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US DEPT OF LABOR
ADMIN LAW JUDGES
WASHINGTON, DC

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**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

AMERQUAL GROUP, LLC,

Defendant.

CASE NO. 2016 OFC 2

ADMINISTRATIVE COMPLAINT

Plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor, (hereinafter "OFCCP"), by its attorneys, alleges:

1. This action is brought by OFCCP to enforce the contractual obligations imposed by Executive Order No. 11246 (30 Fed. Reg. 12319), as amended by Executive Order No. 11375 (32 Fed. Reg. 14303), and Executive Order 12086 (43 Fed. Reg. 46501) (hereinafter "Executive Order 11246" or the "Executive Order"), and the rules and regulations issued pursuant thereto.

2. Jurisdiction over this action exists under Sections 208 and 209 of Executive Order 11246, 41 CFR 60-1.26 and 41 CFR Part 60-30.

3. Defendant, AmeriQual Group, LLC, located in Evansville, Indiana ("Defendant") specializes in the production, packaging, assembly, and distribution of shelf-stable products to private companies, the U.S. Department of Defense, and several other Government agencies.

4. At all times pertinent hereto, AmeriQual Group, LLC was an Indiana limited liability company with two facilities in Evansville, Indiana. One facility, AmeriQual Foods, is, and at all times pertinent hereto, was located at 18200 Highway 41 North, Evansville, Indiana 47725. The other facility, AmeriQual Packaging, is, and at all times pertinent hereto, was located at 225 West Morgan Avenue, Evansville, Indiana 47710.

5. At all times pertinent hereto, AmeriQual has been a Government contractor or subcontractor within the meaning of Executive Order 11246, and is now, and at all pertinent times has been, subject to the contractual obligations imposed on Government contractors and subcontractors by Executive Order 11246, and the implementing regulations issued thereunder.

6. The regulations issued pursuant to Executive Order 11246 provide at 41 CFR 60-1.40 and 41 CFR 60-2.1 that each Government contractor with 50 or more employees and a contract of \$50,000 or more must develop a written affirmative action program for each of its establishments in accordance with requirements set forth in 41 CFR Part 60-2.

7. At all times pertinent hereto, AmeriQual has had 50 or more employees.

8. At all times pertinent hereto, AmeriQual had a Government contract or subcontract of \$50,000 or more. Specifically, since at least January 2010 through the present, AmeriQual has been a party to federal government contracts worth over \$500 million.

9. At all times pertinent hereto, AmeriQual has been required to develop, maintain and implement a written affirmative action program for each of its establishments in accordance with the requirements set forth in 41 CFR Part 60-2.

10. Pursuant to Section 202 of Executive Order 11246 and 41 CFR 60.1-4, AmeriQual has agreed not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and has agreed to take affirmative action to

ensure that applicants and employees are afforded employment opportunities without regard to their race, color, religion, sex or national origin.

11. The regulations issued pursuant to Executive Order 11246 provide at 41 CFR 60-2.1(b) that, in order for a contractor to be in compliance with the Executive Order, it must remedy any discrimination against members of an affected class, and must provide relief to such affected class members to remedy the effects of past discrimination.

12. AmeriQual was selected for a compliance evaluation, and OFCCP conducted a compliance review of the contractor's AmeriQual Foods facility located at 18200 Highway 41 North, Evansville, Indiana 47725 beginning on October 18, 2012, with the issuance of a Scheduling letter.

13. As a result of this compliance review, OFCCP found that:

a) Beginning from at least November 18, 2010 and going forward to the present, AmeriQual utilized and, on information and belief, continues to utilize a hiring process and selection procedures that discriminates against male applicants for entry-level Production 1 Job Title positions on the basis of their gender. OFCCP determined that, in the absence of discrimination, at least 27 additional men from a class of 237 qualified male applicants would have been hired during the period of November 18, 2010 through September 26, 2011. Specifically, during this time period, from a qualified pool of 175 female applicants, AmeriQual extended job offers to 74 females (42.3%) whereas, from a qualified pool of 284 male applicants, AmeriQual extended job offers to only 47 males (16.5%). The adverse impact calculated by OFCCP exceeds six (6) standard deviations.

b) AmeriQual failed to supply OFCCP with complete application records for Production 1 applicants as required by 41 C.F.R. § 60-1.12(c)(2).

c) AmeriQual failed to preserve complete and accurate records of Production 1 applications as required by 41 C.F.R. § 60-1.12(e).

d) AmeriQual failed to ensure that work areas provided for employees with the Production 1 Job Title position were provided in such a manner that segregation on the basis of sex cannot result as required by 41 C.F.R. § 60-1.8.

e) AmeriQual failed to evaluate the adverse impact demonstrated in its adverse impact analysis from 2009—2011 as required by 41 C.F.R. § 60-3.4(c).

f) AmeriQual failed to evaluate its selection process's individual components after finding that the total selection process had an adverse impact in violation of 41 C.F.R. § 60-3.4(c)(1).

14. While the compliance review was being conducted, the OFCCP discovered that AmeriQual had created and/or was creating after the fact reasons for individual non-selection decisions that had been made during the review period by adding newly created records such as post-it notes in response to OFCCP's evaluation. These newly created records were made years after the hiring decisions had been made. Initially, AmeriQual failed to provide the original post-it notes that had been attached to interview forms or employment applications when OFCCP first requested employment records. When OFCCP issued a Pre-Determination Notice (PDN), AmeriQual then provided the original post-it notes as well as the newly created post-it notes and other documents. The "two sets" of post-it notes and other documents were commingled and AmeriQual could not provide a means to distinguish between the "two sets." Many of the post-it notes provided differing dispositions than the original applicant flow dispositions that AmeriQual had provided. Moreover, on information and belief, it appears that the "second set" of post-it notes and other documents provided in response to the PDN only critiqued male

applicants who had not been hired. A complete set of notes was not provided until OFCCP went onsite to manually retrieve them.

15. In addition, OFCCP found that AmeriQual generally hired and placed females into table inspector jobs that operated in the middle of the production line where a majority of the hiring occurred and males into loader and utility positions that operated at the front and back ends of the production line where less hiring occurred.

16. The acts and practices described in paragraphs 13(a)-(f), 14 and 15 above violate Executive Order 11246 and the regulations promulgated thereunder, and violate the Defendant's contractual obligations to the Federal Government.

17. All procedural requirements prior to the filing of this Complaint have been met. On September 17, 2014, OFCCP issued to AmeriQual a notice to show cause why enforcement proceedings should not be initiated based upon its findings of Defendant's violations of Executive Order 11246. Prior to issuance of the show cause notice, OFCCP attempted to secure voluntary compliance through means of conciliation and persuasion. These efforts were unsuccessful. In addition, prior to filing this complaint, the Office of the Solicitor also attempted to secure voluntary compliance through means of conciliation and persuasion. These efforts were similarly unsuccessful.

18. Unless restrained by an Administrative Order, AmeriQual will continue to violate the obligations imposed upon it by Executive Order 11246 and the rules and regulations issued pursuant thereto.

WHEREFORE, Plaintiff prays for a recommended decision and order pursuant to 41 CFR Part 60-30, finding that AmeriQual's manipulation of employment records is sanctionable misconduct requiring the imposition of an adverse inference, and providing the following relief:

(1) an order permanently enjoining Defendant, AmeriQual and its officers, agents, servants, successors, divisions and subsidiaries and those persons in active concert or participation with them from violating the Executive Order; (2) an order cancelling all of Defendant AmeriQual's Government contracts and subcontracts and those of its officers, agents, successors, divisions, subsidiaries and those persons in active concert or participation with them, declaring said persons and entities ineligible for the extension or modification of any such existing Government contract or subcontract; (3) an order debarring Defendant AmeriQual and its officers, agents, servants, successors, divisions and subsidiaries and those persons in active concert or participation with them, from entering into future Government contracts and subcontracts until such time thereafter as Defendant has satisfied the Office of Federal Contract Compliance Programs that Defendant AmeriQual has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of the Executive Order and the regulations promulgated thereunder; (4) an order requiring Defendant to provide complete relief to the affected class of male applicants including lost wages, interest, and all other benefits of employment resulting from its discriminatory failure to hire them, including, but not limited to, retroactive seniority; and (5) an order requiring Defendant to hire men from the affected class list.

Plaintiff further prays for such other relief as justice may require.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

DOROTHY J. STEPHENS
Counsel for Civil Rights

Catherine Homolka

CATHERINE L. HOMOLKA
Trial Attorney

DATED: 12-7-15

Attorneys for Plaintiffs

U.S. Dept of Labor
Office of the Solicitor
230 South Dearborn Avenue
Room 844
Chicago, Illinois 60604
(312) 353-4995
(312) 353-5698 Fax



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Administrative Complaint, captioned *Office of Federal Contract Compliance Programs, United States Department of Labor v. AmeriQual Foods, LLC* was mailed prepaid first class mail this 7th day of December,

2015 to:

Mary Lee Schiff, Esq.
Ziemer, Stayman, Weitzel & Shoulders, LLP
20 NW First Street, Ninth Floor, PO Box 916
Evansville, IN 47706

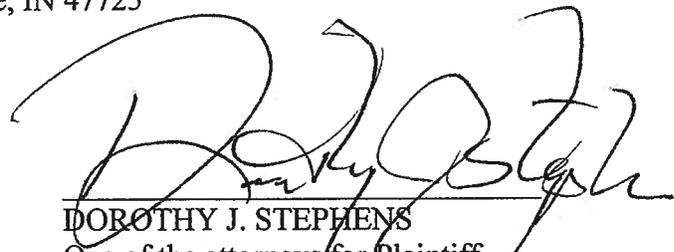
Joshua S. Roffman, Esq.
Alissa A. Horvitz, Esq.
Roffman Horvitz, PLC
8300 Greensboro Drive, Suite 800
McLean, VA 22102



Agent for Service of Process

And

Mirsada Salihovic, Human Resources Director
AmeriQual Foods, LLC
18200 Highway 41 North
Evansville, IN 47725


DOROTHY J. STEPHENS
One of the attorneys for Plaintiff