

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

LITHIA MOTORS, INC.,
d/b/a LITHIA DODGE OF CHERRY CREEK, and
LITHIA CHERRY CREEK DODGE, INC.
d/b/a LITHIA DODGE OF CHERRY CREEK,

Defendants.

COMPLAINT AND JURY TRIAL DEMAND

NATURE OF THE ACTION

This public enforcement action arises 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, African-American or Black. As alleged with greater particularity below, the Equal Employment Opportunity Commission (“Plaintiff” or “Commission”) alleges that Defendants created and tolerated a hostile work environment based on race for James Witherspoon and for other employees at its Cherry Creek Dodge location. In addition, Defendants unlawfully retaliated against James Witherspoon because Mr. Witherspoon complained about improper race-

based conducted carried out at Cherry Creek Dodge. After Mr. Witherspoon followed Defendant's internal complaint process to raise concerns of racial discrimination, his General Manager increased the harassment, making the work conditions intolerable and forcing Mr. Witherspoon from his employment.

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 Section 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 (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
2. The employment practices alleged herein to be unlawful were committed within the jurisdiction of the United States District Court for the District of Colorado.

PARTIES

3. Plaintiff, the 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 Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).
4. Defendant Lithia Motors, Inc. is a corporation, organized under the laws of Oregon.
5. Defendant Lithia Motors, Inc. operates the following stores in Colorado: Lithia Dodge of Cherry Creek; Lithia Colorado Chrysler Jeep; Lithia Colorado Springs Jeep Chrysler; Lithia Centennial Chrysler Jeep; Lithia Chrysler Jeep Dodge of Forth Collins; Lithia Hyundai of Forth Collins; Lithia Volkswagen of Thornton.

6. Defendant Lithia Cherry Creek Dodge, Inc. is a corporation organized under the laws of Colorado.
7. Both Defendants have continuously been doing business in the State of Colorado during all times relevant to this lawsuit, under the name Lithia Dodge of Cherry Creek at 2727 S. Havana Street, Aurora.
8. At all relevant times, each Defendant had at least 15 employees and 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).
9. At all relevant times, Defendants were the employers of the employees who worked at Lithia Dodge of Cherry Creek.
10. Upon information and belief, Defendants are a joint employer of the employees who work at Lithia Dodge of Cherry Creek, or are an integrated enterprise.
11. Upon information and belief, Defendants operate as the alter ego, agent, and/or instrumentality of one another.

STATEMENT OF FACTS

12. More than thirty days prior to the institution of this lawsuit, James Witherspoon filed a charge of discrimination with the Commission alleging violations of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.
13. Since at least 2003, Defendant Lithia Motors Inc. engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).
14. On or about January 2003, Tim Jones transferred from Lithia Centennial Chrysler to

Lithia Cherry Creek Dodge, where he became the General Manager.

15. On or about January 6, 2003, General Manager Jones terminated three minority salesmen Charles Mayes, Roosevelt Williams, and Herman Ortiz for allegedly being late to a sales meeting.
16. On January 6, 2003, car salesman James Witherspoon (African-American) was off work on an authorized leave of absence.
17. On or about January 13, 2003, James Witherspoon returned to work at Cherry Creek Dodge.
18. On or about January 13, 2003, General Manager Jones told Mr. Witherspoon that Witherspoon was “not going to get away with taking “B.P. Time.” When Witherspoon asked what that meant, Jones explained “Black People Time.” Jones also told Witherspoon that “B.P.Time” was the reason I fired “a bunch of you people already.”
19. During Witherspoon's remaining tenure at Cherry Creek Dodge, General Manager Jones afforded Witherspoon less favorable treatment than he afforded Caucasian salesmen.
20. General Manager Jones screamed and yelled obscenities to Witherspoon in the presence of co-workers and displayed more hostility toward Mr. Witherspoon than he displayed to Caucasian salesmen.
21. In contrast to his treatment of Caucasian salesmen, Jones caused Witherspoon’s commissions to be unfairly split with other sales men.
22. Jones deducted an unreasonable amount of pay after wrongly accusing Witherspoon of causing damage to a car. By contrast, a white employee had no pay deducted for

significant damage he had caused in a accident.

23. Jones directed that Witherspoon undergo a drug test, when there were no reasonable grounds for doing so. By contrast, Caucasian employees who were known to be intoxicated at work were not required to submit to drug testing and were not disciplined or discharged.
24. Jones directed Witherspoon to raise the sales price by \$5,000 on a car in which an African-American customer was interested, so that the customer was unable to purchase the car.
25. Mr. Witherspoon filed an internal complaint about discrimination and harassment with Lithia Motors, Inc. corporate office on April 29, 2003.
26. After Witherspoon filed his complaint, he was not advised of any investigation, or of the outcome of any investigation.
27. After Witherspoon file his complaint, General Manager Jones' harassment of Witherspoon only intensified.
28. In addition, Jones yelled at and berated the personnel coordinator at Cherry Creek Dodge, for assisting Mr. Witherspoon in filing an internal charge.
29. With the continued harassment from Jones and no contact from headquarters about his internal complaint, any reasonable person would have felt the conditions had become impossible by the time Witherspoon resigned on May 16, 2003.

STATEMENT OF CLAIMS

FIRST CLAIM FOR RELIEF

Claim of Discrimination

31. The effect of the practices complained of in the paragraphs above has been to deprive James Witherspoon, of equal employment opportunities and otherwise adversely affect his status respectively as an employee, because of race, Black, or African American in violation of Sections 703(a), 42 U.S.C. § 2000e-2(a).
32. The unlawful employment practices complained of in the paragraphs above were intentional.
33. The unlawful employment practices complained of in the paragraphs above were done with malice or with reckless indifference to the federally protected rights of James Witherspoon.

SECOND CLAIM FOR RELIEF

Claim of Retaliation

34. The effect of the practices complained of in the paragraphs above has been to deprive James Witherspoon, of equal employment opportunities and otherwise adversely affect his status respectively as an employee, because he reasonably believed he opposed practices made unlawful under Title VII in violation of Section 704 of Title VII, 42 U.S.C. § 2000e-3(a).
35. The unlawful reprisal and retaliation complained of in the paragraphs above were intentional.
36. The unlawful reprisal and retaliation complained of in the paragraphs above were done

with malice or with reckless indifference to the federally protected rights of James Witherspoon.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in race discrimination, retaliation, and any other employment practice which discriminates on the basis of race.
- B. Order Defendants to institute and carry out policies, practices, and programs at all their Colorado stores that proscribe workplace race discrimination, that prevent and promptly correct racial harassment, that provide equal employment opportunities for African Americans, and which eradicate the effects of its past and present unlawful employment practices.
- C. Order Defendants to make whole James Witherspoon, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and order other affirmative relief necessary to eradicate the effects of its unlawful employment practices described herein, including, but not limited to, front pay.
- D. Order Defendants to make whole James Witherspoon, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in the paragraphs above in amounts to be determined at trial.
- F. Order Defendants to pay James Witherspoon punitive damages for the malicious and reckless conduct described in the paragraphs above in amounts to be determined at trial.

- G. Award the Commission its costs of this action.
- H. Grant such further relief as the Court deems necessary and proper in the public interest.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by this Complaint.

Dated this thirtieth day of September, 2005.

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PLEASE NOTE:

**It is sufficient for purposes
of service on the Plaintiff Equal**

**Employment Opportunity Commission
that pleadings, notices, and any
other court document be served
upon the Trial Attorney.
Therefore, duplicate service
is not required on the Deputy General
Counsel located in Washington, D.C.**