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SUPERIOR COURT/LAW DIV.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAMDEN COUNTY
DOCKET NO.: CAM-L- -16

CRAIG SASHIHARA, Director,
Division on Civil Rights,

Plaintiff,

v.

RENT-A-CENTER, INC.,

Defendant.

Civil Action

COMPLAINT

Plaintiff, Craig Sashihara, Director of the Division on Civil Rights, with offices located at 140 E. Front Street, Sixth Floor, Trenton, New Jersey 08625, by way of Complaint against defendant, Rent-A-Center, Inc., alleges as follows:

PRELIMINARY STATEMENT

1. Defendant Rent-A-Center, Inc. (“Defendant” or “Rent-A-Center”) operates a national chain of rent-to-own stores, including many in the State of New Jersey. The New Jersey Division on Civil Rights received complaints from employees in

two different Rent-A-Center stores that they were subjected to racial slurs by a manager that created a hostile working environment.

2. The Division on Civil Rights conducted an investigation of the allegations, and found that the same assistant manager was the source of the racial slurs at the two stores. When Rent-A-Center's management was aware that this assistant manager employee made the racial slurs at the first store and that another employee was not comfortable working with her because of it, Rent-A-Center transferred the offending manager to a neighboring store. Despite reports that this assistant manager continued to make racial slurs in the second store, Rent-A-Center continued to employ this assistant manager.

3. The Division on Civil Rights brings this action alleging that Rent-A-Center engaged in unlawful discrimination based on race by failing to adequately prevent and remedy a hostile working environment caused by a manager's use of racial slurs.

JURISDICTION AND THE PARTIES

4. The Attorney General of New Jersey ("Attorney General") is charged with the responsibility of enforcing the Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 et seq. The Attorney General is authorized to proceed against any person to compel compliance with any provisions of the LAD or to prevent violations or attempts to violate any such provisions and to file a complaint in Superior Court alleging unlawful discriminatory conduct. N.J.S.A. 10:5-13.

5. The Director of the Division on Civil Rights ("Director") is charged with the responsibility of administering the LAD on behalf of the Attorney General. The Division on Civil Rights ("DCR") is charged, inter alia, with the responsibility of preventing and

eliminating discrimination in employment, housing and access to public accommodations, as well as preventing the interference with rights protected under the LAD. N.J.S.A. 10:5-4, 10:5-6, 10:5-12. This action is brought by the Director in his official capacity pursuant to his authority under N.J.S.A. 10:5-13.

6. Defendant Rent-A-Center, Inc. is a corporation formed under the laws of the State of Delaware, having its principal place of business at 5501 Headquarters Drive in Plano, Texas. Rent-A-Center operates approximately 2,600 rent-to-own stores nationwide, including more than 40 Rent-A-Center store locations in New Jersey.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. Rent-A-Center operates two separate store locations in Pennsauken, New Jersey, one located at 3939 Federal Street (known as Store 1853) and another located at 7941 South Crescent Boulevard (known as Store 344). Each store operates with four to six employees, and is run by a Store Manager, along with two or more Assistant Managers. Other employees who assist customers are referred to as Customer Account Representatives. Each Store Manager reports to a District Manager, who oversees approximately twelve stores. The District Manager reports to a Regional Director.

8. Aaron Berry first started working for Defendant in 2007 as a Customer Account Representative. He was promoted to the position of Assistant Manager in 2009, and to the position of Lead Assistant Manager of Store 1853 in 2012. At all times relevant to this complaint, Bill Ierley served as Store Manager of Store 1853, and Kim Singleton served as District Manager overseeing both Store 1853 and Store 344 as part of her district. Both Ierley and Singleton are Caucasian.

9. Berry reported to DCR that another employee at Store 1853, Assistant Manager Christina Martinez, routinely used the word "nigger" in the workplace. He estimates Martinez used the word in his presence twenty to twenty-five times, or possibly more. He said that Martinez used the word in front of Ierley, and that other times he complained about it to Ierley, but nothing was ever done about it. Berry told DCR that Martinez was more likely to use the slurs when she was angry.

10. Berry and Martinez had a work-related dispute on Friday, December 5, 2014. Berry stated that on that date he noticed Martinez was arranging for a new contract with a customer who had a past due balance on a previous contract, which was against company policy. Berry notified Ierley, who halted the new transaction with the customer. This angered Martinez, who said to Ierley in front of and in reference to Berry, "tell that black muthafucka to get you sales. I'm tired of that black bitch. You let that black nigger get you sales." Martinez then left the store and did not return that day.

11. Later that day, Singleton contacted Ierley, and Ierley told her that Martinez and Berry had an altercation. Berry was concerned that Ierley had not given any details of Martinez's conduct, so he called Singleton directly to give her the details of what had occurred. Berry says that he tried to tell Singleton how he was feeling about the conduct, but that she dismissed him and told him he needed to focus on "getting sales." Berry said that Singleton asked him if he could "get past this," and he said he could.

12. Berry said that he called Ierley the following day to tell him that he did not want to work that day because he did not want to be around Martinez after what had occurred the previous day. Berry said Ierley initially said he did not need to report, but

called him back and instructed him to report to work, as Martinez was not working that day.

13. Berry said that Singleton was in Store 1853 on Monday, December 8, 2014, and spoke to him about what happened the prior Friday. Berry told DCR that Singleton told him it was an "HR matter" and that she would fax statements from Berry, Martinez and Lerley to HR. She said someone "above her" would make a decision as to what would be done about it.

14. Berry told DCR that he was not satisfied with Singleton's response, and also became upset because he saw Singleton and Martinez laughing together in an office at Store 1853 on December 8. He said because of this he contacted Respondent's Coworker Relations (CWR) Department at corporate headquarters and spoke to David Carmichael in the CWR department. He told Carmichael that Martinez had cursed at him and used the "n-word." He also told Carmichael that while he told Singleton he could get past it, he did not mean that he was comfortable continuing to work with Martinez. He told Carmichael that this was not the first time Martinez acted this way, and that she has treated another African-American employee in the store in the same manner.

15. Respondent's CWR records indicate that Singleton told Berry on December 8, 2014, that Martinez would receive "corrective coaching" and told "if she does something like this again she will not be working here." Rent-A-Center provided DCR with a memo called "Performance Discussion Summary" dated December 8, 2014, to Martinez from Singleton. Under "Summary of problem discussed," it states that "There was an altercation on 12/5/14 where derogatory remarks were made to the LAM including cursing." Under "Agreed solution," it states "Christine agrees that was

unprofessional and there will not be another altercation in the store. This is a final warning this cannot happen again. If it does it will result in immediate termination." The memo is signed by both Singleton and Martinez.

16. Respondent provided DCR with copies of handwritten statements from Martinez, Ierley and four other employees of Store 1853. Among the statements, one employee wrote that while employees have arguments where they say things they should not say, but "we feel it's OK because we are like family." He wrote that when an employee gets mad at something someone else says, "we handle it and we apologize." Another employee wrote that Martinez had said the "F Word" and "N Word" to Berry. Another employee wrote that he had not seen an altercation similar to the one between Berry and Martinez on December 5 during the time he worked at Store 1853. All of the employee statements are dated December 9, 2014, which was the day after Singleton had already issued the Performance Discussion Summary to Martinez about the incident.

17. In an undated statement, Store Manager Ierley wrote: "On Friday December 5th at about 11:30a.m., Christine Martinez had an altercation involving Aaron Berry. During this altercation Christine used derogatory words and curses directed towards Aaron. Aaron gave no retaliation towards Christine. Christine left the job on her own accord and did not return."

18. Rent-A-Center obtained two written statements by Martinez. In a statement dated December 9, 2014, Martinez wrote about prior disputes with Berry but did not mention the December 5 incident. The second statement is dated December 15, 2014, and references the incident with Berry. She writes that she was writing up a

customer when Berry intervened and asked the customer why she was not paying her bill.

Martinez wrote in the statement:

I told Aaron [Berry] that sometimes he should handle things nicely not rude, and the lady [customer] asked who is he, the Manager, and I said yes. So I walked away and he [Berry] made a remark so we argued. I told Bill [Ierley] and everyone else, tell them niggas to do your sales. Never meant it any other way. Everyone in the store says that to each other. He started laughing from his office, so Bill came into the office and said calm down. I even called him [Bill Ierley] a nigga. I left the store, I texted Aaron [Berry] and said I was sorry, I never meant to disrespect him in any way. I never meant to hurt anyone's feelings.

19. After Berry's call to Carmichael explaining that he was not comfortable continuing to work with Martinez, Martinez was transferred a few days later to Respondent's Store 344. Singleton oversees Store 344 as well as Store 1853. Berry told DCR that after he called Carmichael, Singleton said to him, "I don't appreciate you going over my head."

20. Defendant told DCR that it took immediate action in response to Martinez's conduct, with Ierley sending Martinez home that day and suspending her. However, Ierley's own statement on the incident states that Martinez left the store after the incident on her own, presumably because she was angry at losing a sale because of Berry's intervention.

21. Berry said employees at Store 1853 and Store 344 need to work together as they share stock and need to communicate. He claims this has been difficult since if he calls Store 344 and Martinez answers, she will hang up on him.

22. Following the transfer of Martinez from Store 1853 to Store 344, Singleton conducted what was referred to as "Workplace Behavior Training" at both

stores. Berry and other employees told DCR that this was the first time they recall that Respondent conducted such training.

23. During DCR's investigation of Berry's complaint, DCR reviewed the written statements provided by Rent-A-Center and conducted its on interviews of employees at Store 1853. One employee told DCR that he has heard Martinez use the word "nigger" in the workplace on more than one occasion, although he himself was not necessarily offended by it. He said that several employees at Store 1853 use the word "nonchalantly" in the workplace. He said that Berry, however, did not engage in this behavior.

24. DCR received a verified complaint from an employee at Store 344, H.G., stating that Martinez used the word "nigger" towards him at Store 344 once she was transferred there. H.G. told DCR that Martinez used the word regularly at Store 344. H.G. said he complained to the Store Manager of Store 344 about Martinez's behavior, and that he was later terminated as a reprisal for complaining about the harassment. Rent-A-Center denied to DCR that H.G. complained about Martinez's conduct or that he was terminated for retaliatory reasons.

25. Rent-A-Center told DCR that H.G. did not complain to his manager about Martinez and that Martinez did not make the comments attributed to her by H.G. However, DCR obtained records from Rent-A-Center's internal investigation of H.G.'s complaint that include a report from one employee who told Defendant's EEO Investigator that he witnessed Martinez use the n-word earlier that year, and it may have been directed to H.G.

26. As part of the investigation of H.G.'s complaint, DCR interviewed employees at Store 344. One employee told DCR that he shared office space with H.G. and heard Martinez use the word "nigger" at Store 344 on at least two occasions; once it was directed at H.G. and another when referring to African-American employees while their backs were turned away from her. This employee also said that he witnessed H.G. go to the Store Manager's office and complain that Martinez was using the word "nigger" toward him. He said he did not know what the Store Manager did regarding H.G.'s report.

27. Notwithstanding H.G.'s complaint, and that another employee also reported to Rent-A-Center during its investigation of H.G.'s complaint that Martinez used racial slurs at Store 344, Martinez continued to work for Defendant at Store 344.

COUNT ONE

RACE DISCRIMINATION IN VIOLATION OF LAW AGAINST DISCRIMINATION

28. Plaintiff repeats the allegations of paragraphs 1 to 27 of the Complaint as if they had been set forth at length herein.

29. The LAD, at N.J.S.A. 10:5-12(a), prohibits, among other things, employers from discriminating against employees or job applicants on the basis of race, including the maintenance of a racially hostile working environment.

30. Rent-A-Center is an "employer" as that term is defined in the LAD.

31. Employees at Store 1853 and Store 344 were subjected to a racially hostile work environment due to Rent-A-Center's actions and inactions in addressing reports of racial slurs in the workplace, including its failure to have sufficient mechanisms to

prevent and remedy instances of racially hostile conduct, including but not limited to an assistant manager's use of racial slurs toward employees at Store 1852 and Store 344.

32. As a direct and proximate result of Defendant's LAD violations, Berry, and others, suffered damages, including but not limited to, humiliation, emotional distress, mental pain and anguish, lost wages, and continues to suffer losses in earning, job experience, retirement benefits, and other employee benefits that he would have received absent Defendant's unlawful conduct.

WHEREFORE, Plaintiff demands judgment against Defendant Rent-A-Center, Inc., and that the Court grant the following relief:

(a) Ordering Defendant to cease and desist from subjecting employees and job applicants to acts of discrimination;

(b) Ordering Defendant to submit to training and monitoring by DCR for a period of two years;

(c) Awarding compensatory damages to Berry, and similarly situated employees of Rent-A-Center for emotional distress and mental pain and humiliation caused by Defendant's discriminatory conduct;

(d) Awarding Plaintiff Director, Division on Civil Rights, punitive damages because of the intentional and willful nature of the Defendant's conduct, pursuant to N.J.S.A. 10:5-13;

(e) Assessing a civil monetary penalty for each violation of the LAD in accordance with N.J.S.A. 10:5-14.1a.;

(f) Awarding costs, including attorneys' fees, pursuant to N.J.S.A. 10:5-27.1; and

(g) Awarding such additional relief as the interests of justice may require.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: _____

James R. Michael
Deputy Attorney General

Dated: 12/21/16

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, James R. Michael, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiff.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: 

James R. Michael
Deputy Attorney General

Dated: 12/21/16

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to R. 4:10-2(b), demand is made upon each defendant that it disclose to plaintiff's counsel whether or not there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse such defendant for payments to satisfy any judgment rendered herein and provide plaintiff's counsel with those insurance agreements or policies, including, but not limited to all and any declaration sheets. This demand shall include not only primary coverage, but also all and any excess, catastrophe and umbrella policies.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By: _____

James R. Michael
Deputy Attorney General

Dated: 12/21/16

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action is not the subject of any other action between the parties. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action. There is presently pending an administrative complaint filed with the Division on Civil Rights against Rent-A-Center entitled Berry v. Rent-A-Center, DCR Docket No. ED27WB-65249. Complainant Berry has indicated that he will expeditiously withdraw his administrative complaint filed with the Division upon the filing of the instant action.

CHRISTOPHER S. PORRINO
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By:


James R. Michael
Deputy Attorney General

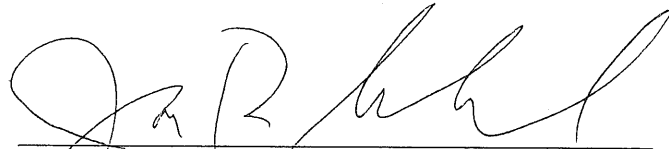
Dated: 12/21/16

RULE 4:5-1(b)(3) COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff New Jersey Division on
Civil Rights

By:

A handwritten signature in black ink, appearing to read 'JRM', written over a horizontal line.

James R. Michael
Deputy Attorney General

Dated: 12/21/14