

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

BEVERAGE DISTRIBUTORS COMPANY, LLC, and  
BEVERAGE DISTRIBUTORS HOLDING, INC.,

Defendants.

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**COMPLAINT AND JURY TRIAL DEMAND**

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**NATURE OF THE ACTION**

This is a public enforcement action under Title I of the Americans with Disabilities Act of 1990, as amended (“ADA”), and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Mike Sungaila, a disabled individual as defined by the ADA. As alleged with greater particularity below, after eliminating Mr. Sungaila’s position as a Driver Helper, Defendant offered Mr. Sungaila a position as a Night Warehouse Loader, conditioned on the results of a medical exam. Defendant withdrew its offer of the Night Warehouse Loader position to Mr. Sungaila after obtaining the results of a medical exam because of

his disability. Defendant refused to hire Mr. Sungaila because of his disability and terminated his employment.

### **JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to § 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference § 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e-5(f)(1) and (3).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Colorado.

### **PARTIES**

3. Plaintiff Equal Employment Opportunity Commission (“EEOC” or “the Commission”) is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by § 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference §§ 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. Defendant Beverage Distributors Company LLC (“Beverage Distributors”) is a Delaware Limited Liability Company registered to do business in the State of Colorado.

5. Defendant Beverage Distributors Holding, Inc. (“Beverage Distributors”) is a Delaware corporation registered to do business in the State of Colorado.

6. At all relevant times, Beverage Distributors has continuously been doing business in the State of Colorado.

7. At all relevant times, Beverage Distributors has continuously been an employer engaged in an industry affecting commerce within the meaning of § 101(5) of the ADA, 42 U.S.C. § 12111(5), and § 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference §§ 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

8. At all relevant times, Beverage Distributors has been a covered entity under § 101(2) of the ADA, 42 U.S.C. § 12111(2).

### **STATEMENT OF CLAIMS**

#### **General Allegations**

9. More than thirty days prior to the institution of this lawsuit, Mr. Sungaila filed a charge with the Commission alleging violations of Title I of the ADA by Beverage Distributors.

10. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Mr. Sungaila is a qualified individual with a disability as defined under the ADA. He is legally blind due to a permanent birth defect called Achromatopsia.

12. Mr. Sungaila's physical impairment substantially limit him in the major life activity of seeing.

13. Mr. Sungaila began working for Respondent in December 2003 as a Driver Helper.

14. Mr. Sungaila did a good job as a Driver Helper.

15. In early 2008, Respondent informed Mr. Sungaila that it had made the decision to dissolve the Driver Helper position and use contract laborers to perform those duties.

16. On March 5, 2008, Mr. Sungaila applied for a Night Warehouse Loader position.

17. On March 24, 2008 Respondent extended a conditional offer of employment as a Night Warehouse Loader, contingent on Mr. Sungaila passing a medical evaluation.

18. On March 24, 2008, Mr. Sungaila underwent a medical examination by a third party occupational health care provider.

19. On or about March 28, 2008, Mr. Sungaila met with Transportation Manager Tom Rogers and with Safety Manager Bob Pieron, who informed him that he was not selected for the Night Warehouse Loader position because he could not drive a forklift.

20. Beverage Distributors withdrew the conditional offer of employment, refused to hire him and terminated his employment.

21. Driving a forklift is not a job function of the entry level Night Warehouse Loader position.

22. Even if driving a forklift were a job function of the Night Warehouse Loader position, Beverage Distributors could have accommodated Mr. Sungaila's inability to drive a forklift.

23. Respondent has contended that it withdrew the job offer because Mr. Sungaila would be a direct threat to himself or others in the Night Warehouse Loader position.

24. Mr. Sungaila would not have posed a threat to the safety of himself or others.

25. To the extent Mr. Sungaila would be direct threat by performing one or more job functions of the Night Warehouse Loader position, Beverage Distributors could have accommodated Mr. Sungaila so as to remove the threat.

26. The Beverage Distributors did not engage in the interactive process to determine whether it was possible to accommodate Mr. Sungaila.

27. On April 5, 2008, Beverage Distributors terminated Mr. Sungaila's employment.

### **Claims For Relief**

#### **1. Violation of the Americans with Disabilities Act - 42 U.S.C. § 12112**

28. Plaintiff EEOC hereby re-alleges, reasserts, and incorporates the preceding paragraphs with the same force and effect as if fully set forth herein.

29. Mr. Sungaila is disabled within the meaning of the ADA because he has a physical impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(1)(A).

30. Mr. Sungaila is disabled within the meaning of the ADA because Mr. Sungaila has a record of an impairment that substantially limited one or more major life activities. 42 U.S.C. § 12102(1)(B).

31. Defendant refused to hire Mr. Sungaila because of an actual or perceived physical or mental impairment, or due to his record of disability. 42 U.S.C. § 12102(1)(C) and (3)(A).

32. Mr. Sungaila is qualified and able, with or without reasonable accommodation, to perform the essential functions of the position of Night Warehouse Loader position at Beverage Distributors.

33. Beverage Distributors was aware of Mr. Sungaila's disability.

34. Beverage Distributors intentionally refused to hire Mr. Sungaila as a Night Warehouse Loader because of his disability or disabilities, because it regarded him as disabled, and/or because of his record of disability in violation of Section 102(a) of the ADA. 42 U.S.C. § 12112(a).

35. Beverage Distributors' discriminatory treatment of Mr. Sungaila was done with malice or reckless indifference to Mr. Sungaila's federally protected rights.

36. Beverage Distributors' discriminatory treatment of Mr. Sungaila was intentional.

37. The effect of the practices complained of in the foregoing paragraphs has been to deprive Mr. Sungaila of equal employment opportunities and otherwise adversely affect his status as an employee because of his disability or disabilities.

**2. Violation of the Americans with Disabilities Act - Section 102(d)**

38. Beverage Distributors violated Section 102(d) of the ADA by utilizing the results of the pre-employment medical screening as a basis to deny him employment.

39. Beverage Distributors' discriminatory treatment of Mr. Sungaila was done with malice or reckless indifference to Mr. Sungaila's federally protected rights.

40. Beverage Distributors' discriminatory treatment of Mr. Sungaila was intentional.

41. The effect of the practices complained of in the foregoing paragraphs has been to deprive Mr. Sungaila of equal employment opportunities and otherwise adversely affect his status as an employee because of his disability or disabilities.

#### **PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Beverage Distributors, its owners, officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in any employment practices that discriminate on the basis of disability.

B. Order Beverage Distributors to institute and carry out policies, practices, and programs which provide equal employment opportunities for disabled individuals and which eradicate the effects of its past and present unlawful employment practices.

C. Order Beverage Distributors to make whole Mr. Sungaila by providing appropriate back-pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including, but not limited to, reinstatement or an appropriate award of front pay.

D. Order Beverage Distributors to make whole Mr. Sungaila by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including job search expenses, in amounts to be determined at trial.

E. Order Beverage Distributors to make whole Mr. Sungaila by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Beverage Distributors to pay Mr. Sungaila punitive damages for its malicious and reckless conduct described above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

**JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact.

Dated: September 29, 2011.

Respectfully submitted,

P. DAVID LOPEZ  
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**PLEASE NOTE:**

For purposes of service upon the EEOC, it is sufficient that pleadings, notices, and court documents be served upon the Trial Attorneys. Duplicate service is not required on the General Counsel in Washington, D.C.