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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 Equal Employment Opportunity
11 Commission,
12 Plaintiff,
13 vs.
14 Bashas' Inc.,
15 Defendant,
16 Navajo Nation,
17 Rule 19 Defendant.

CIV No.

COMPLAINT
(Jury Trial Demanded)

18
19 **NATURE OF THE ACTION**

20 This is an action pursuant to Title VII of the Civil Rights Act of 1964, as
21 amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the
22 Civil Rights Act of 1991, 42 U.S.C. § 1981(a) against Bashas' Inc., ("Bashas")
23 seeking redress for unlawful discrimination against a class of similarly situated
24 non-Navajo Native Americans. Plaintiff, the U.S. Equal Employment Opportunity
25 Commission (the "Commission" or "EEOC") alleges that Bashas' has
26 discriminated against and continues to discriminate against non-Navajo Native
27 Americans on the basis of their national origin by failing to hire qualified non-
28 Navajo Native Americans. The Commission further alleges that Bashas' has

1 failed to retain employment applications as required by 42 U.S.C. § 2000 e-8(c).

2 **JURISDICTION AND VENUE**

3 1. This Court’s jurisdiction is invoked pursuant to 28 U.S.C. §§ 451,
4 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to
5 42 U.S.C. § 2000e-5(f)(1) and (3) and 42 U.S.C. § 1981(a).

6 2. Bashas’ unlawful employment practices were committed in Tuba
7 City, Arizona and, accordingly, venue is proper in this Court.

8 3. The unlawful employment practices occurred on the property of the
9 Navajo Nation located in Tuba City, Arizona and, accordingly, venue is proper in
10 this Court.

11 **PARTIES**

12 4. The Commission is the agency of the United States of America
13 charged with the administration, interpretation and enforcement of Title VII and is
14 expressly authorized to bring this action by 42 U.S.C. § 2000e-5(f)(1) and (3).

15 5. More than thirty days prior to the institution of this lawsuit, Dale
16 Lucero and Randy Honahni (collectively referred to as the “Charging Parties”)
17 filed charges of discrimination with the Commission, alleging that Bashas’ had
18 violated Title VII by refusing to hire them because they were Native Americans
19 who were not members of the Navajo Nation. All conditions precedent to the
20 institution of this lawsuit have been fulfilled.

21 6. Bashas’ operates supermarkets on land which is located in Arizona
22 and has, at all relevant times, employed approximately ten thousand five hundred
(10,500) employees.

23 7. At all relevant times, Bashas’ has continuously been an employer
24 engaged in an industry affecting commerce within the meaning of Section 701(b),
25 (g) and (h) of Title VII, 42 U.S.C. § 2000e-(b), (g) and (h).

26 8. Defendant Navajo Nation is a party to a lease agreement with the
27 Defendant Employer Bashas’ and is therefore named as a party pursuant to Rule
28 19(a) of the Federal Rules of Civil Procedure in that, in its absence, complete

1 relief cannot be accorded among those already parties, and it has an interest in
2 the subject of this action.

3 **NOTICE**

4 9. Notice of this action was given to Mr. Joe Shirley, Jr., President of
5 the Navajo Nation and Mr. Lewis Denetsosie, Attorney General for the Navajo
6 Nation, on July 8, 2005 via certified mail/return receipt. The Commission
7 received the return receipt showing delivery of the documents to each of them on
8 July 12, 2005.

9 **CONCILIATION**

10 10. Prior to the institution of this lawsuit, the Commission's
11 representatives attempted to eliminate the unlawful employment practices alleged
12 below and to effect voluntary compliance with Title VII through informal methods
13 of conciliation, conference and persuasion within the meaning of Section 706(b)
14 of Title VII, 42 U.S.C. § 2000e-5(b).

15 **STATEMENT OF CLAIMS**

16 11. Charging parties are Native Americans who are not members of the
17 Navajo Nation. Charging parties are members of the Hopi Tribe.

18 12. Bashas' operates a supermarket which is located on land owned by
19 the Navajo Nation.

20 13. Charging parties and a class of similarly situated qualified non-
21 Navajo Native Americans applied for open positions with Bashas' for which they
22 were qualified. Bashas' did not hire Charging Parties and the class of similarly
23 situated qualified non-Navajo Native Americans, but instead hired members of
24 the Navajo Nation for the open positions.

25 14. Bashas' has a history of refusing to hire non-Navajo Native
26 Americans for open positions at its facility. The effect of this reputation is that
27 qualified non-Navajo Native Americans have been discouraged from applying for
28 open positions at Bashas' and have accordingly failed to apply for open positions
with Bashas'.

1 B. Order Bashas' to institute and carry out policies, practices, and
2 programs which provide equal employment opportunities for non-Navajo Native
3 Americans and which eradicate the effects of its past and present unlawful
4 employment practices.

5 C. Order Bashas' to make whole Charging Parties and a class of
6 similarly situated non-Navajo Native Americans by providing appropriate back
7 pay with prejudgment interest, in amounts to be determined at trial, and other
8 affirmative relief necessary to eradicate the effects of its unlawful employment
9 practices.

10 D. Order Bashas' to make and preserve all records, in accordance with
11 the provisions of Section 709(c) of Title VII of the Civil Rights Act of 1964, 42
12 U.S.C. § 2000e-8(c), relevant to the determination of whether unlawful
13 employment practices have been or are being committed.

14 E. Order Bashas' to make whole Charging Parties and a class of
15 similarly situated non-Navajo Native Americans by providing compensation for
16 past and future pecuniary losses resulting from the unlawful employment
17 practices described above in amounts to be determined at trial.

18 F. Order Bashas' to make whole Charging Parties and a class of
19 similarly situated non-Navajo Native Americans by providing compensation for
20 past and future nonpecuniary losses resulting from the unlawful practices
21 complained of above in amounts to be determined at trial.

22 G. Order Bashas' to pay punitive damages for its malicious and reckless
23 disregard to the federally protected rights of the Charging Parties and a class of
24 similarly situated individuals described above, in amounts to be determined at
25 trial.

26 H. Grant such further relief as the Court deems necessary and proper in
27 the public interest.

28 I. Award the Commission its costs of this action.

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JURY DEMAND

The Commission respectfully requests a trial by jury on all appropriate Claims for Relief set forth in this Complaint.

DATED this 17th day of August, 2005.

Respectfully submitted,

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