

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

U.S. DISTRICT COURT
SO. DIST. AL.
MOBILE, AL 36682

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FILED CLERK'S OFFICE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Plaintiff

Civil Action No: 97-1189-93-M

vs.

OUTRIGGER RESTAURANT, INC.,
Et al.

Defendants

COMPLAINT-IN-INTERVENTION

COMES NOW the Plaintiff-Intervenors, Gregory King, Earlene Millender, JoAnn Sullivan, Deloise Porter, Michael Watson, Wallace Kyles, Tyrone Pearson, Henry Sullivan, Michael Jackson, Louis Etheridge, Ahmad Rasheed, Barbara Clarkson, Cassandra Knight, Dawn Whiting and Mark A. Vannasdall (hereinafter collectively called "Plaintiff-Intervenors") and brings forth this action against the defendants, Outrigger Restaurant, Inc. and Skilstaf, Inc. (hereinafter called "Defendants"), and further states as follows:

I. JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1331, 1343(4), 2201 and 2202, 42 U.S.C. Section 2000e et seq, and 42 U.S.C. Section 1981. This is a suit authorized and instituted pursuant to Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended, the "Civil Rights Act of 1991," and 42 U.S.C. Section 1981. The

jurisdiction of this Court is invoked to secure protection of, and redress deprivation of, rights secured by 42 U.S.C. Section 2000e et seq., The "Civil Rights Act of 1991", and 42 U.S.C. § 1981 providing for legal and equitable relief against racial discrimination.

2. The Plaintiffs-Intervenors, Gregory King, Earlene Millender, JoAnn Sullivan, Deloise Porter, Michael Watson, Wallace Kyles, Tyrone Pearson, Henry Sullivan, Michael Jackson, Louis Etheridge, Ahmad Rasheed, Barbara Clarkson, Cassandra Knight, Dawn Whiting and Mark A. Vannasdall, have fulfilled all conditions precedent to the institution of this action under Title VII of the Act of Congress known as the "Civil Rights Act of 1964," as amended. The Plaintiff-Intervenors filed their charges of race discrimination with the EEOC within 180 days of the occurrence of the last discriminatory act. Thereafter, the EEOC brought suit against Outrigger on behalf of Plaintiff-Intervenors and the class they seek to represent. In addition, Plaintiff-Intervenors are relying on their own Equal Employment Opportunity Commission (EEOC) charges of discrimination and those of the other plaintiffs and plaintiff-intervenors to this action.

II. PARTIES

3. The Plaintiff-Intervenors, Gregory King, Earlene Millender, JoAnn Sullivan, Deloise Porter, Michael Watson, Wallace Kyles, Tyrone Pearson, Henry Sullivan, Michael Jackson, Louis Etheridge, Ahmad Rasheed, Barbara Clarkson, Cassandra Knight, Dawn Whiting and Mark A. Vannasdall are citizens of the United States of African-American heritage and reside in the State of Alabama.

The Plaintiff-Intervenors were employed at all times pertinent to this action by the Defendant, Outrigger Restaurant, Inc. and Employer Accounting Services Com. Inc, as successor to Skilstaf, Inc.

4. The Defendant, Outrigger Restaurant, Inc. (Hereinafter called "Outrigger"), is a company existing and operating under the laws of the State of Alabama. Defendant Outrigger is also an employer under the definitions of Title VII and 42 U.S.C. Section 1981.

5. The Defendant, Skilstaf, Inc. (Hereinafter called "Skilstaf") is a company existing and operating under the laws of the State of Alabama. Defendant Skilstaf is also an employer under the definitions of Title VII and 42 U.S.C. Section 1981.

6. The Defendants Outrigger and Skilstaf have engaged in an "industry affecting commerce" within the meaning of Section 701(h) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-(h). The Defendants have employed at least fifteen (15) persons.

III. VENUE

7. Venue is proper in the Southern District of Alabama, Southern Division, since Defendants are conducting business within this District and Division and this action is brought where the unlawful employment practice was committed.

IV. CAUSES OF ACTION

8. Plaintiff-Intervenors hereby adopt, and incorporate, all averments contained in the Complaint filed in this matter by the EEOC as if fully stated herein.

9. During all times pertinent to this lawsuit, Plaintiff-Intervenors were employed by the Defendants, Outrigger and Skilstaf.

10. Defendants have discriminated against the Plaintiff-Intervenors on the basis of race in hiring, rehiring, evaluations, compensation, job duty assignments, recruitment, screening, selection procedures, denial of promotions, discipline, demotions, subjective decision-making practices, and other terms and conditions of employment which have resulted in disparate impact and treatment of the Plaintiff-Intervenors, and all others similarly situated.

11. While so employed, the Plaintiff-Intervenors were subjected to discrimination as a result of their race which affected the terms and conditions of their employment. Said discrimination was continuous and resulted in a pattern and practice of discrimination by Defendants.

12. Plaintiff-Intervenors were retaliated against as a result of complaints against discrimination which were made against Radcliffe and other supervisory employees of Defendants.

13. As a result of the continuous racially hostile working environment and retaliation which Plaintiff-Intervenors were forced to endure, working conditions became so intolerable that they were forced to resign their positions at Outrigger which resulted in a constructive discharge.

14. The Defendants engaged in policies and practices by and through the management of it's company, which evidence a pattern and practice of willful and intentional discrimination against the

Plaintiff-Intervenors on the basis of their race. These policies and practices include but are not limited to the following:

- a) Verbally harassing the Plaintiffs, and others similarly situated, in an effort to secure their resignation and/or termination.
- b) Engaging in racially hostile policies in violation of the rights of the Plaintiff-Intervenors, and others similarly situated.
- c) Tolerating racial epithets by its employees resulting in a racially hostile working environment. These comments include, but are not limited to:

1. The manager and part owner of the company, Radcliffe, referred to black employees as "stupid," "stupid nigger," and "nigger."
2. Radcliffe frequently told black employees that they were "lazy" and "a bunch of worthless niggers"
3. Radcliffe referred to one of his supervisors as the "slave keeper"
4. Referring to a white supervisor as a "nigger lover" as a result of his complaints regarding the treatment of African-American employees
5. Referring to African-American employees as "my niggers"

15. The policies, practices and procedures adopted, condoned, and ratified by Defendants were discriminatory and constituted a continuing violation of discrimination in violation of the rights of Plaintiff-Intervenors.

16. The Plaintiff-Intervenors, Louis E. Ethridge, was employed by Defendants from February, 1995, through June, 1995, as a fry cook. During Ethridge's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of his race. Ethridge was denied promotions and raises as a result of his race and discriminated against in other terms and conditions of employment. As a result of the hostile working environment, Ethridge was forced to resign his position with Defendants resulting in a constructive discharge.

17. The Plaintiff-Intervenor, Henry Sullivan, was employed by Defendants from March, 1995, through August 1995, as the head fry cook. During Sullivan's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of his race and discriminated against in other terms and conditions of employment. Sullivan complained to his manager regarding the racially hostile working environment and was retaliated against as a result of his complaints resulting in his termination. Sullivan was denied promotions and raises as a result of his race.

18. The Plaintiff-Intervenors, Deloise Porter, was employed by Defendants from April 12, 1995, through August 14, 1995, as the salad preparer. During Porter's employment with Defendants, she was continuously subjected to racial epithets and hostile treatment

as a result of her race and discriminated against in other terms and conditions of employment. As a result of the racially hostile working environment, Porter's working conditions became so intolerable that she was forced to resign resulting in a constructive discharge. Porter was also denied promotions and raises as a result of her race.

19. The Plaintiff-Intervenors, Tyrone Pearson, was employed by Defendants from June, 1995, through August 14, 1995, as the dishroom supervisor. During Pearson's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of his race and discriminated against in other terms and conditions of employment. As a result of the racially hostile working environment, Pearson's working conditions became so intolerable that he was forced to resign resulting in a constructive discharge. Pearson was also denied promotions and raises as a result of his race.

20. The Plaintiff-Intervenors, JoAnn Sullivan, was employed by Defendants from July 23, 1995, through August 30, 1995, as the salad preparer. During Sullivan's employment with Defendants, she was continuously subjected to racial epithets and hostile treatment as a result of her race and discriminated against in other terms and conditions of employment. As a result of the racially hostile working environment, Sullivan's working conditions became so intolerable that she was forced to resign resulting in a constructive discharge. Sullivan was also denied promotions and raises as a result of her race.

21. The Plaintiff-Intervenor, Gregory King, was employed by Defendants from June, 1995, through October 3, 1995, as a cook. During King's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of his race. King was demoted from Cook to dish washer as a result of his race and discriminated against in other terms and conditions of his employment. As a result of the racially hostile working environment, King's working conditions became so intolerable that he was forced to resign resulting in a constructive discharge. King was also denied promotions and raises as a result of her race.

22. The Plaintiff-Intervenor, Earlene Millender, was employed by Defendants from May 5, 1995, through August 14, 1995, as a dishwasher and salad line preparer. During Millender's employment with Defendants, she was continuously subjected to racial epithets and hostile treatment as a result of her race and discriminated against in other terms and conditions of her employment. As a result of the racially hostile working environment, Millender's working conditions became so intolerable that she was forced to resign resulting in a constructive discharge. Millender was also denied promotions and raises as a result of her race.

23. The Plaintiff-Intervenors, Michael L. Jackson, was employed by Defendants from February 1995, through June, 1995. During Jackson's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of his race. Jackson was hired as a food preparer and later reassigned to the position of cook. However, Jackson's reassignment of job duties from food preparer to cook did not

result in a pay increase nor was his pay equivalent to white employees with the same duties and responsibilities. Jackson was discriminated against on the basis of his race by Defendants in promotions, compensation, discipline and other terms and conditions of his employment. As a result of the racially hostile working environment, Jackson's working conditions became so intolerable that he was forced to resign resulting in a constructive discharge.

24. The Plaintiff-Intervenors, Michael Watson, was employed by Defendants from April, 1995, through August 15, 1995, Fry Line Supervisor. During Watson's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of his race and discriminated against in other terms and conditions of my employment. As a result of the racially hostile working environment, Watson's working conditions became so intolerable that he was forced to resign resulting in a constructive discharge. Watson was also denied promotions and raises as a result of his race.

25. The Plaintiff-Intervenors, Mark Vannasdall, a white male, was employed by Defendants from March, 1995, through September, 1995, as a Chef and Kitchen Supervisor. During Vannasdall's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of his complaints of race discrimination. Vannasdall was retaliated against as a result of his complaints of racial discrimination to Radcliffe, and other management, and discriminated against in other terms and conditions of his employment. On or about September, 1995, Vannasdall was terminated for making complaints regarding

race discrimination at Outrigger and in retaliation for his statements and compliance regarding EEOC investigations regarding discrimination at Outrigger.

26. The Plaintiff-Intervenors, Dawn Whiting, applied for a position with Defendants for a waitress position on several occasions beginning in June, 1995. Whiting had previous experience as a waitress and was qualified for said position. Whiting was told that Defendants' had no vacant waitress positions, but the reasons provided for her rejection was pretextual since other less qualified white individuals were hired by Defendants. Defendants failed to hire Whiting on the basis of her race.

27. The Plaintiff-Intervenors, Cassandra Knight, was employed with Defendants from July, 1995 to August 1995, as a dishwasher. During Knight's employment with Defendants, she was continuously subjected to racial epithets and hostile treatment as a result of her race. Knight was denied promotions, raises, and equal compensation to other employees with similar job duties and responsibilities as a result of her race and discriminated against in other terms and conditions of her employment. As a result of Knight's complaints of disparate treatment, she was retaliated against which resulted in her termination.

28. The Plaintiff-Intervenors, Barbara Clarkson, was employed with Defendants from May, 1995, to February, 1996, as a cook. During Clarkson's employment with Defendants, she was continuously subjected to racial epithets and hostile treatment as a result of her race. Clarkson was denied promotions, raises, transfers, and equal compensation to other employees with similar

job duties and responsibilities as a result of her race and discriminated against in other terms and conditions of her employment. As a result of the racially hostile working environment, Clarkson's working conditions became so intolerable that she was forced to resign resulting in a constructive discharge.

29. The Plaintiff-Intervenors, Ahmad Shareef Rasheed, was employed with Defendants from March, 1996, to October, 1996. During Rasheed's employment with Defendants, he was continuously subjected to racial epithets and hostile treatment as a result of her race. Rasheed was denied raises, and equal compensation to other employees with similar job duties and responsibilities as a result of his race and discriminated against in other terms and conditions of her employment. As a result of the racially hostile working environment, Rasheed's working conditions became so intolerable that he was forced to resign resulting in a constructive discharge.

TITLE VII AND 42 U.S.C. SECTION 1983

30. Plaintiff -Intervenors reallege and incorporate by reference paragraphs 1 through 29 as if fully set forth herein.

31. This is a claim to redress unlawful discrimination on the basis of race in violation of Title VII and 42 U.S.C. Section 1981.

32. Defendants have discriminated against Plaintiff-Intervenors on the basis of their race in matters of discipline, subjective decision making policies, termination, and other terms and conditions of employment which have resulted in disparate impact and treatment of Plaintiff-Intervenors.

33. Defendants' actions discriminated against the Plaintiff-Intervenors on the basis of their race in violation of the Title VII and the Civil Rights Act of 1991, by instituting and conducting a continuous, systematic pattern and practice of race discrimination in an effort to create a hostile working environment and resulting in Plaintiff-Intervenors' terminations.

34. Defendants are liable for the hostile working environment which was polluted with racially harassing behavior by Marvin Radcliffe, and other employees of Defendants. Defendants knew, or should have known, of the proclivity of Radcliffe, and other employees, for harassing African-American employees. Defendants created and supported an environment which the unlawful behavior of Radcliffe, and others, towards African-American employees was tolerated.

35. Plaintiff-Intervenors complained about the racially harassing and discriminatory conduct of Radcliffe, but Defendants failed to take corrective action. In fact, the treatment of Plaintiff -Intervenors by Radcliffe became more severe after Plaintiff-Intervenors stated complaints about his unlawful conduct, which resulted in harsher treatment of Plaintiff-Intervenors and ultimately led to their termination.

36. As the direct and proximate result of the Defendants' wrongful actions, the Plaintiff-Intervenors were caused to suffer lost wages, loss of future earning capacity, loss of health benefits, loss of retirement benefits, loss of benefits in general, loss of raises, mental anguish, loss of dignity, embarrassment, humiliation, and other intangible injuries and other directly and

indirectly related expenses. These losses are continuing and the Plaintiff-Intervenors will continue to suffer such losses in the future.

37. The Defendant's actions were intentional, wanton, and willful.

38. The Plaintiff-Intervenors have been forced to hire legal services of the undersigned attorneys to enforce their rights under Title VII and 42 U.S.C. Section 1981 and are required to pay reasonable attorneys' fees for the services rendered herein.

PRAYER FOR RELIEF

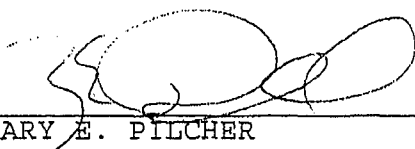
WHEREFORE, Plaintiff-Intervenors respectfully pray that this Court assume jurisdiction of this action and after trial:

1. Enter an order requiring Defendants to make Plaintiff-Intervenors whole by awarding them compensatory, punitive and/or nominal damages and any other appropriate relief, including, but not limited to, an award of costs, attorneys' fees and expenses.

2. Grant the Plaintiff-Intervenors such other relief and benefits as the cause of justice may require.

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY ON ALL CLAIMS TRIABLE BY JURY.

Respectfully submitted this 29th day of April, 1998.

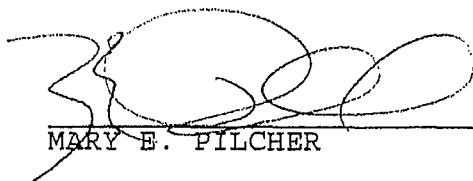


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed to Pamela Agee, Esquire, U.S. equal Employment Opportunity Commission, 1900 3rd Avenue, Birmingham, Alabama 35203-2397, Frank James, Esquire, Berkowitz, Lefkovits, Isom & Kushner, 1600 South Trust Tower, Birmingham, Alabama 35203 and to Mr. Wayne Stark, Agent for Skilstaf, P.O. Box 729, Alexander City, Alabama 35010, by U.S. Mail, this 29th day of April, 1998.



MARY E. PILCHER