

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION**

U.S. EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 04-CV-03128-BEL
)	
COCA-COLA ENTERPRISES, INC)	
)	
Defendant.)	
_____)	

MOTION FOR LEAVETO INTERVENE

COMES NOW, Mark Mason, by and through his attorneys Lawrence R. Holzman and the law firm of Joseph, Greenwald & Laake, P.A., and pursuant to the Civil Rights Act of 1964, § 706(e), as amended, 42 U.S.C.A. § 2000e-5(f)(1) and Rule 24(a) of the Federal Rules of Civil Procedure, files this motion to intervene in the above-captioned matter in order to file Complaint against the Defendant ¹ and in support thereof, states as follows:

1. The above-captioned matter is an action under Title VII of the Civil Rights act of 1964 (“Title VII”) and Title I of the Civil Rights Act of 1991 (“Title I”) to correct unlawful employment practices on the basis of race and to provide appropriate relief to Mark Mason, who was adversely affected by such practices.

2. Title VII confers on a charging party such as Mr. Mason (i.e. the party who filed an administrative complaint with Employment Opportunity Commission (EEOC)), an unconditional and absolute right to intervene in an EEOC

¹ A copy of the proposed complaint is attached as Exhibit “A”.

action that is based on that complaint. Civil Rights Act of 1964, § 706(e), as amended, 42 U.S.C.A. § 2000e-5(f)(1); Fed.Rules Civ.Proc.Rule 24(a), 28 U.S.C.A.” *E.E.O.C. v. GMRI, Inc.*, 221 F.R.D. 562, (D. Kan. 2004).

3. Federal Rule of Civil Procedure 24 governs motions to intervene. Subsection (a) of the Rule provides that “[u]pon timely application anyone shall be permitted to intervene in an action ... when a statute of the United States confers an unconditional right to intervene.” The Court is required to permit intervention if two elements are met: (1) the application is timely; and (2) a federal statute confers an unconditional right to intervene.

4. Rule 24 is silent as to what constitutes timely application and “the question must therefore be answered in each case by the exercise of sound discretion by the trial court.” *Simms v. Andrews*, 118 F.2d 803, 806 (C.A. 1941); *Walden v. Elrod*, 72 F.R.D. 5 (D. Okl. 1976).

5. Mr. Mason’s application to intervene is timely as the Complaint in this matter was filed on September 30, 2004. In addition, on March 22, 2005, this Court granted a Joint Motion to Stay Discovery.²

6. In addition, Mr. Mason has an unconditional right to intervene under section 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(f)(1). Section 706(f)(1) provides that “[t]he person or persons aggrieved *shall have the right to intervene* in a civil action brought by the Commission...”

² On information and belief the stay was entered prior to the promulgation of discovery, conduct of depositions or motions practice, and was motivated by an agreement to conduct early mediation prior to litigation. Mr. Mason would also agree to participate in such early mediation. Mediation is in fact already scheduled

7. Courts construe this “statutory language to confer on the party who filed the EEOC charge upon which the EEOC action is based **an unconditional and absolute right to intervene in the action.** The Court’s interpretation is consistent with other cases discussing intervention by a charging party in Title VII suits filed by the EEOC.” *MRI, Inc.*, 221 F.R.D at 563; *see, e.g., EEOC v. Mo. Pac. R.R. Co.*, 493 F.2d 71, 74 (8th Cir.1974) (charging party has “absolute right” to intervene in EEOC suit); *Rappaport*, 273 F.Supp.2d at 263 (charging party has “unconditional right to intervene” in EEOC action based upon her charge); *EEOC v. Rekrem, Inc.*, 199 F.R.D. 526, 529 (S.D.N.Y.2001) (charging parties have “unconditional right to intervene ... with regard to the Title VII claims”); *EEOC v. Pac. Maritime Ass’n*, 188 F.R.D. 379, 380 (D.Or.1999) (charging party has statutory right to intervene in EEOC Title VII action); *EEOC v. Domino’s Pizza, Inc.*, 870 F.Supp. 655, 656 n. 1 (D.Md.1994) (section 706(f) confers unconditional right to intervene on charging party).

8. Here, it is undisputed that Mr. Mason is the aggrieved person, as he is the person who filed the charge upon which the EEOC’s lawsuit is based. He therefore has the unconditional right to intervene in this case. As he has met the requirements for intervention under Title VII, the mandatory language of Section 706(f)(1) and Federal Rule of Civil Procedure 24(a) dictates that this Court grant Mr. Mason leave to intervene.

WHEREFORE, in consideration of the foregoing analysis, Mr. Mason

to take place with the assistance of Judge Grimm and Mr. Mason and counsel would hope to participate in such mediation.

respectfully requests that this Honorable Court grant his Motion for Leave to Intervene in this action.

Respectfully submitted,

JOSEPH, GREENWALD & LAAKE, P.A.

_____\s\ ECF_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing pleading was filed and served by ECF and that to the best of my knowledge, information and belief there are no counsel of record or *pro se* parties requiring service by regular mail.

Lawrence R. Holzman

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

U.S. EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 04-CV-03128-BEL
)	
COCA-COLA ENTERPRISES, INC)	
)	
Defendant.)	
_____)	
)	
MARK MASON)	
)	
Intervenor/Plaintiff,)	
)	
v.)	
)	
COCA-COLA ENTERPRISES, INC)	
)	
Intevenor/Defendant.)	
_____)	

COMPLAINT

COMES NOW, the Plaintiff, Mark Mason, by and through his attorneys, Lawrence R. Holzman and the law firm of Joseph, Greenwald & Laake, P.A., and sues the Defendant, Coca Cola Enterprises, Inc., and for cause states the following:

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 ("Title VII"), Title 1 of the Civil Rights Act of 1991, and 42 U.S.C. Section 1981 as a private action to seek redress and remedies for unlawful employment practices on the basis of race as to the Plaintiff, Mark

Mason, who was adversely affected by the practices. The Defendant employed the Plaintiff and placed him in a management training program in the Washington, D.C. area. Thereafter, the Defendant promoted Mr. Mason's white counter-parts who participated in the program with Mr. Mason, but CCE did not promote him in the same fashion. Additionally, the defendant discriminated on the basis of race in the wages and other compensation and benefits that were paid to Mr. Mason. The Defendant otherwise discriminated on the basis of race against Mr. Mason in the term and conditions of his employment.

As a direct and proximate result, Mr. Mason suffered economic losses of various types as well as humiliation, embarrassment, isolation and mental anguish. Additionally, Mr. Mason suffered physically and was hospitalized as a result of the Defendant's actions.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338. This action involves employment discrimination, which occurred within the boundaries of Prince George's County, Maryland in violation of 42 U.S.C. §§ 2000(e) et. seq., Title VII of the Civil Rights Act of 1964, and 42 U.S.C. §1981.

2. Venue is proper in the District Of Maryland under 28 U.S.C. § 1391, because the employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the District of Maryland.

PARTIES

3. Plaintiff, Mark Mason, ("Mr. Mason") is an adult, African-American citizen of the State of Maryland who resides in Prince George's County, Maryland.

4. Defendant, Coca Cola Enterprises, Inc. ("CCE") is a Delaware corporation authorized to conduct business, and actually conducting business, in the State of Maryland

with offices located in Hanover and Columbia and other facilities located in Prince George's County and throughout the state.

5. At all relevant times, CCE has continuously been an employer engaged in an industry affecting commerce under Section 701(b), (g) and (h) of Title VII, 42 U.S.C. Sections 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

1. More than thirty days prior to the institution of this lawsuit, Mark Mason filed a charge with the Equal Employment Opportunities Commission (the "EEOC") alleging that the Defendant discriminated against him in violation of federal law.
2. All conditions precedent to the filing of this lawsuit have been met.
3. The EEOC investigated Mr. Mason's charge and filed its own lawsuit in the above-captioned matter.
4. Mark Mason has filed this lawsuit by intervention.
5. Since at least January 2001, and before that date, CCE has engaged in unlawful employment practices in violation of law.
6. The effect of the practices complained of above has been to deprive Mr. Mason of equal employment opportunities and otherwise adversely affected him on the basis of race in terms of his status as a candidate for promotion, his wages, his compensation and other benefits, and the terms and conditions of his employment.
7. The unlawful employment practices complained of above were intentional.
8. The unlawful employment practices complained of were done with malice or with reckless indifference to the federally protected rights of Mr. Mason.

9. The effect of CCE's actions has been to cause Mr. Mason to suffer economic loss, as well as humiliation, embarrassment and emotional distress.

10. The effect of CCE's actions has been to cause Mr. Mason to suffer physical harm and to be hospitalized.

11. Plaintiff was a hard working, team oriented, dependable, skilled and committed employee for Defendants.

12. Despite his excellent employment record, Plaintiff was discriminated against in terms of promotions, compensation and other benefits, and generally in the terms and conditions of his employment because he is African American.

13. Plaintiff was discriminated against in violation of 42 U.S.C. §§ 2000(e) et. seq., Title VII of the Civil Rights Act of 1964, and 42 U.S.C. §1981.

WHEREFORE, the Plaintiff, Mark Mason, demands judgment against Defendant, for

- a. Compensatory damages for emotional pain, suffering, mental anguish, embarrassment, humiliation and isolation in amounts to be determined at trial; plus
- b. Compensation for actual damages in amounts to be proven at trial; plus
- c. Back plus back pay and interest to be determined at trial; plus
- d. Punitive damages in amounts to be determined at trial for CCE's malicious and reckless conduct in discriminating against Mr. Mason; plus
- e. Attorneys fees and costs; plus
- f. An injunction or other appropriate order directing that Mr. Mason be immediately promoted to the grade 15 level and directing that CCE provide other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices further and additional relief as the nature of the case may require and which this Honorable Court

shall deem just and proper including but not limited to an injunctive relief or other relief directing. Plus

- g. Such other and further relief as the cause of justice may require.

Respectfully submitted,

JOSEPH, GREENWALD & LAAKE, P.A.

By:

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