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UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

U.S. EQUAL EMPLOYMENT:

OPPORTUNITY COMMISSION,

Civil Action No.

Plaintiff,

:

v. : COMPLAINT

AND JURY TRIAL DEMAND

DIVERSE LYNX, LLC

:

Defendant.

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NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act (ADEA) to correct an unlawful employment action on the basis of age and to provide appropriate relief to Kadambi Vijaisimh. As alleged with greater particularity below, Defendant Diverse Lynx, LLC ("Defendant"), an employment agency, failed or refused to refer Mr. Vijaisimh for employment on the basis of age.

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 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the "ADEA"),

which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217.

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

PARTIES

- 3. Plaintiff, the United States Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation, and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.
- 4. At all relevant times, Defendant has been a New Jersey corporation doing business in the State of New Jersey, with its headquarters and primary location in Princeton, and has been an employment agency within the meaning of Section 11(c) of the ADEA, 29 U.S.C. § 630(c).

CONCILIATION

5. Prior to institution of this lawsuit, the Commission attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

STATEMENT OF CLAIMS

6. Since at least in or around May 2014, Defendant has engaged in unlawful employment practices, in violation of Section 4 of the ADEA, 29 U.S.C. § 623(b):

- a. In or around May of 2014, Mr. Vijaisimh posted his resume on the website maintained by Defendant seeking job applicants.
- b. At or around that time Defendant sought to identify and refer a person for an information technology project management job ("Job Opportunity") at another company.
- Soon after Mr. Vijaisimh posted his resume on Defendant's website,
 Defendant contacted him about the Job Opportunity.
- d. Mr. Vijaisimh had substantial information technology project management experience and was qualified for the Job Opportunity.
- e. Defendant and Mr. Vijaisimh discussed the details of the Job Opportunity, including salary and other terms of employment.
- f. The day after the last of those discussions, some of which occurred by email, Defendant sent an email to Mr. Vijaisimh which stated:

Thanks for your reply. I check the details of [sic] you. And you [sic] born in 1945. So I discussed with the client side. Age will matter. So that's why I can't [sic] be able to submit your profile to client side.

- g. After sending Mr. Vijaisimh the above-referenced email, Defendant failed and/or refused to refer Mr. Vijaisimh for the Job Opportunity because of his age (40 or older).
- 7. The effect of the practices complained of above has been to deprive Mr. Vijaisimh of equal employment opportunities and otherwise adversely affect his status as an employee or an applicant for employment.
- 8. The unlawful practices complained of above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

PRAYER FOR RELIEF

Therefore, the Commission respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in practices which discriminate on the basis of age.
- B. Order Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, to institute and carry out policies, practices, and programs which provide equal opportunities for employees and job applicants 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices.
- C. Order Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, to pay appropriate monetary relief, including back wages in an amount to be determined at trial, an equal sum as liquidated damages, and prejudgment interest to Mr. Vijaisimh.
- D. Grant such further relief as the Court deems necessary and proper in the public interest.
 - E. Award the Commission its costs in this action.

JURY TRIAL DEMAND

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

Dated: May 8, 2017 Newark, New Jersey

Respectfully submitted,

JAMES L. LEE Deputy General Counsel

GWENDOLYN Y. REAMS Associate General Counsel

U.S. Equal Employment Opportunity Commission 131 M Street, N.E. Washington, D.C. 20507

JUSTIN MULAIRE Acting Regional Attorney

/s/ Sebastian Riccardi
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JS 44 (Rev. 07/16) Case 3:17-cv-03220-MAS-TJBy Pocument 1 Stiled 05/08/17 Page 6 of 7 PageID: 6

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS			DEFENDANT	S	
U.S. Equal Employment Opportunity Commission			Diverse, Lynx, LLC		
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, Email and Telephone Number) See attached			County of Residence of First Listed Defendant Mercer (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)		
II. BASIS OF JURISDI	ICTION (Place an "X" in O	One Box Only)	 I. CITIZENSHIP OF I	PRINCIPAL PARTIES	(Place an "X" in One Box for Plaintij
U.S. Government Plaintiff	☐ 3 Federal Question (U.S. Government Not a Party)		(For Diversity Cases Only) Citizen of This State	PTF DEF □ 1 □ 1 Incorporated or Pr of Business In T	and One Box for Defendant) PTF DEF rincipal Place □ 4 □ 4 This State
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizensh.)	ip of Parties in Item III)	Citizen of Another State	☐ 2 ☐ 2 Incorporated and I of Business In .	
IV. NATURE OF SUIT	C (Place an "Y" in One Roy Or	dy)	Citizen or Subject of a Foreign Country	□ 3 □ 3 Foreign Nation	□ 6 □ 6
CONTRACT		DRTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
□ 110 Insurance □ 120 Marine □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment ∞ Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted Student Loans (Excludes Veterans) □ 153 Recovery of Overpayment of Veteran's Benefits □ 160 Stockholders' Suits □ 190 Other Contract □ 195 Contract Product Liability □ 196 Franchise REAL PROPERTY □ 210 Land Condemnation □ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Torts to Land □ 245 Tort Product Liability □ 290 All Other Real Property	□ 330 Federal Employers' Liability □ 340 Marine □ 345 Marine Product Liability □ 350 Motor Vehicle □ 355 Motor Vehicle □ 700 Other Personal Injury □ 362 Personal Injury - Medical Malpractice CIVIL RIGHTS □ 440 Other Civil Rights □ 441 Voting ★ 442 Employment □ 443 Housing/ Accommodations □ 445 Amer. w/Disabilities - Employment □ 446 Amer. w/Disabilities - Other □ 448 Education	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage Product Liability PRISONER PETITIONS Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	□ 625 Drug Related Seizure of Property 21 USC 881 □ 690 Other □ 710 Fair Labor Standards Act □ 720 Labor/Management Relations □ 740 Railway Labor Act □ 751 Family and Medical Leave Act □ 790 Other Labor Litigation □ 791 Employee Retirement Income Security Act ■ IMMIGRATION □ 462 Naturalization Application □ 465 Other Immigration Actions	□ 422 Appeal 28 USC 158 □ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS □ 820 Copyrights □ 830 Patent □ 840 Trademark SOCIAL SECURITY □ 861 HIA (1395ff) □ 862 Black Lung (923) □ 863 DIWC/DIWW (405(g)) □ 864 SSID Title XVI □ 865 RSI (405(g)) FEDERAL TAX SUITS □ 870 Taxes (U.S. Plaintiff or Defendant) □ 871 IRS—Third Party 26 USC 7609	□ 375 False Claims Act □ 376 Qui Tam (31 USC 3729(a)) □ 400 State Reapportionment □ 410 Antitrust □ 430 Banks and Banking □ 450 Commerce □ 460 Deportation □ 470 Racketeer Influenced and Corrupt Organizations □ 480 Consumer Credit □ 490 Cable/Sat TV □ 850 Securities/Commodities/ Exchange □ 890 Other Statutory Actions □ 891 Agricultural Acts □ 893 Environmental Matters □ 895 Freedom of Information Act □ 896 Arbitration □ 899 Administrative Procedure Act/Review or Appeal of Agency Decision □ 950 Constitutionality of State Statutes
	moved from	Appellate Court	(specif	ner District Litigation fy) Transfer	
VI. CAUSE OF ACTIO	I 29 U.S.C. Section	n 626(b)	lling (Do not cite jurisdictional st	atutes unless diversity):	
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS UNDER RULE 2	IS A CLASS ACTION 3, F.R.Cv.P.	DEMAND \$	CHECK YES only JURY DEMAND	if demanded in complaint: Yes No
VIII. RELATED CASI IF ANY	E(S) (See instructions):	JUDGE		DOCKET NUMBER	
DATE 05/08/2017 FOR OFFICE USE ONLY		signature of attor s/ Sebastian Ricc			
	MOUNT	APPLYING IFP	JUDGE	MAG. JU	DGE

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