

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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Christopher Graham, Carl Blackmon, Edward Wicks,
Ramon Hayes,

Plaintiffs, **Case No.:**

v.

Cingular Wireless, Inc., SBC Communications Inc.,
and Bell South Corporation,

Defendants.

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**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF
AND MONETRY DAMAGES.**

Plaintiffs come to this Court in good faith and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-2(a) and 42 U.S.C. §§ 1981 and 1982, and under the Fifth, Thirteenth and Fourteenth Amendments of the United States Constitution, together with state law claims.

2. Defendants, Cingular Wireless Inc. and its parent companies SBC Communications and Bell South Corporation (“Cingular”), have been engaged in a widespread pattern and practice of discrimination against blacks and minorities. This discrimination has been against employees of Cingular and Dealers who contract to do business with Cingular. Cingular discriminates against all blacks and minorities regardless of whether they are employees or Dealers who contract to do business with it.

3. With respect to the employees, Cingular systematically fails to promote Black employees. It prohibits Black employees from advancing their careers and receiving the

same terms and conditions of employment as their white counterparts. Cingular promotes white employees more rapidly than Blacks, regardless of their seniority status or experience. Black employees are subjected to harassment and disciplinary action for minor infractions, while white employees receive a relatively stress free work environment and their infractions are often overlooked by their white supervisors.

4. Black employees are assigned to train newly hired white employees, who later are promoted to more senior positions while the Black employees who trained them remain at the same lower-level position without even getting any recognition for their contribution to Cingular. Opportunities to work on new and more challenging projects are usually reserved for whites, despite the fact that there are more senior and capable Black employees who can do the work. Offering these opportunities to white employees, at the exclusion of blacks, enables management to promote whites under the pretext that they are more knowledgeable than the Black employees, even if the blacks are more senior. This is in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a).

5. With respect to the Dealers, Cingular systematically fails to uphold its contractual obligations with black and minority Dealers, while not doing the same with white Dealers. This is in violation of 42 U.S.C § 1981. Cingular has never sold a “sales and service contract” to a black Dealers; it discriminates against and is extremely reluctant to make a sale and service contract with minorities, while an overwhelming number of Dealers with a sale and services contract are white. Cingular refuses to rent or sell certain cellular phones under the “sale and services” contract to Blacks on the basis of race. This is in violation of 42 U.S.C. § 1982. Cingular has consistently used its

corporate power to keep black and minority Dealers within their geographical area in which blacks and minorities reside. It prohibits black and minority Dealers from expanding outside the black and minority areas by not allowing them to become a sale and service Dealer. While at the same time, it does not prohibit white Dealers from expanding into black or minority geographic areas by allowing them to become a sale and service Dealer. This refusal to contract with and to sell or rent to Blacks and minorities is in violation of both §§ 1981 and 1982.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331, 1343(a)(4); 42 U.S.C. §§ 2000e-2(a), 1981 & 1982; and the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution. Supplemental Jurisdiction for the state law claims exists under 28 U.S.C. § 1367(a). The two employee-Plaintiffs have filed a complaint with the Equal Employment Opportunity Commission (EEOC) and received a Right to Sue Letter, dated October 29, 2003 and January 21, 2004. All parties are domiciled or doing business in this venue and the causes of action arose within this venue.

THE PARTIES

7. Plaintiffs, Christopher Graham and Carl Blackmon, are Black employees at Cingular. Plaintiffs, Edward Wicks and Ramon Hayes, are Black Dealers who contract to do business with Cingular. The Defendant, Cingular Wireless, is a corporation that sells

cellular telephones, which is a joint venture between the two parent companies:
defendants SBC Communications Inc., and Bell South Corporation,

STATEMENT OF FACTS

EMPLOYEE DISCRIMINATION

Failure to Promote

8. Since 1993, Plaintiff Graham has been assigned to train newly hired white employees. These white employees were promoted to positions higher than Graham's position, notwithstanding the fact that Graham was more senior and experienced. These white employees include: Daniel Delaney, Michael Morrissey, John Marlega, Daren Nordeen, John Keehma, Steve Smith, Brian Penton and Brian Heine. Moreover, there were other white employees with less experience and seniority who were promoted before Graham.

9. Since 1995, Plaintiff Blackmon has been assigned to train newly hired white employees. These white employees were promoted to positions higher than Blackmon's position, notwithstanding the fact that the Blackmon was more senior and experienced. These white employees include: John Keehma, Mike Morrissey, Dan Delaney, Brian Heine, John Marlega and Steve Smith. Moreover, there were other white employees with less experience in seniority that were promoted before Blackmon.

10. Seniority among employees in the Field Engineering Department is not a factor that Cingular considers for promotional opportunities when Blacks stand to get a promotion based on seniority. John Keehma was promoted to Field Engineer after two years on the job and after four years he was promoted to Senior Field Engineer. John

Marlega was promoted twice in four years to senior Field Engineer and Steve Smith was promoted after only three years. Keehma, Marlega and Smith are white employees in that department. By contrast, Plaintiff Carl Blackmon, a black technician has been on the job for 6 1/2 years and still has not been promoted. Plaintiff Graham was promoted after eight years and was reminded by Bruce Salnave that his promotion had to be awarded by managers outside the Field Engineering Department.

11. Dennis Moore, a black employee in the purchasing department applied for the purchasing agent position that was posted on the Company's bulletin. The posting stated that candidates must have been at their current Buyer position for at least 12 months. Moore was not only the senior Buyer at the Department, he had held that position for about 18 months and was a Certified Purchasing Manager. Nonetheless, Moore's white manager, Martha Morrison, gave the promotion to Gail Schourek, a white female with less experience who had held her then-current position for less than the required 12 months. Moore complained about the improper handling of that promotion, however, the management failed to provide a valid reason for such conduct. The only excuse they could offer was that Moore's manager simply acted "unprofessionally." In an effort to appease Moore, the management subsequently offered him two lateral transfers (one out of state), but they never offered him the promotion for which he felt he was qualified and deserved. When Moore refused the lateral transfers and insisted that the Company should grant him the promotion for which he was qualified, he was terminated.

12. Kenneth Whitten, a black senior engineer with technical knowledge and experience, applied for a supervisor position that was available in customer support engineering. Although Whitten was interviewed for the position, the interview was

nothing more than face-saving courtesy. It had already been decided that the position was going to be awarded to Mike Crandall, a white senior engineer who, unlike Whitten, lacked technical experience. Thereafter, Crandall received another promotion, from supervisor to manager. Upon Crandall's promotion, the supervisor position became available again. Once again, Whitten apply for the promotion and was denied the position. The position was given to Connie Gass, a white female, who was a call-center manager with no technical experience.

13. Dave Nicholson, a black employee with an electronics engineering degree, was never assigned to special projects, such as the wireless 911. Such assignments would enable him to gain the experience and skills necessary for advancement. On the other hand, Shawn O'Leary, a white employee without engineering degree, was assigned to the wireless 911 project. Nicholson was evidently better qualified than O'Leary to work on special projects because he trained O'Leary. In addition to the denial of special projects, Nicholson had to wait almost two years before receiving a promotion. However, Shannon Burt, a white female, was promoted to engineer after only six months on the job.

Disparate Treatment of Blacks

14. Defendants failed to give overtime pay and RPP assignments (which provide additional 10% pay) to Plaintiffs Graham and Blackmon, while giving such pay to white employees with less qualification and seniority. For example, Russ Jender, a white employee, was paid overtime and RPP pay for "site audits " and Plaintiff Graham was not, even though Graham worked a longer length of time on the same project and

instructed Jender on the site audit. Cingular currently owe Graham 550 hours of documented RPP and overtime pay.

15. Plaintiffs Graham and Blackmon went to Daniel Wickert, a white manager, to complain about not receiving RPP assignments and overtime pay. They also complained to their supervisor, Glenn Dorman, a white male, and to a senior union steward, Brian Penton. For the first time in their employment history, Glenn Dorman offered RPP pay. Immediately thereafter, on August 30, 2002, Daniel Wickert sent an e-mail to Glenn Dorman, Brian Penton and Tim Kaufenberg, their Director, that stated: "Chris Graham is not to be offered all RPP assignments again until he is able to demonstrate a full understanding and appreciation of the opportunity that this assignment presents." However, there were white employees who committed major infractions and do not get reprimanded in the same manner.

16. Currently, the most senior employee in his area is the Plaintiff Graham and Daniel Wickert prohibits all managers from assigning RPP duties to Graham.

17. Plaintiff Graham's White supervisor, Jim Coconate, refused to assign Graham to inspect a construction project at site 214, but did assign Dan Delaney, a less senior white employee, to conduct the inspection. Coconate was aware that Delaney had to travel for two hours to get to the site, whereas Graham was merely less than 30 minutes away and was more qualified to perform the inspection.

18. Blacks are readily disciplined for occasional infractions, regardless of their levity. White employees, however, commit more serious infractions, but receive no disciplinary action. For instance, Plaintiff Blackmon, a black employee, was grounded for three weeks because he was 20 minutes away from his work site during his lunch

hour. On the other hand, Brian Penton, a white employee who routinely travels more than 45 minutes each way from his job site to the office for lunch, is not even giving a warning for his frequently over extended lunch breaks.

19. Likewise, white employees who mishandle company property face no serious consequences. Deno Fetchner, for instance, is said to have misused an expensive desoldering machine that Cingular had purchased, but was not disciplined for such serious misconduct. Some whites, such as Carl Battaglia, come to work with their faculties so impaired that they pass out on the table. In Battaglia's case, he was simply transferred to another department without further disciplined.

20. Employees in the Field Engineering Department were all awarded extended bonuses in March 2002. However, the only two black employees in that department received no such bonuses, even though they received favorable performance evaluations and worked just as hard as their white counterparts. Likewise, Dave Nicholson did not receive extended bonuses, while his counterparts, such as Chris Melker, Shannon Burt and Joe Gerard received such bonuses.

21. Black account managers are assigned to manage accounts that all are located in minority neighborhoods of the inner city. A Black account manager, Brian Cooper, reports that there were no white account managers working in the inner-city accounts. The only exception to that practice were Jim Nagy and Brian Lettrich, white account managers who are assigned to the most profitable black-owned accounts, which activated over 2000 new lines per month. That account was subsequently transferred to a Black account manager when sales on it began to decline. Whites were assigned to other areas

of the city of Chicago, such as Lincoln Park, where there is an abundance of affluent whites.

22. During a reorganization in January 2000, sales accounts were reassigned among account managers whose titles were changed to district managers. Most of the non-producing accounts were assigned to the only black member of the dealer accounts team, ensuring that his income would plummet for that year. When the black district manager complained of the unfair assignment of the accounts, Jackie Myers and Jim Antesberg simply responded that the Manager Jim Moen did not have a problem. Moen, for his part, responded that he was unable to do anything, even though he had the authority to assign the accounts to district managers.

23. Glenn Dorman issues cellular phones to all technicians, except the only to black technicians in the Field Engineering Department. When the black technicians, such as the Plaintiffs herein, inquired about the situation, Dorman told him that only some technicians doing digital additions were issued those phones, and that additional phones were on back order. Both of Dorman's claims were false because someone in the Service Department told both Plaintiffs Graham and Blackmon that the black technicians were also doing digital additions and there were no back orders for more phones.

24. Ignoring the value and experience of his senior black employees, Dorman consistently assigns white employees to take charge of the team when he is away from the workplace. He often leaves in charge Larry Barrett and Darin Nordeen, two White males, instead of entrusting Plaintiff Graham to lead the team in Dorman's absence. Graham is a more senior member of the team and is fully cable of supervising the more junior employees and overseeing the operation. In addition to enabling junior white

employees to gain supervisory experience to the detriment of more senior Blacks, the junior white employees receive a monetary bonus as compensation for performing supervisory duties. This is compensation that is denied to the senior black employees.

25. The Field Engineering Department of Cingular in the Chicago area has approximately 40 employees in it since 1990 and only two of the 40 employees have been Blacks. The two black employees constitute 5% of the workforce. However, the Black population in Chicago is 36.8%, the White population is 42% and all other minorities is 21.2% pursuant to the U.S. census in 2000 and greatestcity.com. Thus, although there is approximately the same percentage of Blacks to White in Chicago, only 5% of Blacks constitute the workforce at Cingular's Field Engineering Department.

26. When new equipment is issued, White employees are the first to receive the equipment, while Blacks are relegated to use old equipment. When White employees in a field engineering team were issued new touch screen computers the Plaintiffs Blackmon and Graham received used computers. When Graham and Blackmon complained to their manager about this disparity, Daniel Wickert responded by saying that old computer enabled them to do their job. Wickert ignored their concern that there was an apparent racial disparity in the way equipment is issued at Cingular.

27. Dan Wickert interferes with the work schedule when black employees, including the Plaintiffs herein, agree with their leads (supervisors/managers) on special projects such as the Acuture install, even though such projects and schedules are worked out on a voluntary basis between the leads and the workers on the project. Wickert, however, does not interfere with the work schedule of White leads, such as Steve Smith.

28. Cingular management usually sends e-mail announcements, flowers and collects money when any of the white technicians lose a close family member, have a baby or if there is an illness in the family. Plaintiff Graham's father died in 1998 and management did not send an e-mail nor did it give flowers or collect money.

29. Managers Bryan Klamer and Jim Moen required Ron Foster, the only black in their dealer accounts team, to fill out and submit requisition forms to obtain ordinary office supplies, such as paper clips and pens. Other members of the dealer team were permitted to retrieve from the supplies closet in the supplies they needed. Foster, on the other hand, was not even permitted to approach the supplies closet unless an escort accompanied him.

30. Black employees are subjected to annoying questioning about petty issues that are ordinarily overlooked when whites are involved. For instance, Glenn Dorman, a white supervisor called Plaintiff Blackmon to ask him why his telephone rings more than four times before he picks it up. However, Dorman says nothing about the fact that John Keehma, another white employee, rarely picks up the phone, letting incoming calls go to his voice mail.

31. Technical training is another area where Cingular discriminates against black employees and benefits whites. Cingular managers have sent white employees out-of-state for training, and made up excuses when Blacks requested to be said for the same training. The white managers claim that the white employees who receive the training would train the black employees when they returned. When the union demanded that Blacks be sent out-of-state for the same training, managers then required them to lay out all travel and accommodation expenses and subsequently get reimbursed. This

requirement, although contrary to stated company policy of paying directly for such expenses, effectively prevented Blacks from attending such training because the cash outlay was more than they could afford.

Hostile Work Environment

32. In 2003, Plaintiffs Graham and Blackmon found pictures posted around the work area of the T.V. show Sanford and Son with Lamont's head taken off and manager John Coffey's head in its place. The white employees found it to be funny while John Coffey was highly offended and upset that someone would place a picture of his face in such circumstances.

33. On July 7, 2003, Plaintiff Graham visited a secured cell site (C033) where he found the words "kill the niggers" painted on the side of the cell site cabinet. Although white technicians, such as Russel Gender, Larry Barrett and others, admitted seeing the graffiti before plaintiff, they did not reported to management. After Plaintiff Graham reported the graffiti and asked for its removal, Cory Volonaski, in the human resources department, told him that someone was the offended that Graham reported the incident.

34. Camille Vacic questioned Barry Bruce, a black male employee, about his hairstyle, noting that Bruce's hair was longer than the usual, close-crop style worn by Black men. Vacic has never been heard to make similar inquiries of white men. When Bruce began wearing his hair in braids, a style popular among African-Americans, others also adopted that style as a fashion statement. Vacic accused Bruce of being the "ringleader" in getting others to wear braids in their hair.

35. Klamer and Moen, in the presence of black employees, often ridiculed and criticized Black clients who maintain accounts with Cingular. During weekly meetings, Klamer and Moen mockingly fake a Southern drawl to emulate the inflection of African-Americans. They also intentionally mispronounce words and use improper grammar in an attempt to imply that Blacks are ignorant and uneducated. They also disparage black clients, claiming that those clients are slow or uneducated.

36. Moen refers to minorities in the south side of Chicago as "the scum of the earth." He once made this remark during a meeting with businessmen who wanted to bring cellular service to the south side neighborhood of Chicago, which is predominantly populated by Blacks and other minorities.

37. Personal belongings of black employees are tampered with and even disposed of. Plaintiff Graham has found his nametag removed from his file cabinet and thrown behind his desk under a cabinet. He has found his certificates flipped backward and his cell phone placed in the trashcan. Other similar harassments against the Plaintiffs occurred.

38. Monica Richman, a black customer service representative, was falsely accused of using profanities with a customer. Lauri Sternes, her white supervisor, held a meeting with Richmond where they played back a recording of the conversation in question. Sternes admitted that Richmond had not altered any profanities at the customer and assured Richmond that there was no reason for taking disciplinary action against her. However, a few days later Sternes approached Richmond asking her to sign a written disciplinary warning for the same incident. The formal warning would place Richmond on probation for six months. Richmond refused to sign a warning and requested that the

recording be played back in the presence of the union representative. Sternes balked at Richmond's request, claiming that the tape had been erased. Even though Sternes knew that the accusations against Richmond were false, Sternes placed the unsigned warning in Richmond's employee record.

39. Plaintiffs Blackmon and Graham were assigned to inventory the sites within their work zone. At the last minute, a supervisor told them to visit one site outside their zone. While they were visiting the outside site, John Coffey, a white male, sent an e-mail to the managers complaining that Blackmon and Graham did not inventory some sites within their zone. This was an attempt to portray Blackmon and Graham as if they failed to do their job. Although their managers had diverted Blackmon and Graham to the out-of-zone site, the two volunteered to return to their zone and inventory the sites that were not previously assigned to them.

DISCRIMINATION AGAINST DEALERS

42 U.S.C. §§ 1981 & 1982

40. On January 15, 1997, Plaintiff Edward Wicks, an African-American, entered into a contract with Cingular, until February 27, 2002, where he would become an authorized dealer and agent doing business under Mercedes Wireless Inc. The contract is called the Authorized Dealer Agreement, which defined the nature and scope of the relationship that exist between Wicks and the Defendants.

41. Until February 27, 2002, Wicks sought to modify the contract to allow him to become a full-service agent where he could sell prepaid and postpaid wireless service. However, Brian Lettrich, a White manager at Cingular, refused to modify the contract

and told Wicks that he will not do well as a full-service agent in his neighborhood.

Wicks neighborhood consists of Blacks and other minorities.

42. During the last quarter of 1997 there was a great demand for postpaid wireless service. Wicks sought to modify his contract again to become a contract dealer. This time the Cingular manager he dealt with was Sal Moline, a Hispanic American. Mr. Moline did modify the contract and permitted Wicks to sell prepaid and postpaid-contract wireless service. This benefited Wicks' and the Black community because postpaid-contracted services were a much better deal than prepaid. Wicks business skyrocketed in selling postpaid-contract services.

43. Plaintiff Wicks increase the profit for Cingular and increased his sales. However, in order to expand and continue to grow Wicks must become a "sales and service" Dealer. Cingular management, including Jim Moen among others, recognized Wicks success in his location. Such success made by a White Dealer would qualify them to receive a "Sales and Service" contract. The expressed requirement for Dealers to become a "Sales and Service Representative" is to have "an average of 75 contracted new lines a month for over one year."

44. Wicks could not have qualify to be a Sales and Service Representative, because Laura Price, Jim Moen, Brain Lettrich and Scott Nichole's, Cingular managers commenced a concerted effort to put Wicks out of business. They first withheld the sale, to Plaintiffs of desperately needed equipment. Second, they withheld earned commission and residuals. Third, they did not properly service Plaintiffs' customers by not repairing their phone bills, by making many errors on their bills and by not providing a proper

service. This caused many terminations of service before the 180 days period, which permitted Cingular to impose a “charge-back” fee against Plaintiffs.

45. Laura Prace made many racist comments towards Wicks. Wicks simply ignored those comments so that he could just continue his business with Cingular, the company he loved and was proud to be a part of. Laura Prace called Wicks a boy that did not know how to run his business in front of her co-workers and to Wicks.

46. In September 2000 Jim Moen threatened Wicks. He said to Wicks that if he “goes over his head” that would be the end of Wicks “relationship with Cingular.” In February of 2002, Scott Nichols called Wicks ignorant because Wicks stated that it is wrong for Cingular to hold his commissions and residuals and pay him as late as they want and at the same time complain he is past due on his equipment bill.

47. Brian Lettrich made a false statement to Wicks on numerous occasions about restoring his credit line. He said that Wicks has a great future with Cingular once Wicks paid Cingular the \$150,000 dollars in charge-backs. Wicks trusted and relied on the Cingular managers to be truthful with him. Wicks sought a long-term relationship with Cingular. He continued to work for Cingular and he paid all charge-backs in reliance on his managers’ false statements. However, after Wicks paid the \$150,000 Cingular shut Wicks business down by not paying commission and residuals and most importantly by not extending a credit line like it said it would and like it does for its White Dealers.

48. Plaintiff Wicks attended the shareholders meeting in the summer of 2001 where he spoke with Cingular’s officials and explained the treatment he was receiving. Wicks thought by going to top officials, Cingular’s managers would not act in such a

hateful discriminatory manner. However, this would not be the case. Cingular's managers treated Wicks with more harassment.

49. Manager Jim Moen and Laura Prace, Jackie Meyers and Jim Hannesburger said to Plaintiff Wicks that if he pays the \$150,000.00 charge-backs his credit line would be restored and he will be keep in business with Cingular. This was a false statement; in reliance on these manager's false statement Wicks eventually paid off the entire charge-backs. However, Cingular's managers denied Wicks a credit line. Without a credit line Wicks was unable to purchase inventory from Cingular; he was unable to meet the growing demand for products and services. He could no longer operate his business.

50. In August of 2000, after working 11 months in postpaid-contract services and not receiving any payments. Wicks fell behind on his car payments and all his other obligations; he had large debts to pay and Cingular was the only company getting paid. Wicks called Laura Prace, Jim Moen and Brian Lettrich to explain that if they don't pay some of his commission, his business was in danger of shutting down. Jim Moen refused to speak with Wicks and Laura Prace told Wicks close is store, sell his truck and sale phones out the back of his car.

51. In May 2001, Wicks earned \$17,000 in commissions, but received no commissions due to the charge-back balance. Manager Jim Moen and Laura Prace refused to give Wicks any commission payments; they paid Wicks a check for one dollar, which they claim is consistent with the terms of the contract. Wicks told his managers that he could not survive off \$1.00 dollar per month. Cingular managers promised Wicks they would not send him any more checks for \$1.00 dollar. Wicks asked these managers over and over to allow some of his commission to be paid to him so that he can at least stay in

business. Cingular and its employees continued to send Wicks checks for less than \$1.00 dollar.

52. Wicks stated to his managers “there was no way in heaven and earth that you can work a man for 30 days and send him a check for less than one dollar and be acting in good faith.” These checks were sent with the intent to cause harm to Wicks, hurt him and crush him financial, emotional and spiritually. This treatment did cause Wicks major stress, anguish, and many family problems. Cingular managers knew that Wicks had children and they continued to put Wicks in unbearable situations.

53. On February 27, 2002, Wicks attempted to order cellular phones for customers and was denied by Laura Prace, Scott Nichols and Jim Moen. Wicks then called Bill Baldwin of the Atlanta corporate office for Cingular for help. Bill Baldwin made a call to the Chicago office and sent instruction to help Wicks with this matters. However, Cingular managers did not comply.

54. In fact, Shelly Borsma, Laura Prace and Todd Flack conspired to put Wicks out of business. They requested that Wicks produce his bank statements, business financial records and tax returns and they claimed that this was standard business practice. They used this as the reason for delay and denial of payments.

55. From 1997 to July 2002, Plaintiff Hayes entered into this same Authorized Dealer Agreement with Cingular to serve only as "prepaid Dealer." Hayes was very successfully in prepaid sales and he exceeded the usual requirement for becoming a "sales and service Representative," however, Cingular repeatedly refused his request. Plaintiffs Hayes met the requirements for becoming a sales and service Representative, by contracting 75 new lines per month for over one year, however, he was denied.

Meanwhile, other white Dealers in non-minority areas are allowed to become a sales and service Representative as soon as they meet this requirement.

56. There are no Blacks with Cingular who have received a sales and service contract. All the Dealers with a sales and service contract are white. By not receiving a sales and service contract Hayes was limited in his expansion and could not grow out of his minority neighborhood.

57. Cingular breached the Authorized Dealer Agreement with both Plaintiffs Wicks and Hayes by failing to give earned commission when consumers, who failed to stay active for minimum of 181 days and were later reinstated; Cingular consistently excluded or failed to identify Plaintiffs' stores in their advertisements; Cingular authorized currency exchanges as dealers within the Plaintiffs' geographic area, which reduced their market share; Cingular permitted unauthorized Dealers to sell Cingular products by supplying such products to "sales and service centers" that in turn supply unauthorized Dealers.

58. Cingular made numerous errors on customers bill, which resulted in customers terminating their contract and Cingular forcing Plaintiffs to pay charge-backs. Cingular refused Plaintiffs' request to audit their accounting records.

59. Cingular refused Plaintiffs' request to audit its records. Cingular had change some of the customer's numbers without reveal which numbers were changed to Plaintiffs. Plaintiffs had to pay charge-backs and they lost their commission and residual for these customers.

60. Cingular withheld approval for Plaintiffs and other Black Dealers to open new sites in non-minority areas.

61. Cingular failed to make prompt and complete repairs to the phones sold to Wicks' customers.

62. Cingular provided free dealer lines and unlimited a time to White Dealers, but not Black Dealers.

63. When Plaintiffs Wicks and Hayes had some credit line, Cingular required them to pay for their products received within 30 days, but it would not pay them their commission this or residuals for over 180 days. White Dealers were paid their commission and residuals within 10 days and were granted in excess of 120 days to pay for products supplied by Cingular.

COUNT ONE
FIRST CAUSE OF ACTION
DISCRIMINATION UNDER TITLE VII OF THE 1964 CIVIL RIGHTS ACT

64. Plaintiffs repeat paragraph 1 through 63 as though stated herein.

65. Plaintiffs Graham and Blackmon are employees at Cingular who are African-Americans in within the protected class of Title VII.

66. Plaintiffs were qualified for the job and performed to employer's legitimate expectations. Plaintiffs are more senior, more trained, more experienced and more capable than the above mentioned White employees who were promoted before Plaintiffs.

67. Plaintiffs suffered adverse employment actions by not being timely promoted and enduring a hostile work environment, as set forth above.

68. Cingular treated similarly situated employees of a different race from Plaintiffs, more favorably by giving them promotions and providing a less stressful work environment, as set forth above.

COUNT TWO
SECOND CAUSE OF ACTION
RETALIATION UNDER TITLE VII OF THE 1964 CIVIL RIGHTS ACT

69. Plaintiffs repeat paragraph 1 through 68 as though stated herein.

70. Plaintiffs engaged in statutorily protected activity by filing a discrimination claim with the Equal Employment Opportunity Commission (EEOC) in October 2002.

71. Plaintiff suffered adverse employment action, as stated above, after filing their complaint with the EEOC.

72. There is a causal link between the Plaintiffs filing a complaint with the EEOC and suffering the adverse employment actions; Cingular management expressed it and implied it, as set forth above.

COUNT THREE
THIRD CAUSE OF ACTION
DISCRIMINATION IN CONTRACTUAL RELATIONSHIP, 42 U.S.C § 1981

73. Plaintiffs repeat paragraphs 1 through 72 as though stated herein.

74. Plaintiffs Wicks and Hayes are African-Americans and members of a racial minority group.

75. Cingular's intent was to discriminate against these Plaintiffs on the basis of their race.

76. The discrimination enumerated above related to the making, performing and modifying a contract, as set forth above and in the common law fraud cause of action.

COUNT FOUR
FOURTH CAUSE OF ACTION
DISCRIMINATION IN SALE & RENT, 42 U.S.C § 1982

77. Plaintiffs repeat paragraph 1 through 76 as though stated herein.

78. Plaintiffs Wicks and Hayes are African-Americans and members of the racial minority group.

79. Cingular intentionally discriminated against these Plaintiffs by refusing to rent or sell to them certain cellular phones under the “sale and services” contract on the basis of race.

80. The discrimination enumerated above concerns the selling and renting of certain cellular phones under the "sale and services" contract, as set forth above and in the common law fraud cause of action below.

COUNT FIVE
FIFTH CAUSE OF ACTION
COMMON LAW FRAUD

81. Plaintiffs repeat paragraph 1 through 80 as though stated herein.

82. The following are false statements of material facts made by Cingular’s managers; they knew that the statements were false; they made the statements to induce Plaintiffs Wicks and Hayes to act; the Plaintiffs acted in reliance on the truth of the statements; and damages resulted from such reliance.

83. There are four incidents that constitute common law fraud and/or a breach of contract.

84. **FIRST**, in May 2000, Plaintiff Ramon Hayes entered in a contract with Cingular, specifically with Mr. Robert Nelson, Jim Moen and Leann Blanchard was a witness. The terms of the contract were that Hayes would sell his Chicago business and open a new location in Gurnee Mills Mall. In exchange, Cingular promised to promote Hayes to “Sales and Service” Dealer if he achieves the required rate of sale at Gurnee Mills.

85. However, Mr. Nelson and Mr. Moen knew that their state to promote Hayes to Sales and Service, if he meets the requirements, was false and they made this state to induce him to move his business to Gurnee Mills. Hayes, in reliance on this false statement, moved his business to Gurnee Mills.

86. In July, 2002, Plaintiff Hayes learned from inside sources, including Leann Blanchard, that Cingular automatically upgrades Dealer to “Sales and Service” when they sell over 75 contract lines of service per month for at least a three-month period. However, after Hayes asked to be promoted to Sales and Services, the account executive, Julie Klemp, told him that he must sell over 75 contract lines of service per month for at least a one-year period. Yet, white Dealers were automatically promoted to Sales and Service when they sell over 75 contract lines of service per month for a three-month period and in some cases they were promoted to Sales and Service status without selling over 75 contract lines of service per month for at least a three-month period.

87. Plaintiff Hayes were able to get over 75 contract lines of service per month for more than one year. Yet when they demanded to be promoted to Sales and Services, the following Cingular representatives denied their demand: Shelly Boersma, Jim Anetsburger, Bill Baldwin and Steven Carter.

88. **SECOND**, Jim Moen and Jim Hannesburger expressed to Plaintiffs Wicks and Hayes that they would receive the same equipment and service pricing as Cingular gives to its internal distribution channels. This was witnessed and implied by account executives: Leann Blanchard, Michelle Mohr and Julie Klemp. It was later discovered by other Dealers that Cingular was not giving the same equipment and service pricing to their Dealers as to Cingular's internal distribution channels. Cingular later admitted that it did not provide the same equipment and service pricing.

89. **THIRD**, these same individuals also expressed to Plaintiffs Wicks and Hayes that their new store listing will be on the "support number system." This is a system where a customer calling Cingular for the location of a store that sells its products, Cingular would give all the stores within a zip code. However, Plaintiffs' stores were not listed. Cingular management knew that Plaintiffs' location would not be listed and made this false statement to induce Plaintiffs to move their location and to renew their contract with Cingular.

90. **FOURTH**, Manager Jim Moen and Laura Prace, Jackie Meyers and Jim Hannesburger said to Plaintiff Wicks that if he pays the \$150,000.00 charge-backs his credit line would be restored and he will be kept in business with Cingular. This was a false statement; in reliance of this false statement, Wicks eventually paid off the entire charge-backs. However, Cingular's managers denied Wicks a credit line. Without a credit line Wicks was unable to purchase inventory from Cingular; he was unable to meet the growing demand for products and services. He could no longer operate his business.

91. After the Plaintiffs Wicks and Hayes complained about the above and demanded that Cingular remedy the matter, the above named Cingular managers

commenced a concerted effort to put Wicks and Hayes out of business. They first withheld the sale to Plaintiffs of desperately needed equipment during a peak time of the year. Second, they withheld earned commission and residuals. Third, they did not properly service Plaintiffs' customers by not repairing their phone, by making many errors on their bills and by not providing a proper service. This caused many terminations of service before the 180 days period, which permitted Cingular to impose a "charge-back" fee against Plaintiffs.

92. Many of these customers restored their service before the 180 days and or their charge-back, however, Cingular did not refund these "charge-backs" to Plaintiffs, nor did it give the earned commission and residuals for these customers. The above named Cingular managers withheld over \$350,000 from Hayes and \$450,000 from Wicks. The exact amount cannot be known without reviewing Cingular's records.

93. As a result of Defendants' Common Law Fraud/Breach of Contract, Plaintiffs were unable to expand or grow their business. Plaintiffs lost profits, commissions and residuals. Plaintiff Hayes went out of business and Plaintiff Wicks' business was irreparably damaged.

COUNT SIX
SIXTH CAUSE OF ACTION
BREACH OF CONTRACT

94. Plaintiffs repeat paragraph 1 through 93 as though stated herein.

95. In 1995 and in 1997, Plaintiffs Wicks and Hayes entered into a contract with Cingular entitled Authorizes Dealer Agreement, whereby the Cingular provided cellular phones and Plaintiffs sold the phones and receive profit and commissions.

96. Since February 27, 2002 for Wicks and Since July 15, 2002 for Hayes, Cingular has been in breach of Authorized Dealer Agreement by: failing to pay commissions and residuals to Plaintiffs, failing to extend credit and provide inventory to Plaintiffs, and failing to provide regular reports and financial statements.

97. The Plaintiffs and Defendants entered into a contractual agreement with respect to the statements made in the pleadings set forth in the above common law fraud cause of action. Defendants breached said contract by not fulfilling its contractual obligations, as set forth above.

COUNT SEVEN
SEVENTH CAUSE OF ACTION
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALINGS

98. Plaintiffs repeat paragraphs 1 through 97 as though stated herein.

99. In 1995 and in 1997, plaintiff's Wicks and Hayes entered into a covenant of good faith and fair dealings with Cingular by entering into a contract with it, entitled Authorizes Dealer Agreement, whereby Cingular provided cellular phones and Plaintiffs sold these phones and receive profits and commission.

100. Since February 27, 2002 for Wicks and Since July 15, 2002 for Hayes, Cingular has breached said covenant by not paying Plaintiffs' their commission and residuals, and by not allowing Plaintiffs to become sale and service representatives, and by canceling Plaintiffs credit line, which permits them to keep inventory in their stores, and by discriminating against him on the basis of their race.

101. The Plaintiffs and Defendants entered into a covenant of good faith and fair dealings with respect to the statements made in the pleadings set forth in the above

common law fraud cause of action. Defendants breached said covenant of good faith and fair dealings by not fulfilling its obligations, as set forth above.

COUNT EIGHT
EIGHTH CAUSE OF ACTION
VIOLATION OF THE ILLINOIS FRANCHISE DISCLOSURE ACT

102. Plaintiffs repeat paragraphs 1 through 101 as though stated herein.

103. The Plaintiffs Wicks and Hayes entered into an agreement with Cingular whereby, Cingular grants them the right to engage in selling its wireless phone and service, under a plan that Cingular prescribes. Plaintiffs could only sale Cingular products.

104. Plaintiffs operated their business pursuant to the trademark, trade name, logotype and advertisement of Cingular.

105. Each Plaintiff had to pay Cingular \$1500 for the right to engage in the business of selling Cingular's product and service.

106. Defendants violated the Illinois Franchise Disclosure Act for the reasons set forth above and for terminating Plaintiffs' business without good cause.

DAMAGES

107. As a direct result of Cingular's conduct Plaintiffs, Graham and Blackmon lost wages and had their careers irreparably damaged. They have suffered embarrassment, humiliation, loss of enjoyment of life, inconvenience, and other non-pecuniary losses. Plaintiffs seek relief that includes, but not limited to, back pay, front pay, lost benefits, lost future earnings, and compensatory damages for pain-and-suffering in the amount of ten million dollars (\$10,000,000). Plaintiffs' also seek attorney's fees

pursuant to 42 U.S.C. § 1988, and equitable relief in an injunction prohibiting Cingular's discriminatory conduct, together with such other further relief that this court deems just and proper.

108. As a direct result of Cingular's conduct Plaintiffs Wicks and Hayes lost profits and commission and had their business irreparably damaged. They have suffered embarrassment, humiliation, loss of enjoyment of life, inconvenience, and other non-pecuniary losses. Plaintiffs seek relief and includes, but not limited to, their earned commissions and residuals, lost future earnings, compensatory damages for pain-and-suffering in the amount of one hundred million dollars (\$100,000,000).

109. Since Cingular's conduct was intentional and it had prior warnings regarding such conduct, punitive damages is appropriate in this case to deter Cingular and other defendants similarly situated from repeating such conduct. Thus, Plaintiffs seek \$500 million in punitive damages.

JURY TRIAL IS DEMANDED

Respectfully submitted,

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