

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

LEMUEL MIDDLETON, REGINALD LEWIS,  
JOHN KEE, SHARON FLOWERS, GASTON  
HAZELWOOD, CYNTHIA JONES-MCCALL, WILLIE  
JONES, JOYA FULTON, LASWANYA JACKSON,  
DAVID KEE, BYRON WILLIAMS, VICTOR KEE,  
ANDREW LOVETT, MADELINE RILEY,  
SHERRIA CAMPBELL and CHARLES JACKSON,  
individually and on behalf of  
all other persons similarly situated,

Plaintiffs,

v.

PUBLIX SUPER MARKETS, INC.,

Defendant.

Case No. \_\_\_\_\_  
CLASS ACTION

97-760-CIV-T-25E

CLASS ACTION COMPLAINT - DEMAND FOR  
JURY TRIAL AND INJUNCTIVE RELIEF SOUGHT

Plaintiffs sue Defendant and state:

**JURISDICTION OF THE COURT**

1. This case is brought as a class action under 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000e et seq.) and the Florida Human Rights Act of 1992, Chapter 760, Florida Statutes.

2. Jurisdiction of this Court is founded upon 28 U.S.C. §§ 1331, 1343 and 1367 and 42 U.S.C. § 2000e-5(f)(3).

3. Venue is proper under 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3).

4. The Plaintiffs have satisfied the administrative prerequisites to suit under Title VII.

53709  
\$150.00

**PLAINTIFFS**

5. Each of the Plaintiffs is a black applicant for employment, black employee, or black former employee of Publix Super Markets, Inc., as described more fully in this Complaint.

**DEFENDANT**

6. Defendant Publix Super Markets, Inc., (hereafter "Publix") is a corporation with headquarters in Lakeland, Florida. It operates more than 500 retail grocery stores, primarily in Florida and Georgia, warehouses at each of its four divisions (some with satellite warehouses), and plants which produce such foods as dairy, deli and bakery products.

**CLASS ACTION ALLEGATIONS**

7. This action is brought as a class action under Fed.R.Civ.P. 23. The class consists of all present, former, and future black employees and applicants for employment with the Defendant alleging discrimination based on race in:

- (a) hiring and selection to and resistance to demotion from non-management jobs;
- (b) transition from part-time to full-time;
- (c) promotion and transfer to and resistance to demotion from management jobs or superior management jobs;
- (d) terms and conditions of employment including hostile work environment;
- (e) hourly rate, hours afforded, and salary; and
- (f) discharge and constructive discharge.

The term "selection" is used as a term of art in this Complaint because there is a pattern of black class members employed in jobs such as Front End Service Person (bagger) being passed over for jobs, such as Cashier, which are awarded to white persons being hired from outside the Publix workforce.

8. The facilities included are all retail stores, all warehouses, and all production plants owned and operated by Publix. The Division and Corporate headquarters are included only as to hiring and transferring.

9. Numerosity: Subsection (a)(1) of Rule 23 is satisfied in that the class is so numerous that joinder is impracticable. The number of current black employees on information and belief is circa 9,000 which does not include black former employees or black applicants for employment.

10. Commonality: Subsection (a)(2) is satisfied in that there are questions of fact and law common to the members of the class: to wit, has and does Publix maintain a continuing pattern and practice of discrimination against black persons in employment.

11. Publix has highly centralized personnel policies and practices which operate across all of its operations. The decision making process in the retail stores for hiring, promotions, job assignment and other employment benefits including compensation is based on highly subjective criteria in that managers make such decisions without resort to written guidelines or training and with

largely unfettered discretion. At most times relevant to this action, in the retail stores Publix did not post jobs and selected managers based on the "tap on the shoulder" system. The same policies and practices were used in selecting persons for management and professional jobs in the warehouses, plants and corporate headquarters.

12. On information and belief, Publix currently uses or has used during times relevant to this action its central Human Resources Department to screen applications for all non-store jobs, including jobs at the warehouses, plants and corporate offices. As recently as early 1993, Publix coded applications according to the race of the applicant. One of the purposes of such coding was to limit the number of black employees employed in non-store jobs. Some of the selecting supervisors instructed the Human Resources Department not to send applications from blacks. One or more employees from the Human Resources Department complained to higher management about these racially motivated instructions.

13. These common personnel polices and practices are used by Publix to exclude black applicants and black employees from jobs, promotional opportunities and other employment benefits afforded to similarly situated white employees. They raise common issues of fact for purposes of Fed.R.Civ.P. 23(a)(2).

14. The Plaintiffs' theory of liability, i.e., that Publix has intentionally discriminated against the Plaintiffs and the class, raises a common issue of law for purposes of Fed.R.Civ.P.

23 (a) (2) .

15. Typicality: Subsection (a) (3) is satisfied in that the claims of the 16 representative parties are typical of the class as a whole. The representative parties as a group represent each of the practices complained of herein, including failure to hire, failure to promote, failure to provide terms and conditions of employment in an environment from of racial bias, and discharge. The representative parties as a group have applied for and/or held a broad range of jobs and suffered failure to promote from part-time to full-time and have been denied most jobs as promotional opportunities that exist in the retail sector of Publix's employ. Many have been discharged because of their race. A number of the Plaintiffs have applied for or worked in the Publix's warehouse and plant facilities including those in Lakeland, Jacksonville, Miami and Atlanta. Like those who have worked in the retail operations, they have suffered a wide variety of failures to hire, promotional denials, and racially biased terms and conditions of employment and discharges. Others of the Plaintiffs have been discriminatorily denied employment and the opportunity to transfer to positions at the corporate and division offices.

16. Adequacy of Representation: The named plaintiffs will adequately represent the class. The plaintiffs desire to represent the class, do not have interests antagonistic to the rest of the class, and have retained counsel experienced in class action litigation of employment discrimination claims.

17. This action is brought under subsection (b) (2) of Fed.R.Civ.P. 23 in that Publix has acted or refused to act on grounds generally applicable to the class, making appropriate declaratory and injunctive relief with respect to the class a whole. Although damages are sought, equitable relief will predominate. In the alternative, Plaintiffs seek certification under subsection (b) (3) of Fed.R.Civ.P. 23.

**RACIALLY DISCRIMINATORY PRACTICES**

18. Publix has maintained a pattern and practice of racial discrimination against black applicants and employees in retail outlets, warehouses, and plants in the following ways:

- (a) failing to hire black applicants on terms equal to white applicants;
- (b) selecting white new hires for positions for which black incumbent employees are more qualified;
- (c) demoting black employees on terms less favorable than those afforded white employees;
- (d) failing to promote black employees from part-time to full-time employment on terms equal to white employees;
- (e) failing to promote black employees on terms equal to white employees;
- (f) failing to transfer black employees to more favorable assignments on terms equal to white employees;
- (g) maintaining a racially hostile work environment for black employees;

(h) utilizing subjective, race-based decision making processes in hiring, promotion, transfer and compensation decisions which are made by an overwhelmingly white managerial workforce;

(i) discharging and constructively discharging black employees on terms less favorable than those afforded white employees.

(j) failing to hire, transfer and promote into the Division and Corporate headquarters black employees and applicants on terms equal to white persons;

(k) deterring blacks from applying for employment with Publix and from seeking promotional opportunities; and

(l) denying black applicants and black employees other terms and conditions of employment, such as compensation, on the same basis applied to similarly situated white applicants and employees.

**ALLEGATIONS OF REPRESENTATIVE PLAINTIFFS**

**Lemuel Middleton**

19. PLAINTIFF LEMUEL MIDDLETON commenced his employment with Publix as a part-time Bagger in 1986 at Store #259 in St. Petersburg and was promoted to part-time Produce Clerk. In 1988, Middleton went on military leave. He served in the Marines from 1988-1992 including Operation Desert Storm, commanding 50 Marines in wartime.

20. In 1992, Middleton returned to Publix to the same store after being in the military service, commencing as a part-time Stocker and advancing to a full-time Stocker, Lead Stock Person and in charge of Frozen Foods in Perishables.

21. During this time, Middleton was told he would be trained for store management. However, his Store Manager was not training him and was telling others that he had no intention of promoting Middleton. Middleton went to the District Manager to inquire about promotional opportunities. He pointed out that he had supervised Marines in wartime. He was told he would have to wait.

22. White employees with less service and inferior records and abilities, including Jeffrey Campbell and Keith Dull, were promoted over Middleton to 2d Assistant Manager. Needing to know his Store Manager's intentions, Middleton told him that if he was not going to be trained and promoted he would have to leave to advance his career. His Manager said he "did not know" which Middleton took to be a rejection of his request. His career at a dead end, Middleton left approximately one month later in January, 1995. He is currently an insurance salesman.

Reginald Lewis

23. PLAINTIFF REGINALD LEWIS was hired by Publix as a part-time Stock Person in Jacksonville in August, 1988. Approximately seven months later, he was promoted to full-time Stock Person.

24. In October 1992, Lewis was promoted to 2d Assistant Manager. Three weeks after his promotion, Lewis was involuntarily transferred by his District Manager to #431 in Brunswick, Georgia. This was a great inconvenience on him because it forced him to work 50 miles from his family in Jacksonville.

25. Just before Lewis's promotion, Store #431 in Brunswick,

Georgia, had been picketed by a civil rights group alleging racial discrimination in employment. When Lewis arrived, he was placed out front and was told that he was a "token."

26. The all-white management team at #431 did not welcome Lewis. He was not allowed to perform the full range of duties normally assigned to 2d Assistant Managers. The Assistant Store Manager at #431 treated the black employees disrespectfully referring to them with racial slurs such as "nigger." Lewis, himself, was called "boy" and "midnight oil" by the other 2d Assistant Manager. The Store Manager condoned a white Cashier calling Lewis "buckwheat" and refused to allow Lewis to write her up.

27. Around July, 1993, Lewis was falsely accused of stealing from the company, was suspended for two weeks and had his keys taken from him. When the company realized that its allegations were in error, he did not have his keys returned nor did he receive an apology. After this he was used essentially as a Stock Person.

28. In August 1993, Lewis was transferred back to a store in Jacksonville. The Bakery Manager in Brunswick called him and said that he believed Lewis was going to be fired in Jacksonville. Soon thereafter \$500 was said missing and Lewis was accused of theft by Assistant Director of Retail Operations, Ralph Phillips. During these accusations, District Manager Harper physically blocked the doorway to stop Lewis from leaving the room where he was being accused and interrogated. Lewis swore that he was not guilty. He

was told that if he admitted to the theft, he could save his job, but that if he did not, the company would bring in outside investigators who would destroy him and he would lose his retirement which was approximately \$6000. To save his job, Lewis admitted to a theft he did not do. He was fired immediately.

29. After being fired, Lewis tried to contact Human Resources Director for Jacksonville, Jim Bohannon, but Bohannon would not speak with him. He then telephoned Jessie Barton, Vice President, on three separate occasions, but Barton refused to talk to Lewis on each occasion. Lewis is currently a Produce Manager with Albertson's.

John Kee

30. PLAINTIFF JOHN KEE first applied to the Jacksonville Warehouse in 1988. There was a high degree of favoritism for relatives amongst the white employees at the warehouse, so he believed that because he had two uncles working at the warehouse, his application might receive more favorable consideration than other qualified candidates. He was given the physical with two white candidates. Later that day the two whites were hired and the supervisor making the decision told Kee that he had chosen the two whites over him because they had "more morals and responsibilities."

31. Knowing that Publix can provide good employment opportunities, Kee applied again to the warehouse in early 1996. He was not given an interview or any response by the company.

32. Kee knew that there were good opportunities in Publix retail stores. In addition he understood that once that he was an incumbent Publix employee, he might be able to transfer to the warehouse.

33. In June 1996, Kee was hired at store #187 in Jacksonville as a Front Service Person (bagger). He received in the range of 25-27 hours a week. Kee was an exceptionally good Stock Person and Publix worked him 20-24 hours a week stocking, instead of bagging. He repeatedly asked to be given the title of Stock Person to fit his actual responsibilities but Publix refused. Though Publix enjoyed the benefit of his excellent stocking ability, they kept his pay and title that of Front Service Person. He was 26 years old at this time. Students still in school were being newly employed and getting 40 hours of work, more than he was ever given.

34. From June to December 1996 approximately nine white employees were hired and made Stock Persons at Store #187. All of these individuals were junior to Kee at Publix. By December, 1996, Kee could see that he would never be promoted and quit in frustration.

35. During his employment from June 1996 to December 1996, Kee asked on a numerous occasions about the opportunity to transfer to the warehouse. Each time he was put off and given no opportunity to apply.

36. Kee is currently employed as Assistant Maintenance Supervisor for an apartment complex. He shares supervisory

authority over approximately 20 persons.

Sharon Flowers

37. PLAINTIFF SHARON FLOWERS went to work for Publix in approximately November 1990 as a part-time Bakery Clerk at Store #2038 in St. Petersburg, Florida.

38. In August 1991, she was promoted to a pack-out position in the Bakery, but still as part-time, even though she often worked up to 55 hours per week. Flowers had been interested in full-time employment from the day she was hired, and in January 1992, she began actively requesting it. In March 1992, her Bakery Manager, Michael Masi, assured her that she and another white baker were next in line to be full-time.

39. In late October 1992, Flowers went on maternity leave. Just before this Masi assured her that her pack-out position would be open when she returned.

40. In February 1993, Flowers returned from maternity leave to find her position had been given to a white employee. During the same period, another white employee who returned from maternity leave was given back her former position.

41. Because she lost her former position, Flowers asked to be assigned to another store. This was denied and, instead, she was given a Front Service Person (bagger) position. Her hours were significantly reduced.

42. After this, Flowers began asking her Store Manager, David Andrews, for a Cashier position pointing out that in addition to

her Publix sales experience, she had two years at Winn-Dixie as a Cashier. She was told that she would have to "prove herself" first. She worked the Front Service Person for about four months. During this time three or four white Cashiers were hired, all of whom were white.

43. Around August 1993, Flowers filed a charge of discrimination with the EEOC. Only then did Publix respond by allowing her to be a part-time Cashier, but they did not compensate her for the lost earnings.

44. A few months later in October 1993, Flowers was transferred back to the pack-out position in the Bakery. But again only as part-time. In approximately July or August 1994, the white Baker whom Masi had assured her she would be promoted to full-time along with, was made full-time. In October 1994, she asked Masi when she would get full-time status. Masi said he had to talk to the District Manager, John Reina, but never mentioned it to her again.

45. After this conversation with Masi, two other Bakers, both white, were made full-time. In January 1995, another Baker, who again was white, was also made full-time. He had over a year less experience than Flowers. Then in July 1995, still another white Baker with less tenure received full-time status.

46. During her entire tenure at Publix, Flowers was never promoted to full-time status.

47. During the last two months of 1993 and all of 1994,

Flowers spent a significant amount of time assisting the Bakers, such that she became trained in all aspects of baking. Masi was very pleased with her work and asked her to assist the Bakers.

48. Beginning in July 1994, Flowers began telling Masi that she wanted to promote to Baker.

49. In November 1994, Flowers overheard Masi telling the Store Manager, Andrews, and the District Manager, Reina, that he needed more help. Masi said he wanted to promote Flowers. Reina and Andrews insisted that Masi hire someone from the outside. After the conversation ended, Flowers asked Masi if he talked to Reina and Andrews about her promotion to Baker. Masi told her she would be coming over to bake by January.

50. In January 1995, Masi told her that if she would be available on weekends he could start her as a Baker. Flowers adjusted her availability immediately. She started coming in on Saturdays and spent all day training to bake. Masi told her that when he got a replacement for her in pack-out she would be promoted.

51. In late January 1995, two new Bakers were hired. Both were white. One had no experience and the other appeared to have little. Flowers was taken off the schedule for her training; however, she worked for the next month training them.

52. Flowers continued to ask Masi about promoting her to Baker. Masi put her off by telling her he had to first fill her pack-out position.

53. In June 1995, Masi hired yet another Baker. As before the Baker was white and appeared to have little experience.

54. In September 1996, after nearly six years on the job and having never been written up or disciplined and having consistently performed her job satisfactorily, Flowers was fired by her Store Manager for allegedly having failed to punch out her time card for a break. Ironically, the day on which Flowers was fired she was not scheduled, but rather had come in to help out.

Gaston Hazelwood

55. PLAINTIFF GASTON HAZELWOOD started working for Publix as a part-time Baker in January 1989. In June 1989, he became a full-time Baker at store #2039 in St. Petersburg. Later, he was transferred to store #2027 at the Gateway Mall. Not long after Hazelwood arrived at store #2027, his new 2d Assistant Manager, Jim Hussey, had a pair of new shorts on. Hazelwood asked him about the shorts. Hussey commented, "I didn't have to chase the nigger too far to get them."

56. In 1991, Hazelwood was transferred to store #2007 in St. Petersburg and promoted to Assistant Bakery Manager. His staff was all white and resisted taking directions from a black supervisor. When the subject of possibly hiring more blacks came up, Hazelwood's Bakery Manager commented, "What do they want us to do? Go up under the trees and hire them?"

57. In October 1992, he was transferred back to #2027. The Bakery Manager left and as Assistant Bakery Manager, Hazelwood was

put in charge. Hazelwood tried to get a black Baker from another Publix store transferred to work with him in the Bakery. His Store Manager, Sean Atkinson, said "I don't want that nigger in this store."

58. Starting in 1993, Hazelwood began asking to be promoted to Bakery Manager. He asked Jane Pixley, Regional Bakery Supervisor, Tommy Kline, District Manager, his successor John Reina, District Manager and Sean Atkinson. He was not offered any position.

59. In 1994, the Bakery Manager at Hazelwood's store left. Hazelwood asked for the promotion since he had already served as Assistant Bakery Manager. This request was denied. A white Assistant Bakery Manager junior to Hazelwood was brought in from another store.

60. In 1994 Hazelwood again asked his District Manager, John Reina, for a promotion to Bakery Manager. Reina told Hazelwood that he would have to wait 6-10 years to get promoted just as Reina had alluding to his not getting promoted. At this time white employees with less time at Publix were being chosen for Bakery Manager.

61. Subsequently, in April 1995, still stuck in the position Assistant Bakery Manager, Hazelwood was reprimanded by his Store Manager Larry Hayes, at the instance of Reina, for allegedly not doing his work, a charge which was not true. Hazelwood was out having knee surgery. Hayes told Hazelwood that if he did not sign

the false reprimand, Publix would take more harsh and drastic measures against him. Realizing that they intended to fire him, he left that day. Hazelwood is now at the Police Academy.

Cynthia Jones-McCall

62. PLAINTIFF CYNTHIA JONES-MCCALL was hired by Publix as a part-time Cashier in January 1986 at the Pompano Beach store. In July 1986, she became a full-time Cashier and worked in that capacity until May 1994 when she went out on long term disability due to an injury. She retired from Publix three months later in August 1994.

63. During McCall's more than eight years of service, she received satisfactory performance evaluations, including commendations from customers. She was not issued any written reprimands or other discipline.

64. During these years, McCall received fewer increases in pay than similarly situated white Cashiers. On one occasion when McCall asked her Store Manager, Alan Price, who is white, about a pay raise. Price told her in no uncertain terms that she had gotten all she was going to get.

65. In September 1996, McCall decided to reapply at the SearsTown store on Federal Highway in Sunrise, Florida. The Store Manager, Butch Florentine, who is white, told her that he would not rehire her unless she went back to her former Manager, Price. Because she felt that Price had treated her in a racially discriminatory manner, she chose not to do that even though she was

very interested in being hired at the SearsTown store.

66. Later in 1996, McCall applied to the Andrews store in Oakland Park. The Store Manager was Florentine, the same man who had been the Store Manager at SearsTown when she had applied before. Florentine told her that she would have to call Lakeland. She called Lakeland. Someone in personnel at the Corporate Headquarters told her just go to the store in which she sought employment and apply. Remembering what Florentine had said, she contacted her former Store Manager, Price. Price told her to contact personnel in Lakeland and added, sarcastically, "Good luck." Having just called Lakeland, McCall realized that she was not going to be hired at either of these stores.

67. Then in October 1996, she also submitted an application to the Sea Ranch Village store. It had been remodeled and was hiring a substantial number of employees. She spoke with the Store Manager and Assistant Manager, who told her they would be in touch with her in a week. She had worked with the Assistant Manager, Craig Prince, before.

68. When she did not hear anything, McCall went to the store again. Again, she was told that they would get in touch with her. When she still did not hear from the store, she returned and spoke again with the Store Manager and Assistant Manager. She asked them what she needed to do and they did not respond. She then made yet a fourth contact, calling the Store Manager. He said that he was waiting for her paperwork from Lakeland.

69. McCall was never contacted again and so, after four unsuccessful contacts, three visits and one telephone call, she realized that Publix was not going to hire her.

Willie Jones

70. PLAINTIFF WILLIE JONES was hired while in college by Publix July 31, 1987 as a part-time Front Service Person and subsequently resigned in January 1995.

71. In 1990, Jones started asking about full-time employment in the Lakeland Warehouse Service Department. He was told there were no jobs. Over the next nine months, he kept calling back and each time got the same response. After one such call, Jones learned a white employee, his junior in tenure, had applied to the Warehouse after Jones and was hired in the Service Department. When he inquired how this had occurred, he was told that he had not pursued the opportunity hard enough.

72. Commencing in 1990, Jones also repeatedly asked his Store Manager for a promotion to Stock Person or any full-time job. Jones assured his Store Manager that he could work as many hours as assigned. The 2d Assistant Manager told Jones he was "not ready yet." Despite this, Jones was allowed to stock once a week, though at his job classification as Front End (bagger) and his lower rate of pay.

73. From this time until his resignation in January 1995, many white employees junior to Jones were promoted over him, and some went on to store management. A number of the Stock Person

vacancies in Jones' store were filled with new hires who were white, even though Jones had multiple years of service. On one such occasion in 1993, when a white employee was promoted to full-time Stock Person over Jones, Jones asked his Store Manager why and was told that it was because he was unavailable for more hours. Once, again, he assured the Manager that he was available and would quit any other employment in favor of Publix. Some of the whites selected for full-time Stock Person were selected after April 1, 1993.

74. On information and belief, during Jones' first six to seven years with Publix, no black person attained the job of full-time Stock Person or Front End Coordinator in his store. Jones himself worked more than seven years as a part-time Front Service Person.

Joya Fulton

75. PLAINTIFF JOYA FULTON went to work for Publix on February 13, 1984 and is currently employed by Publix. She was assigned to the Del., rose from part-time to full-time, and after three to four years became Deli Manager.

76. As a Deli Manager, Fulton was placed in store #58 in Ft. Lauderdale, a small low-volume store located in a poor neighborhood with an usually high percentage of black customers for Publix. The low volume controlled the bonuses for which she was eligible. Bonuses are an important part of a departmental manager's earnings.

77. For the six years she was at store #58, Fulton repeatedly

asked for a transfer to a higher volume store. Numerous white Deli Managers who were junior to her at Publix were promoted to the larger volume stores which allowed them to substantially increase their earnings.

78. After six years at store #58, Fulton was transferred to store #140 in Ft. Lauderdale. However, store #140 was also a low volume store and is in fact going out of business.

79. Being unsuccessful at getting assigned to a high volume store, in 1996, Fulton asked for a demotion to Assistant Deli Manager at a larger store hoping that she could then rise to Deli Manager in a large store. Her supervisor and her merchandiser denied her request for a transfer. Instead, after 12 years of service to Publix, she was involuntarily demoted to a Deli Clerk at store #70, a high volume store. She was also expected to help out at another store, #166, because she was so experienced.

80. Having been demoted to Deli Clerk, Fulton was then told that she was not eligible for any further pay increases because she was at the top of the pay scale for that position. This was not true. Other Deli Clerks who had never served in Deli management and were junior to her were making more than she.

Laswanya Jackson

81. PLAINTIFF LASWANYA JACKSON went to work for Publix as a part-time Cashier in April, 1988, and resigned in November, 1996. At the time she was hired, Jackson requested full-time and continued to do so through her employment in Florida. White part-

time Cashiers junior to her were promoted to full-time over her. She moved to part-time Deli Worker to make more money. On a number of occasions, she inquired about the possibility of training for a management position. She was told she would be given the opportunity to work in various positions in order to train for promotion; however, the opportunities were never made available.

82. In 1994, Jackson was still part-time. She and her mother who were both working for Publix were told by management officials that with a group of stores opening in the Atlanta area, there would be more opportunities for advancement. Based on this representation she and her mother moved from South Florida to the Atlanta area in August, 1994.

83. Despite the promise of improved employment opportunities, Publix started Jackson in Atlanta store #494 as a part-time Cashier. It took approximately five months before she was given a full-time Cashier position. She was the only black employee of the five Cashiers in the back office of store #494. She was ostracized by the white employees in the back office.

84. A full-time white back office Cashier who was being trained to do payroll came to Jackson and said that if she were Jackson she would not would not be doing the job. Jackson asked why. The Cashier said that it was because Jackson was being paid so little. She showed Jackson the payroll records. All four white full-time Cashiers in the back room were making the maximum or close to the maximum which was approximately \$10.50 per hour. By

comparison, Jackson was earning \$7.50 per hour even though her Publix tenure was longer than most or all of the other four full-time Cashiers in the back room.

85. During her tenure in store #494, Jackson overheard a 2d Assistant Manager inquire of her Store Manager, Lonnie Pepelu, who is white, whether he wanted to hire two persons whose applications he had taken. Pepelu inquired whether they were black or white. The 2d Assistant said they were black. Pepelu said that he would not hire them because he had hired all the blacks he was going to hire.

86. Around Fall 1995, Jackson transferred to store #269 to work in the back office. Before she transferred, Jackson got the Store Manager's agreement that she would work no more than two nights per week because of her child care responsibilities. When she got there, she found that junior white back office employees were given shifts with no night work. There were enough employees in the back office that there was no need for any one to work more than one night per week. After being assigned more night hours, Jackson started getting pressured from her 2d Assistant Manager and Grocery Manager, both of whom are white, to change to part-time employment.

87. In Spring 1996, Jackson was able to transfer to store #560, which had just opened, as a back office cashier. All the other back office cashiers were white. Her Store Manager, Janice Hargrave, who is also white, agreed that Jackson would only work

two nights a week. However, as before, approximately one month later Jackson was being required to work more nights. Her managers apologized, but continued to increase her night work. Because of the increased night work and the failing health of her mother, Jackson had to take a two week leave of absence with the understanding that she would have her job when she returned. However, when she returned, she was told she had to work as a cashier.

88. Realizing that she would encounter the same discriminatory treatment at whichever store she worked in Atlanta, Jackson resigned in November, 1996.

89. During her tenure at Publix in Georgia, Jackson also inquired about management training opportunities. One Store Manager said that he would provide her with management training but never did. Another told her there was no such thing as training opportunities in stores.

David Kee

90. PLAINTIFF DAVID KEE went to work for Publix at the Grocery Shipping Warehouse in Jacksonville in April 1988. Prior to going to the warehouse he had worked for the State of Florida for four years as an eligibility worker. At the time he was hired he had a bachelor's degree in psychology from Bethune Cookman College. During the time he was employed at the warehouse he earned his masters degree in psychology from Jacksonville Theological in May, 1996.

91. Kee's first job at the warehouse was cleanup. However shortly after arriving, he began asking about management positions in retail and the warehouse. In particular he asked Jim Bohannan, the head of Human Resources for the Jacksonville Division. Bohannan and the others he asked repeatedly told him there were no vacancies and falsely assured him that they would let him know if anything came up. They made it impossible for Kee to know whether what he was being told was true because they would not show him any announcements. The only jobs he was told about were other blue collar jobs in the warehouse.

92. After about six months he was promoted to Dock worker. Approximately two months later he became a Loader and then in 1990 became a Selector.

93. After four and a half years as a Selector, he became a Forklift Operator, but only after having many junior white employees pass him by to the Forklift job on the basis of their race.

94. As a Forklift Operator, Kee was written up a number of times, though he always performed his job well. He was being written up because the management was hostile to him as a black man seeking management jobs. During the time he held the Forklift Operator job, Publix discriminatorily denied him the appropriate amount of help in his job. They discriminatorily gave him less desirable hours.

95. Around Summer 1993, Kee applied for the position of Human

Relations Specialist. There were nine vacancies. All of the positions were filled by whites, except one. Kee's credentials were superior to all or most of the successful applicants.

96. In early 1996, Kee again applied for a white-collar position in the warehouse which involved helping set up a computer system for the warehouse. Kee had more formal education than the white person who was chosen.

97. Although he repeatedly requested management and white collar jobs from 1988 until 1996, the Human Relations Specialist and computer vacancies described above are the only two specific jobs which were ever made known to Kee so he could specifically apply for them.

98. Unable to promote into a position in keeping with his training and education, Kee retired on September 13, 1996. If he had held a better job, he would not have retired. Kee is currently the Manager of Diversified Records Services and supervises 30 employees. He is in the process of training an additional 60 employees.

Byron Williams

99. PLAINTIFF BYRON WILLIAMS graduated from the United States Naval Academy at Annapolis. He served nine years on active duty. His responsibilities included being Comptroller for a \$45 million budget on the U.S.S. Saratoga. Prior to that assignment he was the Material Stores Officer responsible for control of 44 storerooms with over 100,000 line items valued in excess of \$200,000 million.

Williams wanted a career at Publix in management or finance because he had heard that it was a good company to work for and felt that it would work well with his Naval experience in material and financial management.

100. In August 1994, Williams resigned from active Naval service, assumed a reserve commission and began residing in Jacksonville. In November 1994, he called Jim Bohannan having been told by his mother-in-law, Althemese Barnes, that Bohannan was a person to call about a job at Publix. Bohannan had been the head of Human Resources at the Jacksonville Division of Publix. Mrs. Barnes was known to Bohannan as a black woman.

101. Williams talked to Bohannan and described his naval experience, including his warehousing experience as Comptroller (stock control officer) and material officer on the U.S.S. Saratoga. Bohannan told Williams to apply by bringing his resume to the Division Headquarters on Interstate 10 west of Jacksonville and fill out an application there. Bohannan also said he was no longer head of Human Resources and gave him the name of the new head. Williams spoke with the new head and told him of his background in the Navy. He told Williams that Publix usually hired from within but, as Bohannan said, told Williams to bring his resume out and fill out an applications.

102. A couple of days later, Williams drove out to the Division Headquarters during business hours and explained to the security guard that he had been asked by Human Resources to drop

off his resume and fill out an application. The security guard refused to let him pass. The guard said that he called Human Resources but that neither Bohannan nor his successor were in. The guard took the resume and said he would it to Human Resources.

103. The next day Williams followed up by calling Bohannan to check on his resume. Bohannan said that he had not received the resume, but that, in any event, Publix only hired management from the inside. This was inconsistent with Bohannan's previous statement which had led Williams to bring his resume to the Division headquarters. Bohannan then suggested that Williams look for management opportunities at Publix retail stores in Jacksonville.

104. Shortly thereafter, Williams applied to two Publix stores in Jacksonville. He met with the Store Managers in each store, both of whom were white. He described his high level experience and show them his resume which included, among other things, his naval experience in food service, inventory and purchasing. To deter and discourage him from applying both managers told Williams that he would have to start as a part-time Stocker and that it would probably take two years for him to get full-time as a Stocker. Williams then realized there would be no management opportunities for him at Publix.

105. Williams is currently Director of Purchasing for the Leon County School Board with annual purchases of \$40-50 million dollars.

Victor Kee

106. PLAINTIFF VICTOR KEE was hired by Publix in February 1988 at the Jacksonville Warehouse as a Cleanup. He was the only black in the group of approximately nine or ten persons hired on the same day. The group tested on the Motor Driver job and was told that their seniority would be determined by the order of their punching in after the test. Kee finished first and punched in first.

107. After 90 days, Kee bid on a Trash Compactor job, but it went to Andrew Stevenson, who is white and was among the group in which Kee was hired. Kee's Superintendent, Steve Starling, explained that Stevenson got the job because of his seniority which, he said, was based on alphabetical order. Kee responded that he would still come before Stevenson. Starling promised to "check into the matter." Starling never got back to Kee, so Kee inquired again. This time Starling said that the "seniority" was based on the order in which the secretary had written the group's names down. Starling quashed any further inquiry, stating that nothing could be done about it.

108. A few months later, a Hauler job opened in Fresh Pack. Kee lost the job to three white employees, each his junior. Again he complained to his Supervisor, Frank Young. Contrary to the seniority system in the Warehouse, Young said that the three white employees got the job because they asked for it before it was posted, which was also contrary to the rules.

109. Kee received good performance evaluations and raises and

was finally promoted to Catcher approximately seven months later.

110. After being passed over in favor of Stevenson for an earlier vacancy, in approximately 1990-91, Kee was finally promoted to Loader in the Dairy Department. However, because of his race, he received the least desirable job assignments, in particular unloading the earliest arriving trucks with the largest loads.

111. During Kee's stint in the Dairy Department, he was the only black employee in his part of the department. Joe Moore, a white co-worker, often made racist remarks in front of Kee, the other employees and the Supervisor, Jim Lohman. Lohman would laugh at Moore's remarks and would not correct him. Lohman often made his own racist remarks in front of the employees. In addition to Moore and Logan, Kee's other white co-workers told "nigger jokes" about how they "liked to hang niggers up." Kee's complaints to his supervisor, Donnie Wilkerson, were dismissed as Kee's just taking it wrong. Nothing was done to change the behavior of Kee's white co-workers. The "jokes" continued.

112. In late 1992 Kee was promoted to Selector in Dairy. All the black employees in day selections except for Kee were assigned to Freezer which was considered the least desirable assignment because of the cold. These assignments were based on race.

113. The racially hostile work environment continued and in 1993 a white co-worker addressed Kee as "nigger." Kee, again, complained to Wilkerson. Wilkerson called in the white co-worker and they both laughed about Kee's complaint. Kee complained to

Steve Starling, Wilkerson's boss, but again nothing was done. Starling was the third ranked supervisor in the entire Warehouse. The racial hostility got worse.

114. In 1994, Kee again complained about the environment to Starling. As a result he began to suffer harassment. In particular, getting the worst job assignments and continually being denied breaks. The harassment from supervisors was greeted with laughter by his co-workers.

115. In 1995, Kee was injured when a white co-worker ran over his leg with a cart bearing approximately 1200 pounds. Although all other selectors had been allowed to go home, Kee had been ordered to help the Loaders at the time. The white employees laughed and said he was faking.

116. Kee's doctor diagnosed that his foot was broken, removed cartilage from Kee's leg and put his foot it in a cast. He was put on bed rest for six weeks but was ordered to call the warehouse at 4:00 a.m. every morning just as harassment. Kee returned to work on crutches and under his doctor's orders not to stand, walk or lift. Starling told him to work in the office. Then, the next day Wilkerson told him he could not work in the office. Kee went to Starling, who told him to call Wilkerson. When he called, Lohman answered. Kee told Lohman that Starling had ordered him to work in the office. Lohman repeated this to Supervisor Wilkerson. Kee then overheard Wilkerson say, "What does that black motherfucker think he's going to do? Sit in this office all day with his foot

propped up?" Kee was shocked and started crying. He told Starling what he had just heard.

117. Starling called Wilkerson to his office and Wilkerson admitted that he had said the words. Kee asked for an apology, but Starling told him to leave the room. Wilkerson did not apologize. Later, Wilkerson called Kee into his office and asked Kee angrily why he had told Starling about what he heard. Wilkerson still did not apologize.

118. The next day, despite his doctor's orders, Kee was not assigned to the office but to the back dock. His new job was packing pallets for which he was not trained. Contrary to his doctor's orders, Kee was ordered to use a small forklift. During this time he had to take physical therapy for his ankle.

119. The doctor took off the cast and discovered that Kee had bone chips which was a more serious injury than he had first diagnosed. He put a new cast on.

120. After several days, Kee went back to work and was forced to endure a harassing succession of job changes. First, his pay was cut and he was put on the dock scanning, even though Scanners are normally paid more than Selectors. Next, he was switched to the job of Checker. Then, he was assigned to scratching numbers off of the rack and relabeling them. Finally, he was made to pick up garbage. Each of these jobs required standing and walking which were against his doctor's orders.

121. In hopes of ending the harassment, Kee asked his doctor

to allow him to resume his job as Selector. His doctor would not.

122. Wilkerson left the Dairy Department. On Wilkerson's last day in the Dairy Department he admitted to much of his racist behavior. Wilkerson's replacement was Ron Ramsey, who is white. Ramsey continued the harassment, despite Kee's complaints to Starling.

123. Around this time, Kee was told that, while he was at home on medical leave, he had been given a certain job. The purpose of this was to ensure that the senior bidder, a black woman, would not be the senior bidder. Kee had not bid on the job because he was at home.

124. Starling called Kee to a meeting with Lohman, Ramsey, and Bob Clayton, who is white and the number two person in the Warehouse over Starling. Clayton gave him a piece of paper to sign, which said that Kee bid on the job. Kee refused. Clayton said that if Kee would not sign the false statement, he would be fired. Kee pointed out to Clayton that the day he was allegedly given the job, he was not even at work. Clayton insisted that Kee sign and, needing his job, Kee signed the false statement.

125. Ultimately, Kee reassumed his duties as a Selector even though his foot was still not healed. He reinjured his foot. They sent him to a specialist doctor.

126. In 1996 he injured his back and the harassment grew worse. His new Superintendent Glenn Beck, who took Starling's job, said that he thought that Kee was faking his back injury and

refused to act in accordance with the medical doctor's orders. He continually harassed Kee, requiring him, for example, to sweep with a push broom even though there is a riding sweeper for that function. This put Kee back in the hospital. Finally, he could endure no more harassment and Kee resigned in April, 1996.

Andrew Lovett

127. PLAINTIFF ANDREW LOVETT was hired by Publix on March 5, 1974, in the Jacksonville Warehouse, as a Warehouseman. Lovett was the first black hired in the Jacksonville Warehouse, though one black employee had transferred from the Lakeland warehouse before he arrived.

128. In 1986, he was passed over for Receiving Supervisor in favor of John Corliss, who is white and who had less experience and seniority. Lovett had trained Corliss to be a Receiving Clerk when Corliss first came to the Receiving Dock.

129. In approximately 1987 he was promoted to Shipping Foreman.

130. In 1988 a Produce Warehouse was opened. Publix provided no opportunity for Lovett to apply for the new management positions for the Produce Warehouse. The management team that was selected, consisting of approximately six to eight supervisors, was all white. Lovett was senior to each of them. Most of those chosen had been Truck Drivers and had to be trained in warehouse shipping and receiving skills, whereas Lovett had been in the warehouse for 12 years.

131. Many of these new managers failed at their jobs and resumed driving trucks. Lovett was also passed over for all the vacancies created by this turnover during the first two years of the new Produce Warehouse.

132. In approximately 1989, Lovett was involuntarily transferred to the lateral position of Foreman in the Stock Control Department of the Grocery Warehouse. He asked his Supervisor, Glenn Beck, who is white, for the personnel and equipment necessary to do a good job. They were denied. When he left the position, his successor Lance Rossier, who is white, was given additional personnel and equipment.

133. In approximately 1990 Lovett was passed over for Shipping Supervisor. The position was given to Mark Shaia, who is white and who was less experienced.

134. In 1990 John Corliss, who had some four years earlier been promoted over Lovett, left the position of Receiving Supervisor. Again, Lovett was passed over for that position in favor of Robbie Killan, who is white.

135. In 1992, Lovett took a demotion to Assistant Foreman in the Receiving Department because of the harassment by Superintendent Glenn Beck. Beck did not understand the job of Foreman in Stock Control and ordered Lovett to do things that did not make sense. Beck often threatened Lovett's job.

136. In 1993 Lovett moved laterally to the Recycling Department as Assistant Foreman to escape from the supervision on

Glenn Beck. His Supervisor, Randy Johnson, who is white, did not adequately inform him as to his responsibilities and then gave him a bad evaluation for not performing the duties of the job.

137. In 1994, a new warehouse was opened up in Orlando. Several Foreman and Assistant Foremen were offered the opportunity to transfer and promote to Orlando. Lovett was interested in these opportunities but was neither invited nor had notice of the jobs until after they were filled.

138. As a result of the transfers to Orlando, approximately three Foreman jobs opened up in Jacksonville in the Perishable Warehouse. Again, Lovett desired to transfer to a Foreman position in the Perishable Warehouse, but was neither invited nor had notice of them until after they were filled. Lovett was senior to all those who received the jobs.

139. Lovett resigned in March 1994 because of the discrimination he was suffering.

Madeline Riley

140. PLAINTIFF MADELINE RILEY went to work for Publix on November 5, 1974 in the Bakery Plant on the production line. After about three years she was promoted to Line Leader, the first level of supervision. She served as Line Leader for approximately 13 years.

141. In approximately 1993, Riley was demoted and told that she was not qualified to be a Line Leader. The demotion cost her more than \$2.00 per hour. The claim that Riley was unqualified was

merely a pretext for a racially motivated demotion. A white woman took her position.

142. Riley remained interested in re-promoting for the rest of her career until she retired on January 27, 1996. She was never offered the opportunity to reassume the job title from which she was wrongfully demoted.

Sherria Campbell

143. PLAINTIFF SHERRIA CAMPBELL began working for Publix in November 1991 in the Fresh Pack area of the Miami Warehouse as a temporary employee of a labor agency. She worked as a Packer. After 90 days she was made a permanent Publix employee. The employees of the department were predominantly black. The Miami Warehouse was in a predominantly black neighborhood.

144. In Summer 1992, Publix relocated the Fresh Pack Department to Deerfield Beach into a predominantly white neighborhood. Despite the fact that she had to commute more than 80 miles round trip, Campbell continued at her job. Publix told the Fresh Pack employees that there would be more opportunities in Deerfield.

145. In early 1993 there were rumors that Fresh Pack was going to be dismantled and would no longer exist.

146. Soon thereafter Campbell was assigned to the Cafeteria which offered more opportunity because it was not rumored to be phased out. She was doing a good job. However, soon she was replaced by a white woman with no explanation given to her. The

white woman had previously been assigned to Fresh Pack just as Campbell had been.

147. In March 1993 Publix officially announced that the Fresh Pack Department was being phased out in two weeks. The department was still predominantly black. Shortly after the announcement, Campbell's supervisor called her and approximately four of her co-workers, all of whom were black, in to his office and told them they had to find work at the retail stores. During this meeting, he repeatedly referred to them as "you people" which they felt was disrespectful of them as black persons.

148. Contrary to the official announcement, the Fresh Pack Department was not in fact phased out but remained in operation. Established employees of Fresh Pack, such as Campbell, saw new employees being brought in to Fresh Pack before the established Fresh Pack employee jobs were all terminated. On information and belief, its racial composition changed dramatically to a primarily white department.

149. Campbell and other Fresh Pack employees were told that they had to either resign or find their own positions in the retail stores. However, if they did not resign, they had to be processed as new employees in that they had to fill out a new application. Most Fresh Pack employees who did secure retail positions took a pay decrease.

150. Campbell with no help from Publix secured a position as a Deli worker at a store in North Miami Beach. However, she was

only given 12-20 hours per week compared to her previous 30-35 hours in the Fresh Pack Department at the Miami Warehouse. In the Warehouse, employees were allowed to observe Sunday as the Sabbath. This was not true in Campbell's new job in the Deli Department. She often stressed to the Deli Manager, who was black, that she desired to honor the Sabbath on Sunday. The Deli Manager generally agreed with this request but was overruled by the Assistant Deli Manager, who was white. Most of the time, he would schedule her on Sunday even though she was only getting 12-20 hours per week.

151. Campbell resigned her employment in July 1993.

Charles Jackson

152. PLAINTIFF CHARLES JACKSON went to work for Publix in 1986 in Jupiter, Florida, and is currently employed by Publix. He held the positions of part-time Front End Service Person, part-time Stocker, and part-time Produce Clerk. In 1992, Jackson asked for and was given a leave of absence to attend college and in 1994 received his Associate of Arts degree in auto/diesel technology.

153. In 1994, Jackson recommenced working with Publix in Atlanta as a part-time Front End Service Person and then approximately three months later moved to part-time Produce Clerk. In 1994, he also obtained full-time employment with Greyhound as a diesel mechanic for approximately \$14 per hour. He maintained his part-time job with Publix as a second job.

154. In early 1995, Jackson applied to Publix's Atlanta Division truck garage as a mechanic. His application for mechanic

was summarily rejected at that time and he was told that the best job he could be offered was \$7 per hour washing trucks, which was less than he was making as a part-time Produce Clerk. He was told that he would have to "work his way up" and that "seniority was the only thing that counted." He refused the job.

155. In April 1995, the Dairy Plant opened at the Warehouse facility. Jackson was offered the position of Blowmold Operator, which paid \$10.55 per hour, materially less than his Greyhound job. He was told that while he would have to start at the lower paying Operator's job, he could "soon" be moving into a maintenance mechanic position because of his education and experience. Based on this promise, he relinquished his job with Greyhound to work full-time for Publix.

156. Since that time, Jackson has applied for six maintenance mechanic vacancies. He has been interviewed for all six. All six positions have been given to white employees. Jackson had superior formal mechanical, electrical and electronic education, actual experience, and Publix tenure to most, if not all, of those who were given the jobs.

157. On each occasion he had been interviewed by six or seven persons. Two members of the interview team told him that he was more technically qualified than the white person selected for two of the jobs. A third member of the interview team told Jackson that he believed Jackson should have gotten the job and that he could not understand the outcome of the process and would no longer

participate in the process.

158. In late March 1997, Jackson was told by a night sanitation maintenance employee who was part of Jackson's interview team, that the reason Jackson did not receive a recent vacancy was because the white employee selected, who had been with Publix no more than nine months, was currently enrolled in school. Jackson by contrast had completed his education and had eight years with Publix.

Count I

42 U.S.C. § 1981

159. Plaintiffs incorporate paragraphs 1 through 158.

160. The foregoing conduct of Publix violates the rights of the Plaintiffs and the class to make and enforce contracts and to the full and equal benefit of all laws and proceedings as enjoyed by white citizens under 42 U.S.C § 1981.

161. The foregoing conduct of Publix is and has been continuing in nature.

162. As a consequence of the foregoing conduct the Plaintiffs and the class members have suffered lost wages and other employment benefits, mental pain and anguish, loss of enjoyment of life, humiliation, embarrassment, inconvenience and hurt.

163. Publix has engaged in the foregoing conduct maliciously and in reckless disregard of the rights of the Plaintiffs and the class members and should be punished to deter future violations.

Count II

Title VII, 42 U.S.C. § 2000e et seq.

164. Plaintiffs incorporate paragraphs 1 through 158.

165. The foregoing conduct of Publix violates the rights of the Plaintiffs and the class to be free of discrimination on account of race under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e et seq.

166. The foregoing conduct of Publix is and has been continuing in nature.

167. As a consequence of the foregoing conduct the Plaintiffs and the class members have suffered lost wages and other employment benefits, mental pain and anguish, loss of enjoyment of life, humiliation, embarrassment, inconvenience and hurt.

168. Publix has engaged in the foregoing conduct maliciously and in reckless disregard of the rights of the Plaintiffs and the class members and should be punished to deter future violations.

Count III

Chapter 760, Florida Statutes

169. Plaintiffs incorporate paragraphs 1 through 158.

170. The foregoing conduct of Publix violates the rights of the Plaintiffs and the class to be free of discrimination on account of race under the Florida Human Rights Act of 1992, Chapter 760, Florida Statutes.

171. The foregoing conduct of Publix is and has been continuing in nature.

172. As a consequence of the foregoing conduct the Plaintiffs and the class members have suffered lost wages and other employment benefits, mental pain and anguish, loss of enjoyment of life, humiliation, embarrassment, inconvenience and hurt.

173. Publix has engaged in the foregoing conduct maliciously and in reckless disregard of the rights of the Plaintiffs and the class members and should be punished to deter future violations.

**JURY TRIAL DEMAND**

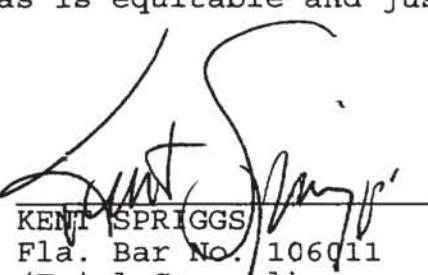
Trial by jury is demanded on all issues so triable in accordance with Fed.R.Civ.P. 38.

**RELIEF REQUESTED**

Plaintiffs request that this Court:

- a. Assume jurisdiction over this case;
- b. Allow appropriate discovery;
- c. Certify the class as pleaded and designate the undersigned counsel as class counsel;
- d. Try Stage I pattern and practice liability issues to a jury and award punitive damages in accordance with the jury verdict;
- e. Order appropriate declaratory and injunctive relief in accordance with the jury verdict;
- f. Try Stage II proceedings before one or more juries, and award back pay, front pay, benefits, and compensatory damages in accordance with jury verdicts;
- g. Award prejudgment interest;

- h. Award costs and attorneys fees to the Plaintiffs; and
- i. Order such other relief as is equitable and just.



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