

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

WILLIAM DEMARSE,

Plaintiff

COLLECTIVE ACTION

VS.

CASE NO. \_\_\_\_\_

CRACKER BARREL OLD  
COUNTRY STORE, INC.,

Defendant.

\_\_\_\_\_ /

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, WILLIAM DEMARSE, by and through his undersigned attorney, and sues the Defendant, CRACKER BARREL OLD COUNTRY STORE, INC. (hereinafter CRACKER BARREL), and alleges as follows:

PRELIMINARY STATEMENT

1. This is a Collective Action seeking declaratory judgment and injunctive relief and costs and attorneys' fees for the age discrimination suffered by Plaintiff and those applicants as a result of the actions of the Defendant.

2. This action is brought to remedy discrimination on the basis of age in the terms, conditions and privileges of employment in violation of the Age Discrimination In Employment Act, as amended, 29 U.S.C. § 621, et seq.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

3. Plaintiff, WILLIAM DEMARSE, has complied with all administrative prerequisites as follows:

A. Plaintiff, WILLIAM DEMARSE, filed charges of discrimination on the basis of age discrimination against the Defendant, CRACKER BARREL, with the

Equal Employment Opportunity Commission (“EEOC”) on or about July 1, 2006 and a Notice of Right To Sue was issued by the EEOC on March 29, 2007, a copy of which is attached hereto as Exhibit 1. The 180-day exclusive jurisdictional period of the Florida Commission on Human Relations expired on or about January 10, 2007. Accordingly, Plaintiff has filed appropriately with this Court under the Age Discrimination In Employment Act.

4. Jurisdiction over this claim is conferred on this Court by 28 U.S.C. § 1331, in that this action arises under the laws of the United States.

5. Declaratory, injunctive and equitable relief is sought pursuant to 28 U.S.C. § 2201, 2202 and 42 U.S.C. § 2000e-5(g).

6. Costs and attorneys’ fees may be awarded pursuant to 42 U.S.C. § 2000e-5(k) and the Federal Rules of Civil Procedure 54.

#### VENUE

7. This action properly lies in the Middle District of Florida, Tampa Division, pursuant to 28 U.S.C. § 1391(b) because the claim arose in this judicial district and pursuant to 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practice was committed in this judicial district.

#### NATURE OF THIS ACTION

8. This action is brought for declaratory judgment of the Plaintiff and all applicants of Defendant who are similarly situated, and for a permanent injunction restraining Defendant from maintaining a policy, practice and/or custom of discriminating against Plaintiff and all applicants because of age, with respect to the privileges of employment and in ways which deprive Plaintiff and all applicants of equal employment opportunities and otherwise adversely affect their status as applicants because of age. This

Complaint also seeks restitution to Plaintiff and all applicants of all rights, privileges, benefits and income that would have been received by them but for Defendant's unlawful and discriminatory practices.

### PLAINTIFF

9. Plaintiff, **WILLIAM DEMARSE**, is a citizen and resident of the United States and acts herein as representative Plaintiff as regards claims against the Defendant, **CRACKER BARREL**, who has been discriminated against in the hiring process with Defendant based upon his age.

### DEFENDANT

10. Defendant, **CRACKER BARREL**, is an employer, engaged in an industry affecting commerce, and employs more than fifteen (15) regular employees.

### FACTUAL BACKGROUND

11. On or about February 10, 2005, Plaintiff, **WILLIAM DEMARSE**, took a test, as a pre-requisite for employment, for the Defendant, **CRACKER BARREL**. At the end of the test, Plaintiff was to answer several questions about himself, one of which was his age. Plaintiff answered the questions. Shortly after taking the test, Plaintiff received a call from the Defendant stating that they were not interested in hiring him. Thus, the test specifically asked Plaintiff, **WILLIAM DEMARSE**, as well as all applicants, to state their age as follows:<sup>1</sup>

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<sup>1</sup> Counsel has redacted by marking through personal information of Plaintiff, William DeMarse.

# Cracker Barrel Old Country Store

## Background Verification

All applicants for employment by Cracker Barrel Old Country Store® must consent to background verifications. This form serves to provide necessary information in order to conduct the background verifications. Your accuracy and thoroughness will help expedite the processing of your application.

Please complete the following information. It is requested that you complete all information on this sheet even if it is already included on your application form or resume. Note: Date of birth and maiden name are not considered in the employment decision. This information is utilized for accurate records verifications only.

### *Please Print All Information*

Your Name William R DEMARSE II

SS#

Your Address

Daytime Telephone

Evening Telephone

College Jacksonville Univ. Jacksonville

Location

Degree  No  2 - Year  4 - Year

N/A Graduate Degree

Last Mo./Yr. Attended DEC 19

Date of Birth Nov 5 1984

Drivers License #: [REDACTED] State FL

Maiden Name or Other Name Used N/A

Year this name was last used N/A

(Exhibit A)

The Defendant, **CRACKER BARREL**, when challenged with the need for this information by the federal Equal Employment Opportunity Commission, related that:

*The recruiter explains that this section of the assessment is information being collected to track candidates in order to comply with Federal and State Equal Employment Opportunity record keeping requirements.*

This, of course, is at odds with any federal or state law that requires or suggests such tracking is necessary or appropriate. Furthermore, the background verification form all applicants are asked to complete, specifically request that they list their date of birth as follows:

Demographic Information									
Social Security Number			Last Name						
[REDACTED]			/ D E M A R S E						
0	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
			First Name						
			/ W I L L I A M						
			Gender		Age		Ethnic Group		
			<input type="radio"/> Female		<input type="radio"/> 20 or Under		<input type="radio"/> Black/African American		
			<input checked="" type="radio"/> Male		<input type="radio"/> 21 to 29		<input type="radio"/> American Indian		
					<input type="radio"/> 30 to 39		<input type="radio"/> Asian/Pacific Islander		
					<input type="radio"/> 40 to 49		<input type="radio"/> Hispanic/Latino		
					<input type="radio"/> 50 to 59		<input checked="" type="radio"/> White/Caucasian		
					<input checked="" type="radio"/> 60 or Over		<input type="radio"/> Other		
Most Recent Managerial Experience			Years in Most Recent Managerial Position			Highest Level of Education Completed			
<input type="radio"/> Assistant Manager			<input type="radio"/> Less than 1			<input type="radio"/> High School/GED			
<input checked="" type="radio"/> General Manager (Single Unit)			<input checked="" type="radio"/> At least 1 but less than 2			<input type="radio"/> 2 Year College Degree			
<input type="radio"/> Multi-Unit Supervisor			<input type="radio"/> At least 2 but less than 5			<input checked="" type="radio"/> 4 Year College Degree			
<input type="radio"/> Owner/Operator			<input type="radio"/> 5 or more			<input type="radio"/> Advanced Degree			

See Exhibit B attached hereto.

12. Plaintiff, **WILLIAM DEMARSE**, comes forward and alleges age discrimination by the Defendant, **CRACKER BARREL**, in hiring. Specifically, Defendant, **CRACKER BARREL**, had a nationwide pattern or practice of asking for and illegally considering the age of all applicants for its employment in violation of the federal Age Discrimination In Employment Act.

**COLLECTIVE ACTION CLAIMS**

13. In addition to Plaintiff, numerous employees and former employees of the Defendant are similarly situated to Plaintiff, in that they have been denied equal treatment as regards their application and consideration for employment with Defendant based upon their age.

**COUNT I**  
**AGE DISCRIMINATION IN EMPLOYMENT ACT**

14. Plaintiff, **WILLIAM DEMARSE**, avers that Defendant, **CRACKER BARREL's** unlawful and discriminatory practice of maintaining a policy, practice and/or custom of discriminating against Plaintiff and other applicants on account of their age violates the provisions of the Age Discrimination In Employment Act ("ADEA"), as amended, 28 U.S.C. § 621, et seq.

**WHEREFORE**, the Plaintiff, **WILLIAM DEMARSE**, hereby demands a trial by jury and a judgment against the Defendant, **CRACKER BARREL**, as follows:

- A. For a money judgment representing all lost wages and all other sums of money;
- B. For a money judgment representing liquidated damages;
- C. For a money judgment representing all damages Plaintiff may avail himself of under the respective cause of action alleged as available;
- D. For a money judgment representing prejudgment interest;
- E. That the Court retain jurisdiction over this action until the Defendant has fully complied with the Orders of this Court and that the Court require the Defendant to file such reports as may be necessary to supervise such compliance;
- F. For the costs of suit, including an award of reasonable attorneys' fees; and
- G. For such other and further relief as may be just and proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff and all applicants similarly situated who join in this action pray for this Court:

A. To issue a permanent injunction enjoining Defendant, its agents, successors, employees, attorneys, and those acting in concert with them, from engaging in each of the unlawful practices set forth in this Complaint, and from continuing other practices shown to be in violation of the law;

B. Grant such other and further relief as may be just and proper, including hiring, front pay, back pay and liquidated damages to the Plaintiff and all similarly situated applicants;

C. Award Plaintiff and other similarly situated applicants their costs in this action and reasonable attorneys' fees pursuant to 29 U.S.C. § 216(b);

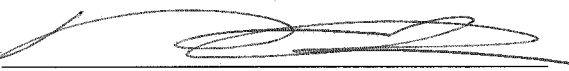
D. To award such other damages and further relief as this Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff and other similarly situated applicants of Defendant, **CRACKER BARREL**, hereby demands a trial of their claims by jury to the extent authorized by law.

Dated: June 8, 2007

Respectfully submitted,

By 

DAVID J. LINESCH  
Florida Bar No. 0376078  
The Linesch Firm  
700 Bee Pond Road  
Palm Harbor, FL 34683  
Voice: (727) 786-0000  
Facsimile: (727) 786-0974  
Email: laborlaw@lineschfirm.com  
Attorney for Plaintiff