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19 Attorneys for State Defendants

20
 21 **IN THE UNITED STATES DISTRICT COURT**
 22 **FOR THE DISTRICT OF ARIZONA**

23 Michael R. Robinson, MSW,
 24 Plaintiff,

25 vs.

26 Centene Corporation/Nursewise; Shannon
 M. Anderson, Human Resources Manager;

Case No. CV2006-1946-PHX-MHM

**JOINT PROPOSED CASE
 MANAGEMENT PLAN**

1 John & Jane Does 1-50; Debra Rinaudo,
2 Exc. Dir.; State of Arizona Board of
3 Behavioral Health Examiners; Amy
4 Shelton, Dep. Dir.; Cedric Davis, Bd.
5 Chair; Steve Legendre, Bd. Member; Jose
6 Herrera, Bd. Member; Ruth Lee, Bd.
7 Member; Sharon "Del" Worley, Bd.
8 Member; Dan Wright, Bd. Member; Laura
9 Waterman, Bd. Member,

10 Defendants.

11 Pursuant to the Court's Order Setting Rule 16 Scheduling Conference dated
12 September 13, 2007, the parties submit the following Proposed Case Management
13 Plan.

14 **1. Nature of the Case:**

15 **Plaintiff's Statement:**

16 Plaintiff alleges upon personal knowledge and upon information and belief in
17 late July Plaintiff applied for employment with Centene Corp./Nursewise (hereafter
18 Centene) Plaintiff's resume was reviewed and Plaintiff was pre-screen via this entity
19 corporate standards and forwarded to the Phoenix subsidiary. On August 16, 2005 I
20 was notified I was not hired for the position of telephonic counselor with Centene
21 Corporation/Nursewise. I believe that I have been discriminated against due to my
22 sex, race and my race, African American, in violation of Title VII of the Civil Rights
23 Act of 1964, as amended, in that: I believe that I was qualified for the position. I
24 believe the company [Centene] systematically fails to hire black males in executive
25 and professional positions. On August 16, 2005, Defendant stated that they "...had
26 decided to pursue other candidates for this opening." *Plaintiff believes at that time
and continuing that defendant presented a letter to Plaintiff as a pretext for it
discriminatory practices.* Plaintiff filed a complaint with EEOC in January of 2006,
against Centene. *During the course of EEOC investigation, Defendant Centene*

1 *disclosed another alleged reason for Centene “truthful reason,” for not employing*
2 *Plaintiff based upon alleged “information received from the State of Arizona Board of*
3 *Behavioral Health Examiners,” thus the reason the Executive Director and members*
4 *of the Bd. are named as individual U.S. citizens in this lawsuit. The “alleged*
5 *information supplied by the Bd. to Centene is not the only time BBBHE has distorted*
6 *and presented false information about Plaintiff’s employment history. On July 15,*
7 *2006, it came to Plaintiff’s attention that BBHE had filed with the Secretary of the*
8 *U.S. Department of health and Human Services (HHS) information which they knew*
9 *is knowingly false and “legally insufficient.” As recent as of July 24, 2006 in response*
10 *to Plaintiff’s Request for Production in US District Court Case No. CV 05 1541 PHX-*
11 *EHC, counsel for the Bd. state that they are not in possession of any inquires or*
12 *responses to verification of request relating to Plaintiff.*

13 Discovery will be required in order to ascertain information stated by Centene
14 to EEOC, (*EEOC did not report what format Centene provided it with written*
15 *documentation/records or merely an oral statement*) EEOC inquiry to Plaintiff based
16 on alleged statements made by Centene and the Bd.’s violation of Plaintiff’s Civil
17 Rights under multiple statutes cited above is in addition to the willful violation of
18 Plaintiff’s Civil Rights under A.R.S. §12-902 (2) and 42 U.S.C. § 2000 Civil Rights
19 Title VII of the Civil Rights Act of 1984, s amended, § 1981, § 1983, §1985. *It is*
20 *Plaintiff’s allegation that Attorney Rinaudo, Executive of the Bd. and individual*
21 *members of the Bd. have failed to maintain custody and control of the information*
22 *they provide to other’s e.g. Centene (based upon their alleged statement to EEOC) as*
23 *an entity and I am being retaliated against for having filed a previous charge of*
24 *discrimination, testifying, and/or participating, in violation of Title VII of the Civil*
25 *Rights Act of 1964, as amended and 42 U.S.C. § 1983. The Bd. has distorted and*
26

1 misrepresented Plaintiff's employment personnel experience, work experience and
2 history in violation of Plaintiff's Civil Rights.

3 **Defendants' Statement:**

4 This is a wrongful employment, failure-to-hire case. Plaintiff alleges that he
5 applied for employment with Defendant Centene/Nursewise and that he was denied
6 employment because of his sex and race, in violation of federal law. Plaintiff was not
7 qualified for the position for which he applied. Plaintiff has also sued members of the
8 Arizona Board of Behavior Health Examiners ("BBHE"), contending that information
9 provided to Defendant Centene/Nursewise about his licensure status was somehow
10 improper.

11 **2. Elements of Proof Necessary for Each Count of the Complaint and Each**
12 **Affirmative Defense:**

13 **Plaintiff's Claims:**

14 Plaintiff has offered proof a prima facie case of discrimination in that (1)
15 plaintiff is a member of a protected class. (2) I believe that I was qualified for the
16 position. I believe the company [Centene] systematically fails to hire black males in
17 executive and professional positions. (3) Centene's letter to plaintiff was a pretext of
18 Centene's discriminatory treatment and practices in that discriminatory motivated
19 treatment is not justified by an employer's offering of a pretext, meaning an
20 explanation which does not describe the actual reasons for a decision *Mister v. Illinois*
21 *Cent. Gulf R. Co.*, 832 F2d 1427 (7th Cir. 1987); The fact that Centene disclosed to
22 EEOC another reason for Centene decision which is not stated in the letter addressed
23 to plaintiff if further proof that Centene's asserted nondiscriminatory reason for the
24 challenged employment action is actually a pretext. *Dugan v. Albemarie County*
25 *School Bd.*, 293 F.3d 716 (4th Cir. 2002) Thus plaintiff does believe he as rejected
26 although he as qualified, since Centene did not disclose Plaintiff's alleged

1 disqualification in the letter sent to plaintiff by Centene. (4) Based upon Centene's
2 letter to plaintiff around mid-August 2005, then Centene's secondly alleged reason for
3 Centene's decision to EEOC in May of 2006 (8 months later) discovery is required in
4 order to ascertain what action was taken by Centene and the position plaintiff applied
5 for and when in fact during what time period in the presiding 8 months that the
6 position filled as is currently being alleged by Centene.

7 Title VII of the Civil Rights Act of 1964 prohibits not only overt
8 discrimination, but also practices that are fair in form but discriminatory in operation.
9 *Griggs v. Duke power Co.*, 401 U.S. 424, 91 S. Ct. 849, 28L. Ed. 2d 158 (1971) Title
10 VII codifies the disparate impact theory by permitting challenges to employment
11 practices that cause disparate impact on the basis of race. religion, nation origin, or
12 sex, and that are not job-related for the position in question and consistent with
13 business necessity Title VII prohibits employment practices which that are facially
14 neutral, but which have a disparate impact because they fall more harshly on a
15 protected group than on other groups and cannot be justified *Connecticut V. Teal*, 457
16 U.S. 424, 91 s. Ct., 848, 8 L. Ed, 2 130 91982); *Pullman-Standard v. Swint*, 456 U.S.
17 273, 102 s. Ct. 1781, 72 L.Ed. 2d 66, 33 Fed.R. Serv. 2d 1501 (1982) *Malave v.*
18 *Potter*, 320 F.3d 321, 60 Fed. R. Evid. Serv. 765 92d Cir. 2003)

19 Centene's systematically fails to hire black males in executive and professional
20 positions even if it appears to be neutral on its fact in fact has a disparate impact and
21 affect on a protected class. *Shuford v. Alabama State Bd. of Educ.*, 968 F. Supp. 1486,
22 119 Ed. Law Rep. 985 (M.D. Ala. 1997)

23 **Defendant Centene/Nursewise's Affirmative Defenses:**

24 Plaintiff's Complaint does not make clear which claims he is asserting against
25 which defendants. It appears that Plaintiff is asserting a Title VII claim against
26 Defendant Centene/Nursewise on the basis of both race and sex discrimination.

1 In a Title VII discrimination lawsuit, the Plaintiff carries the initial burden of
2 establishing a *prima facie* case. To meet this burden in a failure-to-hire case, a
3 Plaintiff must show by a preponderance of the evidence that he: (1) belongs to a
4 racial minority group or a specific gender; (2) applied for and was qualified for a job
5 that the employer was seeking to fill; (3) was rejected despite being qualified; and (4)
6 after the rejection, the position remained open and the employer continued to seek
7 applications from persons with similar qualifications. *McDonnell Douglas Corp. v.*
8 *Green*, 411 U.S. 792 (1973). Because he was not qualified for the job that Centene
9 was seeking to fill, Plaintiff cannot establish the second and third elements of his
10 *prima facie* case.

11 Even assuming Plaintiff can establish a *prima facie* case, Defendant
12 Centene/Nursewise had a legitimate, non-discriminatory reason for his termination.
13 Defendant's articulation of a legitimate, non-discriminatory reason for the adverse
14 employment action rebuts the presumption raised by the *prima facie* case. *See St.*
15 *Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506-07 (1993). The burden then shifts to
16 Plaintiff to demonstrate that the proffered reason was not the true reason, or pretext,
17 for the employment decision, which he cannot do. *See id.*

18 It is unclear from Plaintiff's complaint what claims he is asserting against
19 Defendant Centene/Nursewise. To the extent that he is asserting claims that exceed
20 the scope of his EEOC charge, these claims are barred by the doctrines of waiver,
21 estoppel, and failure to exhaust administrative remedies.

22 **State Defendants' Affirmative Defenses:**

23 Plaintiff has filed suit asserting claims of race discrimination pursuant to 42
24 U.S.C. §§ 1981, 1983 and 1985, as well as under Title VII, 42 U.S.C. § 2000e, *et seq.*

25 Plaintiff's Title VII claim fails as a matter of law because Plaintiff was never
26 an employee of the State of Arizona or any of the other State Defendants. It is well-

1 settled that Title VII, by its own terms, does not apply to professional licensing boards
2 like BBHE. *See, e.g., Haddock v. Bd. of Dental Examiners*, 777 F.2d 462 (9th Cir.
3 1985) (Board of Dental Examiners in neither “employer,” “employment agency,” nor
4 “labor organization” within meaning of the Act).

5 Title VII defines “employer” as “a person engaged in an industry affecting
6 commerce who has fifteen or more employees for each working day in each of twenty
7 or more calendar weeks in the current or preceding calendar year, and any agent of
8 such a person. . . .” 42 U.S.C. § 2000e(b). In its licensing role, the BBHE neither
9 pays wages nor engages the services of applicants. Moreover, there has never been an
10 employer-employee relationship between Plaintiff and State Defendants.

11 Accordingly, Plaintiff cannot maintain a Title VII claim against BBHE or its
12 members. *See Haddock*, 777 F.2d at 464.

13 To find “purposeful discrimination” under § 1981—like “intentional
14 discrimination” under the Title VII disparate treatment theory—the Court must
15 determine:

16 Whether the plaintiff has proven by a preponderance of
17 evidence facts from which the court must infer, absent rebuttal,
18 that the defendant was more likely than not motivated by a
19 discriminatory animus. Under both statutes, the court must
20 make a sensitive inquiry into the direct and circumstantial
evidence of discrimination offered by the plaintiff in order to
determine if the facts so proved allow a legally permissible
inference of discriminatory intent.

21 *Id.* A prima facie case of intentional discrimination may be established under § 1981
22 upon proof of facts that would establish a prima facie case of disparate treatment
23 under Title VII. *Id.* at 539. As noted above in Defendant Centene/Nursewise’s Title
24 VII discussion, Plaintiff cannot establish a *prima facie* case.

1 Plaintiff's § 1983 claim is not well-defined, but BBHE is entitled to qualified
2 immunity for Plaintiff's § 1983 claim because he cannot show a deprivation of his
3 constitutional rights.

4 Finally, in order to establish a § 1985 claim, Plaintiff must show: (1) a
5 conspiracy; (2) for the purpose of depriving a person of the equal protection of the
6 laws; (3) an act in furtherance of the conspiracy; (4) whereby a person is either
7 injured in his person or property or deprived of a right or privilege of a United States
8 citizen. *Mustafa v. Clark County Sch. Dist.*, 157 F.3d 1169, 1181 (9th Cir. 1998).

9 Plaintiff cannot present evidence to satisfy any one of these four prongs.

10 **3. Factual and Legal Issues Genuinely in Dispute:**

11 **Plaintiff**

- 12 • Was Defendant letter of mid-August 2005 a pretext of it's
13 discriminatory reason/practice since Centene neither discloses or
14 described Centene alleged reason stated 8 months later to EEOC.
- 15 • As recent as of July 24, 2006 in response to Plaintiff's Request for
16 Production in US District Court Case No. CV 05 1541 PHX-EHC,
17 counsel for the Bd. state that they are not in possession of any inquires
18 or responses to verification of request relating to Plaintiff.
- 19 • Have individual members of the Bd. and SWCC violated Plaintiff's
20 Civil Rights under multiple statutes in violation of Plaintiff's Civil
21 Rights under A.R.S. §12-902 (2) and 42 U.S.C. § 2000 Civil Rights
22 Title VII of the Civil Rights Act of 1984, s amended, § 1981, § 1983,
23 §1985.
- 24 • It is Plaintiff's allegation that Attorney Rinaudo, Executive of the Bd.
25 and individual members of the Bd. have failed to maintain custody and
26 control of the information they provide to other's e.g. Centene (based

1 upon their alleged statement to EEOC) as an entity and I am being
2 retaliated against for having filed a previous charge of discrimination,
3 testifying, and/or participating, in violation of Title VII of the Civil
4 Rights Act of 1964, as amended and 42 U.S.C. § 1983. The Bd. has
5 distorted and misrepresented Plaintiff's employment personnel
6 experience, work experience and history in violation of Plaintiff's Civil
7 Rights.

- 8 • Is the hiring process employed by Centene itself discriminatory.
- 9 • A statistical analysis of the applicant flow for the category/or categories
10 is necessary.
- 11 • What information and data is evidence by an examination and review of
12 African American males in proportion to their representation in the
13 general labor market among both applicants and those hired for
14 employment by Centene.
- 15 • What are the judgmental criteria utilized by Centene for selecting from
16 among various applicants?
- 17 • Does the administration of the hiring process employed by Centene tend
18 to discourage protected classes?

19 **Defendants**

- 20 • Whether Plaintiff has valid claims against the Defendants in this case;
- 21 • Whether Plaintiff was denied employment for improper reasons or for
22 legitimate, non-discriminatory reasons;
- 23 • Whether Plaintiff has suffered any damages; and
- 24 • Whether Plaintiff has mitigated his damages.

1 **4. Jurisdictional Basis of the Case:**

2 This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
3 1331 (federal question jurisdiction) and 28 U.S.C. § 1343, as Plaintiff has alleged
4 violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, 42
5 U.S.C. § 1981, and other laws of the United States.

6 **5. Parties, if any, Which Have Not Been Served, As Well As Parties Which**
7 **Have Not Yet Filed an Answer or Other Appearance:**

8 None.

9 **6. Whether There Are Dispositive or Partially Dispositive Issues to be**
10 **Decided by Pretrial Motions, And the Legal Issues About Which Any**
11 **Pretrial Motions are Contemplated:**

12 Defendant Centene/Nursewise intends to file a motion for summary judgment
13 on the grounds that Plaintiff has failed to state a *prima facie* Title VII case and
14 Plaintiff lacks evidence refuting Defendant Centene/Nursewise's legitimate
15 explanation for not hiring Plaintiff for a position for which he was not qualified. *See*
16 *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *see also Wallis v. J.R.*
Simplot Co., 26 F.3d 885, 890 (9th Cir. 1994).

17 State Defendants also intend to file a motion for summary judgment based on
18 the grounds stated above in their affirmative defenses.

19 **7. Whether the Case is Suitable For Reference to Arbitration, to a Special**
20 **Master, or to a United States Magistrate Judge for all Further**
21 **Proceedings:**

22 Plaintiff is agreeable to arbitration. Defendants do not believe the case is
23 suitable for reference to arbitration, a special master, or a Magistrate Judge at this
24 time.

25 **8. Status of Related Cases Pending Before Other Judges of This Court Or**
26 **Before Other Courts:**

There are no related cases.

1 **9. Statement of When Initial Disclosures Were Made or Will be Made:**

2 The parties will exchange initial disclosures on **October 26, 2007.**

3 **10. Proposed Deadlines For:**

4 a. Filing motions to amend pleadings and motions to join additional parties:

5 **November 19, 2007.**

6 b. Discovery cutoff: **May 30, 2008.**

7 c. Last day to file dispositive motions: **July 31, 2008.**

8 d. Disclosure of expert testimony by under Rule 26(a)(2), Fed. R. Civ. P.:

9 Plaintiff: **December 5, 2007.**

10 Defendants: **February 5, 2008.**

11 **11. The Scope of Discovery and Whether Discovery Should be Limited to or**
12 **Focused on Particular Issues:**

13 The parties have no issues to raise at this time.

14 **12. The Estimated Length of Trial, and Any Suggestions for Shortening Trial:**

15 The parties are uncertain at this point as to the length of any trial, but their best
16 estimate is 5 trial days. The parties have no suggestions at this time for shortening
17 trial.

18 **13. Whether a Jury Trial Has Been Requested and Whether the Request for a**
19 **Jury Trial is Contested:**

20 Plaintiff requested a jury trial and the request is not contested.

21 **14. The Prospects of Settlement, Including any Request to have a Settlement**
22 **Conference Before Another United States District Court Judge or**
23 **Magistrate Judge, or other Request of the Court for Assistance in**
24 **Settlement Efforts:**

25 The parties will continue considering these options as the case progresses.

26 **15. In Class Actions, the Proposed Dates for Class Certification Proceedings**
and Other Class Management issues:

Not applicable.

1 **16. Whether any Unusual, Difficult, or Complex Problems or Issues Exist**
2 **Which Would Require that this Case be Placed on the Complex Track for**
3 **Case Management Purposes:**

4 None.

5 **17. Any Other Matters Which Counsel Feel Will Aid the Court in Resolving**
6 **This Dispute in a Just, Speedy, and Inexpensive Manner:**

7 None.

8 DATED this 9th day of October, 2007.

9 s/ Michael R. Robinson
10 2930 W. Camelback #143
11 Phoenix, Arizona 85017-3301
12 Plaintiff

13 TERRY GODDARD, Attorney General

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24 Attorneys for Defendant

25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on October 9, 2007, I electronically transmitted the
attached document to the Clerk's Office using the CM/ECF System for filing and
transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:
Carrie Jane Brennan, Shane Paul Dyet, and Robert A. Kaiser.

1 I further certify that on October 9, 2007, I served the attached document by
2 mailing same via US Postal Service to the following, who is not a registered
participant of the CM/ECF System:

3 Michael R. Robinson
4 2930 W. Camelback, #143
5 Phoenix, AZ 85017-3301

6 s/Kelly Dourlein
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