CASE-CLOSED, CASE-MANAGER-KNOWLES

U.S. District Court Middle District of Tennessee (Nashville) CIVIL DOCKET FOR CASE #: 3:04-cv-00409

EEOC v. Bert's Men's Stores

Assigned to: District Judge Robert Echols

Demand: \$0

Cause: 42:2000e Job Discrimination (Employment)

Plaintiff Equal Employment Opportunity represented

Commission

represented by Celia S. Liner

Equal Employment Opportunity

Nature of Suit: 442 Civil Rights: Jobs Jurisdiction: U.S. Government Plaintiff

Commission

1407 Union Avenue

Date Filed: 05/10/2004

Jury Demand: Plaintiff

Suite 621

Memphis, TN 38104 (901) 544-0116 Fax: (901) 544-0111

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LEAD ATTORNEY

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V.

Defendant

Bert's Men's Stores of Nashville, Inc.

represented by Luther Wright, Jr.

Boult, Cummings, Conners & Berry P O Box 340025 1600 Division Street Suite 700 Nashville, TN 37203-0025 (615) 244-2582 Email: lwright@boultcummings.com

LEAD ATTORNEY ATTORNEY TO BE NOTICED

Interested Party

THOMAS M PAIGE, SR.

represented by Glen Coy Watson, III

1106 18th Avenue South Nashville, TN 37212 (615) 369-9600 Email: gcw@deshalaw.com LEAD ATTORNEY ATTORNEY TO BE NOTICED

Roy Clarence DeSha, Jr.

1106 Eighteenth Avenue, S Nashville, TN 37212 (615) 369-9600 Email: roy@deshalaw.com ATTORNEY TO BE NOTICED

Date Filed # **Docket Text** 05/10/2004 1 | COMPLAINT (No Summons(es) issued) (jb) (Entered: 05/12/2004) NOTICE of Initial Case Management Conference: ICMC set for 9:30 a.m. on 05/10/2004 7/6/04, Case referred to Magistrate Judge E. C. Knowles (jb) (Entered: 05/12/2004) 06/07/2004 WAIVER OF SERVICE mailed upon deft Bert's Men's Stores on 5/26/04 (jb) (Entered: 06/08/2004) 06/30/2004 PROPOSED Initial Case Management Order (jb) (Entered: 06/30/2004) 07/06/2004 CLERK'S RESUME: Case Management Conference held on 7/6/04. Proposed Case Management Order submitted; dispositive mtn ddl 1/3/05; jury trial set for 5/17/05 before Judge Echols. Order to enter C/R: Tape No.: 2004-43 MK (dlt) (Entered: 07/07/2004) 07/06/2004 INITIAL CASE MANAGEMENT ORDER by Magistrate Judge E. C. Knowles: Jury trial set for 9:00 a.m. on 5/17/05 before Judge Echols. Pretrial conference set 3:00 p.m. on 4/25/05 before Judge Echols. Discovery ddl set for 12/3/04; dispositive mtn filing ddl set for 1/3/05; mtns to amend the pleadings set for

	8/6/04. EOD 7/7/04 (cc: all counsel) (dlt) (Entered: 07/07/2004)			
08/12/2004	6	ANSWER by deft to [1-1] (gi) (Entered: 08/13/2004)		
11/22/2004	7	NOTICE by Luther Wright, attorney for deft Bert's Men's Stores of change of address; new address is 1600 Division St., Ste. 700, P.O. Box 340025, Nashville TN 37203-0025. (xc: af) (dlt) (Entered: 11/23/2004)		
11/22/2004	8	JOINT MOTION & MEMORANDUM to modify initial case management orde (w/ att'd proposed order) (dlt) (Entered: 11/23/2004)		
11/23/2004	9	ORDER by Magistrate Judge E. C. Knowles granting joint motion to modify initial case management order [8-1]. Discovery ddl is set for 12/17/04. The ddl for discovery-related motions is 12/31/04. Dispositive Motion filing ddl is set for 1/17/05. (cc: all counsel) (EOD 11/24/04) (jb) (Entered: 11/24/2004)		
01/18/2005	10	MOTION by deft for summary judgment (w/attached exhs A-E) (jb) (Entered: 01/19/2005)		
01/18/2005	11	MEMORANDUM OF LAW by deft in support of motion for summary judgment [10-1] (w/attachment) (jb) (Entered: 01/19/2005)		
01/18/2005	12	STATEMENT of undisputed material facts by deft in support of motion for summary judgment [10-1] (jb) (Entered: 01/19/2005)		
02/18/2005	13	MOTION by pltf for leave to file summary judgment response out of time (w/attached response & proposed order) (gi) (Entered: 02/18/2005)		
02/18/2005	17	MEMORANDUM by pltf in support of motion for leave to file summary judgment response out of time [13-1] (jb) (Entered: 03/08/2005)		
02/22/2005	14	RESPONSE by pltf EEOC to motion for summary judgment [10-1] (hv) (Entered: 02/22/2005)		
02/22/2005	15	RESPONSE by pltf EEOC to deft's statement of undisputed material facts in support of motion for summary judgment (copy of deposition of Thomas Paige) (hv) (Entered: 02/22/2005)		
02/24/2005	16	ORDER by Judge Robert L. Echols granting motion for leave to file summary judgment response out of time [13-1]. The Clerk is directed to file pltf's respons (cc: all counsel) (EOD 2/25/05) (jb) (Entered: 02/25/2005)		
03/09/2005	18	MOTION by deft for leave to file reply to pltf's response to deft's motion for summary judgment (w/original reply to pltf's response to deft's motion for summary judgment) (jb) (Entered: 03/10/2005)		
03/09/2005	19	MEMORANDUM by deft in support of motion for leave to file reply to pltf's response to deft's motion for summary judgment [18-1] (jb) (Entered: 03/10/2005)		
03/10/2005	20	ORDER by Judge Robert L. Echols granting motion for leave to file reply to pltf's response to deft's motion for summary judgment [18-1]. The Clerk is directed to file deft's reply to pltf's repsonse to deft's motion for summary judgment. (cc: all counsel) (EOD 3/11/05) (jb) (Entered: 03/11/2005)		
03/10/2005	21	REPLY by deft to pltf's response to deft's motion for summary judgment [10-1] (w/attachment) (jb) (Entered: 03/11/2005)		

03/29/2005	22	ORDER by Judge Robert L. Echols: Jury Trial is set for 9:00 a.m. on 5/17/05. Final Pretrial Conference is set for 3:00 p.m. on 4/25/05. Joint Proposed Pretr. Order ddl is set for 4/20/05. By 4/11/05, the ptys shall file any motions in limit and any motions objecting to expert testimony. Any responses to such motion shall be filed by 4/20/05. By 4/20/05, the ptys shall file briefs on the types of damages recoverable. Pretrial briefs shall be filed 7 working days prior to trial (cc: all counsel) (EOD 3/29/05) (jb) (Entered: 03/29/2005)		
03/31/2005	23	MOTION by deft to amend scheduling order and to continue trial date (w/attached affidavit) (jb) (Entered: 03/31/2005)		
03/31/2005	24	AFFIDAVIT of Luther Wright, Jr. re [23-1] [23-2] (jb) (Entered: 03/31/2005)		
03/31/2005	25	MEMORANDUM by deft in support of motion to amend scheduling order [23-1] and to continue trial date [23-2] (jb) (Entered: 03/31/2005)		
04/11/2005	26	MOTION by pltf in limine to exclude evidence pursuant to Rules 404, 608, and 609 (w/attached exhs. 1 & 2) (jb) (Entered: 04/11/2005)		
04/11/2005	27	MOTION by pltf in limine to exclude testimony pursuant to Rule 412 (w/attached exhs. 1-3) (jb) (Entered: 04/11/2005)		
04/13/2005	28	ORDER by Magistrate Judge E. C. Knowles: The Court has been advised that the ptys are ready for trial, and that there is no need for further case management proceedings before the Magistrate Judge. The ptys have further advised the Courthat there is a possibility of settlement in this action prior to trial. The Clerk is directed to forward this file to the Hon. Robert L. Echols. There will be no further proceedings before the Magistrate Judge. (cc: all counsel) (EOD 4/13/05 (jb) (Entered: 04/13/2005)		
04/18/2005	29	MEMORANDUM OF THE COURT (cc: all counsel) (EOD 4/18/05) (jb) (Entered: 04/18/2005)		
04/18/2005	30	ORDER by Judge Robert L. Echols: For the reasons explained in the accompanying Memorandum [29-1], Deft's motion for summary judgment [10-1] is denied. This case will proceed to jury trial as scheduled on 5/17/05 at 9:00 a.m. (cc: all counsel) (EOD 4/18/05) (jb) (Entered: 04/18/2005)		
04/20/2005	31	EXHIBIT list by deft (jb) (Entered: 04/21/2005)		
04/20/2005	32	WITNESS list submitted by deft (jb) (Entered: 04/21/2005)		
04/20/2005	33	PROPOSED JURY INSTRUCTIONS Nos. 1-16 submitted by pltf (w/disk) (jb) (Entered: 04/21/2005)		
04/20/2005	34	PROPOSED JURY VERDICT INTERROGATORIES Nos. 1-17 by pltf (jb) (Entered: 04/21/2005)		
04/20/2005	35	WITNESS/EXHIBIT list by pltf and agreed stipluations (jb) (Entered: 04/21/2005)		
04/20/2005	36	JOINT STIPULATIONS (jb) (Entered: 04/21/2005)		
04/20/2005		PROPOSED Joint Pretrial Order (jb) (Entered: 04/21/2005)		

04/20/2005	37	RESPONSE by deft in opposition to pltf's motions in limine [26-1] [27-1] (jb) (Entered: 04/21/2005)		
04/20/2005	38	PROPOSED JURY INSTRUCTIONS Nos. 1-23 submitted by deft and verdict forms (jb) Modified on 04/21/2005 (Entered: 04/21/2005)		
04/20/2005	39	PROPOSED VERDICT FORM by deft (jb) (Entered: 04/21/2005)		
04/20/2005	40	PROPOSED VERDICT FORM-DAMAGES by deft (jb) (Entered: 04/21/2005)		
04/21/2005	41	DAMAGES BRIEF FILED by deft (jb) (Entered: 04/21/2005)		
04/25/2005	42	CLERK'S RESUME: Final Pretrial Conference held 4/25/05. The Court will enter an order ruling on deft's motion in limine. Counsel directed to submit objections to deposition testimony in advance of trial. Parties directed to discuss settlement. Case shall proceed to trial as scheduled. C/R: Dorothy Stiles (jb) (Entered: 04/26/2005)		
05/05/2005	43	MEMORANDUM OF THE COURT (cc: all counsel) (EOD 5/6/05) (jb) (Entered: 05/06/2005)		
05/05/2005	44	ORDER by Judge Robert L. Echols: For the reasons explained in the accompanying Memorandum [43-1], Pltf's motion in limine to exclude evidence pursuant to Rules 404, 608, and 609 [26-1] is granted in part and denied in part and Pltf's motion in limine to exclude testimony pursuant to Rule 412 [27-1] is granted in part and denied in part. (cc: all counsel) (EOD 5/6/05) (jb) (Entered 05/06/2005)		
05/18/2005	45	ORDER by Judge Robert L. Echols: The Court having been advised by counse for the ptys that this action has been settled, it is hereby ordered that the action dismissed w/o prejudice to the right, upon good cause shown within 60 days, to reopen the action if the settlement is not consummated. Within the 60 day period the ptys may submit a proposed agreed order of compromise and dismissal. (cc all counsel) (EOD 5/18/05) (jb) (Entered: 05/18/2005)		
06/06/2005		PROPOSED Consent Decree w/exhs A & B (jb) (Entered: 06/07/2005)		
06/10/2005	CONSENT DECREE approved by Judge Robert L. Echols: This Decree reso all claims and issues arising out of Charge Nos. 253-2003-00323, 253-2003-00352, 253-2003-00353 and 253-2003-00505 and the Commission complaint in this case alleging unlawful employment discrimination by deft. agreement shall pertain only to matters arising from the aforementioned char and shall not be in any manner dispositive of another charge pending before office of the Commission. The provisions of this Consent Decree will be effective on the date the Decree is entered by the Court and shall continue to effective and binding upon the ptys to this action for a period of three years of the date of the entry of this decree or until deft's obligations are satisfied, whichever is longer. The provisions in Section IV pertaining to neutral refere shall remain in effect indefinitely. Within 60 days of entry of this Order, deft shall provide the Commisson a copy of its sexual harassment policy, a writte syllabus of the mandatory training of empolyees, and the date said training w conducted at each facility. A copy of the checks sent to Joyce Maxwell, Daw Harrington and Kasetra Nance shall be mailed to Katharine W. Kores, Regio Atty for the EEOC. The ptys shall bear their own costs and attys' fees in this			

		action. (w/attached exhs. A & B) (cc: all counsel) (EOD 6/10/05) (jb) (Entered: 06/10/2005)			
11/29/2005	MOTION for Order to Enforce Consent Decree by Equal Employ Opportunity Commission. Responses due by 12/16/05. (Attachme Proposed Order to Enforce Consent Decree)(Liner, Celia) Modified 11/29/05 (jb). (Entered: 11/29/2005)				
11/29/2005	48	MEMORANDUM in Support of <u>47</u> Motion for Order to Enforce Consent Decr filed by Equal Employment Opportunity Commission. (Attachments: (1) Exhibit 1 - Consent Decree (2) Exhibit 2 - Declaration of Kasetra Nance (3) Exhibit 3 - Declaration of Dawn Harrington (4) Exhibit 4 - Declaration of Joyce Maxwell)(Liner, Celia) (See Motion for Certificate of Service) Modified Text of 11/29/05 (jb). (Entered: 11/29/2005)			
12/16/2005	<u>49</u>	RESPONSE in Opposition re <u>47</u> MOTION for Order to Enforce Consent Decifiled by Bert's Men's Stores of Nashville, Inc (Wright, Luther) (Entered: 12/16/2005)			
12/21/2005	<u>50</u>	REPLY to Response to Motion re <u>47</u> MOTION for Order to Enforce Consent Decree filed by Equal Employment Opportunity Commission. (Attachments: # <u>1</u> Exhibit Letter to Luther Wright sent via fax July 27, 2005 with fax confirmation# <u>2</u> Exhibit Letter to Luther Wright sent via fax November 21, 2005 with fax confirmation# <u>3</u> Exhibit Collective Exhibit - Payment Chart# <u>4</u> Exhibit Collective Exhibit 3 - Interest Calculations)(Liner, Celia) (Entered: 12/21/2005)			
03/28/2006	<u>51</u>	ORDER: Within 7 days of the date of entry of this Order, the parties shall file a "Joint Status Report" indicating whether Deft is in compliance with the terms of the Consent Decree by having made all payments which are presently due, or were past due, and whether any further action needs to be taken by the Court with respect to the Pltf's Motion for Order to Enforce Consent Decree 47. Signed by Judge Robert Echols on 3/28/06. (jb) (Entered: 03/28/2006)			
04/04/2006	<u>52</u>	JOINT STATUS REPORT by the parties. (Liner, Celia) Modified Text on 4/5/06 (jb). (Entered: 04/04/2006)			
"Motion for Order to Enforce Consent Decree" 47. That Order recognitive parties jointly to submit a status report regarding Deft's compliance terms of the Consent Decree previously entered into by the parties 52 has been filed. The Status Reports indicates that Deft has not of the terms of the Consent Decree. Within 7 days of the date of enting Deft shall pay the outstanding amounts owed to the Charging Parties as Nance \$2,500.00, Harrington \$5,500.00, and Maxwell \$6,000 payments shall be made by certified check and shall be sent to each Charging parties at the addresses listed in the Consent Decree. Contemporaneously, with those payments, Deft shall also provide copies of the checks sent to the Charging Parties as required by the Decree. Failure to comply with the terms of this order may result		"Motion for Order to Enforce Consent Decree" 47. That Order required the parties jointly to submit a status report regarding Deft's compliance with the terms of the Consent Decree previously entered into by the parties. Status Report 52 has been filed. The Status Reports indicates that Deft has not complied with the terms of the Consent Decree. Within 7 days of the date of entry of this Order, Deft shall pay the outstanding amounts owed to the Charging Parties. Deft shall pay Nance \$2,500.00, Harrington \$5,500.00, and Maxwell \$6,000.00. Such payments shall be made by certified check and shall be sent to each of the Charging parties at the addresses listed in the Consent Decree. Contemporaneously, with those payments, Deft shall also provide to the EEOC copies of the checks sent to the Charging Parties as required by the Consent Decree. Failure to comply with the terms of this order may result in proceedings for contempt of Court. Signed by Judge Robert Echols on 4/11/06. (jb) Modified			

04/20/2006	<u>54</u>	STATUS REPORT <i>and Motion for Contempt</i> by Equal Employment Opportunity Commission. (Attachments: # 1 Exhibit Declaration of Counsel Celia S. Liner)(Liner, Celia) (Entered: 04/20/2006)	
04/20/2006		(MOTION CONTAINED IN STATUS REPORT-DOCKETED MOTION FO INTERNAL TRACKING PURPOSES-NO PDF ATTACHED-SEE DE #54 F PDF) MOTION for Contempt by Equal Employment Opportunity Commission Responses due by 5/8/06. (jb) (Entered: 04/21/2006)	
04/21/2006		NOTE TO FILER RE: DE #54-In the future please file motion and declaration as separate entries. Motion has been docketed for internal tracking purposes w/o PDF attached. (jb) (Entered: 04/21/2006)	
06/08/2006	<u>55</u>	ORDER: Show Cause Hearing is set for 7/10/2006 at 01:00 PM in Courtroom 874 before District Judge Robert Echols. Thomas paige, the President of Bert's Men's Stores, Shall appear in person at the Show Cause Hearing to explain why he has not made the payments as ordered by the Court and why a Contempt Order should not be issued. Signed by Judge Robert Echols on 6/8/06. (dt) (Entered: 06/08/2006)	
06/28/2006	<u>56</u>	NOTICE of Limited Appearance by Glen Coy Watson, III on behalf of THOMAS M PAIGE, SR (Watson, Glen) Modified Text on 6/28/06 (jb). (Entered: 06/28/2006)	
06/28/2006	<u>57</u>	SUGGESTION OF BANKRUPTCY as to Thomas M. Paige, Sr., President of Bert's Mens Stores of Nashville, Inc. by THOMAS M PAIGE, SR. (Watson, Glen) Modified Text on 6/28/06 (jb). (Entered: 06/28/2006)	
07/10/2006	<u>58</u>	Minute Entry for proceedings held before Judge Robert Echols: Show Cause Hearing held on 7/10/06. Deft did not appear to show cause why he has not complied with terms of the Consent Decree. Bert's Men's Stores assessed \$50/day compliance fee. For the reasons stated on the record, hearing continued to Friday, 7/14/06. Order to enter. (Court Reporter Dorothy Stiles.) (jb) Modified Text on 7/10/06 (jb). (Entered: 07/10/2006)	
07/10/2006	<u>62</u>	AFFIDAVIT of Luther Wright, Jr. See Order <u>59</u> . (Attachments: (1) Exhibit 1-Baptist Orders and Progress Notes; Excuse Slip dated 7/10/06; Fax Cover Sheet)(jb) (Entered: 07/20/2006)	
07/11/2006	ORDER: Thomas Paige failed to appear at the Show Cause Hearing set for 7/10/06. In lieu of Paige's appearance, counsel for Paige filed an Affidavit with attachments which purport to show Paige was at his mother's bedside in a hospital in Memphis, Tennessee. Show Cause Hearing is continued to 7/14/06 at 3:00 PM. Thomas Paige shall appear in person at this show cause hearing. If Thomas Paige fails to appear at this hearing and is not excused from so appearing by the Court based upon competent evidence that he cannot so appear because his mother is critically ill, the Court may be forced to issue a bench warrant in order to secure his appearance in court. Because of Paige's failure to appear at the hearing scheduled for 7/10/06, without adequate explanation, and because of his repeated failure to comply with the terms of the Consent Decree he signed on behalf of Bert's Men's Stores and for which he agreed to be personally liable, the Court will assess a compliance fine on Paige in the amount of \$50.00 per day payable to the EEOC for distribution to the Charging Parties to become effective commencing 7/11/06, and will remain in effect until Bert's Men's Stores pays the		

		remaining amount owed to the Charging Parties under the terms of the Consent Decree or otherwise convinces the Court that the non-compliance fine should be lifted. Signed by Judge Robert Echols on 7/11/06. (jb) (Entered: 07/11/2006)
07/14/2006	<u>60</u>	Minute Entry for proceedings held before Judge Robert Echols: Show Cause Hearing held on 7/14/06. Mr. Paige appeared as ordered, explained his reasons for not complying with the consent decree. The \$50/day compliance fee imposed on July 10 is waived. Order to enter denying EEOC's motion for contempt as moot. Witness and exhibit attached. (Court Reporter Dorothy Stiles.) (jb) Modified on 7/20/06 (jb). (Entered: 07/20/2006)
07/20/2006	61	ORDER: The Court finds that an explanation has been provided for Paige's failure to appear on behalf of Bert's Men's Stores at the Show Cause Hearing on 7/10/06, and to make payments in accordance with the Consent Decree. The Court further finds the compliance fine should be waived and the 7/11/06 Order should be amended accordingly. The Order 59 is amended and the compliance fine of \$50.00 per day levied is waived. The EEOC's Motion for Contempt 54 is denied as moot. This is a final Order which concludes the actions taken by the EEOC against Bert's Men's Stores for Deft's failure to enforce the terms of the Consent Decree. Signed by Judge Robert Echols on 7/20/06. (jb) (Entered: 07/20/2006)

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