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17 Counsel for Plaintiff Adrienne Hudson

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 C10-03158

21 WHA

22 ADRIENNE HUDSON, individually and on
behalf of all others similarly situated,

23 Plaintiffs,

24 vs.

25 FIRST TRANSIT, INC.

26 Defendants.

) Case No.: ###

) COMPLAINT

) CLASS ACTION

ORIGINAL
FILED
JUL 20 2010
RICHARD W. WIEKING
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

E-filing

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COMPLAINT

Plaintiff Adrienne Hudson (“Hudson” or “Plaintiff”) brings this class action on behalf of herself individually and all others similarly situated against Defendant First Transit, Inc. (“First Transit” or “Defendant”), and complains as follows:

I. INTRODUCTION

1. This is an employment discrimination class action lawsuit brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, as amended by the Civil Rights Act of 1991 (“Title VII”), the California Fair Employment and Housing Act, Cal. Gov. Code § 12940(a) (“FEHA”), and the California Unfair Business Practices Act, Business and Professions Code §§17200, *et seq.*, also known as the Unfair Competition Law (“UCL”). First Transit has a policy or practice of rejecting job applicants and terminating employees with criminal records, regardless of the nature or age of the offense or the offense’s relation to the job in question. This policy or practice has an adverse impact on African Americans and Latinos, is not job-related nor justified by business necessity and, therefore, is unlawful under Title VII, 42 U.S.C. § 2000e-2(k), FEHA, Cal. Gov. Code § 12940(a), and the UCL. Cal. Bus. & Prof. Code §§ 17200, *et seq.*

2. Plaintiff seeks declaratory, injunctive, and equitable monetary relief, restitution, and an award of costs, expenses, and attorneys’ fees for herself individually and on behalf of the Class and Subclass she seeks to represent.

II. PARTIES

A. Plaintiff

3. Plaintiff Adrienne Hudson is a 44-year-old African-American woman who resides in Oakland, California.

B. Defendant

4. Defendant First Transit is a Delaware corporation that is headquartered in Cincinnati, Ohio.

5. First Transit is a national transportation company that represents, on its Internet website, that it is the nation’s leading bus transportation provider.

1 6. According to its website, as of 2007, First Transit had 15,500 employees and operated
2 in 41 states.

3 7. At all times relevant to this Complaint, First Transit was an employer within the
4 meaning of Title VII, 42 U.S.C. § 2000e(b), and FEHA, Cal. Gov. Code § 12940(a).

5 **III. JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

6 8. The Court has jurisdiction of this matter under 28 U.S.C. § 1331 and 42 U.S.C. 2000e-
7 5(f)(3). The Court has supplemental jurisdiction of Plaintiff's UCL and FEHA claims pursuant to 28
8 U.S.C. § 1367.

9 9. Venue is proper in, and First Transit is subject to the personal jurisdiction of, this Court
10 because First Transit maintains facilities and business operations in this District and rescinded its offer
11 of employment to Hudson in this District. 28 U.S.C. § 1391(b); 42 U.S.C. § 2000e-5(f)(3).

12 10. Venue is proper in the San Francisco/Oakland Division of this Court pursuant to Local
13 Rule 3-2(c)-(d) because the events which give rise to the claims asserted in this Complaint occurred in
14 Alameda County, California which is located in this Division. In particular, First Transit rescinded its
15 offer of employment to Hudson in Oakland (Alameda County).

16 **IV. BACKGROUND**

17 11. African Americans and Latinos are disproportionately impacted by the criminal justice
18 system because of their race and national origin. They are arrested, convicted, and incarcerated at rates
19 that vastly exceed those of whites. According to 2000 census data, 12.3% of the general United States
20 population is African American. U.S. Census Bureau, *Overview of Race and Hispanic Origin*, 3
21 (2001). However, over 28% of all arrests are of African Americans. U.S. Department of Justice,
22 Federal Bureau of Investigation, *2008 Crime in the United States*, table 43 (2009). Further, 38% of the
23 United States prison population is African American. U.S. Department of Justice, Bureau of Justice
24 Statistics, *Bulletin, Prisoners in 2008*, p. 5 (2009). Similarly, while 12.5% of the United States
25 population is Latino, *Overview of Race and Hispanic Origin*, at 3, approximately 21% of the United
26 States' prison population is Latino. *Bulletin, Prisoners in 2008*, at table 43. Indeed, in 2008, African
27 Americans were 6.1 times more likely to be incarcerated than whites, and Latinos were 2.3 times more
28 likely to be incarcerated than whites. *Id.*

1 15. Hudson has no record of any other criminal convictions.

2 16. Prior to applying for a position with First Transit, Hudson was employed as a
3 paratransit bus driver by MV Transportation in Oakland. Hudson began working for MV
4 Transportation in July 2008. She was a reliable and effective employee for MV Transportation and
5 had a good work record.

6 17. In February 2009, Hudson applied for a paratransit bus driver job with First Transit. In
7 early March 2009, First Transit offered Hudson a job conditioned on the results of a criminal
8 background check and accepted her into its training program. She left her employment with MV
9 Transportation in March 2009, to accept First Transit's offer of employment.

10 18. On or about March 20, 2009, First Transit rescinded its job offer to Hudson because she
11 had a criminal record for a 2002 welfare fraud conviction.

12 19. Hudson informed First Transit that the charge had been dismissed, pursuant to
13 California Penal Code § 1203.4, and provided First Transit with copies of court records documenting
14 the dismissal. Nevertheless, First Transit refused to employ Hudson.

15 20. First Transit's criminal records policy prohibits, among other things, individuals
16 convicted of a felony and individuals sentenced to any period of incarceration (no matter how brief)
17 from ever working for the company. This policy applies regardless of the age of the conviction or
18 sentence, the individual's prior work history, or the offense's relation to the job in question. First
19 Transit also refuses to employ individuals who receive alternative sentences, even if those alternative
20 sentences ultimately result in a dismissal of the criminal charges without any judgment of conviction.

21 21. First Transit's criminal records policy has an adverse impact on African American and
22 Latino job applicants and employees, does not consider all of the factors that are outlined by the
23 EEOC's policy guidelines, is not job related nor justified by business necessity, and, is therefore
24 unlawful.

25 22. Hudson desires to work for First Transit, but the company's unlawful criminal records
26 policy prohibits her from doing so.

1 28. *Rule 23(a)(2) – commonality.* There are numerous questions of law and fact common to
2 the Class and Subclass that relate to and affect the claims of relief sought for the Class and Subclass
3 and the anticipated defenses thereto. Those common questions include, without limitation, the
4 following: (a) whether it is First Transit’s policy or practice to reject job applicants or terminate
5 employees based on their criminal records; (b) whether First Transit maintains, communicates, and
6 enforces a policy or practice of not hiring or terminating individuals because of their criminal records;
7 (c) whether in rejecting or terminating individuals based on their criminal records First Transit
8 considers the nature or age of the offense or its relation to the job in question, and if so, how First
9 Transit considers these factors; (d) whether First Transit’s criminal records policy is job-related and
10 consistent with business necessity; (e) whether First Transit’s above-described criminal records policy
11 violates Title VII, FEHA, and the UCL; (f) what relief is appropriate to remedy the claims of Plaintiff
12 and the Class and Subclass resulting from First Transit’s unlawful and discriminatory criminal records
13 policy; and (g) whether equitable and injunctive relief is warranted for the Class and Subclass.

14 29. *Rule 23(a)(3) – typicality.* The claims of the Plaintiff, who is a representative of the Class
15 and Subclass, are typical of the claims of the Class and Subclass. The Plaintiff has been personally
16 affected and discriminated against by the same policy that has harmed the Class and Subclass as a
17 whole and other Class and Subclass members individually.

18 30. *Rule 23(a)(4) – adequacy.* Plaintiff will fairly and adequately represent and protect the
19 interests of the Class and Subclass. Plaintiff has no conflict with any member of the Class or Subclass.
20 Plaintiff continues to desire employment with First Transit and is committed to the goal of having First
21 Transit revise its criminal records policy and practice to eliminate the unlawful discriminatory impact
22 on African Americans and Latinos. Plaintiff has retained counsel competent and experienced in
23 complex employment discrimination class actions, and they have and will devote adequate staff and
24 other resources to the case.

25 31. *Rule 23(b)(2) – case maintainable under this rule.* This action is properly maintained
26 as a class action pursuant to Rule 23(b)(2) in that First Transit has acted or refused to act on grounds
27 that are generally applicable to the Class and Subclass. In particular, First Transit’s company-wide
28

1 criminal records policy applies generally to the Class and Subclass so that final injunctive relief or
2 corresponding declaratory relief is appropriate respecting the Class and Subclass as a whole.

3 **FIRST CAUSE OF ACTION**
4 **(Title VII of the Civil Rights Act)**
5 **42 U.S.C. 2000e-2(k)**
6 **(ON BEHALF OF PLAINTIFF AND THE NATIONWIDE CLASS)**

7 32. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

8 33. First Transit's policy or practice of not hiring applicants and terminating employees
9 based on their criminal records has a disparate impact on African Americans and Latinos. Moreover,
10 the policy or practice is neither job-related nor consistent with business necessity. Even if First Transit's
11 policy or practice could be justified by business necessity, which it cannot, less discriminatory
12 alternatives exist that would equally serve any alleged necessity.

13 34. First Transit's criminal records policy or practice violates rights secured to Plaintiff and
14 the Class by Title VII.

15 35. Plaintiff and the Class have no plain, adequate, or complete remedy at law to redress the
16 wrongs alleged in the Complaint. The injunctive relief sought in this action is the only means of
17 securing complete and adequate relief. Plaintiff and the Class are now suffering, and will continue to
18 suffer, irreparable injury from First Transit's discriminatory acts and omissions.

19 36. First Transit's conduct has caused and continues to cause Plaintiff and the members of
20 the Class substantial lost earnings and other employment benefits.

21 37. To remedy the violation of the rights of Plaintiff and the Class secured by Title VII,
22 Plaintiff requests that the Court award them the relief prayed for below.

23 **SECOND CAUSE OF ACTION**
24 **(California Fair Employment and Housing Act)**
25 **Cal. Gov. Code § 12940(a)**
26 **(ON BEHALF OF PLAINTIFF AND THE SUBCLASS)**

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

28 39. First Transit's criminal records policy or practice as described above, violates rights
secured to Plaintiff and the Subclass by FEHA.

1 D. A preliminary and permanent injunction preventing First Transit and its officers and
2 directors from engaging in the unlawful employment practices described herein;

3 E. A preliminary and permanent injunction requiring First Transit to carry out policies,
4 practices, and programs that provide equal employment opportunities for all applicants and employees
5 regardless of criminal record status, unless such status can be justified as job-related and consistent
6 with business necessity, and no less discriminatory alternative exists;

7 F. Award of monetary relief as follows:

8 i. On the First Cause of Action, order First Transit to pay equitable monetary
9 relief, in the form of back and front pay, to Plaintiff and members of the Class on whose behalf claims
10 are asserted under Title VII in an amount to be proved at trial;

11 ii. On the Second Cause of Action, order First Transit to pay equitable monetary
12 relief, in the form of back and front pay to Plaintiff and members of the Subclass on whose behalf
13 claims are asserted under FEHA, in an amount to be proved at trial; and

14 iii. On the Third Cause of Action, order First Transit to make restitution to the
15 Plaintiff and members of the Subclass on whose behalf claims are asserted who were deprived of
16 wages, compensation, fringe benefits, or other equitable monetary benefits as a result of First Transit's
17 violations of law for which the UCL provides such remedies.

18 G. An award of pre-judgment and post-judgment interest on all monetary amounts awarded
19 in this action, as provided by law;

20 H. An award of attorneys' fees, costs, and expenses; and

21 I. An award for any other and further relief that the Court deems equitable, just, and
22 proper.

23 ///

24 ///

25 ///

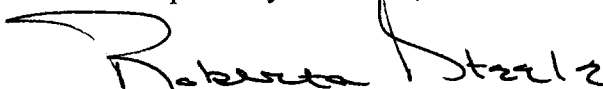
26 ///

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28 ///

1 Dated: July 20, 2016

Respectfully submitted,

2 

3 TERESA DEMCHAK, (SB # 123989)
4 ROBERTA STEELE (SB #188198)
5 JAMES KAN (SB #240749)
6 GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
7 DARDARIAN
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11 (510) 835-1417 (fax)

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27 mneighly@nelp.org
28 NATIONAL EMPLOYMENT LAW PROJECT
405 14th Street, Suite 1400
Oakland, CA 94612
(510) 663-5707
(510) 663-2028 (fax)

ATTORNEYS FOR PLAINTIFFS

EXHIBIT 1

EXHIBIT 2

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Adrienne Hudson**
 450 Canyon Oak Drive
 Oakland, CA 94605

From: **Oakland Local Office**
 1301 Clay Street
 Suite 1170 N
 Oakland, CA 94612

On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
555-2010-00159	Margarita Hossainzadeh, Investigator	(510) 637-3246

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.


Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Kristine A. Jensen,
 Director

06-01-2010
 (Date Mailed)

Enclosures(s)

CC: **Director Human Resources**
Employee Relations
FIRST TRANSIT, INCORPORATED
 600 Vine Street, Suite 1400
 Cincinnati, OH 45202

Madeline Neighly, Esq.
 405-14th Street, Suite 1400
 Oakland, CA 94612

EXHIBIT 3

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

(SEE ADDRESS CHECKED BELOW)

EEOC Number:

555-2010-00159

Case Name:

Adrienne Hudson v. FIRST TRANSIT,
INC.

Date:

December 17, 2009

TTY # (800) 700-2320

H
4800 Stockdale Hwy., Suite 215
Bakersfield, CA 93309
(661) 395-2729C
1320 E. Shaw Avenue, Suite 150
Fresno, CA 93710
(559) 244-4760

R/S

1055 West Seventh Street,
Suite 1400
Los Angeles, CA 90017
(213) 439-6799

M

1515 Clay Street, Suite 701
Oakland, CA 94612
(510) 622-2941

E

Sacramento District Office
2218 Kausen Drive, Suite 200
Elk Grove, CA 95758
(916) 478-7230

D

1350 Front Street, Suite 1063
San Diego, CA 92101
(619) 645-2681

A

San Francisco District Office
1515 Clay Street, Suite 701
Oakland, CA 94612
(510) 622-2973

G

2570 North First Street, Suite 480
San Jose, CA 95131
(408) 325-0344

K

2101 East Fourth Street, Suite 255-B
Santa Ana, CA 92705
(714) 558-4266

NOTICE TO COMPLAINANT AND RESPONDENT

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

No response to the DFEH is required by the respondent.

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

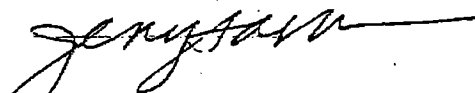
NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,



JENNIFER L. LUJAN

