



## JURISDICTION AND VENUE

2. 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 Acts of 1964 ("Title VII"), 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. § 1981a.

3. Venue is proper in this Court because the unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

## PARTIES

4. Plaintiff Equal Employment Opportunity 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 Sections 706 (f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5 (f)(1) and (3).

5. Defendant Kroger Texas L.P. ("Kroger" or "Defendant") has continuously been and is now doing business in the State of Texas and the City of Houston and has continuously had more than 15 employees. Kroger may be served with process by serving its registered agent in Texas, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, which may be found at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

6. At all relevant times, Defendant 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

7. More than thirty days prior to the institution of this lawsuit, Ms. Washington and Ms. Tarver filed charges of discrimination with the Commission alleging violations of Title VII by Defendant. On October 7, 2003, both Ms. Washington and Ms. Tarver filed charges with the Commission. All conditions precedent to the institution of this lawsuit have been fulfilled including the timely filing of charges and an attempt to conciliate the matter with Defendant.

8. Since at least 2003, Defendant has engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). Since at least 2003, Kroger has failed to hire qualified female applicants, as a class, as order selectors because of their sex.

9. On or about September 19, 2003, Ms. Washington and Ms. Tarver applied to work as order selectors at the Kroger Distribution Center ("Warehouse"). Ms. Washington and Ms. Tarver obtained and completed applications at the Warehouse and turned in their completed applications on the same day.

10. When she applied to work at the Warehouse, Ms. Washington had over three(3) years experience working as an order selector and other relevant work experience, which was set out in her application. Among other things, Ms. Washington's completed application reflected that she had never been convicted of a crime, had never been discharged from employment, and had completed high school. Ms. Washington called the Warehouse several times to check the status of her application and was told Kroger was still hiring. In early October, 2003, she was told the Warehouse was accepting applications but not hiring. Ms. Washington had previously applied at the Warehouse for the order

selector job but has never been called for an interview.

11. When she applied to work at the Warehouse, Ms. Tarver had over ten (10) years experience working as an order selector and other relevant work experience, which was set out in her application. Among other things, Ms. Tarver's completed application reflected that she had never been convicted of a crime, had never been discharged from employment, and had completed high school. Ms. Tarver called the Warehouse several times to check the status of her application. On one occasion, she was told to wait until she was called and, at other times, she was told the Warehouse was still hiring. In early October, 2003, Ms. Tarver was told the Warehouse was accepting applications but not hiring.

12. After Ms. Washington and Ms. Tarver applied for order selector positions at the Warehouse, Kroger failed to interview them and hired less qualified male applicants for order selector positions.

13. During the year 2003, Mr. Tim Mack, Kroger's Assistant Distribution Manager, was responsible for hiring order selectors to work at the Warehouse.

14. Since about 1998, Mr. Mack's job responsibilities has included hiring order selectors to work at the Warehouse.

15. Mr. Mack has offered employment to just three female order selectors, but none prior to October 2003.

16. Mr. Mack has failed to select female applicants to the order selector position for interview on the same basis as male applicants.

17. Prior to November 2003, Kroger failed, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to preserve the applications for the order selector position of

applicants who were not selected for interview.

18. The effect of the unlawful practices complained of herein has been to deprive Ms. Washington, Ms. Tarver and other qualified female applicants of equal employment opportunities and otherwise adversely affected their status as employee because of their sex.

#### PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

19. Grant a permanent injunction enjoining Kroger, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in employment practices which discriminate on the basis of gender;

20. Order Kroger to institute and carry out policies, practices and procedures which provide equal employment opportunities for female applicants and employees and which eradicate the effects of its unlawful employment practices;

21. Order Kroger to make Ms. Washington, Ms. Tarver, and identified class members whole by providing appropriate back pay, with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices they was subjected to;

22. Order reinstatement into a comparable position for Ms. Washington, Ms. Tarver, and identified class members or award front pay in the amounts to be proven at trial if reinstatement is impractical;

23. Order Kroger to pay compensatory damages to Ms. Washington, Ms. Tarver, and identified class members for the past and future pecuniary losses resulting from the unlawful employment practices described above including but not limited to loss benefits;

24. Order Kroger to pay compensatory damages to Ms. Washington, Ms. Tarver, and identified class members for their past and future non-pecuniary losses including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses they suffered as a result of the unlawful employment practices described above, in amounts to be proven at trial;

25. Award punitive damages to Ms. Washington, Ms. Tarver, and identified class members in amounts to be proven at trial;

26. Award pre-judgment and post-judgment interest on all amounts recovered as allowed by law;

27. Order all affirmative relief necessary to eradicate the effects of the unlawful employment practices;

28. Order Kroger to preserve applications as required under Title VII.

29. Award the Commission its costs in this action; and

30. Grant such other and further relief as is just and equitable.

JURY TRIAL DEMAND

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

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

ERIC S. DREIBAND

General Counsel

JAMES L. LEE

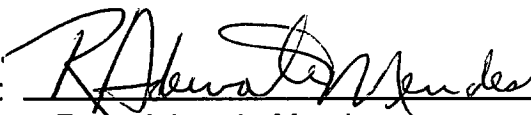
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I(a) PLAINTIFFS
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DEFENDANTS
KROGER TEXAS LP

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Rose Adewale-Mendes, Supervisory Trial Attorney
EEOC-Houston District Office
1919 Smith Street, 7th Floor
Houston, Texas 77002
(713) 209-3404

ATTORNEYS (IF KNOWN)

United States Courts
Southern District of Texas
FILED

MAY 17 2005

H-05-1768
H. Milby, Clerk

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- [x] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- PTF DEF
Citizen of This State [ ] 1 [ ] 1
Citizen of Another State [ ] 2 [ ] 2
Citizen or Subject of a Foreign Country [ ] 3 [ ] 3
Incorporated or Principal Place of Business in This State [ ] 4 [ ] 4
Incorporated and Principal Place of Business in Another State [ ] 5 [ ] 5
Foreign Nation [ ] 6 [ ] 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Defendant has engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2 (a)(1) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Defendant subjected Yolanda Washington and Subrena Tarver to discriminatory treatment by unlawfully failing to hire them and other females, as a class, because of their sex. Also, Kroger did not retain applications of applicant to the order selector position.

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- [x] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 another district (specify)
[] 6 Multidistrict Litigation
[] 7 Judge from Appeal to District Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23: [ ]
DEMAND \$
Check YES only if demanded in complaint: JURY DEMAND: [X] YES [ ] NO

VIII. RELATED CASE(S) IF ANY (See instructions)

JUDGE DOCKET NUMBER

DATE: 5-17-05 SIGNATURE OF ATTORNEY OF RECORD: Rose Adewale-Mendes