

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

TA TAR, REGINA TA BORA, and JAI ROI MAI
RON, on behalf of themselves and all other similarly
situated persons,

Plaintiffs,

v.

NUTRABLEND FOODS INC., and
NUTRABLEND FOODS, LLC
AEROTEK, INC.,

Defendants.

CIVIL ACTION

ELECTRONICALLY FILED ON
SEPTEMBER __, 2018

Civil No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT – CLASS ACTION

1. Plaintiffs Ta Tar, Regina Ta Bora, and Jai Roi Mai Ron (“Plaintiffs”) brings this class action lawsuit against Defendants NutraBlend Foods, Inc., NutraBlend Foods, LLC, and Aerotek, Inc. (collectively “Defendants”) to recover damages under the Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981, and the New York Human Rights Law based upon discrimination and wrongful termination predicated on the Plaintiffs’ race and national origin of Burmese

JURISDICTION AND VENUE

2. The Court has personal jurisdiction over the parties. Plaintiffs and the class they seek to represent are citizens of the State of New York and/or worked for Defendants in the State of New York. Defendants do business in the State of New York and their conduct in the State of New York underlies all of the claims in this suit.

3. The Court has subject matter jurisdiction under 28 U.S.C. § 1332 because this action raises a federal question for which the district courts have original jurisdiction. See 28 U.S.C. § 1331.

4. Venue is proper under 28 U.S.C. § 1391(b)(2) because this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

PARTIES

5. Plaintiff, Ta Tar, is an individual residing in Buffalo, Erie County, New York. He worked for the Defendants as a production worker from May of 2016 to March of 2017.

6. Plaintiff, Regina Ta Bora, is an individual residing in Buffalo, Erie County, New York. He worked for the Defendants as a production worker from May of 2016 to March of 2017.

7. Plaintiff, Jai Roi Mai Ron, is an individual residing in Buffalo, Erie County, New York. He worked for the Defendants as a production worker from May of 2016 to March of 2017.

8. Defendant NutraBlend Foods Inc., was and is a Canadian corporation with its principal place of business located at 415 Dobbie Drive, Cambridge, Ontario N1T1S9 Canada that, at all relevant times mentioned herein, was authorized to do business in New York and actually engaged in business in New York.

9. Defendant, NutraBlend Foods, LLC, is a wholly owned subsidiary of, Defendant, NutraBlend Foods Inc., with its principal place of business located at 3805 Walden Avenue, Lancaster, New York 14086-1407 (hereinafter “NutraBlend.”)

10. Defendant Aerotek Group, Inc., is a Maryland Corporation with its principal place of business located at 7301 Parkway Drive, Hanover, Maryland 21076 that, at all relevant times mentioned herein, was authorized to do business in New York and actually engaged in business in New York.

FACTS

11. Defendant, NutraBlend maintains manufacturing facilities that specialize in the manufacture of nutritional powder products in two locations in Ontario, Canada, and one location in Lancaster, New York.

12. Defendant, Aerotek Group, Inc., is an international staffing agency with multiple locations in North America, Europe, Asia, and Australia.

13. In May of 2016, the Plaintiffs were all hired through Defendant, Aerotek Group, Inc., as production workers in the Lancaster, New York location of the NutraBlend Defendants.

14. The Plaintiffs are all of Burmese origin and came to the United States as refugees and re-settled in Buffalo, New York.

15. The Plaintiffs are all non-English speakers and the only language the Plaintiffs understand is Burmese.

16. While employed for the Defendants, the Plaintiffs received direction from bilingual employee and were, therefore, able to perform their jobs as production workers competently.

17. During the Plaintiffs employment with the Defendants, they never received a warning or notice regarding their performance.

18. It was well known the Defendants that the Plaintiffs were non-English speakers of Burmese origin.

19. While the Plaintiffs were not proficient in the English language, it did not prevent them from successfully performing the duties of their positions.

20. On or about March 30, 2017, the Plaintiffs were all terminated from their positions as production worker with the Defendants without explanation.

21. Upon information and belief, shortly before March 30, 2017, an employee of the NutraBlend Defendants requested a list of all production workers who did not speak English.

22. Upon information and belief, there is a policy and procedure in place with the NutraBlend Defendants to terminate employees based not on their performance but on their national origin and ability to speak English.

23. Upon information and belief, shortly before March 30, 2017, a list was compiled of all production workers who did not speak English and were of Burmese national origin.

24. Upon information and belief, on or about March 30, 2017, an employee of the NutraBlend Defendants contacted an employee of Defendant, Aerotek Group, Inc., and directed the Aerotek employee to terminate all of the non-English speakers of Burmese national origin.

25. Upon information and belief, the employee of Defendant, Aerotek Group, Inc., then proceeded to terminate all non-English speakers of Burmese national origin who were employed at the NutraBlend plant.

26. The employees terminated includes, but is not limited to, the Plaintiffs.

27. On January 22, 2018, the Plaintiffs, Ta Tar, Regina Ta Bora, and Jai Roi Mai Ron, respectively, filed a charge of discrimination against the NutraBlend Defendants and a charge of discrimination against Defendant, Aerotek Group, Inc., with the Equal Employment Opportunity Commission pursuant to the provisions of Title VII of the Civil Rights Act of 1964.

28. On September 11, 2018, the Equal Employment Opportunity Commission provided Plaintiffs' counsel with a Right to Sue notice. All conditions precedent to the institution of this lawsuit have been fulfilled.

CLASS ACTION ALLEGATIONS

29. Plaintiffs brings this lawsuit as a class action, pursuant to Federal Rule of Civil Procedure 23, on behalf of themselves and all other individuals who at any time in the last three years were terminated by the Defendants because of their inability to speak proficient English and national origin.

30. Class action treatment is appropriate because, as summarized in Paragraphs 31 to 36 below, all of Rule 23's requirements are satisfied.

31. The class is so numerous that joinder of all class members is impracticable.

32. Plaintiffs class members, and their claims are typical of the claims of other class members and they have no interests that are antagonistic to or in conflict with the interests of other class members.

33. Plaintiffs will fairly and adequately represent the class members and their interests, and they have retained competent and experienced counsel who will effectively represent the class members' interests.

34. Questions of law and fact are common to all class members.

35. Common questions of law and fact predominate over questions affecting only individual class members.

36. A class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Title VII of the Civil Rights Act of 1964)

37. All previous Paragraphs of this Complaint are incorporated as though fully set forth herein.

38. By the acts and conduct described herein, the Defendants willfully and intentionally discriminated against the Plaintiffs based on their national origin in violation of Title VII of the Civil Rights act of 1964, as amended, 42 U.S.C. § 2000 (e) *et seq.* and the Civil Rights Act of 1991.

39. By such acts and conduct, the Plaintiffs have been damaged by the loss of their wages or salary and other economic benefits rightfully due.

40. As a result of such acts and conduct, the Plaintiffs have suffered compensatory damage to their professional reputation and career, humiliation, mental anguish and related distress.

41. The unlawful employment practices complained of above were intentional.

42. The unlawful employment practices complained of above were and are done with malice or with reckless indifference to the federally protected rights of the Plaintiffs.

COUNT II
(New York Human Rights Law)

43. All previous Paragraphs of this Complaint are incorporated as though fully set forth herein.

44. By the acts and conduct described herein, the Defendants discriminated against the Plaintiffs in the terms, conditions, and privileges of employment based on the Plaintiffs' national origin in violation of New York Executive Law § 296(1)(a).

45. By such acts and conduct, the Plaintiffs have been damaged by the loss of their wages or salary and other economic benefits rightfully due.

46. As a result of such acts and conduct, the Plaintiffs have suffered compensatory damage to their professional reputation and career, humiliation, mental anguish and related distress.

47. The unlawful employment practices complained of above were intentional.

48. The unlawful employment practices complained of above were and are done with malice or with reckless indifference to the rights of the Plaintiffs protected by the State of New York.

COUNT III
(Title VII of the Civil Rights Act of 1964)

49. All previous Paragraphs of this Complaint are incorporated as though fully set forth herein.

50. By the acts and conduct described herein, the Defendants willfully and intentionally interfered with the Plaintiffs ability to make and enforce contracts for employment through the Defendants discrimination against the Plaintiffs based on their national origin in violation of 42 U.S.C. § 1981.

51. By such acts and conduct, the Plaintiffs have been damaged by the loss of their contractually guaranteed wages or salary and other economic benefits rightfully due.

52. As a result of such acts and conduct, the Plaintiffs have suffered compensatory damage to their professional reputation and career, humiliation, mental anguish and related distress.

53. The unlawful employment practices complained of above were intentional.

54. The unlawful employment practices complained of above were and are done with malice or with reckless indifference to the federally protected rights of the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief on behalf of themselves and other class members:

- A. Declaratory and/or injunctive relief as deemed appropriate by the Court;
- B. Grant the Plaintiffs permanent injunctions:
 - i. Prohibiting the Defendants, their agents, successors, employees, attorneys, and those acting in concert with them and at their direction from engaging in any of the practices set forth above and any other practice shown to be unlawful or discriminatory on the basis of national origin with respect to compensation, terms, conditions, and privileges of employment or from continuing or maintaining a policy, practice, custom or usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of the Plaintiffs and other persons similarly situated to enjoy equal employment opportunities secured by law.
- C. Awarding the Plaintiffs, and all other similarly situated class members, back pay, benefits and other remuneration to which they would have been entitled but for the Defendants' discrimination, such award to be made with prejudgment interest on the sums unlawfully withheld from the Plaintiffs and all other similarly situated class members.
- D. Punitive damages and prejudgment interest;
- E. Litigation costs, expenses, and attorneys' fees, including but not limited to the fees mandated by 42 U.S.C. § 1988; and
- F. Such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a jury trial.

Dated: September 12, 2018

Respectfully submitted,

/s

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* *Pro Hac Vice* Admission Anticipated

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Lawsuit Claims NutraBlend Fired Burmese Refugees Over Inability to Speak English](#)
