

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

No. CIV 05-376-C-RJB (EJL)

SETTLEMENT AGREEMENT  
AND ORDER OF DISMISSAL

**I. INTRODUCTION**

1. This action originated with a discrimination charge filed by Travis Woods (“Mr. Woods”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and the Idaho Human Rights Commission (“IHRC”) on August 25, 2003. In his charge, Mr. Woods alleged, among other things, that Wal-Mart Stores, Inc. (“Wal-Mart”) subjected him to

harassment based on his race (African American) at its Lewiston, Idaho store in violation of § 703 of Title VII, 42 U.S.C. § 2000e-2(a) (“Title VII”), and retaliated against him for complaining of the ongoing harassment in violation of § 704 of Title VII, 42 U.S.C. § 2000e-3.

2. The EEOC sent Wal-Mart a Letter of Determination dated April 19, 2005, that contained a finding of reasonable cause that Wal-Mart violated Title VII as to Mr. Wood’s harassment and termination allegations based on his race and retaliation, and a finding of no reasonable cause that Wal-Mart had violated Title VII with respect to the remaining allegations in his discrimination charge.

3. The EEOC filed this lawsuit on September 15, 2005, in the United States District Court for the District of Idaho on behalf of Mr. Woods, alleging that from approximately January 1, 2001, until March 2003, Wal-Mart had subjected Mr. Woods to harassment based on his race, discriminated against him based on his race, retaliated against Mr. Woods for complaining about the harassment, and discriminated and retaliated against him when he was terminated in March 2003. Wal-Mart denied each of these allegations and asserted that it took prompt corrective action with regard to any alleged harassment of Mr. Woods and terminated him for violating Wal-Mart’s attendance and no-call/no-show policies, not because of his race.

4. The parties want to conclude fully and finally all claims arising out of the EEOC’s complaint, and the charge of discrimination filed with the EEOC by Mr. Woods. They enter into this Settlement Agreement and Order of Dismissal (referred to hereafter as “Agreement” or “Settlement Agreement”) to further the objectives of equal employment as set forth in Title VII.

## **II. NONADMISSION OF LIABILITY AND NONDETERMINATION BY THE COURT**

5. This Settlement Agreement is not an adjudication or finding on the merits of this case and shall not be construed as an admission by Wal-Mart of a violation of Title VII.

### **III. JURISDICTION AND VENUE**

6. 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 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), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. The employment practice alleged to be unlawful in the EEOC's complaint filed herein occurred within the jurisdiction of the United States District Court for the District of Idaho.

### **IV. SETTLEMENT SCOPE**

7. This Settlement Agreement is the final and complete resolution of all Title VII allegations of unlawful employment practices contained in the complaint filed on behalf of Mr. Woods, including all claims by the parties for attorney fees and costs. The scope of this Settlement Agreement will be limited to Wal-Mart's Lewiston, Idaho facility, Store #2006, (hereafter referred to in this Agreement as "Wal-Mart"). This Settlement Agreement resolves all issues and claims arising out of or related to this complaint, and is binding and final as to all such issues and claims.

### **V. MONETARY RELIEF**

8. In settlement of this lawsuit, Wal-Mart agrees to pay Mr. Woods the gross settlement amount of \$125,000. Of that sum, 20%, or \$25,000, will be considered "back pay" from which all mandatory deductions shall be withheld, and 80%, or \$100,000 will be considered "general damages" to compensate Mr. Woods for his alleged emotional and psychic harm, payment of which is to be provided directly to Mr. Woods within fourteen (14) days of the execution and filing of this Settlement Agreement and Order of Dismissal, with copies to the EEOC.

## **VI. AFFIRMATIVE AND OTHER RELIEF**

### **A. General Provisions**

9. Wal-Mart's salaried managers at its Lewiston, Idaho facility, Store #2006, will refrain from engaging in practices that constitute harassment based on an associate's race, or that constitute retaliation for an individual engaging in protected EEO activity. In recognition of its obligations under Title VII, Wal-Mart has instituted policies and practices, including Wal-Mart's Policy Prohibiting Harassment/Inappropriate Conduct (PD-19), a copy of which has been provided to the EEOC.

### **B. Anti-Discrimination Policies and Procedures**

10. Wal-Mart will maintain policies designed to prevent racial harassment, race discrimination, and retaliation. Wal-Mart will provide training to its salaried managers to understand its Equal Employment Opportunity ("EEO") policies and how those policies define and identify what constitutes racial harassment, race discrimination and retaliation, and will make its salaried managers personally accountable for following these policies, as set forth in Paragraph 15 below.

11. Within ninety (90) days of the effective date of this Agreement, Wal-Mart will: (a) provide to the EEOC copies of Wal-Mart's policies in effect regarding EEO, anti-harassment, non-retaliation, and investigation of internal complaints, and (b) ensure that its Harassment/Inappropriate Conduct Policy has been communicated to all present and future associates, both management and non-management, at its Lewiston, Idaho facility, Store #2006.

### **C. Training**

12. Within six (6) months of the execution of this Agreement, Wal-Mart will present to all salaried managers, at its Lewiston, Idaho facility Store #2006, at least 1 (one) hour of

training by a qualified trainer on racial harassment, race discrimination, and retaliation for engaging in protected EEO activity. Wal-Mart also agrees to provide at least one (1) hour of training on racial harassment, race discrimination and retaliation to the hourly associates at its Lewiston, Idaho store. The EEOC will have an opportunity to review the training materials prior to the training date.

Within one year thereafter, following this initial training, Wal-Mart will require: (1) all salaried managers at its Lewiston, Idaho facility Store #2006, to complete at least one (1) hour of training by a qualified trainer on racial harassment, race discrimination and retaliation; and (2) all hourly associates at its Lewiston, Idaho facility Store #2006, to complete at least one (1) hour of training on racial harassment, race discrimination and retaliation.

D. Expungement of Records

13. Wal-Mart will not disclose any information or make reference to any charge of discrimination that is the subject of the lawsuit or refer to this lawsuit in responding to employment reference requests for information about Mr. Woods. In responding to reference requests for information about Mr. Woods, Mr. Woods should direct prospective employers to The Work Number by calling – 1-800-660-3399, who will confirm Mr. Woods' dates of employment and positions held.

14. Wal-Mart will confirm that the personnel file of Mr. Woods does not contain any reference to his discrimination charge against Wal-Mart or to this lawsuit.

E. Policies Designed to Promote Salaried Manager Accountability

15. Wal-Mart will communicate to its salaried managers in the Lewiston, Idaho Store #2006 regarding their duty to ensure compliance with Wal-Mart's EEO policies, and regarding their duty to address and report any incident or complaint of racial harassment, race

discrimination, or retaliation, of which they become aware. If a salaried manager or supervisor violates Wal-Mart's EEO policies, he/she may be subject to discipline, up to and including termination.

16. Wal-Mart will also communicate to its salaried managers in the Lewiston, Idaho Store #2006 that there will be no retaliation against any associate for reporting or relaying any incident of race discrimination or retaliation under Wal-Mart's EEO policy, or for participating in or conducting an investigation of such an incident.

F. Reporting

17. Wal-Mart shall report in writing to the EEOC beginning six (6) months from the date of the entry of this Settlement Agreement, and thereafter every six months for the duration of the Settlement Agreement the following information:

a. Certification of the completion of training and list of attendees set forth in Paragraph 12 above, and a list of all attendees including job titles.

b. Certification that its EEO policy has been communicated to all current and newly hired associates as described in Paragraph 11 above.

c. Confirmation that the personnel file of Mr. Woods does not contain any reference to his discrimination charge against Wal-Mart or to this lawsuit, as described in paragraph 14 above.

d. A summary of all racial harassment, race discrimination and retaliation complaints, if any, filed by associates working at Wal-Mart's Lewiston, Idaho Store #2006 that were reported to Wal-Mart's salaried managers, pursuant to Wal-Mart Policies PD-19 or PD-57, and the resolution of each complaint; and

e. A statement certifying that Wal-Mart has complied with the terms of this Settlement Agreement.

G. Posting

18. Wal-Mart will post a Notice, attached as Exhibit 1 to this Settlement Agreement. The Notice shall be posted on a centrally located bulletin board at Wal-Mart's Lewiston, Idaho Store #2006 for the duration of this Settlement Agreement.

## **VII. ENFORCEMENT**

19. If the EEOC determines that Wal-Mart has not complied with the terms of this Settlement Agreement, the EEOC will provide written notification of the alleged breach to Wal-Mart. The EEOC will not petition for enforcement of this Settlement Agreement, as set forth in Paragraph 20 below, for at least thirty (30) days after providing written notification of the alleged breach. The 30-day period following the written notice shall be used by the parties for good faith efforts to resolve the dispute, or for Wal-Mart to cure the breach. In those cases where it would take longer than thirty (30) days to cure the breach, Wal-Mart may have such additional time as may be necessary by agreement with the EEOC so long as Wal-Mart takes all reasonable efforts to cure the breach within the thirty (30) day period.

20. Should Wal-Mart and the EEOC not be able to resolve any alleged breach of this Settlement Agreement, the parties agree that the dispute will be referred to Judge Rosselle Pekelis (retired), Judicial Dispute Resolution, who will be empowered with the full range of judicial remedies to enforce this Settlement Agreement, including ordering the payment of fees and costs, and extending the duration of this Settlement Agreement.

## **VIII. DURATION AND TERMINATION**

21. This Settlement Agreement shall be in effect for two (2) years from the date this

Settlement Agreement is filed with the Court.

Dated this 2nd day of February, 2007.

WILLIAM TAMAYO  
Regional Attorney  
San Francisco District  
350 The Embarcadero, Suite 500  
San Francisco, California 94105-1260

KATHRYN OLSON  
Supervisory Trial Attorney

DAMIEN A. LEE  
Senior Trial Attorney  
TERI HEALY  
Senior Trial Attorney  
Seattle Field Office  
909 First Avenue, Suite 400  
Seattle, Washington 98104  
Ph. (206) 220-6915  
Fax (206) 220-6911  
Kathryn.Olson@EEOC.gov  
Damien.Lee@EEOC.gov  
Teri.Healy@EEOC.gov

Attorneys for Plaintiff EEOC

BY: /s/ William Tamayo  
(per 2/2/07 email authorization)

MICHAEL REISS, Admitted Pro Hac Vice  
MICHAEL J. KILLEEN, Admitted Pro Hac Vice  
SHEEHAN SULLIVAN WEISS, Admitted Pro  
Hac Vice  
Davis Wright Tremaine, LLP  
2600 Century Square, 1501 Fourth Ave.  
Seattle, WA 98101-1688  
Ph. (206) 622-3150  
Fax (206) 628-7699  
reism@dwt.com  
killm@dwt.com  
sulls@dwt.com

Attorneys for Defendant Wal-Mart

/s/ Michael J. Killeen

Chas F. McDevitt, ISB#835  
McDevitt & Miller  
420 West Bannock Street  
P.O. Box 2564-83701  
Boise, ID 83702  
Ph. (208) 343-7500  
Fax (208) 336-6912  
[chas@mcdevitt-miller.com](mailto:chas@mcdevitt-miller.com)  
Local Counsel for Defendant

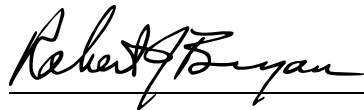
BY: /s/ Chas F. McDevitt



## ORDER APPROVING SETTLEMENT AGREEMENT

The Court having considered the foregoing Settlement Agreement, IT IS HEREBY ORDERED THAT the foregoing Settlement Agreement be, and the same hereby is, approved as the final Order of this Court in full settlement of this action. Subject to the provisions in Paragraphs 19 and 20, this lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees to any party.

DATED this 5<sup>th</sup> day of February, 2007.

A handwritten signature in black ink, reading "Robert J. Bryan", written over a horizontal line.

Robert J. Bryan  
United States District Judge

**WAL-MART STORES, INC.**

**NOTICE TO ALL WAL-MART STORES, INC. ASSOCIATES**

This notice is posted pursuant to a Settlement Agreement reached between the EEOC and Wal-Mart Stores, Inc. in CV 05-376-C RJB (EJL).

Federal law prohibits an employer from discriminating against any individual based on the individual's race or retaliation with respect to hiring, promotion, demotion, terms and conditions of employment, and/or termination. Federal law also prohibits an employer from allowing any associate to be harassed based on his race. It is also unlawful for an employer to retaliate against any individual because he or she complains of discrimination or harassment, cooperates with the investigation of a discrimination or harassment charge by Wal-Mart Store, Inc. or a government agency, participates as a witness or potential witness in any investigation or legal proceeding, or otherwise exercises his or her rights under the law.

Any associate who is found to have retaliated against any other associate because such associate participated in this lawsuit will be subject to substantial discipline, up to and including immediate discharge.

Should you have any complaints of discrimination, you should contact your supervisor, any upper level management individual or Human Resources.

Associates have the right to bring complaints of discrimination, sexual harassment and/or retaliation to the U.S. Equal Employment Opportunity Commission, Seattle Field Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, 206/220-6883, 1-800-699-4000, and/or the Idaho Human Rights Commission at, P.O. Box 83720, Owyhee Plaza, Fourth Fl., 1109 Main St., Ste. 400, Boise, ID 83720-0040, 208/334-2873. Any Wal-Mart, Inc. associate or applicant may also contact Wal-Mart at 1-800-963-8442.