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FILED IN THE  
 U.S. DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON  
 SEP 25 2003  
 JAMES R. LARSEN, CLERK  
 DEPUTY  
 SPOKANE, WASHINGTON

6 ATTORNEYS FOR PLAINTIFF

9 UNITED STATES DISTRICT COURT  
 10 FOR THE EASTERN DISTRICT OF WASHINGTON

**CS-03-0339-LRS**

11 EQUAL EMPLOYMENT  
 12 OPPORTUNITY COMMISSION,

Plaintiff,

v.

14 MCCAIN FOODS USA, INC.,

Defendant.

CIVIL NO.

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

18 This is an action under Title VII of the Civil Rights Act of 1964 ("Title VII")  
 19 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices  
 20 on the basis of sex and to provide appropriate relief to Chanda Thomas and Marilyn  
 21 McNelly who were adversely affected by such practices. The Equal Employment  
 22 Opportunity Commission alleges that Defendant McCain Foods USA, Inc.  
 23 ("Defendant") failed to promote Ms. Thomas and Ms. McNelly because of their sex,  
 24 female. Plaintiff seeks injunctive and monetary relief, including pecuniary and  
 25 nonpecuniary compensatory damages and punitive damages, on behalf of Ms.

ORIGINAL

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1 Thomas and Ms. McNelly.

2 JURISDICTION AND VENUE

3 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§  
4 451,1331,1337, 1343 and 1345. This action is authorized and instituted pursuant to  
5 sections 706(f)(1) and (3) of Title  
6 VII, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3). This action is also authorized  
7 and instituted pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §  
8 1981a.

9 2. The employment practices alleged to be unlawful were and are  
10 committed within the jurisdiction of the United States District Court for the Eastern  
11 District of Washington.

12 PARTIES

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

18 4. At all relevant times, Defendant has continuously been a corporation  
19 doing business in the State of Washington and has continuously had at least 15  
20 employees.

21 7. At all relevant times, Defendant has continuously been an employer  
22 engaged in an industry affecting commerce within the meaning of Sections and  
23 Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

24 8. Prior to institution of this lawsuit, the Commission's representatives  
25 attempted to eliminate the unlawful employment practices alleged below and to effect

1 voluntary compliance with Title VII through informal methods of conciliation,  
2 conference and persuasion within the meaning of Section 706(b) of Title VII, 42  
3 U.S.C. § 2000e-5(b).

#### 4 STATEMENT OF CLAIMS

5 9. More than thirty days prior to the institution of this lawsuit, Chandra  
6 Thomas filed a charge of discrimination with the Commission alleging violations of  
7 Title VII by Defendant. All conditions precedent to the institution of this lawsuit have  
8 been fulfilled.

9 10. Since at least October 1, 2002, Defendant has engaged in unlawful  
10 employment practices at its facility in Othello, Washington in violation of Section  
11 703(a) of Title VII, 42 U.S.C. § 2000e-2(a). These practices included failing to  
12 promote Ms. Thomas and Ms. McNelly because of their sex, female.

13 11. The effect of the practice(s) complained of in paragraph 10 above has  
14 been to deprive Ms. Thomas and Ms. McNelly of equal employment opportunities  
15 and otherwise adversely affect their status as employees seeking promotion because  
16 of their sex.

17 12. The unlawful employment practices complained of in paragraph 10  
18 above were and are intentional.

19 13. The unlawful employment practices complained of in paragraph 10  
20 above were and are done with malice or with reckless indifference to the federally  
21 protected rights of Ms. Thomas and Ms. McNelly who were unlawfully denied  
22 promotions because of their sex.

#### 23 PRAYER FOR RELIEF

24 Wherefore, the Commission respectfully requests that this Court:

25 A. Grant a permanent injunction enjoining Defendant and its officers,

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1 agents, successors, assigns, and all persons in active concert or participation with it,  
2 from engaging in referral practices that discriminate on the basis of sex and in any  
3 other employment practice which discriminates on the basis of sex.

4 B. Order Defendant to institute and carry out policies, practices and  
5 programs which provide equal employment opportunities for women and which  
6 eradicate the effects of its past and present unlawful employment practices.

7 C. Order Defendant to make whole Chandra Thomas and Marilyn McNelly  
8 by providing appropriate back pay with prejudgment interest, in amounts to be  
9 proved at trial, and other affirmative relief necessary to eradicate the effects of its  
10 unlawful employment practices.

11 D. Order Defendant to make whole Ms. Thomas and Ms. McNelly by  
12 providing compensation for past and future pecuniary losses resulting from the  
13 unlawful employment practices described in paragraphs 10-13 above, including  
14 without limitation past and future out-of-pocket expenses, in amounts to be  
15 determined at trial.

16 E. Order Defendant to make whole Ms. Thomas and Ms. McNelly by  
17 providing compensation for past and future non-pecuniary losses resulting from the  
18 unlawful practices complained of in paragraphs 10-13 above, including without  
19 limitation emotional pain, suffering, loss of enjoyment of life and humiliation in  
20 amounts to determined at trial.

21 F. Order Defendant to pay Ms. Thomas and Ms. McNelly punitive damages  
22 for its malicious and/or reckless conduct described in paragraphs 10-13 above in an  
23 amount to be determined at trial.

24 G. Grant such further relief as the Court deems necessary and proper in the  
25 public interest.

H. 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 24<sup>th</sup> day of September, 2003.

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