

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

MARCEL “MARC” T. THOMAS, individually  
and on behalf of a class of similarly situated  
African-American employees,

Plaintiff,

- against -

GENERAL ELECTRIC COMPANY,  
GE TRANSPORTATION,  
GE AVIATION MATERIALS, L.P. a/k/a/ GEAM,  
JEFFREY R. IMMELT,  
DAVID L. CALHOUN,  
DANIEL “DAN” C. HEINTZELMAN,  
CHARLENE T. BEGLEY,  
JOHN “JACK” F. RYAN,  
MARC A. CHINI,  
WILLIAM “BILL” J. CONATY,  
CLAUDIO X. GONZALEZ,  
ANDREA JUNG,  
RALPH S. LARSEN,  
SAM NUNN, and  
DOUGLAS A. WARNER III

Defendants.

CIVIL ACTION NO.  
3:05-CV-00788 (PCD)

**ANSWER**

This Answer is submitted on behalf of Defendants General Electric Company (“GE”),  
GE Transportation<sup>1</sup>, GE Aviation Materials, L.P. (“GEAM”), Jeffrey R. Immelt, David L.  
Calhoun, Daniel Heintzelman, Charlene T. Begley, John F. Ryan, Marc A. Chini, William J.  
Conaty, Claudio X. Gonzalez, Andrea Jung, Ralph S. Larsen, Sam Nunn and Douglas A. Warner

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<sup>1</sup> GE Transportation is an operating division of GE and not a separately incorporated entity. As such, it lacks capacity to be sued (see paragraph 2).

III (collectively, “Defendants”), by their attorneys, Paul, Hastings, Janofsky & Walker LLP and Jones Day in response to the Class Action Complaint (the “Complaint”).<sup>2</sup>

### **ANSWER TO SPECIFIC ALLEGATIONS**

1. Defendants admit that Plaintiff Marcel “Marc” T. Thomas (“Plaintiff”) purports to bring this lawsuit on his own behalf and on behalf of a class of similarly situated African American managers and professional level employees for race discrimination and injunctive relief, but deny that Plaintiff is similarly situated to other African American managers and professional level employees, deny that Defendants collectively or individually engaged in race discrimination, deny that GE’s pay and promotion policies and procedures are racist and subjective, and deny that Plaintiff is entitled to the claimed relief or any relief whatsoever.

2. Defendants admit that Plaintiff sues Defendants and admits that Claudio Gonzalez, Andrea Jung, Ralph S. Lauren, Sam Nunn and Douglas A. Warner III are members of GE’s Board of Directors and the Management Development and Compensation Committee, but deny that Defendants carried out and/or assisted any wrongful acts as alleged in the Complaint. Defendants likewise deny that GE Transportation, an unincorporated division of GE, has the capacity to be sued.

3. Defendants admit that Plaintiff makes the allegations contained in the Complaint and respond to each such allegation as set forth below.

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<sup>2</sup> While this Answer is submitted on behalf of all Defendants, it contains denials of allegations about which the individual defendants may lack knowledge or information sufficient to form a belief as to their truth. Because a denial of knowledge or information has the same effect as a denial, pursuant to Fed.R.Civ.P. Rule 8(b), where the Company defendants have denied the allegations, the Answer states denials on behalf of all defendants. This blanket denial serves the purpose of streamlining the answer, and avoids the submission of multiple answers on behalf of each defendant. A denial does not mean that each individual defendant has knowledge of the facts on which the denial by the Company defendants is based.

4. Defendants deny the allegations contained in paragraph 4 of the Complaint, but admit that on March 23, 2005, Jeffrey Immelt responded to a question by an employee about diversity in words substantially consistent with this allegation.

5. Defendants deny the allegations contained in paragraph 5 of the Complaint.

6. Defendants deny the allegations contained in paragraph 6 of the Complaint.

7. Defendants deny the allegations contained in paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. Defendants admit that they promote diversity and that they publicly state they are the “Global Employer of Choice,” but deny the remaining allegations contained in paragraph 9 of the Complaint.

10. Defendants admit that Plaintiff is one of GE’s African American managers, but deny the remaining allegations contained in paragraph 10 of the Complaint.

11. Defendants admit that Plaintiff was given the title of President, Chairman and CEO of Defendant General Electric Aviation Materials, L.P. (“GEAM”) in 2004, but deny the remaining allegations contained in paragraph 11 of the Complaint.

12. Defendants deny the allegations contained in paragraph 12 of the Complaint.

13. Defendants deny the allegations contained in paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in paragraph 14 of the Complaint.

15. Defendants admit that Jack Ryan is a Senior Human Resources manager, but deny the remaining allegations contained in paragraph 15 of the Complaint.

16. Defendants admit that in 2005 Plaintiff’s performance rating was “Least Effective,” but deny the remaining allegations contained in paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in paragraph 17 of the Complaint.
18. Defendants deny the allegations contained in paragraph 18 of the Complaint.
19. Defendants deny the allegations contained in paragraph 19 of the Complaint.
20. Defendants deny the allegations contained in paragraph 20 of the Complaint.
21. Defendants admit that they have strongly worded anti-discrimination policies, but deny the remaining allegations contained in paragraph 21 of the Complaint.
22. Defendants deny the allegations contained in paragraph 22 of the Complaint.
23. Defendants deny the allegations contained in paragraph 23 of the Complaint.
24. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.
25. Defendants admit that GE is headquartered in Fairfield, Connecticut, but deny the remaining allegations contained in paragraph 25 of the Complaint.
26. Defendants deny the allegations contained in paragraph 26 of the Complaint.
27. Defendants deny the allegations contained in paragraph 27 of the Complaint.
28. Defendants deny the allegations contained in paragraph 28 of the Complaint.
29. Defendants admit that plaintiff has brought this action in Federal court rather than use the DRP, but deny the remaining allegations contained in paragraph 29 of the Complaint.
30. Defendants deny the allegations contained in paragraph 30 of the Complaint.
31. Defendants admit that Plaintiff has been a manager at GE since 2001, and is currently CEO, President and Chairman of GEAM, but deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 31 of the Complaint.

32. Defendants admit the allegations contained in paragraph 32 of the Complaint.

33. Defendants admit that GE Transportation is a multi-billion dollar operating division of GE, headquartered in Cincinnati, Ohio, whose products and services include those identified in the Complaint, but deny the remaining allegations contained in paragraph 33 of the Complaint.

34. Defendants admit that GEAM is headquartered in Irving, Texas, but deny the remaining allegations contained in paragraph 34 of the Complaint.

35. Defendants admit that Jeffrey R. Immelt is a resident of and/or works in Connecticut in his capacity as the CEO of GE and the Chairman of the Board of Directors of GE, but deny the remaining allegations contained in paragraph 35 of the Complaint

36. Defendants admit that David L. Calhoun is the President and CEO of GE Transportation, but deny the remaining allegations contained in paragraph 36 of the Complaint.

37. Defendants admit that Daniel C. Heintzelman is the Vice President and General Manager for GE Engine Services, Inc., but deny the remaining allegations contained in paragraph 37 of the Complaint.

38. Defendants admit that Charlene T. Begley is the President and CEO of GE Transportation Rail, that GE Transportation Rail is headquartered in Erie, Pennsylvania, and that GE Transportation Rail is described on a portion of its website as a “global technology leader and supplier to the railroad, transit, marine engine and mining industries,” but deny the remaining allegations contained in paragraph 38 of the Complaint.

39. Defendants admit that Jack F. Ryan is the Vice President of Human Resources for GE Engine Services, but deny the remaining allegations contained in paragraph 39 of the Complaint.

40. Defendants admit that Marc A. Chini is the Vice President of Human Resources for GE Transportation, but deny the remaining allegations contained in paragraph 40 of the Complaint.

41. Defendants admit that William J. Conaty is the Senior Vice President of Human Resources for GE, and that GE is headquartered in Connecticut, but deny the remaining allegations contained in paragraph 41 of the Complaint.

42. Defendants admit that Claudio X. Gonzalez is a member of the Board of Directors of GE and GE's Compensation Committee, but deny the remaining allegations contained in paragraph 42 of the Complaint.

43. Defendants admit that Andrea Jung is a member of the Board of Directors of GE and GE's Compensation Committee, but deny the remaining allegations contained in paragraph 43 of the Complaint.

44. Defendants admit that Ralph S. Larsen is a member of the Board of Directors of GE and GE's Compensation Committee, but deny the remaining allegations contained in paragraph 44 of the Complaint.

45. Defendants admit that Sam Nunn is a member of the Board of Directors of GE and GE's Compensation Committee, but deny the remaining allegations contained in paragraph 45 of the Complaint.

46. Defendants admit that Douglas A. Warner III is a member of the Board of Directors of GE and GE's Compensation Committee, but deny the remaining allegations contained in paragraph 46 of the Complaint.

47. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint.

48. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint.

50. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint.

51. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint.

52. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint.

53. Defendants admit that Plaintiff joined GE's Corporate Initiative Group ("CIG") as a manager in Fairfield, Connecticut in 2001, but deny the remaining allegations contained in paragraph 53 of the Complaint.

54. Defendants admit that while at CIG, Plaintiff was a member of the Corporate Crisis Management Team and that Plaintiff was a member of the Corporate Sourcing Advisory Board, but deny the remaining allegations contained in paragraph 54 of the Complaint.

55. Defendants deny the allegations in Paragraph 55 of the Complaint but admit that Plaintiff helped develop a management/supplier digitalization tool to enhance procurement operations within GE, provided guidance and led remote teams to ensure quality in project implementation.

56. Defendants admit that Plaintiff joined GE Rail as a General Manager after he left CIG and that GE Rail is the largest U.S.-based locomotive manufacturer, but deny the remaining allegations contained in paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Complaint, but admit that GE Transportation achieved over \$41 million in cost savings and deflation and reduced the number of sole/single source suppliers. Defendants also admit that Plaintiff negotiated in excess of \$135 million in contracts for parts and sub-assemblies.

58. Defendants admit that plaintiff worked with manufacturing and sourcing operations, but deny the remaining allegations contained in Paragraph 58 of the Complaint.

59. Defendants admit that Plaintiff led initiatives, but deny the remaining allegations contained in Paragraph 59 of the Complaint.

60. Defendants deny the allegations contained in paragraph 60 of the Complaint.

61. Defendants admit that Plaintiff holds the positions of President, Chairman and CEO of GEAM in Irving, Texas, and that GEAM is one of nine current business segments of GE Engine Services, but deny the remaining allegations contained in paragraph 61 of the Complaint.

62. Defendants admit that GEAM is a limited partnership that earned revenues of approximately \$180 million in 2004 and specialized in the purchase and sale of turbine engines,



airframes, and refurbished spare parts, but deny the remaining allegations contained in paragraph 62 of the Complaint.

63. Defendants admit that Plaintiff was offered the position of CEO of GEAM in early 2004 and that Ms. Begley coached Plaintiff on various management techniques, but deny the remaining allegations contained in paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Complaint.

65. Defendants admit that William Fitzgerald discussed with Plaintiff the career opportunities presented by the CEO position at GEAM, but deny the remaining allegations contained in paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in paragraph 67 of the Complaint.

68. Defendants admit that William Thompson's base salary was higher than Plaintiff's base salary and that Thompson was in a lower band level and reported to Plaintiff, but deny the remaining allegations contained in paragraph 68 of the Complaint.

69. Defendants admit that Heintzelman knew that the base salary offered to Plaintiff was less than the salary paid to Plaintiff's predecessor, Don Schreiber, but deny the remaining allegations contained in paragraph 69 of the Complaint.

70. Defendants admit that Plaintiff was awarded 2,567 shares of company stock in May, 2004, but deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 70 of the Complaint.

71. Defendants admit that Plaintiff was selected from less than 100 nominees to receive the Latimer award at a luncheon at GE's corporate headquarters hosted by two GE

officers, and that the award acknowledged Plaintiff's achievements as quoted in the Complaint, but deny the remaining allegations contained in paragraph 71 of the Complaint.

72. Defendants admit that Plaintiff was given a plaque with the GE Chairman's signature inscribed, but deny the remaining allegations contained in paragraph 72 of the Complaint.

73. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff conducted a top-to-bottom assessment of GEAM's operations and capabilities soon after becoming CEO of GEAM, but deny the remaining allegations contained in paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in paragraph 75 of the Complaint.

76. Defendants deny the allegations contained in paragraph 76 of the Complaint.

77. Defendants deny the allegations contained in paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in paragraph 81 of the Complaint.

82. Defendants admit that Plaintiff's preliminary bonus recommendations were adjusted by Plaintiff for some employees as a result of the normal review process and that the adjustments were made for legitimate business reasons unrelated to race or sex, but deny the remaining allegations contained in paragraph 82 of the Complaint.

83. Defendants deny the allegations contained in paragraph 83 of the Complaint.

84. Defendants deny the allegations contained in paragraph 84 of the Complaint.
85. Defendants deny the allegations contained in paragraph 85 of the Complaint.
86. Defendants deny the allegations contained in paragraph 86 of the Complaint.
87. Defendants deny the allegations contained in paragraph 87 of the Complaint.
88. Defendants deny the allegations contained in paragraph 88 of the Complaint.
89. Defendants admit that GE values integrity and equal opportunity with respect to its employees, but deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 89 of the Complaint.
90. Defendants deny the allegations contained in paragraph 90 of the Complaint.
91. Defendants deny the allegations contained in paragraph 91 of the Complaint.
92. Defendants deny the allegations contained in paragraph 92 of the Complaint.
93. Defendants deny the allegations contained in paragraph 93 of the Complaint.
94. Defendants deny the allegations contained in paragraph 94 of the Complaint.
95. Defendants deny the allegations contained in paragraph 95 of the Complaint.
96. Defendants admit that Chini counseled Plaintiff on several occasions on the subjects of his leadership style, his performance in relation to possible promotion and compensation, and alternative placement, but deny the remaining allegations in paragraph 96 of the Complaint.
97. Defendants deny the allegations contained in paragraph 97 of the Complaint.
98. Defendants deny the allegations contained in paragraph 98 of the Complaint.
99. Defendants deny the allegations contained in paragraph 99 of the Complaint.
100. Defendants deny the allegations contained in paragraph 100 of the Complaint.

101. Defendants deny the allegations contained in paragraph 101 of the Complaint.
102. Defendants deny the allegations contained in paragraph 102 of the Complaint.
103. Defendants deny the allegations contained in paragraph 103 of the Complaint.
104. Defendants deny the allegations contained in paragraph 104 of the Complaint.
105. Defendants deny the allegations contained in paragraph 105 of the Complaint.
106. Defendants deny the allegations contained in paragraph 106 of the Complaint.
107. Defendants deny the allegations contained in paragraph 107 of the Complaint.
108. Defendants deny the allegations contained in paragraph 108 of the Complaint.
109. Defendants deny the allegations contained in paragraph 109 of the Complaint.
110. Defendants deny the allegations contained in paragraph 110 of the Complaint.
111. Defendants deny the allegations contained in paragraph 111 of the Complaint.
112. Defendants deny the allegations contained in paragraph 112 of the Complaint.
113. Defendants deny the allegations contained in paragraph 113 of the Complaint.
114. Defendants deny the allegations contained in paragraph 114 of the Complaint.
115. Defendants deny the allegations contained in paragraph 115 of the Complaint.
116. Defendants deny the allegations contained in paragraph 116 of the Complaint.
117. Defendants deny the allegations contained in paragraph 117 of the Complaint.
118. Defendants admit that a 2002 PowerPoint presentation and marketing tool contained a reference to the television show “Sanford & Sons,” but deny the remaining allegations contained in paragraph 118 of the Complaint.
119. Defendants deny the allegations contained in paragraph 119 of the Complaint.

120. Defendants admit that Schreiber commented to Arnold about caddies during a golf outing prior to Plaintiff's employment with GEAM, but deny the remaining allegations in paragraph 120 of the Complaint.

121. Defendants deny the allegations contained in paragraph 121 of the Complaint.

122. Defendants deny the allegations contained in paragraph 122 of the Complaint.

123. Defendants deny the allegations contained in paragraph 123 of the Complaint.

124. Defendants deny the allegations contained in paragraph 124 of the Complaint.

125. Defendants deny the allegations contained in paragraph 125 of the Complaint.

126. Defendants deny the allegations contained in paragraph 126 of the Complaint.

127. Defendants deny the allegations contained in paragraph 127 of the Complaint.

128. Defendants deny the allegations contained in paragraph 128 of the Complaint.

129. Defendants deny the allegations contained in paragraph 129 of the Complaint.

130. Defendants deny the allegations contained in paragraph 130 of the Complaint.

131. Defendants deny the allegations contained in paragraph 131 of the Complaint.

132. Defendants admit that Plaintiff seeks to bring claims on behalf of a class of current and former African-American managers at GE, but deny that such a class should be certified.

133. Defendants admit that Plaintiff attempts to define the potential class he seeks to represent as set forth in paragraph 133 of the Complaint, but deny that such a class should be certified. Defendants deny the remaining allegations contained in paragraph 133 of the Complaint.

134. Defendants admit that Plaintiff attempts to define the potential class he seeks to represent as set forth in paragraph 134 of the Complaint, but deny that such a class should be certified. Defendants deny the remaining allegations contained in paragraph 134 of the Complaint.

135. Defendants deny the allegations contained in paragraph 135 of the Complaint.

136. The allegations contained in the first sentence of paragraph 136 of the Complaint are conclusions of law to which no response is required. To the extent a response is deemed required, the allegations are denied. Defendants deny the remaining allegations contained in paragraph 136 of the Complaint.

137. Defendants deny the allegations contained in paragraph 137 of the Complaint.

138. Defendants deny the allegations contained in paragraph 138 of the Complaint.

139. Defendants deny the allegations contained in paragraph 139 of the Complaint.

140. Defendants deny the allegations contained in paragraph 140 of the Complaint.

141. Defendants deny the allegations contained in paragraph 141 of the Complaint.

142. Defendants deny the allegations contained in paragraph 142 of the Complaint.

143. Defendants deny the allegations contained in paragraph 143 of the Complaint.

144. Defendants admit that Plaintiff is an African-American who worked at GE during the period specified in the Complaint. Defendants deny that any class may be properly certified in this action and deny the remaining allegations contained in paragraph 144 of the Complaint.

145. Defendants deny the allegations contained in paragraph 145 of the Complaint.

146. Defendants deny the allegations contained in paragraph 146 of the Complaint.

147. Defendants deny the allegations contained in paragraph 147 of the Complaint.

148. Defendants deny the allegations contained in paragraph 148 of the Complaint.

149. Defendants admit that Plaintiff purports to seek the relief set forth in paragraph 149, but deny that any class may be properly certified in this action and deny that Plaintiff and/or the class he purports to represent is entitled to any of the relief identified in paragraph 149 of the Complaint or any relief whatsoever.

150. Defendants deny the allegations contained in paragraph 150 of the Complaint.

151. Defendants deny the allegations contained in paragraph 151 of the Complaint.

152. Defendants deny the allegations contained in paragraph 152 of the Complaint.

153. Defendants deny the allegations contained in paragraph 153 of the Complaint.

154. Defendants deny the allegations contained in paragraph 154 of the Complaint.

155. Defendants deny the allegations contained in paragraph 155 of the Complaint.

### **CLASS COUNTS**

#### **COUNT I – 42 U.S.C. § 1981**

156. Defendants reallege and incorporate by reference their response to paragraphs 1 through 155 as if fully set forth herein.

157. Defendants admit that Plaintiff purports to bring this Count on behalf of himself and all class members as defined by Plaintiff in the Complaint, but deny that any class may be properly certified in this action and deny all remaining allegations in paragraph 157 of the Complaint.

158. Defendants deny the allegations contained in paragraph 158 of the Complaint.

159. Defendants deny the allegations contained in paragraph 159 of the Complaint.

- 160. Defendants deny the allegations contained in paragraph 160 of the Complaint.
- 161. Defendants deny the allegations contained in paragraph 161 of the Complaint.
- 162. Defendants deny the allegations contained in paragraph 162 of the Complaint.
- 163. Defendants deny the allegations contained in paragraph 163 of the Complaint.

### **COUNT II – TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

164. Defendants reallege and incorporate by reference their response to paragraphs 1 through 163 as if fully set forth herein.

165. Defendants admit that Plaintiff purports to bring this Count on behalf of himself and all class members as defined by Plaintiff in the Complaint, but deny that any class may be properly certified in this action and deny all remaining allegations in paragraph 165 of the Complaint.

- 166. Defendants deny the allegations contained in paragraph 166 of the Complaint.
- 167. Defendants deny the allegations contained in paragraph 167 of the Complaint.
- 168. Defendants deny the allegations contained in paragraph 168 of the Complaint.
- 169. Defendants deny the allegations contained in paragraph 169 of the Complaint.
- 170. Defendants deny the allegations contained in paragraph 170 of the Complaint.
- 171. Defendants deny the allegations contained in paragraph 171 of the Complaint.

### **COUNT III – CONNECTICUT HUMAN RIGHTS ACT**

172. Defendants reallege and incorporate by reference their response to paragraphs 1 through 171 as if fully set forth herein.



173. Defendants deny the allegations contained in paragraph 173 of the Complaint.
174. Defendants deny the allegations contained in paragraph 174 of the Complaint.
175. Defendants deny the allegations contained in paragraph 175 of the Complaint.

### **PRAYER FOR RELIEF ON CLASS CLAIMS**

Responding to the Prayer for Relief on Class Claims in the Complaint, Defendants deny that Plaintiff and/or the purported class members have been or will be damaged by reason of act or omission of Defendants or any officer, agent or employee of the corporate Defendants. Defendants further deny that any act or omission of Defendants or any officer, agent, or employee of the corporate Defendants, violated any rights, statutory or otherwise, of Plaintiff or any purported class member. Defendants further deny that Plaintiff and/or the purported class members are entitled to any of the relief requested in subparagraphs A through P thereof for Counts I through III of the Class Counts contained in the Complaint.

### **INDIVIDUAL COUNTS**

#### **COUNT I – 42 U.S.C. § 2000e, *et seq.* – EQUAL PAY AND PROMOTION**

176. Defendants reallege and incorporate by reference their response to paragraphs 1 through 175 as if fully set forth herein.
177. Defendants deny the allegations contained in paragraph 177 of the Complaint.
178. Defendants deny the allegations contained in paragraph 178 of the Complaint.
179. Defendants deny the allegations contained in paragraph 179 of the Complaint.

**COUNT II - 42 U.S.C. § 2000e, et seq. – RETALIATION**

180. Defendants reallege and incorporate by reference their response to paragraphs 1 through 179 as if fully set forth herein.

181. Defendants deny the allegations contained in paragraph 181 of the Complaint.

182. Defendants deny the allegations contained in paragraph 182 of the Complaint.

183. Defendants deny the allegations contained in paragraph 183 of the Complaint.

184. Defendants deny the allegations contained in paragraph 184 of the Complaint.

185. Defendants deny the allegations contained in paragraph 185 of the Complaint.

**COUNT III – CONNECTICUT HUMAN RIGHTS ACT – EQUAL PAY AND PROMOTION**

186. Defendants reallege and incorporate by reference their response to paragraphs 1 through 185 as if fully set forth herein.

187. Defendants deny the allegations contained in paragraph 187 of the Complaint.

188. Defendants deny the allegations contained in paragraph 188 of the Complaint.

189. Defendants deny the allegations contained in paragraph 189 of the Complaint.

190. Defendants deny the allegations contained in paragraph 190 of the Complaint.

**COUNT IV - CONNECTICUT HUMAN RIGHTS ACT – RETALIATION**

191. Defendants reallege and incorporate by reference their response to paragraphs 1 through 190 as if fully set forth herein.

192. Defendants deny the allegations contained in paragraph 192 of the Complaint.

- 193. Defendants deny the allegations contained in paragraph 193 of the Complaint.
- 194. Defendants deny the allegations contained in paragraph 194 of the Complaint.
- 195. Defendants deny the allegations contained in paragraph 195 of the Complaint.
- 196. Defendants deny the allegations contained in paragraph 196 of the Complaint.

**COUNT V – 42 U.S.C. § 1981**

- 197. Defendants deny the allegations contained in paragraph 197 of the Complaint.
- 198. Defendants deny the allegations contained in paragraph 198 of the Complaint.
- 199. Defendants deny the allegations contained in paragraph 199 of the Complaint.

**COUNT VI – BREACH OF IMPLIED CONTRACT (ALL GE DEFENDANTS)**

200. Defendants reallege and incorporate by reference their response to paragraphs 1 through 199 as if fully set forth herein.

- 201. Defendants deny the allegations contained in paragraph 201 of the Complaint.
- 202. Defendants deny the allegations contained in paragraph 202 of the Complaint.
- 203. Defendants deny the allegations contained in paragraph 203 of the Complaint.
- 204. Defendants deny the allegations contained in paragraph 204 of the Complaint.
- 205. Defendants deny the allegations contained in paragraph 205 of the Complaint.
- 206. Defendants deny the allegations contained in paragraph 206 of the Complaint.

**COUNT VII – TORTIOUS INTERFERENCE WITH CONTRACT (AGAINST ALL CORPORATE AND INDIVIDUAL DEFENDANTS EXCEPT GEAM)**

207. Defendants reallege and incorporate by reference their response to paragraphs 1 through 206 as if fully set forth herein.

208. Defendants deny the allegations contained in paragraph 208 of the Complaint.

209. Defendants deny the allegations contained in paragraph 209 of the Complaint.

210. Defendants deny the allegations contained in paragraph 210 of the Complaint.

211. Defendants deny the allegations contained in paragraph 211 of the Complaint.

212. Defendants deny the allegations contained in paragraph 212 of the Complaint.

**COUNT VIII – INTENTIONAL MISREPRESENTATION**

213. Defendants reallege and incorporate by reference their response to paragraphs 1 through 212 as if fully set forth herein.

214. Defendants deny the allegations contained in paragraph 214 of the Complaint.

215. Defendants deny the allegations contained in paragraph 215 of the Complaint.

216. Defendants deny the allegations contained in paragraph 216 of the Complaint.

217. Defendants deny the allegations contained in paragraph 217 of the Complaint.

218. Defendants deny the allegations contained in paragraph 218 of the Complaint.

**COUNT IX – NEGLIGENT MISREPRESENTATION**

219. Defendants reallege and incorporate by reference their response to paragraphs 1 through 218 as if fully set forth herein.

- 220. Defendants deny the allegations contained in paragraph 220 of the Complaint.
- 221. Defendants deny the allegations contained in paragraph 221 of the Complaint.
- 222. Defendants deny the allegations contained in paragraph 222 of the Complaint.
- 223. Defendants deny the allegations contained in paragraph 223 of the Complaint.

#### **COUNT X – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

224. Defendants reallege and incorporate by reference their response to paragraphs 1 through 223 as if fully set forth herein.

- 225. Defendants deny the allegations contained in paragraph 225 of the Complaint.
- 226. Defendants deny the allegations contained in paragraph 226 of the Complaint.
- 227. Defendants deny the allegations contained in paragraph 227 of the Complaint.
- 228. Defendants deny the allegations contained in paragraph 228 of the Complaint.

#### **COUNT XI – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

229. Defendants reallege and incorporate by reference their response to paragraphs 1 through 228 as if fully set forth herein.

- 230. Defendants deny the allegations contained in paragraph 230 of the Complaint.
- 231. Defendants deny the allegations contained in paragraph 231 of the Complaint.
- 232. Defendants deny the allegations contained in paragraph 232 of the Complaint.
- 233. Defendants deny the allegations contained in paragraph 233 of the Complaint.
- 234. Defendants deny the allegations contained in paragraph 234 of the Complaint.

235. Defendants deny each and every other allegation of the Complaint not expressly admitted herein.

### **PRAYER FOR RELIEF ON INDIVIDUAL CLAIMS**

Responding to the Prayer for Relief on Individual Claims in the Complaint, Defendants deny that Plaintiff has been or will be damaged by reason of act or omission of Defendants or any officer, agent or employee of the corporate Defendants. Defendants further deny that any act or omission of Defendants or any officer, agent, or employee of the corporate Defendants, violated any rights, statutory or otherwise, of Plaintiff. Defendants further deny that Plaintiff is entitled to any of the relief requested in subparagraphs A through K thereof for Counts I through XI of the Individual Counts contained in the Complaint.

### **AFFIRMATIVE AND OTHER DEFENSES**

#### **FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

(Failure to State Facts Sufficient to State a Claim)

236. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

#### **SECOND SEPARATE AND AFFIRMATIVE DEFENSE**

(Arbitration Agreements Bar Bringing Suit)

237. Plaintiff has agreed, as have many members of the putative class he seeks to represent, to arbitrate any or all of the purported claims asserted in the Complaint. The filing of

this Complaint violates such agreements to arbitrate and the Complaint should be dismissed and/or stayed and Plaintiff, and/or putative class members, should be compelled to arbitrate.

### THIRD SEPARATE AND AFFIRMATIVE DEFENSE

#### (Lack of Personal Jurisdiction)

238. The Court lacks personal jurisdiction over individual defendants Calhoun, Heintzelman, Begley, Ryan, Chini, Gonzalez, Jung, Larsen, Nunn, and Warner, none of whom are Connecticut residents and none of whom work in Connecticut. The Court also lacks personal jurisdiction over GEAM, which does not transact business in Connecticut. The Complaint should therefore be dismissed against all these defendants under Rule 12(b)(2) of the Federal Rules of Civil Procedure.

### FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

#### (Improper Venue)

239. Plaintiff is barred from pursuing his claims in the District of Connecticut because venue is improper, and the Complaint, and each purported claim contained therein, with respect to the following Defendants: GEAM, Calhoun, Heintzelman, Begley, Ryan, Chini, Gonzalez, Jung, Larsen, Nunn, and Warner should be dismissed under Rule 12(b)(3) of the Federal Rules of Civil Procedure or, in the alternative, transferred to the proper venue.

FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Statute of Limitations)

240. Some or all of Plaintiff's and putative class members' claims are barred in whole or in part by the applicable statutes of limitation, including, but not limited to, a failure to file a charge of discrimination with the proper administrative agency.

SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

241. Plaintiff's and putative class members' claims are barred because Plaintiff and the putative class members failed, in whole or in part, to exhaust all available administrative remedies, and/or otherwise failed to comply with the statutory prerequisites to the bringing of this action, including, but not limited to, the assertion of claims that do not fall within the scope of an administrative charge and the failure to obtain a right to sue letter.

SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendant's Legitimate Non-Discriminatory Decisions)

242. The Complaint, and each purported claim contained therein, is barred in whole or in part because all decisions with respect to Plaintiff's and putative class members' employment were made by Defendants for legitimate, non-discriminatory, non-pretextual reasons.

EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Mixed Motive)

243. Defendants did not commit the acts or omissions as alleged in the Complaint for discriminatory motives, but assuming that they did, such acts or omissions would have been taken in any event for legitimate, non-discriminatory, non-pretextual reasons.



NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Estoppel)

244. Plaintiff and putative class members are estopped from pursuing the claims in the Complaint, in whole or in part, by reason of the Plaintiff's and putative class members' own actions and course of conduct.

TENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Waiver)

245. Plaintiff and putative class members have waived their right, if any, to pursue the claims in the Complaint, in whole or in part, by reason of their own actions and course of conduct.

ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Doctrine of Laches)

246. The Complaint, in whole or in part, is barred by the doctrine of laches.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Doctrine of Unclean Hands)

247. The Complaint, in whole or in part, is barred by the doctrine of unclean hands.

THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendants' Reasonable Care)

248. The Complaint is barred in whole or in part, because Defendants exercised reasonable care to prevent and correct promptly any alleged discriminatory and/or retaliatory behavior.

FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Prior Settlement and Release Bars Bringing Suit)

249. To the extent that any putative class member has executed a settlement and release with Defendants and received consideration therefor, any and all claims he or she purports to bring against Defendants, including, without limitation, the claims alleged herein, are barred in their entirety.

FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Lack of Venue – Special Venue Provisions of Title VII)

250. Plaintiff and putative class members who do not work for, did not work for, or did not apply for work with Defendants in the District of Connecticut are barred from pursuing their Title VII claims in the District of Connecticut because they cannot satisfy the special venue requirements of 42 U.S.C. § 2000e-5(f)(3).

SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendants' Practices Consistent with Business Necessity)

251. Insofar as any of Defendants' hiring, assignment, transfer, compensation or promotion policies, or any other employment policy or procedure utilized by Defendants, has had a statistically adverse impact on African Americans, such policies or practices nevertheless are lawful because they are job-related and consistent with business necessity.

SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Differential Treatment Based on *Bona Fide* Factors)

252. Plaintiff's and putative class members' Title VII claims are barred because any alleged differential treatment of Plaintiff and putative class members by Defendants was

undertaken pursuant to a *bona fide* merit system, *bona fide* seniority system, or *bona fide* factors other than race. 42 U.S.C. § 2000e-2(h).

EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Reasonable Care)

253. Defendants have taken reasonable care to prevent and remedy promptly any incidents of alleged discrimination and racial harassment brought to management's attention. Defendants have policies banning discrimination and harassment in the workplace and a reasonable and available procedure for handling complaints thereof, which provides for prompt and effective responsive action. To the extent that Plaintiff and/or members of the putative class failed to reasonably utilize or otherwise avail themselves of these policies and procedures, or to act reasonably in response to Defendants' corrective and remedial actions, their claims of alleged discrimination and harassment, including common law claims based on such conduct, are barred. To the extent Plaintiff and/or the putative class members have used these policies and procedures and their alleged concerns have been dealt with promptly and effectively, their claims are barred and/or they have suffered no damages as a result.

NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Actual or Constructive Notice)

254. Defendants did not have actual or constructive notice of any alleged racial discrimination and harassment against Plaintiff and/or the putative class members. To the extent that Defendants were aware of any allegedly discriminating and harassing behavior, Defendants exercised reasonable care to prevent and correct promptly the alleged discrimination and harassment.

TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Against Defendants' Policies)

255. Any instances of discriminatory, harassing, or retaliatory conduct by managers of Defendants, the occurrence of which Defendants expressly deny, would have contravened Defendants' policies and their good faith efforts to enforce and follow Title VII and other anti-discrimination laws.

TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Lack of Standing)

256. Plaintiff lacks standing to pursue claims based on alleged termination practices because Plaintiff's employment has not been terminated, and, therefore, cannot represent the interests of others.

TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(No Adverse Employment Action)

257. Plaintiff has not experienced an adverse employment action.

TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Class Conflicts)

258. Class or subclass certification would be inappropriate herein due to conflicts of interest between Plaintiff and purported class or subclass members, or between and among purported class or subclass members.

TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Satisfy Prerequisites Under Rule 23 – Arbitration Venue)

259. Plaintiff cannot satisfy the prerequisites under Federal Rule of Civil Procedure 23 (“Rule 23”) because some or all of the claims of the named Plaintiff and putative class members are covered by arbitration agreements that require Plaintiff and putative class members to resolve their disputes with Defendants through arbitration brought at a location within twenty five miles from the location where the Plaintiff or putative class member works or most recently worked for Defendants.

TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Not Appropriate for Class Treatment)

260. The types of claims alleged by the Plaintiff on behalf of himself and the alleged class are matters in which individual questions predominate and, accordingly, are not appropriate for class treatment.

TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Neither Common Nor Typical)

261. The claims alleged by Plaintiff are neither common to nor typical of those, if any, pertaining to the alleged class Plaintiff purports to represent.

TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Class Treatment is Not Superior Method)

262. Plaintiff has not shown and cannot show that class treatment of the claims alleged herein is superior to other methods of adjudicating the controversy.

TWENTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Inadequate Representatives)

263. The Plaintiff and/or Plaintiff's counsel are inadequate representatives of any alleged class of persons they purport to represent.

TWENTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Conduct Not Extreme or Outrageous)

264. Any and all claims by Plaintiff based in whole or in part upon any alleged physical or emotional injury or mental distress are barred because no conduct of Defendants was extreme or outrageous or undertaken with the intent of causing, or in reckless disregard of the probability of causing, emotional distress.

THIRTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

265. The Complaint, and each and every purported claim alleged therein, is barred in whole or in part because each Plaintiff and putative class member has failed to mitigate or reasonably attempt to mitigate his or her damages, if any, as required by law.

THIRTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Unjust Enrichment)

266. The Complaint, and each and every purported claim alleged therein, is barred because any recovery from Defendants would result in Plaintiff's or a putative class member's unjust enrichment.

### THIRTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Legal Remedy Precludes Injunctive and Equitable Relief)

267. Plaintiff's and putative class members' claims for injunctive and other equitable relief are barred because Plaintiff and putative class members have an adequate and complete remedy at law.

### THIRTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(After-Acquired Evidence Doctrine)

268. Plaintiff and putative class members may be barred, in whole or in part, from recovery of damages as alleged and prayed for in the Complaint by the after-acquired evidence doctrine.

### THIRTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Absence of Intentional Discrimination Precludes Punitive Damages)

269. Defendants allege that they have not engaged in intentional discrimination with respect to Plaintiff and putative class members, and Defendants therefore cannot be liable for punitive damages.

### THIRTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Absence of Malice, Reckless Indifference or Fraud Precludes Punitive Damages)

270. Defendants allege that they have not acted with malice, reckless indifference or fraud toward Plaintiff and putative class members and, therefore, Defendants cannot be liable for punitive damages.

THIRTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Punitive Damages Would Constitute Denial of Due Process)

271. Plaintiff and putative class members are not entitled to recover any punitive or exemplary damages as prayed for in the Complaint: any such award as applied to the facts in this case would violate Defendant's constitutional rights under provisions of the United States and state Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution.

THIRTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Plead Facts Sufficient to Support Punitive Damages)

272. Plaintiff and putative class members are not entitled to receive punitive damages because Plaintiff has not pled facts sufficient to support such an award.

THIRTY-EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendants' Good Faith Efforts Preclude Punitive Damages)

273. Plaintiff and putative class members are not entitled to receive punitive damages because Defendants have made good faith efforts to prevent discrimination in its workplace.

THIRTY-NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Defendants' Policies Preclude Punitive Damages)

274. Plaintiff and putative class members are barred from recovering punitive damages because Defendants had in place training and a policy to prevent discrimination and retaliation in its workplace, and made good faith efforts to implement and enforce that policy.



FORTIETH SEPARATE AND AFFIRMATIVE DEFENSE

(Punitive Damages Precluded – Individual Decisionmakers)

275. Plaintiff and putative class members are not entitled to receive punitive damages because, even if they were able to establish that any individual manager allowed unlawful bias to affect any employment decision, which Defendants expressly deny, Defendants, in light of their good faith efforts to prevent bias, are not liable for punitive damages based on any such individual decision.

FORTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(No Liability for Individual Defendants)

276. None of the individual defendants were Plaintiff's employer under the governing law and, therefore, they are not proper parties to this action.

FORTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Lack of Capacity to be Sued)

277. GE Transportation, an unincorporated division of GE, lacks the capacity to be sued.

FORTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Statutory Caps)

278. To the extent Plaintiff and putative class members have suffered damage or loss, their recovery is limited by the statutory cap set forth in Title VII.

FORTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Comparative Negligence)

279. If Defendants were negligent in any respect, which Defendants expressly deny, then any such negligence on the part of Defendants was less than that of Plaintiff and Plaintiff's recovery should therefore be diminished or barred.

FORTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Workers' Compensation Exclusivity)

280. Some or all of Plaintiff's claims are barred by the exclusivity of the remedy provided by the Texas Workers' Compensation laws.

FORTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure of Consideration)

281. With respect to all claims founded upon the alleged existence of a contract between Plaintiff and Defendant, the existence of which contract is hereby denied, there has been a failure of consideration.

FORTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Statute of Frauds)

282. The Complaint, in whole or in part, is barred by the statute of frauds.

WHEREFORE, Defendants prays for judgment as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That judgment be entered in favor of Defendants;
3. That Defendants be awarded their reasonable costs and attorneys' fees; and

4. That Defendants be awarded such other and further relief as the Court deems just and proper.

Dated: June 24, 2005

/s/ Patrick W. Shea

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**CERTIFICATE OF SERVICE**

The undersigned, a member of the Bar of this Court, hereby certifies that he has caused to be served by overnight mail a true and accurate copy of the foregoing Answer on this 24th day of June 2005, on the following:

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