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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, vs. LES SCHWAB TIRE CENTERS OF MONTANA, INC., LES SCHWAB WAREHOUSE CENTER, INC., Defendants.	)	CASE NO. CV-06-149-M-DWM EEOC'S FIRST AMENDED COMPLAINT JURY TRIAL DEMAND

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NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I 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 Earle Nevins. The Equal Employment Opportunity Commission alleges that defendant subjected Mr. Nevins to harassment based on his race (Native American) and then retaliated against him for complaining about racial harassment, ultimately terminating him. Plaintiff seeks monetary relief, including nonpecuniary compensatory and punitive damages, and injunctive relief, on behalf of Mr. Nevins.

JURISDICTION AND VENUE

1. 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. sections 2000e-5(f)(1) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Montana.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) of Title VII, 42 U.S.C. §2000e-5(f)(1).

4. At all relevant times, defendants Les Schwab Tire Centers of Montana, Inc. and Les Schwab Warehouse Center, Inc. (collectively referred to herein as “Les Schwab” or

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"defendants") have been corporations continuously doing business in the State of Montana and have continuously had at least 15 employees.

5. At all relevant times, defendant Les Schwab has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e-(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Mr. Nevins filed a charge with the Commission alleging violations of Title VII by Les Schwab. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. From at least April 2002 until December 2004, defendant engaged in unlawful employment practices at its Kalispell, Montana store in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and -3(a). Defendant engaged in these unlawful practices through the following actions: (1) by subjecting Mr. Nevins to racial harassment; (2) by discriminating against Mr. Nevins based on his race; (3) by retaliating against Mr. Nevins for his complaints to company officials about racial harassment; and (4) by discriminating and retaliating against Mr. Nevins by terminating him in December 2004.

8. The effect of the practices complained of in paragraph 7 above has been to deprive Mr. Nevins of equal employment opportunities and otherwise adversely affect his status as an employee.

9. The unlawful employment practices complained of in paragraph 7 above were intentional.

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10. The unlawful employment practices complained of in paragraph 7 above were done with malice or with reckless indifference to the federally protected rights of Mr. Nevins.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining defendant, its officers, successors, agents, assigns, and all persons in active concert or participation with it, from engaging in any retaliatory employment practices.

B. Order defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for all employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order defendant to make whole Mr. Nevins by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including past and future out-of-pocket expenses, in amounts to be determined at trial.

D. Order defendant to make whole Mr. Nevins by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including without limitation emotional pain, suffering, and loss of enjoyment of life, in amounts to be determined at trial.

E. Order defendant to pay Mr. Nevins punitive damages for its malicious and reckless conduct described in paragraph 7 above, in amounts to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

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G. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this 15th day of August, 2007.

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