

CAUSE NO. _____

KEVIN SIMMS <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	
UNIVERSITY OF HOUSTON	§	_____ JUDICIAL DISTRICT
	§	
<i>Defendant,</i>	§	
	§	HARRIS COUNTY, TEXAS

ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT;

COMES NOW, Plaintiff, Dr. Kevin Simms and files this his Original Petition and Request for Disclosure against Defendant, University of Houston (“hereinafter referred to as “UH”) and will show the Court as follows:

I.

JURISDICTION AND VENUE

This court has subject matter and personal jurisdiction of this action which arises under the Texas Labor Code Chapter 21, et. seq, the Texas Commission on

Human Rights Act. University of Houston has continuous contact with the State of Texas in that an assertion of jurisdiction would not offend traditional notions of fair play and substantial justice. The cause of action arose in Houston, Harris County, Texas in that Mr. Simms was previously employed by the University of Houston and conducts business in Houston, Texas.

Discrimination: An employee including a prospective employee may not be retaliated against (or discriminated against) for opposing a discriminatory practice, making a discrimination charge filing a discrimination complaint, or testifying, assisting, or participating in an investigation, proceeding or hearing of discrimination. Texas law prohibits discrimination on the basis of race, color, disability, and retaliation, Tex. Lab. Code Ann Section 21.005.

II.

PARTIES AND SERVICE

Defendant, University of Houston., is a public institution of higher education in the State of Texas.

Plaintiff, Dr. Kevin Simms (“Dr. Simms”) is an individual who resides in Houston, Harris County, Texas.

III.

DISCOVERY CONTROL PLAN

Plaintiff intend that this suit be governed by Discovery Control Level Three in this is a complex employment discrimination case pursuant to Chapter 21 of the Tex. Labor Code Section 21.005 and employment discrimination case¹.

IV.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Plaintiff, Dr. Kevin Simms has exhausted his administrative remedies by dual filing charges with the the Texas WorkForce Commission Civil Rights Division and the EEOC. Dr. Simms is seeking a Notice of Right to File Civil Action from the Texas Workforce Commission. His claims filed with the EEOC/ Texas Workforce Commission are a continuing violation. The University was on actual notice of Plaintiff's intent to file suit.

¹ Request for disclosures are due within 50 days of service.

V.

NATURE OF THE CASE:

This is a state law only, failure to hire discrimination case brought under Texas Labor Code Chapter 21. African-American candidates, including Dr. Kevin Simms were not afforded an opportunity to apply for the Head Football coaching position at the University of Houston. Clearly better qualified African-Americans candidates not only were unable to apply, interview or become the successful candidate. The job opening was not posted as required by law. Thus, prohibiting qualified African-Americans from being selected or considered for the position. Defendant, University of Houston violated Plaintiff's rights under Texas Labor Code Chapter 21, et. seq.

VI.

BACKGROUND FACTS

On January 7, 2019 there was a press conference announcing the hiring of the new Head Football coach at the University of Houston, Dana Holgersen, Caucasian. Mr. Holgersen signed a twenty million contract for a five-year deal. The hiring came only approximately three days from the date the former head coach, Major Lee Applewhite's separation.

Chairman, Tilman Fertitta, Caucasian, was heard boasting that he personally went after Mr. Holgersen. Chancellor and University President, Renu Khator, also endorsed Mr. Holgersen. Plaintiff, Dr. Kevin Simms has over thirty years of coaching experience and is clearly more qualified than Dana Holgersen. Dr. Simms was not hired.

University of Houston (“UH”) violated Texas Labor Code, Chapter 21, as it did not advertise or post the head coach position, preventing African Americans from applying. UH requires a minimum of two weeks to post a vacant position to allow applicants to apply. The University did not post the job opening for two weeks and therefore not only violated state law, it violated university policy and procedures.

When Dr. Simms inquired about UH’s hiring process, he was not given an adequate response. He simply was told that it was confidential to disclose those that interviewed. University of Houston continues to bypass African Americans in applying and being considered for the head football coach position as it does not adhere to the job posting and advertising requirements. Thus, the University violate Texas Labor Code by failing to hire qualified black candidate, Dr. Kevin Simms in

the Head football coaching position. As a result, Plaintiff, suffered injuries and damages.

VII.

RACE DISCRIMINATION

Plaintiff incorporates herein the preceding paragraphs.

University of Houston., violated Texas Labor Code and the Texas Commission on Human Rights Act when it refused to because of his race, African American, allow Dr. Kevin Simms and other qualified African American candidates to apply, interview, and hire Dr. Kevin Simms.

University of Houston is engaged in an industry affecting commerce and has 15 or more employees during the relevant time periods. Dr. Simms is an African American. Dr. Simms wanted to apply for the Head Football coaching position after learning of the separation of Major Lee Applewhite. He was denied the opportunity. A comparison of the credentials of Dr. Kevin Simms and other qualified African American candidates reveal that they are better qualified for the position. Certainly, Dr. Simms should have been the successful candidate for the Head Football Coaching position. Because he was not hired, Dr. Simms suffered injuries and damages within the jurisdictional limits of this Court.

VIII. REQUEST FOR DISCLOSURE

University of Houston is requested to disclose, within 50 days of service of this request, the information and material described in Rule 194.2.

XI. DAMAGES

1. Plaintiffs incorporates the facts herein.

Plaintiffs seeks all damages allowed under the Texas Labor Code, including:

2. Compensatory general damages against Defendant in the amount proven at trial for loss wages, loss earning capacity, future pecuniary losses, emotional pain, suffering, inconvenient, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.
3. Plaintiffs seek actual damages, (back pay and front pay and loss of all employment benefits) both general, and special, for the injuries Mental Anguish suffered by Dr. Simms past, present, and future. Compensatory special damages-past, present, and future. Mental anguish sustained by Dr. Simms past, present, and future. Reasonable and necessary expenses incurred by Dr. Simms past, present, and future including attorney's fees and costs including reasonable expert fees.; Plaintiffs seek to recover all costs, expenses, expert fees including

reasonable and necessary attorney's fees under Texas Civil Practices and Remedies Code 38.0001 incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to, as the Court deems equitable and just-past, present, and future.

4. Plaintiff seeks pre-judgment and post-judgment interest at the maximum rate allowed by law. The total amount of damages Plaintiff is seeking damages to date totaling the salary Dana Holgersen received from the University of Houston and all benefits.

5. Exemplary damages based on the nature and severity of conduct of Defendant during his employment and/ or hospitalization.

6. Costs of suit;

Such other relief, as the court may deem proper.

X.

JURY DEMAND

Plaintiff respectfully request a jury trial.

WHEREFORE PREMISES CONSIDERED, Plaintiff, Dr. Kevin Simms respectfully request the Court to enter a Judgment for him and all relief requested in law or equity, as the court deems necessary and proper.

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