

*Rec'd*  
*6/14/05*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

*JUN 28 2005*

**GREGORY C. LANGHAM**  
CLERK

Civil Action No. 04-M-2005 (BNB)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

CLIFFORD BAKER

Plaintiff-Intervenor

v.

EXEL, Inc.,

Defendant.

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**COMPLAINT AND JURY DEMAND**

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Plaintiff-Intervenor, Clifford Baker, through his attorney, Dale A. Gaar, respectfully submits the following complaint and jury demand.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345.
2. The claims in this matter arose in Colorado and venue is proper in this Court.

### **PARTIES**

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. Plaintiff-intervenor, Clifford Baker, is an individual who resides in Colorado.

5. At all relevant times, Defendant Exel, has continuously been doing business in Colorado.

6. At all relevant times, Defendant Exel had at least 15 employees and has continuously been 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).

### **GENERAL ALLEGATIONS**

7. More than thirty days prior to the institution of this lawsuit, Clifford Baker filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least May 8, 2003, Defendant has engaged in unlawful employment practices at its facility located in Golden, Colorado, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a). Such unlawful employment practices include an unfair and sham investigation, and termination of Baker because of his race and color, and because he complained about offensive racial comments of a white co-worker.

9. Baker is an African-American male with black skin color.

10. In April 2003, Baker was employed by Defendant Exel in the position of Traffic Clerk.

11. In April 2003, Heather Wood, a white female, was also employed by Defendant Exel and worked with Baker on the same shift, under the same supervisor.

*Events of April 25, 2003*

12. During a workplace discussion on April 25, 2003, Wood, repeatedly made offensive racial comments.

13. Baker was offended by Wood's comments on April 25, 2003.

14. Wood knew from Baker's response that he was offended by her comments on April 25, 2003.

15. Other black employees present for the discussion on April 25, 2003, were also offended by Wood's comments.

16. Supervisors present for the discussion on April 25, 2003, failed to stop the discussion and failed to report the offensive conduct to higher level managers.

17. In early May, 2003, Baker complained to Defendant about Wood's offensive comments on April 25, 2003.

*Events of April 28, 2003*

18. On April 28, 2003, Wood told Baker that a truck driver (not employed by Exel) had said he did not want to be waited on by "that nigger," referring to Baker.

19. Baker immediately reported to a supervisor Wood's comment about the truck driver.

***Defendant's Sham Investigation***

20. On or about May 8, 2003, Wood resigned her employment, and complained about Baker.

21. Defendant asked Wood whether she would agree to stay if Baker was terminated.

22. Wood agreed to rescind her resignation.

23. On May 8 and 9, 2003, Defendant interviewed Baker, Wood, and three other employees.

24. During the interviews on May 8 and 9, 2003, Defendant's investigators were informed of Wood's offensive racial comments on April 25, 2003, and April 28, 2003.

25. Defendant's investigators did not interview two of the black employees present during the discussion on April 25, 2003.

26. Defendant asked Wood whether she was satisfied with Defendant's investigation.

27. Defendant did not ask Baker whether he was satisfied with Defendant's investigation.

28. When one of the investigators suggested that Baker and Wood be assigned to different shifts, Baker agreed and agreed to work the late night shift.

29. Defendant placed Wood on paid leave from May 8, 2003, until May 14, 2003.

***Defendant's Termination of Baker***

30. On May 14, 2003, Defendant terminated Baker.

31. Baker was terminated because of his race and color, and because he had complained about Wood's racially offensive comments in the workplace.

**FIRST CLAIM FOR RELIEF**

[Wrongful Termination based on Race and Color]

32. Mr. Baker incorporates by reference the previous allegations of this complaint.

33. The effect of the practices complained of above has been to deprive Baker of equal employment opportunities and otherwise adversely affect his status as an employee, because of his race and color, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

34. The unlawful employment practices complained of above were intentional.

35. The unlawful employment practices complained of above were done with malice or with reckless indifference to Baker's federally protected rights.

**SECOND CLAIM FOR RELIEF**

[Retaliation in violation of Title VII]

36. Mr. Baker incorporates by reference the previous allegations of this complaint.

37. The effect of the practices complained of above has been to deprive Baker of equal employment opportunities and otherwise adversely affect his status as an employee, because he opposed practices he reasonably believed to be illegal under Title VII, in violation of Sections 704(a), and 706 of Title VII, 42 U.S.C. §2000e-3(a), 2000e-5.

38. The unlawful employment practices complained of above were intentional.

39. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of Baker.

**THIRD CLAIM FOR RELIEF**

[Race discrimination and Retaliation in violation of 42 U.S.C. § 1981]

40. Mr. Baker incorporates by reference the previous allegations of this complaint.

41. Mr. Baker was qualified for the job he held with Excel.

42. Despite his qualifications, Excel discharged Mr. Baker.

43. Excel did not eliminate Mr. Baker's position after he was discharged.

44. Excel intended to discriminate against Mr. Baker on the basis of race.

45. Excel discriminated against Mr. Baker on the basis of race.

46. Excel took adverse employment action against Mr. Baker because he opposed practices he reasonably believed to be violations of 42 U.S.C. § 1981.

47. Excel's discrimination and retaliation interfered with Mr. Baker's rights in connection with the making, performance, modification, and/or termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

48. The unlawful employment practices complained of above were intentional.

49. A causal connection exists between Mr. Baker's protected activity and the adverse action.

50. Mr. Baker was damaged as a result of the adverse action.

51. The unlawful employment practices complained of above were done with malice or with reckless indifference to Baker's federally protected rights.

WHEREFORE, Mr. Baker respectfully requests that this Court:

a. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in discrimination based on race or color, and any other employment practice which discriminates on the basis of race or color.

b. Order Defendant to institute and carry out policies, practices, and programs that (1) proscribe workplace discrimination based on race or color; (2) provide equal employment opportunities for African Americans; and (3) eradicate the effects of its past and present unlawful employment practices.

c. Order Defendant to make whole Baker by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and order other affirmative relief necessary to eradicate the effects of its unlawful employment practices described herein, including, but not limited to, reinstatement or front pay in lieu thereof.

d. Order Defendant to make whole Baker, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in above, in amounts to be determined at trial.

e. Order Defendant to make whole Baker, by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices described above, in amounts to be determined at trial.

f. Order Defendant to pay Baker punitive damages for its conduct described above and carried out with malice or reckless disregard for Baker's federally protected rights, in

amounts to be determined at trial.

- g. Award the Mr. Baker its costs of this action.
- h. Award Mr. Baker his reasonable attorneys' fees and other litigation related expenses
- i. Grant such further relief as the Court deems necessary and proper in the public interest.

**JURY TRIAL DEMAND**

Mr. Baker requests a jury trial. **RESPECTFULLY SUBMITTED,**

Dated: June 16, 2005

By   
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**CERTIFICATE OF MAILING**

I certify that on June 16, 2005 I sent a copy of the above **APPLICATION FOR INTERVENTION BY CLIFFORD BAKER** by first class mail, postage prepaid, addressed to all counsel of record as follows:

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