

2. The plaintiff cannot prevail on his claims for the following reasons:
 - Plaintiff has failed to prove a *prima facie* case of disparate treatment race discrimination in the failure to hire him to a position of employment, because plaintiff has not shown that he applied or was considered for an available position with the Birmingham North District office with which he applied.
 - Plaintiff has failed to prove a *prima facie* case of pattern and practice disparate treatment race discrimination in the failure to hire him to a position of employment, because plaintiff has not shown that he applied or was considered for an available position with the Birmingham North District office with which he applied. Furthermore, he has failed to produce any evidence that Cook's engaged in race discrimination towards him or any other individuals.
 - Plaintiff has failed to prove a *prima facie* case of disparate impact race discrimination in the failure to hire him to a position of employment, because plaintiff has not shown that any of the policies, practices, or procedures that he alleges to have a disparate impact caused him, or anyone else, any individual harm.
 - Plaintiff has no standing to bring his claims on behalf of the individuals in his alleged Fed. R. Civ. P. Rule 23 class, because he cannot establish a *prima facie* case regarding any of these allegations.
3. Cook's motion is based on admissible portions of:
 - (A) The pleadings;
 - (B) Affidavits (with exhibits);
 - (C) Other authenticated evidence;
 - (D) Plaintiff's Responses to Defendant's Interrogatories and Requests for Production; and

(E) Cook's Brief in Support of its Motion for Summary Judgment
as to claims alleged by Plaintiff Marion Waters.

WHEREFORE PREMISES CONSIDERED, Cook's respectfully requests this Court to grant summary judgment on all claims alleged by Marion Waters against Cook's in this complaint, certify the judgment as final under Rule 54(b) of the Federal Rules of Civil Procedure and grant costs in favor of the defendant.

/s/ Mac B. Greaves

Mac B. Greaves

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th of June, 2008, I electronically filed the foregoing Motion with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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