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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Plaintiff

Case NO:
03 CV4990(JS)(AL)

and DILBER JIMENEZ, OLGA CHRISTINA MORALES,
SONIA URIBE, JHON SANCHEZ, SONIA BORRERO,
MILTON MISNAZA, NATALIA NARANJO, ROCIO RODRIGUEZ,
OSCAR MORALES, ERIKA ROMERO, RUTH VIDAL and
MARIA ZAMORA

Intervenors,

**PLAINTIFF-INTERVENORS
SECOND AMENDED
COMPLAINT AND
DEMAND FOR JURY TRIAL**

-against-

FIRST WIRELESS GROUP, INC.

Defendants

Plaintiff-Intervenors complaining of defendants First
Wireless Group Inc., allege:

NATURE OF THE ACTION

1. This is a civil rights action to redress deprivation of rights accorded to Plaintiffs pursuant to the Civil Rights Act of 1964, 42 U.S.C.A 2000e et seq. ("Title VII"); the Civil Rights Act.

2. All of the Plaintiff Intervenors as past employees of First Wireless Group were subjected to unequal terms and conditions of employment. Specifically, Asian employees at Defendant Company, First Wireless Group, Inc., were provided with preferential treatment. Plaintiff-Intervenors allege that they were discriminated against due to their race and national origin. The discriminatory animus reflected itself in pay disparities between Asian and Hispanic workers. Moreover, Plaintiff-Intervenors allege that they were retaliated against for opposing the unlawful discriminatory practices. Plaintiff-Intervenors bring this action seeking compensatory, emotional distress, punitive damages, cost and attorney fees along with any other relief the court may find just and proper.

JURISDICTION AND VENUE

3. Plaintiffs invoke the jurisdiction of this Court pursuant to (i) 28 U.S.C §1343(3) and §1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages secured or to secure equitable relief under any Act of Congress providing for the protection of civil rights; (ii) the Declaratory Judgment Statute, 28 U.S.C §2201; (iii) Title VII, 42 U.S.C. sec. 2000e et seq., and (iv) 28 U.S.C §1367(a), in that the state and

federal claims arise from a common nucleus of operative fact such that they are so related that they form part of the same case or controversy under Article III of the United State Constitution.

4. Venue is proper in the Court pursuant to 28 U.S.C. §1391(b), in as much as the defendants have an office and conducts business and can be found in the Eastern District of New York, and the causes of action arouse and occurred in the Eastern District of New York. Venue is also proper in this Court pursuant to § 706(f)(3) of Title VII, 42 U.S.C sec. 2000e, in as much, as the unlawful employment practices complained of herein occurred within the Eastern District of New York.

PARTIES

5. The Equal Employment Opportunity Commission(hereinafter the "EEOC") is a Commission created by the government of the United States pursuant to section 705 of the Civil Rights Act of 1964, 42 U.S.C sec. 2000e-4. The EEOC maintains its principal office in the District of Columbia. The EEOC is authorized to bring this action pursuant to 42 U.S.C sec. 2000e-5(f)(1).

6. The Plaintiff-Intervenors are all persons who reside in the County of Suffolk, State of New York. Plaintiffs all worked for First Wireless in the evening shift. Plaintiffs were all terminated from employment on February 28, 2002. Plaintiffs are authorized to intervene in this action pursuant to 42 U.S.C sec. 2000(e)-5(f)(1).

7. Upon information and belief, the Defendant, First Wireless Group, Inc., is a corporation duly organized and existing in the State of New York.

8. The Defendant First Wireless Group, Inc., is engaged in an industry affecting commerce, as defined in Title VII of the Civil Rights Act of 1964, as amended §701(g)-(h), 42 U.S.C. §2000e(g)-(h).

9. At all relevant times, the Defendant First Wireless, had, and still has, at least fifteen (15) or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Therefore, the Defendant is "an employer" within the meaning of Title VII §701, 42 U.S.C. §2000(e).

PROCEDURAL REQUIREMENTS

10. Plaintiff- Intervenors incorporate by reference Paragraphs 1 through 10 of this Complaint as though the same were set forth full herein.

11. On or about March 2002, the Plaintiffs Intervenors filed a timely charge of discrimination with of the Suffolk County Human Rights Commission.

12. On August 19, 2002, the Plaintiffs requested that their case be transferred to the EEOC for investigation.

13. On or about July 25, 2003, following its investigation of that Charge, the EEOC issued a determination that there was reasonable cause to believe that the Plaintiff- Intervenors were discriminated against due to their race, national origin, and retaliated against for opposing unlawful discriminatory practices.

14. Following the determination set forth above, the EEOC attempted to eliminate unlawful employment practices by informal methods of conference, conciliation and persuasion pursuant to 42 U.S.C §2000e-5(f)(1), but was unable to secure a conciliation agreement.

15. On or about September 30, 2003, the EEOC began their federal law suit for discriminatory practices in employment against Defendant First Wireless.

STATEMENT OF FACTS

16. Plaintiff-Intervenors incorporate by reference Paragraphs 1- 15 of this Complaint as though the same were set forth fully herein.

17. On or about April 20, 2000, Plaintiff- Intervenor, Dilber Jimenez, was hired by the Defendants as a Night Shift Manager. Plaintiff Jimenez is a Hispanic male. Plaintiff-Intervenor was wrongfully terminated on or about April 23, 2001.

18. Plaintiff- Intervenor, Sonia Borrero, was hired by the Defendants on or about August 28, 2000. Plaintiff Borrero

worked the evening shift. Plaintiff Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Borrero is a Hispanic female.

19. Plaintiff- Intervenor, Oscar Morales, was hired by the Defendants on or about October 2, 2000. Plaintiff Morales worked the evening shift. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Morales is a Hispanic male.

20. Plaintiff- Intervenor, Olga Morales, was hired by the Defendants on or about October 2000. Plaintiff Morales worked as a line leader in the evening shift. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Morales is a Hispanic female.

21. Plaintiff- Intervenor, Milton Misnaza, was hired by the Defendants on or about March 1, 2001. Plaintiff Miznasa worked the evening shift. Plaintiff Miznasa worked at First Wireless painting phones. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Miznasa is a Hispanic male.

22. Plaintiff- Intervenor, Natalia Naranjo, was hired by the Defendants on or about December 6, 2000. Plaintiff Naranjo worked the evening shift, as a programmer. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Naranjo is a Hispanic female.

23. Plaintiff- Intervenor, Rocio Rodriguez, was hired by the Defendants on or about August 28, 2000. Plaintiff Rodriguez worked the evening shift. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Rodriguez is a Hispanic female.

24. Plaintiff-Intervenor, Erika Romero, was hired by the Defendants on or about September 25, 2000. Plaintiff Romero worked the evening shift. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Romero is a Hispanic female.

25. Plaintiff-Intervenor, Sonia Uribe, was hired by the Defendants on or about November 27, 2000. Plaintiff Uribe worked the evening shift. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Uribe is a Hispanic female.

26. Plaintiff-Intervenor, Ruth Vidal, was hired by the Defendants on or about January 15, 2001. Plaintiff Vidal worked the evening shift. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Vidal is a Hispanic female.

27. Plaintiff-Intervenor, Maria Zamora, was hired by the Defendants on or about March 26, 2001. Plaintiff Zamora worked the evening shift. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Vidal is a Hispanic

female.

28. Plaintiff- Intervenor, Jhon Sanchez, was hired by the Defendants on or about November 2000. Plaintiff Sanchez worked the evening shift, as a testing technician. Plaintiff-Intervenor was wrongfully terminated on or about February 28, 2002. Plaintiff Sanchez is a Hispanic male.

29. Plaintiff-Intervenors worked in a variety of positions ranging from management to testing technicians. Their work performance was exemplary.

30. The majority of the work force at First Wireless Group, Inc., were Hispanics. However, during the course of Plaintiff-Intervenors employment more and more Asians were hired.

31. Historically, Dilber Jimenez did most of the hiring of the night shift personal. However, the Asian employees were hired by upper management. It was then Dilber Jimenez's job, as Night Shift Manager, to assign the Asian employees to a line leader. The line leaders would then supervise the Asian employees work. It was incumbent upon the Plaintiff-Intervenors to train the Asian employees on how to perform the essential job functions assigned to them.

32. Upon information and belief, the Asian employees had limited language skills. Thus, communicating with the Asian employees created difficulties. Upon information and belief, the Asian employees had no previous training in the field. As a

result, the Asian employees production was far less then similarly situated Hispanic workers. Nevertheless, the Hispanic workers continued to work and coexist without incident until they became aware that they were being subjected to unequal terms and conditions of employment. Specifically, similarly situated Hispanic workers were being paid far less then lessor experienced Asian employees.

33. Incensed over the discriminatory practices, Plaintiff-Intervenors complained to Night Shift Manager, Dilber Jimenez. On or about April 20, 2001, in disbelief, Plaintiff-Intervenor, Jiminez complained to Plant Manager, Andrew Ng. Clearly and unequivocally, Plaintiff-Intervenors informed their superior of the discriminatory practices reflected in the pay disparities. Mr. Ng refused to take proactive remedial measures and simply told Mr. Jiminez that he "should be concerned with the good of the company and not the employees."

34. Contemporaneously, the night shift employees circulated a petition calling for Management to put an end to pay disparities between the Asian and Hispanic workers. Upon information and belief, the petition was created and circulated by Adrianna Torres and Rosa Garcia. More than forty Hispanic employees willingly signed the petition. Mostly all of the Plaintiff-Intervenors signed the petition.

35. On or about April 23, 2001, Dilber Jimenez, Rosa Garcia

and Adrianna Torres were called into the office and terminated. Allegedly the reason given by the defendants for their termination was company reorganization. On information and belief, prior to her termination, Adrianna Torres was recognized by the company as the employee of the month. Moreover, Dilber Jimenez prior to his wrongful termination, was given a raise and assured of a future with a growing company. Clearly, Defendants' legitimate business reason for Plaintiff-Intervenor Jiminez's termination was pretextual. The motivating factor in Plaintiff-Intervenors termination was retaliation for opposing unlawful employment practices.

36. On information and belief, as a result of their discriminatory discharge on or February 8, 2002, Rosa Garcia, and Adrianna Torres filed a charge of discrimination with the Suffolk County Commission of Human Rights. While the Defendants were acutely aware of their illegal and discriminatory practices, they continued in their pattern and practice of race and national origin discrimination. The Defendants manifested a blatant disregard for Plaintiffs federally protected rights by continuing to compensate the Asian workers at a higher rate than the Hispanic workers regardless of experience and/or length of service.

37. As a result of the investigation by the Suffolk County Commission of Human Rights, the Defendants escalated their campaign of harassment by singling out the Hispanic workers. Plaintiffs

contend that the Asian workers were allowed to remain seated, while Hispanic employees were to remain standing while working; Hispanic workers were censored and not allowed to readily speak to one another. Moreover, Plaintiffs contend as productivity was dwindling, because of the lack of production by the Asian workers, Hispanic employees were pressured to increase their output to compensate. However, pay differential remained the same. Hispanic employees earned approximately \$7.00 per hour while Asian workers earned approximately \$8.50.

38. In December 2001, Plaintiff- Intervenors began to hear rumors that the night shift was going to be eliminated. A new shift was created in which the Asian employees were allowed to transfer into. Not so coincidentally, the only Hispanic employees who were allowed to transfer to the newly created shift were those who never signed the petition or those who recanted their previous claim of discrimination.

39. On or about January 22, 2002, as further evidence of Defendants' discriminatory animus, a letter was circulated to the night shift personnel. The letter called for a formal declaration from each employee who signed the petition as to whether they recanted their previous statement of discrimination based on pay differential.

40. On or about February 28, 2002, as direct evidence of Defendants' discriminatory animus in retaliation for opposing

illegal employment practices all of the employees who signed the petition and did not retract their previous statement were terminated.

41. The Defendants have discriminated against the Plaintiff-Intervenors in violation of Title VII in that its non-discriminatory business reasons for the pay disparities and Plaintiffs termination are clearly pretextual.

**AS AND FOR A FIRST FEDERAL CAUSE OF ACTION
FOR EMPLOYMENT DISCRIMINATION
BASED ON NATIONAL ORIGIN DISCRIMINATION**

42. The Plaintiffs repeats and reallege the allegations set forth in paragraphs "1" through "41" as if more fully set forth herein.

43. The Defendants have discriminated against the Plaintiff-Intervenors in the terms and conditions of their employment on the basis on national origin in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e et seq.

44. The Defendants willfully and knowingly subjected the Hispanic workers at First Wireless Group, Inc., to unequal terms and conditions in employment due to their national origin.

45. By reason of the Defendants' unlawful actions, the Plaintiffs were caused to suffer economic loss, were made emotionally ill, and were otherwise greatly injured, and therefore demand back pay, compensatory, emotional distress and punitive

damages and benefits for Dilber Jimenez, and compensatory, emotional distress, and punitive damages for all other Plaintiff Intervenor in a sum to be determined by a jury; interest costs, prejudgment interest, and disbursements; and in addition attorneys fees.

**AS AND FOR A SECOND FEDERAL CAUSE OF ACTION
FOR EMPLOYMENT DISCRIMINATION
BASED ON RACE DISCRIMINATION**

46. The Plaintiffs repeats and reallege the allegations set forth in paragraphs "1" through "45" as if more fully set forth herein.

47. The Defendants have discriminated against the Plaintiff-Intervenor in the terms and conditions of their employment on the basis on race in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e et seq.

48. The Defendants willfully and knowingly subjected the Hispanic workers at First Wireless Group, Inc., to unequal terms and conditions in employment due to their race.

49. By reason of the Defendants' unlawful actions, the Plaintiffs were caused to suffer economic loss, were made emotionally ill, and were otherwise greatly injured, and therefore demand back pay, compensatory, emotional distress and punitive damages and benefits for Dilber Jimenez, and compensatory, emotional distress, and punitive damages for all other Plaintiff Intervenor in a sum to be determined by a jury; interest costs,

prejudgment interest, and disbursements; and in addition attorneys fees.

**AS AND FOR A THIRD FEDERAL CAUSE OF ACTION
FOR RETALIATION**

50. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs "1" through "49" with the same force and effect as if stated more fully herein.

51. The Defendants discriminated against Plaintiff-Intervenors based upon them opposing unlawful employment practices under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e). Defendants terminated Plaintiff-Intervenors' employment in retaliation for them complaining of the different terms and conditions of employment between the Asian and Hispanic Workers at First Wireless Group, Inc.

52. By engaging in the above-described conduct, the Defendants discriminated against Plaintiff-Intervenors with malice or reckless indifference to their federally protected rights. Accordingly, Plaintiffs have suffered and are entitled to damages, including but not limited to: lost compensation, and/or lost pay for Dilber Jimenez, pain and suffering, mental anguish and other emotional distress damages, compensatory, and punitive damages, along with costs and attorney's fees for all Plaintiffs, and

prejudgment interest in an amount to be determined by a jury.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff-Intervenors respectfully pray for judgment against the Defendants as follows:

(a) As and For a First Federal Cause of Action for Employment Discrimination Based Upon National Origin, an award to the Plaintiff-Intervenors under Title VII of all of the back pay, compensatory, emotional distress and punitive damages and fringe benefits Dilber Jimenez lost as a result of the Defendants' unlawful discrimination against him, together with an award for compensatory, emotional distress and punitive damages in an amount to be determined by a jury at trial for all other Plaintiffs, with interest costs, disbursements and prejudgment interest; and reasonable attorney's fees.

(b) As and For a Second Federal Cause of Action for Employment Discrimination Based Upon Race, an award to the Plaintiff-Intervenors under Title VII of all of the back pay, compensatory, emotional distress and punitive damages and fringe benefits Dilber Jimenez lost as a result of the Defendants' unlawful discrimination against him, together with an award for compensatory, emotional distress and punitive damages in an amount to be determined by a jury at trial for all other Plaintiffs, with interest costs, disbursements and prejudgment interest; and reasonable attorney's

fees.

(c) As and For a Third Federal Cause of Action for Employment Discrimination Based Upon Retaliation, an award to the Plaintiff-Intervenors under Title VII of all of the back pay, compensatory, emotional distress and punitive damages and fringe benefits for Dilber Jimenez as a result of the Defendants' unlawful retaliation, together with an award for compensatory, emotional distress and punitive damages for all other Plaintiffs in an amount to be determined by a jury at trial, with interest costs, disbursements and prejudgment interest; and reasonable attorney's fees.

(d) Prejudgement interest on any amount awarded under subsections (a) and/or (b) and/or (c) of this Prayer for Relief;

(e) That the Court retain jurisdiction over this action until the Defendants has fully complied with the Orders of the Court; and that the Court require the Defendants to file such reports as may be necessary to supervise such compliance; and

(f) To award Plaintiff-Intervenors such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff-Intervenors herein demand a trial by jury of all issues in this action.

Dated: Brentwood, New York
June 2, 2005

Respectfully submitted,

s/s DELVIS MELÉNDEZ(DM-7975)
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