

Service of this Complaint in Intervention may be made by delivering a copy of this instrument to its counsel in accordance with the Federal Rules of Civil Procedure.

B. STATEMENT OF FACTS

3. On or about September 19, 2003, Ms. Yolanda E. Washington and Ms. Subrena L. Tarver applied to work as order selectors at the Kroger Distribution Center (“Warehouse”). Both Ms. Washington and Ms. Tarver obtained and completed applications at the Warehouse and turned in their completed applications on the same day.

4. Yolanda E. Washington is an African-American female who at the time had over three (3) years experience working as an order selector along with other relevant work experience which was noted in her application. Additionally, Ms. Washington’s application reflected that she had never been convicted of a crime, had never been discharged from employment, and had completed high school. Subsequent to submitting her application, Ms. Washington called the Warehouse several times to check on the status of her application and was told Kroger was still hiring. In early October, 2003, she was informed that the Warehouse was accepting applications by not hiring. Ms. Washington had previously applied at the Warehouse for the order selector position but has never been called for an interview.

5. At the time that Ms. Tarver applied for the order selector position with Kroger, she had over ten (10) years experience working as an order selector as well as other relevant work experience as she noted 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 that 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 was not hiring.

6. After Ms. Washington and Ms. Tarver applied for order selector positions at the Warehouse, Kroger failed to interview them and hire less qualified male applicants for order selector positions.

7. During the year 2003, Mr. Tim Mack, Kroger's Assistant Distribution Manager was responsible for hiring order selectors to work at the Warehouse.

8. Since about 1988, Mr. Mack's job responsibilities have included hiring order selectors to work at the Warehouse.

9. Mr. Mack has offered employment to just three order selectors, but none prior to October 2003.

10. Mr. Mack has failed to select female applicant to the order selector position for interview on the same basis as male applicant.

11. 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 employees because of their sex.

C. CAUSES OF ACTION

Count No. 1 – TEXAS COMMISSION ON HUMAN RIGHTS

13. Plaintiff repeats and re-alleges paragraphs 1 through 11 with the same force and effect as though fully set forth here.

14. As females, Ms. Washington and Ms. Tarver are members of a class protected from discrimination by the Texas Commission on Human Rights Act.

15. Defendant Kroger has discriminated against Ms. Washington and Ms. Tarver in violation of the Texas Commission on Human Rights Act.

16. Ms. Washington and Ms. Tarver have been damaged as a result of Kroger's discrimination in violation of the Texas Commission on Human Rights Act.

17. Kroger's violations were done with malice or with reckless indifference to the statutorily-protected rights of Ms. Washington and Ms. Tarver. An award of exemplary damages are therefore appropriate. Defendant's actions demonstrate that they have engaged in discriminatory practices with

D. DEMAND FOR A JURY

18. Intervenors Ms. Washington and Ms. Tarver demand a jury trial.

E. PRAYER FOR RELIEF

WHEREFORE, in addition to the relief prayed for in the complaint in the principal action.

Intervenor prays that this Court order Kroger to pay Intervenors the following:

- a. appropriate backpay, including but not limited to, their salary and benefits;
- b. compensatory damages;
- c. punitive damages;
- d. enjoin Kroger from further acts of discrimination;
- e. reasonable attorney's fees both for the trial of this cause and any and all appeals as is necessary;
- f. all costs of taxable court in this matter;
- g. pre-judgment and post-judgment interest at the highest rate allowed by law; and
- h. all such other relief, legal or equitable, as may be warranted.

Respectfully submitted:

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By: /s/ Melissa Moore

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to all counsel of record via courier, certified mail (return receipt requested), facsimile transmittal and/or first class mail delivery on this the 14th day of July, 2005.

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