

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

SEP 28 PM 3:14

U.S. DISTRICT COURT  
S.D. OF FLA. - MIA

UNITED STATES EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BJ'S WHOLESALE CLUB, INC.. )  
 )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO.

**CIV. - GOLD**

COMPLAINT

JURY TRIAL DEMANDED  
INJUNCTIVE RELIEF SOUGHT

**MAGISTRATE JUDGE  
TURNOFF**

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of national origin and race, and to provide appropriate relief to Jesus Santos ("Mr. Santos") and other similarly situated individuals who were adversely affected by such practices. As stated with greater particularity in paragraphs below, the Commission alleges that Mr. Santos and other similarly situated individuals were regularly subjected to harassment on the basis of national origin and race which included, but was not limited to offensive racial and national origin based derogatory comments, slurs and epithets which created an unlawful hostile work environment.

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 Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII"), 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 for the Southern District of Florida, Miami Division.

### PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "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. At all relevant times, Defendant, BJ's Wholesale Club, Inc. (the "Employer") has continuously been a foreign corporation doing business in the State of Florida and the City of Homestead, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer 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 days prior to the institution of this lawsuit, Mr. Santos filed a charge with the Commission alleging violations of Title VII by the Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least August of 2005, Defendant Employer has engaged in unlawful employment practices at its Homestead, Florida location in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a).

a. Defendant's Manager Henry Gallardo, Cuban, regularly subjected Mr. Santos to unwelcome verbal harassment on the basis of Mr. Santos' national origin, Puerto

Rican, which was sufficiently severe and pervasive to constitute an intimidating, hostile and offensive work environment.

- b. The offensive conduct included, but was not limited to national origin based slurs, epithets and derogatory comments, such as: "you are a dumb ass because you are Puerto Rican"; "stupid Puerto Rican"; "you all have nigger blood"; and "you can't think right because you are Puerto Rican".
- c. Mr. Santos complained to Defendant's management regarding the unlawful harassment. Defendant's management failed to take measures to prevent and promptly correct further harassment from taking place on its premises.
- d. Defendant's Manager Henry Gallardo, Cuban, regularly subjected other similarly situated individuals William Floyd, Ternell Miller, and Lonnie Brady to unwelcome verbal harassment on the basis of their race, Black, which was sufficiently severe and pervasive to constitute an intimidating, hostile and offensive work environment.
- e. The offensive conduct included, but was not limited to race based slurs, epithets and derogatory comments, such as: "Blacks are not smart enough to do the job"; "niggers came over on a boat "; "Blacks and Puerto Ricans can't do what Cubans do"; "you niggers don't know what you are doing"; "Black people are dumb"; and "you can't learn because you are Black."
- f. William Floyd and Lonnie Brady complained to Defendant's management regarding the unlawful harassment. Defendant's management failed to take measures to prevent and promptly correct further harassment from taking place on its premises.
8. The effect of the conduct complained of in paragraph seven (7) above has been to

deprive Mr. Santos and other similarly situated individuals of equal employment opportunities and otherwise adversely affect their status as employees because of their race or national origin.

9. The unlawful employment practices complained of in paragraph seven (7) above were intentional.

10. The unlawful employment practices complained of in paragraph seven (7) above were done with malice or with reckless indifference to the federally protected rights of Mr. Santos and other similarly situated individuals.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with Defendant, from engaging in racial and national origin based harassment and any other employment practice which discriminates on the basis of race and national origin.

B. Order Defendant Employer, to institute and carry out policies, practices, and programs which provide equal employment opportunities for employees regardless of race and national origin, and which eradicate the effects of its past unlawful employment practices.

C. Order Defendant Employer to make whole Mr. Santos, Mr. Floyd, Mr. Miller, Mr. Brady and any other similarly situated individuals by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph seven (7) above, including emotional pain, suffering, inconvenience, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

D. Order Defendant Employer to pay Mr. Santos, Mr. Floyd, Mr. Miller, Mr. Brady and

any other similarly situated individuals punitive damages for its malicious and reckless conduct described in paragraph seven (7) above, in amounts to be determined at trial.

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

F. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully Submitted,

RONALD S. COOPER  
General Counsel

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

DELNER FRANKLIN-THOMAS  
Regional Attorney.



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OPPORTUNITY COMMISSION  
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Attorney for Plaintiff

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p><b>I. (a) PLAINTIFFS</b> U.S. Equal Employment Opportunity Commission</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) Maritza I. Gomez EEOC, 2 S. Biscayne Blvd., Suite 2700 Miami, FL 33131; Tel: (305) 808-1783</p>	<p><b>DEFENDANTS</b> BJ's Wholesale Club, Inc.</p> <p>County of Residence of First Listed Defendant <b>Miami-Dade</b> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED</p> <p>Attorneys (If Known) <i>Dale G. Browne / WG</i></p>
<p><b>CIV - GOLD</b></p> <p><b>MAGISTRATE JUDGE</b></p>	
<p><b>(d)</b> Check County Where Action Arose: <input checked="" type="checkbox"/> MIAMI-DADE <input type="checkbox"/> MONROE <input type="checkbox"/> BROWARD <input type="checkbox"/> PALM BEACH <input type="checkbox"/> MARTIN <input type="checkbox"/> ST. LUCIE <input type="checkbox"/> INDIAN RIVER <input type="checkbox"/> OKFEE/HOBEE HIGHLANDS</p>	

<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">PTF DEF</td> <td style="width:33%;">PTF DEF</td> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF	PTF DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	<input type="checkbox"/> 5 <input type="checkbox"/> 5	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 6 <input type="checkbox"/> 6	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 6 <input type="checkbox"/> 6														

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 470 Deportation <input type="checkbox"/> 480 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Forfeiture to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p><b>PRISONER PETITIONS</b></p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609					

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Re-filed- (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** (See instructions second page)

a) Re-filed Case  YES  NO      b) Related Cases  YES  NO

JUDGE: \_\_\_\_\_ DOCKET NUMBER: \_\_\_\_\_

**VII. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity)

Title VII of the Civil Rights Act of 1964. This case is about hostile environment because of National Origin (Puerto Rican) and/or Race (Black) from a supervisor against several employees

LENGTH OF TRIAL via 5-7 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      **DEMANDS**      CHECK YES only if demanded in complaint

**JURY DEMAND:**  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: *Maritza I. Gomez*      DATE: 9/28/06

FOR OFFICE USE ONLY

AMOUNT: \_\_\_\_\_ RECEIPT #: \_\_\_\_\_ IFP: \_\_\_\_\_