IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

LOUDY APPOLON, individually and on behalf of all others similarly situated, Plaintiffs, v. UNIVERSITY OF MIAMI and LEONARD M. MILLER SCHOOL OF MEDICINE, Defendants.	**CLASS ACTION COMPLAINT**

Plaintiff Loudy Appolon, individually and as a class representative on behalf of all others similarly situated, by her attorneys Outten & Golden LLP, Santiago J. Padilla, and the Lawyers' Committee for Civil Rights, brings the following allegations against Defendants University of Miami and the Leonard M. Miller School of Medicine ("Defendants"):

PRELIMINARY STATEMENT

1. Defendants, the sixth-largest employer in Miami-Dade County, reject job applicants based on their credit history that has no bearing on their fitness or ability to perform the job. Because the use of credit history without a proper showing of job relatedness and business necessity has a disproportionate and well-established negative impact on African Americans and Latinos, Defendants' practice violates Title VII of the Civil Rights Act of 1964.

PARTIES

2. Plaintiff Loudy Appolon is an African American resident of Miami, Florida. For almost seven years preceding her application for a position with Defendants, Ms. Appolon

consistently worked in various capacities in the health care field. She performed clerical, secretarial, and collections work and enrolled in courses toward a degree in Health Information Management. In her prior positions, Ms. Appolon regularly handled billing and other confidential information, including patient social security and credit card numbers. In the summer of 2009, Ms. Appolon applied for and was offered a position as a Senior Medical Collector in the Department of Patient Financial Services at the University of Miami, Miller School of Medicine. Relying on that offer, and with the reasonable assumption that a credit check would pose no problems, Ms. Appolon resigned her prior position. Then, just before her employment was to commence, Defendants reneged on their job offer because Ms. Appolon's credit history – which showed no pending delinquencies and just a few defaults from prior years that had been remedied to the satisfaction of the lenders – was deemed unsatisfactory. Ms. Appolon's credit history did not in any way reflect poorly on her character or her ability to do the job Defendants had offered her.

3. Upon information and belief, Defendants maintain control, oversight, and direction over the operation of the office in which Plaintiff applied for employment, including its background screening practices.

4. Defendants University of Miami and Leonard M. Miller School of Medicine are Florida Non-Profit Corporations. At all times relevant to this complaint, each has engaged in business affecting commerce, has employed more than 15 employees, and has been an employer within the meaning of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII").

5. On their website, Defendants tout their diversity and the "multicultural environment" which "reflects [Defendants'] location in one of the world's most dynamic and multicultural cities." According to Defendants, diversity is an "integral component" of life on

their campuses. Yet Defendants' employment policies contradict these goals by discriminating against the very groups they purport to attract.

JURISDICTION AND VENUE

6. The court has jurisdiction under 28 U.S.C. § 1331 as this claim arose under the Constitution, laws, or treaties of the United States and under § 717 of Title VII, 42 U.S.C. § 2000e-2(k).

7. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f)(3) because the Miller School of Medicine campus where Ms. Appolon would have worked but for the Defendants' unlawful employment practice is located in Miami, Florida.

PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS

8. Plaintiff has satisfied the procedural and administrative requirements for proceeding under Title VII. On April 20, 2010, Plaintiff filed a timely written Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC"). On August 30, 2010, the EEOC issued a right to sue letter to Plaintiff, which was received on or about September 1, 2010. Plaintiff will have commenced this action within 90 days of her receipt of the notice of right to sue.

BACKGROUND

9. African Americans and Latinos suffer higher rates of many of the financial events that negatively impact credit history than do whites. These effects, combined with the inaccuracies rampant in the credit reporting industry, contribute to disproportionally bad credit in minority communities.

10. Credit ratings of African Americans and Latinos are significantly lower than those of whites. A 2007 Federal Reserve Board report to Congress found significant racial disparities in credit scores, with the mean score of African Americans approximately half that

of non-Hispanic whites. Latinos fared only marginally better than African Americans.[1]

11. African Americans and Latinos are disproportionately affected by predatory lending, foreclosures, general unemployment, and health-care related bankruptcies, each of which can negatively impact an individual's credit rating. African Americans and Latinos across the country pay higher loan costs than whites.[2] At the same time, these groups face higher rates of unemployment. As of December 2009, the national unemployment rate was 16.2 percent for African Americans and 12.9 percent for Latinos, compared to 9 percent for whites.[3]

12. Credit ratings are notoriously inaccurate. Studies have shown[4] that credit reports frequently contain false delinquencies, inaccurate or outdated demographic information, and/or inaccurate account information. Many also contain repeat listings of some loans and/or omit listings of others entirely.

13. Credit background does not predict job performance or workplace crime. Numerous studies have shown *no* statistical correlation between poor credit and job performance or propensity to commit fraud.

14. As a result of the statistical disparities detailed above, restrictions on hiring individuals with poor credit have a far more severe effect on African Americans and Latinos than on whites. In other words, Defendants' hiring policy replicates the racial discrimination present in the credit reporting system, thereby excluding qualified African Americans and Latinos

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1 Board of Governors of the Federal Reserve System, *Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit* 80-81 (Aug. 2007).

2 National Community Reinvestment Coalition, *Income is No Shield Against Racial Differences in Lending: A Comparison of High-Cost Lending in America's Metropolitan Areas II*, 2008, available at http://www.ncrc.org/images/stories/pdf/research/income%20is%20no%20shield%20ii.pdf.

3 United for a Fair Economy, *State of the Dream 2010: Drained*, 3 (Jan. 2010).

4 *E.g.*, U.S. General Accounting Office, *Consumer Credit: Limited Information Exists on Extent of Credit Report Errors and Their Implications for Consumers* (2003), available at http://www.gao.gov/new.items/d031036t.pdf; U.S. PIRG Mistakes Do Happen, a Look at Errors in Consumer Credit Reports, 2004, available at http://www.uspirg.org/home/reports/report-archives/financial-privacy--security/financial-privacy--security/mistakes-do-happen-a-look-at-errors-in-consumer-credit-reports.

from valuable employment opportunities. This discriminatory denial of employment affects not only the individuals who are rejected or terminated, but also their families and entire communities, replicating minority under-employment and compounding credit inequities in the process.

15. Overly broad restrictions on hiring individuals with poor credit history are discriminatory and illegal under Title VII of the Civil Rights Act. Title VII requires that where significant racial disparity exists, credit history can be considered only where the employer can prove that the applicant's credit is related to the particular job in question, and that denial of the position is necessary for the employer to conduct its business. Likewise, the federal government's Uniform Guidelines on the Use of Employee Selection Procedures mandate that any selection procedure having an adverse racial impact on hiring or employment will be deemed discriminatory unless it has been validated as job-related and consistent with business necessity.

16. The EEOC has stated on numerous occasions that inquiries into applicants' credit history should be avoided because such inquiries tend to have an adverse impact on minority candidates.[5]

17. In addition to being unlawful, policies and practices that disqualify job applicants whose credit history has no bearing on their fitness or ability to perform the job are bad public policy. Many individuals have bad credit because they lost a job and fell behind on their bills, or because of illness and the high costs of medical treatment, particularly for the uninsured. In order to rehabilitate their credit, these individuals need to find employment and a steady income. Yet

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[5] *See* EEOC letter, Title VII: Employer Use of Credit Checks, March 9, 2010, *available at* http://www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html; Dianna B. Johnston, Assistant Legal Counsel, EEOC Informal Discussion Letter re Title VII: Employer Use of Credit Checks, Mar. 9, 2010, *available at* http://www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html. *See also* EEOC, Pre-Employment Inquiries and Credit Rating or Economic Status, undated, *available at* http://www.eeoc.gov/laws/practices/inquiries_credit.cfm; EEOC, *E-RACE Goals and Objectives*, at http://www.eeoc.gov/eeoc/initiatives/e-race/goals.cfm.

their ability to obtain employment is hampered by policies like Defendants'.

18. Particularly in the midst of the Great Recession, in which the unemployment rate soared to 10.6 percent (significantly higher in minority communities, as noted above) and millions of homeowners – a disproportionate number of them minority homeowners[6] – found themselves in foreclosure proceedings, such policies needlessly frustrate the hiring of qualified African American and Latino applicants.

19. Defendants add insult to injury by needlessly rejecting applicants in Florida, one of the states most hard-hit by the current economic crisis. Earlier this year, Florida's unemployment rate reached an all-time high of 12.3 percent. Minority groups were particularly hard-hit: African Americans were unemployed at a rate of 15.4 percent, a rise of seven percentage points.[7]

PLAINTIFF'S FACTUAL ALLEGATIONS

20. In June 2009, Ms. Appolon applied for a Senior Medical Collector position in the Department of Patient Financial Services at the University of Miami, Miller School of Medicine. Ms. Appolon was qualified for the Senior Medical Collector position: at the time of her application, she had worked successfully in the medical industry for many years, including four years as a medical collector. Ms. Appolon previously completed courses at Miami Dade College towards a degree in Health Information Management.

21. In approximately June 2009, Ms. Appolon was interviewed by Rebecca Aranda, an employee of Defendants. After the interview, Ms. Aranda told Ms. Appolon that she would most likely be hired for the Senior Medical Collector position.

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[6] Jacob S. Rugh & Douglas S. Massey, "Racial Segregation and the American Foreclosure Crisis," 75 American Sociological Review 629, 634 (October 2010).

[7] Emily Eisenhauer, Bernardo Oseguera, & Carlos A. Sanchez, "The State of Working Florida 2010", available at http://www.risep-fiu.org/wp-content/uploads/2010/09/State-of-Working-Florida-2010.pdf.

22. In early July 2009, Ms. Aranda offered Ms. Appolon the Senior Medical Collector position. Ms. Appolon accepted the offered employment.

23. Defendants confirmed the job offer in a letter dated July 28, 2009, contingent upon a background check. The letter further stated that Ms. Appolon's first day of work would be August 10, 2009, when she was directed to attend new employee orientation from 8:00 a.m. to 4:15 p.m.

24. On July 31, 2009, Ms. Appolon resigned from her position at North Shore Medical Center.

25. On August 7, 2009, the Friday before Ms. Appolon was scheduled to commence employment with Defendants, she was informed by their Human Resources Department that she could not begin the position the following Monday as planned. Defendants told Ms. Appolon that she could not fill the position because of her credit report. Defendants suggested that Ms. Appolon apply for jobs not involving financial matters or that she improve her credit and apply again.

26. On August 10, 2009, Ms. Appolon received a letter from Defendants enclosing a copy of her credit report.

27. Ms. Appolon reviewed the report and determined that it contained errors. Ms. Appolon corrected those errors with the credit reporting agency, and repeatedly tried to get in touch with Defendants to alert them to the errors contained in her credit report, but received no response.

28. Ms. Appolon had no active credit problems at the time of her application for employment with Defendants, and there was nothing in her credit history that was at all job relevant.

29. On August 20, 2009, Ms. Appolon received a letter from Defendants stating that her application for employment was being denied, effectively rescinding Defendants' previous offer of employment. The letter stated that information contained in Ms. Appolon's credit report "in whole or in part, influenced [Defendants'] employment decision."

CLASS ACTION ALLEGATIONS

30. Plaintiff brings her class allegations under Fed. R. Civ. P. 23(a) and (b)(2) on behalf of a class defined as follows: All African American and Latino persons who have been or will be denied or deterred from employment, or who have suffered or will suffer adverse action, based on their credit background between June 24, 2009 and the date of judgment in this action (the "Class").

31. Plaintiff is a member of the Class.

32. Upon information and belief, the members of the Class are so numerous that joinder of all of them is impracticable. Defendants have campuses throughout South Florida and employ over 13,000 people; many more have no doubt applied for positions at one of their campuses during the class period. Plaintiffs do not know the precise number of Class Members – this information is in Defendants' possession.

33. There are questions of law and fact common to the Class, and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether it is Defendants' policy or practice to reject job applicants or terminate current employees based on their credit history; (2) what screening parameters Defendants use to reject or terminate individuals based on their credit history; (3) whether Defendants' policy or practice to reject or terminate individuals based on their credit history has a disparate impact on Latino and African American applicants or employees; (4) whether Defendants' policy or practice to reject or terminate individuals based on their credit history is job-related and

consistent with business necessity; (5) whether less discriminatory alternative(s) exist that would equally serve any alleged necessity and (6) what equitable and injunctive relief for the Class is warranted.

34. Plaintiff's claims are typical of the claims of the Class: (1) Plaintiff applied for a position with Defendants; (2) she was subjected to a credit check, just as other Class members; (3) she was subjected to substantially the same screening device as other Class members; (4) the job offer was revoked after the credit check revealed that her credit history was unsatisfactory to Defendants; and (5) she has the same discrimination claim, and seeks the same injunctive relief, as other Class members based on disparate impact. All of these claims are substantially shared by each and every class member.

35. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has no conflict with any class member. Plaintiff is committed to the goal of having Defendants revise their hiring policy and practice to eliminate its discriminatory impact on African American and Latino applicants and employees.

36. Plaintiff has retained counsel competent and experienced in complex employment discrimination class actions.

37. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted and/or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and the Class as a whole. The Class members are entitled to injunctive relief to end Defendants' common, uniform, unfair, and discriminatory policies and/or practices.

CLAIM FOR RELIEF
(Disparate Impact)
(Title VII of the Civil Rights Act of 1964,
U.S.C §§ 2000(e) *et seq*.)

38. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

39. Plaintiff brings this claim on her own behalf and on behalf of the Class.

40. Defendants' policy and practice of denying employment opportunities based on applicants' credit history harmed Plaintiff and the Class and constitutes unlawful discrimination based on race, color, ethnicity, and national origin in violation of 42 U.S.C. §§ 2000 *et seq.*

41. Defendants' policy and practice of denying employment opportunities based on applicants' and employees' credit history has a disparate impact on Latinos and African Americans, and is neither job-related nor consistent with business necessity. Even if Defendants' policy and practice could be justified by business necessity, less discriminatory alternative(s) exist that would equally serve any alleged necessity.

42. Plaintiff and the Class have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiff and the Class she seeks to represent are now suffering, and will continue to suffer, irreparable injury from Defendants' discriminatory acts and omissions.

43. Defendants' conduct has caused, and continues to cause, Plaintiff and the members of the Class substantial losses in earnings and other employment benefits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for relief as follows:

1. Certification of the case as a class action on behalf of the proposed Class;
2. Designation of Representative Plaintiff Loudy Appolon as representative on behalf of the Class;
3. Designation of Representative Plaintiff's counsel of record as Class counsel;
4. A declaratory judgment that the practices complained of herein are unlawful and violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*;
5. A preliminary and permanent injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs and usages set forth herein;
6. An order that Defendants institute and carry out policies, practices, and programs that provide equal employment opportunities for all applicants and employees regardless of credit history, unless the use of such history can be justified as job-related and consistent with business necessity, where no less discriminatory alternative exists, and that Defendants eradicate the effects of their past and present unlawful employment practices;
7. An order restoring Plaintiff and Class members to their rightful positions with Defendants, as applicants or employees, or in lieu of instatement or reinstatement, an order for back and front pay (including interest) and benefits;
8. Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law, including but not limited to 42 U.S.C. §§ 2000e-5(k);
9. Pre-judgment and post-judgment interest, as provided by law; and

10. Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

Dated: Miami, FL
November 22, 2010

Respectfully submitted,

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