

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

Civil Action No. 05-cv-01901-PSF-MJW

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

Plaintiff,

v.

**LITHIA MOTORS, INC.,  
d/b/a LITHIA DODGE OF CHERRY CREEK, and  
LITHIA CHERRY CREEK DODGE, INC.  
d/b/a LITHIA DODGE OF CHERRY CREEK,**

Defendants.

**JAMES WITHERSPOON,**

Applicant for Intervention.

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**MOTION TO INTERVENE AS PARTY PLAINTIFF**

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James Witherspoon, Applicant, moves for leave to intervene as Plaintiff to assert the claims set forth in his proposed Complaint, a copy of which is attached. Applicant states as follows:

1. Applicant is entitled to intervene as a matter of right pursuant to Fed.R.Civ.P. 24(a)(1) and 42 U.S.C. §2000e-5(f)(1), and this application has been timely brought.
2. This action arises out of charges of discrimination filed by James Witherspoon, who was subject to unlawful employment practices on the basis of race, African-American or Black, while employed by Defendant.
3. Applicant filed charges with the EEOC alleging that Defendant had violated Title

VII of the Civil Rights Act of 1964, as amended, by subjecting James Witherspoon and other employees at its Cherry Creek Dodge location to a hostile work environment based on race, and, further, retaliated against him after he complained about improper race-based conduct carried out at Cherry Creek Dodge by increasing the harassment, making the work conditions intolerable and forcing Mr. Witherspoon from his employment. The EEOC found cause on these charges and filed a Complaint in this Court.

4. The EEOC has filed claims against Defendant for unlawful race-based discrimination and retaliation. However, Mr. Witherspoon has additional claims for relief based on hostile work environment and violations under 42 U.S.C. § 1981.

5. Mr. Witherspoon has a right to bring individual claims of race-based discrimination and retaliation. His claims arise from numerous incidents in which Mr. Witherspoon was subjected to race-based discrimination. For example, there was an incident in which the General Manager told Mr. Witherspoon that Witherspoon was “not going to get away with taking “B.P. Time” after being out on authorized leave, explaining that “B.P. Time” meant “Black People Time.” The General Manager also told Mr. Witherspoon that “B.P. Time” was the reason I fired “a bunch of you people already.” Further, during Mr. Witherspoon's tenure at Cherry Creek Dodge, the General Manager afforded him less favorable treatment than he afforded Caucasian salesmen, for example, he screamed and yelled obscenities at Mr. Witherspoon in the presence of co-workers and displayed more hostility toward Mr. Witherspoon than he displayed to Caucasian salesmen; he caused Mr. Witherspoon's commissions to be unfairly split with other sales men; he deducted an unreasonable amount of money from Witherspoon's pay after wrongly accusing him of causing damage to a car; he forced Mr.

Witherspoon to undergo a drug test, when there were no reasonable grounds for doing so; and he directed Mr. Witherspoon to raise the sales price by \$5,000 on a car in which an African-American customer was interested, so that the customer was unable to purchase the car.

6. In addition, after Mr. Witherspoon filed an internal complaint about discrimination and harassment with Lithia Motors, Inc. corporate office, he was not advised of any investigation, or of the outcome of any investigation. Moreover, after Mr. Witherspoon file his complaint, the General Manager yelled at and berated the personnel coordinator at Cherry Creek Dodge, for assisting Mr. Witherspoon in filing an internal charge. In addition, the General Manager's harassment of Mr. Witherspoon intensified to the point that he was forced to leave the dealership.

7. Mr. Witherspoon also seeks intervention through exercise of this Court's discretion pursuant to Fed.R.Civ.P. 24(b). Mr. Witherspoon seeks to redress violation of his rights pursuant to 42 U.S.C. §§ 2000e-2 and 2000e-3 and 42 U.S.C. § 1981, as amended, 1991.

8. An employee who is the subject of employer discrimination and of retaliation because of his efforts to vindicate the rights of racial minorities may bring an action under 42 U.S.C. § 1981. Skinner v. Total Petroleum, Inc., 859 F.2d 1439, 1447 (10<sup>th</sup> Cir. 1988).<sup>1</sup> Claims for retaliation are within the scope of a § 1981 claim. See, Ramirez v. Department of Corrections, 222 F.3d 1238, 1244 (10<sup>th</sup> Cir. 2000)(citing Skinner with approval); Andrews v. Lakeshore Rehabilitation Hospital, 140 F.3d 1405, 1411-13 (11<sup>th</sup> Cir. 1998).

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<sup>1</sup> Skinner was decided prior to Patterson v. McLean Credit Union, 491 U.S. 164, 109 S.Ct. 2363 (1989) and before the amendments to 42 U.S.C. § 1981 expanding the definition of the terms "make and enforce contracts" under the 1991 amendments to the Civil Rights Act.

9. Mr. Witherspoon's claims are supported by law and have common questions of fact and law to the pending Complaint by the EEOC. Ramirez v. Department of Corrections, 222 F.3d 1238, 1244 (10<sup>th</sup> Cir. 2000); O'Shea v. Yellow Technology Services, Inc., 185 F.3d 1093, 1098 (10<sup>th</sup> Cir. 1999); Bolden v. PRC, Inc., 43 F.3d 545, 551 (10<sup>th</sup> Cir. 1994).

10. This legal proceeding is just beginning, with a complaint having only recently been filed. Defendant has not yet filed its Answer. Therefore, permitting the Applicant to intervene will not delay or prejudice the adjudication of rights of the original parties.

*D.Colo.L.R. 7.1 Certification*

11. Pursuant to D.Colo.L.R. 7.1, counsel for the Applicant for Intervention has consulted with counsel for the Plaintiff and Defendant. Plaintiff does not oppose this Motion for Intervention. Defendant opposes the Applicant's Motion.

**WHEREFORE**, Applicant respectfully requests this Court to grant this motion and that they be allowed to file the Complaint attached hereto as **Exhibit 1**.

**DATED** this 5<sup>th</sup> day of December, 2005.

Respectfully submitted,

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s/ Patricia S. Bangert

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**ATTORNEYS FOR INTERVENOR**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2005, I electronically filed the foregoing to the Clerk using the CM/ECF system, which will send notification of such filing to the following:

Lynn Palma, EEOC

Joseph Davis, Lithia

s/ Patricia S. Bangert

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Patricia S. Bangert