

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 and
JAMES STEADHAM

Intervenors,

vs.

ALBERTSON'S LLC,

Defendant.

**COMPLAINT AND JURY DEMAND OF
INTERVENOR LUIS SOLIS GONZÁLEZ**

Luis Solis González ("Intervenor" or "Solis"), by his attorneys the law firm of McNamara & Martínez LLP, complain against Defendant Albertson's LLC as follows:

NATURE OF COMPLAINT IN INTERVENTION

1. This complaint in intervention is brought under (a) Section 1 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981"), as amended, and (b) 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 Mexican-Hispanic national origin. These unlawful employment practices include the maintenance of a severe, pervasive,

and hostile work environment because of Intervenor' national origin, and discriminatory terms and conditions of employment. As redress for the damages he has suffered, and in the future will suffer, Intervenor seek legal and equitable remedies sufficient to make him whole, as more fully set forth below.

PARTIES

3. Solis is a citizen of the United States and a resident of the State of Colorado. Solis was born in México is of Mexican-Hispanic national origin. He is thus entitled to the rights and privileges protected by Section 1981 and 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 relevant herein, 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 relevant herein, Defendant was Solis' 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 1981 and 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, and is an aggrieved individual within the meaning of 42 U.S.C. § 2000e-5(f)(1).

GENERAL FACTUAL ALLEGATIONS

11. Solis worked for Defendant from about July 2002 to August 2007.

12. Solis worked at Defendant’s distribution center located at 2780 North Tower Road, Aurora, CO 80011 (the “Distribution Center”).

13. While employed with Defendant, Solis was a Mechanic in the Maintenance Department at the Distribution Center.

14. Throughout his tenure with Defendant, Solis performed the functions of his position in at least a satisfactory manner.

Hostile Work Environment

15. Throughout his employment with Defendant, Solis has been subjected to a work environment at the Distribution Center which was permeated with racially explicit graffiti, epithets, drawings and writings.

16. Solis has heard offensive racial and ethnic slurs and comments at the Distribution Center, including but not limited to “nigger,” “fucking nigger,” “cholos,” “Mexicans should go back to México,” “dumb Mexicans,” “lazy Mexicans,” and “go back to México” and “go back to México you fucking Mexicans.” He also heard comments to the effect that the workers should speak English because this is the U.S. and not México. In addition, on several occasions Solis heard white employee Les Reed freely admit that he did not like black people and that he discriminated against black people.

17. Solis has heard managers and supervisors say “andele, andele” (“hurry up”) over the loudspeaker, and does not recall ever hearing any similar call to hurry up made in English.

18. Solis complained to his supervisor about these racially explicit comments. To Intervenor’s knowledge, no disciplinary action was ever taken against Reed or any other individual who made these comments.

19. On several occasions white co-worker Steve Ropp told Solis to “go back to México” and “don’t speak Spanish.” Although Solis complained to his supervisor, no disciplinary action was ever taken against Ropp and these comments continued.

20. Solis was very offended by these racial comments and informed his supervisor of this on more than one occasion, and requested that these comments stop. These comments continued on a frequent basis even after Solis complained.

21. Solis has also frequently seen offensive racial and ethnic writings in the workplace, including but not limited to swastikas, “nigger,” “fucking nigger,” “kill niggers,” “white power,” “go back to México,” “fucking spic,” “wetback,” “fucking wetback,” “a good nigger is a dead nigger,” and “porch monkeys.” Solis was exposed to these racially-offensive materials on a daily or nearly daily basis since his employment began with Defendant.

22. In November 2006 white employee Les Reed wrote on a calendar on November 20, a Mexican holiday, a comment to the effect that “all fucking Mexicans go back to Mexico, why are you here?”

23. Solis complained about the calendar writing to Foreman Victor Lopez, who in turn complained to Warehouse Manager Jim Hayes. Despite these complaints, the calendar remained up in full view of all employees for two days before it was removed. No disciplinary action was taken against Reed.

24. Solis informed his supervisors that he was very offended by these racial writings, and requested that these incidents and writings be promptly investigated.

25. Solis did not witness any member of management take prompt and effective remedial action in response to these complaints until about the time that this litigation was filed by the EEOC. Solis observed these racially-charged writings remain in place without removal for long periods of time.

Discriminatory Terms & Conditions of Employment

26. Solis was subjected to discriminatory work assignments during his tenure with Defendant, including without limitation the following:

27. Solis was frequently required to do more tasks than white Maintenance Department employees, and was also very frequently assigned tasks which were much harder and more difficult to do and complete than the tasks assigned to white Mechanics.

28. Solis was also frequently assigned to work alone on projects that required two workers, and to which a helper was assigned when the same projects are given to white employees. These were projects which included, but were not limited to, repairing overhead doors and repairing or installing racks.

29. Solis frequently complained to his supervisors about his discriminatory work assignments, and he specifically complained that he was expected to do more work, and harder work, solely because of his Mexican national origin. His complaints never resulted in a change in these discriminatory terms and conditions of employment.

30. George Potter, Manager of the Maintenance Department at the Distribution Center, often unilaterally changed Intervenor's bid schedule. Solis initially assumed his schedule was subject to change because he was the least senior Mechanic. But even after he was no longer the least senior employee in the Maintenance Department, his schedule was often changed to his detriment, and to the benefit of a less senior white employee.

31. When Solis complained to Potter about the unilateral changes to his work schedule, he was told that if he wanted his regular days off, he could call in sick, a solution which would have caused Solis to be assessed points and disciplined under Defendant's attendance policy.

32. Similarly, when Solis asked for time off he was frequently denied, while similar requests from white employees were routinely granted.

33. When Solis learned that an employee on the day shift was quitting, he requested that shift. Potter initially denied that anyone was quitting, and when a vacancy did occur on the day shift, the shift in question was assigned to a white employee who had less seniority at the time when Solis had made his transfer request.

34. Solis was publically humiliated by his General Manager in a manner never done to white employees. This occurred when Solis and his foreman, Mr. Lopez, were asked to repair a broken pallet jack. They were unable to immediately diagnose the problem because a pallet was stuck. While waiting to have a forklift remove the pallets, the Distribution Center's General Manager, Charles Miller, became impatient and used another pallet jack to ram into the jammed pallet, causing the entire stack of pallets to fall. Miller blamed Solis and Lopez for breaking the pallet jack, yelling and publicly ridiculing them in the presence of a number of employees. Solis was embarrassed and humiliated by this unprecedented incident.

35. While employed with Defendant, Solis observed that several qualified minority employees, including Victor Lopez, Pete Dennis, and Jose Maldonado, were passed over for promotion in favor of white candidates hired from outside the company.

36. As a direct and proximate result of Defendant's unlawful employment practices complained of herein, Solis has suffered, and in the future will suffer, 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 National Origin in Violation of Section 1981)

37. Intervenor incorporates the allegations set forth in paragraphs 1 through 36 of this complaint as if fully alleged herein.

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

39. Intervenor was subjected to a severe and pervasively hostile work environment at the Distribution Center because of his Mexican-Hispanic national origin, in violation of Section 1981.

40. This violation was intentional.

41. This violation 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

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

42. Intervenor incorporates the allegations set forth in paragraphs 1 through 41 of this complaint as if fully alleged herein.

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

44. Intervenor was subjected to a severe and pervasively hostile work environment at the Distribution Center because of his Mexican-Hispanic national origin, in violation of Title VII.

45. This unlawful employment practice was intentional.

46. 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.

THIRD CLAIM FOR RELIEF

(Discriminatory Terms and Conditions of Employment in Violation of Section 1981)

47. Intervenor incorporates the allegations set forth in paragraphs 1 through 46 of this complaint as if fully alleged herein.

48. Defendant discriminated against Intervenor on the basis of his Mexican-Hispanic national origin with respect to the terms and conditions of his employment including, but not limited to, disparate work assignments and schedules, disparate shift assignments, and discriminatory working conditions.

49. These violations were intentional.

50. These violations were willful and wanton, and/or were done with malice or with reckless indifference to Intervenor's federally-protected rights.

51. Defendant's discrimination against Intervenor in the terms and conditions of his employment was in violation of Section 1981.

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

FOURTH CLAIM FOR RELIEF

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

52. Intervenor incorporates the allegations set forth in paragraphs 1 through 51 of this complaint as if fully alleged herein.

53. Defendant discriminated against Intervenor on the basis of his Mexican-Hispanic national origin with respect to the terms and conditions of his employment

including, but not limited to, disparate work assignments and schedules, disparate shift assignments, and discriminatory working conditions.

54. These unlawful employment practices were intentional.

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

56. 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 past and future 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 31st day of August, 2007.

s/ William J. Martínez
McNamara & Martinez LLP
1640 East 18th Avenue
Denver, CO 80218
Tel: 303/333-8700
Fax: 303/331-6967
E-mail: wjm@mcmarlaw.com

ATTORNEY FOR INTERVENORS
CHRISTOPHER ADAMS,
LUIS SOLIS GONZÁLEZ and
JAMES STEADHAM

Address of Intervenor Luis Solis González:
10106 North Pitkin Way
Commerce City, CO 80022

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2007, I electronically filed the foregoing COMPLAINT AND JURY DEMAND OF INTERVENOR LUIS SOLIS GONZÁLEZ with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Rita Byrnes Kittle rita.kittle@eeoc.gov
Lynn Palma lynn.palma@eeoc.gov
U.S. Equal Employment Opportunity Commission

Elwyn F. Schaefer efschaefer@qwest.net
Andrea J. Kershner akershner@qwest.net
Elwyn F. Schaefer & Associates

Lawrence J. Gartner gartner@kmm.com
Stephanie M. Gushá gusha@kmm.com
Naomi Young young@kmm.com
Kimberly M. Talley talley@kmm.com
Kauff, McClain & McGuire LLP

Richard S. Mandelson rmandelson@bakerlaw.com
Baker & Hostetler LLP

s/ Kathi Donahue _____