

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

Ahmad Milam, et al. )  
)  
PLAINTIFFS ) Case No. 03 CV 9343  
)  
v. ) Judge Lefkow  
)  
Dominick's Finer Foods, Inc., United ) Magistrate Judge Keys  
Food and Commercial Workers Union, )  
("UFCW") Local 881, et al., )  
)  
DEFENDANTS. )

**NOTICE OF MOTION**

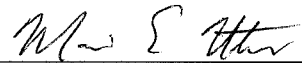
TO: Sara J. Kagay Mindy Kallus  
Vedder, Price, Kaufman & Kammholz, P.C. Karmel & Gilden  
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**PLEASE TAKE NOTICE** that I have this day filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **Plaintiffs' Motion For Reassignment Of Case, And To Amend Pleadings**, a copy of which is attached hereto and herewith served upon you.

**PLEASE TAKE FURTHER NOTICE** that I shall appear before Judge Lefkow, or before such other Judge sitting in her place or stead, on Thursday, October 6, 2005, at 9:30 a.m., and there and then present said motion.

Respectfully submitted,

AHMAD MILAM

By:   
\_\_\_\_\_  
One of His Attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that I have caused a true and accurate copy of **Plaintiffs' Motion For Reassignment Of Case, And To Amend Pleadings**, to be served on counsel for Defendants, by sending a copy of the same, via facsimile, to the attorneys identified on the **Notice of Motion**, via facsimile, on this 30<sup>th</sup> day of September, 2005, before the hour of 12:15 a.m.



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Mario E. Utreras, Esq.



those of Plaintiffs Milam and Thomas. Their claims stemmed from the same discriminatory actions engaged in by Defendant Dominick's and Defendant UFCW, and the only difference among the six African-American male employee Plaintiffs is the extent of financial damages they each incurred due to the Defendants' discriminatory actions, and an additional ground of discrimination as to Plaintiffs Clark, Falkner, Hamb, and Ragland, their gender. These four other African-American male employees of Defendant Dominick's and union members of Defendant UFCW received their respective Right to Sue Letters from the EEOC on or after July 19, 2004.

3. The Court granted the motion for finding of relatedness and to consolidate on September 14, 2004, and a Fourth Amended Complaint encompassing the six Plaintiffs and all of the present Defendants was filed on October 18, 2004.

4. Timothy Smith and Travis Thomas filed a Complaint against the same Defendants in the *Milam* case, on September 19, 2005, titled *Smith et al. v. Dominick's Finer Foods Inc., et al.*, 05 C 5398 (J. Gottschall). The *Smith* case brings claims by Plaintiff Smith against all the Defendants under 42 U.S.C. § 1981(a) for the exact same conduct that Defendants are alleged to have engaged in in the *Milam* case, as well as a claim by Plaintiff Smith against Defendant UFCW for breach of the federal common law duty of fair representation, again for the same conduct that Defendant UFCW allegedly engaged in in the *Milam* case, and finally for violation of Section 301 of the Labor Management Relations Act (LMRA) against Defendants Dominick's Finer Foods Inc. and Defendant UFCW, once again for the same conduct that the two entity Defendants allegedly engaged in in the *Milam* case.

5. The *Smith* case differs from the instant case in that it contains an additional factual scenario involving the same discriminatory scheme of disfavoring African American part-time produce clerks (such as the Plaintiffs in the *Smith* and *Milam* cases), but this time as compared to

Ezekiel Rodriguez, a part-time produce clerk who is Hispanic, and who was illegally classified as having more seniority as to Plaintiffs Smith and Travis Thomas, and therefore was able to “claim” Plaintiffs Smith and Thomas’ work hours, instead of vice-versa. This act of favoring Mr. Rodriguez over Plaintiffs Smith and Thomas spanned the same time period as that encompassed within the *Milam* lawsuit, only longer, involved the same Defendants engaging in virtually identical behavior as alleged in *Milam*, and resulted in an additional cause of action for damages to Plaintiffs Smith and Thomas than to the Plaintiffs and their causes of action as set forth in the *Milam* lawsuit (and as to Plaintiff Smith’s allegations in *Smith* that mirrored those of the Plaintiffs in *Milam*). Thus, the three Counts in the *Smith* lawsuit also encompass within them these additional factual assertions of discriminatory action.

6. There exists virtual identicalness of causes of action in the instant case with those in *Smith*, in that Plaintiff Smith’s causes of action, excluding his allegations concerning Mr. Rodriguez, mirror the causes of action in *Milam*<sup>1</sup> and are based upon a common core of operative facts, and the same evidence in the instant case would sustain Plaintiff Smith’s causes of action in *Smith* (excluding his allegations concerning Mr. Rodriguez). *Schuller v. General Motors Corp.*, 932 F.Supp. 1113 (N.D. Ill. 1996); see Fed.R.Civ.P. 20 (Permissive Joinder of Parties).

7. The case has not proceeded far enough along so as to make joinder impractical. Although the parties in *Milam* have engaged in discovery, some of the information needed to sustain the claims in *Smith* has been requested in discovery during *Milam*. Furthermore, to date, only two depositions have been taken, those of Plaintiffs Clark and Faulkner, and thus no repetition of work would be necessary if the *Smith* case were joined with *Milam*. Furthermore,

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<sup>1</sup> Plaintiff Smith does not bring a Title VII claim in *Smith*, as do the Plaintiffs in *Milam*, given that the time period for filing suit after his being issued a Right to Sue has long since passed. In fact, there are no Title VII claims brought in the *Smith* case.

no answer or responsive pleading has been filed by any of the Defendants in the *Smith* case, and thus, no discovery has commenced in that case.

8. Judicial resources would be conserved by having the *Smith* case consolidated with the instant case and reassigned to this Court, and permitting Plaintiffs Smith and Thomas to proceed as Plaintiffs<sup>2</sup> in the instant case, as the majority of Plaintiff Smith's claims in *Smith* involve common questions of law or fact with *Milam*, while the remaining claims in *Smith* involve closely related questions of fact (to wit, Defendants actions in favoring Mr. Rodriguez over Plaintiffs Smith & Thomas), but the same questions of law as in *Milam*. Fed.R.Civ.P. 42; Local Rule 40.4.

9. Pursuant to Local Rule 40.4(c), a copy of the Complaint in *Smith* is attached hereto as "Exhibit A." For the aforementioned reasons, the requirements of Local Rule 40.4(b) have also been established.

10. Accordingly, the *Smith* Plaintiffs ask for an Order from this Court finding that the instant case, *Milam*, lower numbered, and *Smith* are related within the meaning of the Local Rules of the Northern District of Illinois, and should be reassigned and joined as one in this Court.

11. Should this Court enter an Order granting the *Smith* Plaintiff's requests, the newly constituted *Milam* Plaintiffs would need to file a Fifth Amended Complaint to reflect the new parties and/or the consolidation of the cases.

12. Entering the requested Order is consistent with preserving the Court's judicial resources, as well as the litigation resources of the Plaintiffs/potential Plaintiffs and Defendant Dominick's and Defendant UFCW. *See, e.g., Houk v. Kimberly-Clerk Corp.*, 613 F.Supp. 923 (W.D. Mo. 1985)(rights of all interested parties, whenever possible, should be disposed of in a single

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<sup>2</sup> Plaintiff Thomas is already a plaintiff in the *Milam* case, but his claims involving discriminatory treatment as relating to Mr. Rodriguez are not part of the *Milam* case.

litigation); *Guedry v. Marino*, 164 F.R.D. 181 (E.D. La. 1995)(joinder of claims, parties & remedies is strongly encouraged under the Federal Rules of Civil Procedure); *Grayson v. Kmart Corp.*, 73 F.3d 1086 (11<sup>th</sup> Cir. 1986), *cert. denied* 519 U.S. 987 (1996) (Court of Appeals looks with disfavor upon commencement of two separate actions which assert essentially same cause of action based on essentially same facts and legal theories, before two different judges, particularly where same counsel represents plaintiffs in both actions).

WHEREFORE, for the reasons set forth above, the *Milam* Plaintiffs respectfully move this Court for an Order finding relatedness of the *Smith* case, an Order reassigning the *Smith* case to this Court and consolidating it with the instant case, and an Order granting the newly constituted *Milam* Plaintiffs leave to file a Fifth Amended Complaint should all or some of the aforementioned Orders be granted by this Court.

Respectfully submitted,

AHMAD MILAM, TRAVIS THOMAS,  
MARLON CLARK, STEPHEN FALKNER,  
CHARLES HAMB JR., and MYCAYALE  
RAGLAND

By:   
One of their attorneys

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