

IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA

DARRELL WILLIAMS,)
) CASE NO.:
Plaintiff,)
)
vs.) COMPLAINT AND DEMAND FOR
) JURY TRIAL
ASBURY AUTOMOTIVE GROUP, INC., a)
Delaware corporation; and COURTESY)
AUTO GROUP, INC. (d/b/a MERCEDES)
BENZ OF TAMPA), a Florida corporation,)
Defendant.)
_____)

COMPLAINT

COMES NOW, Plaintiff DARRELL WILLIAMS (hereinafter “Plaintiff”) hereby sues the Defendants ASBURY AUTOMOTIVE GROUP, (hereinafter “ASBURY”) and Defendants COURTESY AUTO GROUP, INC. (d/b/a MERCEDES BENZ OF TAMPA) (hereinafter “COURTESY”) (collectively hereinafter “Defendants”), and alleges as follows:

INTRODUCTION

1. This is an action for employment discrimination in violation of state civil rights laws, pursuant to the provisions of the Florida Civil Rights Act of 1992 (“FCRA”), Fla. Stat. §§ 760.01, *et seq.* Defendants have facilitated by and through their employees, agents, managers, and the like, an inherently discriminatory workplace, despite Defendants’ knowing of the disparate impact upon Plaintiff, a Black American male. Defendants further retaliated against Plaintiff who complained about this discrimination.

2. As a result of Defendants unlawful patterns, policies, and practices, and through their habitual acts and omissions—willful or wanton—Plaintiff received less protection against

harassment and discrimination from Defendants' employees, agents, managers, officers or otherwise, as compared to non-Black American employees, and was retaliated against in several incidences of harassment and discrimination, all of which Defendants either facilitated or failed to adequately remedy even though Defendants had actual or constructive notice of the ongoing harassment, discrimination, and retaliation.

JURISDICITON AND VENUE

3. This Court has jurisdiction over this dispute because this complaint seeks damages in excess of Thirty-Thousand-Dollars (\$30,000.00), exclusive of interest and attorney's fees.

4. Venue is proper in this Court, because all acts complained of occurred in Hillsborough County, Florida.

PARTIES

5. Plaintiff DARRELL WILLIAMS (hereinafter "Plaintiff" or "WILLIAMS") is a natural person and was, at all times relevant hereto, "employed" by Defendant as defined by Fla. Stat. §§ 760.01, *et seq.*, in Hillsborough County, Florida.

6. Defendant ASBURY AUTOMOTIVE GROUP, INC. (hereinafter "ASBURY") is a Delaware corporation, with its principal place of business located at 2905 Premiere Parkway, NW, Suite 300 Duluth, Georgia 30097. Defendants COURTESY are registered and licensed to do business in the State of Florida, in Hillsborough County, Florida. Defendant COURTESY was, at all times relevant hereto, Plaintiff's "employer" as that term is defined by FRCA, Fla. Stat. §§ 760.01, *et seq.*

7. Defendant COURTESY AUTO GROUP, INC. (hereinafter "COURTESY") is a Florida corporation, with its principal place of business located at 200 SW 1st Avenue, 14th Floor, Fort Lauderdale, Florida 33301. Defendant COURTESY is registered and licensed to do business

in the State of Florida, in Hillsborough County, Florida. Defendant COURTESY was, at all times relevant hereto, a locally branded dealership within Defendant ASBURY's vehicle franchise network, and Plaintiff's "employer" as that term is defined by FRCA, Fla. Stat. §§ 760.01, *et seq.*

ADMINISTRATIVE REMEDY EXHAUSTED

8. Prior to filing this action, Plaintiff filed a charge of employment discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Florida Commission on Human Relations ("FCHR") on or about August 25, 2020, a copy of which is attached hereto as "**Exhibit 1.**"

9. On or about September 17, 2020, Plaintiff received a notice of right to sue letter from the EEOC and brings this lawsuit within ninety (90) days from receipt of same. Plaintiff is authorized by law to file the instant action within four (4) years of the adverse actions complained of, and therefore this action is timely filed under the laws of the State of Florida.

GENERAL ALLEGATIONS

10. Plaintiff was, at all times relevant hereto, employed by Defendant from approximately April 2012 to approximately May 11, 2020, and Plaintiff was promoted to Defendants' sales department, on or about January 2020.

11. Throughout his employment with Defendants, Plaintiff satisfactorily performed to the reasonable and legitimate non-discriminatory expectations of Defendants for over eight (8) years. Anything to the contrary is pretextual.

12. In fact, Plaintiff's performance as a sale representative from January 2020 to May 11, 2020 was exceptional, even under the circumstances of COVID-19 pandemic where businesses nationwide saw decrease sales revenue.

13. Despite Plaintiff being an exceptional salesman for Defendants, on numerous occasions he was subject to treatment that was based on his race.

14. For example, on or about February 25, 2020, Plaintiff began being referred to in racially oppressed and regarded based on his race and color.

15. In other situations, Defendants' employees would call him a "nigger" and verbally demean him using similar racial epithets.

16. On or about February 26, 2020, one of Plaintiff's co-workers, a white female by the name of Sydney Marcatos who happened to be Defendants' General Manager's financial advisor's daughter, called Plaintiff a "nigger" three (3) or more times in one incident.

17. When Marcatos referred to Plaintiff as a "nigger" three (3) separate times, there were multiple employees of Defendants present and privy to the racially discriminatory conversation, including upper management, namely, Julian Burt, (Defendants' internet sales manager), Shedric Payne (Defendants internet salesman), and Derick Mechum (Defendants floor salesman).

18. The next day after being called a "nigger" by Marcatos, Plaintiff reported this racial discrimination to Defendants' General Manager, Alexander Glickman, but he did not seem to find anything wrong with it.

19. Reporting discrimination to a superior such as Defendants' General Manager is the protocol detailed in Defendants' employee policy.

20. Despite Plaintiff's reporting of the incident, nothing was done about the racial discrimination and name-calling. In fact, Defendants' General Manager even brushed it off as no big deal and stated that Marcatos did not mean anything by it, as though the word "nigger" had a non-discriminatory or non-racial meaning.

21. Glickman further stated to Plaintiff that he saw “no need to report” the incident to Defendants’ human resources department, and no further action was taken by Defendants to remedy the racial injustices suffered by Plaintiff; however, Defendants did take retaliatory action against Plaintiff to punish him for reporting discrimination in the workplace.

22. Plaintiff was not given any time to seek out further and/or more formal remedy through Defendants’ employee protocols, as he was terminated before he could do so.

23. On or about May 11, 2020, Defendants’ General Manager, Alexander Glickman terminated Plaintiff for pretextual reasons, alleging that the termination was due to COVID-19 in order to cover up the actual, discriminatory and retaliatory basis for the decision to terminate Plaintiff.

24. Upon information and belief, the adverse action taken against Plaintiff was wholly or partially retaliatory due to Plaintiff having complained about and reported the racial discrimination that he suffered while employed by Defendants.

25. As a result, Plaintiff has suffered economic and emotional losses, lost reputation, loss of dignity, pain and suffering, mental and/or emotional anguish, and other physical and/or emotional damages as a direct result of Defendants’ unlawful conduct.

COUNT I – RACIAL DISCRIMINATION (STATE)

26. Plaintiff incorporates the allegations set forth in Paragraphs one (1) through twenty-five (25), as though full set forth herein, and further alleges the following:

27. Plaintiff has filed a timely charge of discrimination with the EEOC and FCHR, and thus has exhausted his administrative remedies.

28. During his employment, Plaintiff formally and informally complained of the unlawful discriminatory practices to Defendant’s employees, agents, representatives, and/or

officers, as per company policy, regarding the numerous instances of severe and pervasive racial harassment and discrimination that Plaintiff was subjected to while employed by Defendants.

29. Plaintiff was a member of a protected class, and engaged in protected activities, including but not limited to the use of Defendant's internal policies for rejecting and remedying racial discrimination and hostile workplace conduct. Plaintiff has a right to be free from reprisal against him for engaging in these activities.

30. Plaintiff was subject to racial epithets and other racial discrimination while employed by Defendants, even after notifying Defendant of this unlawful conduct, and it continued to occur to present. Racial discrimination suffered by Plaintiff includes the following:

- a. Being referred to using racially derogatory names, including but not limited to "nigger"; and,
- b. Other instances of racial discrimination as describe more fully above.

31. The stated reasons, other than admissions of discrimination, for Defendant's conduct, repeated discipline and disparate treatment of Plaintiff were not the true reasons, but instead were pretext to hide Defendant's discriminatory animus.

32. Defendant's conduct as alleged at length herein constitutes discrimination based on race, color, and national origin in violation of the FRCA, Fla. Stat. §§ 760.01, *et seq.*

WHEREFORE, Plaintiff respectfully requests the following relief against Defendant:

- a. An award of damages, including lost wages and benefits;
- b. An award of compensatory damages for pain and suffering, mental anguish, loss of dignity and reputation, inconvenience, and loss of enjoyment of life;
- c. An award of attorneys' fees and costs;

- d. An award of punitive damages to be determined by a jury, pursuant to Fla. Stat. § 760.11(5); and,
- e. Any other relief deemed just and proper, including declaratory relief that Plaintiff's rights were violated by Defendant.

COUNT II – HOSTILE WORK ENVIRONMENT (STATE)

33. Plaintiff incorporates the allegations set forth in Paragraphs one (1) through thirty-two (32), as though full set forth herein, and further alleges the following:

34. Plaintiff has filed a timely charge of discrimination with the EEOC and FCHR, and thus has exhausted his administrative remedies.

35. During his employment, Plaintiff formally and informally complained of the unlawful discriminatory practices to Defendant's employees, agents, representatives, and/or officers, as per company policy, regarding the numerous instances of severe and pervasive racial harassment and discrimination that Plaintiff was subjected to while employed by Defendants.

36. Plaintiff was a member of a protected class, and engaged in protected activities, including but not limited to the use of Defendant's internal policies for rejecting and remedying racial discrimination and hostile workplace conduct. Plaintiff has a right to be free from reprisal against him for engaging in these activities.

37. Defendant, by and through its officers, directors, agents, representatives, or other employees, as well as its own actions or inactions, took adverse action against Plaintiff which increased in degree each time Plaintiff rejected or refused disparate treatment.

38. Defendant's conduct as alleged at length herein constitutes retaliation against Plaintiff based on Plaintiff's race and color, and based on the fact that Plaintiff engaged in activities protected under the FCRA.

39. The stated reasons for Defendant's conduct were not the true reasons, other than those rare instances of unofficial or informal admission by Defendants, but instead were pretext to hide Defendant's discriminatory and retaliatory animus.

40. Defendant retaliated against Plaintiff because Plaintiff was a member of a protected class of individuals and because Plaintiff engaged in activities protected by law, but mainly because Defendants considered and referred to Plaintiff as a "nigger."

41. As a result of Defendant's adverse and retaliatory actions against him, Plaintiff suffered damages including but not limited to lost wages, lost benefits, inconvenience, loss of dignity, loss of reputation, pain and suffering, and mental and physical anguish, *inter alia*.

42. The acts and omissions of Defendant alleged at length herein constitute retaliation against Plaintiff based on his race, color, and national origin, as well as his opposition, rejection, and disapproval of racial harassment, discrimination, and Hostile and abusive workplace.

43. Defendant has deprived Plaintiff of the enjoyment of all benefits, privileges, terms, and conditions of his employment, in violation of the FCRA.

WHEREFORE, Plaintiff respectfully requests the following relief against Defendant:

- a. An award of damages, including lost wages and benefits;
- b. An award of compensatory damages for pain and suffering, mental anguish, loss of dignity, loss of reputation, inconvenience, and loss of enjoyment of life;
- c. An award of attorneys' fees and costs;
- d. An award of punitive damages to be determined by a jury, pursuant to Fla. Stat. § 760.11(5); and,

- e. Any other relief deemed just and proper, including declaratory relief that Plaintiff's rights were violated by Defendants.

COUNT III – RETALIATION (STATE)

44. Plaintiff incorporates the allegations set forth in Paragraphs one (1) through forty-three (43), as though full set forth herein, and further alleges the following:

45. Plaintiff has filed a timely charge of discrimination with the EEOC and FCHR, and thus has exhausted his administrative remedies.

46. During his employment, Plaintiff formally and informally complained of the unlawful discriminatory practices to Defendant's employees, agents, representatives, and/or officers, as per company policy, regarding the numerous instances of severe and pervasive racial harassment and discrimination that Plaintiff was subjected to while employed by Defendants.

47. Plaintiff engaged in protected activities, including the use of Defendant's internal policies for rejecting and remedying racial discrimination and hostile workplace conduct. Plaintiff has a right to be free from reprisal against him for engaging in these activities.

48. Defendants, by and through its employees, officers, agents, representatives and other employees, as well as its own actions and/or inactions, took adverse action against Plaintiff which increased in degree since the time he engaged in protected activities of rejecting and remedying racial discrimination and hostile workplace conduct.

49. Defendants knowingly allowed and/or facilitated retaliatory actions against Plaintiff including actions of further racial hate and discriminations by its employees, officers, agents, representatives, and other employees.

50. Defendant conduct as alleged above constitutes retaliation against Plaintiff because he engaged in activities protected by the FCRA.

51. The stated reasons for Defendant's conduct, with the acceptance of any admissions, were not the true reason, were not the true reasons, but instead were pretext to hide Defendant's retaliatory animus.

52. As a result of Defendant's adverse and retaliatory actions, Plaintiff suffered damages as a result of Defendant's retaliation, sustaining injuries including but not limited to lost wages, benefits, pain and suffering, mental and physical pain and suffering, and mental anguish, *inter alia*.

53. The acts and/or omissions of Defendant alleged above constitute retaliation against Plaintiff based on his opposition, rejection, and disapproval of racial harassment, racial discrimination, and a racially hostile and abusive workplace.

54. Defendant has deprived Plaintiff of the enjoyment of all benefits, privileges, terms and conditions of his employment in violation of the FCRA.

WHEREFORE, Plaintiff respectfully requests the following relief against Defendant:

- a. An award of damages, including lost wages and benefits;
- b. An award of compensatory damages for pain and suffering, mental anguish, loss of dignity and reputation, inconvenience, loss of enjoyment of life;
- c. An award of attorneys' fees and costs;
- d. An award of punitive damages to be determined by a jury, pursuant to Fla. Stat. § 760.11(5); and,
- e. Any other relief deemed just and proper, including declaratory relief that Plaintiff's rights were violated by Defendant.

COUNT IV – PUNITIVE DAMAGES UNDER F.C.R.A. § 760.11(5)

55. Plaintiff incorporates the allegations set forth in Paragraphs one (1) through fifty-four (54), as though full set forth herein, and further alleges the following:

56. The above-described actions of Defendant constitute violations of the FCRA, Fla. Stat. §§ 760.01, *et seq.*

57. The above-described actions of Defendant were intentional, willful, abusive, done with gross recklessness, done in bad faith, done without reasonable basis, and done with gross negligence or recklessness.

58. As such, Defendant is liable to Plaintiff for punitive damages, under the FCRA, Fla. Stat. § 760.11(5).

WHEREFORE, Plaintiff respectfully requests that this Court award the following relief against Defendants:

- a. An award of punitive damages to be determined by a jury, pursuant to Fla. Stat. § 760.11(5); and,
- b. Any other relief deemed just and proper at a trial by jury.

JURY DEMAND

Plaintiff DARRELL WILLIAMS hereby demands a trial by jury, pursuant to the Florida Rule of Civil Procedure 1.430(b) on all issues so triable.

DATED this 15th day of November 2020.

Respectfully Submitted,

THE COCHRAN FIRM ORLANDO, LLC

/s/Michael G. Mann

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Attorney for Plaintiff.

EXHIBIT 1

Equal Employment Opportunity Commission Charge of Discrimination

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Darrell K. Williams
7278 Barque Drive
Tampa, FL 33607

From: Tampa Field Office
501 East Polk Street
Room 1000
Tampa, FL 33602

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
511-2020-03529	My Linh Kingston, Investigator	(813) 202-7937

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Evangeline Hawthorne

Evangeline Hawthorne,
Director

9/17/2020

(Date Mailed)

Enclosures(s)

cc: Dean Calloway
Associate General Counsel
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