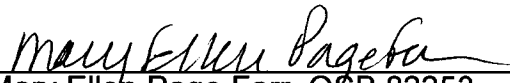
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4. For such other relief as the court deems equitable.

DATED: February 24, 2005

  
Mary Ellen Page Farr, OSB 82253  
Don S. Willner, OSB 52114  
David D. Park, OSB 80335

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| First Name      | Last Name |                 | Basis of Discrimination |     |                 |                     |              |             |
|-----------------|-----------|-----------------|-------------------------|-----|-----------------|---------------------|--------------|-------------|
|                 |           |                 | Race                    | Sex | National Origin | Age                 | Disability   | Retaliation |
| Gloria          | Aguirre   | Hispanic Female | X                       | X   | X               | X<br>DOB 04-01-61   |              |             |
| Hector          | Aguirre   | Hispanic Male   | X                       |     | X               |                     | Medical Hold |             |
| Jennifer        | Anderson  | White Female    |                         | X   |                 |                     |              |             |
| Jeffrey         | Bateman   | White Male      |                         |     |                 |                     | Disability   | X           |
| Clarence George | Beck      | White Male      |                         |     |                 | X<br>DOB 05-18-34   |              |             |
| Hanna           | Beck      | Asian Female    | X                       | X   |                 | X<br>DOB 04-19-47   |              |             |
| Emma Y.         | Bradford  | Black Female    | X                       | X   |                 | Age<br>DOB 04-22-55 |              |             |
| Don G.          | Buell     | White Male      |                         |     |                 | X<br>DOB 11-04-56   |              |             |

| First Name | Last Name |                       | Basis of Discrimination |     |                 |                   |              |             |
|------------|-----------|-----------------------|-------------------------|-----|-----------------|-------------------|--------------|-------------|
|            |           |                       | Race                    | Sex | National Origin | Age               | Disability   | Retaliation |
| Mary G.    | Coco      | White Female          |                         | X   |                 | X<br>DOB 05-18-42 |              |             |
| Ruth       | Conner    | Black Female          | X                       | X   |                 | X<br>DOB 08-14-46 |              |             |
| Shannon    | Cooper    | Hispanic/white Female | X                       | X   |                 |                   |              |             |
| Dana       | Curry     | White Female          |                         | X   |                 |                   |              |             |
| Dominic A. | Damiani   | White Male            |                         |     |                 | X<br>DOB 09-17-56 |              | X           |
| William    | Damron    | White Male            |                         |     |                 | X<br>DOB 06-25-47 | Medical Hold |             |
| Judith E.  | Detmer    | White Female          |                         | X   |                 | X<br>DOB 01-27-42 | Disability   | X           |
| Gail M.    | Dixon     | White Female          |                         | X   |                 | X<br>DOB 06-12-55 |              |             |
| Russell R. | Dooley    | White Male            |                         |     |                 | X<br>DOB 03-06-61 | Disability   |             |

| First Name  | Last Name |                          | Basis of Discrimination |     |                 |                   |              |             |
|-------------|-----------|--------------------------|-------------------------|-----|-----------------|-------------------|--------------|-------------|
|             |           |                          | Race                    | Sex | National Origin | Age               | Disability   | Retaliation |
| Karen       | Dutter    | White Female             |                         | X   |                 |                   |              | Retaliation |
| Usar        | Einert    | Asian Female             | X                       | X   | X               | X<br>DOB 01-11-52 |              |             |
| Sandra      | Espinoza  | White Female             |                         | X   |                 | X<br>DOB 04-06-46 | Medical Hold |             |
| Leroy       | Fich      | White Male               |                         |     |                 | X<br>DOB 06-23-42 |              |             |
| Amanda      | Fleming   | Black Female             | X                       | X   |                 | X<br>DOB 08-24-44 |              | X           |
| Melinda     | Gammage   | White Female             |                         | X   |                 | X<br>DOB 07-19-45 |              |             |
| Leah Nicole | Garcia    | White Female<br>Hispanic | X                       | X   |                 |                   |              | X           |
| Irena       | Gawlowicz | White Female             |                         | X   | X               | X<br>DOB 03-29-58 |              | X           |
| Nikki       | Goon      | White Female             |                         | X   |                 | X<br>DOB 03-18-57 | Disability   |             |

Exhibit 1

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| First Name  | Last Name |                                    | Basis of Discrimination |     |                 |                   |              |             |
|-------------|-----------|------------------------------------|-------------------------|-----|-----------------|-------------------|--------------|-------------|
|             |           |                                    | Race                    | Sex | National Origin | Age               | Disability   | Retaliation |
| Velma Lee   | Gunn      | White Female                       |                         | X   |                 | X<br>DOB 05-28-46 | Medical Hold |             |
| Conchita L. | Haddenham | Asian Female                       |                         | X   | X               | X<br>DOB 06-26-36 |              |             |
| Gerald      | Handegard | White Male                         |                         |     |                 | X<br>DOB 09-06-45 |              |             |
| Rachel Ann  | Hayes     | White Female                       |                         | X   |                 |                   | Disability   | X           |
| Robert J.   | Hein      | White Male                         |                         |     |                 | X<br>DOB 07-15-50 |              |             |
| Maryann V.  | Hernandez | Asian Female<br>(Pacific Islander) | X                       | X   |                 |                   |              |             |
| Josephine   | Hill      | White Female                       |                         | X   |                 | X<br>DOB 10-26-55 |              | X           |
| Sharon      | Joslin    | White Female                       |                         | X   |                 | X<br>DOB 10-14-46 | Disability   | X           |

| First Name  | Last Name    |              | Basis of Discrimination |     |                 |                   |              |             |
|-------------|--------------|--------------|-------------------------|-----|-----------------|-------------------|--------------|-------------|
|             |              |              | Race                    | Sex | National Origin | Age               | Disability   | Retaliation |
| Roger W.    | Karr         | White Male   |                         |     |                 | X<br>DOB 10-15-36 |              |             |
| Krystyna E. | Korfanty     | White Female |                         | X   | X               | X<br>DOB 07-25-53 |              |             |
| Karen       | Letcher      | White Female |                         | X   |                 | X<br>DOB 07-12-59 |              | X           |
| Barbara Ann | Lugo         | White Female |                         | X   |                 | X<br>DOB 01-03-46 |              |             |
| Faith       | Malcolm      | White Female |                         | X   |                 | X<br>DOB 05-07-46 | Disability   |             |
| Joshua      | Meisenheimer | White Male   |                         |     |                 |                   | Disability   |             |
| Dennis      | Minzghor     | White Male   |                         |     |                 | X<br>DOB 12-08-46 |              |             |
| Linda M.    | Ocampo       | White Female |                         | X   |                 | X<br>DOB 10-04-47 | Medical Hold | X           |
| Gheorge     | Onescu       | White Male   |                         |     | X               | X<br>DOB 10/25/52 |              | X           |

| First Name | Last Name |                 | Basis of Discrimination |     |                 |                   |            |             |
|------------|-----------|-----------------|-------------------------|-----|-----------------|-------------------|------------|-------------|
|            |           |                 | Race                    | Sex | National Origin | Age               | Disability | Retaliation |
| Mary D.    | Otnes     | White Female    |                         | X   |                 |                   |            | X           |
| John       | Pridemore | White Male      |                         |     |                 | X<br>DOB 11-23-35 |            | X           |
| Terry Ann  | Pullen    | White Female    |                         | X   |                 | X<br>DOB 12-20-45 | Disability |             |
| Jenina     | Ramos     | Hispanic Female | X                       | X   | X               |                   |            |             |
| Sheena     | Reis      | White Female    |                         | X   |                 |                   |            |             |
| Roberta    | Rylander  | White Female    |                         | X   |                 | X<br>DOB 08-18-45 |            | X           |
| Belem      | Shankle   | White Female    |                         | X   |                 | X<br>DOB 05-14-51 |            |             |
| Karen      | Sharr     | White Female    |                         | X   |                 |                   |            | X           |
| Tricia     | Stith     | White Female    |                         | X   |                 |                   |            |             |

| First Name | Last Name   |              | Basis of Discrimination |     |                 |                   |            |             |
|------------|-------------|--------------|-------------------------|-----|-----------------|-------------------|------------|-------------|
|            |             |              | Race                    | Sex | National Origin | Age               | Disability | Retaliation |
| Janise     | Stoltz      | White Female |                         | X   |                 | X<br>04-23-39     |            | X           |
| Stanley    | Strong      | White Male   |                         |     |                 |                   |            | X           |
| Robert W.  | Tappert     | White Male   |                         |     |                 | X<br>DOB 05-01-51 | Disability |             |
| Ivana      | Tarabochia  | White Female |                         | X   | X               |                   |            | X           |
| Dianna     | Thorkildson | White Female |                         | X   |                 |                   |            |             |
| Diana K.   | Wadley      | White Female |                         | X   |                 | X<br>DOB 07-25-45 | Disability | X           |
| Natalia    | Zhikareva   | White Female |                         | X   | X               | X<br>DOB 09-30-54 |            | X           |

### **CERTIFICATE OF SERVICE**

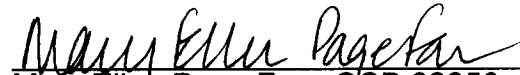
I hereby certify that I served the foregoing **SIXTH AMENDED COMPLAINT** on the following named persons on the date indicated below by:

- ☒ mailing the document, first class mail, postage prepaid
- ☐ hand delivering the document
- ☒ sending the document by facsimile transmission
- ☐ overnight delivery

to the persons named below, contained in a sealed envelope, addressed as follows:

Mr. Louis A. Santiago  
Ms. Courtney Dippel  
Holland + Knight  
2300 US Bancorp Tower  
111 S.W. Fifth Ave.  
Portland, Oregon 97204  
Facsimile: 503-241-8014

DATED: February 24, 2005

  
\_\_\_\_\_  
Mary Ellen Page Farr, OSB 82253  
Attorney for Plaintiff