

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

ALBERTSON'S LLC f/k/a Albertson's Inc.

Defendant,

JAMES BAXTER,

Intervenor.

COMPLAINT IN INTERVENTION AND JURY DEMAND

Plaintiff/Intervenor, James L. Baxter ("Baxter"), having been permitted to intervene in this case, states as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345.
2. This action is authorized and instituted pursuant to 42 U.S.C. §§ 2000e-2(a), 2000e-3, 2000e-5(f)(1), 2000e-5(f)(3), 42 U.S.C. §1981a and 29 U.S.C. § 626(c)(1).

Exhibit 1

3. The employment practices alleged to be unlawful were committed within the boundaries of the United States District Court for the District of Colorado and venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

4. Baxter is a 54 year old black man.

5. At all relevant times, Defendant Albertson's LLC f/k/a Albertson's Inc. ("Defendant" or "Albertson's") has continuously conducted business in the State of Colorado and has continuously employed at least twenty (20) people.

6. At all relevant times, Defendant has continuously been a employer engaged in an industry affecting commerce within the meaning of 42 U.S.C. §§ 2000e-(b), (g) and (h) and 29 U.S.C. . §§ 630(g) and (h).

GENERAL ALLEGATIONS

7. Plaintiff incorporates his prior allegations herein

8. Baxter is a member of a class of individuals who were subjected to disparate terms and conditions of employment because of race and age.

9. Since September 1, 1989, Baxter has been employed by Defendant at Albertson's Distribution Center Warehouse #8281 in Aurora, Colorado as a warehouse order selector.

10. During the course of his employment, he has been subjected to harassment including racial insults and workplace graffiti based on his race and age which have been sufficiently pervasive or severe enough to alter the terms and conditions of his employment.

11. Albertson's knew or should have known about the harassment.

12. Swastikas have been drawn on the bathroom walls and fixtures. The words “Kunta” and “lazy n-word” have been written on warehouse equipment. (“Kunta” is the name of the black protagonist in the movie “Roots”.)

13. During the course of his employment, Baxter has regularly complained to supervisors about instances of bigotry and racial insults.

14. During the course of his employment, Baxter has been subjected to unwarranted discipline and given less favorable work assignments because of his race and age and because he has complained about discrimination based on race and age.

15. During the course of his employment, Baxter, because of his race and age, and because he has complained about discrimination based on race and age, has been denied opportunities to transfer to more favorable positions such as Aisle Forklift Operator and has been denied sufficient opportunities to train for such positions.

16. It is Albertson’s stated policy that employees perform their work safely. However, on December 21, 2000, Baxter was written up for allegedly wasting company time by checking his equipment to determine why its handle would not spring back up. The condition of the handle was a matter of safety.

17. On July 3, 2003, Baxter was the only order selector working in the candy, bakery and E divisions of the warehouse. A manager, Steven Dade, told him he was working too slowly and holding up loads. Baxter was replaced by another worker and sent to work in the A and B divisions. Selecting from the A and B divisions is much more physically demanding than selecting from the other divisions in the warehouse. Individuals who were loading told Baxter

that he had not slowed them down.

18. Baxter believes that, because of his race and age and, because he has complained about racial discrimination, he has been given job assignments as a selector which make it harder for him to meet production standards.

19. On September 21, 2006, Baxter filed a complaint with the EEOC complaining that he had been discriminated against on the basis of his age and race and in retaliation for his complaints about discrimination.

20. On April 23, 2007, Baxter's wife became ill. Their 15 year old daughter called Albertson's three times trying to talk with her father about her mother's condition. Each time, she told the person who answered the phone that it was an emergency. Each time she was only given voice mail and was not allowed to speak to Baxter. When Baxter returned home, he found his wife unconscious. She was taken to the hospital where she remained until April 26, 2007.

21. On April 25, 2007, Baxter went to work at 6:00 a.m. He advised the manager, Jim Zanstra ("Zanstra"), that his wife was in the hospital in intensive care and asked him for Family Medical Leave Act ("FMLA") forms. Zanstra told Baxter he would have to get the forms from Human Resources. Baxter went to Human Resources immediately but found it closed. He left to be with his wife at the hospital but returned to Human Resources at 1:00 p.m. and obtained FMLA forms.

22. When Baxter reported to work the next day, Steven Dade told him that he was suspended for three days for missing work on April 25th. When Baxter told him he had FMLA forms which would excuse his absence, Dade told Baxter that he would have to take that up with

Human Resources.

23. On April 27, 2007, Baxter filed a second Charge with the EEOC complaining that he had been discriminated against on the basis of his race and age, and in retaliation for his complaints of discrimination.

24. The unlawful employment practices described above were done willfully and with malice or with reckless indifference to Baxter's federally protected rights based on his race and age and/or in retaliation for his complaints of discrimination.

FIRST CAUSE OF ACTION: TITLE VII RACE DISCRIMINATION

- 25. Baxter incorporates his prior allegations herein.
- 26. Baxter is a member of a protected class, African American.
- 27. Baxter was subjected to discrimination based upon his race.
- 28. As a result of the actions of Defendant, Baxter suffered damages.

SECOND CAUSE OF ACTION: AGE DISCRIMINATION

- 29. Baxter incorporates his prior allegations and cause of action herein.
- 30. Baxter is a member of a protected class, persons over the age of 40.
- 31. Baxter was subjected to discrimination based upon his age.
- 32. As a result of the actions of Defendant, Baxter suffered damages.

THIRD CAUSE OF ACTION: RETALIATION

- 33. Baxter incorporates his prior allegations and causes of action herein.
- 34. Baxter engaged in protected activity when he complained of racial and age discrimination to Albertson's supervisors and when he filed charges with the EEOC.

35. In retaliation for Baxter engaging in protected activity, he received unwarranted discipline, less favorable job assignments and was denied transfer to, and the opportunity to train for more favorable positions.

36. As a result of the actions of Albertson's, Baxter suffered damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against the Defendant and award him all relief allowed by law including, but not limited to, the following:

- a. Actual economic damages as established at trial;
- b. Compensatory damages including, but not limited to, those for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses;
- c. Liquidated damages for the claim of age discrimination;
- d. Punitive damages for all claims allowed by law in an amount to be determined at trial;
- e. Pre-judgment and post-judgment interest at the legal rate;
- f. Attorney's fees and costs; and
- g. Such further relief as justice requires.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE.

ELWYN F. SCHAEFER & ASSOCIATES

s/Elwyn F. Schaefer _____

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