

U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:12-cv-60758-RNS

Smith v. TBC Rental Group, Inc.
Assigned to: Judge Robert N. Scola, Jr
Referred to: Magistrate Judge Alicia M. Otazo-Reyes
Cause: 42:1983 Civil Rights (Employment Discrimination)

Date Filed: 04/27/2012
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff**Johnathan M. Smith**

represented by **Johnathan M. Smith**
1930 Grant Street
Hollywood, Fl 33020
954-391-3124
PRO SE

V.

Defendant**Tire Kingdom***TERMINATED: 06/04/2012*

represented by **Chad Kevin Lang**
Meyer Moser Lang LLP
2525 Ponce De Leon Blvd.
Suite 1080
Coral Gables, FL 33134
305-423-0600
Fax: 305-423-0599
Email: clang@mmlfirm.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**TBC Retail Group, Inc.**

represented by **Chad Kevin Lang**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/27/2012	<u>1</u>	COMPLAINT against Tire Kingdom. Filing fee \$ 350.00. IFP Filed, filed by Johnathan M. Smith. (Attachments: # <u>1</u> Civil Cover Sheet)(mg) (Entered: 04/27/2012)
04/27/2012	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Johnathan M. Smith. (mg) (Entered: 04/27/2012)
04/27/2012	<u>3</u>	Judge Assignment to Judge Robert N. Scola, Jr and Magistrate Judge Robin S. Rosenbaum (mg) (Entered: 04/27/2012)
04/30/2012	<u>4</u>	Order Granting Plaintiff's Motion to Proceed In Forma Pauperis and Directing Service by U.S. Marshal. Signed by Judge Robert N. Scola, Jr on 4/30/2012. (jcy) (Entered: 04/30/2012)
05/07/2012	<u>5</u>	Summons Issued as to Tire Kingdom. (cqs) (Entered: 05/07/2012)
05/25/2012	<u>6</u>	NOTICE of Attorney Appearance by Chad Kevin Lang on behalf of Tire Kingdom (Lang, Chad) (Entered: 05/25/2012)
05/29/2012	<u>7</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint Tire Kingdom served on 5/23/2012, answer due 6/13/2012. (cqs) (Entered: 05/29/2012)
06/01/2012	<u>8</u>	AMENDED COMPLAINT against TBC Retail Group, Inc., filed by Johnathan M. Smith.(cbr) Modified text on 6/5/2012 to reflect correct defendant name (TBC

		Retail Group, Inc.) per <u>11</u> Order (ral). (Entered: 06/04/2012)
06/01/2012	<u>9</u>	Summons Issued as to TBC Retail Group, Inc.. (cbr) (Entered: 06/04/2012)
06/01/2012	<u>10</u>	NOTICE of Change of Address by Johnathan M. Smith (address updated) (cbr) (Entered: 06/04/2012)
06/05/2012	<u>11</u>	ORDER on <u>8</u> Amended Complaint; granting Plaintiff's request to amend by interlineation. The initial Complaint shall now read as if it were against TBC Retail Group, Inc. instead of Tire Kingdom. Signed by Judge Robert N. Scola, Jr on 6/4/2012. (ral) (Entered: 06/05/2012)
06/13/2012	<u>12</u>	<i>Defendant's</i> ANSWER and Affirmative Defenses to Amended Complaint by TBC Retail Group, Inc..(Lang, Chad) (Entered: 06/13/2012)
06/13/2012	<u>13</u>	Corporate Disclosure Statement by TBC Retail Group, Inc. (Lang, Chad) (Entered: 06/13/2012)
06/14/2012	<u>14</u>	ORDER PROVIDING INSTRUCTIONS TO PRO SE LITIGANT Signed by Judge Robert N. Scola, Jr on 6/14/2012. (ail) (Entered: 06/15/2012)
06/15/2012	<u>15</u>	ORDER REQUIRING DISCOVERY AND SCHEDULING CONFERENCE AND ORDER REFERRING DISCOVERY MATTERS TO THE MAGISTRATE. Signed by Judge Robert N. Scola, Jr on 6/14/2012. (ail) (Entered: 06/15/2012)
07/02/2012	<u>16</u>	Clerks Notice of Magistrate Judge Assignment pursuant to Administrative Order 2012-53, to Magistrate Judge Alicia M. Otazo-Reyes. Magistrate Judge Robin S. Rosenbaum no longer assigned to case. (mb) (Entered: 07/02/2012)
07/20/2012	<u>17</u>	SCHEDULING REPORT – Rule 26(f) by TBC Retail Group, Inc. (Lang, Chad) (Entered: 07/20/2012)
07/20/2012	<u>18</u>	SCHEDULING ORDER And Order Of Referral To Mediation Jury Trial set for 8/12/2013 before Judge Robert N. Scola Jr.. Calendar Call set for 8/6/2013 09:00 AM in Miami Division before Judge Robert N. Scola Jr.. Amended Pleadings due by 8/24/2012. Expert Discovery due by 5/26/2013. Fact Discovery due by 3/27/2013. Joinder of Parties due by 8/24/2012. Mediation Deadline 4/16/2013. In Limine Motions due by 6/6/2013. Dispositive Motions due by 8/11/2013. Signed by Judge Robert N. Scola, Jr on 7/20/2012. (cqs) (Entered: 07/23/2012)
07/27/2012	<u>19</u>	AMENDED COMPLAINT against TBC Retail Group, Inc. filed in response to Order Granting Motion for Leave, filed by Johnathan M. Smith.(cqs) (Entered: 07/30/2012)
08/13/2012	<u>20</u>	Defendant's MOTION to Strike <u>19</u> Amended Complaint and Incorporated Memorandum of Law by TBC Retail Group, Inc.. Responses due by 8/30/2012 (Lang, Chad) Modified text on 8/14/2012 (asl). (Entered: 08/13/2012)
08/14/2012	<u>21</u>	ORDER denying <u>20</u> Motion to Strike. See attached ORDER for details. Signed by Judge Robert N. Scola, Jr. on 8/14/2012. (jky) (Entered: 08/14/2012)
08/15/2012	<u>22</u>	<i>Defendant's</i> ANSWER and Affirmative Defenses to Amended Complaint by TBC Retail Group, Inc..(Lang, Chad) (Entered: 08/15/2012)

(1" from top of page, and centered, begin title of Court)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____ -CV- _____
(Judge's Last Name/Magistrate's Last Name)

12-60758-Civ-Scola/Rosenbaum

Johnathan M Smith
(Full Name of Plaintiff/s)

Plaintiff (s)

vs. Tiro Kingdom

(Full Name of Defendant/s)

Defendant(s)

FILED BY [Signature]
2012 APR 27 PH 2:04
CLERK OF DISTRICT COURT
S.D. OF FLA.-FTL

Complaint

TITLE OF DOCUMENT

I, Johnathan Matthew Smith [plaintiff or defendant], in the above styled cause, I am a male. I was hired by Tiro Kingdom May 25, 2011 as a mechanic. I was sexually harrassed by Philip J. Tomarchia store manager. On a couple occasions Mr. Tomarchia made sexually derogatory comments to me. I complained to Mike R. Ore, District Manager, about

the sexual harassment, Mr Ore has not taken any action to correct the hostile working environment; in retaliation, I was written up and threatened with termination. I also complained to Human Resources but to no avail.

I was not told a reason for the sexual harassment. After I complained to management I was written up and was told that I will be terminated in four weeks or more if I don't increase productivity in a far away store I was transferred to that in the past that only produce low productivity and ~~that~~ I believe the Respondent discriminated against me because of my race, Black skin, in violation of Title VII of the Civil Rights Act of 1964, as amended. I am asking for up to \$300,000 of a law suit because I am not the same as a person mentally, my life style change, loose my home and a loose in income. There are other paper work attached to support my law suit.

04-27-2012
Dated: Month, day, year

Respectfully submitted,

Johnathan Matthew Smith
Name of Filer

Attorney Bar Number (if applicable)

Attorney E-mail Address (if applicable)

Johnathan Matthew Smith
Firm Name (if applicable)

4401 Sw 20th street
Street Address

Hollywood FL 33023
City, State, Zip Code

Telephone: 954-391-3124

Facsimile: _____

Attorneys for Plaintiff/Defendant [Party Name(s)]
(if applicable)

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by _____

_____ [specify method of service] on _____ [date]

on all counsel or parties of record on the Service List below.

Johnathan Matthew Smith
Signature of Filer

SERVICE LIST

Party or Attorney Name

Party or Attorney Name

Attorney E-mail Address (if applicable)

Attorney E-mail Address (if applicable)

Firm Name (if applicable)

Firm Name (if applicable)

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

Telephone: _____

Telephone: _____

Facsimile: _____

Facsimile: _____

Attorneys for Plaintiff/Defendant
[Party's Name(s)] (if applicable)

Attorneys for Plaintiff/Defendant
[Party's Name(s)] (if applicable)

March 20th 2012
Johnathan Smith
4401 SW 20th Street Unit # 4
Hollywood FL.
33023 Phone: (954) 391-3124

Attention: Deborah Bauer
Johnathan VS. Tire Kingdom
Case # 846-2012-20046

To Deborah Bauer,
My name is Mr. Johnathan Smith. I am writing you this letter to send some paper work.

1. I attached a copy of my schedule and time sheet as proof of when I was off on December 29th 2011 when I had a meeting with two personnel from Human Resources, Philip J. Tomarchio (Store Manager) that had made the harassing derogatory comments to me, and Mike R. Ore (District Manager). I had complained to Mike R. Ore (District Manager) before the meeting on December 29, 2011 about the sexual harassments from Philip J. Tomarchio (Store Manager). You will see no action was taken, because the time sheet shows the very next day after the meeting on December 29th 2011 to address my complaint, I was still schedule to work with Philip J. Tomarchio (Store Manager). This is proof that my complaint about the hostile working environment was not addressed.

2. I attached a copy of my schedule and time sheet showing the start date of the week that I was transferred to a further store as retaliation (Store# 75 of Commercial). Instead of addressing the issue with Philip J. Tomarchio (Store Manager) in addition to being transferred on December 31, 2011 I was presented with displanary action by Mike R. Ore (District Manager) for a write up on December 17, 2011 after I had made the complaint to him, and I was told I will be given 4 weeks or more to be monitored for mandatory increase productivity at store and field management level and if I don't increase my productivity it will result in termination of my employment.

3. I attach a copy of all my emails sent to Human Resources about my complaint.

4. I made a police report on December 29th 2011 to Deputy Andrew Taylor
Case # 161112002335 against Philip J. Tomarchio after the meeting because the hostile working environment was not addressed.

5. Attached is a copy of the write up that was giving to me to sign by Mike R. Ore (District Manager) and I was told at that time I will be fired if I do not sign it.

6. One of the witnesses named and number who heard Philip J. Tomarchio (Store Manager) sexually comments is **Mr. Noël Hernandez his phone number is (305)491-3810.**

EEOC Form 161-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Johnathan M. Smith
4401 Sw 20th Street, Unit 4
Plantation, FL 33023

From: Miami District Office
2 South Biscayne Blvd
Suite 2700
Miami, FL 33131

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

EEOC Charge No. 846-2012-20046
EEOC Representative Deborah Bauer, Senior Federal Investigator
Telephone No. (305) 808-1756

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court 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.)

- More than 180 days have passed since the filing of this charge.
Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
The EEOC is terminating its processing of this charge.
The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought 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.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Signature of Malcolm S. Medley
for MALCOLM S. MEDLEY, District Director

07 MAR 12
(Date Mailed)

Enclosures(s)

cc: Susan Williams, Human Resources Manager
TIRE KINGDOM
823 Donald Ross Road
Juno Beach, FL 33408

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Store Schedule- Tire Kingdom #260 (cooper city)

Manager Hours		58.50		Sales Hours		92.50			
Mechanic Hours		120.00		Tech Hours		160.00			
Store #	260	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Total
Date		12/24	12/25	12/26	12/27	12/28	12/29	12/30	
MANAGEMENT TEAM									
PHILIP Manager	In Out Lunch	6:30 AM 1:00 PM		6:30 AM 5:00 PM	6:30 AM 5:00 PM		6:30 AM 5:00 PM	6:30 AM 5:00 PM	58.50
ROBIN Service Manager	In Out Lunch	8:00 AM 6:00 PM 1.00		9:00 AM 7:00 PM 1.00	9:00 AM 7:00 PM 1.00	7:00 AM 5:00 PM 1.00		9:00 AM 7:00 PM 1.00	53.00
Kyle Sales	In Out Lunch	9:00 AM 7:00 PM 1.00				10:30 AM 7:00 PM 1.00	10:00 AM 7:00 PM 1.00	11:00 AM 8:00 PM 1.00	39.50
AUTO TECHNICIANS									
WILLIE Mechanic 12987534	In Out Lunch	7:00 AM 5:00 PM 1.00		7:00 AM 4:00 PM 1.00	7:00 AM 4:00 PM 1.00	7:00 AM 4:00 PM 1.00	7:00 AM 4:00 PM 1.00		40.00
MIKE Mechanic	In Out Lunch	10:00 AM 7:00 PM 1.00		10:00 AM 7:00 PM 1.00			10:00 AM 7:00 PM 1.00	7:00 AM 4:00 PM 1.00	40.00
John Smith 2880851	In Out Lunch	9:00 AM 6:00 PM 1.00			10:00 AM 7:00 PM 1.00	10:00 AM 7:00 PM 1.00		10:00 AM 7:00 PM 1.00	40.00
GENERAL SERVICE TECHNICIAN									
Noel Hernandez 12982161	In Out Lunch	10:00 AM 7:00 PM 1.00		9:00 AM 7:00 PM 1.00	9:00 AM 7:00 PM 1.00			12:00 PM 8:00 PM 1.00	40.00
Thomas Horton 12988145	In Out Lunch	7:00 AM 5:00 PM 1.00		8:00 AM 6:00 PM 1.00		8:00 AM 4:00 PM 1.00	8:00 AM 6:00 PM 1.00		40.00
Daniel Vicente 12988929	In Out Lunch	8:00 AM 5:00 PM 1.00			9:00 AM 5:00 PM 1.00		8:00 AM 4:00 PM 1.00	8:00 AM 6:00 PM 1.00	38.00
Bryon Armstrong	In Out Lunch	10:00 AM 7:00 PM 1.00		4:00 PM 7:00 PM	4:00 PM 7:00 PM	3:00 PM 7:00 PM		3:00 PM 7:00 PM	30.00
<p>ALL ASSOCIATES MUST CLOCK IN AND OUT FOR LUNCH EVERY DAY.</p> <p>NO EXCEPTIONS!</p>									

Store # 260 Tire Kingdom #260 (cooper city)									
Manager Hours		57.00		Sales Hours		91.50			
Mechanic Hours		80.00		Tech Hours		153.00			
Store #		Sat	Sun	Mon	Tue	Wed	Thu	Fri	Total
Date		12/31	1/1	1/2	1/3	1/4	1/5	1/6	
MANAGEMENT TEAM									
PHILIP Manager	In	6:30 AM	8:00 AM	6:30 AM	9:00 AM		6:30 AM	6:30 AM	57.00
	Out	2:00 PM	4:00 PM	5:00 PM	7:00 PM		5:00 PM	5:00 PM	
	Lunch								
ROBIN Service Manager	In	8:00 AM	9:00 AM	9:00 AM	7:00 AM	7:00 AM		9:00 AM	52.00
	Out	6:00 PM	5:00 PM	7:00 PM	5:00 PM	5:00 PM		7:00 PM	
	Lunch	1.00	1.00	1.00	1.00	1.00		1.00	
Kyle Sales	In	9:00 AM	10:00 AM			10:30 AM	10:00 AM	11:00 AM	39.50
	Out	7:00 PM	6:00 PM			7:00 PM	7:00 PM	8:00 PM	
	Lunch	1.00	1.00			1.00	1.00	1.00	
AUTO TECHNICIANS									
WILLIE Mechanic 12987534	In	7:00 AM		7:00 AM	7:00 AM	7:00 AM	7:00 AM		40.00
	Out	5:00 PM		4:00 PM	4:00 PM	4:00 PM	4:00 PM		
	Lunch	1.00		1.00	1.00	1.00	1.00		
MIKE Mechanic	In	10:00 AM	8:00 AM	10:00 AM			10:00 AM	7:00 AM	40.00
	Out	7:00 PM	6:00 PM	7:00 PM			7:00 PM	4:00 PM	
	Lunch	1.00	1.00	1.00			1.00	1.00	
GENERAL SERVICE TECHNICIAN									
Noel Hernandez 12982161	In	10:00 AM	8:00 AM		10:00 AM	10:00 AM		10:00 AM	40.00
	Out	7:00 PM	4:00 PM		7:00 PM	7:00 PM		8:00 PM	
	Lunch	1.00	1.00		1.00	1.00		1.00	
Thomas Horton 12988145	In	7:00 AM	8:00 AM			8:00 AM	9:00 AM		31.00
	Out	5:00 PM	4:00 PM			4:00 PM	6:00 PM		
	Lunch	1.00	1.00			1.00	1.00		
Daniel Vicente 12988929	In	8:00 AM		8:00 AM	8:00 AM		8:00 AM	8:00 AM	40.00
	Out	5:00 PM		6:00 PM	4:00 PM		4:00 PM	6:00 PM	
	Lunch	1.00		1.00	1.00		1.00	1.00	
Bryon Armstrong	In	10:00 AM	8:00 AM	4:00 PM	4:00 PM	3:00 PM		3:00 PM	30.00
	Out	7:00 PM	6:00 PM	7:00 PM	7:00 PM	7:00 PM		8:00 PM	
	Lunch	1.00	1.00						

57050

TIRE KINGDOM, INC
TIME ENTRY REPORT / STORE

From: 12/31/11 To: 01/06/12

Date: 2/23/12
Time: 16:21:37
Page: 1

Score #: 75 075 POWER LINE ROAD
Employee: 49622 CARTER, CLINTON R.

Date	Day	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	No Lunch	Total
12/31/11	Sat	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/01/12	Sun	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/02/12	Mon	000	07:44	18:01	000	00:00	00:00	000	00:00	00:00		10:17
01/03/12	Tue	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/04/12	Wed	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/05/12	Thu	001	09:08	16:58	001	15:55	18:11	000	00:00	00:00		08:13
01/06/12	Fri	001	00:00	00:00	001	00:00	00:00	000	00:00	00:00		00:00
												Total/Week = 026:44

I understand that the time reflected above is accurate and represents the hours that I have actually worked during this pay period. I further understand that an (*) next to the day, indicates that an adjustment has been made and is accurate based on the information I have submitted; Signature _____
I attest that during this pay period I was not injured or made ill from any job related occurrence; Signature _____

Date	Day	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	No Lunch	Total
12/31/11	Sat	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/01/12	Sun	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/02/12	Mon	001	07:20	16:35	001	00:00	00:00	000	00:00	00:00		09:35
01/03/12	Tue	001	07:20	15:13	001	16:21	16:52	000	00:00	00:00		08:24
01/04/12	Wed	001	07:05	12:45	001	13:44	15:07	000	00:00	00:00		08:03
01/05/12	Thu	001	08:10	12:47	001	13:34	15:48	000	00:00	00:00		07:51
01/06/12	Fri	001	07:40	13:07	001	14:29	15:30	000	00:00	00:00		07:28
												Total/Week = 044:57

I understand that the time reflected above is accurate and represents the hours that I have actually worked during this pay period. I further understand that an (*) next to the day, indicates that an adjustment has been made and is accurate based on the information I have submitted; Signature _____
I attest that during this pay period I was not injured or made ill from any job related occurrence; Signature _____

Date	Day	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	No Lunch	Total
12/31/11	Sat	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/01/12	Sun	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/02/12	Mon	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/03/12	Tue	001	07:01	18:14	001	18:15	18:33	000	00:00	00:00		11:31
01/04/12	Wed	001	07:03	12:31	001	12:59	15:48	000	00:00	00:00		08:17
01/05/12	Thu	001	07:06	12:15	001	12:45	15:09	000	00:00	00:00		08:33
01/06/12	Fri	001	07:03	11:58	001	12:51	15:49	000	00:00	00:00		07:53
												Total/Week = 036:14

I understand that the time reflected above is accurate and represents the hours that I have actually worked during this pay period. I further understand that an (*) next to the day, indicates that an adjustment has been made and is accurate based on the information I have submitted; Signature _____
I attest that during this pay period I was not injured or made ill from any job related occurrence; Signature _____

Date	Day	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	Pay Type	Time In	Time Out	No Lunch	Total
12/31/11	Sat	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/01/12	Sun	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/02/12	Mon	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/03/12	Tue	001	07:01	18:14	001	18:15	18:33	000	00:00	00:00		11:31
01/04/12	Wed	001	07:03	12:31	001	12:59	15:48	000	00:00	00:00		08:17
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01/02/12	Mon	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
01/03/12	Tue	001	07:01	18:14	001	18:15	18:33	000	00:00	00:00		11:31
01/04/12	Wed	001	07:03	12:31	001	12:59	15:48	000	00:00	00:00		08:17
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01/02/12	Mon	000	00:00	00:00	000	00:00	00:00	000	00:00	00:00		00:00
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I attest that during this pay period I was not injured or made ill from any job related occurrence; Signature _____

Subject: [No Subject]
From: Johnathan Smith (johnsmith81@yahoo.com)
To: kbonneau@tbccorp.com;
Date: Thursday, December 29, 2011 7:55 PM

Philip my store manager in store 260 have verbally harased me saying if it haning and dangaly in the middle or soft to the right and when I was checking the oil level on a car Phillip came over and said that could be use as a probe in the butt to me Johnathan Smith and I have told him to stop and he treating to fire me and i had seen him fire 3 other in two weeks time in the pass and the last time he did it was on November 17 2011. Which we talked about in the meet between Phillip the store manager of tire kingdom store 260, Mike the district manager and H/R representatives.

Sent from Yahoo! Mail on Android

Subject: [No Subject]

From: Johnathan Smith (johnsmith81@yahoo.com)

To: kbonneau@tbccorp.com;

Date: Friday, December 16, 2011 6:32 PM

To Whom this may concern:

You asked me when my day off is and I found out today Friday 16, 2011 that my day off is Monday 19, 2011. You can contact me at 954-391-3124 to set up a conference time to meet as agreed to my request please.

Thank You.

Subject: Request Conference

From: Johnathan Smith (johnsmith81@yahoo.com)

To: kbonneau@tbccorp.com;

Date: Tuesday, December 13, 2011 4:21 PM

To whom it may concern:

I want to request a conference between a H/R representative and my Store Manager Philip from #260 (Cooper City)

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<p>I. (a) PLAINTIFFS <i>Jonathan M. Smith</i></p> <p>(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p>	<p>DEFENDANTS <i>Tire Kingdom</i></p> <p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Incorporated or Principal Place of Business in Another State</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>Foreign National</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business in This State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business in Another State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign National	<input type="checkbox"/>	<input type="checkbox"/>
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business in This State	<input type="checkbox"/>	<input type="checkbox"/>																				
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business in Another State	<input type="checkbox"/>	<input type="checkbox"/>																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign National	<input type="checkbox"/>	<input type="checkbox"/>																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 State Trust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Reporting <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Allon Derelict <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): *Title VII of the Civil Rights Act of 1964, as amended*

LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS *up to \$300,000* CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: *Jonathan M. Smith* DATE: *04-27-2012*

FOR OFFICE USE ONLY

AMOUNT _____ RECEIPT # _____ IFP _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

(d) Choose one County where Action Arose.

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States District Courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT

for the

12-60758-Civ-Scola/Rosenbaum

Jonathan M Smith
Plaintiff/Petitioner

Tire Kingdom
Defendant/Respondent

Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. If incarcerated. I am being held at:

If employed there, or have an account in the institution, I have attached to this document a statement certified by appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for an institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. If not incarcerated. If I am employed, my employer's name and address are:

My gross pay or wages are: \$ 800 every 2 weeks, and my take-home pay or wages are: \$ 592 every 2 weeks per (specify pay period) every 2 weeks

FILED BY [Signature] APR 27 PM 2:04 DIST. CT. FLA-FTL

3. Other Income. In the past 12 months, I have received income from the following sources (check all that apply):

- (a) Business, profession, or other self-employment [] Yes [x] No
(b) Rent payments, interest, or dividends [] Yes [x] No
(c) Pension, annuity, or life insurance payments [] Yes [x] No
(d) Disability, or worker's compensation payments [] Yes [x] No
(e) Gifts, or inheritances [] Yes [x] No
(f) Any other sources [] Yes [x] No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$ 50.00

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (describe the property and its approximate value): 97 GMC VAN 300.00 it was given to me.

99 Turus 500.00

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (describe and provide the amount of the monthly expense):

child support 649.00 month
130.00 light bill because I am late due to job status
800 in rent but I just loose my Apt. 04-26-2012
~~credit card~~ ~~credit card~~ ~~credit card~~

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support: 649.00 month

Two kids Zoe & Johnathan Smith

8. Any debts or financial obligations (describe the amounts owed and to whom they are payable):

1,500 of Apt Eviction money
~~1,500~~ Doctor Bills 2,000
Dental Bills 500.00
credit card 1,200

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 04-27-2012


Applicant's signature
Johnathan Smith
Printed name

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-60758-Civ-SCOLA

JOHNATHAN M. SMITH,

Plaintiff,

vs.

TIRE KINGDOM,

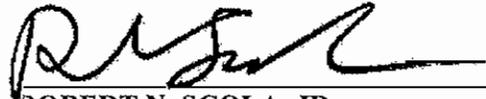
Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED
IN FORMA PAUPERIS AND DIRECTING SERVICE BY U.S. MARSHAL**

THIS MATTER is before the Court on the Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* [ECF No. 2], filed by Johnathan M. Smith, *pro se*. Upon careful consideration, it is hereby **ORDERED and ADJUDGED** as follows:

- 1) The Plaintiff's Motion is **GRANTED**.
- 2) Within fourteen days of this Order, the Plaintiff shall file with the Court a Summons indicating the address of the Defendant.
- (1) Service of the Summons and Complaint in this case shall be effected by the U.S. Marshal, consistent with Federal Rule of Civil Procedure 4(c)(3). Pursuant to Federal Rules of Civil Procedure 4, the U.S. Marshal shall direct service by registered or certified mail to the Defendant, Tire Kingdom, at the address indicated in the Summons. Service of process shall be perfected within forty-five days of the Plaintiff filing the fully completed Summons. The Marshal shall file a Return of Service indicating the date and manner in which service was perfected. In the event that the Marshall is unable to perfect service within this time, notice must be filed with the Court explaining the cause of the delay.

DONE and ORDERED in chambers, at Miami, Florida, on April 30, 2012.



ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:

Robin S. Rosenbaum, U.S. Magistrate Judge
U.S. Marshal's Service, Civil Section
Pro se Plaintiff Johnathan M. Smith

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Johnathan M. Smith)
Plaintiff)

v.)

Tira Kingdom)
Defendant)

Civil Action No.
12-CV-60758-RNS #3

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Tira Kingdom
823 Donald Ross Road
Juno Beach, FL 33408

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Johnathan M. Smith
1930 Grant St.
Hollywood, FL 33020-3544

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 05-07-2012


Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2012, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

/s/ Chad K. Lang, Esq.
Attorneys for Defendant

SERVICE LIST

Johnathan M. Smith, *pro se*
1930 Grant Street
Hollywood, FL 33020
Via U.S. Mail

USM-285 is a 5-part form. Fill out the form and print 5 copies. Sign as needed and route as specified below.

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF JOHNATHAN M. SMITH	COURT CASE NUMBER 12-60758-RNS MAY 29 2012 TYPE OF PROCESS SUMMONS AND COMPLAINT (IFP)
DEFENDANT TIRE KINGDOM	
SERVE AT {	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF BUSINESS, DISTRICT OF ORIGIN, DISTRICT OF SEIZURE OR CONDEMNATION TIRE KINGDOM
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 823 Donald Ross Road Juno Beach, FL 33408

FILED
STEVEN W. LARMOE
U.S. MARSHAL
S.D. OF FLA. - W.R.B.

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	Number of process to be served with this Form 285	1
Johnathan M. Smith 1930 Grant Street Hollywood, FL 33020-3544	Number of parties to be served in this case	1
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold Fold

Please serve the process.

Signature of Attorney other Originator requesting service on behalf of:	<input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
---	--	------------------	------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process 1	District of Origin No. 04	District to Serve No. 04	Signature of Authorized USMS Deputy or Clerk <i>[Signature]</i>	Date 05/18/2012
--	--------------------	------------------------------	-----------------------------	--	--------------------

I hereby certify and return that I have personally served, I have legal evidence of service, I have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above) <i>Barbara Autenanger Receptionist</i>	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode
Address (complete only different than shown above)	Date 5/23/12
	Time 10:00 <input checked="" type="checkbox"/> am <input type="checkbox"/> pm
	Signature of U.S. Marshal or Deputy <i>[Signature]</i> P. Jimenez

Service Fee	Total Mileage Charges including endeavors	Forwarding Fee	Total Charges	Advance Deposits	Amount owed U.S. Marshal* or (Amount of Refund*) \$0.00
-------------	---	----------------	---------------	------------------	---

REMARKS:
served @ corporate office.

(1" from top of page, and centered, begin title of Court)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12 -CV- 60758 RNS
(Judge's Last Name/Magistrate's Last Name)

Johnathan M. Smith

(Full Name of Plaintiff/s),

Plaintiff (s)

vs. TBC RETAIL
GROUP, INC.

(Full Name of Defendant/s),

Defendant(s).

Amendment Complaint
TITLE OF DOCUMENT

I, Johnathan M. Smith [plaintiff or defendant], in the above styled
cause, making a amendment complaint
to correct the defendant's name
From: Tire Kingdom.
TO: TBC RETAIL GROUP, INC.

FILED
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

2012 JUN -1 PM 2:05

FILED BY MB

06-01-2012
Dated: Month, day, year

Respectfully submitted,

Johnathan M. Smith
Name of Filer

Attorney Bar Number (if applicable)

Attorney E-mail Address (if applicable)

Firm Name (if applicable)

1930 Grant Street
Street Address

Hollywood FL 33020-3544
City, State, Zip Code

Telephone: 954-391-3124

Facsimile: _____

Attorneys for Plaintiff/Defendant [Party Name(s)]
(if applicable)

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by _____

_____ [specify method of service] on 6-01-2012 [date]

on all counsel or parties of record on the Service List below.

Johnathan M. Smith
Signature of Filer

SERVICE LIST

Chad K. Lang
Party or Attorney Name

TBC RETAIL GROUP, INC.
Party or Attorney Name

clang@mmlfirm.com
Attorney E-mail Address (if applicable)

Attorney E-mail Address (if applicable)

Meyer Moser Lang LLP
Firm Name (if applicable)

Firm Name (if applicable)

2525 Ponce Leon Blvd.
Street Address Suite 1080

823 DONALD ROSS ROAD
Street Address

Coral Gables, Florida 33134
City, State, Zip Code

TWNO BEACH FL 33408
City, State, Zip Code

Telephone: 786/497-7071
305/1423-0595

Telephone: _____

Facsimile: _____

Facsimile: _____

Attorneys for Plaintiff/Defendant
[Party's Name(s)] (if applicable)

Attorneys for Plaintiff/Defendant
[Party's Name(s)] (if applicable)

AO 440 (Rev. 12/09) Summons in a Civil Action

FILED BY

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

2012 JUN -1 PM 2:14
STEPHEN M. LANGRISH
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

Johnathan M. Smith
Plaintiff

v.

TBC RETAIL GROUP, INC.
Defendant

Civil Action No. 12-60758-Cv-Scola

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Tire Kingdom care of MAYER MOSER LANG LLP Chad K. Lane
2525 Ponce de Leon Blvd, Suite 1080
Coral Gables, Florida 33134

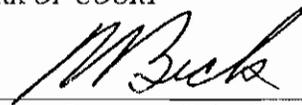
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Johnathan M. Smith
1930 Grant Street
Hollywood FL 33020-3544

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT



Signature of Clerk or Deputy Clerk

Date: 06-01-2012

(1" from top of page, and centered, begin title of Court)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12 -CV- 60758RNS
(Judge's Last Name/Magistrate's Last Name)

Johnathan M. Smith

(Full Name of Plaintiff/s)

Plaintiff (s)

vs.

TBC RETAIL
GROUP, INC.

(Full Name of Defendant/s)

Defendant(s)

FILED BY: JK
2012 JUN - 1 PM 12:59
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

Notice of Change of Address
TITLE OF DOCUMENT

I, Johnathan M. Smith [plaintiff or defendant], in the above styled
cause, making a change of address from:
4401 Sw 20th street unit 4 Hollywood FL 33023
TO: 1930 Grant Street Hollywood
FL 33020

Dated: Month, day, year

Respectfully submitted,

Name of Filer

Attorney Bar Number (if applicable)

Attorney E-mail Address (if applicable)

Firm Name (if applicable)

Street Address

City, State, Zip Code

Telephone: _____

Facsimile: _____

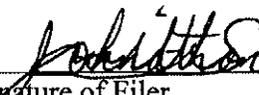
Attorneys for Plaintiff/Defendant [Party Name(s)]
(if applicable)

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by _____

_____ [specify method of service] on 6-01-12 [date]

on all counsel or parties of record on the Service List below.



Signature of Filer

SERVICE LIST

Johnathan M. Smith
Party or Attorney Name

Party or Attorney Name

Attorney E-mail Address (if applicable)

Attorney E-mail Address (if applicable)

Firm Name (if applicable)

Firm Name (if applicable)

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

Telephone: _____

Telephone: _____

Facsimile: _____

Facsimile: _____

Johnathan
Attorneys for Plaintiff/Defendant
[Party's Name(s)] (if applicable)

Attorneys for Plaintiff/Defendant
[Party's Name(s)] (if applicable)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-60758-Civ-SCOLA

JOHNATHAN M. SMITH,

Plaintiff,

vs.

TIRE KINGDOM,

Defendant.

ORDER ON AMENDED COMPLAINT

THIS MATTER is before the Court on an independent review of the record. The Plaintiff has filed what purports to be an Amended Complaint [ECF No. 8]. The filing is a single handwritten page and its stated purpose is solely to “correct the Defendant’s name” from Tire Kingdom to TBC Retail Group, Inc. The Plaintiff makes no alterations to any substantive allegations or claims. As such, the Court construes this filing as a request to permit amendment by interlineation.

“Subject to the discretion of the court, and in the absence of a statute or rule of court providing otherwise, amendment by interlineation is considered permissible, particularly in the case of an amendment of a trivial or formal nature.” *Woodburn v. Fla. Dep’t of Children & Family Servs.*, 2011 WL 7661425, at *19 (S.D. Fla. Dec. 1, 2011) (quoting 71 C.J.S. Pleading § 437 (2011)). Interlineation amendment may be used to fix errors involving the proper name of a party. *See id.* Accordingly, it is hereby **ORDERED and ADJUDGED** that Plaintiff’s request to amend by interlineation is **GRANTED**. The initial Complaint shall now read as if it were against TBC Retail Group, Inc. instead of Tire Kingdom.

DONE and ORDERED in chambers, at Miami, Florida, on June 4, 2012.



ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Robin S. Rosenbaum, U.S. Magistrate Judge
U.S. Marshal’s Service, Civil Section
Pro se Plaintiff Johnathan M. Smith

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12-cv-60758-RNS

JOHNATHAN M. SMITH,

Plaintiff,

v.

TBC RETAIL GROUP, NC,

Defendant.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant, TBC RETAIL GROUP, INC. ("Defendant"), submits this Answer and Affirmative Defenses to the Complaint¹ filed against it by Plaintiff, JOHNATHAN M. SMITH (hereinafter "Plaintiff"), and states as follows:

ANSWER

1. Defendant admits the allegations contained in sentence 1 of the Complaint.
2. Defendant denies the allegations contained in sentence 2 of the Complaint.

Defendant admits that TBC Retail Group, Inc. d/b/a Tire Kingdom hired Plaintiff as a Mechanic on or about May 25, 2011.

3. Defendant denies the allegations contained in sentence 3 of the Complaint and demands strict proof thereof.

¹ Plaintiff filed a document titled "Amendment Complaint," (D.E. #8) changing only the name of the Defendant to its proper legal name and not referencing nor incorporating the language in his original Complaint (D.E. #1). Under the language of the Court's Order on Amended Complaint (D.E. #11), Plaintiff's filing is being considered a request to amend by interlineation. Accordingly, in its Answer, Defendant refers to Plaintiff's claims as those stated in his "Complaint."

4. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 4, and therefore denies them and demands strict proof thereof, including that Philip Tomarchio's alleged comments to Plaintiff were sexually derogatory.

5. Defendant admits that Plaintiff told Michael Ore about comments that Philip Tomarchio allegedly made to Plaintiff. Defendant denies the remainder of the allegations in sentence 5 of the Complaint and demands strict proof thereof.

6. Defendant denies the allegations contained in sentence 6 of the Complaint and demands strict proof thereof.

7. Defendant admits that Plaintiff told Human Resources about comments Philip Tomarchio allegedly made to Plaintiff. Defendant denies the remainder of the allegations in sentence 7 of the Complaint and demands strict proof thereof.

8. The allegations in sentence 8 of the Complaint are too vague for Defendant to formulate a response. If a response is required, Defendant denies the allegations in sentence 8 of the Complaint and demands strict proof thereof.

9. Defendant admits that after Plaintiff told Michael Ore and Human Resources about comments Philip Tomarchio allegedly made to Plaintiff, Plaintiff later received an Associate Warning Notice. Defendant denies the remainder of the allegations in sentence 9 of the Complaint, the sentence lasting approximately 11 lines in length.

10. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 10 of the Complaint and therefore denies them and demands strict proof thereof, including that that Defendant has violated any law, acted in any improper manner toward Plaintiff, or that Plaintiff suffered, or is entitled to, any amount of damages from Defendant.

11. Defendant states that the allegations in sentence 11 of the Complaint reference “paper work” that, if it has any effect, speaks for itself and does not create or support any valid claim. If a response is required, Defendant denies the allegations in sentence 11 of the Complaint and demands strict proof thereof.

GENERAL DENIAL

Defendant denies all allegations, requests for relief, captions, headings or notes throughout Plaintiff’s Complaint that are not specifically admitted by Defendant.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff’s Complaint fails to state a claim against Defendant upon which relief can be granted.

2. Plaintiff’s claims should be dismissed for insufficiency of service of process.

3. Plaintiff’s damages are limited by the applicable laws under which they are brought.

4. Defendant has not violated any legal or contractual duty owed to Plaintiff, and therefore, Plaintiff is not entitled to recover against Defendant.

5. Plaintiff’s claims should be dismissed because Plaintiff failed to exhaust administrative requisites required under 42 U.S.C. § 2000e *et seq.*

6. Any and all of Defendant’s actions as alleged in Plaintiff’s Complaint were taken in good faith and in a fair and equitable manner so as to bar some or all of the claims of Plaintiff’s Complaint.

7. No adverse employment actions or tangible employment actions were taken against Plaintiff.

8. Any change in Plaintiff’s terms and conditions of employment was requested by

Plaintiff.

9. If any adverse employment actions or tangible employment actions were found to have been taken against Plaintiff, they were predicated upon grounds other than, and would have been taken absent, Plaintiff's involvement in a protected class.

10. Defendant had legitimate, non-discriminatory reasons for taking any adverse employment actions against Plaintiff.

11. Plaintiff fails to allege acts of harassment severe or pervasive enough to create a hostile work environment based on his sex or any other impermissible factor.

12. Defendant maintains a well-publicized policy that provides for investigation of all claims of harassment brought by an employee; to the extent Plaintiff is deemed to have made any claims of "harassment," Defendant did, in fact, investigate Plaintiff's claims of harassment and otherwise complied in all respects with its policies and applicable law.

13. At all relevant times Defendant exercised reasonable care to prevent and promptly correct any discriminatory and/or harassing behavior.

14. Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant or to otherwise avoid harm.

15. Plaintiff failed to engage in protected activity to establish a claim for retaliation.

16. Defendant is not liable for any intentional actions taken by any of its employees.

17. Plaintiff failed to mitigate his damages, if any.

18. Defendant states that Plaintiff's damages are limited by collateral sources.

19. Plaintiff acted in such a manner as to cause all or part of his damages, and therefore, his recovery, if any, should be barred or reduced accordingly.

20. The damages claimed by Plaintiff are speculative and therefore not recoverable.

21. Plaintiff has not been intentionally deprived of any rights, privilege, or immunity secured by federal or state law.

22. Plaintiff's damages, if any, are limited by Defendant's good-faith attempts to comply with 42 U.S.C. § 2000e *et seq.*

23. Plaintiff's claims for damages against Defendant are barred because the alleged damages, if any, were not proximately, legally, or actually caused by any action, inaction, or inattention by Defendant.

25. Plaintiff's own negligence was the contributing legal cause of the injuries or damages complained of.

26. Any recovery for any damages suffered by Plaintiff is barred or must be reduced by the doctrine of comparative negligence.

27. Plaintiff, through his actions, knowingly and voluntarily relinquished any and all rights asserted in his Complaint.

RESERVATION OF RIGHTS

Defendant hereby gives notice that it intends to rely on such other defenses and affirmative defenses as might become available or apparent during the course of discovery and, thus, reserves the right to amend this Answer and serve such defenses and otherwise supplement the foregoing Affirmative and Other Defenses.

WHEREFORE, Defendant respectfully requests that the Court enter judgment in Defendant's favor, dismissing Plaintiff's claims with prejudice, and awarding Defendant its costs and reasonable attorneys' fees.

Respectfully submitted this 13th day of June, 2012.

Chad K. Lang, Esq.

Fla. Bar No. 0156922
clang@meyerwhite.com
MEYER MOSER LANG LLP
2525 Ponce de Leon Blvd.
Suite 1080
Coral Gables, FL 33134
Telephone: (305) 423-0600

/s/ Chad K. Lang
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2012, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

/s/ Chad K. Lang
Attorneys for Defendant

SERVICE LIST

Johnathan M. Smith
1930 Grant Street
Hollywood, FL 33020
(954) 391-3124

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12-cv-60758-RNS

JOHNATHAN M. SMITH,

Plaintiff,

v.

TBC RETAIL GROUP, NC,

Defendant.

DEFENDANT'S RULE 7.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, Defendant TBC Retail Group, Inc. hereby states as follows:

TBC Retail Group, Inc. is a wholly owned subsidiary of TBC Shared Services, Inc., which is a wholly owned subsidiary of TBC Corporation. TBC Corporation's stock is not traded publicly but is jointly owned by Sumitomo Corporation of America (60 percent) and Summit Global Management of America, Inc. (40 percent). Sumitomo Corporation of America is a wholly owned subsidiary of Sumitomo Corporation. Sumitomo Corporation's stock is publicly traded in Japan.

Respectfully submitted this 13th day of June, 2012.

Chad K. Lang, Esq.
Fla. Bar No. 0156922
clang@meyerwhite.com
MEYER MOSER LANG LLP
2525 Ponce de Leon Blvd.
Suite 1080
Coral Gables, FL 33134
Telephone: (305) 423-0600

/s/ Chad K. Lang
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2012, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

/s/ Chad K. Lang
Attorneys for Defendant

SERVICE LIST

Johnathan M. Smith
1930 Grant Street
Hollywood, FL 33020
(954) 391-3124

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-60758-Civ-SCOLA

JOHNATHAN M. SMITH,

Plaintiff,

vs.

TIRE KINGDOM,

Defendant.

ORDER PROVIDING INSTRUCTIONS TO *PRO SE* LITIGANT

THIS MATTER is before the Court on independent review of the record. *Pro se* litigants (*i.e.*, parties not represented by counsel), like all litigants, must comply with the rules of civil procedure and the Court's orders. Accordingly, it is hereby **ORDERED** that the Plaintiff, Johnathan M. Smith, a *pro se* litigant, shall comply with all Federal Rules of Civil Procedure and Local Rules for the Southern District of Florida.¹ Failure to comply with the federal and local rules may result in sanctions being imposed against *pro se* litigants. Some of the requirements of these rules are as follows:

1. Every pleading, motion, memorandum, or other paper required and/or permitted to be filed with the Court must be filed directly with the Clerk of the Court. No letters, pleadings, motions, or other documents may be sent directly to the District Judge or Magistrate Judge's chambers. Any papers improperly delivered directly to chambers will be returned and disregarded by the Court.

2. All papers filed must include the case style, case number, and appropriate title in the format required by the Local Rules. *See Local Rule 5.1.*² The signature block of each pleading must also contain the *pro se* litigant's name, address, and telephone number.

¹ The Federal and Local Rules may be accessed from the Clerk of the Court's website, available at: <http://www.flsd.uscourts.gov>.

² The sample form for documents filed with the Court may be accessed from the Clerk of the Court's website, available at: <http://www.flsd.uscourts.gov>.

3. All papers filed with the Clerk of Court must also be served on the opposing counsel, or the opposing side if the opposing side is not represented by counsel. Each filing must include a certificate of service indicating the name and address of the attorney served.

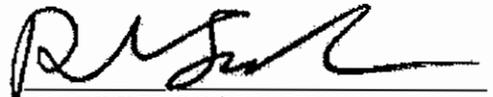
4. Litigants must promptly notify the Court of any change in address by filing a "Notice of Change of Address," which also must be served on opposing counsel.

5. A *pro se* litigant who wishes to oppose a motion must respond in writing within the time periods provided by the rules of procedure.

6. Any litigant and his or her family, friends, or acquaintances may not call the Judge's chambers for legal advice about the case. Brief case status information contained on the docket sheet may be available from the Clerk of Court.

7. A *pro se* litigant bears responsibility for actively pursuing his or her case and must obtain any essential discovery, file all necessary pleadings and motions, comply with all scheduling orders, and prepare the case for trial.

DONE and ORDERED in chambers, at Miami, Florida on June 14, 2012.


ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Robin S. Rosenbaum, U.S. Magistrate Judge
Pro se Plaintiff Johnathan M. Smith

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 12-60758-Civ-SCOLA

JOHNATHAN M. SMITH,

Plaintiff,

vs.

TIRE KINGDOM,

Defendant.

**ORDER REQUIRING DISCOVERY AND SCHEDULING CONFERENCE AND
ORDER REFERRING DISCOVERY MATTERS TO THE MAGISTRATE JUDGE**

THIS MATTER is before the Court upon an independent review of the record. It is **ORDERED and ADJUDGED** as follows:

1. The Plaintiff shall forward a copy of this Order to every Defendant immediately upon the filing of a response to the complaint by a Defendant in this case. If this matter has been removed from state court, the removing Defendant shall immediately forward a copy of this Order to every party who has made an appearance in the state court action.

2. Within twenty-one days of this Order, the parties shall meet and confer regarding discovery and scheduling issues, as set out in Federal Rule of Civil Procedure 26(f) and Local Rule 16.1(b). If this case was removed from state court, the parties' discovery and scheduling conference shall occur within twenty-one days of this Order.

3. Within fourteen days of the parties' discovery and scheduling conference, the parties shall file a joint discovery plan and conference report, as set forth in Federal Rule of Civil Procedure 26(f)(3) and Local Rule 16.1(b)(2). The parties should note that Federal Rule of Civil Procedure 26(f)(3)(B) and Local Rule 16.1(b)(C) requires the joint discovery plan and conference report to state the parties' proposed time limit to complete discovery.

4. The parties do not need to submit a joint proposed scheduling order pursuant to Local Rule 16.1(b)(3). Instead, the parties shall inform the Court, in their discovery plan and conference report, which case track they believe this case should be assigned pursuant to Local Rule 16.1(a) and the proposed time limit to complete discovery. In reporting this information, the parties should refer to the scheduling timelines set forth in Attachments "A" and "B" to this

Order. Attachment "A" should be used if the parties believe the case is straight-forward and may benefit from an expedited scheduling track. In most other cases, the standard scheduling track in Attachment "B" should be used. If the parties believe that this case is uniquely complex and requires more time the parties must set out the reasons justifying a more protracted schedule along with a proposed schedule of trial and pretrial deadlines.

5. Pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Local Rules of the Southern District of Florida, all discovery motions in this matter are referred to the designated magistrate judge to take all necessary and proper action as required by law.¹ Any motion affecting the deadlines set by the Court's Scheduling Order is excluded from this referral. In filing discovery motions, the parties shall follow the discovery procedures outlined in paragraph six of this Order.

6. **DISCOVERY MOTION PROCEDURES**: Discovery motions (which must contain the Local Rule 7.1(a)(3) certification of good-faith conference) shall be handled on an expedited briefing schedule and with a shortened page limitation, to prevent delay to the pretrial schedule. Accordingly, the parties shall file responses and replies to discovery motions no later than seven days after a motion, or response, is filed. These deadlines are inclusive of the "mailing" days allotted by the Federal and Local Rules. Any contrary deadlines that may appear on the Court's docket or the attorneys' deadline report, generated by CM/ECF, cannot modify this Order. Any discovery motion and response, including the incorporated memorandum of law, shall not exceed ten pages. Any reply memoranda shall not exceed five pages. Also, the parties should note that Federal Rule of Civil Procedure 29 permits parties to stipulate to extend the time for responding to interrogatories, requests for production, or requests for admissions, unless such extension would interfere with the deadline set for completing discovery, for hearing a motion, or for trial.

DONE and ORDERED in chambers, at Miami, Florida on June 14, 2012.



ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:

Robin S. Rosenbaum, U.S. Magistrate Judge
Pro se Plaintiff Johnathan M. Smith

¹ Magistrate judges are designated as follows: Miami division cases, Judge Ted E. Bandstra; Fort Lauderdale division cases, Judge Robin S. Rosenbaum; West Palm Beach division cases, Judge James M. Hopkins.

Attachment "A" to the Order Requiring Discovery and Scheduling Conference
Example Scheduling Timeline For Expedited Track Cases

Days After Entry of The Scheduling Order	
28	Deadline to join additional parties or to amend pleadings.
60	Deadline to file joint interim status report. Deadline to file Proposed Order Scheduling Mediation, setting forth the name of the mediator, and the date, time, and location of the mediation, consistent with the Order of Referral to Mediation (which immediately follows this scheduling order).
120	Deadline to complete fact discovery. Deadline to submit joint notice indicating whether the parties consent to jurisdiction before the designated magistrate judge for purposes of final disposition. Deadline to disclose the identity of expert witnesses, and to exchange expert witness summaries/reports pursuant to Federal Rule of Civil Procedure 26(a)(2). Rebuttal disclosures are permitted, and shall conform to the deadline set forth in Federal Rule of Civil Procedure 26(a)(2)(C)(ii).
135	Deadline for the filing of all dispositive motions.
140	Deadline to complete mediation.
165	Deadline to complete all expert discovery.
60 days BEFORE calendar call	Deadline for the filing of pretrial motions, including motions <i>in limine</i> and <i>Daubert</i> motions.
10 days BEFORE the trial date	Deadline to file joint pretrial stipulation pursuant to Local Rule 16.1(e) and pretrial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(3). Deadline to file proposed jury instructions (if the matter is set for a jury trial) or proposed findings of fact and conclusions of law (if the matter is set for a bench trial) pursuant to Local Rule 16.1(k).
250 (approximate)	Calendar Call.
255 (approximate)	Two-week trial period commences.

Attachment "B" to the Order Requiring Discovery and Scheduling Conference**Example Scheduling Timeline For Standard Track Cases**

Days After Entry of The Scheduling Order	
35	Deadline to join additional parties or to amend pleadings.
90	Deadline to file joint interim status report.
180	Deadline to file Proposed Order Scheduling Mediation, setting forth the name of the mediator, and the date, time, and location of the mediation, consistent with the Order of Referral to Mediation (which immediately follows this scheduling order).
250	<p>Deadline to complete all fact discovery.</p> <p>Deadline to submit joint notice indicating whether the parties consent to jurisdiction before the designated magistrate judge for purposes of final disposition.</p> <p>Deadline to disclose the identity of expert witnesses, and to exchange expert witness summaries/reports pursuant to Federal Rule of Civil Procedure 26(a)(2). Rebuttal disclosures are permitted, and shall conform to the deadline set forth in Federal Rule of Civil Procedure 26(a)(2)(C)(ii).</p>
265	Deadline for the filing of all dispositive motions.
270	Deadline to complete mediation.
310	Deadline to complete all expert discovery.
60 days BEFORE calendar call	Deadline for the filing of pretrial motions, including motions <i>in limine</i> and <i>Daubert</i> motions.
10 days BEFORE the trial date	<p>Deadline to file joint pretrial stipulation pursuant to Local Rule 16.1(e) and pretrial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(3).</p> <p>Deadline to file proposed jury instructions (if the matter is set for a jury trial) or proposed findings of fact and conclusions of law (if the matter is set for a bench trial) pursuant to Local Rule 16.1(k).</p>
375 (approximately)	Calendar Call.
380 (approximately)	Two-week trial period commences.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12-cv-60758-RNS

JOHNATHAN M. SMITH,

Plaintiff,

v.

TBC RETAIL GROUP, NC,

Defendant.

**JOINT DISCOVERY PLAN AND SCHEDULING REPORT
PURSUANT TO LOCAL RULE 16.1.B**

Pursuant to Federal Rule of Civil Procedure 26(f), Southern District of Florida Local Rule 16.1(B)(2) and the Court's Order dated June 15, 2012, Defendant TBC RETAIL GROUP, INC. and Plaintiff JOHNATHAN M. SMITH (collectively, "the parties") hereby submit this Joint Discovery Plan and Scheduling Report after conferring via telephone on July 2 and 6, 2012.

(a) Likelihood of Settlement – The parties have agreed to use their best efforts to settle this case.

(b) Likelihood of Appearance of Additional Parties – At this time, the parties do not anticipate that it is likely that additional parties will appear in this action, but they reserve the right to add parties until the deadline for doing so.

(c) Proposed Case Track – The parties propose that this case be placed on a standard track, including that: (i) motions to join other parties and to amend the pleadings be filed on or before July 20, 2012; (ii) all fact discovery be completed on or before February 20, 2013; (iii) dispositive motions shall be filed on or before March 7, 2013.

(d) Proposals for the Formulation and Simplification of Issues – The parties will attempt to stipulate to facts and authenticity of documents to the extent that it is appropriate to do so based upon discovery in this action.

(e) Necessity or Desirability of Amendments to Pleadings – At this time, the parties do not anticipate that it is likely that they will amend the pleadings, but they reserve the right to amend the pleadings up to the deadline for doing so.

(f) Possibility of Obtaining Admissions of Fact and of Documents – The parties will attempt to obtain admissions of fact, stipulations and advance rulings in order to avoid unnecessary proof and issues at trial. At this time, the parties believe that they will be able to stipulate to the authenticity of documents and the use of photocopies in lieu of originals, subject to inspection of the originals. The parties expect the use of electronically-stored information will be minimal, but will generally produce electronic files by disk or other mutually agreeable method of delivery of electronic files, such as e-mail where practicable, in the native form in which the files are stored in the normal course of business. Alternatively, the parties may produce electronically stored files in .pdf format or by printing hard copies of such files, so long as the content of the hard copy files is identical to the electronically stored files. The parties are not required to include metadata in their initial production.

(g) Suggestions for the Avoidance of Unnecessary Proof – The parties will attempt to obtain admissions and stipulations to avoid unnecessary proof and cumulative evidence at trial.

(h) Reference to Magistrate Judge or Master – At this time, the parties have not agreed to trial before a magistrate judge.

(i) Time Required for Trial – The parties estimate at this time that the trial of this case will require approximately three to ten trial days (Standard Track).

(j) Pretrial Conference and Trial Dates – The parties propose a final pretrial conference on June 17, 2013, and trial beginning on July 1, 2013.

(k) Other Information – The parties at this time are unaware of other information that might be helpful to the Court in setting this case for a status or pretrial conference.

Joint Proposed Discovery Plan

1. The parties agree that this case should be assigned to a standard case management track pursuant to Local Rule 16.1.A. The parties shall exchange their Rule 26(a)(1) Disclosures on or before July 20, 2012.

2. **Detailed Discovery Plan:** The parties propose that discovery should not be conducted in phases, nor limited to or focused on any particular issues. The parties also agree that no changes in the timing, form, or requirements under Rule 26(a) of the Federal Rules of Civil Procedure are necessary at this time.

a. Plaintiff's Discovery: Plaintiff plans to serve requests for production of documents, interrogatories, and requests for admissions. Additionally, Plaintiff intends to depose various representatives and agents of Defendant that have knowledge of the issues raised in the Complaint and other individuals with knowledge of relevant facts.

b. Defendant's Discovery: Defendant plans to serve requests for production of documents, interrogatories, and requests for admissions and to issue subpoenas to third parties for relevant records concerning Plaintiff. In addition, Defendant intends to depose Plaintiff and any other person with knowledge of relevant facts.

c. Proposed Schedule:

September 13, 2012 The parties shall file a joint interim status report.

December 12, 2012 The parties shall file a Proposed Order Scheduling Mediation, if mediation is elected.

January 21, 2013 Plaintiff shall furnish opposing counsel with a written list containing the names and addresses of all affirmative expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify. On the same date Plaintiff shall also provide a report from all expert witnesses intended to be called at trial, consistent with Fed. R. Civ. P. 26(a)(2)(B). Within the 21-day period following the disclosure, the Plaintiff shall make his experts available for deposition by Defendant. The experts' depositions may be conducted without further order from the Court.

February 20, 2013 Defendant shall furnish Plaintiff with a written list containing the names and addresses of all affirmative expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify. On the same date Defendant shall also provide a report from all expert witnesses intended to be called at trial, consistent with Fed. R. Civ. P. 26(a)(2)(B). Within the 21-day period following this disclosure, Defendant shall make its experts available for deposition by the Plaintiff. The experts' depositions may be conducted without further order from the Court.

All fact discovery shall be completed.

The parties shall submit a joint notice indicating whether the parties consent to jurisdiction before the designated magistrate judge for purposes of final disposition.

March 12, 2013 Mediation, if elected, shall be completed.

3. Currently, the parties do not anticipate the need for any use of the Manual on Complex Litigation, nor any other need for rule variations, such as deposition length or the number of depositions.

4. The parties agree that currently there are no other orders that should be entered by the Court under Federal Rule of Civil Procedure 26(c) or Federal Rule of Civil Procedure 16(b) and (c).

Respectfully submitted this 20th day of July 2012.

Johnathan M. Smith
1930 Grant Street
Hollywood, FL 33020
(954) 391-3124
Pro Se Plaintiff

/s/ Johnathan M. Smith
Plaintiff

Chad K. Lang, Esq.
Fla. Bar No. 0156922
MEYER MOSER LANG LLP
2525 Ponce de Leon Blvd.
Suite 1080
Coral Gables, Florida 33134
Tel: (305) 423-0600
Fax: (305) 423-0599
clang@mmlfirm.com

/s/ Chad K. Lang
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2012, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

/s/ Chad K. Lang
Attorneys for Defendant

SERVICE LIST

Johnathan M. Smith
1930 Grant Street
Hollywood, FL 33020
(954) 391-3124

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 12-60758-Civ-SCOLA

JOHNATHAN M. SMITH,

Plaintiff,

vs.

TBC RETAIL GROUP, INC.,

Defendant.

**SCHEDULING ORDER AND
ORDER OF REFERRAL TO MEDIATION**

THIS MATTER is set for trial during the two-week period beginning **August 12, 2013**. Calendar call will be held at 9:00 a.m. on the preceding Tuesday, **August 6, 2013**, at the Wilkie D. Ferguson, Jr. United States Courthouse, 400 N. Miami Avenue, Courtroom 12-3, Miami, Florida. A pretrial conference will be held immediately following calendar call only if requested by the parties in advance.

1. The parties shall comply with the following schedule:

Aug. 24, 2012	Deadline to join additional parties or to amend pleadings.
Oct. 18, 2012	Deadline to file Joint Interim Status Report.
Jan. 16, 2013	Deadline to file Proposed Order Scheduling Mediation, setting forth the name of the mediator, and the date, time, and location of the mediation, consistent with the Order of Referral to Mediation (which immediately follows this scheduling order).
Mar. 27, 2013	Deadline to complete all fact discovery Deadline to submit Joint Notice Indicating Whether The Parties Consent To Jurisdiction Before The Designated Magistrate Judge For Purposes Of Final Disposition. Deadline to disclose the identity of expert witnesses, and to exchange expert witness summaries/reports pursuant to Federal Rule of Civil Procedure 26(a)(2). Rebuttal disclosures are permitted, and shall conform to the deadline set forth in Federal Rule of Civil Procedure 26(a)(2)(C)(ii).

Apr. 11, 2013	Deadline for the filing of all dispositive motions.
Apr. 16, 2013	Deadline to complete mediation, consistent with the Order of Referral to Mediation (which immediately follows this scheduling order).
May 26, 2013	Deadline to complete all expert discovery.
June 6, 2013	Deadline for the filing of pretrial motions, including motions <i>in limine</i> and <i>Daubert</i> motions
Aug. 2, 2013	Deadline to file Joint Pretrial Stipulation pursuant to Local Rule 16.1(e) and pretrial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(3). Deadline to file proposed jury instructions (if the matter is set for a jury trial) or proposed findings of fact and conclusions of law (if the matter is set for a bench trial) pursuant to Local Rule 16.1(k).

2. Interim Joint Status Report. The parties are required to submit an interim joint status report addressing the following issues:

- a) Have all defendants been served? If not, state the reasons.
- b) Have all defendants responded to the complaint? If not, state the reasons.
- c) If this is a class action, has a motion for class certification been filed? If so, what is its status?
- d) Have the parties agreed on and selected a mediator? Have the parties agreed upon a place, date, and time for mediation?
- e) Have the parties engaged in informal settlement negotiations? If not, explain the reasons for the failure to do so. If yes, state the status of such negotiations (*e.g.*, ongoing, impasse, etc.) and the relative prospects for resolution through informal means.
- f) Describe the status of discovery conducted to date, and identify whether the parties reasonably believe that they will be able to complete discovery by the Court's deadline. If not, explain the reasons.
- g) Identify any other issues that the Court should be aware of that may affect the resolution of this matter or the schedule as currently set.
- h) For Fort Lauderdale/West Palm division cases, the parties shall indicate whether they prefer to try the case in Miami or Fort Lauderdale/West Palm.

3. Jury Instructions. The parties shall submit their proposed jury instructions jointly, though they need not agree on each proposed instruction. Where the parties do agree on a proposed instruction, that instruction shall be set out in regular typeface. Instructions proposed only by a

plaintiff shall be underlined. Instructions proposed only by a defendant shall be bold-faced. Every instruction must be supported by a citation of authority. The parties shall use as a guide the Eleventh Circuit Pattern Jury Instructions for Civil Cases, including the directions to counsel, or the applicable state pattern jury instructions. The parties shall jointly file their proposed jury instructions via CM/ECF, and shall also submit their proposed jury instructions to the Court via e-mail at scola@flsd.uscourts.gov in MS Word format (.doc).

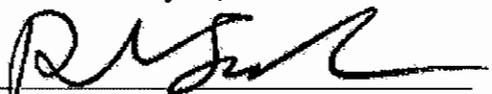
4. Trial Exhibits. All trial exhibits must be pre-marked. Plaintiff's exhibits shall be marked numerically with the letter "P" as a prefix. Defendant's exhibits shall be marked alphabetically with the letter "D" as a prefix. A list setting out all exhibits must be submitted at the time of trial. This list must indicate the pre-marked identification label (e.g., P-1, or D-A) and must also include a brief description of the exhibit.

5. Deposition Designations. Any party intending to use deposition testimony as substantive evidence must designate by line and page reference those portions in writing. The designations must be served on opposing counsel and filed with the Court fourteen days before the deadline to file the joint pretrial stipulation. The adverse party must serve and file any objections and any cross-designations within seven days. The initial party shall then have seven days to serve and file objections to the cross-designations.

6. Voir Dire Questions. The Court will require each prospective juror to complete a brief written questionnaire prior to the commencement of questioning in the courtroom. Any party may file, no more than five proposed, case-specific questions to be included in the questionnaire. The proposed questions must be filed with the Court at the time of the filing of the joint pretrial stipulation, and shall also be emailed to scola@flsd.uscourts.gov in MS Word format (.doc).

7. Settlement Notification. If this matter is settled, counsel are directed to inform the Court promptly via telephone (305-523-5140) and/or e-mail (scola@flsd.uscourts.gov).

DONE and ORDERED in chambers, at Miami, Florida on July 20, 2012.


ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Designated U.S. Magistrate Judge
Counsel of record

[Order of Referral to Mediation on following page]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 12-60758-Civ-SCOLA

JOHNATHAN M. SMITH,

Plaintiff,

vs.

TBC RETAIL GROUP, INC.,

Defendant.

ORDER OF REFERRAL TO MEDIATION

Trial having been set in this matter, pursuant to Federal Rule of Civil Procedure 16 and Local Rule 16.2, it is **ORDERED AND ADJUDGED** as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than the deadline set out in the Court's Scheduling Order.
2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference.
3. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of the Court, but may select any other mediator. The parties shall agree upon a mediator within sixty days from the date of this Order. If there is no agreement, lead counsel shall promptly notify the Clerk of the Court in writing and the Clerk of the Court shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.
4. A place, date, and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established no later than the deadline in the Scheduling Order. The lead attorney shall complete the form order attached and submit it to the Court (Attachment "A"). **The parties must agree on a place, date, and time for mediation and the lead attorney**

shall submit the proposed order scheduling mediation, no later than the deadline set forth in the Scheduling Order.

5. Pursuant to Local Rule 16.2(e), the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

6. All proceedings of the mediation shall be confidential and privileged.

7. At least fourteen days prior to the mediation date, each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved. The mediator is authorized to grant extensions of time up to the mediation for the parties to file their mediation statements.

8. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements in this Order, or who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.

9. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Local Rule 16.2(b)(6), or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within forty-five days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least three full business days in advance. Failure to do so will result in imposition of a fee for two hours of mediation.

10. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2(f), by the filing of a notice of settlement signed by counsel of record within fourteen days of the mediation conference. Thereafter the parties shall promptly submit an appropriate pleading concluding the case.

11. Within seven days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was adjourned, or whether the mediator declared an impasse.

12. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

DONE and ORDERED in chambers, at Miami, Florida on July 20, 2012.

A handwritten signature in black ink, appearing to read 'R. Scola, Jr.', written over a horizontal dotted line.

ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Designated U.S. Magistrate Judge
Counsel of record

Attachment "A" to the Order Of Referral To Mediation:
Form Order Scheduling Mediation

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. XX-XXXXX-Civ-SCOLA

XXX,

Plaintiff,

vs.

XXX,

Defendant.

_____ /

ORDER SCHEDULING MEDIATION

The mediation conference in this matter shall be held with _____ on _____, 20__, at ____ (am/pm) at _____, Florida.

This date has been agreed to by the mediator and the parties and shall not be rescheduled without leave of the Court.

DONE and ORDERED in chambers, at Miami, Florida on _____.

ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Designated U.S. Magistrate Judge
Counsel of record

(1" from top of page, and centered, begin title of Court)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12 -CV- 60758RNS
(Judge's Last Name/Magistrate's Last Name)

Johnathan M Smith

(Full Name of Plaintiff(s))

Plaintiff (s)

vs.
TBC RETAIL
GROUP, INC.

(Full Name of Defendant(s))

Defendant(s).

FILED BY [Signature]
2012 JUL 27 PM 4:06
STEVEN M. [Signature] MORE
CLERK U.S. DIST. CT.
S.D. OF FLA.-FTL

Amended Complaint

TITLE OF DOCUMENT

I, Johnathan M. Smith [plaintiff or defendant], in the above styled
cause, Filing an amended complaint on

FRom: 04/27/2012

TO: 07/27/2012

I am a black male. I was hired by TBC Retail Group, Inc. d/b/a Tire Kingdom as a Mechanic on May 25, 2011. I was verbally sexually harassed by Philip J. Tomarchio (Store Manager) in store 260 Pine Island Road, Hollywood Fl. 33024. On a couple occasions Philip J. made verbal sexually derogatory comments to me by saying some of the things like "if it is hanging and dangly in the middle or soft to the right" and when I was checking the oil level on a car Phillip came over and said "that could be use as a probe in the butt to me" and I had told him to stop talking to me like that because I don't like it. Phillip threatens to fire me and I had also seen him fire three others TBC Retail Group, Inc. d/b/a Tire Kingdom employees in a two weeks time. I complained to Mr. Mike Ore (District Manager) about the verbally sexually harassments. Mr. Mike Ore did not take any action to correct the hostile working environment; in retaliation, I was threatened with a final write up with no record of write ups presented to me to sign in the pass. I also called and complained to a Human Resources representative, but to no avail. Phillip continues the verbally sexually harassments and I keep telling him to stop to. I decided the best thing to do was to sent an e-mail that was on Tuesday, December 13, 2011 to Kelly Bonneau (Works in Human Resources) who works in the corporate office at the Headquarters at TBC Retail Group, Inc. d/b/a Tire Kingdom Human Resources department requiting a conference meeting between a Human Resources Representatives Myself and Philip J. (Store Manager) in store 260. I was contacted by phone from Lauren Arias (Divisional Human Resources Manager) and was told that she was going on vacation and Lauren told me that Kelly (Who works in Human Resources) will be looking into it for her since she will be going on vacation. Kelly contacts me and asked when my day off is and I told her I will let her know. December 16, 2011 I try to call Kelly, but got no answer then I e-mail her stating my day of is on December 19, 2011 and you can contact me at my number to set up a conference time to meet as agreed to my request please. Kelly contacts me and told me that we can meet on December 29, 2011. Philip, Mike and two Human Resources representatives was there at the conference and I explain what the issue I had with Philip plus I told them that others have heard Philip spoke verbal sexually derogatory comments. I was not given a reason for verbally sexually harassment and the respond I got was from Mike (District Manager) and Kelly (Who works in Human Resources) telling me to work one more day with Philip then I will be transferred. I asked what if he still continues with the verbally sexually harassments because no one said anything about taking any disciplinary actions against Philip and Kelly replayed saying to Philip "be a good boy for me". Mike told me that I will be transfer to another store (which is further form my home) plus I had to raise my productivity or I will be terminated within the next 4 weeks or more if my productivity don't get better then presented me with a final write up stating that and threaten me in a harsh voice saying to me if I don't sign it I will be fired so I did. Since I was instructed to work one more day with Philip not knowing what Philip reaction will be I call the police and made a report against Philip that same day after the conference meeting stating the issues with Philip and what had happen. When I reach at the new (Store 75 of Commercial) some of the employees told me that it was slow saying "that this store is known to be slow and you will not have a good productivity to make money here" and showed me the reason why. I got a call from Lauren Arias telling me she is back from her vacation and she will look into the matter for me. My life style has changed; I lose my home and my income decreased. I believe I was discriminated against because of my race, Black in violation of Title VII of the Civil Rights Act of 1964, as amended. I am suing TBC Retail Group, Inc. d/b/a Tire Kingdom Defendant with a hostile environment claim and Retaliation/Reprisal Claim up to 300,000.00. I have paper work to support my law sue case.

07 27 2012
Dated: Month, day, year

Respectfully submitted,

Johnathan M. Smith
Name of Filer

Attorney Bar Number (if applicable)

Attorney E-mail Address (if applicable)

Firm Name (if applicable)

Street Address

City, State, Zip Code

Telephone: _____

Facsimile: _____

Attorneys for Plaintiff/Defendant [Party name(s)]
(if applicable)

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by

_____ [specify method of service] on _____ [date]

on all counsel or parties of record on the Service List below.

Johnathan M. Smith
Signature of Filer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12-cv-60758-RNS

JOHNATHAN M. SMITH,

Plaintiff,

v.

TBC RETAIL GROUP, NC,

Defendant.

**DEFENDANT’S MOTION TO STRIKE PLAINTIFF’S FIRST AMENDED COMPLAINT
AND INCORPORATED MEMORANDUM OF LAW**

Defendant, TBC RETAIL GROUP, INC. (“Defendant”), submits this Motion to Strike Plaintiff’s First Amended Complaint and Incorporated Memorandum of Law and states as follows:

BACKGROUND

On May 7, 2012, Plaintiff Johnathan M. Smith (“Plaintiff”) filed his initial Complaint (ECF No. 5) in this action.¹ On June 13, 2012, Defendant filed its Answer. On July 30, 2012, Plaintiff filed an “Amended Complaint.” (ECF No. 19). On its face, this Amended Complaint asserts it is “from: 04/27/2012 to: 07/27/2012.” However, the Amended Complaint includes no allegations from that time period. It largely rehashes assertions from Plaintiff’s initial Complaint and adds allegations known to him at the time he filed his Complaint (not to mention his June 4, 2012 “Amendment Complaint”).

¹ On June 4, 2012, Plaintiff filed what was titled “Amendment Complaint” (ECF No. 8), that the Court construed as a request to permit amendment by interlineation. On June 5, 2012, the Court granted this request, noting that Plaintiff made “no alterations to any substantive allegations or claims.” (ECF No. 11).

MEMORANDUM OF LAW

Federal Rule of Civil Procedure 15(a) provides the proper procedure for a plaintiff to amend his complaint. Plaintiff elected not to comply with these procedures, at his own peril.

As a matter of course, a party may amend a complaint within 21 days of serving it, or 21 days after service of a responsive pleading. Fed. R. Civ. P. 15(a)(1). Plaintiff here did neither, waiting to file his Amended Complaint until 47 days after Defendant served its Answer. Therefore, to file an amended complaint, the Federal Rules required Plaintiff to either obtain Defendant's written consent, or seek leave from the Court. Fed. R. Civ. P. 15(a)(2) (stating that one of these two avenues is the only way to amend a complaint after the opportunity had expired to do so as a matter of course). Plaintiff did not seek consent from Defendant to file an Amended Complaint, nor did he file a motion seeking leave with the Court. He thus undisputedly failed to comply with the mandatory Federal Rule, and his Amended Complaint should be stricken.

Although Plaintiff is proceeding *pro se*, he has been charged by this Court to follow all applicable rules, including the Federal Rules of Civil Procedure (ECF No. 11). Counsel for Defendant has sent Plaintiff Internet links for these Rules multiple times to ensure he has ready access. Plaintiff's failure to comply with these Federal Rules is inexcusable. *See* Fed. R. Civ. P. 15(a); *see also Williams v. Beasley*, No. 5:08-cv-110/RS/WCS, 2009 U.S. Dist. LEXIS 11097 at *2 (N.D. Fla. Feb. 13, 2009) (declining to consider *pro se* plaintiff's amended complaint in part due to his failure to file proper motion for leave to amend).²

² Although Plaintiff did not follow the proper procedure to amend his Complaint, he still has an option to do so prior to the August 24, 2012 deadline to do so under the Court's Scheduling Order (ECF No. 18). Yet, even if he did so, his Amended Complaint would be insufficient, as it only adds facts that were known to Plaintiff at the time he filed his initial Complaint. *Kendall v. Thaxton Rd. LLC*, 443 Fed. Appx. 388, 393 (11th Cir. 2011) (affirming district court's denial of

CONCLUSION

WHEREFORE, Defendant respectfully requests that the Court strike Plaintiff's Amended Complaint due to his failure to adhere to Fed. R. Civ. P. 15(a). In making this Motion, counsel for Defendant has made reasonable efforts to confer with Plaintiff, namely by attempting to reach him via telephone and electronic mail (both of which Plaintiff has previously used to communicate with counsel for Defendant), but has been unable to do so.

Respectfully submitted this 13th day of August, 2012.

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pro se plaintiff's motion to amend complaint in part due to the fact that plaintiff knew facts at time initial complaint was filed).

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2012, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

/s/ Chad K. Lang
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12-cv-60758-RNS

JOHNATHAN M. SMITH,

Plaintiff,

v.

TBC RETAIL GROUP, NC,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED COMPLAINT**

THIS CAUSE, having been heard on Defendant TBC Retail Group, Inc.'s, Motion to Strike Plaintiff's First Amended Complaint, and the Court having considered the same and being otherwise fully advised, it is hereby:

ORDERED AND ADJUDGED that:

1. Plaintiff's First Amended Complaint [ECF No. 19] is **STRICKEN**.

DONE and **ORDERED** in chambers, at Miami, Florida, on _____ 2012.

ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Chad K. Lang, Esq.
Johnathan M. Smith

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 12-60758-Civ-SCOLA

JOHNATHAN M. SMITH,

Plaintiff,

vs.

TBC RETAIL GROUP, INC.,

Defendant.

ORDER DENYING MOTION TO STRIKE

THIS MATTER is before the Court on the Defendant's Motion to Strike Plaintiff's First Amended Complaint [ECF No. 20], filed by TBC Retail Group, Inc. For the reasons explained below, this Motion is denied.

Defendant moves to strike the Plaintiff's Amended Complaint on the grounds that he waited 47 days after Defendant answered and did not seek Defendant's consent or leave of Court, as required under Federal Rule of Civil Procedure 15(a). According to Defendant, Plaintiff therefore "undisputedly failed to comply with the mandatory Federal Rule, and his Amended Complaint should be stricken." Mot. at 2. Defendant also contends that the Amended Complaint adds a new range of dates without any supporting allegations, and otherwise just "rehashes assertions from Plaintiff's initial Complaint and adds allegations known to him at the time he filed his Complaint[.]" Mot. at 1.

The Amended Complaint will not be stricken on the basis of these arguments. Federal Rule of Civil Procedure 12(f) provides that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Motions to strike are not favored, and are "regularly 'denied unless the challenged allegations have no possible relation or logical connection to the subject matter of the controversy and may cause some form of significant prejudice to one or more of the parties to the action.'" *Kenneth F. Hackett & Assocs., Inc. v. GE Capital Info. Tech.*, 744 F. Supp. 2d 1305, 1309 (S.D. Fla. 2010) (Altonaga, J.) (citation omitted).¹

¹ See also *Great Am. Assur. Co. v. Sanchuk, LLC*, 2012 WL 195526, at *2 (M.D. Fla. Jan. 23, 2012) ("a motion to strike is a drastic remedy disfavored by the courts"); *Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC.*, 2010 WL 5393265, at *1 (S.D. Fla. Dec. 21, 2010) ("Motions to strike are generally disfavored and are usually denied") (citations omitted).

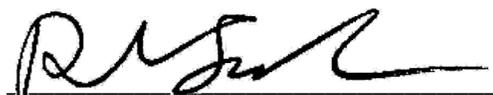
Here, Defendant does not mention the Rule 12(f) standard. Nor does Defendant argue that “the challenged allegations have no possible relation or logical connection to the subject matter of the controversy and may cause some form of significant prejudice” if allowed to stand. *See Kenneth F. Hackett & Assocs.*, 744 F. Supp. 2d at 1309. Instead, Defendant’s arguments are directed to Plaintiff’s failure to follow Rule 15(a) and his addition of “allegations known to him at the time he filed his Complaint[.]” Mot. at 1-2.

As for the first argument, Plaintiff is a *pro se* litigant and while the Court expects him to follow the Rules, the Court will accord him leeway not given to litigants represented by persons schooled in the law. *See Simpson v. United States*, 1997 WL 151431, at *2 (N.D. Fla. Jan. 27, 1997) (*pro se* plaintiffs not held to strict compliance with procedural requirements). Moreover, as Defendant readily admits, the deadline to amend the pleadings has not passed; therefore, if Plaintiff had requested leave, the Court would have readily granted it.

Defendant next cites to *Kendall v. Thaxton Road LLC*, 443 F. App’x 388, 393 (11th Cir. 2011), for the proposition that even if Plaintiff had sought leave to amend, “his Amended Complaint would be insufficient, as it only adds facts that were known to Plaintiff at the time he filed his initial Complaint.” Mot. at 2 n.2. This argument is mistaken. *Kendall* concerned a plaintiff’s failure to show that amendment was proper *after* the deadline to amend had passed. When amendment is sought belatedly, the plaintiff must show “good cause” under Rule 16(b) in addition to meeting the more relaxed standard of Rule 15(a). As *Kendall* makes clear, a relevant factor to consider under Rule 16(b) is whether the information underlying the proposed amendment was known to the plaintiff at an earlier time. That consideration has no application here, however, because, as already stated (and as Defendant concedes), the deadline to amend the pleadings has not yet passed in this case. Therefore, Plaintiff need not meet the more exacting “good cause” standard under Rule 16(b).

In conclusion, the Court finds no basis to strike the Plaintiff’s Amended Complaint under Rule 12(f). Accordingly, it is hereby **ORDERED and ADJUDGED** that Defendant’s Motion to Strike [ECF No. 20] is **DENIED**.

DONE and ORDERED in chambers, at Miami, Florida, on August 14, 2012.



ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record; Johnathan M. Smith (address of record)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 0:12-cv-60758-RNS

JOHNATHAN M. SMITH,

Plaintiff,

v.

TBC RETAIL GROUP, NC,

Defendant.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant, TBC RETAIL GROUP, INC. ("Defendant"), submits this Answer and Affirmative Defenses to the First Amended Complaint ("Amended Complaint") filed against it by Plaintiff, JOHNATHAN M. SMITH (hereinafter "Plaintiff"), and states as follows:

ANSWER

1. Defendant admits the allegations contained in sentence 1 of the Amended Complaint.
2. Defendant admits the allegations contained in sentence 2 of the Amended Complaint
3. Defendant denies the allegations contained in sentence 3 of the Amended Complaint and demands strict proof thereof.
4. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 4 of the Amended Complaint, and therefore denies them and demands strict proof thereof, including that Philip Tomarchio's alleged comments to Plaintiff were sexually derogatory.

5. Defendant admits that Plaintiff was informed by Defendant that his unacceptable performance could lead to disciplinary action up to and including termination of employment. Defendant further admits that three employees were terminated from employment at Store 260 in a three-week period in October and November 2011. Defendant denies the remainder of the allegations contained in sentence 5 of the Amended Complaint and demands strict proof thereof.

6. Defendant admits that Plaintiff told Michael Ore about comments that Philip Tomarchio allegedly made to Plaintiff. Defendant denies the remainder of the allegations contained in sentence 6 of the Amended Complaint and demands strict proof thereof.

7. Defendant denies the allegations contained in sentence 7 of the Amended Complaint and demands strict proof thereof.

8. Defendant admits that Plaintiff told Human Resources about comments Philip Tomarchio allegedly made to Plaintiff. Defendant denies the remainder of the allegations contained in sentence 8 of the Amended Complaint and demands strict proof thereof.

9. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 9 of the Amended Complaint, and therefore denies them and demands strict proof thereof.

10. Defendant admits that Plaintiff sent an e-mail to Defendant's Human Resources Representative Kelley Bonneau on December 13, 2011 requesting a conference between a "H/R representative" and "my Store Manager Philip from #260." Defendant denies the remainder of the allegations contained in sentence 10 of the Amended Complaint and demands strict proof thereof.

11. Defendant admits that Lauren Arias, Divisional Human Resources Manager for Defendant, spoke with Plaintiff by telephone on December 14, 2011. Defendant denies the

remainder of the allegations contained in sentence 11 of the Amended Complaint and demands strict proof thereof.

12. Defendant admits that Kelley Bonneau contacted Plaintiff to determine his schedule to schedule the meeting Plaintiff requested. Defendant denies the remainder of the allegations contained in sentence 12 of the Amended Complaint and demands strict proof thereof.

13. Defendant admits that Plaintiff sent an e-mail to Kelley Bonneau on December 16, 2011, informing her that his day off was on December 19, 2011, and informing her she could contact him “to set up a conference time to meet as agreed to my request please.” Defendant is without sufficient knowledge or information to admit or deny the remaining allegations contained in sentence 13 of the Amended Complaint, and therefore denies them and demands strict proof thereof.

14. Defendant admits the allegations contained in sentence 14 of the Amended Complaint.

15. Defendant admits that a meeting was held on December 29, 2011 with Plaintiff, Philip Tomarchio, Michael Ore and two employees from Defendant’s Human Resources department. Defendant further admits that in that meeting, Plaintiff for the first time alleged that Philip Tomarchio made comments that he perceived as harassing, and that Defendant agreed to transfer Plaintiff to another store at Plaintiff’s request. Defendant denies the remainder of the allegations contained in sentence 15 of the Amended Complaint and demands strict proof thereof.

16. Defendant admits that Plaintiff was told that he would be transferred, as he requested. The remainder of the allegations contained in sentence 16 of the Amended Complaint

are too vague for Defendant to formulate a response. If a response is required, Defendant denies the remainder of the allegations contained in sentence 16 of the Amended Complaint and demands strict proof thereof.

17. Defendant denies the allegations contained in sentence 17 of the Amended Complaint and demands strict proof thereof.

18. Defendant admits that Plaintiff was told he would be transferred to another store as he requested. Defendant further admits that Plaintiff was informed that a continued declination of performance would lead to further disciplinary action up to and including termination of employment. Defendant denies the remainder of the allegations contained in sentence 18 of the Amended Complaint and demands strict proof thereof.

19. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 19 of the Amended Complaint and therefore denies them and demands strict proof thereof.

20. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 20 of the Amended Complaint and therefore denies them and demands strict proof thereof.

21. Defendants admits that Lauren Arias called Plaintiff after returning from vacation to inform him that she was investigating his claims. Defendant denies the remainder of the allegations contained in sentence 21 of the Amended Complaint and demands strict proof thereof.

22. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 22 of the Amended Complaint and therefore denies them and demands strict proof thereof, including that that Defendant has violated any law, acted in any

improper manner toward Plaintiff, or that Plaintiff suffered, or is entitled to, any amount of damages from Defendant.

23. Defendant denies the allegations contained in sentence 23 of the Amended Complaint and demands strict proof thereof.

24. Defendant admits that Plaintiff is suing Defendant. Defendant denies the remaining allegations contained in sentence 24 of the Amended Complaint and demands strict proof thereof.

25. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in sentence 25 of the Amended Complaint and therefore denies them and demands strict proof thereof.

GENERAL DENIAL

Defendant denies all allegations, requests for relief, captions, headings or notes throughout Plaintiff's Complaint that are not specifically admitted by Defendant.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted.

2. Plaintiff's damages are limited by the applicable laws under which they are brought.

3. Defendant has not violated any legal or contractual duty owed to Plaintiff, and therefore, Plaintiff is not entitled to recover against Defendant.

4. Plaintiff's claims should be dismissed because Plaintiff failed to exhaust administrative requisites required under 42 U.S.C. § 2000e *et seq.*

5. Any and all of Defendant's actions as alleged in Plaintiff's Complaint were taken

in good faith and in a fair and equitable manner so as to bar some or all of the claims of Plaintiff's Complaint.

6. No adverse employment actions or tangible employment actions were taken against Plaintiff.

7. Any change in Plaintiff's terms and conditions of employment was requested by Plaintiff.

8. If any adverse employment actions or tangible employment actions were found to have been taken against Plaintiff, they were predicated upon grounds other than, and would have been taken absent, Plaintiff's involvement in a protected class.

9. Defendant had legitimate, non-discriminatory reasons for taking any adverse employment actions against Plaintiff.

10. Plaintiff fails to allege acts of harassment severe or pervasive enough to create a hostile work environment based on his sex or any other impermissible factor.

11. Defendant maintains a well-publicized policy that provides for investigation of all claims of harassment brought by an employee; to the extent Plaintiff is deemed to have made any claims of "harassment," Defendant did, in fact, investigate Plaintiff's claims of harassment and otherwise complied in all respects with its policies and applicable law.

12. At all relevant times Defendant exercised reasonable care to prevent and promptly correct any discriminatory and/or harassing behavior.

13. Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant or to otherwise avoid harm.

14. Plaintiff failed to engage in protected activity to establish a claim for retaliation.

15. Defendant is not liable for any intentional actions taken by any of its employees.

16. Plaintiff failed to mitigate his damages, if any.
17. Plaintiff's damages are limited by collateral sources.
18. Plaintiff acted in such a manner as to cause all or part of his damages, and therefore, his recovery, if any, should be barred or reduced accordingly.
19. The damages claimed by Plaintiff are speculative and therefore not recoverable.
20. Plaintiff has not been intentionally deprived of any rights, privilege, or immunity secured by federal or state law.
21. Plaintiff's damages, if any, are limited by Defendant's good-faith attempts to comply with 42 U.S.C. § 2000e *et seq.*
22. Plaintiff's claims for damages against Defendant are barred because the alleged damages, if any, were not proximately, legally, or actually caused by any action, inaction, or inattention by Defendant.
25. Plaintiff's own negligence was the contributing legal cause of the injuries or damages complained of.
26. Any recovery for any damages suffered by Plaintiff is barred or must be reduced by the doctrine of comparative negligence.
27. Plaintiff, through his actions, knowingly and voluntarily relinquished any and all rights asserted in his Complaint.

RESERVATION OF RIGHTS

Defendant hereby gives notice that it intends to rely on such other defenses and affirmative defenses as might become available or apparent during the course of discovery and, thus, reserves the right to amend this Answer and serve such defenses and otherwise supplement the foregoing Affirmative and Other Defenses.

WHEREFORE, Defendant respectfully requests that the Court enter judgment in Defendant's favor, dismissing Plaintiff's claims with prejudice, and awarding Defendant its costs and reasonable attorneys' fees.

Respectfully submitted this 15th day of August, 2012.

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/s/ Chad K. Lang
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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2012, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

/s/ Chad K. Lang
Attorneys for Defendant

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