

IN THE UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOUVENIA ARMSTRONG, HENRY)
BEASLEY, BETTY TALLEY, MELBA JOBE,) **SECOND AMENDED**
GEORGE OBI, WALTER BROWN, VINCENT)
BEAUREGARD, LARSEN CASH, PEGGY) **CLASS ACTION COMPLAINT**
SMITH, TIM SWADER, LYNETTE)
BARRETT, RENEE DAVIS, EUGENE)
JULIEN, SANDRA LANIUS, WT MELTON,)
TREVA NICKENS, ROY RUTH, LARRY)
SCHUSTER, DIANA SIMMONS and DONNA) **Case No. 3-03-1250**
SWIM,)
)
Individually and on Behalf of Others Similarly)
Situated,)
) **JURY TRIAL**
and HELEN LUST, LILLIAN HARRIS,) **JUDGE: Aleta A. Trauger**
GERALDINE THOMAS, MARILYN)
MCNEILL and FLOYD WOODLEY,)
Individually,)
)
PLAINTIFFS,)
)
v.)
)
WHIRLPOOL CORPORATION and)
INTERNATIONAL BROTHERHOOD OF)
BOILERMAKERS, IRON SHIP BUILDERS,)
BLACKSMITHS, FORGERS and HELPERS,)
Local S-272,)
)
DEFENDANTS.)

SECOND AMENDED CLASS ACTION COMPLAINT

1. Ten African-Americans (“African-American Class Representatives”) and ten Caucasians (collectively “Class Representatives”), who are current and former employees of Whirlpool, bring this action against Defendant Whirlpool, Inc. (“Whirlpool”) and Defendant

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, & Helpers, Local S-272 (“the Union”) (collectively “Whirlpool” or “Defendants”). The Class Representatives, Louvenia Armstrong, Henry Beasley, Betty Talley, Melba Jobe, George Obi, Walter Brown, Vincent Beauregard, Larsen Cash, Peggy Smith, Tim Swader, Lynette Barrett, Renee Davis, Eugene Julien, Sandra Lanius, WT Melton, Treva Nickens, Roy Ruth, Larry Schuster, Diana Simmons and Donna Swim, bring this action, on behalf of themselves and the class of persons they seek to represent, to redress the racial discrimination and harassment they and others have suffered while working at Whirlpool. Five additional African-American individual Plaintiffs, Helen Lust, Lillian Harris, Geraldine Thomas, Marilyn McNeill and Floyd Woodley, bring this action on behalf of themselves, individually, to redress the discrimination each suffered while working at Whirlpool.

I. A SUMMARY OF PLAINTIFFS’ RACIAL DISCRIMINATION SUIT AGAINST DEFENDANTS

A. FACTUAL OVERVIEW

2. The twenty African-American and white Class Representatives and class members in this racial discrimination lawsuit are all current and former employees of the Whirlpool facility in LaVergne, Tennessee, which makes room air conditioners, built-in refrigerators, air purifiers and dehumidifiers. Whirlpool employs more than 1,000 employees at the LaVergne facility. Whirlpool Corporation is the world's leading manufacturer and marketer of major home appliances, with 68,000 employees, annual sales of over \$13 billion and nearly 50 manufacturing and technology research centers around the globe. The company markets Whirlpool, KitchenAid, Brastemp, Bauknecht, Consul and other major brand names to consumers in more than 170 countries. Whirlpool Corporation has recently acquired Maytag, which is a \$4.7 billion home and commercial appliance company focused in North America and in targeted international markets.

3. Plaintiffs sue because black and white employees at Whirlpool's La Vergne, Tennessee facility have been and continue to be subjected to a gauntlet of racial discrimination, verbal abuse, racist graffiti and hostile treatment, reminiscent of Reconstruction and the era of the Night Rider.

4. Racial discrimination flourishes and is deeply embedded in Whirlpool's corporate culture. It is open, active, and unashamed. The harassment, abuse and discrimination are encouraged by Whirlpool management's refusal to stop the misbehavior.

5. Black and white employees have been and continue to be adversely affected by the racially hostile environment at Whirlpool and, consequently, by the violation of their personal right to work in an environment free of racial discrimination. They have been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and use of racial slurs, epithets and stereotypes; and
- (b) By Whirlpool management's awareness of, participation in and/or lack of response to the hostile working conditions.

RACIAL ANIMUS

6. Black and white Whirlpool employees have been subjected to an environment permeated with racial hatred, slurs, epithets and stereotypes. Whirlpool has done little or nothing to confront and eliminate this racism. For example, certain white employees routinely use the word "nigger" in reference to African-American employees, such as "I want that yeller nigger's job. I want to fuck him in the ass." Certain white employees use other terms to refer to black employees, such as "gorillas," "dumb niggers," "lazy niggers" and "stupid niggers." Despite knowing about the derogatory references to black employees, Whirlpool white managerial and supervisory staff have failed to take any action to discipline or discourage those

responsible for this racist behavior. Plaintiffs have in their possession tape recorded messages supporting these allegations.

7. Black employees are routinely cautioned by Whirlpool employees to “stay with [their] own kind.”

8. Certain white employees repeatedly tell racially derogatory jokes and slurs, such as references to black employees as “nigger bitches” or “uppity niggers.” This is and has been tolerated by Whirlpool’s white managerial and supervisory staff.

9. Plaintiffs possess at least one tape recorded, racially hostile message from a white Whirlpool employee.

KU KLUX KLAN

10. White employees make rampant references to the Ku Klux Klan (“KKK”), such as “May the Klan be with you.” Despite knowing about the KKK references, Whirlpool’s white managers and supervisors have failed to take any action to discipline or discourage those responsible from continuing to engage in this racist behavior.

RACIST GRAFFITI

11. Racist graffiti, such as the derogatory terms “nigger,” “sand niggers,” “desert niggers,” and “ragheads,” is commonplace at Whirlpool’s LaVergne facility. Whirlpool white managerial and supervisory staff know about the racist graffiti but have failed to take any action to discipline or discourage those responsible from continuing to display the racist graffiti. In addition, Whirlpool fails to erase the racist graffiti in a timely manner and, as a result, the racist graffiti remains on the walls of the Whirlpool facility for weeks and often months.

“JAMES EARL RAY DAY”

12. Certain white employees would comment openly that they wanted to replace Martin Luther King, Jr. Day with James Earl Ray Day to celebrate the assassination of Dr. King. In addition, certain white employees would refer to Martin Luther King Day as “Nigger Day.” Despite knowing about these openly racist and hateful comments, Whirlpool’s white managerial

and supervisory staff have failed to take any action to discipline or discourage those responsible from continuing to engage in the racist and hateful commentary.

RETALIATION AGAINST WHITE AND BLACK EMPLOYEES

13. When white and black employees voice their opposition to Whirlpool's racist policies and practices, they are routinely retaliated against. White employees are taunted and retaliated against if they are observed talking to and interacting with their black co-workers.

14. As a result, black and white Class Representatives and class members have been aggrieved and have suffered extreme harm.

B. EVIDENCE OF WHIRLPOOL'S RACIALLY HOSTILE ENVIRONMENT FROM AN INSIDER

15. Ms. Lynn McCrary is a white female who served as a Staff Representative for the Union defendant in this case from November 2002 until July 2003. Ms. McCrary was hired by the Union president to address race discrimination issues at the Whirlpool plant in LaVergne, Tennessee and to recruit new members for the purpose of integrating the Union, which was almost exclusively white. In her efforts to address race discrimination at Whirlpool, Ms. McCrary had significant interaction with Whirlpool Division Vice President, Doug Hutchins ("Mr. Hutchins"), and Whirlpool's Director of Human Resources, Fred Contraris ("Mr. Contraris"). These Whirlpool managers made it clear to Ms. McCrary that Whirlpool had no intentions of changing its practices with regard to African-Americans.

16. Vice President Hutchins expressed to Ms. McCrary that Whirlpool enjoyed a significant amount of control over the Union and that he did not want the Union integrated. In fact, in response to Ms. McCrary's efforts to integrate the Union, Vice President Hutchins stated "You don't understand Tennessee." Vice President Hutchins also specifically told Ms. McCrary that he did not want any African-Americans in the Union because he felt that they would cause trouble for the rest of the Whirlpool employees.

17. Additionally, and most significantly, Vice President Hutchins advised Ms.

McCrary that **“Blacks are not going to be promoted on my watch.”**

18. Ms. McCrary had similar encounters with Director of Human Resources Fred Contraris. Mr. Contraris told Ms. McCrary that African-Americans complain a lot and that as long as he was the head of Human Resources, Henry Beasley—an African-American who led a Union committee to try to improve minority membership—would not be promoted.

19. Ms. McCrary witnessed white supervisors make racist comments. For example, Ms. McCrary witnessed white supervisors Terry Lacke and Peggy LaGrange refer to African-Americans as “niggers” on a daily basis. Additionally, white supervisor Dale Travis, in reference to Martin Luther King Day, told Ms. McCrary that Whirlpool needed a “James Earl Ray Day” in honor of the man who assassinated Dr. King.

C. LEGAL OVERVIEW AND GOALS OF THIS ACTION

20. The Class Representatives seek to represent Whirlpool employees who have been subjected to one or more aspects of the systemic racial harassment and pervasive hostile work environment described in this Complaint, including, but not limited to: a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and management’s awareness of, participation in and/or lack of response to the hostile working conditions. The systemic racial harassment and racially hostile work environment described in this Complaint is, and has been, continuing in nature.

21. All Class Representatives seek a declaratory judgment that (a) Defendants’ racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and that (b) the Defendants tolerated, condoned, ratified and/or engaged in the hostile work environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action. The African-American Class Representatives seek a declaratory judgment that (a) Defendants discriminated against them by subjecting them to differential treatment on the basis

of their race, and that (b) Defendants have denied them the same right to make and enforce contracts as enjoyed by white citizens employed by Whirlpool. Such conduct is unlawful under two statutes: (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), et seq. (“Title VII”), and (b) Section One of the Civil Rights Act of 1866, as amended in 1991, 42 U.S.C. §1981 (“§ 1981”).

22. The Class Representatives further seek a permanent injunction and other equitable relief necessary to undo the effects of the Defendants’ past racial discrimination and harassment and to prevent such discrimination from continuing to adversely affect their lives and careers, including, but not limited to: affirmative restructuring of the Defendants’ practices and procedures that result in the racially hostile work environment at Whirlpool; affirmative restructuring of Defendants’ selection and compensation procedures, training and other terms and conditions of employment; reimbursement of expenses incurred in prosecuting this action; and attorneys’ fees. The Class Representatives further seek damages, back-pay and other equitable remedies necessary to make the members of the class whole.

23. The Union has failed to take action on behalf of their members, who are also members of the class herein, to help redress the racist wrongs in the Whirlpool workplace.

II. JURISDICTION AND VENUE

24. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000(e)-5, et seq., as amended, to redress and enjoin employment practices of Whirlpool in violation of this statute.

25. Venue is proper in the District pursuant to 28 U.S.C. § 1391(b) because Defendant Whirlpool is a resident of this District and because a substantial part of the events or omissions giving rise to these claims occurred in this District.

III. CONDITIONS PRECEDENT TO SUIT UNDER TITLE VII

26. The Class Representatives have fulfilled all precedent conditions necessary to the institution of this action under Title VII or are in the process of perfecting their rights and

exhausting administrative remedies. Class Representatives' claims arising under §1981 do not require administrative exhaustion.

IV. PARTIES

A. CLASS REPRESENTATIVES

27. **Class Representative Louvenia Armstrong** ("Louvenia Armstrong" or "Ms. Armstrong") is an African-American resident of Murfreesboro, Tennessee. Armstrong has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately October 1984 until the present.

28. **Class Representative Henry Beasley** ("Henry Beasley" or "Mr. Beasley") is an African-American resident of Thompson Station, Tennessee. Mr. Beasley has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately December 1984 until the present.

29. **Class Representative Betty Talley** ("Betty Talley" or "Ms. Talley") is an African-American resident of Murfreesboro, Tennessee. Ms. Talley has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately October 1984 until the present.

30. **Class Representative Melba Jobe** ("Melba Jobe" or "Ms. Jobe") is an African-American resident of Lebanon, Tennessee. Ms. Jobe has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1984 until the present.

31. **Class Representative George Obi** ("George Obi" or "Mr. Obi") is an African-American resident of Antioch, Tennessee. Mr. Obi was employed at Whirlpool's facility in La Vergne, Tennessee from 1996 until approximately June 2002, when he was involuntarily laid off. Mr. Obi was recalled in January 2003.

32. **Class Representative Walter Brown** ("Walter Brown" or "Mr. Brown") is an African-American resident of Antioch, Tennessee. Mr. Brown was employed at Whirlpool's

facility in La Vergne, Tennessee from approximately December 1994 until approximately June 7, 2002, when he was involuntarily laid off.

33. **Class Representative Vincent Beauregard** (“Vincent Beauregard” or “Mr. Beauregard”) is an African-American resident of Nashville, Tennessee. Mr. Beauregard was employed at Whirlpool’s facility in La Vergne, Tennessee from approximately December 2001 until approximately August 2, 2002, when he was involuntarily laid off. Mr. Beauregard returned to work in approximately January 2003.

34. **Class Representative Larsen Cash** (“Larsen Cash” or “Mr. Cash”) is an African-American resident of Antioch, Tennessee. Mr. Cash has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately November 1986 until the present.

35. **Class Representative Peggy Smith** (“Peggy Smith” or “Ms. Smith”) is an African-American resident of Clarksville, Tennessee. Ms. Smith was employed at Whirlpool’s facility in La Vergne, Tennessee from 1996 until August 19, 2005.

36. **Class Representative Tim Swader** (“Tim Swader” or “Mr. Swader”) is an African-American resident of Murfreesboro, Tennessee. Mr. Swader has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately 1988 until the present.

37. **Class Representative Lynette Barrett** (“Lynette Barrett” or “Ms. Barrett”) is a Caucasian resident of Smyrna, Tennessee. Ms. Barrett has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately October 1984 to the present.

38. **Class Representative Renee Davis** (“Renee Davis” or “Ms. Davis”) is a Caucasian resident of Murfreesboro, Tennessee. Ms. Davis has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately 2000 to the present.

39. **Class Representative Eugene Julien** (“Eugene Julien” or “Mr. Julien”) is a Caucasian resident of Shelbyville, Tennessee. Mr. Julien has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately 1984 to the present.

40. **Class Representative Sandra Lanius** (“Sandra Lanius” or “Ms. Lanius”) is a

Caucasian resident of Smyrna, Tennessee. Ms. Lanus has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately November 1984 to the present.

41. **Class Representative WT Melton** ("WT Melton" or "Ms. Melton") is a Caucasian resident of Woodbury, Tennessee. Ms. Melton has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1995 to the present.

42. **Class Representative Treva Nickens** ("Treva Nickens" or "Ms. Nickens") is a Caucasian resident of Murfreesboro, Tennessee. Ms Nickens has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1983 to the present.

43. **Class Representative Roy Ruth** ("Roy Ruth" or "Mr. Ruth") is a Caucasian resident of Franklin, Tennessee. Mr. Ruth has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1984 to the present.

44. **Class Representative Larry Schuster** ("Larry Schuster" or "Mr. Schuster") is a Caucasian resident of La Vergne, Tennessee. Mr. Schuster was employed at Whirlpool's facility in La Vergne, Tennessee from on or about December 4, 1995 to approximately May 23, 2004.

45. **Class Representative Diana Simmons** ("Diana Simmons" or "Ms. Simmons") is a Caucasian resident of Woodbury, Tennessee. Ms. Simmons was employed at Whirlpool's facility in La Vergne, Tennessee from approximately March 1989 to October 2004.

46. **Class Representative Donna Swim** ("Donna Swim" or "Ms. Swim") is a Caucasian resident of McMinnville, Tennessee. Ms. Swim has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately February 1985 to the present.

B. INDIVIDUAL PLAINTIFFS

47. **Plaintiff Helen Lust** ("Helen Lust" or "Ms. Lust") is an African-American resident of Antioch, Tennessee. Ms. Lust has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately November 1987 until the present.

48. **Plaintiff Lillian Harris** ("Lillian Harris" or "Ms. Harris") is an African-American resident of La Vergne, Tennessee. Ms. Harris has been employed at Whirlpool's

facility in La Vergne, Tennessee from approximately January 20, 1992 until the present.

49. **Plaintiff Geraldine Thomas** (“Geraldine Thomas” or “Ms. Thomas”) is an African-American resident of Antioch, Tennessee. Ms. Thomas has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately 1992 until the present.

50. **Plaintiff Marilyn McNeill** (“Marilyn McNeill” or “Ms. McNeill”) is an African-American resident of Clarksville, Tennessee. Ms. McNeill has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately February 7, 1996 until the present.

51. **Plaintiff Floyd Woodley** (“Floyd Woodley” or “Mr. Woodley”) is an African-American resident of Nashville, Tennessee. Mr. Woodley has been employed at Whirlpool’s facility in La Vergne, Tennessee from approximately February 13, 1995 until August 2, 2002, when he was involuntarily laid off.

C. DEFENDANTS

52. **Defendant Whirlpool** is a corporation doing business in La Vergne, Tennessee and is an employer under 42 U.S.C. § 2000e(b). It is subject to suit under 42 U.S.C. §1981, as amended, and under Title VII of the Civil Rights Act of 1964 42 U.S.C. §§ 2000e, et seq., as amended.

53. **Defendant International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local S-272**, is the collective bargaining unit to which Plaintiffs belong, and is an entity subject to suit as a party to the collective bargaining agreement with the Defendant Company, and is, therefore, an indispensable party under Rule 19(a)(1) and 19(a)(2) of the Federal Rules of Civil Procedure because any relief granted could impact the bargaining agreement. It is subject to suit under 42 U.S.C. §1981, as amended, and under Title VII of the Civil Rights Act of 1964 42 U.S.C. §§ 2000e, et seq., as amended.

V. CLASS CERTIFICATION WITH RESPECT TO THE TITLE VII CLAIM FOR ALL CLASS REPRESENTATIVES

A. CLASS DEFINITION

54. All Class Representatives seek to maintain claims on their own behalf and on behalf of a class of current, former and future Whirlpool employees. Each Class Representative is a member of the class.

55. The Class consists of all non-managerial Whirlpool employees who have been adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of their right to work in an environment free of discrimination. All of the Class Representatives are proposed representatives of the class. Upon information and belief, there are over a thousand members of the proposed class.

B. EFFICIENCY OF CLASS PROSECUTION OF COMMON CLAIMS

56. Certification of a class of employees similarly situated to the Class Representatives is the most efficient and economical means of resolving the questions of law and fact which are common to the claims of the Class Representatives and the proposed class. The individual claims of the Class Representatives require resolution of the common question of whether Defendants tolerated, condoned, knew and/or should have known, of severe and pervasive racial harassment resulting in a hostile work environment, and whether the Defendants failed to take proper remedial action.

57. The Class Representatives seek remedies to eliminate the adverse effects of such discrimination in their own lives, careers and working conditions, as well as in those of the proposed class members, and to prevent continued racial discrimination and harassment in the future. The Class Representatives have standing to seek such relief because of the adverse effect that such discrimination has had on them individually, and on similarly situated non-managerial employees generally. In order to gain such relief for themselves, as well as for the class members, the Class Representatives will establish the existence of systemic racial discrimination

and harassment as the premise for the relief they seek. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the proposed class of employees who have been affected by these common questions of law and fact is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for the Class Representatives, the proposed class and Defendants. The Class Representatives' individual and class claims are premised upon the traditional bifurcated method of proof and trial. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues

C. NUMEROSITY AND IMPRACTICABILITY OF JOINDER

58. The class which the Class Representatives seek to represent is too numerous to make joinder practicable. The proposed class consists of over one thousand current, former and future employees during the liability period.

D. COMMON QUESTIONS OF LAW AND FACT

59. The prosecution of the claims of the Class Representatives will require the adjudication of numerous questions of law and fact common to both their individual claims and those of the class they seek to represent. The common questions of law include, *inter alia*, (i) whether Defendants' racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively racially hostile and abusive, and (ii) whether Defendants tolerated, condoned, ratified and/or engaged in the hostile environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action. The common questions of fact include, *inter alia*, whether the Defendants' practices and procedures fostered and/or resulted in (i) a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes, and (ii) management's awareness of, participation in and/or lack of response to the hostile working conditions.

E. TYPICALITY OF CLAIMS AND RELIEF SOUGHT

60. The claims of the Class Representatives are typical of the claims of the proposed class. Discrimination in the form of a hostile work environment occurs as a pattern and practice throughout all levels and departments of Whirlpool's La Vergne, Tennessee facility and adversely affects all Class Representatives and members of the class. In particular, Whirlpool subjects its employees to a working environment heavily charged with racial discrimination, resulting largely from rampant racial harassment and the use of racial slurs, epithets and stereotypes, and condones management's awareness of, participation in and/or lack of response to the hostile working conditions. The systemic racial harassment and racially hostile work environment described in this Complaint is, and has been, continuing in nature.

61. The relief sought by the Class Representatives for racial discrimination and harassment complained of herein is also typical of the relief which is sought on behalf of the proposed class. The Class Representatives seek a permanent injunction and other equitable relief necessary to undo the effects of the Defendants' past racial discrimination and harassment and prevent such discrimination from continuing to adversely affect their lives and careers, including, but not limited to, affirmative restructuring of the Defendants' practices and procedures that currently result in the racially hostile work environment at Whirlpool's La Vergne, Tennessee facility; reimbursement of expenses incurred in prosecuting this action; and attorneys' fees. The Class Representatives further seek damages, back-pay and other equitable remedies necessary to make the members of the class whole.

F. ADEQUACY OF REPRESENTATION

62. The Class Representatives' interests are co-extensive with those of the members of the proposed class which they seek to represent in this case. The Class Representatives seek to remedy the racially hostile work environment at Whirlpool so that all employees can enjoy their right to work in an environment free of racial discrimination. The Class Representatives are willing and able to represent the proposed class fairly and vigorously as they pursue their

similar individual claims in this action. The Class Representatives have retained counsel who are qualified, experienced and able to conduct this litigation and meet the time and fiscal demands required to litigate an employment discrimination class action of this size and complexity. The combined interests, experience and resources of the Class Representatives and their counsel to litigate competently the individual and class claims at issue in this case clearly satisfy the adequacy of representation requirement of Fed.R.Civ.P. 23(a)(4).

G. CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(b)

63. Whirlpool has acted on grounds generally applicable to the Class Representatives and the proposed class by adopting and following systemic practices and procedures that are racially discriminatory.

64. The racial discrimination and harassment resulting in a racially hostile work environment at Whirlpool are standard occurrences and not sporadic incidents. Whirlpool has refused to act on grounds generally applicable to the class by tolerating, condoning, ratifying and/or engaging in the hostile working conditions, and/or refusing to remedy known racial discrimination or harassment. Whirlpool's refusal to act on grounds that are not racially discriminatory have made appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

65. The common issues of law and fact affecting the claims of the Class Representatives and proposed class members predominate over any issues affecting only individual claims.

66. A class action is superior to other available means for the fair and efficient adjudication of the claims of the Class Representatives and members of the proposed class.

67. The cost of proving the Defendants' pattern or practice of discrimination makes it impracticable for the Class Representatives and members of the proposed class to prosecute their claims individually.

VI. CLASS CERTIFICATION WITH RESPECT TO THE §1981 AND TITLE VII CLAIMS FOR THE AFRICAN-AMERICAN CLASS REPRESENTATIVES

A. CLASS DEFINITION

68. The African-American Class Representatives seek to maintain claims on their own behalf and on behalf of a class of current, former and future African-American Whirlpool employees. Each of the African-American Class Representatives is a member of the class.

69. The class consists of all African-Americans who are, or have been, employed by Whirlpool and have experienced racial discrimination and/or harassment at any time during the applicable liability period. All of the African-American Class Representatives are proposed representatives of the class. Upon information and belief, there are hundreds of members of the proposed class.

B. EFFICIENCY OF CLASS PROSECUTION OF COMMON CLAIMS

70. Certification of a class of similarly situated African-Americans is the most efficient and economical means of resolving the questions of law and fact that are common to the individual claims of the named African-American Class Representatives and the class. The individual claims of the African-American Class Representatives require resolution of the common question of whether the Defendants have engaged in a systemic pattern of racial discrimination and harassment against African-Americans. The African-American Class Representatives seek remedies to undo the adverse effects of such discrimination in their own lives, careers and working conditions and to prevent continued racial discrimination in the future. The named African-American Class Representatives have standing to seek such relief, in part because of the adverse effect that racial discrimination and harassment targeted at African-Americans has had on their own interest in working conditions free from the pernicious effects of racial bias and hostility. In order to gain such relief for themselves, as well as for the class members, the African-American Class Representatives must establish the existence of systemic

racial discrimination and harassment as the premise of the relief they seek. Without class certification, the same evidence and issues would be subject to repeated relitigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the class of African-Americans affected by the common questions of law and fact is the most efficient and judicious means of presenting the evidence and argument necessary to resolve such questions for the African-American Class Representatives, the class and the Defendants. The African-American Class Representatives' individual and class claims are premised upon the traditional bifurcated method of proof and trial for disparate impact and systemic disparate treatment claims of the type at issue in this Amended Complaint. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

C. NUMEROSITY AND IMPRACTICABILITY OF JOINDER

71. The class which the African-American Class Representatives seek to represent is too numerous to make joinder practicable. The proposed class consists of hundreds of current, former and future African-American applicants and employees who are, have been, or will be employed by Whirlpool during the liability period. The Defendants' pattern and practice of racial discrimination and harassment also makes joinder impracticable by discouraging African-Americans from applying or pursuing employment opportunities, thereby making it impractical and inefficient to identify many members of the class prior to determination of the merits of Defendants' class-wide liability.

D. COMMON QUESTIONS OF LAW AND FACT

72. The prosecution of the claims of the African-American Class Representatives will require the adjudication of numerous questions of law and fact common to both their individual claims and those of the class they seek to represent. The common questions of law include, *inter*

alia, whether the Defendants have engaged in systemic racial discrimination and harassment in its selection practices and its terms and conditions of work and employment in a manner made unlawful by the statute under which this action is brought. The common questions of fact include, *inter alia*, whether the Defendants' selection and compensation procedures incorporate the following racially discriminatory practices: (i) reliance upon subjective procedures and criteria which permit and encourage the incorporation of racial stereotypes and bias by Whirlpool's predominantly white managerial staff; (ii) refusal to establish or follow policies, procedures, or criteria that reduce or eliminate disparate impact and/or intentional racial bias or stereotypes in the Defendants' decision making process; (iii) pre-selection of whites before vacancies or opportunities become known; and (iv) discouragement of applications and expressions of interest by African-Americans through a reputation for racial bias, racially hostile conditions of work and unequal terms and conditions of employment in such areas as work hours and position assignments.

E. TYPICALITY OF CLAIMS AND RELIEF SOUGHT

73. The claims of the African-American Class Representatives are typical of the claims of the proposed class. The discriminatory treatment to which African-American Class Representatives have been subjected is manifested by such policies and/or patterns or practices as denying African-American employees desirable promotional opportunities, job assignments, training, management positions, compensation, bonuses and other benefits and conditions of employment on the same terms applied to white employees. In particular, Whirlpool deters African-American employees from seeking promotions, management positions and desirable job assignments; fails to select African-Americans for desirable job assignments and positions; ignores, and in some cases actively supports, racist comments, racist jokes and racist behavior among its staff; and fails to enforce policies prohibiting racial discrimination.

74. Defendants' illegal practices and procedures are premised on an invidious and

racially discriminatory animus directed against African-American people. It is specifically calculated to deny members of the African-American race equal treatment and opportunities guaranteed by §1981 and Title VII.

75. The Defendants' selection procedures, as well as the other systemic practices that are the subject of this Second Amended Complaint, are determined at the corporate level of the Defendants' operations, and do not vary significantly from one department to another. The employment practices at issue in this Amended Complaint are neither unique nor limited to one department, but affect the named African-American Class Representatives and members of the class in the same way throughout the Defendants' operations.

76. The relief necessary to remedy the claims of the named African-American Class Representatives is the same as that necessary for the class. The African-American Class Representatives seek the following relief for their individual claims and those of the class: (i) a declaratory judgment that the Defendants have engaged in systemic racial discrimination and harassment in limiting the employment opportunities of African-Americans to lower classifications and compensation and in creating a hostile work environment for Whirlpool employees; (ii) a permanent injunction against such continuing discrimination; (iii) restructuring of the Defendants' selection and compensation procedures so that African-Americans are able to learn about and fairly compete in the future for better classifications, compensation levels and the terms and conditions of employment traditionally enjoyed by white employees; (iv) restructuring of the Defendants' workforce so that African-Americans are assigned to the classifications, locations and compensation levels that they now hold in the absence of the Defendants' racial discrimination; and (v) damages, back-pay and other equitable remedies necessary to make the African-American named Plaintiffs/Class Representatives and the class they seek to represent whole from Defendants' past discrimination.

F. ADEQUACY OF REPRESENTATION

77. The African-American Class Representatives' interests are coextensive with those of the class in that each seeks to remedy Defendants' discriminatory employment practices so that racially hostile conditions of work will be eradicated and African-Americans will no longer be segregated in unequal positions and prevented from obtaining managerial, and other more desirable, positions. The African-American Class Representatives are able and willing to represent the class fairly and vigorously, as they pursue their common goals through this action. The African-American Class Representatives have retained counsel who are qualified, experienced and able to conduct the litigation and to meet the time and fiscal demands required to litigate an employment discrimination class action of this size and complexity. The combined interest, experience and resources of the African-American Class Representatives and their counsel to litigate competently the individual and class claims at issue clearly satisfy the adequacy of representation requirement of Federal Rule of Civil Procedure 23(a)(4).

G. CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(b)

78. Whirlpool has acted on grounds generally applicable to the African-American Class Representatives and the proposed class by adopting and following systemic practices and procedures which are racially discriminatory.

79. Defendants' racial discrimination is their standard operating procedure rather than a sporadic occurrence. Defendants have refused to act on grounds generally applicable to the class by refusing to adopt or follow selection and compensation procedures which do not have disparate impact or otherwise do not systemically discriminate against African-Americans and by refusing to establish conditions of work that are not hostile to African-Americans. Defendants' systemic discrimination and refusal to act on grounds that are not racially discriminatory have made appropriate final injunctive relief and corresponding declaratory relief

with respect to the class as a whole.

80. The injunctive and declaratory relief are the predominant relief sought because they are both the culmination of the proof of the Defendants' individual and class-wide liability at the end of Stage I of a bifurcated trial and the essential predicate for the African-American Class Representatives' and class members' entitlement to equitable remedies at Stage II of such a trial. Declaratory and injunctive relief flow directly and automatically from proof of the common question of law and fact regarding the existence of systemic racial discrimination against African-Americans. Such relief is the factual and legal predicate for the African-American Class Representatives' and class members' entitlement to equitable remedies for individual losses caused by such systemic discrimination.

81. The common issues of fact and law affecting the claims of the African-American Class Representatives and proposed class members predominate over any issues affecting only individual claims.

82. A class action is superior to other available means for the fair and efficient adjudication of the claims of the African-American Class Representatives and members of the proposed class.

83. The cost of proving the Defendants' pattern or practice of discrimination makes it impracticable for the African-American Class Representatives and members of the proposed class to prosecute their claims individually.

VII. ALLEGATIONS OF THE CLASS REPRESENTATIVES

A. LOUVENIA ARMSTRONG

84. **Class Representative Louvenia Armstrong** has been employed at Whirlpool's La Vergne, Tennessee facility since approximately October 1984 in many capacities, including tow motor driver.

84. Ms. Armstrong has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

85. As a result of (a) and (b) above, Ms. Armstrong has been aggrieved and has suffered extreme harm.

86. Ms. Armstrong was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

87. Ms. Armstrong reported to her supervisor, Steve Tidwell ("Mr. Tidwell"), that another employee, Dale, a white male, was constantly telling racial jokes and using the word "nigger." Mr. Tidwell and another supervisor, Bill Westberry, asked Dale to repeat what he had said and then laughed when he told them. Both supervisors heard the racial jokes and slurs but never did anything about them. Another white male who was employed at Whirlpool threatened Ms. Armstrong and a group of other African-American employees by saying that "he was going to tell his KKK buddies about them." In addition, Rob, a white male employee, constantly told racial jokes at the lunch table and became angry with Ms. Armstrong when she confronted him about it. Ms. Armstrong was forced to start eating lunch in another area.

88. Ms. Armstrong knows of one supervisor, Charlie Fisher, who threw a cake baked

for him by an African-American woman in the trash and said that he “wouldn’t eat nothing no nigger cooked.”

89. Ms. Armstrong has witnessed that the Whirlpool factory in La Vergne, Tennessee employs only one African-American supervisor and few African-American group leaders. No African-Americans serve as managers or plant managers, and none work in Whirlpool’s front office. African-American employees regularly receive less training than white employees and work in constant fear of pretextual termination. During her employment with Whirlpool, Ms. Armstrong has informed her supervisors that she was interested in being promoted to positions with better opportunities for advancement. For example, in November 2002, Ms. Armstrong applied for a supervisor position. Three white candidates of equal or lesser qualifications were offered the supervisor positions.

90. Ms. Armstrong has also been subjected to more severe discipline than white employees. For example, Randall Tidwell, a white supervisor, has refused to grant Ms. Armstrong break time, even though Mr. Tidwell has allowed white employees to take breaks. In addition, white supervisors, including Terry Lackey (“Mr. Lackey”), discipline Ms. Armstrong and other African-American employees for talking on the job, even though they refrain from disciplining white employees for the same offense. Mr. Lackey has subjected Ms. Armstrong to closer supervision than white employees and has treated her differently and less respectfully than similarly situated white employees.

91. Ms. Armstrong believes that the work environment at Whirlpool is racially hostile.

92. As a result of Defendants’ discriminatory actions, Ms. Armstrong has suffered extreme harm.

B. HENRY BEASLEY

93. **Class Representative Henry Beasley** has been employed since approximately December 1984 at the Whirlpool facility in La Vergne, Tennessee. He is currently employed as a quality technician.

94. Mr. Beasley has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

95. As a result of (a) and (b) above, Mr. Beasley has been aggrieved and has suffered extreme harm.

96. Mr. Beasley was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

97. Upon information and belief, the Defendants have promoted white employees to vacant positions over African-American employees who have comparable or superior experience. For example, on approximately November 21, 2002, Mr. Beasley applied for a supervisor position in manufacturing. Although Mr. Beasley was one of 14 applicants selected for an initial interview, he was not called for a second interview. The supervisor position was offered to Brent Pierson, a white employee, Charlie Fisher, a white employee, and Pam Potts, a

white employee. Mr. Beasley had approximately ten more years of experience than both Mr. Fisher and Ms. Potts.

98. Mr. Beasley has witnessed that African-American employees are disciplined more harshly than white employees. For example, an African-American employee was fired for taking a gambling card, while white employees regularly take gambling cards. Also, another African-American employee was terminated after receiving four write-ups in one month. Around the same time, a white employee, Mark Hearnberger (“Mr. Hearnberger”), also received four write-ups in one month. However, rather than terminating Mr. Hearnberger, white Whirlpool supervisors changed one of Mr. Hearnberger’s write-ups to a verbal warning. Mr. Beasley has witnessed that Mr. Lackey, a white supervisor, regularly harasses African-American female employees. For example, Mr. Lackey asked Frida Freeman, an African-American female, to perform a task for him. When Ms. Freeman's supervisor moved her, rendering her unable to perform the task, Mr. Lackey threatened to suspend or terminate her. On another occasion, Mr. Lackey accused an African-American female, Vicki, of turning off her line even though a male employee admitted to having turned off the line. Mr. Lackey also sent an African-American female to a line and told her to stay there until it was finished running. Because she had no work to perform in this capacity, the employee returned to her former line. When Mr. Lackey observed that the employee had moved, he physically intimidated her and instructed her to return to the line. After these incidents, Mr. Beasley complained regarding Mr. Lackey’s harassment of African-American female employees to Mr. Lackey’s supervisor, Paul Hutchins, a white male. Mr. Hutchins and the union president, Jim Romine (“Mr. Romine”), another white male, met with Mr. Beasley in September 2002. During this meeting, Mr. Hutchins and Mr. Romine claimed that they had spoken with Mr. Lackey regarding Mr. Beasley’s complaints. However, Mr. Lackey continues to harass African-American female

employees.

99. Mr. Beasley has been subjected to retaliation as a result of his vocal opposition to Whirlpool's racist policies and practices. Specifically, several white male supervisors and salaried employees have retaliated against him by making threatening remarks to him.

100. Mr. Beasley believes that the work environment at Whirlpool is racially hostile.

101. As a result of Defendants' discriminatory actions, Mr. Beasley has suffered extreme harm.

C. BETTY TALLEY

102. **Class Representative Betty Talley** has been employed since approximately October 1984 in the capacities of assembler, brazer, inspector, group leader and warehouse operator at Whirlpool's facility in La Vergne, Tennessee.

103. Ms. Talley has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

104. As a result of (a) and (b) above, Ms. Talley has been aggrieved and has suffered extreme harm.

105. Ms. Talley was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

106. Ms. Talley worked with Robert Quiggle (“Mr. Quiggle”), a white male, until he was transferred to the plant in early 2005. Mr. Quiggle constantly made ethnic jokes, including many jokes referring to O.J. Simpson. Supervisors frequently heard these jokes, but they never did anything to discipline Mr. Quiggle; instead, they simply laughed. Ms. Talley also complained to her supervisor, Bill Westberry (“Mr. Westberry”), about the frequent racial slurs and jokes, including references to the Ku Klux Klan made by a co-worker, Dale Travis (“Mr. Travis”). Ms. Talley had to ask to be transferred to another area because the supervisors did nothing to stop Mr. Travis’ behavior. Ms. Talley also asked Jim Romine, the president of the Union, to do something about the constant racial slurs and jokes at Whirlpool’s La Vergne facility. Mr. Romine told Ms. Talley that there was nothing anyone could do because it was only “shop-talk.”

107. Upon information and belief, the Defendants have promoted white employees to vacant positions over African-American employees who have comparable or superior experience. For example, Ms. Talley applied for a promotion to the position of helper to the warehouse coordinator. Ron Briley (“Mr. Briley”), a white male who had only three months of experience in the warehouse, was awarded the position. At the time of her application for the promotion, Ms. Talley had more than seven years of experience working at Whirlpool. Two additional African-American employees, Melba Jobe and Mohammed, a male, also applied to be promoted to warehouse coordinator’s helper. Although Ms. Jobe and Mohammed were significantly more familiar with warehouse operations than Mr. Briley, both were also denied the promotion.

108. White supervisors, including Mr. Lackey, often allow white employees, including Dale Travis, to leave their stations during their shifts. Even when they do not leave their stations, African-Americans are frequently disciplined by Mr. Lackey when the line slows down.

In addition, Mr. Lackey often confronts African-Americans in the presence of other employees, whereas he takes white employees aside in order to discipline them.

109. Ms. Talley believes that the work environment at Whirlpool is racially hostile.

110. As a result of Defendants' discriminatory actions, Ms. Talley has suffered extreme harm.

D. MELBA JOBE

111. **Class Representative Melba Jobe** has been employed at Whirlpool in La Vergne, Tennessee since 1984. Ms. Jobe is currently a warehouse operator.

112. Ms. Jobe has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

113. As a result of (a) and (b) above, Ms. Jobe has been aggrieved and has suffered extreme harm.

114. Ms. Jobe was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

115. Upon information and belief, the Defendants have promoted white employees to vacant positions over African-American employees who have comparable or superior experience. For example, in November 2001, Ms. Jobe applied for the position of warehouse

coordinator. Despite her qualifications and seven years of experience at Whirlpool, Whirlpool did not offer Ms. Jobe the position. Instead, Whirlpool awarded the promotion to a less qualified white male employee, who had no warehouse experience. In addition, Mr. Briley had a poor absentee record, while Ms. Jobe had a good absentee record.

116. Ms. Jobe has also witnessed that African-American employees are held to a higher standard than white employees. White employees, such as Mr. Briley, advance in the company despite having poor records, whereas an African-American employee, Ted, was disqualified from the warehouse for damaging equipment. Moreover, a white employee, Paul Parchman, who damaged thousands of dollars worth of equipment, was not disqualified. In addition, some of Ms. Jobe's white co-workers make racist comments on a regular basis. Supervisors, including Susie Powell ("Ms. Powell"), a white female, are aware of these racist comments but have failed to prevent them. Ms. Powell regularly allows white employees to take extremely long lunch breaks, whereas she disciplines African-American employees who take long lunch breaks.

117. In September 2002, Ms. Jobe filed a charge of discrimination with the Nashville, Tennessee office of the Equal Employment Opportunity Commission, alleging race and sex discrimination in promotions, disparate discipline, terms and conditions of employment and harassment against Whirlpool Corporation. Since that time, Ms. Jobe's supervisors in Whirlpool's distribution center, including Jack Ethridge and Donnie Carter, both white males, have retaliated against her by refusing to discipline co-workers who subject Ms. Jobe to frequent racial slurs and comments; assigning Ms. Jobe more difficult tasks; and subjecting her to closer scrutiny than similarly situated white employees who have not filed charges of discrimination. In addition, in January 2003, Whirlpool denied Ms. Jobe the opportunity to work overtime but granted this opportunity to less senior white employees.

118. Ms. Jobe believes that the work environment at Whirlpool is racially hostile.

119. As a result of Defendants' discriminatory actions, Ms. Jobe has suffered extreme harm.

E. GEORGE OBI

120. **Class Representative George Obi** was employed at Whirlpool's facility in La Vergne, Tennessee from 1996 until approximately June 2002 as a Technical Process Technician (TPT)/group leader. In approximately June 2002, Mr. Obi was involuntarily laid off. He was recalled in January 2003.

121. Mr. Obi has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

122. As a result of (a) and (b) above, Mr. Obi has been aggrieved and has suffered extreme harm.

123. Mr. Obi was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

124. Upon information and belief, Defendants have promoted white employees to vacant positions over other African-American employees who have comparable or superior experience.

125. Mr. Obi was laid off in approximately June 2002 even though he held a higher classification than a white employee, Gary Rickman (“Mr. Rickman”), who was not laid off. Richard Hartman, the white manager of assembly support, told Mr. Obi that he was laid off because his department required only two TPTs. However, including Mr. Obi, there were only two TPTs in the department at that time. Mr. Rickman had resigned from the TPT position approximately 18 months earlier, due to his lack of computer skills. After Mr. Rickman resigned, Mr. Obi applied for and was offered his position. Since Mr. Rickman’s classification was lower than Mr. Obi’s at the time of Mr. Obi’s layoff, Mr. Rickman should have been laid off instead of Mr. Obi. However, Mr. Rickman had been promoted to an unspecified supervisory position several days before Mr. Obi was laid off.

126. Mr. Obi filed his charge of racial discrimination in October 2002. In December 2002, subsequent to the filing of his charge, all group leaders who were laid off in June 2002 were recalled except for Mr. Obi. Mr. Obi was not recalled until January 2003.

127. Mr. Obi complained to Mr. Hartman that a co-worker had made racial slurs in his presence. The co-worker had told Mr. Obi, “I saw your kinfolks dancing naked on the trees in Wild Kingdom.” These comments and others were made on a continual basis from March 2002 through May 2002. Neither Mr. Hartman nor any other management official of Whirlpool corrected the situation, and the racial taunts by this employee did not cease until the employee left Whirlpool’s La Vergne, Tennessee facility.

128. Mr. Obi believes that the work environment at Whirlpool is racially hostile.

129. As a result of Defendants’ discriminatory actions, Mr. Obi has suffered extreme

harm.

F. WALTER BROWN

130. **Class Representative Walter Brown** was employed at Whirlpool's facility in La Vergne, Tennessee from approximately December 1994 until approximately June 7, 2002 in the capacities of assembler, manufacturing worker and processor.

131. Mr. Brown has been adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

132. As a result of (a) and (b) above, Mr. Brown has been aggrieved and has suffered extreme harm.

133. Mr. Brown was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

134. From 1999 until approximately May 27, 2002, Mr. Brown worked as a processor in the Built-in Refrigeration department ("BIR"). In the BIR department, all employees are protected from layoffs. However, on approximately May 27, 2002, immediately before a planned layoff, Doug Hagewood, a white employee in the Human Relations department, and Johnny Bond, a white supervisor, transferred Mr. Brown from his protected BIR position to the Room Air department, where employees are not protected from layoffs. On approximately June

7, 2002, Mr. Brown was laid off. Additionally, Mr. Brown's transfer to the Room Air department eliminated his seniority in the BIR department, making it difficult for him to return to that department after the layoff. Before Mr. Brown was transferred, he had seniority over approximately fifteen or more BIR employees, many of whom were white. The BIR department, which is the only department without seasonal layoffs, has historically been staffed almost exclusively by white employees. Currently, approximately 90% of the employees in BIR are white. There are no African-American supervisors in the department.

135. In approximately September 2000, Mr. Brown applied for a position as a training coordinator and was denied the position in favor of a less qualified white employee. At the time of his application, Mr. Brown had approximately ten years of experience training others and met all of the qualifications for the training coordinator position. The white employee who was awarded the position was not qualified to fill the position because she had no training. Upon information and belief, Whirlpool had to bring someone in to teach her how to perform the job she was awarded. Mr. Brown was informed by Whirlpool manager Roger Conyers that he was not selected because he lacked computer skills. However, Mr. Brown had extensive computer skills, which he acquired and/or honed over an eight year period while working in customer relations for another company.

136. Mr. Brown has witnessed and experienced that African-American employees are routinely subjected to racial harassment. For example, a white employee in BIR frequently curses at non-white employees. Although Mr. Brown and others have reported her behavior to management, she has not been disciplined to date. In addition, racist graffiti is commonplace at Whirlpool. Mr. Brown has seen graffiti referring to Somali Muslims as "sand niggers," "desert niggers," and "ragheads."

137. Mr. Brown believes that the work environment at Whirlpool is racially hostile.

138. As a result of Defendants' discriminatory actions, Mr. Brown has suffered extreme harm.

G. VINCENT BEAUREGARD

139. **Class Representative Vincent Beauregard** was employed at Whirlpool in La Vergne, Tennessee from approximately December 2001 until approximately August 2, 2002, when he was involuntarily laid off. Mr. Beauregard returned to work in approximately January 2003.

140. Mr. Beauregard has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

141. As a result of (a) and (b) above, Mr. Beauregard has been aggrieved and has suffered extreme harm.

142. Mr. Beauregard was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

143. Upon information and belief, the Defendants have selected white employees to fill vacant positions over African-American employees who have comparable or superior

experience and/or seniority. For example, after Mr. Beauregard was laid off on approximately August 2, 2002, a position became available at another Whirlpool facility. According to company policy, the position should have been offered to laid off employees in order of seniority. Rather than follow company policy, management offered the position to Pepper Quinn, a white employee with less seniority than Mr. Beauregard. In addition, Mr. Beauregard was denied training opportunities that were afforded to similarly situated white employees. Mr. Ethridge, a white warehouse manager, assured Mr. Beauregard that he would receive on-the-job training. Ms. Powell, a white second shift supervisor, also informed Mr. Beauregard that he would be allowed to train during the down season. However, when the down season came, Mr. Beauregard was still not allowed to train, despite the fact that several of his co-workers had mentioned to management that he needed training and the fact that white employees were receiving training during this time period. Ms. Powell assigned Mr. Beauregard tasks such as cutting boxes, wrapping boxes and doing manual labor, while white employees were trained in operating Fork Trucks.

144. Mr. Beauregard has witnessed and experienced that African-American employees are routinely subjected to racial harassment. He has heard white employees make racial remarks, including that “they should send all the minorities out of the country” and one white employee referring to a “coon in a tree.” Ms. Powell is aware of such remarks but has not disciplined the offending employees to date.

145. In October 2002, Mr. Beauregard filed a charge of discrimination with the Nashville, Tennessee office of the Equal Employment Opportunity Commission, alleging race discrimination in promotions, disparate discipline, terms and conditions of employment and harassment, against Whirlpool Corporation. Since Mr. Beauregard returned to work in January 2003, white Whirlpool supervisors, including Ms. Powell, have subjected Mr. Beauregard to

retaliation by leveling false accusations against him in order to create a pretext for his termination.

146. Mr. Beauregard believes that the work environment at Whirlpool is racially hostile.

147. As a result of Defendants' discriminatory actions, Mr. Beauregard has suffered extreme harm.

H. LARSEN CASH

148. **Class Representative Larsen Cash** is a resident of Antioch, Tennessee. Mr. Cash has been employed at Whirlpool's facility in La Vergne, Tennessee since approximately November 1986. From November 1986 until 1993, Mr. Cash worked as an operator. During 1993, Mr. Cash worked as a group leader. He returned to the operator position in 1993 and worked in that capacity until 1998. From 1998 to approximately June 2002, Mr. Cash was again employed as a group leader. In June 2002, he was demoted from the group leader position to an assembler position in Whirlpool's Dehumidifier Department.

149. Mr. Cash has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

150. As a result of (a) and (b) above, Mr. Cash has been aggrieved and has suffered extreme harm.

151. Mr. Cash was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

152. Mr. Cash has been subjected to discriminatory demotion practices and procedures. Rather than demoting the least senior group leader, as Whirlpool policy mandates, Mr. Cash's supervisor demoted him instead. Two white group leaders with less seniority, Joan Carney and Diane Simmons, had their positions made permanent around the same time. The practice of demoting African-American employees rather than less qualified white employees is commonplace at Whirlpool. When several African-American employees, including Evelyn McKellery and Geraldine Thomas, were demoted, their positions were subsequently offered to less qualified white employees, including Randall Upchurch, Melissa Campbell, Georgia Hicks and Richard. After the white employees moved into these positions, their positions were made permanent.

153. Mr. Cash has witnessed and experienced that African-American employees are routinely subjected to racial harassment. White employees regularly make derogatory and racist comments about African-American employees and African-Americans in general. For example, a white employee asked all of the African-American employees in his department if they had ever heard anyone call someone else a nigger. The African-American employees notified Bill Westberry ("Mr. Westberry"), Mr. Cash's white supervisor, that white employees frequently used that racial slur, as well as others. In addition, a white group leader, Mr. Travis, said, "You'd better watch out – there's a whole lot of niggers taking over here." Mr. Westberry took no disciplinary actions against those employees who had made racist comments. Mr. Cash has observed white employees, including Mark Watwood ("Mr. Watwood"), a group leader, harass African-American, female employees. Many employees, including Mr. Cash, have complained

about Mr. Watwood's behavior to Whirlpool managers, such as Mr. Westberry, a white male, but to no avail. Mr. Westberry informed Mr. Cash that Mr. Westberry did not have time to watch Mr. Watwood. Mr. Westberry also subjects African-American employees to extremely close supervision on an ongoing basis. Mr. Cash has witnessed that Whirlpool subjects African-American employees to adverse terms and conditions of employment, including more severe disciplinary practices and refusal to accommodate the medical restrictions of black employees. For example, when Mr. Cash was campaigning for union president, he was falsely accused of riding on a company cart to campaign. Mr. Westberry, Jerry Kennedy ("Mr. Kennedy"), the white plant manager, Fred Contraris, a white Human Resources employee, and Mr. Haywood were involved in disciplining Mr. Cash. In contrast, the incumbent union president, Mr. Romine, a white employee, used a tow motor to campaign but was not disciplined for this violation of company policy. In addition, Missy Hill, an African-American employee who had an accident on the job, was forced to undergo drug testing. However, Teresa Barrett, a white employee who was involved in an accident that knocked over a bank of lockers onto an employee, was not forced to undergo drug testing. Mr. Cash brought this disparity to the attention of Doug Hutchinson, a white Division Vice President, to no avail. Two additional white employees, Amelia and Eugene Julien, had accidents on the job but were not forced to undergo immediate drug testing. Also, in August 2002, a magnetic resonance imaging (MRI) image showed that Mr. Cash had a crack in his wrist. At this time, his doctor put Mr. Cash under restrictions not to lift over one pound or engage in repetitive motion. When Mr. Cash brought the doctor's note to the attention of Whirlpool, a Human Resources employee who was a white male, Mr. Haywood, refused to accommodate Mr. Cash's medical restriction. However, several white employees with similar arm injuries, including Roy Ruth and Kevin Campbell, were provided with light duty work around the same time.

154. Mr. Cash believes that the work environment at Whirlpool is racially hostile.

155. As a result of Defendants' discriminatory actions, Mr. Cash has suffered extreme harm.

I. PEGGY SMITH

156. **Class Representative Peggy Smith** is a resident of Clarksville, Tennessee. Ms. Smith was employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1996 until her termination on Friday, August 19, 2005. She was employed in the capacity of line technician in the air conditioning department.

157. Ms. Smith has been adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

158. As a result of (a) and (b) above, Ms. Smith has been aggrieved and has suffered extreme harm.

159. Ms. Smith was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

160. Throughout her employment at Whirlpool, Ms. Smith was subjected to racial harassment and a racially hostile work environment. On or about March 2001, Terry Lackey ("Mr. Lackey"), a white supervisor, shouted at Ms. Smith and then shoved her because she took

off her glasses before she had completely exited the building. Ms. Smith told two managers, Paul Hutchison and Susan Dillon, about the incident. Mr. Hutchison told Mr. Lackey to apologize, but both men were laughing when Mr. Lackey spoke to Ms. Smith.

161. Ms. Smith was confronted by a supervisor, Keith Blackmore (“Mr. Blackmore”), because he saw her using her cell phone. Ms. Smith explained that the call was an emergency and that a white employee, Randall, talked on his phone all the time. Mr. Blackmore called Randall over and made a joke that they needed “to get Betty an Oreo milkshake” but that he wanted “a vanilla milkshake.”

162. On or about January 2003, Ms. Smith was working on the line, when Keith Blackman (“Mr. Blackman”), a white male supervisor, came behind her and surprised her in an aggressive manner. Mr. Blackman and other white supervisors make racist comments to Ms. Smith on a regular basis.

163. Ms. Smith believes that the work environment at Whirlpool is racially hostile.

164. As a result of Defendants’ discriminatory actions, Ms. Smith has suffered extreme harm.

J. TIMOTHY SWADER

165. **Class Representative Timothy Swader** is a resident of Murfreesboro, Tennessee. Mr. Swader has been employed at Whirlpool’s facility in La Vergne, Tennessee for about sixteen years. During his employment at Whirlpool, Mr. Swader has worked in several different positions, including Assemblyman and Tool Assembly Group Leader.

166. Mr. Swader has been adversely affected by the racially hostile work environment and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

(a) By a working environment heavily charged with racial discrimination, resulting

largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and

- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

167. As a result of (a) and (b) above, Mr. Swader has been aggrieved and has suffered extreme harm.

168. Mr. Swader was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

169. On several occasions throughout his employment, Mr. Swader has requested that his job be locked in order to protect him from layoffs and demotions. However, Mr. Kennedy, a white supervisor, refused Mr. Swader's request each time. Mr. Swader has witnessed that Whirlpool rarely locks in the positions of African-American employees. On approximately March 22, 2002, Mr. Swader was demoted from his position as tooling group leader and required to work as an assembler on the line. After his demotion, Mr. Kennedy continued to require Mr. Swader to perform the duties of tooling group leader. Mr. Swader is unaware of any white employee who was subjected to this type of treatment. Mr. Swader refused to perform the duties of tooling group leader without formally occupying the position, and, as a result of his refusal, Mr. Kennedy accepted applications for the position of tooling group leader. Mr. Kennedy hired two less qualified white employees, Randall Upchurch ("Mr. Upchurch") and Richard Eskildsen ("Mr. Eskildsen"), to fill the position. Mr. Upchurch and Mr. Eskildsen were immediately locked in so that neither employee could be demoted or laid off. Mr. Eskildsen was unprepared for the position and Mr. Swader was required to train him. Prior to his demotion, Mr. Swader performed every duty of the position without any assistance, although Mr. Upchurch and Mr.

Eskildsen were allowed to split the responsibilities, resulting in significantly less work for each of them.

170. Mr. Swader believes that the work environment at Whirlpool is racially hostile.

171. As a result of Defendants' discriminatory actions, Mr. Swader has suffered extreme harm.

K. LYNETTE BARRETT

172. **Class Representative Lynette Barrett** is a resident of Smyrna, Tennessee. Ms. Barrett has been employed at Whirlpool's facility in La Vergne, Tennessee since approximately October 1984 to the present. She worked as an assembler from 1984 to 1985, as a brazer from 1985 to 1986, as a fork truck operator from 1986 to 1990, as an assembler from 1990 to 1991, as inspector for part of 1991, as a machine operator from 1991 to 1993, as a Machine Team Leader from 1993 to 1994, as an assembler from 1994 to 1995, as a Team Resource Trainer from 1995 to 1999, as an assembler from 1999 to 2000, as a Quality Assurance Laboratory Assistant from 2000 to 2001, as a brazer trainer from 2001 to 2002, as an assembler from 2002 to 2003 and as a Kanban technician from 2003 to the present.

173. Ms. Barrett has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

174. As a result of (a) and (b) above, Ms. Barrett has been aggrieved and has suffered

extreme harm.

175. Ms. Barrett was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

176. Specifically, Ms. Barrett witnessed white employees telling racial jokes at the Whirlpool facility in La Vergne, Tennessee on numerous occasions. For example, Ms. Barrett heard Dale Travis refer to Helen Lust as “the nigger bitch” and, while he was standing behind Ms. Lust and Ms. Barrett, Mr. Travis stated that “the nigger bitch is going to get what’s coming to her.” Mr. Westberry, a white male supervisor, was standing about four feet away from Ms. Barrett but did not reprimand Mr. Travis for making this comment. In addition, Ms. Barrett overheard a white male co-worker, in the presence of two other white male co-workers, tell a supervisor a joke in which he referred to “a Catholic, a Jew and a nigger.” The co-workers and the supervisor all laughed at the joke. Ms. Barrett witnessed that Whirlpool supervisors and/or managers routinely heard and/or participated in the telling and use of racial jokes, slurs and epithets, while doing nothing to stop this behavior. For example, Mr. Westberry heard racial jokes and, rather than reprimanding employees for their offensive statements, he laughed at the jokes.

177. In addition, Ms. Barrett observed white employees using racial slurs and epithets at the Whirlpool facility in La Vergne, Tennessee. Referring to Lisa Major, a white male said to another co-worker “She’s getting to be an uppity nigger.” A white male co-worker also referred to Henry Beasley as a “nigger.”

178. Ms. Barrett believes that the work environment at Whirlpool is racially hostile.

179. As a result of Defendants’ discriminatory actions, Ms. Barrett has suffered extreme harm.

L. RENEE DAVIS

180. **Class Representative Renee Davis** is a resident of Murfreesboro, Tennessee. Ms. Davis has been employed at Whirlpool's facility in La Vergne, Tennessee since approximately 2000 to the present as an assembler.

181. Ms. Davis has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets, and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

182. As a result of (a) and (b) above, Ms. Davis has been aggrieved and has suffered extreme harm.

183. Ms. Davis has been and continues to be negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

184. Ms. Davis routinely witnessed racially hostile jokes, slurs and epithets while at the Whirlpool facility in La Vergne, Tennessee. For example, a colleague demanded of her, in front of her co-workers, "What's it like to fuck a black dick?" She frequently heard white co-workers use the term "nigger" when referring to black employees and even heard white co-workers tell their black counterparts to "Go back to the bush."

185. Ms. Davis believes that the work environment at Whirlpool is racially hostile.

186. As a result of Defendants' discriminatory actions, Ms. Davis has suffered extreme harm.

M. EUGENE JULIEN

187. **Class Representative Eugene Julien** is a resident of Shelbyville, Tennessee. Mr. Julien has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1984 to the present. He worked as an assembler, a brazer a clamp truck operator and a Materials Group Leader. In addition, he served as Training Co-Chair from 1989 to 1994, and has worked as Safety Representative from 1998 to the present.

188. Mr. Julien has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

189. As a result of (a) and (b) above, Mr. Julien has been aggrieved and has suffered extreme harm.

190. Mr. Julien was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

191. Mr. Julien witnessed white employees telling racially derogatory jokes at the Whirlpool facility in La Vergne, Tennessee. Mr. Julien witnessed that Whirlpool supervisors and/or managers regularly heard and/or participated in the telling and use of racial jokes, slurs

and epithets, while doing nothing to stop this behavior.

192. Mr. Julien has routinely seen co-worker Dale Travis, a white male, joke about African-American and other minority employees in a derogatory manner. He also heard Mr. Travis joke on Martin Luther King, Jr. Day that Whirlpool should have a James Earl Ray Day to celebrate Dr. King's assassination. In addition, Mr. Julien has witnessed Mr. Travis refer to black employees as "niggers" several times a week.

193. Mr. Julien has also heard white supervisor Paul Hutchins tell other white employees and black supervisor Willie "Buck" Bingham derogatory jokes about black employees and use racial slurs. For example, Mr. Hutchins repeatedly called black employees "niggers" and, on multiple occasions, called Mr. Bingham a "nigger" to his face. Mr. Hutchins also frequently referred to Middle Eastern employees as "ragheads," "sand niggers," and "camel jockeys."

194. Mr. Julien believes that the work environment at Whirlpool is racially hostile.

195. As a result of Defendants' discriminatory actions, Mr. Julien has suffered extreme harm.

N. SANDRA LANIUS

196. **Class Representative Sandra Lanus** is a resident of Smyrna, Tennessee. Ms. Lanus has been employed at Whirlpool's facility in La Vergne, Tennessee since approximately November 1984 to the present. She has worked as an assembler in the Tubing/Coils Department, a Group Leader in the Tubing Department, an assembler in Tubing/Coils Department, an expediter, an assembler in Air Conditioner Lines and is currently an auditor in the laboratory.

197. Ms. Lanus has been and continues to be adversely affected by the systemic practice and pattern of racial discrimination and, consequently, by the violation of her personal

right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

198. As a result of (a) and (b) above, Ms. Lanius has been aggrieved and has suffered extreme harm.

199. Ms. Lanius was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

200. Ms. Lanius witnessed white employees telling racial jokes at the Whirlpool facility in La Vergne, Tennessee. She also saw many white employees using racial slurs or epithets. Specifically, Dale Travis, a white co-worker, often made statements concerning the Ku Klux Klan ("KKK"). On one occasion, when Ms. Lanius was with co-worker WT Melton, Mr. Travis said to them: "Ladies, we missed you all at the Klan meeting last night. I see you still have your robes on." When Mr. Travis said "robes," he was referring to Ms. Melton's white lab coat and to Ms. Lanius' white blouse. Ms. Lanius and Ms. Melton quickly left to continue their work; as they were leaving, Mr. Travis shouted: "May the Klan be with you." Mr. Travis used this phrase on multiple occasions. In another instance, when Ms. Melton and Ms. Lanius were driving a motorized cart at work, Henry Beasley, an African-American co-worker, walked by. In front of other co-workers and Supervisor Bill Westberry, Mr. Travis screamed, "There goes that high yeller nigger."

201. Ms. Lanius believes that the work environment at Whirlpool is racially hostile.

202. As a result of Defendants' discriminatory actions, Ms. Lanius has suffered extreme harm.

O. WT MELTON

203. **Class Representative WT Melton** is a resident of Woodbury, Tennessee. Ms. Melton has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1995 to the present. She has worked as an assembler in the Fin Prass/ARBI Department, a Group Leader in the Final Crate Department, an assembler in the CABI/BIR, a Quality Auditor in the Customer Assurance Laboratory and in the assembly line for Room Air.

204. Ms. Melton has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

205. As a result of (a) and (b) above, Ms. Melton has been aggrieved and has suffered extreme harm.

206. Ms. Melton has been and continues to be negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

207. Ms. Melton routinely witnessed white employees using racial slurs or epithets at the Whirlpool facility in La Vergne, Tennessee. For example, she often heard Dale Travis, an

hourly employee, make statements concerning the Ku Klux Klan (“KKK”). On one occasion, when Ms. Melton was with co-worker Sandra Lanius, Mr. Travis loudly said to them: “Ladies, we missed you all at the Klan meeting last night. I see you still have your robes on.” When Mr. Travis said “robes,” he was referring to Ms. Lanius’ white blouse and to the white lab coat Ms. Melton was wearing for work. Ms. Lanius and Ms. Melton quickly left to continue their work; as they were leaving, Mr. Travis shouted: “May the Klan be with you.” Mr. Travis used this phrase on multiple occasions, often in proximity to the assembly line and Supervisor Bill Westberry, a white male. In another instance, when Ms. Melton and Ms. Lanius were driving a motorized cart at work, Henry Beasley, an African-American co-worker, drove by them on another motorized cart and waved to them and others in the area. When Mr. Beasley drove by, Mr. Travis said: “I want that yeller nigger’s job. I want to fuck him in the ass.” There were employees nearby who could hear Mr. Travis’ comments. Ms. Melton often heard white employees use the term “nigger,” “sand nigger,” “raghead” and “camel jockey” in reference to black employees and employees of Middle Eastern descent. Ms. Melton witnessed that Whirlpool supervisors and managers heard and/or participated in the telling and use of racial jokes, slurs and epithets, and did not act to stop this behavior. White employees made racially-hostile remarks in front of supervisors, including Mr. Westberry, who would either laugh at these comments or ignore them.

208. Ms. Melton believes that the work environment at Whirlpool is racially hostile.

209. As a result of Defendants’ discriminatory actions, Ms. Melton has suffered extreme harm.

P. TREVA NICKENS

210. **Class Representative Treva Nickens** is a resident of Murfreesboro, Tennessee. Ms. Nickens has been employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1983 to the present. From 1983 to 1984, she worked as an assembler. From 1984 to the present, she has worked as a trucker, Group Leader and CABI Processor.

211. Ms. Nickens has been adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

212. As a result of (a) and (b) above, Ms. Nickens has been aggrieved and has suffered extreme harm.

213. Ms. Nickens was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

214. Ms. Nickens routinely witnessed white employees using racial slurs or epithets at the Whirlpool facility in La Vergne, Tennessee. For example, she heard her co-workers use the term "nigger" on multiple occasions. In addition, her white co-workers repeatedly told Henry Beasley, her black co-worker, to "stay with his own kind." This comment was referring to the fact that Mr. Beasley often spent time with white employees, and Ms. Nickens' white counterparts were offended by these interactions. In addition, Ms. Nickens witnessed Steve Knight, a white supervisor, make it clear that he did not like Mr. Beasley spending time with white female employees.

215. Ms. Nickens also witnessed that Mr. Knight would supervise Mr. Beasley with more scrutiny than white employees. For example, Mr. Knight would follow Mr. Beasley around the Whirlpool facility on a cart, often giving Mr. Beasley extra work assignments. Mr. Knight did not treat the white employees in this manner.

216. Further, Ms. Nickens saw that Mr. Beasley was frequently moved around the facility while white employees, such as Eddie Dial and Robert Stanford, were not subjected to this treatment and were treated in a much more respectful manner.

217. Ms. Nickens believes that the work environment at Whirlpool is racially hostile.

218. As a result of Defendants' discriminatory actions, Ms. Nickens has suffered extreme harm.

Q. ROY RUTH

219. **Class Representative Roy Ruth** is a resident of Franklin, Tennessee. Mr. Ruth has been employed at Whirlpool's facility in La Vergne, Tennessee since 1984 to the present. From 1984 to 1987, Mr. Ruth worked on the assembly line. From 1987 to 1990, he worked as a trucker. From 1990 to 1995, he worked as a Tow Motor Operator. From 1995 to the present, he has worked on the assembly line.

220. Mr. Ruth has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

221. As a result of (a) and (b) above, Mr. Ruth has been aggrieved and has suffered extreme harm.

222. Mr. Ruth has been and continues to be negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work

environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

223. Mr. Ruth witnessed white employees telling racially derogatory jokes at the Whirlpool facility in La Vergne, Tennessee. For example, Dale Travis told racially derogatory jokes in the presence of supervisors, who, rather than reprimanding him, laughed at these jokes. Mr. Travis frequently used the term “nigger” in these jokes. In addition, on multiple occasions, Mr. Travis told African-American employees walking through the work area, “Hey, you nigger, Roy don’t like you.” Whirlpool supervisors and managers witnessed and/or participated in this behavior and did not act to stop it.

224. Mr. Ruth also observed racially hostile graffiti throughout the Whirlpool facility in La Vergne, Tennessee. In particular, a bathroom near the cafeteria had the word “nigger” written multiple times on the walls.

225. Mr. Ruth believes that the work environment at Whirlpool is racially hostile.

226. As a result of Defendants’ discriminatory actions, Mr. Ruth has suffered extreme harm.

R. LARRY SCHUSTER

227. **Class Representative Larry Schuster** is a resident of La Vergne, Tennessee. Mr. Schuster has been employed at Whirlpool’s facility in La Vergne, Tennessee since on or about December 4, 1995 to approximately May 23, 2004. He has worked in Inspection Repair and as a Heavy Press Operator and Warehouse Operator. Mr. Schuster also served as a Group Leader and a Union Steward for the warehouse from 1998 to 2004.

228. Mr. Schuster has been adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

229. As a result of (a) and (b) above, Mr. Schuster has been aggrieved and has suffered extreme harm.

230. Mr. Schuster was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

231. Mr. Schuster regularly witnessed white employees at the Whirlpool facility in La Vergne, Tennessee telling racially derogatory jokes, often in front of minorities. For example, Mr. Schuster heard white employees joke that they wanted to replace Martin Luther King, Jr. Day with James Earl Ray Day to celebrate the assassination of Dr. King. Mr. Schuster witnessed Whirlpool employees and supervisors telling racist jokes on a daily basis.

232. Mr. Schuster also observed white employees using racial slurs or epithets at Whirlpool's La Vergne facility. For example, white employees regularly referred to black employees as "niggers" or "sand niggers." Mr. Schuster witnessed that Whirlpool supervisors and managers heard and/or participated in the telling and use of racial jokes, slurs and epithets and did not act to stop this behavior. For example, Mr. Carter, a white supervisor, called black football players "niggers," while Ms. Powell, a Second Shift Supervisor, routinely referred to black employees as "those people." Also, Mr. Etheridge, a Warehouse Manager, tolerated all racist comments and even joked about the racist comments.

233. Mr. Schuster also frequently saw racially hostile graffiti throughout the Whirlpool

facility in La Vergne, Tennessee. For example, Mr. Schuster witnessed that racist graffiti was almost always present in the bathroom stalls and that Whirlpool rarely made any attempt to remove the graffiti. On the rare occasions that Whirlpool did attempt to remove the graffiti, employees would soon deface the walls with more racially prejudiced statements.

234. Mr. Schuster believes that the work environment at Whirlpool is racially hostile.

235. As a result of Defendants' discriminatory actions, Mr. Schuster has suffered extreme harm.

S. DIANA SIMMONS

236. **Class Representative Diana Simmons** is a resident of Woodbury, Tennessee. Ms. Simmons was employed at Whirlpool's facility in La Vergne, Tennessee from approximately March 1989 to October 2004. She worked in numerous capacities in the production of air conditioners, air dehumidifiers and air purifiers. In approximately 2000, she became a Group Leader.

237. Ms. Simmons has been adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

238. As a result of (a) and (b) above, Ms. Simmons has been aggrieved and has suffered extreme harm.

239. Ms. Simmons has been negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

240. Ms. Simmons regularly witnessed white employees using racial slurs or epithets at the Whirlpool facility in La Vergne, Tennessee. Ms. Simmons heard white employees refer to black employees as “gorillas,” “niggers,” “dumb niggers,” “lazy niggers,” and “stupid niggers” on an almost daily basis. Specifically, her white co-worker Joan Carney routinely referred to black employees as “gorillas,” and co-workers Dale Travis and June Brown frequently referred to black employees as “niggers” and “sand niggers.” White employees also referred to co-workers of Middle Eastern descent as “rag-heads.” On one occasion, Ms. Brown, in reference to a black co-worker, said, “Don’t call that dumb nigger up here, I’ll do it myself.” In addition, Ms. Simmons witnessed white employees telling their black co-workers to “Go back where you came from.”

241. Ms. Simmons also repeatedly heard white employees telling racially hostile jokes at the Whirlpool facility in La Vergne, Tennessee. For example, white employees referred to Martin Luther King Day as “Nigger Day” every year for the fifteen years that she worked at Whirlpool.

242. Furthermore, Ms. Simmons’ supervisor and co-workers repeatedly retaliated against her for interacting with her black co-workers. For example, Ms. Simmons’ white counterparts taunted her if they observed her talking to her black co-workers. Also, Ms. Simmons’ supervisor, Bill Westberry, in retaliation for Ms. Simmons’ interaction with her black co-workers, moved her to the other side of the line on which she worked. This made it extremely difficult for Ms. Simmons to fulfill her duties as group leader. As group leader, Ms. Simmons was required to be present in the area from which she was moved, and to perform a

number of tasks, such as helping with the line count, repairing units, fixing the stacker machine and ordering parts. By moving her to the other side of the line, Mr. Westberry virtually insured that Ms. Simmons would be unable to perform the functions of her job.

243. Ms. Simmons witnessed that Whirlpool supervisors and managers routinely heard and/or participated in the telling and use of racial jokes, slurs and epithets, instead of acting to stop this behavior. For example, when Ms. Simmons informed Mr. Westberry that her co-workers were using the terms “gorilla” and “nigger” in reference to black employees, he laughed and stated, “You don’t tell me how to do my job.” In addition, Ms. Simmons saw that when Mr. Westberry heard Mr. Travis make racial slurs, Mr. Westbury would often laugh so hard that he would lose his breath. Ms. Simmons also witnessed that upon returning from vacation and learning that Dale Travis had been fired, Mr. Westberry tried to have Mr. Travis reinstated.

244. Ms. Simmons believes that the work environment at Whirlpool is racially hostile.

245. As a result of Defendants’ discriminatory actions, Ms. Simmons has suffered extreme harm.

T. DONNA SWIM

246. **Class Representative Donna Swim** is a resident of McMinnville, Tennessee. Ms. Swim has been employed at Whirlpool’s facility in La Vergne, Tennessee since approximately February 1985 to the present. Ms. Swim worked as an assembler from 1985 to 1990 and as a forklift driver from 1990 to 1998. From 1998 to the present, she has worked as a Quality Technical Process Technician.

247. Ms. Swim has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways.

(a) By a working environment heavily charged with racial discrimination, resulting

largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and

- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

248. As a result of (a) and (b) above, Ms. Swim has been aggrieved and has suffered extreme harm.

249. Ms. Swim has been and continues to be negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

250. Ms. Swim routinely witnessed the use of racial slurs and epithets by white employees at the Whirlpool facility in La Vergne, Tennessee. She heard white employees call black employees "niggers" one to two times per week. In addition, she noticed that white employees regularly called their black co-workers "lazy" and stated their distaste for African-Americans. Ms. Swim also heard employees of Middle Eastern descent referred to as "sand niggers."

251. Ms. Swim believes that the work environment at Whirlpool is racially hostile.

252. As a result of Defendants' discriminatory actions, Ms. Swim has suffered extreme harm.

VIII. ALLEGATIONS OF THE INDIVIDUAL PLAINTIFFS

A. HELEN LUST

253. **Plaintiff Helen Lust** is a female resident of Antioch, Tennessee. Ms. Lust has been employed at Whirlpool's facility in La Vergne, Tennessee from on or about November 1987

until the present. She has been employed in the capacity of assembly worker.

254. Ms. Lust has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes;
- (b) By a working environment in which sexual harassment is prevalent; and
- (c) By management's awareness of, participation in and/or lack of response to these hostile working conditions.

255. As a result of (a), (b) and (c) above, Ms. Lust has been aggrieved and has suffered extreme harm.

256. Ms. Lust has been subjected to sexual harassment and a sexually hostile work environment. Ms. Lust was subjected to sexual harassment by Mark Watwood ("Mr. Watwood"), a group leader for Whirlpool, that includes unwelcome touching and comments. On one occasion, Mr. Watwood rubbed his penis against Ms. Lust's leg. Watwood repeatedly made unwelcome and offensive sexual remarks and propositions to Ms. Lust and other subordinate female employees. Mr. Watwood's prurient behavior created a hostile environment for Ms. Lust, which adversely affected the terms and conditions of her employment.

257. The Defendants, through Mr. Watwood, subjected Ms. Lust to sexual harassment and to a sexually hostile work environment that adversely affected the terms and conditions of her employment. In addition, Mr. Watwood has retaliated against Ms. Lust because he believed that she complained about his harassment. Mr. Watwood falsely accused Ms. Lust of using offensive language towards a co-worker. Ms. Lust never used offensive language, but she was nevertheless suspended by Defendant Whirlpool.

258. Mr. Watwood's sexual harassment of Ms. Lust was unwelcome and was severe and pervasive enough to adversely affect the terms and conditions of her employment. Moreover, the Defendants knew, or should have known, of Mr. Watwood's harassment of Ms. Lust and/or his proclivity for sexually harassing female employees, and failed to take prompt and effective remedial action. Mr. Watwood fondled his subordinate girlfriend and other female employees on a continual basis in front of Lust and other female employees in the area of his responsibility. The employees complained about the conduct, but nothing was done.

259. Ms. Lust was subjected to and witnessed racially hostile treatment, racial stereotypes, harsher and more frequent discipline for herself and other African-Americans and other adverse terms and conditions of employment. For example, Ms. Lust has witnessed African-American employees suspended for relatively minor violations of Whirlpool policy which they did not even commit, while white employees guilty of far worse conduct have not been suspended. For example, Mr. Watwood has never been suspended for his open sexual harassment of female employees.

260. Ms. Lust believes that the work environment at Whirlpool is racially and sexually hostile.

261. As a result of Defendants' unlawful actions, Ms. Lust has suffered extreme harm.

B. LILLIAN HARRIS

262. **Plaintiff Lillian Harris** is a resident of La Vergne, Tennessee. Ms. Harris has been employed at Whirlpool's facility in La Vergne, Tennessee from on or about January 20, 1992 until the present. She has been employed in the capacities of processor on the green line, blue line, paint line, tubing and coils and is currently processor in the built-in refrigerator department.

263. Ms. Harris has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an

environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

264. As a result of (a) and (b) above, Ms. Harris has been aggrieved and has suffered extreme harm.

265. Ms. Harris was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

266. On or about June 2002, Ms. Harris requested a transfer out of a position in which she was required to do work so demanding that it posed a hazard to her safety and health. Ms. Harris requested the transfer from Susan Dillards, a white female supervisor, Willie Cole, a white male supervisor and Richard Shinbaum, a white male engineer. However, these individuals denied Ms. Harris' request and transferred a less senior white employee instead.

267. Ms. Harris believes that the work environment at Whirlpool is racially hostile.

268. As a result of Defendants' discriminatory actions, Ms. Harris has suffered extreme harm.

C. GERALDINE THOMAS

269. **Plaintiff Geraldine Thomas** has been employed at Whirlpool's facility in La Vergne, Tennessee from 1992 until the present in the capacities of assembler, group leader and process technician.

270. Ms. Thomas has been and continues to be adversely affected by the racially

hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

271. As a result of (a) and (b) above, Ms. Thomas has been aggrieved and has suffered extreme harm.

272. Ms. Thomas was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

273. During her employment at Whirlpool, Ms. Thomas has been passed over for promotions in favor of less qualified white employees. Defendants' discriminatory practices have discouraged Ms. Thomas from applying to other positions.

274. Ms. Thomas has been subjected to racially hostile comments and behavior, including racial jokes and use of the word nigger. These racial slurs were often made in the presence of Whirlpool supervisors, yet these supervisors took no action against the offenders. Ms. Thomas has also witnessed racially hostile graffiti, including signs and drawings referring to the KKK. Ms. Thomas is likewise aware of other African Americans being subjected to similar racially hostile comments and/or behavior.

275. Ms. Thomas believes that the work environment at Whirlpool is racially hostile.

276. As a result of Defendants' discriminatory actions, Ms. Thomas has suffered extreme harm.

D. MARILYN MCNEILL

277. **Plaintiff Marilyn McNeill** is a resident of Clarksville, Tennessee. Ms. McNeill has been employed at Whirlpool's facility in La Vergne, Tennessee from on or about February 7, 1996 until the present in the capacity of line technician.

278. Ms. McNeill has been and continues to be adversely affected by the racially hostile work environment at Whirlpool and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. She has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets, and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

279. As a result of (a) and (b) above, Ms. McNeill has been aggrieved and has suffered extreme harm.

280. Ms. McNeill was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. She has been subjected to and has observed racially hostile treatment and racial stereotypes.

281. Ms. McNeill presented a request to Mr. Hagewood, a white human resources supervisor, for the reasonable accommodation that she be assigned to a position where she could sit during her shift, because she suffers from arthritis. Mr. Hagewood refused to accommodate Ms. McNeill's restrictions. However, her white co-workers are regularly granted similar accommodations. Also, on or about 2002, Ms. McNeill was unfairly disciplined by Mr. Blackman, a white male supervisor, after a white employee made a mistake on the line.

However, after learning that it was a white employee who made the mistake, Mr. Blackman chose not to discipline the employee who was responsible.

282. Ms. McNeill believes that the work environment at Whirlpool is racially hostile.

283. As a result of Defendants' discriminatory actions, Ms. McNeill has suffered extreme harm.

E. FLOYD WOODLEY

284. **Plaintiff Floyd Woodley** is a resident of Nashville, Tennessee. Mr. Woodley has been employed at Whirlpool's facility in La Vergne, Tennessee from on or about February 13, 1995 until August 2, 2002, when he was involuntarily laid off. He was employed in the capacity of tow motor driver.

285. Mr. Woodley has been and continues to be adversely affected by the racially hostile work environment and, consequently, by the violation of his personal right to work in an environment free of racial discrimination. He has been harmed in the following ways:

- (a) By a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes; and
- (b) By management's awareness of, participation in and/or lack of response to the hostile working conditions.

286. As a result of (a) and (b) above, Mr. Woodley has been aggrieved and has suffered extreme harm.

287. Mr. Woodley was negatively affected by the challenged systemic practices and patterns of racial discrimination and by the racially hostile work environment at Whirlpool. He has been subjected to and has observed racially hostile treatment and racial stereotypes.

288. After Mr. Woodley was laid off in August 2002, a temporary position became

available in a warehouse in Ohio. Mr. Ethridge, a white supervisor, gave the position to a white male employee, who had less seniority and experience than Mr. Woodley.

289. Mr. Woodley believes that the work environment at Whirlpool is racially hostile.

290. As a result of Defendants' discriminatory actions, Mr. Woodley has suffered extreme harm.

IX. WITNESS ALLEGATIONS

A. LYNN MCCRAY

291. **Witness Lynn McCray** is a resident of Merriam, Kansas and was employed at Whirlpool's facility in La Vergne, Tennessee as a Staff Representative for the Union. Ms. McCray has been adversely affected by the racially hostile work environment and, consequently, by the violation of her personal right to work in an environment free of racial discrimination. Ms. McCray observed racially hostile treatment, racial stereotypes, adverse terms and conditions of employment for African-Americans and failure to promote African-American employees.

292. Ms. McCray was hired for the Staff Representative position by the President of the Union to address and help solve discrimination issues at the Whirlpool plant, to help integrate the Union and to recruit new members, including minorities, into the Union. After leaving the Union in July 2003, Ms. McCray has maintained contact with many Union members. During her employment at the Union, she significantly interacted with two white management officials, Mr. Hutchins, Division Vice President and Fred Contraris, Director of Human Resources, on virtually a daily basis.

293. Ms. McCray witnessed that Mr. Hutchins played a significant role in ensuring that Whirlpool management controlled the Union, which, at that time, was comprised of almost all white employees. On several occasions, Mr. Hutchins informed Ms. McCray that he did not want her to integrate the Union. Specifically, Mr. Hutchins stated that he wanted "no blacks and

no immigrants” in the Union because they “cause trouble for everyone else.” Mr. Hutchins further explained his opposition to the integration of the Union and the workforce by telling Ms. McCray that she “[didn’t] understand Tennessee.”

294. Ms. McCray further witnessed that Mr. Hutchins and Mr. Contraris contributed to Whirlpool’s failure to promote African-American employees. For example, Mr. Hutchins explicitly told Ms. McCray that “Blacks are not going to be promoted on [his] watch.” Also, Mr. Contraris, with whom Ms. McCray frequently worked regarding minority issues at the plant, stated several times in reference to an African-American employee, Henry Beasley, that, as long as he was head of Human Resources, “Henry Beasley will not be promoted.”

295. Mr. Contraris also declared to Ms. McCray that “blacks like to complain a lot” and that several African-American employees had filed discrimination charges against Whirlpool. He also offered to show Ms. McCray the files regarding these complaints.

296. Ms. McCray also witnessed that several other employees contributed to the widespread racially hostile work environment at Whirlpool. For example, Ms. McCray heard two white first line supervisors, Mr. Lackey and Peggy LaGrange, both make racist comments about African-American employees and used the word “nigger” on a daily basis when referring to African-Americans. Also, Dale Travis, another white employee, told Ms. McCray, in reference to Martin Luther King holiday, that Whirlpool needed a James Earl Ray day, referring to the man who assassinated Dr. King. Although Ms. McCray reported this statement to Mr. Hutchins and Mr. Contraris, they just laughed and refused to take any action against Mr. Travis.

297. Ms. McCray has witnessed African-American and other minority employees being subjected to racial hatred, being denied promotions and experiencing difficulty obtaining worker’s compensation for on-the-job injuries. Furthermore, she has witnessed that the work environment at Whirlpool is very hostile to African-American and minority employees and

white employees routinely harass African-American employees.

B. KIMBERLY PETRILLO

298. **Witness Kimberly Petrillo** is a resident of Murfreesboro, Tennessee. Ms. Petrillo was employed at Whirlpool's facility in La Vergne, Tennessee from approximately 1991 to 1996.

299. Ms. Petrillo routinely witnessed white employees telling racially derogatory jokes and using racial slurs or epithets at the Whirlpool facility in La Vergne, Tennessee. Specifically, Ms. Petrillo heard white employees refer to African-American employees as "ghetto boys" on a daily basis. In addition, she regularly witnessed white employees at the La Vergne, Tennessee facility refer to African-American employees as "niggers" and "fucking niggers." Also on a daily basis, she heard white employees say that African-Americans "want free rides" and "are all lazy niggers." Ms. Petrillo witnessed that Whirlpool supervisors and managers heard and/or participated in the telling and use of racial jokes, slurs and epithets and did not act to stop this behavior. For example, on one occasion, one of Ms. Petrillo's supervisors stated, "Every time I turn around, one of these damn niggers is calling me."

300. The racially hostile work environment at Whirlpool's La Vergne, Tennessee facility was further augmented by the presence of racially hostile clothing. Ms. Petrillo saw many white employees wearing Confederate flag pins on their shirts on a daily basis. In addition, she saw that one white employee had a Confederate flag on his tow motor vehicle.

CLASS COUNTS

COUNT I

VIOLATIONS OF TITLE VII

RACIALLY HOSTILE WORK ENVIRONMENT (All Plaintiffs Against All Defendants)

301. All Class Representatives re-allege and incorporate by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

302. This Count is brought on behalf of all Class Representatives and the class.

303. Defendants have subjected the Class Representatives and the class to a racially hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), et seq.

304. Defendants have denied Class Representatives and members of the class their personal right to work in an environment free of racial discrimination.

305. Defendants' racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and the Defendants tolerated, condoned, ratified and/or engaged in the hostile work environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action.

306. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Class Representatives and the members of the class, Class Representatives and the members of the class are entitled to application of the continuing violations doctrine to all violations herein.

307. Defendants' conduct in violation of Title VII has injured and damaged the Class Representatives and the class.

308. Class Representative and the members of the class have suffered and continue to

suffer harm, including, but not limited to, a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes, and management's awareness of, participation in and/or lack of response to the hostile working conditions.

309. By reason of Defendants' conduct as alleged herein, Class Representatives and the class are entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

310. Attorneys' fees should be awarded under 42 U.S.C. §2000e-5(k).

COUNT II

VIOLATIONS OF TITLE VII

RACIAL DISCRIMINATION

(African-American Plaintiffs Against All Defendants)

311. African-American Class Representatives re-allege and incorporate by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

312. This Count is brought on behalf of African-American Class Representatives and African-American members of the class.

313. Defendants have discriminated against African-American Class Representatives and the class in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, as amended, by subjecting them to differential treatment on the basis of their race. The Class Representatives and members of the class have suffered both disparate impact and disparate treatment as a result of Defendants' wrongful conduct.

314. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of African-American Class Representatives and the class, entitling Class Representatives

and the members of the class to punitive damages.

315. By reason of the continuous nature of Defendants discriminatory conduct persistent throughout the employment of African-American Class Representatives and members of the class, Class Representatives and the members of the class are entitled to application of the continuing violations doctrine to all violations alleged herein.

316. Defendants' violations of Title VII have injured and damaged the African-American Class Representatives and the class.

317. African-American Class Representatives and the class have suffered and continue to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

318. By reason of Defendants' conduct as alleged herein, African-American Class Representatives and members of the class are entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

319. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

COUNT III

VIOLATIONS OF § 1981

RACIAL DISCRIMINATION

(African-American Plaintiffs Against All Defendants)

320. African-American Class Representatives re-allege and incorporate by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

321. This Count is brought on behalf of African-American Class Representatives and African-American members of the class.

322. Defendants have denied African-American Class Representatives and members of the class the same right to make and enforce contracts as enjoyed by white citizens employed by

Whirlpool, including rights involving the making, performance, modification and termination of contracts with Defendants, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of the Civil Rights Act of 1866, 42 U.S.C § 1981, as amended.

323. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of African-American Class Representatives and the class, entitling Class Representatives and the class to punitive damages.

324. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of African-American Class Representatives and members of the class, Class Representatives and the class are entitled to application of the continuing violations doctrine to all violations alleged herein.

325. Defendants' conduct in violation of § 1981 has injured and damaged the African-American Class Representatives and the class.

326. African-American Class Representatives and the class have suffered and continue to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

327. By reason of Defendants' discrimination, African-American Class Representatives and the class are entitled to all legal and equitable remedies available for violations of § 1981, including an award of punitive damages.

328. Attorneys' fees should be awarded under § 1981, *et seq.*

PRAYER FOR RELIEF ON CLASS CLAIMS

329. Wherefore, Plaintiffs, on behalf of themselves and the class members whom they seek to represent, request the following relief:

- a. Acceptance of jurisdiction of this cause;

- b. Certification of the case as a class action maintainable under Federal Rules of Civil Procedure Rule 23 (a) and (b)(2), on behalf of the proposed Plaintiff class, and designation of the Plaintiffs as representatives of the class and their counsel of record as class counsel;
- c. A declaratory judgment that the Defendants' employment practices challenged herein are illegal and in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), et seq.;
- d. A declaratory judgment that the Defendants' employment practices challenged herein are illegal and in violation of Section One of the Civil Rights Act of 1866, as amended in 1991, 42 U.S.C. §1981;
- e. A temporary and permanent injunction against Whirlpool and its partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in any further unlawful practices, policies, customs and usages by Defendants set forth herein;
- f. An Order requiring Defendants to initiate and implement programs that (i) remedy the racially hostile work environment at Whirlpool; (ii) ensure prompt, remedial action regarding all claims of racial harassment; (iii) provide equal employment opportunities for African-American employees; (iv) remedy the effect of Whirlpool's past and present unlawful employment practices; and (v) eliminate the continuing effects of the discriminatory and retaliatory practices described above;
- g. An Order requiring Defendants to initiate and implement systems of assigning, training, transferring, compensating and promoting African-American employees in a non-discriminatory manner;
- h. An Order establishing a task force on equality and fairness to determine

the effectiveness of the programs described in (e) and (f), above, which would provide for (i) the monitoring, reporting and retaining of jurisdiction to ensure equal employment opportunity, (ii) the assurance that injunctive relief is properly implemented, and (iii) a quarterly report setting forth information relevant to the determination of the effectiveness of the programs described in (e) and (f), above;

- i. An Order restoring Plaintiffs and the class they seek to represent to those jobs they would now be occupying but for Whirlpool's discriminatory practices;
- j. An Order directing Whirlpool to adjust the wage rates and benefits for Plaintiffs and the class they seek to represent to the level that they would be enjoying but for Whirlpool's discriminatory practices;
- k. An award of back pay; front pay; lost job benefits; preferential rights to jobs; and other equitable relief for the Plaintiffs and the class they seek to represent;
- l. Nominal damages;
- m. Compensatory damages;
- n. Punitive damages;
- o. An award of litigation costs and expenses, including reasonable attorney's fees to the Plaintiffs and class members;
- p. Prejudgment interest; and
- q. Such other and further relief as the Court may deem just and proper.

INDIVIDUAL COUNTS

COUNT I

(Individual Claim of Plaintiff Helen Lust)

VIOLATIONS OF TITLE VII

SEXUAL HARASSMENT

(Against All Defendants)

330. Plaintiff Helen Lust re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

331. Whirlpool has discriminated against Ms. Lust by permitting an ongoing and pervasive pattern and practice of sexual harassment against Ms. Lust by creating and maintaining a sexually hostile work environment, in violation of 42 U.S.C. § 2000e et seq.

332. Whirlpool's conduct has been intentional, deliberate, willful, malicious, reckless and conducted in callous disregard of Ms. Lust's rights.

333. As a direct and proximate result of Whirlpool's aforementioned conduct, Ms. Lust was damaged and injured.

334. Ms. Lust suffered economic losses, mental and emotional harm, anguish and humiliation.

335. By reason of the continuous nature of Whirlpool's discriminatory conduct persistent throughout Ms. Lust's employment, Ms. Lust is entitled to application of the continuing violation doctrine to all of the violations alleged herein.

336. By reason of the sexual harassment suffered at Whirlpool, Ms. Lust is entitled to all legal and equitable remedies available under Title VII.

COUNT II

(Individual Claim of Plaintiff Helen Lust)

VIOLATIONS OF TITLE VII

RACIALLY HOSTILE WORK ENVIRONMENT

(Against All Defendants)

337. Plaintiff Helen Lust re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

338. Defendants have subjected Ms. Lust to a racially hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), et seq.

339. Defendants have denied Ms. Lust her personal right to work in an environment free of racial discrimination.

340. Defendants' racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and the Defendants tolerated, condoned, ratified and/or engaged in the hostile work environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action.

341. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Lust, Ms. Lust is entitled to application of the continuing violations doctrine to all violations herein.

342. Defendants' conduct in violation of Title VII has injured and damaged Ms. Lust.

343. Ms. Lust has suffered and continues to suffer harm, including, but not limited to,, a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes, and management's awareness of, participation in and/or lack of response to the hostile working conditions.

344. By reason of Defendants' conduct as alleged herein, Ms. Lust is entitled to all

legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

345. Attorneys' fees should be awarded under 42 U.S.C. §2000e-5(k).

COUNT III

(Individual Claim of Plaintiff Helen Lust)

VIOLATION OF TITLE VII

RACE DISCRIMINATION

(Against All Defendants)

346. Plaintiff Helen Lust re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

347. Defendants have discriminated against Ms. Lust in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, as amended, by subjecting her to differential treatment on the basis of her race. Ms. Lust has suffered both disparate impact and disparate treatment as a result of Defendants' wrongful conduct.

348. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. Lust, entitling Ms. Lust to punitive damages.

349. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Lust, Ms. Lust is entitled to application of the continuing violations doctrine to all violations alleged herein.

350. Defendants' violations of Title VII have injured and damaged Ms. Lust.

351. Ms. Lust has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

352. By reason of Defendants' conduct as alleged herein, Ms. Lust is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

353. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

COUNT IV

(Individual Claim of Plaintiff Helen Lust)

VIOLATION OF § 1981

RACE DISCRIMINATION

(Against All Defendants)

354. Plaintiff Helen Lust re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

355. Defendants have denied Ms. Lust the same right to make and enforce contracts as enjoyed by white citizens employed by Whirlpool, including rights involving the making, performance, modification and termination of contracts with Defendants, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of § 1981.

356. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. Lust, entitling Ms. Lust to punitive damages.

357. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Lust, Ms. Lust is entitled to application of the continuing violations doctrine to all violations alleged herein.

358. Defendants' conduct in violation of § 1981 has injured and damaged Ms. Lust.

359. Ms. Lust has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

360. By reason of Defendants' discrimination, Ms. Lust is entitled to all legal and equitable remedies available for violations of § 1981, including an award of punitive damages.

361. Attorneys' fees should be awarded under § 1981, *et seq.*

COUNT V

(Individual Claim of Plaintiff Lillian Harris)

VIOLATIONS OF TITLE VII

RACIALLY HOSTILE WORK ENVIRONMENT

(Against All Defendants)

362. Plaintiff Lillian Harris re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

363. Defendants have subjected Ms. Harris to a racially hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), *et seq.*

364. Defendants have denied Ms. Harris her personal right to work in an environment free of racial discrimination.

365. Defendants' racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and the Defendants tolerated, condoned, ratified and/or engaged in the hostile work environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action.

366. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Harris, Ms. Harris is entitled to application of the continuing violations doctrine to all violations herein.

367. Defendants' conduct in violation of Title VII has injured and damaged Ms. Harris.

368. Ms. Harris has suffered and continues to suffer harm, including, but not limited to, a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes, and management's awareness of, participation in and/or lack of response to the hostile working conditions.

369. By reason of Defendants' conduct as alleged herein, Ms. Harris is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

370. Attorneys' fees should be awarded under 42 U.S.C. §2000e-5(k).

COUNT VI

(Individual Claim of Plaintiff Lillian Harris)

VIOLATION OF TITLE VII

RACE DISCRIMINATION

(Against All Defendants)

371. Plaintiff Lillian Harris re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

372. Defendants have discriminated against Ms. Harris in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, as amended, by subjecting her to differential treatment on the basis of her race. Ms. Harris has suffered both disparate impact and disparate treatment as a result of Defendants' wrongful conduct.

373. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. Harris, entitling Ms. Harris to punitive damages.

374. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Harris, Ms. Harris is entitled to application of the continuing violations doctrine to all violations alleged herein.

375. Defendant's violations of Title VII have injured and damaged Ms. Harris.

376. Ms. Harris has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

377. By reason of Defendants' conduct as alleged herein, Ms. Harris is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

378. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

COUNT VII

(Individual Claim of Plaintiff Lillian Harris)

VIOLATION OF § 1981

RACE DISCRIMINATION

(Against All Defendants)

379. Plaintiff Lillian Harris re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

380. Defendants have denied Ms. Harris the same right to make and enforce contracts as enjoyed by white citizens employed by Whirlpool, including rights involving the making, performance, modification and termination of contracts with Defendants, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of § 1981.

381. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. Harris, entitling Ms. Harris to punitive damages.

382. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Harris, Ms. Harris is entitled to application of the continuing violations doctrine to all violations alleged herein.

383. Defendants' conduct in violation of § 1981 has injured and damaged Ms. Harris.

384. Ms. Harris has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

385. By reason of Defendants' discrimination, Ms. Harris is entitled to all legal and equitable remedies available for violations of § 1981, including an award of punitive damages.

386. Attorneys' fees should be awarded under § 1981, *et seq.*

COUNT VIII

(Individual Claim of Plaintiff Geraldine Thomas)

VIOLATIONS OF TITLE VII

RACIALLY HOSTILE WORK ENVIRONMENT

(Against All Defendants)

387. Plaintiff Geraldine Thomas re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

388. Defendants have subjected Ms. Thomas to a racially hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), *et seq.*

389. Defendants have denied Ms. Thomas her personal right to work in an environment free of racial discrimination.

390. Defendants' racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and the Defendants tolerated, condoned, ratified and/or engaged in the hostile work environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action.

391. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Thomas, Ms. Thomas is entitled to application of the continuing violations doctrine to all violations herein.

392. Defendants' conduct in violation of Title VII has injured and damaged Ms. Thomas.

393. Ms. Thomas has suffered and continues to suffer harm, including, but not limited to, a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes, and management's awareness of, participation in and/or lack of response to the hostile working conditions.

394. By reason of Defendants' conduct as alleged herein, Ms. Thomas is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

395. Attorneys' fees should be awarded under 42 U.S.C. §2000e-5(k).

COUNT IX

(Individual Claim of Plaintiff Geraldine Thomas)

VIOLATION OF TITLE VII

RACE DISCRIMINATION

(Against All Defendants)

396. Plaintiff Geraldine Thomas re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

397. Defendants have discriminated against Ms. Thomas in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, as amended, by subjecting her to differential treatment on the basis of her race. Ms. Thomas has suffered both disparate impact and disparate treatment as a result of Defendants' wrongful conduct.

398. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. Thomas, entitling Ms. Thomas to punitive damages.

399. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Thomas, Ms. Thomas is entitled to application of the continuing violations doctrine to all violations alleged herein.

400. Defendants' violations of Title VII have injured and damaged Ms. Thomas.

401. Ms. Thomas has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

402. By reason of Defendants' conduct as alleged herein, Ms. Thomas is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

403. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

COUNT X

(Individual Claim of Plaintiff Geraldine Thomas)

VIOLATION OF § 1981

RACE DISCRIMINATION

(Against All Defendants)

404. Plaintiff Geraldine Thomas re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

405. Defendants have denied Ms. Thomas the same right to make and enforce contracts as enjoyed by white citizens employed by Whirlpool, including rights involving the making, performance, modification and termination of contracts with Defendants, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of § 1981.

406. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. Thomas, entitling Ms. Thomas to punitive damages.

407. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. Thomas, Ms. Thomas is entitled to application of the continuing violations doctrine to all violations alleged herein.

408. Defendants' conduct in violation of § 1981 has injured and damaged Ms. Thomas.

409. Ms. Thomas has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

410. By reason of Defendants' discrimination, Ms. Thomas is entitled to all legal and equitable remedies available for violations of § 1981, including an award of punitive damages.

411. Attorneys' fees should be awarded under § 1981, *et seq.*

COUNT XI

(Individual Claim of Plaintiff Marilyn McNeill)

VIOLATIONS OF TITLE VII

RACIALLY HOSTILE WORK ENVIRONMENT

(Against All Defendants)

412. Plaintiff Marilyn McNeill re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

413. Defendants have subjected Ms. McNeill to a racially hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), *et seq.*

414. Defendants have denied Ms. McNeill her personal right to work in an environment free of racial discrimination.

415. Defendants' racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and the Defendants tolerated, condoned, ratified and/or engaged in the hostile work environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action.

416. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. McNeill, Ms. McNeill is entitled to application of the continuing violations doctrine to all violations herein.

417. Defendants' conduct in violation of Title VII has injured and damaged Ms. McNeill.

418. Ms. McNeill has suffered and continues to suffer harm, including, but not limited to, a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes, and

management's awareness of, participation in and/or lack of response to the hostile working conditions.

419. By reason of Defendants' conduct as alleged herein, Ms. McNeill is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

420. Attorneys' fees should be awarded under 42 U.S.C. §2000e-5(k).

COUNT XII

(Individual Claim of Plaintiff Marilyn McNeill)

VIOLATION OF TITLE VII

RACE DISCRIMINATION

(Against All Defendants)

421. Plaintiff Marilyn McNeill re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

422. Defendants have discriminated against Ms. McNeill in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, as amended, by subjecting her to differential treatment on the basis of her race. Ms. McNeill has suffered both disparate impact and disparate treatment as a result of Defendants' wrongful conduct.

423. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. McNeill, entitling Ms. McNeill to punitive damages.

424. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. McNeill, Ms. McNeill is entitled to application of the continuing violations doctrine to all violations alleged herein.

425. Defendants' violations of Title VII have injured and damaged Ms. McNeill.

426. Ms. McNeill has suffered and continues to suffer harm, including, but not limited

to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

427. By reason of Defendants' conduct as alleged herein, Ms. McNeill is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

428. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

COUNT XIII

(Individual Claim of Plaintiff Marilyn McNeill)

VIOLATION OF § 1981

RACE DISCRIMINATION

(Against All Defendants)

429. Plaintiff Marilyn McNeill re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

430. Defendants have denied Ms. McNeill the same right to make and enforce contracts as enjoyed by white citizens employed by Whirlpool, including rights involving the making, performance, modification and termination of contracts with Defendants, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of § 1981.

431. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Ms. McNeill, entitling Ms. McNeill to punitive damages.

432. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Ms. McNeill, Ms. McNeill is entitled to application of the continuing violations doctrine to all violations alleged herein.

433. Defendants' conduct in violation of § 1981 has injured and damaged Ms.

McNeill.

434. Ms. McNeill has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

435. By reason of Defendants' discrimination, Ms. McNeill is entitled to all legal and equitable remedies available for violations of § 1981, including an award of punitive damages.

436. Attorneys' fees should be awarded under § 1981, *et seq.*

COUNT XIV

(Individual Claim of Plaintiff Floyd Woodley)

VIOLATIONS OF TITLE VII

RACIALLY HOSTILE WORK ENVIRONMENT

(Against All Defendants)

437. Plaintiff Floyd Woodley re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

438. Defendants have subjected Mr. Woodley to a racially hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), et seq.

439. Defendants have denied Mr. Woodley his personal right to work in an environment free of racial discrimination.

440. Defendants' racially discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and the Defendants tolerated, condoned, ratified and/or engaged in the hostile work environment, or, in the alternative, knew, or should have known, of its existence and failed to take remedial action.

441. By reason of the continuous nature of Defendants' discriminatory conduct

persistent throughout the employment of Mr. Woodley, Mr. Woodley is entitled to application of the continuing violations doctrine to all violations herein.

442. Defendants' conduct in violation of Title VII has injured and damaged Mr. Woodley.

443. Mr. Woodley has suffered and continues to suffer harm, including, but not limited to, a working environment heavily charged with racial discrimination, resulting largely from the rampant racial harassment and the use of racial slurs, epithets and stereotypes, and management's awareness of, participation in and/or lack of response to the hostile working conditions.

444. By reason of Defendants' conduct as alleged herein, Mr. Woodley is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

445. Attorneys' fees should be awarded under 42 U.S.C. §2000e-5(k).

COUNT XV

(Individual Claim of Plaintiff Floyd Woodley)

VIOLATION OF TITLE VII

RACE DISCRIMINATION

(Against All Defendants)

446. Plaintiff Floyd Woodley re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

447. Defendants have discriminated against Mr. Woodley in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, as amended, by subjecting him to differential treatment on the basis of his race. Mr. Woodley has suffered both disparate impact and disparate treatment as a result of Defendants' wrongful conduct.

448. In the employment practices described above, Defendants intentionally engaged

in discriminatory practices with malice or with reckless indifference to the federally protected rights of Mr. Woodley, entitling Mr. Woodley to punitive damages.

449. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Mr. Woodley, Mr. Woodley is entitled to application of the continuing violations doctrine to all violations alleged herein.

450. Defendants' violations of Title VII have injured and damaged Mr. Woodley.

451. Mr. Woodley has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

452. By reason of Defendants' conduct as alleged herein, Mr. Woodley is entitled to all legal and equitable remedies available for violations of Title VII, including an award of punitive damages.

453. Attorneys' fees should be awarded under 42 U.S.C. § 2000e-5(k).

COUNT XVI

(Individual Claim of Plaintiff Floyd Woodley)

VIOLATION OF § 1981

RACE DISCRIMINATION

(Against All Defendants)

454. Plaintiff Floyd Woodley re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

455. Defendants have denied Mr. Woodley the same right to make and enforce contracts as enjoyed by white citizens employed by Whirlpool, including rights involving the making, performance, modification and termination of contracts with Defendants, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of § 1981.

456. In the employment practices described above, Defendants intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of Mr. Woodley, entitling Mr. Woodley to punitive damages.

457. By reason of the continuous nature of Defendants' discriminatory conduct persistent throughout the employment of Mr. Woodley, Mr. Woodley is entitled to application of the continuing violations doctrine to all violations alleged herein.

458. Defendants' conduct in violation of § 1981 has injured and damaged Mr. Woodley.

459. Mr. Woodley has suffered and continues to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

460. By reason of Defendants' discrimination, Mr. Woodley is entitled to all legal and equitable remedies available for violations of § 1981, including an award of punitive damages.

461. Attorneys' fees should be awarded under § 1981, *et seq.*

PRAYER FOR RELIEF ON INDIVIDUAL CLAIMS

462. Wherefore, each Individual Plaintiff requests the following relief:

- a. Grant the Plaintiff a declaratory judgment holding that the actions of the Defendants described hereinabove violated and continue to violate the rights of the Plaintiff as secured by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), et seq.;
- b. Grant the Plaintiff a declaratory judgment holding that the actions of the Defendants described herein violated and continues to violate the rights of the Plaintiff as secured by Section One of the Civil Rights Act of 1866, as amended in 1991, 42 U.S.C. §1981;
- c. Grant the Plaintiff a permanent injunction enjoining the Defendants, their agents, successors, employees, attorneys and those acting in concert with

the Defendants and on the Defendants' behalf from continuing to violate Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000(e), et seq.;

- d. Grant the Plaintiff a permanent injunction enjoining the Defendants, their agents, successors, employees, attorneys and those acting in concert with the Defendants and on the Defendants' behalf from continuing to violate Section One of the Civil Rights Act of 1866, as amended in 1991, 42 U.S.C. §1981;
- e. A temporary and permanent injunction against Whirlpool and its partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in any further unlawful practices, policies, customs and usages by Defendants set forth herein;
- f. Grant the Plaintiff an order requiring the Defendants to make the Plaintiff whole, including back-pay (plus interest);
- g. Nominal damages;
- h. Compensatory damages;
- i. Punitive damages;
- j. An award, of litigation costs and expenses, including reasonable attorney's fees to the Plaintiff;
- k. Prejudgment interest; and
- l. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Respectfully submitted this 15th day of September, 2005.

/s/

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