

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**Kethenus Gill and Raymond
Forman**

Plaintiffs,

v.

Univar USA, Inc.

Defendant.

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CIVIL ACTION NO. 3:17-cv-2600

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiffs Kethenus Gill and Raymond Forman ("Plaintiffs"), by and through their attorneys, bring this action for damages and other legal and equitable relief from Univar USA, Inc. ("Defendant"), for violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e *et seq.*, the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 *et seq.* ("§ 1981"), and for violation of Title 2 of the Texas Labor Code ("TLC"), Tex. Lab. Code § 21.001 *et seq.*, and any other cause(s) of action that can be inferred from the facts set forth herein.

INTRODUCTION

1. This is an action brought by Plaintiffs who seek damages from Defendant for acts of discrimination and a hostile work environment based on their race and/or color.

2. Defendant is one of the largest chemical distribution companies within the United States and employs more than five thousand (5,000) employees.

3. Defendant owns and operates numerous distribution facilities throughout the United States, including a facility located in Dallas, Texas.

4. Plaintiff Gill is a Black male who resides in the state of Texas and is currently employed by Defendant as a material handler.

5. Plaintiff Gill has been employed by Defendant for more than fifteen (15) years.

6. Plaintiff Forman is a Black male who resides in the state of Texas and is currently employed by Defendant as a driver.

7. Plaintiff Forman has been employed by Defendant for more than three (3) years.

8. Plaintiffs were employed at Defendant's distribution facility located in Dallas, Texas.

9. Throughout Plaintiffs' employment with Defendant, they have been subjected to racial graffiti and epithets. The men's bathroom stalls depicted, among other things, the derogatory terms: "Nigger," "Niggas," "Rag Head," "Blacks are monkeys," "I hate Niggers," and "Obama can suck a moose cock."

10. In addition, a monkey was twice hung from the ceiling in the shipping department. When the Plaintiffs and other Black employees complained, several dispatchers laughed and stated "that's how we are going to lynch y'all fools."

11. Defendant maintains a policy and practice of denying Black employees promotional opportunities in favor of less qualified White and Hispanic employees.

12. Despite applying for numerous promotions, Plaintiffs were denied promotions in favor of less qualified White and Hispanic employees.

13. Defendant also maintains a policy and practice of compensating White and Hispanic employees at higher rate than similarly situated Black employees.

14. Defendant maintains a policy and practice of steering Black employees into more arduous and dangerous positions.

15. Plaintiffs made complaints to Defendant regarding its unlawful conduct in violation of state and federal anti-discrimination statutes, but Defendant willfully ignored Plaintiffs' complaints by taking no remedial action.

16. This action is also brought by Plaintiff Gill who seeks damages from Defendant for acts of retaliation for his participation in protected activities.

17. On October 31, 2015, Plaintiff Gill filed a Charge of Discrimination (the "Charge") with the Equal Employment Opportunity Commission ("EEOC") against Defendant.

18. Immediately following the filing of the Charge, Defendant engaged in a policy and practice of retaliating against Plaintiff Gill.

19. Plaintiffs are now seeking damages and other applicable remedies for violations of state and federal anti-discrimination statutes.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States, and pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 28 U.S.C. § 2201; (iii) Title VII; (iv) 42 U.S.C. § 1981 *et seq.*, as amended; and (v) 42 U.S.C. § 1981a *et seq.*, as amended.

21. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

PARTIES

22. Defendant is a publically traded Delaware corporation with its principal place of business located at 3074 Highland Parkway, Suite 200, Downers Grove, Illinois 60515.

23. Upon information and belief, Defendant employs more than five thousand (5,000) employees.

24. Defendant conducts business within the state of Texas by owning and operating a distribution facility located at 10889 Bekay Street, Dallas, Texas 75238 (the “Facility”).

25. Upon information and belief, Defendant employs more than one hundred (100) employees at its Dallas, Texas Facility.

26. Upon information and belief, Defendant uses the Facility to distribute chemical and other related products to purchasers across the state of Texas.

27. Plaintiff Gill is a person who has been aggrieved by Defendant’s actions. He is and has been, at all relevant times, a Black male citizen of the United States of America and is a resident of the State of Texas.

28. Plaintiff Forman is a person who has been aggrieved by Defendant’s actions. He is and has been, at all relevant times, a Black male citizen of the United States of America and is a resident of the State of Texas.

EXHAUSTION OF FEDERAL ADMINISTRATIVE REMEDIES

29. Plaintiffs who have herein alleged claims pursuant to Title VII have timely filed complaints of discrimination and retaliation with the EEOC.

30. Plaintiffs have received their Notices of Right to Sue letters from the EEOC prior to the filing of this Complaint.

STATEMENT OF THE FACTS

I. Facts Common to all Plaintiffs

31. Defendant is a company engaged in the business of distributing chemicals and other related products.

32. Defendant owns and operates a distribution facility located in Dallas, Texas, which is used to distribute chemicals and other related products to purchasers throughout the state of Texas.

33. Plaintiffs are currently employed at the Facility.

34. Throughout Plaintiffs' employment with Defendant, they have been denied promotional opportunities on the basis of their race and/or color and in favor of less qualified White and Hispanic employees.

35. Upon information and belief, less qualified White and Hispanic employees are promoted at a significantly higher rate than Black employees.

36. Upon information and belief, there is only one (1) Black employee in a managerial role at the entire Dallas, Texas facility.

37. Defendant maintained a policy of posting available promotional opportunities.

38. However, this policy was not followed at the Facility, as promotional opportunities were rarely posted.

39. Accordingly, White and/or Hispanic employees were notified of existing promotional opportunities through other means, but Plaintiffs and other Black employees were not.

40. Throughout Plaintiffs' employment with Defendant, they earned a significantly lower rate of pay than their similarly situated White and Hispanic co-workers.

41. Throughout Plaintiffs' employment with Defendant, they have been subjected to a hostile work environment on the basis of their race and/or color.

42. Defendant's men's bathroom stalls depicted racial graffiti of, among others, the derogatory terms: "Nigger," "Niggas," "Rag Head," "Blacks are monkeys," "I hate Niggers," and "Obama can suck a moose cock."

43. Plaintiff Forman has been called a "nigger," "nigga," and "boy" in the workplace, and Plaintiff Gill was told his work is "nigger work."

44. Defendant had knowledge of the fact that racial graffiti existed on the men's bathroom stalls as Defendant's supervisors frequently used said stalls.

45. Plaintiffs complained on numerous occasions concerning the racial graffiti.

46. Defendant permitted the racial graffiti to remain on the bathrooms stalls for months after Plaintiffs first complained of the racial graffiti on the men's bathroom stalls.

II. Facts Pertaining to Plaintiff Gill

47. In or around March 2000, Plaintiff Gill began his employment with Defendant as a material handler.

48. Plaintiff Gill's duties as a material handler in the tank farm include repackaging chemicals, loading Defendant's product in the delivery trucks, and unloading Defendant's product from the delivery trucks. His duties in the tank farm require working with extremely dangerous chemicals and the use of a full hazmat suit.

49. In or around 2007, Plaintiff Gill was transferred from a material handler to a forklift operator position earning the same rate of pay.

50. A forklift operator's duties include, among other things, unloading and loading the delivery trucks transporting Defendant's product through the use of a forklift.

51. A forklift operator position is a more desirable position than a material handler in the tank farm because it demands less physical labor and does not involve the risk of working with dangerous chemicals.

52. In or around 2013, Plaintiff Gill was forced to return to his former position as a material handler in the tank farm against his wishes after Operations Manager, Jeff Pernel (“Mr. Pernel”), informed him that White employees could not handle the material handler position in the tank farm.

53. When Plaintiff Gill protested returning to the tank farm as a material handler, he was promised a raise by Mr. Pernel.

54. Plaintiff Gill did not receive the promised raise.

55. Upon information and belief, Plaintiff Gill’s forklift operator position was filled by a White employee.

56. Upon information and belief, that employee had two (2) less years of seniority and experience with Defendant than Plaintiff Gill.

57. Notably, there are no White material handlers assigned to the tank farm.

58. Throughout Plaintiff Gill’s employment with Defendant, he earned significantly less than his similarly situated White co-workers.

59. For example, Plaintiff Gill’s similarly situated White co-worker, a material handler without experience in the tank farm, earned approximately \$5.00 per hour more than Plaintiff Gill.

60. Upon information and belief, that employee has approximately four (4) years less seniority and experience as a material handler than Plaintiff Gill.

61. Upon information and belief, other White similarly situated employees earned more per hour than Plaintiff Gill.

62. Moreover, Plaintiff Gill was denied promotional opportunities on the basis of his race and/or color.

63. For example, Plaintiff Gill was never offered or informed about a “chemical care” promotional opportunity.

64. Upon information and belief, “chemical care” employees earn approximately \$30,000 more per year than a material handler.

65. In or around, December 2016, a White material handler was promoted to a “chemical care” position. Plaintiff Gill was denied even the opportunity to apply for the position given to that employee.

66. Additionally, in or around December 2016, Defendant promoted another White material handler over Plaintiff Gill to a “chemical care” position. Again, Plaintiff Gill was denied the opportunity to apply for said position.

67. Upon information and belief, that employee resigned his employment with Defendant approximately three (3) times throughout his tenure, but was still offered the position over Plaintiff Gill.

68. Notably, throughout his employment with Defendant, Plaintiff Gill was told by several White employees that “material handling is nigger work.”

69. The “chemical care” positions were never posted and Plaintiff Gill did not have the opportunity to apply for them.

70. Plaintiff Gill has also been subjected to a hostile work environment throughout his employment with Defendant.

71. For example, as previously stated, Plaintiff Gill was subjected to racial graffiti in the men’s bathroom.

72. In or around October 2014, Plaintiff Gill complained about the racial graffiti to Defendant's White district operations manager, Steven Berg ("Mr. Berg").

73. In response to Plaintiff Gill's October 2014 complaint, Mr. Berg stated: "I don't see a problem with it; we see things different than you people."

74. In April 2015, during a discussion about the Baltimore protests following the death of Freddie Gray, one of Plaintiff Gill's White co-workers stated to Plaintiff Gill: "You people would still complain even if you got a new rope," indicating that he felt African Americans complained about everything.

75. Plaintiff Gill complained to a manager in Defendant's Human Resources department about the derogatory comment; however, Defendant took no remedial action in response to such complaints.

76. On another occasion, in the presence of Defendant's White director, a White night shift supervisor stated to Plaintiff Gill that the reason why it was difficult for New Orleans to rebuild after Hurricane Katrina was because the Black citizens of New Orleans were "using the government's money to buy Cadillacs."

77. In or around May 2015, Plaintiff Gill witnessed a man with what appeared to be a shotgun on Company property.

78. Plaintiff Gill was understandably terrified about seeing a stranger on the premises with a gun and ran to the office to inform them about the gun.

79. Everyone in the office began laughing as they informed him that an exterminator was on the property to shoot birds.

80. Plaintiff Gill was, upon information and belief, the only employee who was not informed that an exterminator would be on the property shooting an air rifle to kill birds.

81. Plaintiff Gill complained to Mr. Berg and to Human Resources employee, Mr. Aaron Adams (“Mr. Adams”), about not being informed about a contractor using a gun on the premises.

82. Plaintiff Gill further reported to Mr. Adams that the racial graffiti on the Company property was never addressed nor discussed with employees.

83. Mr. Adams then arrived at the plant during the following week to conduct an investigation, as the supervisors at the Facility never informed him about the racial graffiti onsite.

84. Months after Mr. Adams completed his investigation, Mr. Berg held a meeting with employees about graffiti in the workplace in which he stated that graffiti would not be tolerated in the workplace

85. In or around April 11, 2016, Plaintiff Gill and other Black employees discovered a monkey hung by a rope from the ceiling of the shipping department.

86. Dispatchers were laughing about the monkey and stated “that’s how we are going to lynch y’all fools.”

87. Plaintiff Gill and other Black employees reported the monkey and comments to Defendant’s supervisors, including Branch Operations Manager, James Priest (“Mr. Priest”).

88. Management did not remove the monkey until in or around April 22, 2016. Eleven days later. The monkey was then hung from the ceiling again in or around April 25, 2016. Management again failed to immediately remove the monkey. It was eventually taken down a second time almost one week later.

89. Upon information and belief, despite management having cameras in the office and discovering the identity of the employee who hung the monkey the second time, no corrective action was taken.

90. In addition to complaining directly to Defendant about these issues beginning in 2014, Plaintiff Gill also filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) on October 31, 2015.

91. On or around November 11, 2015, a mechanical piece of Mr. Gill's filling machine was dislodged, which is a common incident.

92. Plaintiff Gill's White supervisor, Mr. Priest, informed him that he needed to fill out an incident report about the dislodgment.

93. Notably, other employee are not required to complete an incident report for this particular part becoming dislodged.

94. Since Plaintiff Gill was never required to fill out an incident form for such an occurrence in the past, he asked Mr. Priest if he knew about his EEOC Charge to which Mr. Priest's supervisor, Brett Sheffield ("Mr. Sheffield"), replied: "Oh, I'm well aware."

95. Two (2) days later, Plaintiff Gill was called into an office and was interrogated by his White supervisors, Mr. Priest, Mr. Sheffield, and Chad Burns ("Mr. Burns").

96. In an attempt to intimidate Mr. Gill, Mr. Sheffield blocked the door as Mr. Burns questioned him about allegedly not placing a particular product in the correct location.

97. The alleged incident concerning product placement allegedly occurred before Plaintiff Gill filed his EEOC Charge.

98. Plaintiff Gill was threatened by Defendant with a three (3) day suspension for the alleged incident.

99. Upon information and belief, Defendant requested that the police be present at the Facility during the meeting set forth in ¶ 95 as they had hoped to incite Plaintiff Gill to become violent.

100. Throughout Plaintiff Gill's employment with Defendant, he was never hostile nor did he ever display any acts of aggression.

101. Currently, Plaintiff Gill is forced to work alone on assignments that require two (2) employees to complete.

102. Plaintiff Gill is constantly criticized by his supervisors for not completing the assignments fast enough.

103. Before filing his EEOC Charge, Plaintiff Gill was not required to work alone on assignments that require two employees to complete

104. Upon information and belief, Defendant does not require other employees outside the protected class to work alone on assignments that require two employees to complete.

105. Accordingly, in order to complete his assigned tasks, Plaintiff Gill is required to exert twice the amount of physical labor during the workday as Defendant's employees outside the protected class.

106. Furthermore, upon information and belief, Plaintiff Gill is the only material handler required to radio his supervisors to report all of his movements throughout the workday, including use of the restrooms.

107. Upon information and belief, other material handlers, who have significantly less years of seniority, are permitted to move unimpeded throughout the Facility as they do not have to keep their supervisors updated on their movements.

III. Facts Pertaining to Plaintiff Forman

108. In or around February 2014, Plaintiff Forman commenced his employment with Defendant.

109. Plaintiff Forman began his employment with Defendant as a material handler.

110. Currently, Plaintiff Forman is employed by Defendant as a driver.

111. Throughout Plaintiff Forman's employment, Defendant denied Plaintiff Forman promotional opportunities for which he was qualified on the basis of his race and/or color.

112. For example, Plaintiff Forman has applied for more than a dozen positions.

113. These applications only garnered Plaintiff Forman three (3) interviews.

114. Some, but not all, of the positions which Plaintiff Forman was denied include: 2nd Shift Supervisor, Branch Ops supervisor, Traffic Controller, Sales Support, Environmental Technician, and Office Administrator.

115. Upon information and belief, all of the applied-for positions set forth in ¶ 114 were filled by either White or Hispanic employees.

116. For example, in or around December 2015, Plaintiff Forman sought a promotion to a Yard Specialist position, which would have increased his rate of pay by approximately \$2.50 per hour.

117. Plaintiff Forman was never informed by Defendant about the potential Yard Specialist promotion.

118. Instead, he only had knowledge of the promotional opportunity because the former Yard Specialist resigned.

119. Plaintiff Forman made a request to Mr. Priest for a promotion to the available Yard Specialist position.

120. In response, Mr. Priest told him that he already had a person "in mind" for that position.

121. Defendant gave the Yard Specialist position to a Hispanic material handler.

122. Upon information and belief, prior to that employee's promotion to Yard Specialist, he was both demoted from night supervisor to material handler and transferred to another distribution facility due to his poor work performance.

123. Plaintiff Forman complained to Mr. Adams about that employee being promoted over him.

124. Mr. Adams told Plaintiff Forman that in order to resolve his concerns he needed to speak with the Defendant's White Director of Employee Relations, Michael Newman ("Mr. Newman").

125. Accordingly, Plaintiff Forman made the same complaint to Mr. Newman.

126. Thereafter, Mr. Newman informed Plaintiff Forman that Defendant was implementing a hiring freeze for the Yard Specialist position.

127. One month later, the Yard Specialist position was suddenly posted.

128. Plaintiff Forman applied for the position and was awarded the position in January 2016.

129. Plaintiff Forman was not, however, provided a pay increase.

130. Despite numerous requests that he be properly trained for the position, Plaintiff Forman was repeatedly denied training.

131. Upon information and belief, the Company brought in a supervisor from its Pennsylvania branch to train Yard Specialists.

132. However, each time that supervisor was sent to the Dallas location, Mr. Forman was pulled from the Yard Specialist position and instructed to resume his driving duties.

133. As a result, Plaintiff Forman held the position for approximately six (6) weeks and was then forced to ask to be placed back as a Driver because he was concerned about being unable to safely perform the Yard Specialist position without the proper training.

134. Plaintiff Forman has also been subjected to a hostile work environment on the basis of his race and/or color.

135. For example, on several occasions, a White material handler, called Plaintiff Forman: “Nigger,” “Nigga,” and “Boy.”

136. In or around June 2014, Plaintiff Forman complained to his Hispanic operations manager about the derogatory comments.

137. Again, in or around December 2015, Plaintiff Forman complained about the derogatory comments to Defendant's Hispanic branch operations supervisor.

138. Upon information and belief, Defendant did not take any corrective action regarding Plaintiff Forman’s complaints.

139. Additionally, in or around June 2014, and again in or around December 2015, Plaintiff Forman complained to management about the racial graffiti.

140. Upon information and belief, Defendant permitted the racial graffiti to remain on the men’s bathroom stall walls for months after Plaintiff Forman made his December 2015 complaint.

141. In or around April 11, 2016, Plaintiff Forman and other Black employees discovered a monkey hung by a rope from the ceiling of the shipping department.

142. Dispatchers were laughing about the monkey and stated “that’s how we are going to lynch y’all fools.”

143. Plaintiff Forman and other Black employees reported the monkey and comments to Defendant's supervisors, including Branch Operations Manager, James Priest ("Mr. Priest").

144. Management did not remove the monkey until in or around April 22, 2016. Eleven days later. The monkey was then hung from the ceiling again in or around April 25, 2016. Management again failed to immediately remove the monkey. It was eventually taken down a second time almost one week later.

145. Upon information and belief, despite management having cameras in the office and discovering the identity of the employee who hung the monkey the second time, no corrective action was taken.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION FOR A VIOLATION OF Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (Disparate Treatment Discrimination (Intentional Discrimination) on Account of Race)

1. Plaintiffs Gill and Forman are a member of a protected class and repeat and re-allege the allegations in the preceding paragraphs, as if fully set forth herein.

2. The conduct alleged herein violates Title VII and 42 U.S.C. § 2000 *et. seq.* as Defendant has engaged in the practice of discrimination against the Plaintiffs.

3. The conduct alleged herein violates Title VII and 42 U.S.C. § 2000e *et. seq.* as Defendant has engaged in the practice of discrimination with respect to the terms and conditions of Plaintiffs' employment.

4. Due to Plaintiffs' race and/or color, Defendant subjected Plaintiffs to discriminatory compensation and discriminatory denial of promotional opportunities and/or titles for which they were qualified and to which Plaintiffs' White and Hispanic co-workers were not subjected.

5. Plaintiffs' requests for relief are set forth below.

AS AND FOR A SECOND CAUSE OF ACTION FOR A VIOLATION OF
Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*
(Hostile Work Environment)

146. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

147. The conduct alleged herein violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* as Defendant has engaged in racial and/or color harassment and has created, maintained and condoned a hostile work environment toward Plaintiffs.

148. The conduct Plaintiffs complained of was sufficiently severe or pervasive to alter the terms and conditions of their employment by creating an abusive working environment.

149. The Defendant knew about the conduct and failed to implement reasonably prompt and appropriate corrective action.

150. Plaintiffs' requests for relief are set forth below.

AS AND FOR A THIRD CAUSE OF ACTION FOR A VIOLATION OF
Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*
(Retaliation)
As to Plaintiff Gill

151. Plaintiff Gill repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

152. Plaintiff Gill lodged complaints with Defendant and/or the EEOC regarding discrimination and/or the hostile work environment to which he was subjected, and as such engaged in protected activity under Title VII.

153. Defendant retaliated against Plaintiff Gill because of his protected activity.

154. Plaintiff Gill's requests for relief are set forth below.

AS AND FOR A FOURTH CAUSE OF ACTION FOR A VIOLATION OF
Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 *et seq.*
(Disparate Treatment Discrimination (Intentional Discrimination) on Account of Race)

155. Plaintiffs are a member of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

156. Plaintiffs were subjected to discrimination on the basis of race and/or color by Defendant.

157. The conduct alleged herein violates Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 *et seq.* as Defendant has engaged in the practice of discrimination against Plaintiffs named herein who have asserted such claims.

158. Due to Plaintiffs' race and/or color, Defendant subjected Plaintiffs to discriminatory compensation and discriminatory denial of promotional opportunities and/or titles for which they were qualified and to which Plaintiffs' White and Hispanic co-workers were not subjected.

159. Plaintiffs' requests for relief are set forth below.

AS AND FOR A FIFTH CAUSE OF ACTION FOR A VIOLATION OF
The Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 *et seq.*
(Hostile Work Environment)

160. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

161. The conduct alleged herein violates Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 *et seq.* as Defendant has engaged in racial and/or color harassment and has created, maintained and condoned a hostile work environment toward Plaintiffs.

162. The conduct Plaintiffs complained of was sufficiently severe or pervasive to alter the terms and conditions of their employment by creating an abusive working environment.

163. The Defendant knew about the conduct and failed to implement reasonably prompt and appropriate corrective action.

164. Plaintiffs' requests for relief are set forth below.

AS AND FOR AN SIXTH CAUSE OF ACTION FOR A VIOLATION OF
The Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 *et seq.*
(Retaliation)
As to Plaintiff Gill

165. Plaintiff Gill repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

166. Plaintiff Gill lodged complaints with Defendant and/or the EEOC regarding discrimination and/or the hostile work environment to which he was subjected, and as such engaged in protected activity under § 1981.

167. Defendant retaliated against Plaintiff Gill because he engaged in protected activity.

168. Plaintiff Gill's requests for relief are set forth below

AS AND FOR A SEVENTH CAUSE OF ACTION FOR A VIOLATION OF
Title 2 of the Texas Labor Code, Tex. Lab. Code § 21.001 *et seq.*
(Discrimination)

169. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

170. Due to Plaintiffs' race and/or color, Defendant subjected Plaintiffs to discriminatory compensation and discriminatory denial of promotional opportunities and/or titles for which they were qualified and to which Plaintiffs' White and Hispanic co-workers were not subjected.

171. The conduct alleged herein violates TLC § 21.001 *et seq.* as Defendant has engaged in the practice of discrimination against Plaintiffs.

172. The conduct alleged herein violates TLC § 21.001 *et seq.* as Defendant has engaged in the practice of discrimination with respect to the terms and conditions of Plaintiffs' employment.

173. Plaintiffs' requests for relief are set forth below.

AS AND FOR A EIGHTH CAUSE OF ACTION FOR A VIOLATION OF
Title 2 of the Texas Labor Code, Tex. Lab. Code § 21.001 *et seq.*
(Hostile Work Environment)

174. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

175. Plaintiffs were subjected to a hostile work environment on the basis of race and/or color by Defendant.

176. The conduct alleged herein violates TLC § 21.001 *et seq.* as Defendant has engaged racial and/or color harassment and has created, maintained and condoned a hostile work environment towards Plaintiffs.

177. The conduct Plaintiffs complained of was sufficiently severe or pervasive to alter the terms and conditions of their employment by creating an abusive working environment.

178. Plaintiffs' requests for relief are set forth below.

AS AND FOR AN NINTH CAUSE OF ACTION FOR A VIOLATION OF
Title 2 of the Texas Labor Code, Tex. Lab. Code § 21.001 *et seq.*
(Retaliation)
As to Plaintiff Gill

179. Plaintiff Gill repeats and re-alleges the allegations contained in the paragraphs above as if fully set forth herein.

180. Plaintiff Gill lodged complaints with Defendant and/or the EEOC regarding discrimination and/or the hostile work environment to which he was subjected, and as such engaged in protected activity under TLC § 21.001 *et seq.*

181. Defendant retaliated against Plaintiff Gill because he engaged in protected activity.

182. Plaintiff Gill's requests for relief are set forth below

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. That the practices of the Defendant complained of herein be determined and adjudged to be in violation of the rights of Plaintiffs under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 *et seq.*; and Title 2 of the Texas Labor Code ("TLC"), Tex. Lab. Code § 21.001 *et seq.*
2. All damages which Plaintiffs have sustained as a result of Defendant's conduct, including back pay, punitive damages, general and special damages for lost compensation and job benefits he would have received but for Defendant's unlawful retaliatory conduct, and for emotional distress, humiliation, embarrassment, and anguish;
3. An award to Plaintiffs of pre-judgment interest at the highest level rate, from and after the date of service of the initial complaint in this action on all owed wages from the date such wages were earned and due;
4. An award to representing Defendant's share of FICA, FUTA, state unemployment insurance and any other required employment taxes;
5. An award to Plaintiffs for the amount of owed wages, including interest thereon, and penalties subject to proof;

6. Awarding Plaintiffs their costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and other costs;
7. Pre-judgment and post-judgment interest, as provided by law; and
8. That the Court retain jurisdiction over Defendant until such time as it is satisfied that it has remedied the practices complained of and is determined to be in full compliance with the law;

Plaintiffs seek injunctive relief, and including but not limited to:

- a. Training on the subject of employment discrimination for all of Defendant's employees;
- b. Diversity training for all managers conducted by reputable outside vendors;
- c. Supervisory discipline up to and including termination for any supervisor who engages in unlawful discrimination;
- d. Active monitoring of the work areas to ensure compliance with discrimination policies;
- e. Monitoring by the Court of a Federal Agency to ensure that Defendant complies with all injunctive relief; and

Plaintiffs further demand that they be awarded such other and further legal and equitable relief as may be found appropriate and as the Court may deem just or equitable.

Respectfully submitted,



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