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Date
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LEMUEL MIDDLETON, REGINALD LEWIS,
SHARON FLOWERS, GASTON
HAZLEWOOD, CYNTHIA JONES-McCALL,
WILLIE JONES, JOYA FULTON,
CHARMAINE WASHINGTON, VICTOR
KEE, and ANDREW LOVETT
individually and on behalf of
all other persons similarly situated,

Plaintiffs,

v.

Case No. 97-760-CIV-T-25E
CLASS ACTION

PUBLIX SUPER MARKETS, INC.,

Defendant.

PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT
INJUNCTIVE RELIEF SOUGHT

Plaintiffs sue Defendant and state:

JURISDICTION OF THE COURT

1. This case is brought as a class action under 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000e et seq.) and the Florida Human Rights Act of 1992, Chapter 760, Florida Statutes.
2. Jurisdiction of this Court is founded upon 28 U.S.C. §§ 1331, 1343 and 1367 and 42 U.S.C. § 2000e-5(f)(3).
3. Venue is proper under 28 U.S.C. § 1391(b) and 42 U.S.C § 2000e-5(f)(3).

4. The Plaintiffs have satisfied the administrative prerequisites to suit under Title VII and the Florida Human Rights Act of 1992, Chapter 760, Florida Statutes.

PLAINTIFFS

5. Each of the Plaintiffs is a black applicant for employment, black employee, or black former employee of Publix Super Markets, Inc., as described more fully in this Complaint.

DEFENDANT

6. Defendant Publix Super Markets, Inc., (hereafter "Publix") is a corporation with headquarters in Lakeland, Florida. It operates approximately 550 retail grocery stores, primarily in Florida and Georgia, warehouses at each of its four divisions (some with satellite warehouses), and plants which produce such foods as dairy, deli and bakery products.

CLASS ACTION ALLEGATIONS

7. This action is brought as a class action under Fed.R.Civ.P. 23. The class consists of all present, former, and future black employees and applicants for employment with the Defendant alleging discrimination based on race.

In Retail:

- (a) hiring;
- (b) promotion and transfer to better jobs including transition from part-time to full-time, assignment to more lucrative positions within a given job title, and being passed over for jobs in favor of white persons hired from outside the Publix workforce;
- (c) discharge and constructive discharge.

In Nonretail:

(a) discharge and constructive discharge in all four divisions; and

(b) hiring at the Jacksonville warehouse, the only nonretail facility in the Jacksonville

Division.

8. Numerosity: Subsection (a)(1) of Rule 23 is satisfied in that the class is so numerous that joinder is impracticable. The number of current and former black employees from 1993-97, on information and belief, is circa 50,000 which does not include black applicants for employment.

9. Commonality: Subsection (a)(2) is satisfied in that there are questions of fact and law common to the members of the class: to wit, has and does Publix maintain a continuing pattern and practice of discrimination against black persons in employment.

10. Publix has highly centralized and subjective personnel policies and practices which operate across all of the operations alleged in the class described above. The decision making process in the retail stores for hiring, promotions, and discharge is based on highly subjective criteria in that managers make such decisions without resort to written guidelines which would materially guide their discretion. At most times relevant to this action, in the retail stores Publix did not post jobs and selected managers based on the "tap on the shoulder" system. The same subjective policies and practices were used in selecting persons for discharge in all nonretail jobs and for hiring in the Jacksonville warehouse.

11. These common personnel policies and practices raise common issues of fact for purposes of Fed.R.Civ.P. 23(a)(2).

12. The Plaintiffs' theories of liability, that Publix is guilty of both disparate treatment and disparate impact against the Plaintiffs and the class, raise common issues of law for purposes of Fed.R.Civ.P. 23(a)(2).

13. Typicality: Subsection (a)(3) is satisfied in that the claims of the representative Plaintiffs are typical of the class as a whole. The representative parties as a group represent each of the practices complained of herein, including failure to hire, failure to promote, and discharge. The representative Plaintiffs Jones-McCall and Washington have been discriminatorily denied employment as applicants for retail jobs. Plaintiffs Fulton, Hazlewood, Middleton, Lewis, Jones-McCall, Jones, Washington and Flowers suffered discriminatory failure to promote in the retail sector of Publix's employ. Plaintiffs Lewis, Flowers, and Washington were discriminatorily discharged. Plaintiffs Lovett and Kee have been discriminatorily discharged from nonretail positions.

14. Adequacy of Representation: The named Plaintiffs will adequately represent the class. The Plaintiffs desire to represent the class, do not have interests antagonistic to the rest of the class, and have retained counsel experienced in class action litigation of employment discrimination claims.

15. This action is brought under subsection (b)(2) of Fed.R.Civ.P. 23 in that Publix has acted or refused to act on grounds generally applicable to the class, making appropriate declaratory and injunctive relief with respect to the class a whole. In the alternative, Plaintiffs seek certification under subsection (b)(3) of Fed.R.Civ.P. 23.

RACIALLY DISCRIMINATORY PRACTICES

16. Publix has maintained a pattern and practice of racial discrimination against black applicants and employees in **retail** outlets in the following ways:

- (a) failing to hire black applicants on terms equal to white applicants;
- (b) selecting white new hires for positions for which black incumbent employees are more qualified;
- (c) failing to promote black employees on terms equal to white employees, including from part-time to full-time employment; and
- (d) discharging and constructively discharging black employees on terms less favorable than those afforded white employees.

Publix has maintained a pattern and practice of racial discrimination against black applicants and employees in **nonretail** operations in the following ways:

- (a) discharging and constructively discharging black employees on terms less favorable than those afforded white employees; and
- (b) failing to hire blacks on terms equal to white applicants at the Jacksonville warehouse.

ALLEGATIONS OF REPRESENTATIVE PLAINTIFFS

Lemuel Middleton

17. PLAINTIFF LEMUEL MIDDLETON commenced his employment with Publix as a part-time Bagger in 1986 at Store 259 in St. Petersburg and was promoted to part-time Produce Clerk. In 1988, Middleton went on military leave. He served in the Marines from 1988-1992 including Operation Desert Storm.

18. After his military service, in 1992, Middleton returned to Publix to the same store,

beginning as a part-time Stock Person. Shortly thereafter, he advanced to full-time status and later became a Lead Stock Person with responsibility for Frozen Foods.

19. During this time, the Store Manager, Richard Hayes, told Middleton that he would be trained for store management. However, Hayes refused to provide him with the full training required for employees to progress into management.

20. Middleton went to the District Manager to inquire about promotional opportunities. He pointed out his experience commanding Marines during Operation Desert Storm. He was told he would have to wait.

21. Eventually, one of the store's assistant managers, Robert Molldene, told Middleton that he was going to train him since the Store Manager, Hayes, would not do it. Later, Molldene told Middleton that Hayes had told him to stop the training. Molldene also told Middleton that Hayes had no intention of promoting him into management.

22. White employees who were less qualified were promoted to Second Assistant Manager.

23. Needing to know his Store Manager's intentions, Middleton told him that if he was not going to be trained and promoted he would have to leave to advance his career. His Manager said he "did not know," which Middleton took to be a rejection of his request. His career at a dead end, Middleton left approximately one month later in January, 1995.

24. Middleton is currently an insurance salesman.

Reginald Lewis

25. PLAINTIFF REGINALD LEWIS was hired by Publix as a part-time Stock Person in Jacksonville in August, 1988. Approximately seven months later, he was promoted to full-time Stock Person.

26. In October of 1992, Lewis was offered the position of Second Assistant Manager in store No. 431 in Brunswick, Georgia. Although this was a great inconvenience to Lewis and his family because it forced him to work over 50 miles from his family in Jacksonville, he accepted the transfer because he believed that the transfer would be a true promotion into management and would provide him the opportunity to obtain the management training and skills that are necessary to progress further in Publix management. Lewis hoped to one day become a Store Manager for Publix.

27. Just before Lewis's promotion, the Brunswick store had been picketed by a civil rights group that alleged that Publix engaged in racial discrimination in their employment practices. When Lewis arrived, he was placed out front to greet customers and was told that he was a "token."

28. The all-white management team at No. 431 did not welcome Lewis. He was not allowed to perform the full range of duties normally assigned to Second Assistant Managers. Rather, Lewis was given insubstantial, non-management duties that proved that the "token" label given to him was, in fact, accurate.

29. The Assistant Store Manager at No. 431 treated the black employees disrespectfully referring to them with racial slurs such as "nigger." Lewis, himself, was called "boy" and "midnight oil" by the other Second Assistant Manager. The Store Manager condoned

a white Cashier calling Lewis "buckwheat" and refused to allow Lewis to write her up.

30. Once he was transferred into the Second Assistant Manager position, he was permitted neither to perform the true duties of that job nor participate meaningfully in the management of the store. For this reason, Lewis believed that he had no real chance of achieving his goal of rising to the further levels of management.

31. In approximately July of 1993, Lewis was falsely accused of stealing from the company. He was suspended for two weeks and had his store keys taken from him. The company's investigation of Lewis's alleged wrongdoing showed that he had been wrongly accused. Despite this, however, Lewis did not receive an apology and thenceforth was used essentially as a Stock Person in the Brunswick store.

32. In August 1993, Lewis was transferred back to a store in Jacksonville. After Lewis had returned to Jacksonville, the Bakery Manager at the Brunswick store called him and said that he believed Lewis was going to be fired. Soon thereafter, Lewis was accused of theft by Assistant Director of Retail Operations, Ralph Phillips. Lewis was detained in a back room at the store and told that he had stolen from the company. During these accusations, District Manager Charles Harper physically blocked the doorway to stop Lewis from leaving the room where he was being accused and interrogated. Lewis swore that he was not guilty. He was told that if he admitted to the theft, he could save his job, but that if he did not, the company would bring in outside investigators who would destroy him and he would lose his retirement which was approximately \$6000. To save his job, Lewis admitted to a theft he did not do. He was fired immediately.

33. After being fired, Lewis tried to contact the Human Resources Director for Jacksonville, Jim Bohannon, but Bohannon would not speak with him. He then telephoned Jessie Barton, Vice President, on three separate occasions, but Barton refused to talk to Lewis on each occasion.

34. Lewis is currently a Produce Manager with Albertson's Food Stores.

Sharon Flowers

35. PLAINTIFF SHARON FLOWERS went to work for Publix in approximately November 1990 as a part-time Bakery Clerk at store 38 in St. Petersburg, Florida.

36. In August 1991, she was promoted to a pack-out position in the Bakery, but still as part-time, even though she often worked up to 55 hours per week. Flowers had been interested in full-time employment from the day she was hired, and in January 1992, she began actively requesting it. In March 1992, her Bakery Manager, Michael Masi, assured her that she and another Bakery employee who was white were next in line to be full-time.

37. In late October 1992, Flowers went on maternity leave. Just before this Masi assured her that her pack-out position would be held open for her return.

38. In February 1993, Flowers returned from maternity leave to find her position had been given to a white employee. During the same period, another white employee who returned from maternity leave was given back her former position.

39. Because she lost her former position, Flowers asked to be assigned to another store. Her request was denied and, instead, she was given a Front Service Person (bagger) position. Her hours were significantly reduced.

40. After this, Flowers began asking her Store Manager, David Andrews, for a Cashier position pointing out that in addition to her Publix sales experience, she had two years at Winn-Dixie as a Cashier. She was told that she would have to "prove herself" first. She worked the Front Service Person position for about four months. During this time three or four Cashiers were hired, all of whom were white.

41. Around May 1993, Flowers filed a charge of discrimination with the EEOC. Only then did Publix respond by allowing her to be a part-time Cashier, but they did not compensate her for the lost earnings.

42. A short time later in October 1993, Flowers was transferred back to the pack-out position in the Bakery, again as a part-time employee. In approximately July or August 1994, the white Baker whom Masi had assured her she would be promoted to full-time along with, was made full-time. In October 1994, she asked Masi when she would get full-time status. Masi said he had to talk to the District Manager, John Reina, but never mentioned it to her again.

43. After this conversation with Masi, two other Bakers, both white, were made full-time. In January 1995, another Baker, who again was white, was also made full-time. He had over a year less experience than Flowers. Then in July 1995, still another white Baker with less tenure received full-time status.

44. Flowers was not promoted to full-time status until February of 1996, five years after she began working for Publix.

45. During late 1993 and all of 1994, Masi indicated that he was very pleased with her work and asked her to assist the Bakers. During that time, Flowers spent a significant amount of

time assisting the Bakers, such that she became trained in all aspects of baking.

46. Throughout this time, Flowers continued to be interested in full-time status with Publix and promotion to the Baker position. Because of her responsibilities for her young child, she was not available for full-time work from the time that she returned from her maternity leave until approximately late 1994. At that time, Flowers informed Publix management that she desired a full-time position in the bakery.

47. In November 1994, Flowers overheard Masi telling the Store Manager, Andrews, and the District Manager, Reina, that he needed more help. Masi said he wanted to promote Flowers. Reina and Andrews insisted that Masi hire someone from the outside. After the conversation ended, Flowers asked Masi if he talked to Reina and Andrews about her promotion to Baker. Masi told her she would be coming over to bake by January.

48. In January 1995, Masi told Flowers that if she would be available on weekends he could give her further training for the Baker position. Flowers adjusted her availability immediately. She indicated to Masi that she was available every weekday for the 5:00 a.m. until 2:00 p.m shift and on alternating Saturdays. Flowers was to receive training on the alternating Saturdays in addition to that which she received during the weekday shifts. Masi scheduled Flowers accordingly and she began working these shifts in order to become a Baker.

49. Masi told Flowers that when he got a replacement for her in pack-out she would be promoted to Baker.

50. In early 1995, Mike Pasquesrella, who is white was hired as a Baker. He appeared to have little baking experience. Upon information and belief, at least one other new

white employee, Bill Osepczuk, was hired in early 1995 and given duties as a Baker. Osepczuk appeared to have no baking experience. Masi took Flowers off the schedule for the training days to which he had agreed. However, she worked for the next month training these new white employees.

51. Flowers continued to ask Masi about promoting her to Baker. Masi put her off by telling her he had to first fill her pack-out position.

52. In June 1995, Masi hired yet another Baker. As before, the Baker was white and appeared to have little experience.

53. In September 1996, after nearly six years on the job and having never been written up or disciplined and having consistently performed her job satisfactorily, Flowers was fired by her Store Manager for allegedly having failed to punch out her time card for a break. Ironically, the day on which Flowers was fired she was not scheduled to work, but rather had come in to help out.

Gaston Hazlewood

54. PLAINTIFF GASTON HAZLEWOOD started working for Publix as a part-time Baker in January 1989. In June 1989, he became a full-time Baker at Store 39 in St. Petersburg. Later, he was transferred to Store 27 at the Gateway Mall. Not long after Hazlewood arrived at Store 27, his new Second Assistant Manager, Jim Hussey, had a pair of new shorts on. Hazlewood asked him about the shorts and Hussey commented, "I didn't have to chase the nigger too far to get them."

55. In 1991, Hazlewood was transferred to Store 7 in St. Petersburg and promoted to

Assistant Bakery Manager. His staff was all white and resisted taking directions from a black supervisor. When the subject of possibly hiring more blacks came up, Hazlewood's Bakery Manager commented, "What do they want us to do? Go up under the trees and hire them?"

56. On another occasion, Hazlewood requested that a Baker, who was black, be transferred from another Publix store to work with him in the Bakery. His Store Manager, Sean Atkinson, said "I don't want that nigger in this store."

57. In October 1992, he was transferred back to Store 27. Later, the Bakery Manager there left and, as Assistant Bakery Manager, Hazlewood was put in charge until another Manager was brought in.

58. Starting in 1993, Hazlewood began asking to be promoted to Bakery Manager. By that time, Hazlewood was qualified for the manager position. He asked Jane Pixley, Regional Bakery Supervisor; Tommy Kline, District Manager; John Reina, Kline's successor as District Manager; and Sean Atkinson, his Store Manager. He was not offered any position.

59. In 1994, the Bakery Manager at Hazlewood's store left. Hazlewood asked for the promotion since he had already served as Assistant Bakery Manager. This request was denied. A white Assistant Bakery Manager junior to Hazlewood in bakery management was brought in from another store.

60. In 1994, Hazlewood again asked his District Manager, John Reina, for a promotion to Bakery Manager. Reina, supposedly alluding to his own experience, told Hazlewood that he would have to wait 6-10 years to get promoted. At this time white employees with less time as Assistant Bakery Managers at Publix than he had were being chosen for Bakery

Manager. This included Mike Ostrowski, who became an Assistant Bakery Manager in October of 1992, approximately one year after Hazlewood was promoted into management.

61. In approximately December of 1994, Publix offered Hazlewood a lateral transfer as an Assistant Bakery Manager at another store. Because this would involve no change in pay or benefits for Hazlewood and would require a move to a new and unfamiliar store, Hazlewood considered the transfer to be a demotion and did not accept it. At that time, Hazlewood told his superiors that he remained interested in promotion to the Bakery Manager position.

62. Subsequently, in April 1995, still stuck in the position Assistant Bakery Manager, Hazlewood was reprimanded by his Store Manager Larry Hayes, at the instance of his District Manager, Reina, for allegedly not doing his work, a charge which was not true. Rather, Hazlewood was out having knee surgery at the time of the alleged infraction. Hayes told Hazlewood that if he did not sign the false reprimand, Publix would take more harsh and drastic measures against him. Realizing that they intended to fire him, he quit that day.

63. Since leaving Publix, Hazlewood has attended the St. Petersburg Police Academy and is pursuing a career in law enforcement.

Cynthia Jones-McCall

64. PLAINTIFF CYNTHIA JONES-McCALL was hired by Publix as a part-time Cashier in January 1986 at the Pompano Beach store. In July 1986, she became a full-time Cashier and worked in that capacity until May 1994 when she went out on long term disability due to an injury. She retired from Publix three months later in August 1994.

65. During McCall's more than eight years of service, she consistently received

satisfactory performance evaluations, including commendations from customers.

66. During these years, McCall received fewer increases in pay than similarly situated white Cashiers. On one occasion when McCall asked her Store Manager, Alan Price, who is white, about a pay raise, Price told her in no uncertain terms that she had gotten all she was going to get.

67. In September 1996, McCall decided to reapply at Store 58, the Hub Plaza store in Fort Lauderdale, Florida. At that time, McCall spoke with Butch Felix, whom she understood to be the Store Manager. Felix, who is white, told her that in order for her to be hired by Publix, she would have to go back to her former Manager, Alan Price. Because she felt that Price had treated her in a racially discriminatory manner, she believed that contact with Price would be futile and did not do so even though she was very interested in working for Publix.

68. Then in October of 1996, McCall contacted Store 114 in Wilton Manors to apply for work. Butch Felix, with whom she had spoken at the Hub Plaza store, was the Store Manager there. Felix told her that she would have to call corporate headquarters in Lakeland about being hired. She did so and someone in personnel at the corporate headquarters told her that there was no special procedure and that she should just go to the store in which she sought employment and apply.

69. Remembering what Felix had earlier told her, McCall contacted her former Store Manager, Alan Price. Price told her to contact personnel in Lakeland and added, sarcastically, "Good luck." Having just called Lakeland only to be told that she should contact the stores directly, McCall realized that she was not going to be hired at either of these stores.

70. Then, later in October, she submitted an application to Store 591 in Sea Ranch Lakes, Florida. She understood that the store had been remodeled and was hiring a substantial number of new employees. She spoke with the Store Manager and Assistant Manager, who told her they would be in touch with her in a week. She had previously worked with the Assistant Manager, Craig Noville.

71. When she did not hear anything, McCall went to the store again. Again, she was told that they would get in touch with her. When she still did not hear from the store, she returned and spoke again with the Store Manager and Assistant Manager. She asked them what she needed to do and they did not respond. She then made yet a fourth contact, calling the Store Manager. He said that he was waiting for her paperwork from Lakeland.

72. McCall was never contacted again and so, after multiple personal visits to the stores where she wished to apply and contact with corporate management, she realized that Publix was not going to hire her, despite the fact that she was qualified and eligible for employment in each of the stores where she attempted to apply.

Willie Jones

73. PLAINTIFF WILLIE JONES was hired by Publix in July 1987 as a part-time Front Service Clerk (bagger) at Store 311 in Temple Terrace, Florida. He resigned his employment with Publix in approximately March of 1995.

74. Commencing in 1990, Jones repeatedly asked his Store Manager for a promotion to Stock Person at the store. Jones assured his Store Manager that he could work as many hours as assigned. The Second Assistant Manager told Jones he was "not ready yet."

75. Nonetheless, Jones was assigned to stock once a week. The stocking position involved increased responsibilities and more difficult work than those of the Front End position. For these reasons, it was considered a higher position and paid more. Despite this, Jones was never paid as a stocker during his assignments to the duties of that job. Because he continued to be paid as bagger while performing stocking duties and was never given any hope to receive a raise commensurate with his new duties, Jones stopped requesting temporary stocking assignments.

76. From this time until his resignation in March 1995, many white employees junior to Jones were promoted over him, and some went on to store management. A number of the Stock Person vacancies in Jones's store were filled with new hires who were white, even though Jones had multiple years of service. On one such occasion in 1993, when a white employee was promoted to full-time Stock Person over Jones, Jones asked his Store Manager why and was told that it was because he was unavailable for more hours. Once again, he assured the Manager that he was available and would quit any other employment in favor of Publix. Some of the whites selected for full-time Stock Person were selected after April 1, 1993.

77. On information and belief, during Jones's first six to seven years with Publix, no black person attained the job of full-time Stock Person in his store. Jones himself worked more than seven years as a part-time Front Service Person.

Joya Fulton

78. PLAINTIFF JOYA FULTON went to work for Publix on February 13, 1984 and is currently employed by Publix. She was assigned to the Deli, rose from part-time to full-time,

and after three to four years became Deli Manager.

79. As a Deli Manager, Fulton was placed in Store 58 in Ft. Lauderdale, a small low-volume store located in a poor neighborhood with an unusually high percentage of black customers for Publix. The low volume controlled the bonuses for which she was eligible. Bonuses are an important part of a departmental manager's earnings.

80. Despite its knowledge that Fulton desired transfer into a higher volume, more profitable store, Fulton was kept at store 58 for approximately six years. During that same time, white Deli Managers who were junior to her at Publix were promoted to the larger volume stores which allowed them to substantially increase their earnings.

81. After six years at store 58, Fulton was transferred to store 140 in Ft. Lauderdale. However, store 140, like 58, was also a low volume store and has since gone out of business.

82. Being unsuccessful at getting assigned to a high volume store, in 1996, Fulton asked for a demotion into an Assistant Deli Manager position at a larger store hoping that she could then rise to Deli Manager under better circumstances. Janie Allan, her Merchandiser, denied the transfer request. Instead, after 12 years of service to Publix, she was forced out of management and into the substantially lower position of Deli Clerk at store 70 in Fort Lauderdale. She was also expected to help out at another store 166 because of her experience in deli management.

Charmaine Washington

83. PLAINTIFF CHARMAINE WASHINGTON moved to Spring Hill, Florida from New Jersey in March of 1993. While living in New Jersey she had worked for approximately six

years for the Shop-Rite grocery supermarket chain.

84. Shortly after moving to Florida, Washington began applying for a job with Publix. She first applied in July 1993 at store 411 on Mariner Boulevard in Spring Hill in response to a sign advertising for help. She filled out an application and talked to Darin Dampier, the Store Manager, who is white. Dampier told her the store was no longer hiring and she was not hired.

85. Several days after first applying at store 411, she applied at store 359 on Highway 50 in Brooksville, Florida, again in response to a sign in the window advertising for help. She filled out an application and called shortly thereafter and was told the position had been filled. She was not hired.

86. Next, at the beginning of August 1993, Washington submitted an application at store 220 on Pinehurst Drive in Spring Hill. She again was not hired.

87. Following these unsuccessful attempts to get hired, Washington submitted numerous other applications and made numerous further inquiries about job openings at these three stores without success.

88. In August, 1995, while Washington's mother was shopping at store 411, Dampier approached her and asked if Washington had earlier applied at the store and told her mother to have her come in. Washington did and in late August, 1995, was hired at her interview as a part-time Deli Clerk. During her interview, Washington expressed her interest in promoting into management and told Dampier of her previous grocery experience.

89. In Spring, 1996, Washington asked Dampier to move her from Deli-Clerk to Cashier or the Bakery in an effort to get full-time employment and ultimately promote to

management. Dampier did neither and a few months later she was transferred to store 220 as a Deli Clerk.

90. While at store 220, in February of 1996 and again in June of that year, Washington asked her manager, David Wright, who is white, to consider her for each of two customer service positions that came open. Both were given to white employees who had less tenure with Publix than she had.

91. In the spring of 1997, Washington was allowed to change jobs and became a Cashier. She remained part time, however. In May, she asked Wright to consider her for an assistant manager trainee program she had seen advertised on the in-store bulletin board. Wright told her he could not do it. In June 1997, Washington asked Wright to consider her for a merchandise tagging position that had recently come open. It would have given her full-time hours. Wright told her that Steve Fisher, the District Manager who is white, had someone else for the position. She later learned this was not the case. She did not get the position and a white employee was selected.

92. On July 13, 1997, Washington was suspended by Wright for allegedly taking a bag of potato chips that cost 69 cents without paying for them. This allegation was false. Subsequently, she was terminated. At the same time, two white employees were suspended also for taking food without paying for it. Both of them admitted their wrongdoing and neither was fired. One quit and the other was allowed to continue working, even though, Washington is informed and believes, she had previously received disciplinary write-ups for selling alcohol and tobacco to minors and for customer complaints. Washington had not been previously disciplined

and her work performance had always met or exceeded Publix's expectations.

Victor Kee

93. PLAINTIFF VICTOR KEE was hired by Publix in February 1988 at its Jacksonville Warehouse.

94. Throughout his employment with Publix, Kee was treated differently than similarly situated white employees. This included disparate treatment in terms of job assignments, promotions, and pay increases.

95. In approximately 1989, Kee was assigned to the Dairy Department of the Warehouse.

96. Throughout his time in the Dairy Department, Kee was subjected to racial harassment. This included racist remarks by Jim Loehmann (a supervisor) and co-workers. Management also tolerated "nigger" jokes and discussions by workers about how they "liked to hang niggers up." Kee complained about this harassment to Ronnie Wilkerson, his supervisor, but nothing was ever done to stop it.

97. In the fall of 1990, Kee was injured when a white co-worker ran over his leg with a cart bearing approximately 1200 pounds. Although all other selectors had been allowed to go home, Kee had been ordered to help the Loaders at the time. The white employees laughed and said he was faking.

98. Kee's doctor found that his foot was broken. Treatment included removing cartilage from Kee's leg and putting his foot in a cast. He was put on bed rest for six weeks but was ordered to call the warehouse at 4:00 a.m. every morning just as harassment. When Kee

returned to work he still had to use crutches to walk and was under doctor's orders not to stand, walk or lift during the workday.

99. Kee's supervisors and co-workers used this as an opportunity to increase the racial harassment to which Kee was already being subjected. For example when Donnie Wilkerson, Kee's supervisor, learned that Kee was to be assigned to work in the office because of his condition, Kee overheard Wilkerson respond, "What does that black motherfucker think he's going to do? Sit in this office all day with his foot propped up?" Kee was shocked and started crying.

100. While he was still recovering, Kee was forced to endure a harassing succession of job changes and had his pay cut. Each of these jobs required standing and walking which were against his doctor's orders.

101. The racially hostile work environment continued and in 1993 a white co-worker addressed Kee as "nigger." Kee, again, complained to Wilkerson. Wilkerson called in the white co-worker and they both laughed about Kee's complaint. Kee complained to the Superintendent, Steve Starling, who was Wilkerson's boss, but again nothing was done. Starling was the third ranked supervisor in the entire Warehouse. The racial hostility got worse.

102. In 1994, Kee again complained about the environment to Starling. As a result he suffered further harassment and retaliation. In particular, getting the worst job assignments and continually being denied breaks. The harassment from supervisors was greeted with laughter by his co-workers.

103. In 1996, Kee injured his back and the harassment grew worse. His new

Superintendent Glenn Beck, who took Starling's job, said that he thought that Kee was faking his back injury and refused to act in accordance with the doctor's orders. He continually harassed Kee, requiring him, for example, to sweep with a push broom even though a riding sweeper for that function was available. Publix's refusal to abide by Kee's doctor's orders regarding his work duties caused him to undergo further treatment that otherwise would not have been needed.

104. Finally, in April of 1996, Jim Loehmann told Kee to go home and not return to work until he was called back. Kee left.

105. Later, Kee called Loehmann to find out when he could come back to work. Loehmann said that he had to check and would call Kee back. He never did and Kee's employment with Publix ended.

Andrew Lovett

106. PLAINTIFF ANDREW LOVETT was hired by Publix on March 5, 1974, in the Jacksonville Warehouse, as a Warehouseman. Lovett was the first black hired in the Jacksonville Warehouse, though one black employee had transferred from the Lakeland warehouse before he arrived.

107. In 1986, he was passed over for Receiving Supervisor in favor of John Corliss, who is white and who had less experience and seniority. Lovett had trained Corliss to be a Receiving Clerk when Corliss first came to the Receiving Dock.

108. In approximately 1987 Lovett was promoted to Shipping Foreman.

109. In 1988 a Produce Warehouse was opened. Publix provided no opportunity for Lovett to apply for the new management positions for the Produce Warehouse. The management

team that was selected, consisting of approximately six to eight supervisors, was all white.

Lovett was senior to each of them. Most of those chosen had been Truck Drivers and had to be trained in warehouse shipping and receiving skills, whereas Lovett had been in the warehouse for 14 years.

110. Many of these new managers failed at their jobs and resumed driving trucks. Lovett was also passed over for all the vacancies created by this turnover during the first two years of the new Produce Warehouse.

111. In approximately 1989, Lovett was involuntarily transferred to the lateral position of Foreman in the Stock Control Department of the Grocery Warehouse. He asked his Supervisor, Glenn Beck, who is white, for the personnel and equipment necessary to do a good job. They were denied. When he left the position, his successor Lance Rossier, who is white, was given additional personnel and equipment.

112. In approximately 1990, Lovett was passed over for Shipping Supervisor. The position was given to Mark Shaia, who is white and was less experienced.

113. In 1990 John Corliss, who had some four years earlier been promoted over Lovett, left the position of Receiving Supervisor. Again, Lovett was passed over for that position in favor of Robbie Killan, who is white.

114. In 1992, Lovett took a demotion to Assistant Foreman in the Receiving Department because of the harassment by Superintendent Glenn Beck. Beck did not understand the job of Foreman in Stock Control and ordered Lovett to do things that did not make sense. Beck often threatened Lovett's job.

115. In 1993, Lovett moved laterally to the Recycling Department as Assistant Foreman to escape from the supervision on Glenn Beck. His Supervisor, Randy Johnson, who is white, did not adequately inform him as to his responsibilities and then gave him a bad evaluation for not performing the duties of the job.

116. In 1994, a new warehouse was opened in Orlando. Several Foremen and Assistant Foremen were offered the opportunity to transfer and promote to Orlando. Lovett was interested in these opportunities but was neither invited to apply nor had notice of the jobs until after they were filled.

117. As a result of the transfers to Orlando, approximately three Foreman jobs opened up in Jacksonville in the Perishable Warehouse. Again, Lovett desired to transfer to a Foreman position in the Perishable Warehouse, but was neither invited nor had notice of them until after they were filled. Lovett was senior to all those who received the jobs.

118. Realizing that he would not be provided with opportunity to progress any further with Publix because of the discrimination he was suffering, Lovett resigned in March 1994.

Count I

42 U.S.C. §1981

119. Plaintiffs incorporate paragraphs 1 through 118.

120. The foregoing conduct of Publix violates the rights of the Plaintiffs and the class to make and enforce contracts and to the full and equal benefit of all laws and proceedings as enjoyed by white citizens under 42 U.S.C § 1981.

121. The foregoing conduct of Publix is and has been continuing in nature.

122. As a consequence of the foregoing conduct the Plaintiffs and the class members have suffered lost wages and other employment benefits.

Count II

Title VII, 42 U.S.C. § 2000e et seq.

123. Plaintiffs incorporate paragraphs 1 through 122.

124. The foregoing conduct of Publix violates the rights of the Plaintiffs and the class to be free of discrimination on account of race under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e et seq. under both disparate treatment and disparate impact analysis.

125. The foregoing conduct of Publix is and has been continuing in nature.

126. As a consequence of the foregoing conduct the Plaintiffs and the class members have suffered lost wages and other employment benefits.

Count III

Chapter 760, Florida Statutes

127. Plaintiffs incorporate paragraphs 1 through 126.

128. The foregoing conduct of Publix violates the rights of the Plaintiffs and the class to be free of discrimination on account of race under the Florida Human Rights Act of 1992, Chapter 760, Florida Statutes under both disparate impact and disparate treatment analysis.

129. The foregoing conduct of Publix is and has been continuing in nature.

130. As a consequence of the foregoing conduct the Plaintiffs and the class members have suffered lost wages and other employment benefits.

RELIEF REQUESTED

Plaintiffs request that this Court:

- a. Assume jurisdiction over this case;
- b. Allow appropriate discovery;
- c. Certify a “hybrid” class under subsection (b)(2) of Rule 23 in accordance with Cox v. American Cast Iron Pipe, 784 F.2d 1546 (11th Cir. 1986) and designate the undersigned counsel as class counsel;
- d. Try Stage I pattern and practice liability issues by the Court and award appropriate declaratory and injunctive relief in accordance the Stage I findings;
- e. Adjudicate Stage II proceedings for those class members seeking equitable monetary relief and individual injunctive relief in a manner deemed appropriate to the Court and award appropriate relief;
- f. In keeping with the hybrid nature of the class, allow any class member to elect whether to opt-out of Stage II proceedings;
- g. Award prejudgment interest;
- h. Award costs and attorneys fees to the Plaintiffs; and
- i. Order such other relief as is equitable and just.



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