

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION)	
)	
Plaintiff,)	CASE NO. 06-0815-CV-W-HFS
)	
and)	
)	
KEITH SIMMONS)	
)	
Plaintiff-Intervenor,)	JURY TRIAL DEMANDED
)	
vs.)	
)	
WESTERN CONTAINER COMPANY)	
)	
Defendant.)	

COMPLAINT

I. Preliminary Statement

1. COMES NOW Plaintiff, Keith Simmons, by and through his attorney of record, and brings this cause of action against Defendant, Western Container Company. This action seeks declaratory, injunctive and equitable relief, compensatory and punitive damages, and costs and attorney's fees for the discrimination suffered by Plaintiff in the terms and conditions of his employment with Defendant.

II. Jurisdiction

2. This action arises under Title VII of the Civil Rights Act of 1964 (hereinafter "Title VII"), 42 USC § 2000e et seq., the Civil Rights Act of 1991, 42 USC § 1981a, 42 USC § 1983 and the and the Missouri Human Rights Act (hereinafter "MHRA"), 213.010, et seq., R.S.MO.

3. Jurisdiction is invoked pursuant to 28 USC § 1343 (4), 42 USC § 2000e-5 (f), 42 USC § 1981, et seq., 42 USC § 1983 et seq., and 213.010, et seq., R.S.MO. A right-to-sue letter was issued by the Missouri Commission on Human Rights (MCHR) on February 5, 2007, a true and accurate copy of which is attached hereto as Exhibit 1. This right-to-sue letter was based upon a charge affidavit timely filed with both the EEOC and the MCHR, a copy of which is attached hereto as Exhibit 2.

4. Declaratory, injunctive, and equitable relief is sought pursuant to 28 USC §§ 2201, 2202, 42 USC § 1981, et. seq., 42 USC § 1983 et seq., and 213.010, et seq., R.S.MO.

5. Costs and attorney's fees may be awarded pursuant to 42 USC § 2000e-5(k), 42 USC § 1981, et. seq., 42 USC § 1983 et seq., and 213.010, et seq., R.S.MO and Fed R Civ P 54.

6. All conditions precedent to filing this action have been met.

III. Venue

7. This action properly lies in the Western District of Missouri, pursuant to 29 USC § 1391(b), because the claim arose in this judicial district, and pursuant to 42 USC § 2000e-5(f)(3), because the unlawful employment practice was committed in this judicial district.

IV. Parties

8. Plaintiff is an African-American citizen and resident of the United States, the state of Missouri and of this judicial district.

9. Defendant is an employer who, upon information and belief, employs more than 100 regular employees. Defendant was doing business in this judicial district at all times alleged herein. Defendant is an employer within the meaning of 42 USC § 12101 et seq., and 213.010, et seq., R.S.MO.

V. Facts

10. Mr. Simmons was initially hired by Defendant in August of 2003.

11. Throughout his employment, Mr. Simmons was subjected to frequent harassment.

12. Examples of this conduct have included being subjected to racially offensive jokes, being subjected to the use of the words “nigger” and “coon” in reference to African-Americans, being subjected to racially offensive pictures and being treated as an inferior employee.

13. This conduct was race-based and intended to offend Mr. Simmons as an African-American.

14. This conduct created a racially hostile working environment for Mr. Simmons.

15. Following this treatment, Mr. Simmons initiated complaints of discrimination with the Defendant.

16. No substantive efforts were made by Defendant to address the legitimate allegations raised by Mr. Simmons.

17. Following his complaints, the improper treatment of Mr. Simmons and hostile working environment continued.

18. The individuals involved in the treatment of Mr. Simmons were employees of Defendant.

19. Defendant treated Mr. Simmons disparately as compared to other employees who were not African-American.

20. Mr. Simmons was targeted for disparate treatment by Defendant on account of his race.

21. During his employment, Mr. Simmons has continually performed his assigned duties at a level which met Defendant's legitimate performance expectations and was able to perform all essential functions of his position.

22. Defendant's conduct and actions have violated Defendant's own policies and procedures.

23. Mr. Simmons' compensation included wages, benefits, insurance, paid sick leave and retirement and/or § 401 (k) benefits.

24. Mr. Simmons has no plain, adequate, or complete remedy at law to redress the wrongs alleged and is now suffering and will continue to suffer irreparable injury from his treatment by Defendant unless Defendant is enjoined by this Court.

25. Mr. Simmons has suffered, is now suffering, and will continue to suffer emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses as a direct result of Defendant's conduct.

26. Mr. Simmons will suffer future pecuniary losses as a direct result of Defendant's conduct.

27. Defendant engaged in discrimination against Mr. Simmons with malice or in reckless indifference to Plaintiff's rights under Title VII, 42 USC § 1981, 42 USC § 1983 and the MHRA.

VI. Cause of Action

COUNT I - RACIAL HARASSMENT

28. Plaintiff incorporates as if realleged paragraphs 1 through 27.

29. Defendant's actions, as noted above, constituted racial harassment against Plaintiff in violation of Title VII, 42 USC § 1981 and the MHRA.

30. Defendant's actions, as noted above, were discriminatory, continuous, arbitrary and capricious and constituted a disparity in treatment toward Plaintiff and, as such, were unlawful employment practices in violation of Title VII, 42 USC § 1981 and the MHRA.

31. At the time these actions were taken by Defendant, Defendant knew that its actions were unlawful.

32. The actions of Defendant toward Plaintiff and other persons evidence a pattern and practice of discrimination in violation of the provisions of Title VII, 42 USC § 1981 and the MHRA.

33. Plaintiff has been damaged by Defendant's unlawful employment actions.

VII. Prayer for Relief

34. Wherefore, Plaintiff prays that this Court:

a. Declare the conduct engaged in by Defendant to be in violation of Mr. Simmons' rights;

b. Enjoin Defendant from engaging in such conduct;

c. Award Mr. Simmons equitable relief of back salary and fringe benefits;

d. Award Mr. Simmons prejudgment interest;

e. Award Mr. Simons compensatory, punitive and liquidated damages;

f. Award Mr. Simmons his costs and attorneys' fees; and

g. Grant such other relief as it may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff demands trial by jury on all issues as triable by a jury in this complaint.

Respectfully submitted,

/s/

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