

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01273-WYD-BNB

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

CHRISTOPHER ADAMS,
JAMES BAXTER,
LUIS SOLIS GONZÁLEZ,
JAMES STEADHAM and
NATE VALENTINE,

Intervenors,

vs.

ALBERTSON'S LLC,

Defendant.

**COMPLAINT AND JURY DEMAND OF
INTERVENOR NATE VALENTINE**

Nate Valentine ("Intervenor" or "Valentine"), by his attorneys the law firm of McNamara, Roseman, Martínez & Kazmierski LLP, complains against Defendant Albertson's LLC as follows:

NATURE OF COMPLAINT IN INTERVENTION

1. This complaint in intervention is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), as amended.
2. Intervenor has been adversely affected by unlawful employment practices taken against him by Defendant on the basis of his black race. These unlawful

employment practices include the maintenance of a severe, pervasive, and hostile work environment, and discriminatory terms and conditions of employment. As redress for the damages he has suffered, Intervenor seeks legal and equitable remedies sufficient to make him whole, as more fully set forth below.

PARTIES

3. Valentine is an African-American citizen of the United States and a resident of the State of Pennsylvania. He is thus entitled to the rights and privileges protected by Title VII.

4. At all times herein relevant, Defendant has continuously been doing business in the State of Colorado, and has continuously had in excess of 15 employees in Colorado.

5. At all times herein relevant, Defendant was 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).

6. At all times herein relevant, Defendant was Valentine's employer, within the meaning of Section 701 of Title VII.

JURISDICTION AND VENUE

7. This Court's federal question jurisdiction over Intervenor's claims is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4). This action is authorized and instituted pursuant to Section 706 of Title VII.

8. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f) (3) and 28 U.S.C. § 1391(b). The employment practices alleged to be unlawful were

committed within the jurisdiction of the U.S. District Court for the District of Colorado. Defendant maintains offices and conducts business within the State of Colorado.

9. Plaintiff Equal Employment Opportunity Commission ("Plaintiff" or "EEOC") investigated two class-wide pattern or practice charges of discrimination filed by a former black employee of Defendant, Matthew Ricks. Based on these charges, on 30 June 2006, the EEOC filed the instant class action lawsuit, alleging that Defendant has, since at least 1995, maintained a hostile work environment affecting a class of employees based on his race, color and/or national origin, and has subjected employees to discriminatory terms and conditions of employment, based also on such class member's race, color and/or national origin.

10. Intervenor is a member of the similarly-situated class of minority employees described in Plaintiff's Amended Complaint, has been identified as a Claimant in this litigation by the EEOC, and is an aggrieved individual within the meaning of 42 U.S.C. § 2000e-5(f)(1).

GENERAL FACTUAL ALLEGATIONS

11. Valentine began working for Defendant in March 1996 as an Order Selector at its Katy, Texas distribution center.

12. Based on his strong work ethic and performance, Valentine was promoted to Warehouse Foreman in September 1996. In April 1997, Valentine was further promoted to the position of Warehouse Supervisor at Defendant's Katy, Texas facility.

13. In June 2000 Valentine accepted a lateral transfer to a Warehouse Supervisor position at Defendant's distribution center located at 2780 North Tower Road, Aurora, CO 80011 (the "Distribution Center"). Valentine held the position of

Warehouse Supervisor during the entire period of time he was employed at the Distribution Center.

14. In February 2003, Valentine accepted another lateral transfer, this time to the position of Warehouse Supervisor at Defendant's Lancaster, Penn. distribution center. After about one year, again based on his strong work ethic and performance, Valentine received another promotion, this time to the position of Warehouse Superintendent. He is today employed by Supervalu, Inc.

15. Throughout his tenure with Defendant, Valentine performed the functions of his positions in an above-average to superior manner.

Hostile Work Environment

16. Throughout his employment at the Distribution Center Intervenor was subjected to a work environment which was permeated with racially explicit graffiti, epithets, drawings and writings.

17. On a nearly daily basis Valentine was subjected to offensive racist graffiti and writings including, without limitation, "nigger," "hang the nigger," "boy," "go back to Africa," "a good nigger is a dead nigger," "coons," a drawing of a gun with bullets hitting a black man, swastikas, KKK, "white power," drawing of a black man with big lips in a noose, "nigger cottonpicker," "kill niggers," drawing of Hitler, "fucking spic," "fucking wetback," "the only good spic is a dead spic," "you're paid in dollars not pesos," "wetback," "cholos," "wetbacks go back to Mexico," "lazy Mexicans or Hispanics," "go back to Mexico," "Mexicans are taking over," "Mexicans will work for anything," "Mexicans will work for free," and "andele, andele."

18. Valentine himself has been referred to as the “token nigger,” and on one occasion, the racist writings were directed at him personally, stating “Nate is a nigger,” or words to that effect.

19. Valentine observed these graffiti and writings primarily in the main men’s room by the break room, in the warm up room men’s room, and on racks in the warehouse.

20. Valentine estimates that in the 32 months that he worked at the Distribution Center (approximately 960 days), there were only about 30 days in which he was *not* subjected to the racist graffiti, writings and drawings described above.

21. Valentine observed several subordinate employees, including without limitation James Steadham and Brad Davis, complain about the racist graffiti and writings to Warehouse Manager James Hartley, and Hartley would take no action in response. Given Hartley’s inaction, Valentine was aware that Messrs. Steadham and Davis then lodged similar complaints with General Manager Gary Scarff. Although the racist comment about Valentine was removed after complaints were made to Scarff, the other racist graffiti and writings continued to appear.

22. As a Warehouse Supervisor Valentine himself personally received on several occasions complaints about the racist graffiti and writings from several subordinate employees, including without limitation Chris Adams, James Baxter, Brad Davis, Matt Ricks and James Steadham.

23. During the period of about November 2000 to about November 2002 Valentine was frequently the Warehouse Supervisor assigned to the night shift. During this time period, he prepared and sent about 15 e-mail messages to the managers in

his chain in command, including Hartley and James Zandstra, advising them of the complaints he had received from bargaining unit employees regarding racist graffiti and writings. He sent these e-mails because there were no higher-level managers at the Distribution Center during the night shift, and Valentine wanted to make sure that his superiors would be aware of these complaints when they arrived to work the following morning.

24. When Valentine was a Warehouse Supervisor during the day shift, he almost always brought his subordinate employees' complaints about the racist graffiti and writings to the attention of his superiors in person. About 5% of the time he received complaints about the racist graffiti and writings on the day shift he communicated these complaints to his superiors via e-mail. Whether in person or via e-mail, he personally brought the complaints of his subordinate employees to the attention of warehouse managers James Hayes, James Hartley and James Zandstra.

25. On at least one occasion, Valentine went in person to General Manager Gary Scarff, Defendant's highest-ranking manager on site at the Distribution Center, and complained about the racist graffiti and writings. Valentine specifically remembers telling Scarff that he was personally being subjected to these offensive writings and drawings "all the time." He also specifically recalls telling Scarff that the racist graffiti and writings would remain up for long periods of time, and that he hated to have to see these materials "day in and day out."

26. Notwithstanding the multitude of occasions in which Valentine brought his own or his subordinate employees' complaints about the racist graffiti and writings to the attention of the managers in his chain of command, Valentine was never once

asked by his superiors to investigate any of these complaints of, or to discipline anyone for, these infractions of Defendant's anti-harassment and Courtesy, Dignity and Respect policies.

27. Notwithstanding the multitude of occasions in which Valentine brought his own or his subordinate employees' complaints about the racist graffiti and writings to the attention of the managers in his chain of command, Valentine never once heard his fellow members of management discuss in supervisors' meetings (or elsewhere) the need to promptly and effectively respond to these complaints of unlawful conduct at the Distribution Center.

28. Notwithstanding the multitude of occasions in which Valentine brought his own or his subordinate employees' complaints about the racist graffiti and writings to the attention of the managers in his chain of command, Valentine never once observed or was informed that any member of management had investigated or otherwise responded to any of the complaints of racist graffiti and writings.

29. On several occasions Valentine brought the problem to the attention of Maintenance Department managers George Potter and Greg Sharits, whose department was responsible for the maintenance of the rest rooms. Far more frequently than not, Sharits and Potter would ignore Valentine's requests that they assign maintenance staff to immediately remove the offensive materials from the walls of the men's rooms.

30. On several occasions Valentine decided to take things into his own hands and, although he was not their supervisor, directed bargaining unit maintenance employees to remove the graffiti and writings.

31. Valentine suspected that white warehouse employee Randall Harmuth was responsible for a lot of the racist writings and graffiti. On one occasion, as soon as Valentine came into a restroom, Harmuth came out of one of the stalls with a marker in hand, and Valentine found there an incomplete racist drawing. Also, a substantial number of racist writings had been found in the freezer warm-up room near where Harmuth worked.

32. Valentine reported his suspicions concerning Harmuth to Warehouse Manager Hartley on more than one occasion. Hartley chose to ignore Valentine's reports and took no action to investigate or discipline Harmuth. As a result, the racist writings and graffiti continued.

33. Notwithstanding the multitude of occasions in which Valentine brought his own or his subordinate employees' complaints about the racist graffiti and writings to the attention of the managers in his chain of command, to Valentine's knowledge no Distribution Center employee has ever been disciplined, suspended or discharged for violating Defendant's anti-harassment and Courtesy, Dignity and Respect policies.

34. Throughout most of the time he was employed at the Distribution Center Valentine hated and dreaded coming to work because of the hostile work environment. He frequently had nightmares about the work environment in general and about James Hartley in particular.

35. Valentine was deeply offended, disturbed and hurt by the racist graffiti and writings to which he was subjected on an almost daily basis. Valentine had significant trouble sleeping, became increasingly withdrawn from others, and suffered

emotional and mental trauma as a result, including without limitation loss of enjoyment of life and feelings of isolation and humiliation.

36. After his transfer to Defendant's Lancaster, Penn. facility, Valentine was immediately struck with the difference between the work environment at that workplace and the work environment at the Distribution Center. The Lancaster facility was, for the most part, free of racial and national origin harassment and discrimination. Unlike the situation at the Distribution Center, to the extent there were any violations of Defendant's policies at the Lancaster distribution center, upper management there promptly took action to address the problem.

Discriminatory Terms & Conditions of Employment

37. When he began working at the Distribution Center, Valentine observed that a dispatcher, Nancy Amore, was regularly assigning orders to Order Selectors out of sequence. He instructed Amore to stop this practice, and to assign orders in the proper sequence, that is, assign the next order up to the next available Order Selector.

38. On each occasion that he caught Amore assigning work orders out of sequence, Amore informed Valentine that she was only following the directives of Warehouse Manager Hartley. Valentine reported these incidents to his immediate supervisor, Warehouse Superintendent Tim Smith, as well as to Hartley. Both managers informed Valentine that they would speak to Amore about his concerns, but Valentine continued to observe the manipulation of work order assignments on subsequent occasions.

39. As a Warehouse Supervisor, Valentine began to receive complaints from a number of minority subordinate employees about the assignment of work orders.

These employees complained to him that the assignment of work orders was being manipulated on the basis of race and national origin.

40. Upon being made aware of these complaints, Valentine paid closer attention to which employees were being assigned the more difficult and time-consuming orders to pick, and which were getting the easier orders. After some time, it became clear to Valentine that the manipulation of work order assignments was not an accident or coincidence. Valentine noticed that time after time black and Hispanic Order Selectors were being assigned the harder and more difficult work orders, while white employees received the lighter and easier order assignments. Valentine became convinced that the manipulation of work order assignments, done at the direction of Warehouse Manager Hartley, was motivated by race and national origin.

41. Valentine raised his concerns with upper management that work orders were being selectively assigned to the detriment of racial and ethnic minority employees. His concerns were ignored and the work orders continued to be assigned in this discriminatory manner throughout the remainder of his tenure at the Distribution Center.

42. As a Warehouse Supervisor, one of Valentine's duties was to make work assignments at the beginning of a shift for his subordinate employees. Valentine's practice was to make such assignments on the basis of seniority. He would assign less senior employees to perform Order Selector duties, while more senior employees would be assigned to preferred positions, such as forklift operator and receiving.

43. On numerous occasions, Warehouse Manager Hartley would overrule Valentine's initial work assignments for reasons Valentine, at least at first, did not

understand. Hartley frequently reassigned minority employees, who had been given preferable job assignments by Valentine based on their greater seniority, back to Order Selector duties, and then would move less senior white employees into the newly vacant preferred job positions.

44. Valentine was concerned and upset about this, but was not in a position to countermand the Warehouse Manager, who was his second-level Supervisor. After observing this pattern of reassigned job duties repeat itself over and over, Valentine concluded that these reassignments of job duties were being implemented by Hartley on the basis of race and national origin.

45. Valentine also observed that Hartley would frequently change and rearrange the work schedule of warehouse employees in order to meet the personal preferences of white employees, very often at the expense of black and Hispanic employees. The frequency of this practice also led Valentine to conclude that Hartley was intentionally and selectively accommodating the schedule preferences of warehouse employees on the basis of race and national origin.

46. Order Selectors at the Distribution Center have their work performance measured, at least in part, on the number of cartons of merchandise they "pick" during the time they are "on the clock." The practice at the Distribution Center, however, was not to count "down time," that is, time in which an Order Selector was asked to perform tasks at the request of management other than picking orders.

47. Bilingual Hispanic employees at the Distribution Center are sometimes requested by management to perform translation duties, for example in the course of new employee training conducted for newly hired employees who did not speak

English. Valentine on several occasions observed warehouse managers, including without limitation Jeff Brown, ask Hispanic employees to translate for them and then deny these employees down time for the period they were interpreting for him instead of picking orders. This practice adversely affected these Hispanic employees' productivity numbers. Valentine observed this being done to Hispanic employees José Díaz, Orlando González, José Maldonado, and others.

48. Lower productivity numbers not only affected the overall performance evaluations of these Hispanic employees. Lower productivity also directly and adversely impacted the condition of these employees' employment, given the well-established practice at the Distribution Center to assign new job equipment and tools to employees with the highest productivity rates.

49. As Warehouse Supervisor, Valentine developed an innovative plan to try to reduce the turnover of new employees. Under this plan, new employees who were struggling to make their production quota, but who otherwise had a demonstrated record of good attendance and work ethic, would not be terminated after a probationary period. Instead, Valentine would attempt to ensure that these employees received additional time and guidance to assist them in making their production quota.

50. After he had implemented this plan for about a month, Valentine went on vacation. While he was away, the minority employees who had qualified for Valentine's program were abruptly terminated. In contrast, two newer white employees who had already developed attendance problems and who had exhibited an inappropriate attitude toward their jobs were retained. Valentine checked the attendance records of

the terminated minority employees and confirmed to himself that these employees should not have been fired.

51. Valentine sensed that Warehouse Manager Hartley did not like him, and several other employees and managers told him that Hartley had expressly said he did not like Valentine. Valentine observed that Hartley would frequently countermand his decisions. Hartley was very disrespectful to Valentine, and would talk down to him in a way that was demeaning and degrading. Valentine did not observe Hartley treat or interact with white supervisors or managers in a similar manner.

52. In early 2001 Valentine missed 2-3 days from work when he required surgery after having aggravated a prior back injury. When he returned from work, Hartley required him to bring a doctor's excuse. In contrast, white Warehouse Supervisor Jim German informed Valentine that when he had missed 3 ½ weeks of work due to an illness, he was not required to bring in a doctor's excuse. German told Valentine that the difference in treatment was a result of the fact that "Hartley and Smith don't like you because of the color of your skin."

53. For over a year (in the 2001 - 2002 time period) Valentine was the only Warehouse Supervisor with split days off, that is, his days off were never in a row. All of the white Warehouse Supervisors and Superintendents were almost always scheduled two consecutive days in a row off by Warehouse Manager Hartley.

54. When Valentine complained to Hartley about the inequity of this arrangement, Hartley was dismissive of him. Hartley told Valentine that he was tired of hearing about it, and that the schedule was the schedule.

55. German told Valentine that he and some other supervisors had gone to Hartley on Valentine's behalf, and that Hartley had told them that as long as he was Warehouse Manager Valentine would never get two days off in a row. German told Valentine that he knew Hartley was prejudiced against racial minorities because of the comments he (German) had heard Hartley say about minority employees at the Distribution Center.

56. Valentine was primarily responsible for having spreadsheets that contained the warehouse's productivity numbers posted for over two years on the employee bulletin board at the Distribution Center. These spreadsheets clearly indicated that Valentine had the highest productivity rates (measured by number of cases shipped per shift) of any of the Warehouse Supervisors during the period of January 2001 through February 2003.

57. Notwithstanding the fact that Valentine's productivity rates were higher than all of the white Warehouse Supervisors, his salary was lower than all of the white Warehouse Supervisors.

58. Notwithstanding the fact that Valentine's productivity rates were higher than all of the white Warehouse Supervisors, his salary raises were lower than all of the white Warehouse Supervisors.

59. While employed at the Distribution Center, Valentine also observed that minority employees who complained about workplace matters were especially harassed by management. For example, Valentine noticed that Charging Party Matt Ricks was in his view unfairly harassed by management as a result of complaining about discriminatory terms and conditions at work. On one occasion, Valentine heard Hartley

say something to the effect “That motherfucker Matt Ricks I’m sick and tired of him and I’m going to get rid of him. He is nothing but problems and I’m sick and tired of his BS. And if I have to get rid of one of you guys (meaning Valentine or another supervisor) too, I will.”

60. In contrast, Valentine observed white warehouse employee Randall Harmuth file numerous complaints and grievances. Unlike Ricks, however, he was not harassed or targeted for termination by management.

61. Valentine was a supervisor on duty when African-American employee Teashaud Jackson broke his leg. The next day, when Jackson’s grandparents called, concerned about whether he would be fired, and Valentine assured them he would not. Valentine was thereafter shocked to learn that Jackson had in fact been fired. Valentine believes that Jackson would not have been fired if he were white, as he has seen white warehouse employees who are injured on the job be allowed to return to work and not be terminated.

62. As a direct and proximate result of Defendant’s unlawful employment practices complained of herein, Valentine has suffered mental suffering, emotional distress, loss of enjoyment of life, humiliation, loss of reputation, intimidation and inconvenience, and other compensable, non-economic injuries.

FIRST CLAIM FOR RELIEF

(Hostile Work Environment Based on Race in Violation of Title VII)

63. Intervenor incorporates the allegations set forth in paragraphs 1 through 62 of this complaint as if fully alleged herein.

64. During all times herein relevant, Defendant consistently maintained and condoned a work environment at the Distribution Center which was pervasively and severely hostile to African-American employees.

65. Intervenor was subjected to a severe and pervasively hostile work environment at the Distribution Center because of his black race, in violation of Title VII.

66. This unlawful employment practice was intentional.

67. This unlawful employment practice was willful and wanton, and/or was done with malice or with reckless indifference to Intervenor's federally-protected rights.

WHEREFORE, Intervenor prays for relief as more fully set forth below.

SECOND CLAIM FOR RELIEF

(Discriminatory Terms and Conditions of Employment in Violation of Title VII)

68. Intervenor incorporates the allegations set forth in paragraphs 1 through 67 of this complaint as if fully alleged herein.

69. Defendant discriminated against Intervenor on the basis of his black race with respect to the terms and conditions of his employment including, but not limited to, disparate work schedule, disparate compensation and raises, and discriminatory working conditions.

70. These unlawful employment practices were intentional.

71. These unlawful employment practices were willful and wanton, and/or were done with malice or with reckless indifference to Intervenor's federally-protected rights.

73. Defendant's discrimination against Intervenor in the terms and conditions of his employment was in violation of Title VII.

WHEREFORE, Intervenor prays for relief as more fully set forth below.

PRAYER FOR RELIEF

Intervenor respectfully request that this Court enter judgment in his favor and against Defendant, and that it order the following relief against Defendant:

- A. Award Intervenor non-economic damages, for all claims as allowed by law, in an amount to be determined at trial, including, but not limited to, lost earnings capacity, mental suffering, emotional distress, loss of enjoyment of life, humiliation, loss of reputation, intimidation and inconvenience;
- B. Award Intervenor punitive or exemplary damages for all claims as allowed by law, in an amount to be determined at trial;
- C. Award Intervenor attorney's fees and costs, including expert witness fees, as allowed by law;
- D. Award Intervenor pre-judgment and post-judgment interest; and
- E. Award Intervenor such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Intervenor demands a jury trial on all issues of fact raised by his Complaint.

Dated this 17th day of September, 2007.

s/ William J. Martínez
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September, 2007, I electronically filed the foregoing COMPLAINT AND JURY DEMAND OF INTERVENOR NATE VALENTINE with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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