

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

Civil Action No.:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

OLDCASTLE SW GROUP, INC. d/b/a UNITED COMPANIES OF MESA COUNTY,

Defendant.

COMPLAINT and JURY TRIAL DEMAND

NATURE OF THE ACTION

This is a public enforcement action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.* (“Title VII”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, to correct the unlawful employment practices of discriminating against a female employee on the basis of gender, and of subjecting individuals to retaliation for opposing unlawful discriminatory employment practices. This action seeks to provide appropriate relief to Tammy Lane, Michael Galasso, and Calvin Reed, and other similarly situated individuals who were adversely affected by such practices. Plaintiff, the U.S. Equal Employment Opportunity Commission (“EEOC”), contends Defendant discriminated against Tammy Lane on the basis of her sex, female, by subjecting her to harassment and a hostile work environment. EEOC also contends that Defendant retaliated against Tammy Lane, Michael Galasso, and Calvin Reed by

heightening scrutiny of their work and, ultimately, firing these three individuals for engaging in and participating in protected activity by complaining about practices that violated Title VII.

JURISDICTION AND VENUE

1. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 703(a), 704, 706(f)(1), 706(f)(3), of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a), 2000e-3, 2000e-5(f)(1), 2000e-5(f)(3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court, District of Colorado.

PARTIES

3. Plaintiff EEOC 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 Sections 706(f)(1) and 706(f)(3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant has continuously been and is now doing business in the State of Colorado and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant 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).

STATEMENT OF CLAIMS

6. More than thirty (30) days prior to the institution of this lawsuit, Tammy Lane, Michael Galasso and Calvin Reed, former employees of Defendant Old Castle, filed charges of

discrimination with the EEOC on behalf of themselves and other similarly situated employees, alleging violations of Title VII by Defendant.

7. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Old Castle managers have made statements reflecting gender bias, including without limitation, the following:

(a) Brian Cross, Respondent's Plant Manager, told some of Ms. Lane's co-workers that "women should not be at the plant" and that he would not have hired a woman to do a man's job.

b) Mr. Cross told Ms. Lane that "women should not be in this job" and that Ms. Lane needed to grow a "set of balls to stay in the job."

(c) Respondent's General Manager, Ron Arellano, also told Ms. Lane that she needed "to be a man about [her] job" and that she needed to "grow a set of balls" if she wanted to stay in her job.

(d) Defendant's male employees, including Arellano and Ty Ducray referred to Ms. Lane as a "stupid bitch."

(e) In the spring of 2003, Respondent hired Jake Pimentel who constantly ridiculed Ms. Lane and called her names including "c***" and "bitch." Pimentel also ignored Ms. Lane although they were supposed to work together and refused to communicate with Ms. Lane about work related matters.

9. Ms. Lane attempted to report Mr. Pimentel's refusal to work with her to Mr. Cross, who refused to listen to her concerns. Mr. Cross hung up the telephone on Ms. Lane.

10. On or about August, 2004, Ms. Lane complained to Mr. Arellano about harassment,

including the name calling by Mr. Pimentel.

11. Mr. Reed and Mr. Galasso also told Mr. Arellano that they had witnessed Mr. Pimentel and others harass Ms. Lane and call her derogatory gender-related names.

12. On or about September 2004, Mr. McGehee, Defendant's Human Resources Manager, came to Montrose and met with employees, including Ms. Lane and Mr. Pimentel, stating that the employees should "behave as [a] lady or gentlemen."

13. After the meeting in September 2004, Mr. McGehee met with Ms. Lane, Mr. Reed, and Mr. Galasso, to discuss these individuals' concerns about the workplace discrimination and retaliation.

14. The next day after meeting with Mr. McGehee, Ms. Lane met again with Rick Arellano to express her concerns about retaliation. In that meeting, Mr. Arellano referred to her witnesses as "trouble causing, cry baby, mother f***ers". Mr. Arellano also stated that he wanted to fire all of her witnesses right then.

15. After Ms. Lane expressed her concerns, the harassment of her was not abated, and, indeed, increased.

16. After Mr. Galasso expressed his concerns, the harassment of him was not abated, and, indeed, increased.

17. After Mr. Reed expressed his concerns, the harassment of him was not abated, and, indeed, increased.

18. Michael Galasso was out on medical leave starting in October 2004. Mr. Galasso was released to return to work and contacted Defendant to return to work on December 15, 2004. When Mr. Galasso was released to return to work, Defendant said his job was eliminated and

there was no work for him.

19. The stated reason for Mr. Galasso's discharge was a pretext for discrimination.
20. Calvin Reed was laid off on or about December 16, 2004.
21. Defendant states that Mr. Reed was laid off because of customer complaints and for failing to keep his truck clean.
22. The stated reason for Mr. Reed's discharge was a pretext for discrimination.
23. In January 2005, Ms. Lane was laid off.
24. On or about March 16, 2005, Ms. Lane returned to work.
25. On or about April 26, 2005, Ms. Lane was discharged.
26. Defendant states Ms. Lane was discharged for shoddy and careless work.
27. The stated reason for Ms. Lane's discharge was a pretext for discrimination.

FIRST CLAIM FOR RELIEF

(Gender Discrimination in Employment/Sexual Harassment)

28. Plaintiff realleges the foregoing paragraphs 1-27 of this Complaint.
29. Since at least 2001, Defendant has denied equal employment opportunities to Ms. Lane, in violation of section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), by subjecting Ms. Lane to different terms and conditions for her work than for her male co-workers, by maintaining a work environment hostile to women, and by terminating her employment.
30. The effect of the practices complained of in paragraphs 1-29 above has been to deprive Ms. Lane of equal employment opportunities and otherwise adversely affect her status based on her gender.

31. The unlawful employment practices complained of in paragraphs 1-29 above were and are intentional.

32. The unlawful employment practices complained of in paragraphs 1-29 above were and are done with malice or with reckless indifference to Ms. Lane's federally protected rights.

SECOND CLAIM FOR RELIEF

(Retaliation—Harassment, Discharge)

33. Plaintiff realleges the foregoing paragraphs 1-32 of this Complaint.

34. Since at least 2004, Defendant has retaliated against employees for opposing illegal practices in violation of Section 704 of Title VII, 42 U.S.C. 2000e-3(a) by allowing harassment of employees and discharging employees who oppose illegal practices.

35. The effect of the practices complained of in paragraphs 1-34 above has been to deprive employees of equal employment opportunities and to otherwise adversely affect their status as employees because of their opposition to discriminatory practices.

36. During their employment with Defendant, Ms. Lane, Mr. Reed and Mr. Galasso and a class of similarly situated individuals engaged in protected activity under §704 of Title VII, 42 U.S.C. §2000e-4(a), by opposing unlawful discriminatory and retaliatory employment practices.

37. Defendant, acting through its managers and supervisors, retaliated against Ms. Lane, Mr. Reed, Mr. Galasso and a class of similarly situated individuals because of their protected activity.

38. As a result of Defendant's unlawful retaliation, Ms. Lane, Mr. Reed, Mr. Galasso and a class of similarly situated individuals have suffered damages, including but not limited to

backpay, front pay, future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in amounts subject to proof.

39. The unlawful employment practices complained of in paragraphs 33-38 above were and are intentional.

40. The unlawful employment practices complained of in paragraphs 33-38 above were and are done with malice or with reckless indifference to the federally protected rights of female employees.

PRAYER FOR RELIEF

WHEREFORE, the Commission 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 any employment policy or practice which discriminates against women, or retaliates against employees who report gender discrimination.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for all employees and applicants, regardless of gender, and which eradicate the effects of its past unlawful employment practices, including retaliation.

C. Order Defendant to make whole Tammy Lane, by providing appropriate backpay with prejudgment interest, and compensation for other past and future pecuniary losses, in amounts to be determined at trial.

D. Order Defendant to make whole Tammy Lane, by reinstating her with all attendant rights and benefits, or awarding appropriate front pay in lieu thereof, in amounts to be determined at trial.

E. Order Defendant to make whole Tammy Lane, by providing compensation for past and future non-pecuniary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and humiliation, in amounts to be determined at trial;

F. Order Defendant to make whole Tammy Lane, Calvin Reed, and Michael Galasso, and a class of individuals subjected to unlawful discriminatory treatment in retaliation for exercise rights protected by Title VII, by providing appropriate backpay with prejudgment interest, and compensation for other past and future pecuniary losses, in amounts to be determined at trial.

G. Order Defendant to make whole Tammy Lane, Calvin Reed, Michael Galasso and a class of individuals subjected to unlawful discriminatory treatment in retaliation for exercising rights protected by Title VII, by reinstating them with all attendant rights and benefits, or awarding appropriate front pay in lieu thereof, in amounts to be determined at trial.

H. Order Defendant to make whole Tammy Lane, Calvin Reed, Michael Galasso and a class of individuals subjected to the unlawful discriminatory treatment in retaliation for exercising rights protected by Title VII, by providing compensation for past and future non-pecuniary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and humiliation, in amounts to be determined at trial;

I. Order Defendant to make whole Tammy Lane, Calvin Reed, Michael Galasso and a class of individuals subjected to the unlawful discriminatory treatment in retaliation for exercising rights protected by Title VII, by paying punitive damages for its malicious and/or reckless conduct described above, in amounts to be determined at trial

J. Order Defendant and its successors to provide training to officers, managers and employees regarding gender discrimination and retaliation in the workplace;

K. Grant such further relief as the Court deems necessary and proper in the public interest; and

L. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by this Complaint.

Dated: June 30, 2008

Respectfully submitted,

RONALD S. COOPER
General Counsel

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**PLEASE NOTE:
For purposes of service upon the EEOC,
it is sufficient that pleadings, notices, and
court documents be served upon the
Trial Attorneys.**

