

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

MARION WATERS and CHRISTAN	)	
DANIEL DOTSON,	)	
	)	
Plaintiffs,	)	<b>JURY DEMAND</b>
	)	
v.	)	
	)	CIVIL ACTION NO.
COOK’S PEST CONTROL,	)	
INC.	)	CV-07-394 - Coogler
	)	
Defendant.	)	

**FIRST AMENDED CLASS ACTION COMPLAINT**

COMES NOW the Plaintiffs, Marion Waters and Christan Daniel Dodson, named in the above-styled cause, and file this first amended complaint as follows:

**I. JURISDICTION**

1. Plaintiff Marion Waters is an individual, and resided within the Northern District of Alabama at the time of his application for employment with Defendant (hereinafter referred to individually as Plaintiff Waters).

2. Plaintiff Christan Dotson is an individual and resides at 1616 Five Acre Road, Dolomite, Alabama, 35061 (hereinafter referred to individually as Plaintiff Dotson).

2. The Defendant, Cook’s Pest Control, Inc. (hereinafter “Defendant” or “Cook’s”), is an Alabama registered corporation with its principal place of business in the Northern District of Alabama with its headquarters at 1741 Fifth Avenue S.E., Decatur, Alabama 35602.

3. This is an action for declaratory relief, monetary damages, and other appropriate legal and equitable relief to redress the deprivation of rights secured to the Plaintiffs, and the members of the class that he seeks to represent, by Title VII of the Civil Rights Act of 1964, 42

U.S.C. §2000e, *et seq.*, (hereinafter “Title VII”), and 42 U.S.C. § 1981, as amended by the Civil Rights Act of 1991 (hereinafter “§ 1981”), which seek to prevent discrimination based on race in the making and enforcement of contracts, including contracts of employment, on the basis of membership in a racial category referred to herein as African-Americans.

4. Venue for this action properly lies in this Court because the statutory violations committed against the Plaintiffs, and made the basis of their suit, were committed within the Northern Division of the Northern District of Alabama.

5. In or around June and/or July 2006, Plaintiffs completed job applications and took pen and paper pre-employment screening tests at Cook's Birmingham North District Office (Lakeshore Parkway). Plaintiffs Waters and Dotson applied for any position at any Cook's location.

6. Plaintiffs were not offered employment.

7. Plaintiffs applied for jobs companywide.

8. Plaintiffs Waters fulfilled all administrative prerequisites to filing this complaint. Within 180 days of the last act of complained of discrimination, Plaintiff Waters filed a Charge of Discrimination with the Equal Employment Opportunity Commission (hereinafter “EEOC”) in its Atlanta District Office where Waters was then residing. A copy of Plaintiff Waters’ Notice of Right to Sue is attached hereto as Exhibit “A.” This complaint is filed within 90 days of receipt of the Notice of Right to Sue and, therefore, is timely. Plaintiff Dodson’s complaint is timely under “piggyback” principles.

9. Title VII recognizes a cause of action for adverse impact and disparate treatment discrimination.

10. Section 1981 recognizes causes of action for disparate treatment discrimination.

11. Plaintiffs did not sign any valid or enforceable mandatory arbitration agreement.

12. This Court has federal question jurisdiction over this dispute, which is alleged to arise under a federal statute.

13. The Court has *in personam* jurisdiction over the parties to this action.

**[Remainder of Page Blank]**

## II. CLASS ALLEGATIONS

14. Plaintiffs bring this action pursuant to Rule 23(a) and (b) (2) of the *Federal Rules of Civil Procedure*, on their own behalf and on behalf of all other persons similarly situated. The members of the class are in excess of the numerosity requirement for a class action. The class is composed of:

Plaintiffs and all African-American applicants for employment for jobs, or who may become applicants for jobs, or who were discouraged from applying for jobs, for the period **two** years preceding the date of the filing of this complaint to the date of class certification, excluding all judicial officers or employees of the Federal courts within the second degree of affinity; employees of Plaintiffs' counsel; and any other person whose presence in the class would cause mandatory recusal of any judge assigned to the case.

15. Plaintiffs' attorneys are qualified and generally able, with extensive experience in race discrimination law, test validation, validation of selection criteria, disparate impact cases, and complex class actions. For these reasons, the Plaintiffs will fairly and adequately protect the interests of the class in this action for claims of monetary liability, declaratory and injunctive relief. Their claims are typical of the claims of the other members of the class.

16. The questions of law common to the above described class are whether or not the Defendant discriminated against African-Americans as a class, by depriving the members of the class of civil rights secured to them by the laws of the United States, by denying them terms, conditions, and privileges of employment, including wages, benefits, training opportunities, and other beneficial working conditions granted to similarly and/or less qualified non-African-American applicants because of their race, in violation of Title VII and § 1981.

17. The Defendant has acted or refused to act, on grounds generally applicable to the class, thereby making appropriate injunctive relief with respect to the class as a whole.

### III. BACKGROUND FACTS

18. Plaintiffs have been denied employment despite being qualified for the positions for which they applied due to intentional disparate treatment and/or application of facially neutral selection criteria which have an impermissible and unjustified impact upon African-Americans.

19. Plaintiffs contend that they were qualified to perform the duties of many positions within the company, including supervisory or managerial positions but were not hired and that less qualified persons of other races were placed in the positions.

20. Plaintiffs allege that they were not considered for jobs, although they were more qualified and had all educational and experiential qualifications that were reasonably related to success in the jobs for which application was made.

21. Plaintiffs are informed and believe and thereon allege that the Defendant maintained a pattern and practice of discrimination in employment on the basis of race. As a part of that pattern and practice, the Defendant:

(a) Discourages applications by African-Americans by telling callers with a dialect or diction which may indicate they are African-Americans, or persons who apply in person, that there are no jobs available, the effect of which is to taint the applicant pool data. Plaintiffs were discouraged from making an application for employment;

(b) Discourages applications by African-Americans by stating that applications for jobs must be placed on file at every office for which employment could be sought when there is no justification for the practice that has a racially disparate impact on African-Americans who tend to be less able financially to afford to travel to offices across multiple states to make applications at dozens of branches. Cook's accepts applications online

through its web page which indicates that application in person at each of its locations has no business justification;

(c) Discourages applications from African-Americans by using only non-African-Americans in its print and television advertising, or uses few blacks in such advertisements of the companies services, which indicates to the pool of potential applicants that Cook's is not interested in making race-neutral employment decisions;

(d) Fails to employ or promote African-Americans into management positions, which signals African-Americans that Cook's does not make race-neutral employment decisions even when it hires the occasional African-American employee in a low level job;

(e) Designates race on employment applications so as to afford decisionmakers the opportunity to take race into consideration when weeding out applications;

(f) Staffs offices in which applications are submitted with white workers to discourage applications from African-Americans;

(g) Discourages African-Americans from applying by announcing to them that an algebra, geometry and math test is required of applicants;

(h) Uses a "good old boy," "word of mouth," or "tap on the shoulder" system of recruitment, hiring, and promotion;

(i) Uses, or purports to use, a pen and paper test of algebra, geometry and math skills as a selection criteria that has a racially disparate impact on African-Americans in violation of the 4/5<sup>th</sup>'s rule and which has not been validated using any method recognized under the EEOC Guidelines for validation of selection criteria;

(j) Utilizes a cut-score on screening tests, which has not been demonstrated to validly predict success in the jobs for which it is used;

(k) Fails to inform applicants that jobs in which simple algebra, geometry and math will be used to perform the essential functions will be taught utilizing a training program or the use of simplified worksheets for calculating such things as chemical mixing and application, or that it is unnecessary due to the use of regulated “flow-meters” on modern pest control equipment; and,

(l) Uses an overall system of subjective selection criteria.

22. Plaintiffs aver that Cook’s high level management is exclusively Caucasian.

23. Plaintiffs aver that Cook’s uses mandatory binding arbitration clauses for employees to discourage African-Americans from collectively challenging racially discriminatory employment practices because of the prohibitively expensive cost of arbitration of class action and individual claims.

24. Plaintiffs avers because they are African-American, they were denied an employment contract with Defendant.

### COUNT I

#### **PATTERN AND PRACTICE DISPARATE TREATMENT**

25. Comes now the Plaintiffs and reallege each and every material and factual allegation of paragraphs 1 through 24 of Plaintiffs’ complaint as though the same were fully set forth here, and Plaintiffs further aver that the action of the Defendant constituted disparate treatment against the Plaintiffs in terms, conditions, and privileges of employment because of race, in violation of Title VII, and § 1981, and Plaintiffs aver that the Defendant’s illegal practices were intentional, willful, wanton, and done with reckless disregard for the Plaintiffs’ federally protected civil rights.

26. Plaintiffs alleges that as a proximate result of the statutory violations by Defendant, they are now suffering and will continue to suffer material damages and economic losses, mental anguish and emotional distress, and other damages as a result of the discriminatory practices of the Defendant unless and until this Court grants relief.

**COUNT II**

**DISPARATE IMPACT DISCRIMINATION**

27. Comes now the Plaintiffs and reallege each and every material and factual allegation of paragraphs 1 through 26 of Plaintiffs' complaint as though the same were fully set forth here, and Plaintiffs further aver that the action of the Defendant constituted illegal disparate impact discrimination in violation of Title VIII.

28. Plaintiffs alleges that as a proximate result of the statutory violations by Defendant, they are now suffering, and will continue to suffer, material damages and economic losses, mental anguish and emotional distress, and other damages as a result of the discriminatory practices of the Defendant unless and until this Court grants relief.

WHEREFORE, Plaintiffs pray and respectfully request that this Court:

29. Rule that this matter is properly maintained as a class action;

30. Issue a judgment declaring that the Defendant violated the rights afforded the Plaintiffs and the members of the class he seeks to represent, pursuant to Title VII and § 1981;

31. Award Plaintiffs and the class they seek to represent compensation incidental to the injunctive relief requested herein for loss of wages and benefits of employment;

32. Award Plaintiffs and members of the class compensatory damages for economic injuries and losses actually suffered as a result of the Defendant's violations of federal law;



33. Award Plaintiffs, and the members of the class they seek to represent, compensatory damages for the emotional stress suffered as a result of the action of Defendant;

34. Enter a judgment against the Defendant for such punitive damages as will properly punish the Defendant for the illegal employment practices as alleged herein and in an amount that will serve as a deterrent to the Defendant and others from engaging in similar conduct in the future;

35. Issue a permanent injunction:

(a) Requiring Defendant to abolish race discrimination throughout its organization, including all departments and branches, by means of a plan by giving preference to members of the class identified herein in hiring, promotion and other terms and conditions of employment, until such time as the Court determines that all vestiges of discrimination against African-Americans have been abolished and eradicated;

(b) Requiring Defendant to accord African-Americans who were not hired but should have been hired absent the discriminatory practices back pay and front pay (until time of instatement) which would have been commensurate with their wages/salaries, merit increases, responsibilities, and assignments commensurate with their positions;

(c) Requiring Defendant to refrain from using subjective selection criteria and non-validated selection criteria for hiring, promotion, and assigning employees that have a detrimental adverse impact on African-Americans and which are not validated pursuant to 29 C.F.R. 1607;

(d) Requiring Defendant to institute training programs in the management, administrative and professional areas which are designed to compensate for the lost training opportunities and experiences which Plaintiffs and class members would have acquired had they

earlier been assigned to positions predominately held by persons of races other than African-American, and to give newly hired or instated African-Americans the background they will need to compete effectively with persons of other races now occupying such positions; and,

(e) Requiring Defendant to prepare and publish descriptions and titles for all job positions, specifying for each the criteria for hiring and placement, the salary and the responsibilities for the job.

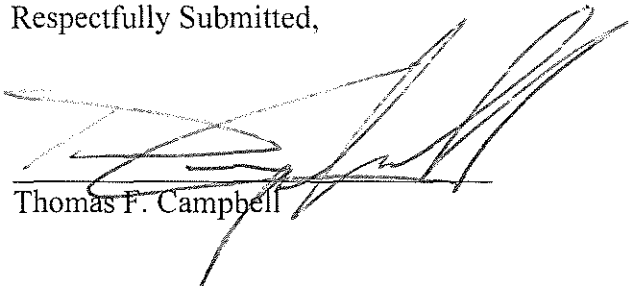
36. Plaintiffs avers that as a direct and/or proximate result of the Defendant's violation of Plaintiffs' federally protected rights, Plaintiffs lost employment wages, benefits, and other accrued emoluments of employment, for which he is entitled to an award of equitable remedies, monetary damages for lost wages, benefits, consequential, and liquidated damages against the Defendant; and Plaintiffs further avers that he is entitled to reinstatement to employment and/or front pay from the Defendant.

37. Award the Plaintiffs, and members of the class he seeks to represent, such other and further relief as the Court deems necessary and proper.

39. Award the Plaintiffs, and members of the class he seeks to represent, reasonable attorneys' fees and the cost of this action as provided for under Title VII and § 1981 or other applicable statutes.

**PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES TRIABLE TO A JURY.**

Respectfully Submitted,



Thomas F. Campbell

**Of Counsel:**  
**CAMPBELL • LAW**  
A PROFESSIONAL CORPORATION  
Complex and Class Litigation  
Concourse at Riverchase

100 Concourse Parkway, Suite 115  
Birmingham, AL 35244  
O: 205-397-0307  
F: 205-397-0307  
C: 205-567-6490  
E-mail: [tcampbell@campbelllitigation.com](mailto:tcampbell@campbelllitigation.com)  
Ala. Bar No. ASB-5900-M60T  
Attorney Code CAM036

Samuel Mark Hill  
The Law Offices of Sam Hill, L.L.C.  
2117 Magnolia Ave. South, Suite 100  
Birmingham, AL 35205-2808  
O: 205-250-7776  
F: 205-250-7675  
E-mail: [Sam@samhilllaw.com](mailto:Sam@samhilllaw.com)  
Ala. State Bar No. ASB-8820-H465  
Attorney Code HIL025

Samuel Fisher  
Wiggins, Childs, Quinn & Pantazis, LLC  
The Kress Building  
301 19<sup>th</sup> Street North  
Birmingham, AL 35203  
O: 205-314-0500  
F: 205-254-1500  
Email: [sf@wcpq.com](mailto:sf@wcpq.com)

**Defendants to be served via HAND DELIVERY**

Cook's Pest Control, Inc.  
c/o James Aycock  
1741 Fifth Avenue, S.E.  
Decatur, Alabama 35602

# **EXHIBIT A**

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
**NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)**

To: Marlon Waters  
 2619 Haligan Pointe  
 Riverdale, GA 30296

From: Atlanta District Office - 410  
 100 Alabama Street, S.W.  
 Suite 4R30  
 Atlanta, GA 30303

On behalf of person(s) aggrieved whose identity is  
 CONFIDENTIAL (Pursuant to 29 CFR 1601.103)

EEOC Charge No.	EEOC Representative	Telephone No.
410-2007-00675	Daniel Nance, Investigator	(404) 562-6865

(See also the additional information enclosed with this form.)

**NOTICE TO THE PERSON AGGRIEVED:**

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice, or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

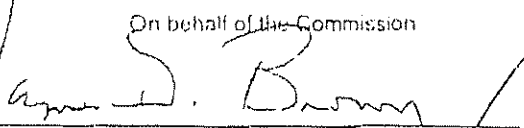
- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required). EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission  
  
 Bernice Williams-Kimbrough,  
 Director

NOV 30 2006

(Date Mailed)

Enclosures(s)

cc Carl Monin, Human Resources Manager  
 Joe R. Whatley, Esq.

Enforced with EEOC  
Form 101-B (5/06)

INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.  
If you also plan to sue claiming violations of State law, please be aware that time limits and other  
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),  
or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was *mailed* to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/1/02 -- not 12/1/02 -- in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge

# EXHIBIT A