

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION**

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Christopher Modtland, for  
himself and all others  
similarly situated,

Plaintiff,

v.

Mills Fleet Farm, Inc.,

Defendant.

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Case Type: Employment  
Case File No.: 04-3051

**AMENDED COMPLAINT  
AND DEMAND FOR A  
JURY TRIAL**

Plaintiff, through his attorneys, NEATON, PUKLICH & KLASSEN, 601 Carlson Parkway, Suite 620, Minnetonka, Minnesota 55305, and JOHN A. KLASSEN, P.A., 700 Lumber Exchange, 10 South Fifth Street, Minneapolis, Minnesota 55402 states and alleges for his Complaint as follows:

**NATURE OF CLAIMS**

1. This is a class action for damages, declaratory and injunctive relief arising under 42 U.S.C. § 1981 (“Section 1981”). Plaintiff seeks further relief for himself and members of the classes pursuant to the Minnesota Human Rights Act, Minn. Stat. § 363.03 et seq. (“MHRA”) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. (“Title VII”). Moreover, this action is to enforce the rights of plaintiff and members of the classes to be free from arbitrary and capricious treatment, and from discrimination on the basis of race, color, and/or gender in employment, as guaranteed by Section 1981, Title VII and the MHRA.

Defendant has maintained patterns, practices, policies, customs and usages which are unlawful and which discriminate against plaintiff and members of the classes that he represents because of their race, color, and/or gender with respect to terms and conditions of employment and hiring.

### **JURISDICTION AND VENUE**

2. This Court has original jurisdiction to consider plaintiff's claims under, and jurisdiction thereof is conferred on this Court by virtue of, 28 U.S.C. §§ 1331 and 1367, 42 U.S.C. § 1981 and 42 U.S.C. §2000e et seq. Jurisdiction to grant injunctive and declaratory equitable relief, as well as damages, is invoked pursuant to 42 U.S.C. § 1981 and 42 U.S.C. §2000e et seq. The unlawful acts and practices alleged herein were committed in the State of Minnesota.

### **CLASS ACTION ALLEGATIONS**

3. Plaintiff brings this action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure on his own behalf and on behalf of all other persons similarly situated. The members of the classes, which, upon information and belief number at least 100 members, are too numerous to be joined in one action. The classes are composed of (1) persons who applied to defendant for employment and were subjected to psychological testing prior to any offer of employment, conditional or otherwise; (2) persons who applied to defendant for employment, were required to undergo psychological testing prior to any offer of employment, and for whom defendant requested information pertaining to the person's race, color and gender; and (3) persons who applied to defendant for employment, were required to undergo psychological testing prior to any offer of employment, and for whom defendant then provided information on the applicant's race, color and/or gender to the psychological testing firm in connection with the testing.

4. Plaintiff and class members were subjected to disparate treatment in hiring and other beneficial conditions of employment on the basis of race, color, and gender.

5. Plaintiff's attorneys are qualified employment law litigators and generally able, with significant and relevant experience in civil rights employment discrimination claims, including class action litigation. For these reasons, the plaintiff will fairly and adequately protect the interests of the class members in this action for damages, declaratory and injunctive relief.

6. Plaintiff's claims are typical of the claims of the other members of the classes.

7. The questions of law common to the above-described class are whether or not the hiring and placement practices of the defendant deprived and deprives members of the classes of civil rights secured to them by the laws of the United States (Section 1981 and Title VII) and the State of Minnesota (MHRA) by denying them the rights, privileges and conditions of employment granted to similarly situated and similarly non-protected class persons, and by subjecting each of them to unlawful application and hiring practices.

8. The defendant has failed to take remedial and corrective action to stop the discriminatory and unlawful treatment afforded the members of the classes, despite notice and knowledge of the discriminatory conduct perpetrated by it. Thus, injunctive and declaratory relief with respect to the classes as a whole is appropriate.

### **PARTIES**

9. Plaintiff is an individual resident of the State of Minnesota.

10. Defendant is, upon information and belief, a Minnesota Corporation having its principal place of business at 512 Laurel Street, Brainerd, Minnesota. Defendant conducts business throughout the State of Minnesota.

## **ADMINISTRATIVE PROCEEDINGS**

11. On or about December 26, 2001, within 365 days of the MHRA violations of which he complains, plaintiff timely filed charges of employment discrimination against the defendant with the Minnesota Department of Human Rights (“MDHR”). These charges were cross-filed with the United States Equal Employment Opportunity Commission (“EEOC”).

12. Plaintiff’s charge was docketed by the MDHR on December 31, 2001 and assigned case number 38556. After investigating plaintiff’s complaint, the MDHR, on September 18, 2002, issued a finding that “probable cause exists to believe that an unfair discriminatory practice was committed.” On April 22, 2003 the MDHR issued an amended probable cause determination, finding:

“Evidence establishes probable cause, that in this case the Charging Party was required to undertake a psychological examination without first being made a conditional job offer, in violation of the Human Rights Act. In addition, there is Probable Cause to believe the Respondent or its agents requested information that pertains to race or gender of job applicants and that this information was made available to the psychological consulting firm. Collection of such information prior to employment is a violation of the Minnesota Human Rights Act.”

13. On May 27, 2004, plaintiff received notice from the MDHR that his charge had been dismissed. Plaintiff brings this claim within 45 days of receipt of this dismissal notice; therefore, plaintiff’s claims based on violations of the Minnesota Human Rights Act are timely and appropriate. The EEOC issued a Notice of Right to Sue in this charge on or about July 9, 2004.

## **ALLEGATIONS COMMON TO ALL CLAIMS**

14. Plaintiff is an African-American male. On July 30, 2001 plaintiff applied for a position with the defendant at its Lakeville, Minnesota location. Plaintiff, like the members of the classes interviewed for the position and, following the interview, defendant asked plaintiff to take a psychological employment test. Plaintiff and the members of the classes agreed to take the

“test” and was thereafter administered the “Reid Report” (herein after “Reid Report” or “test”). At no time prior to plaintiff and the members of the classes taking the Reid Report did defendant make a conditional offer of employment to plaintiff or the members of the classes. In fact, defendant never conditionally or otherwise offered plaintiff or the members of the classes employment.

15. The Reid Report administered by the defendant to plaintiff and the members of the classes requires the individual taking the test to furnish information concerning, among other information, information that pertains to the individual’s race, color and gender.

16. Plaintiff and the members of the classes took the Reid Report and, based solely on the purported results and/or analysis of the test, defendant refused to hire plaintiff.

17. At the time plaintiff applied for employment with defendant, plaintiff was aware that an objectively lesser-qualified Caucasian individual applied for and subsequently received employment with defendant. After obtaining this information, plaintiff contacted defendant concerning the status of his application. In response, defendant replied that it was reviewing plaintiff’s application. Plaintiff further inquired into whether defendant had any positions open and was told “not really.” Upon information and belief, this was not a true statement because defendant continued to hire individuals at its Lakeville, Minnesota location shortly after this conversation and defendant continued to advertise in the newspaper for open positions.

18. Upon information and belief, the defendant has continued to utilize and rely on the Reid Report in connection with its hiring decisions, including those involving the members of the classes. Defendant has admitted that if an individual applicant is judged “not recommended” based on the results of the Reid Report, defendant will not hire the applicant. Defendant has failed to

take remedial and corrective action to stop this practice, despite receiving notice that this practice violates the Minnesota Human Rights Act. Thus, injunctive relief is appropriate.

### **STATEMENT OF CLAIM**

19. Plaintiff alleges that the defendant maintains a pattern and practice of discrimination in employment on the basis of race, color, and/or gender. As part of that pattern and practice, by way of example and without limitation, the defendant engaged in the following unlawful conduct:

- (a) Requiring plaintiff and members of the classes, as employment applicants, to take a pre-employment test referred to as the Reid Report without first offering a conditional offer of employment;
- (b) Requiring the plaintiff and members of the classes to provide race, color and gender data in connection with the Reid Report and the job application process;
- (c) Failure to hire plaintiff and members of the classes for employment while, during the same time period, offering objectively less qualified Caucasian job applicants employment;
- (d) Failure to maintain a hiring policy based on objective job-related criteria that are uniformly applied to Caucasians and non-Caucasians alike; and

20. The policies and practices described above are part of a pattern and practice of unlawful employment practices and race, color, and gender discrimination utilized by the defendant and constitute violations of federal and State law.

## COUNT I

### **RACE, COLOR, AND GENDER DISCRIMINATION IN VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT**

21. Plaintiff realleges the foregoing paragraphs as though fully set forth herein.

#### **Violation of Minnesota Statute Section 363.03, Subd. 1(4)**

22. The Minnesota Human Rights Act provides at §363.03, subd. 1(4) that unless specifically excepted by statute it is an illegal, discriminatory employment practice for an employer, employment agency or labor organization, before a person is employed by the employer or admitted to membership in the labor organization, to require or request the person to furnish information that pertains to race, color and/or gender. This prohibition includes pre-employment information sought or obtained by means of employment application form, job interview, physical exam/health history or third-party sources.

23. Defendant was, at all relevant times herein, an “employer” as that term is defined by the Minnesota Human Rights Act.

24. Defendant required and/or requested plaintiff and members of the classes submit to a psychological examination without first being made a conditional offer of employment. Defendant’s actions violate the Minnesota Human Rights Act.

25. Defendant required and/or requested plaintiff and members of the classes provide information relating to race, color, and/or gender prior to offering plaintiff and members of the class employment. The collection of such information prior to offering plaintiff and the members of the classes employment or a conditional offer of employment violates the Minnesota Human Rights Act.

### **Disparate Treatment on the Basis of Race and Color**

26. Defendant discriminated against plaintiff and members of the classes on the basis of race and color with respect to hiring.

27. Defendant's policies, procedures and actions in: (1) obtaining race and color data from job applicants; (2) supplying that information to the psychological consulting firm that "interprets" the required psychological examination (the "Reid Report") administered by defendant to job applicants and; (3) utilizing a "not recommended" result from the Reid Report as the sole criteria in determining whether to hire individuals adversely affected plaintiff and members of the classes because of race and color.

28. This conduct of defendant constitutes an unfair discriminatory practice, and it has violated the rights of plaintiff and members of the classes under the Minnesota Human Rights Act.

29. Plaintiff and members of the classes are non-Caucasian minorities. Plaintiff applied for employment with defendant. At the time plaintiff and members of the classes applied for employment with defendant, non-minority individuals applied for employment with defendant.

30. During the relevant time period herein, members of the classes applied for employment with defendant. Objectively lesser qualified non-minority individual(s) applied for and subsequently received employment with defendant. Defendant did not offer plaintiff and members of the classes employment.

31. Defendant's decision to not offer plaintiff and members of the classes employment was based, in part, on plaintiff's and members of the classes's race and color. Such actions constitute a violation of the Minnesota Human Rights Act.

32. As a direct and proximate result of the unfair discriminatory practices of defendant, plaintiff and members of the classes have suffered and continue to suffer lost earnings and



benefits, lost earning capacity, embarrassment, humiliation, emotional distress and other damages in an amount in excess of \$75,000.

## **COUNT II**

### **RACE AND COLOR DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981**

33. Plaintiff realleges the foregoing paragraphs as though fully set forth herein.

#### **Disparate Treatment on the Basis of Race and Color**

34. Defendant discriminated against plaintiff and members of the classes on the basis of race and color with respect to hiring.

35. Defendant's policies, procedures and actions in: (1) obtaining race and color data from job applicants; (2) supplying that information to the psychological consulting firm that "interprets" the required psychological examination (the "Reid Report") administered by defendant to job applicants and; (3) utilizing a "not recommended" result from the Reid Report as the sole criteria in determining whether to hire individuals adversely affected plaintiff and members of the classes because of race and color.

36. This conduct of defendant constitutes an unfair discriminatory practice, and it has violated the rights of plaintiff and members of the classes under Section 1981.

37. Plaintiff and members of the classes are non-Caucasian minorities. Plaintiff applied for employment with defendant. At the time plaintiff and members of the classes applied for employment with defendant, non-minority individuals applied for employment with defendant.

38. During the relevant time period herein, non-Caucasian members of the classes applied for employment with defendant. Objectively lesser qualified non-minority individual(s) applied for and subsequently received employment with defendant. Defendant did not offer plaintiff and members of the classes employment.

39. Defendant's decision to not offer plaintiff and members of the classes employment was based, in part, on plaintiff's and members of the classes's race and color. Such actions constitute a violation of Section 1981.

40. As a direct and proximate result of the unfair discriminatory practices of defendant, plaintiff and members of the classes have suffered and continue to suffer lost earnings and benefits, lost earning capacity, embarrassment, humiliation, emotional distress and other damages in an amount in excess of \$75,000.

### **COUNT III**

#### **RACE, COLOR, AND GENDER DISCRIMINATION IN VIOLATION OF TITLE VII**

41. Plaintiff realleges the foregoing paragraphs as though fully set forth herein.

42. Defendant, by its action(s) as set forth herein, discriminated against plaintiff and members of the classes on the basis of race, color and/or gender with respect to hiring.

43. Defendant's policies, procedures and actions in: (1) obtaining race, color and/or gender data from job applicants; (2) supplying that information to the psychological consulting firm that "interprets" the required psychological examination (the "Reid Report") administered by defendant to job applicants and; (3) utilizing a "not recommended" result from the Reid Report as the sole criteria in determining whether to hire individuals adversely affected plaintiff and members of the classes because of race, color and/or gender.

44. The conduct of defendant as alleged herein constitutes unfair discriminatory practice(s), and such practice(s) has violated the rights of plaintiff and members of the classes under Title VII, 42 U.S.C. §2000e et seq.

45. As a direct and proximate result of the unfair discriminatory practices of defendant, plaintiff and members of the classes have suffered and continue to suffer lost earnings and

benefits, lost earning capacity, embarrassment, humiliation, emotional distress and other damages in an amount in excess of \$75,000.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests:

**WHEREFORE**, plaintiffs and members of the classes respectfully pray:

- A. That the Court rule this matter is properly maintained as a class action.
- B. That the practices of defendant complained of herein be adjudged, decreed and declared to be violative of the rights secured to plaintiff and members of the classes by the Minnesota Human Rights Act, Title VII and Section 1981 of the Civil Rights Act of 1991.
- C. That a permanent mandatory injunction be issued requiring that defendant adopt practices in conformity with the requirements of the Minnesota Human Rights Act, Title VII and Section 1981 of the Civil Rights Act of 1991.
- D. That a permanent prohibitory injunction be issued prohibiting defendant from engaging in the practices complained of herein.
- E. That plaintiff and members of the classes be awarded compensatory damages in an amount to be established at trial.
- F. That plaintiff and members of the classes be awarded punitive damages in an amount to be established at trial.
- G. For an entry of an Order enjoining defendant and its officers, agents and employees from subjecting plaintiff and members of the classes to differential treatment and from any retaliation for prior actions, or for bringing this action.

H. That the Court retain jurisdiction until such time as it is satisfied that defendant has remedied the practices complained of herein and is determined to be in full compliance with the law.

I. That the Court order defendant to pay counsel for the plaintiff and the members of the classes their reasonable attorneys' fees and the costs and expenses of this action.

J. That plaintiff and members of the classes be awarded such other and further legal and equitable relief as may be found appropriate, just and/or equitable, including without limitation back pay, front pay, lost earning capacity, out-of pocket expenses, and expert fees.

### **JURY DEMAND**

Plaintiff and members of the classes hereby demand a trial by jury of all issues triable of right by a jury.

NEATON, PUKLICH & KLASSEN

Dated this 12 day of October, 2004.

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### **ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.21, Subd. 2 to the party against whom the allegations in this pleading are asserted.

s/Michael L. Puklich  
Michael L. Puklich