

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 06-cv-01915-EWN-BNB

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

ANDY MARTINEZ,
Plaintiff-Intervenor,

v.

PROFESSIONAL TRANSIT MANAGEMENT LTD, LLC d/b/a SPRINGS TRANSIT,

Defendant.

INTERVENOR’S COMPLAINT AND JURY TRIAL DEMAND

Plaintiff-Intervenor Andy Martinez respectfully submits the following Intervenor’s
Complaint:

JURISDICTION AND VENUE

- 1) Jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331, and 1337 and 1343. This action is commenced under 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 Section 102 of the Civil rights Act of 1991, 42 U.S.C. § 1981(A).
- 2) The alleged unlawful employment practices were committed within the jurisdiction of the United States District Court for the District of Colorado.

PARTIES

- 3) Andy Martinez (“Plaintiff-Intervenor”) is and was at all times relevant to this Complaint, a resident of the State of Colorado.
- 4) Plaintiff Equal Employment Opportunity Commission is an agency of the United States of American charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by 706(f)(1) of Title VII, 42 U.S.C § 2000e-5(f)(1).
- 5) At all relevant times, Defendant has been a foreign corporation doing business in the State of Colorado and has continuously had at least fifteen employees. Defendant is engaged in the business of providing local and express bus transportation services in Colorado.
- 6) At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of 42 U.S.C. §§ 2000e (b), (g) and (h).
- 7) At all relevant times, Defendant was the Plaintiff-Intervenor’s employer within the meaning of Title VII.

STATEMENT OF CLAIMS

- 8) More than thirty (30) days prior to the filing of the lawsuit by the Plaintiff EEOC, Plaintiff-Intervenor filed a Charge of Discrimination with the Commission alleging violations of Title VII by Defendant. Plaintiff-Intervenor has fulfilled all conditions precedent to the filing of this Intervenor’s Complaint.
- 9) Since at least January, 2003, Defendant has engaged in unlawful employment practices, in violation of 42 U.S.C. § 2000e-2(a)(1), by discriminating against Plaintiff-Intervenor.
- 10) Defendant hired Plaintiff-Intervenor on or about July 14, 2004, as a mechanic and he performed the duties of his position in a satisfactory manner.

- 11) Beginning in or about August 2004, Plaintiff-Intervenor began hearing racial slurs in the workplace directed at Hispanics, African Americans and Asians.
- 12) On or about August 2004, some of Plaintiff-Intervenor's white co-workers continually made racial slurs in his presence and some of the derogatory comments involved references to "gassing" and "shooting" members of minority groups, including Hispanics, African Americans and Asians.
- 13) On or about August 2004, some of Plaintiff-Intervenor's white co-workers stated that it should not be against the law to shoot "[n-words], Mexicans, and chinks" and that "we should be able to just line them up and shoot them down," and, "I hate them '[n-words]'".
- 14) On or about August 2004, Plaintiff-Intervenor's co-workers made comments such as, "If [n-words] don't like the way they are treated in America, get on a boat and go back to Africa" and "If I had my way, I'd gas them (African Americans) like Hitler did the Jews."
- 15) On or about August 2004, Plaintiff-Intervenor confronted his white co-workers about these comments and they stated that they had a "deep hatred" for minorities.
- 16) On or about August 2004, some of Plaintiff-Intervenor's white co-workers also discussed target shooting and were known by Plaintiff to keep guns in their possession.
- 17) The discriminatory and hostile comments made by Plaintiff-Intervenor's co-workers were condoned and participated in by Pete Faria, Maintenance Supervisor.
- 18) Pete Faria is white.
- 19) The discriminatory and hostile comments by Plaintiff-Intervenor's co-workers were so pervasive and severe that Plaintiff-Intervenor and other minority employees became fearful of their personal safety while on the job.

- 20) On or about August 2004, Plaintiff-Intervenor complained to Glenn Cross, EEO Manager, about the hostile environment but the discriminatory and hostile comments did not cease.
- 21) Glen Cross is white.
- 22) On or about October 2004, another white co-worker repeatedly used the word “[n-word]” referring to African Americans and stated that his “neighborhood was going to shit because of a clan of Mexicans that were moving in next door.”
- 23) On or about November 2004, one of Plaintiff-Intervenor’s white co-worker stated, “I would shoot every Mexican crossing the border, women and children included.”
- 24) On or after November 2004, one of Plaintiff-Intervenor’s African American co-employees overheard the threatening comments and wrote to management about the racial harassment and his fear of workplace violence based on race, but the harassment and hostile environment did not cease.
- 25) On or about December 2004, Plaintiff-Intervenor again complained to management about the racial environment and threats but the harassment and hostile environment did not cease.
- 26) On or about February 2005, Plaintiff-Intervenor again complained to management about the racial comments and threats, but the harassment and hostile environment did not cease.
- 27) Despite the complaints of Plaintiff-Intervenor and others about the hostile work environment, management failed to take sufficient measures to stop the harassment and hostile environment.
- 28) All of Plaintiff-Intervenor’s managers at the time of these incidents were white.

- 29) Management specifically and initially failed to allow Plaintiff-Intervenor a particular advanced mechanic position and failed to grant Plaintiff-Intervenor the pay raise that would accompany such a promotion.
- 30) The effect of the practices complained of in the foregoing paragraphs has been to deprive Plaintiff-Intervenor of equal employment opportunities, including but not limited to opportunities for advancement and pay raises, and otherwise adversely affect his status as an employee because of his race, color, and/or national origin.
- 31) Because of Plaintiff-Intervenor's national origin (Hispanic) and race and color, Defendant denied Plaintiff-Intervenor of equal employment opportunities, including but not limited to opportunities for advancement and pay raises, and otherwise adversely affected his status as an employee.
- 32) As a result of Defendant's actions, Plaintiff-Intervenor has suffered damages, including but not limited to emotional distress, lost past and future earnings and benefits, and other expenses, in amounts subject to proof.
- 33) The unlawful employment practices complained of in the foregoing paragraphs were and are intentional.
- 34) The unlawful employment practices complained of above were committed with malice or with reckless disregard for the Plaintiff-Intervenor's federally protected rights.

PRAYER FOR RELIEF

Wherefore, Plaintiff-Intervenor respectfully requests that this Court:

- 35) Order the Defendant to make Plaintiff-Intervenor whole by providing compensation for past, and future pecuniary losses incurred as a result of the unlawful employment practices described above, in amounts to be determined at trial.
- 36) Order the Defendant to make Plaintiff-Intervenor whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.
- 37) Order Defendant to pay Plaintiff-Intervenor punitive damages for its malicious and reckless conduct complained of above in amounts to be determined at trial.
- 38) Award Plaintiff-Intervenor his costs and attorneys fees in this action, pursuant to 42 U.S.C. § 2000e-5(k).
- 39) Grant such further relief as the Court deems necessary and proper.

JURY TRIAL DEMAND

Plaintiff-Intervenor requests a jury trial on all questions of fact raised by his Complaint.

Dated this 14th day of December, 2006.

Respectfully submitted,

s/Matthew S. Martin
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