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Attorneys for Earle Nevins

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff, and)
)
EARLE NEVINS,)
)
Intervening Party)
)
-vs.-)
)
LES SCHWAB TIRE CENTERS)
OF MONTANA, INC., LES)
SCHWAB TIRE WAREHOUSE)
INC.,)
)
Defendants.)
_____)

Case No. CV-06-149-M-DWM

**INTERVENING PARTY'S
COMPLAINT
AND JURY TRIAL DEMAND**

COMES NOW, Intervening Party Plaintiff, Earle Nevins, by and through his counsel of record, Santana Kortum-Managhan and William Managhan, MANAGHAN & KORTUM-MANAGHAN LAW FIRM PLLC, and complains and alleges as follows:

NATURE OF ACTION

Plaintiff (hereinafter "EEOC") brought an action under Title VII of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race and retaliation and to provide appropriate relief to the Intervening Party, Earle Nevins. The EEOC alleges that Defendant harassed Mr. Nevins based on his Native American race/ethnicity followed by retaliation and termination after Mr. Nevins complained. Mr. Nevins intervenes pursuant to Rule 24(a), F.R.Civ.P. and 42 U.S.C. § 2000e-5(f)(1) alleging violation of 42 U.S.C. § 1981 and Montana state law.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is valid pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. Plaintiff's 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. § 1981.
2. The EEOC issued its right to intervene notice letter on October 16, 2006.
3. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court of the District of Montana.

PARTIES

4. Intervening Party re-alleges paragraphs 1-3.

5. Plaintiff is the agency of the United States of America with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring their action by Section 706(f)(1) of Title VII, 42 U.S.C. § 2000e-5(F)(1).
6. Defendants have been corporations continually doing business in the State of Montana and have continuously had at least 15 employees.
7. At all relevant times, Defendants has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C., §§2000e-(b),(g) and (h).
8. Intervening party is a Native American and member of the Blackfeet tribe.
9. Intervening party was at all relevant times a resident of Flathead County, Montana, and an employee of Defendants for several years in the Whitefish store and then the Kalispell (Evergreen) store. Intervening party is the aggrieved party in which the EEOC brought the action on behalf of.

STATEMENT OF CLAIMS

10. Intervening Party re-alleges paragraphs 1-9.
11. From spring of 2002 until December of 2005, Defendants engaged in unlawful employment practices at its Kalispell (Evergreen), Montana, store in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and -3(a). Defendants engaged in these unlawful practices through the following actions: (a) subjecting Intervening Party to racial harassment; (b) discriminating against Intervening Party based on his race/ethnicity; (c) retaliating against Intervening Party for his continued complaints to company officials about

racial harassment; and (d) discriminating and retaliating against Intervening Party by terminating him in December of 2004. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.

12. From spring of 2002 to December of 2004, Defendants engaged in intentional unlawful employment practices in Kalispell (Evergreen), Montana store in violation of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.
13. Defendants by their agents and employees knowingly and intentionally harassed Intervening Party on the basis of his race/ethnicity during his employment at the Kalispell (Evergreen) store. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.
14. Defendants by their agents and employees knowingly and intentionally interfered with Intervening Party's employment based upon his race/ethnicity during his employment at the Kalispell (Evergreen) store. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.
15. Defendants by their agents and employees knowingly and intentionally terminated Intervening Party's employment based upon his race/ethnicity during his employment at the Kalispell (Evergreen) store. As a result of

Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.

16. Defendants by their agents and employees negligently retained and negligently supervised store employees after Intervening Party reported physical altercations and physical threats by store employees during his employment at the Kalispell (Evergreen) store.
17. Defendants by their agents and employees intentionally inflicted serious and severe emotional distress, shame and humiliation on Intervening Party by sharing and allowing the sharing of Intervening Party's personal financial information with store employees during his employment at the Kalispell (Evergreen) store. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.
18. Defendants by their agents and employees intentionally inflicted serious and severe emotional distress on Intervening Party by ignoring his continued reporting of physical abuse by store employees during his employment at the Kalispell (Evergreen) store. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.
19. Defendants by their agents and employees intentionally inflicted serious and severe emotional distress on Intervening Party by continually ignoring his continued requests for transfers out of the Kalispell (Evergreen) store based partially on the physical harassment threatened by store employees and suffered by Intervening Party. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.

20. Defendants by their agents and employees knowingly and intentionally violated § 49-1-101, MCA, by allowing store employees to commit assault and battery against Intervening Party during his employment at the Kalispell (Evergreen) store.
21. Defendants by their agents and employees knowingly and intentionally violated § 49-2-301, MCA, during Intervening Party's employment at the Kalispell (Evergreen) store.
22. Defendants by their agents and employees knowingly and intentionally violated § 49-2-303, MCA, during Intervening Party's employment at the Kalispell (Evergreen) store.
23. Defendants by their agents and employees knowingly and intentionally violated § 39-2-904, MCA, during Intervening Party's employment at the Kalispell (Evergreen) store when they fired Intervening Party for reporting a violation of public policy after he requested another written memorialization of the physical violence committed against Intervening Party by a co-worker. As a result of Defendants' malicious and intentional conduct, Intervening Party is entitled to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Intervening Party respectfully requests the following:

1. That Intervening Party be awarded lost wages, fringe benefits, together with interest on the lost wages and fringe benefits;
2. That Intervening Party be awarded a reasonable amount of general damages;

3. That Intervening Party be awarded punitive damages for its malicious and intentional conduct;
4. That Intervening Party be awarded his reasonable attorney fees; and
5. That Intervening Party be awarded such further relief as the Court deems necessary and proper.

DEMAND FOR JURY TRIAL

1. Intervening Party requests a trial by jury of all the issues in this action.

DATED this 6th day of November, 2006.

MANAGHAN & KORTUM-MANAGHAN LAW FIRM PLLC

/s/ Santana N. Kortum-Managhan _____
Attorney for Mr. Nevins