IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION



EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Plaintiff,

٧.

KROGER TEXAS L.P., Defendant. CIVIL ACTION NO. 05-1768

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT OF THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TO THE HONORABLE UNITED STATES DISTRICT COURT:

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and Title I of the Civil Rights Act of 1991, as amended, 42 U.S.C. § 1981 *et seq.*, to correct unlawful employment practices based on sex and to provide appropriate relief to Yolanda E. Washington ("Washington"), Subrena L. Tarver ("Tarver"), and other females who were subjected to discriminatory treatment based on their sex, female. In this suit, the Equal Employment Opportunity Commission ("Commission" or "Plaintiff") alleges that Kroger Texas L.P. unlawfully failed to hire Ms. Washington, Ms. Tarver, and other qualified females, as a class, because of their sex. Also, Kroger did not retain applications of applicant to the order selector position.

JURISDICTION AND VENUE

- 2. 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 Sections 706 (f)(1) and (3) of Title VII of the Civil Rights Acts of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
- 3. Venue is proper in this Court because the unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

PARTIES

- 4. Plaintiff Equal Employment Opportunity Commission is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706 (f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5 (f)(1) and (3).
- 5. Defendant Kroger Texas L.P. ("Kroger" or "Defendant") has continuously been and is now doing business in the State of Texas and the City of Houston and has continuously had more than 15 employees. Kroger may be served with process by serving its registered agent in Texas, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, which may be found at 701 Brazos Street, Suite 1050, Austin, Texas 78701.
- 6. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

- 7. More than thirty days prior to the institution of this lawsuit, Ms. Washington and Ms. Tarver filed charges of discrimination with the Commission alleging violations of Title VII by Defendant. On October 7, 2003, both Ms. Washington and Ms. Tarver filed charges with the Commission. All conditions precedent to the institution of this lawsuit have been fulfilled including the timely filing of charges and an attempt to conciliate the matter with Defendant.
- 8. Since at least 2003, Defendant has engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). Since at least 2003, Kroger has failed to hire qualified female applicants, as a class, as order selectors because of their sex.
- 9. On or about September 19, 2003, Ms. Washington and Ms. Tarver applied to work as order selectors at the Kroger Distribution Center ("Warehouse"). Ms. Washington and Ms. Tarver obtained and completed applications at the Warehouse and turned in their completed applications on the same day.
- 10. When she applied to work at the Warehouse, Ms. Washington had over three(3) years experience working as an order selector and other relevant work experience, which was set out in her application. Among other things, Ms. Washington's completed application reflected that she had never been convicted of a crime, had never been discharged from employment, and had completed high school. Ms. Washington called the Warehouse several times to check the status of her application and was told Kroger was still hiring. In early October, 2003, she was told the Warehouse was accepting applications but not hiring. Ms. Washington had previously applied at the Warehouse for the order

selector job but has never been called for an interview.

- 11. When she applied to work at the Warehouse, Ms. Tarver had over ten (10) years experience working as an order selector and other relevant work experience, which was set out in her application. Among other things, Ms. Tarver's completed application reflected that she had never been convicted of a crime, had never been discharged from employment, and had completed high school. Ms. Tarver called the Warehouse several times to check the status of her application. On one occasion, she was told to wait until she was called and, at other times, she was told the Warehouse was still hiring. In early October, 2003, Ms. Tarver was told the Warehouse was accepting applications but not hiring.
- 12. After Ms. Washington and Ms. Tarver applied for order selector positions at the Warehouse, Kroger failed to interview them and hired less qualified male applicants for order selector positions.
- 13. During the year 2003, Mr. Tim Mack, Kroger's Assistant Distribution Manager, was responsible for hiring order selectors to work at the Warehouse.
- 14. Since about 1998, Mr. Mack's job responsibilities has included hiring order selectors to work at the Warehouse.
- 15. Mr. Mack has offered employment to just three female order selectors, but none prior to October 2003.
- 16. Mr. Mack has failed to select female applicants to the order selector position for interview on the same basis as male applicants.
- 17. Prior to November 2003, Kroger failed, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to preserve the applications for the order selector position of

applicants who were not selected for interview.

18. The effect of the unlawful practices complained of herein has been to deprive Ms. Washington, Ms. Tarver and other qualified female applicants of equal employment opportunities and otherwise adversely affected their status as employee because of their sex.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

- 19. Grant a permanent injunction enjoining Kroger, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in employment practices which discriminate on the basis of gender;
- 20. Order Kroger to institute and carry out policies, practices and procedures which provide equal employment opportunities for female applicants and employees and which eradicate the effects of its unlawful employment practices;
- 21. Order Kroger to make Ms. Washington, Ms. Tarver, and identified class members whole 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 the unlawful employment practices they was subjected to;
- 22. Order reinstatement into a comparable position for Ms. Washington, Ms. Tarver, and identified class members or award front pay in the amounts to be proven at trial if reinstatement is impractical;
- 23. Order Kroger to pay compensatory damages to Ms. Washington, Ms. Tarver, and identified class members for the past and future pecuniary losses resulting from the unlawful employment practices described above including but not limited to loss benefits;

- 24. Order Kroger to pay compensatory damages to Ms. Washington, Ms. Tarver, and identified class members for their past and future non-pecuniary losses including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses they suffered as a result of the unlawful employment practices described above, in amounts to be proven at trial;
- 25. Award punitive damages to Ms. Washington, Ms. Tarver, and identified class members in amounts to be proven at trial;
- 26. Award pre-judgment and post-judgment interest on all amounts recovered as allowed by law;
- 27. Order all affirmative relief necessary to eradicate the effects of the unlawful employment practices;
 - 28. Order Kroger to preserve applications as required under Title VII.
 - 29. Award the Commission its costs in this action; and
 - 30. Grant such other and further relief as is just and equitable.

JURY TRIAL DEMAND

31. The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY
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(Rev 07/89)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers are quired by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I(a) PLAINTIFFS EQUAL EMPLOYMENT OPPORTUNITY COMMISSION			DEFENDANTS KROGER TEXAS LP		
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF(EXCEPT IN U.S. PLAINTIFF CASES)			COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOC TRICAL SERVER COURTS TRACT OF LAND INVOLVED Southern District of Taxes		
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Rose Adewale-Mendes, Supervisory Trial Attorney EEOC-Houston District Office 1919 Smith Street, 7th Floor Houston, Texas 77002 (713) 209-3404			ATTORNEYS (IF KNOWN) L MAY 1 # 2005 H - 0 5 - 1 7 6 8 ol N. Milby, Clerk		
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) [x] 1 U.S. Government [] 3 Federal Question Plaintiff (U.S. Government Not a Party)			III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) PTF DEF Citizen of This State [] 1 [] 1 Incorporated or Principal Place [] 4 [] 4		
Plaintiff (U.S. Government Not a Party) [] 2 U.S. Government [] 4 Diversity Defendant (Indicate Citizenship of Parties in Item III)			of Business in Another State [] 2 [] 2 Incorporated and Principal Place [] 5 [] 5 of Business in Another State Citizen of Subject of a [] 3 [] 3 Foreign Nation [] 6 [] 6 Foreign Country		
IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) Defendant has engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C.§ 2000e-2 (a)(1) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C.§ 1981a Defendant subjected Yolanda Washington and Subrena Tarver to discriminatory treatment by unlawfully failing to hire them and other females, as a class, because of their sex. Also, Kroger did not retain applications of applicant to the order selector position.					
V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[] 110 Insurance [] 120 Marine [] 130 Miller Act [] 140 Negotiable Instrument [] 150 Recovery of Overpayment & Enforcement of Judgment [] 151 Metheare Act [] 152 Recovery of Defaulted [] 153 Recovery of Overpayment of Veterans) [] 153 Recovery of Overpayment of Veterans Benefits [] 160 Stockholders' Suits [] 190 Other Contract [] 195 Co REAL PROPERTY [] 210 I and Condemnation [] 220 Forcelosure [] 230 Rent Lease & Ejoctment [] 240 Torts to Land [] 245 Tort Product Liability [] 290 All Other Real Property	PERSONAL INJURY [] 310 Aurplane [] 315 Aurplane Product Liability [] 320 Assault, Libel & Slander [] 330 Federal Employers' Liability [] 340 Manne [] 345 Manne Product Liability [] 350 Motor Vehicle [] 355 Motor Vehicle Product Liability [] 360 Other Personal Injury CIVIL RIGHTS [] 441 Voting [X] 442 Employment [] 443 Housing/Accommodations [] 444 Welfare [] 440 Other Civil Rights	PERSONAL INJURY [] 362 Personal Injury- Med Malpractice [] 365 Personal Injury-Product Liability [] 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY [] 370 Other Fraud [] 371 Truth in Lending [] 380 Other Personal Property Damage [] 385 Property Damage Product Liability PRISONER PETITIONS [] 510 Motions to Vacate Sentence Habeas Corpus [] 530 General [] 535 Death Penalty [] 540 Mandamus & Other [] 550 Other	[] 610 Agriculture [] 620 Other Food & Drug [] 625 Drug Related Seuzure of Freperty 21 USC 881 [] 630 Liquor Laws [] 640 R R & Truck [] 650 Arrline Regs [] 660 Occupational Safety/Health [] 690 LABOR [] 710 Fair Labor Standards Act [] 720 Labor/Mgmt Relations [] 730 Labor/Mgmt Reporting [] 740 Railway Labor Act [] 740 Railway Labor Act [] 790 Other Labor Litigation [] 791 Empl Ret. Inc. Security Act	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark 840 Trademark 861 HiA (1395ff) 862 Black Lung (923) 863 Ditter XVI 865 RSI (405(g)) 865 RSI (405(g)) 870 Texes (U.S. Plantiff or Delendant) 871 IRS—Third Party 26 USC 7609	[] 400 State Reapportronment [] 410 Antitrust [] 430 Banks and Banking [] 450 Commerce/ICC Rates/etc [] 460 Deportation [] 470 Racketeer Influenced and Corrupt Organizations [] 810 Selective Service [] 850 Secunites/Commodities/ Exchange [] 875 Customer Challenge [] 875 Customer Challenge [] 891 Agnoultural Acts [] 892 Economic Stabilization Act [] 893 Environmental Matters [] 894 Energy Allocation Act [] 895 Freedom of Information Act [] 900 Appeal of Fee Determination Under Equal Access to Justice [] 950 Constitutionality of State Statutes [] 890 Other Statutory Actions
VI. ORIGIN (PLACE AN x IN ONE BOX ONLY) [x] I Original [] 2 Removed from [] 3 Remanded from [] 4 Reinstated or [] 5 another district [] 6 Multidistrict [] 7 Judge from Proceeding State Court Appellate Court Reopened (specify) Litigation Magistrate Judgment					
VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND \$ Check YES only if demanded in complaint: COMPLAINT: [] UNDER FR C P 23 DIRY DEMAND: [X] YES [] NO					
VIII. RELATED CASE(S) IF ANY (See instructions) JUDGE DOCKET NUMBER DATE 5-17-05 SIGNATURE OF ATTORNEY OF RECORD Address of ATTORNEY OF ATTORNEY OF RECORD ADDRESS of ATTORNEY OF RECORD ADDRESS of ATTORNEY OF RECORD ADDRESS of ATTORNEY OF					
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