FILED
2008 Jun-19 AM 09:15
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LINDA SMITH, HEATHER MCGUFFIE, ARLEEN THOMAS, CHRISTY WARREN, ANGELA FARMER, JAMIE ALLEN, TERESA DAVIS, LUCIE JOHNSON, GINGER BEASLEY, ANNETTE PACK, ODORA BECKWOOD, PHYLLIS ANDREWS, ANN SHAW and all women who sought production jobs, may in the future seek such jobs, or who would in the past have sought such jobs in the absence of the discriminatory practices challenged herein,

PLAINTIFFS,

vs.

UNITED STATES STEEL CORPORATION.

DEFENDANT.

Case No: 2:05-CV-1359-VEH

Jury Trial Demanded

AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is an action for a declaratory judgment, and equitable, injunctive and monetary relief, instituted to secure the protection of and to

redress the deprivation of rights secured by Title VII of the Civil Rights Act of 1964, which was amended by the Civil Rights Act of 1991, and which is codified at 42 U.S.C. § 2000e *et seq.* (hereinafter "Title VII") and 42 U.S.C. §1981a.

2. Plaintiffs Linda Smith, Heather McGuffie, Arleen Thomas, Christy Warren, Angela Farmer, Jamie Allen, Teresa Davis, Lucie Johnson, Ginger Beasley, Annette Pack, Odora Beckwood, Phyllis Andrews and Ann Shaw bring this action on behalf of themselves and all women who sought production jobs, may in the future seek such jobs, or who would in the past have sought such jobs in the absence of the discriminatory practices challenged in this case. Such practices include jobs for which defendant has: (a) required or considered "heavy industrial experience" and/or tests or other selection criteria that incorporated, considered or were affected by such experience; and/or (b) otherwise engaged in a pattern or practice of sex discrimination.

3. Plaintiffs bring three separate causes of action: (1) a disparate impact claim for equitable relief pursuant to Section 703(k) of Title VII, 42 U.S.C. §2000c-2(k)); (2) a disparate treatment and/or pattern or practice claim for equitable relief pursuant to §703(a) of such Act; and (3) a compensatory and punitive damage claim pursuant to 42 U.S.C. §1981a, as specified.

4. Class certification is sought separately for each of plaintiffs' three causes of action. Class certification is sought pursuant to Federal Rule of Civil Procedure 23(b)(2) for the equitable relief on plaintiffs' disparate impact claim. Class certification is also appropriate under Rule 23(b)(2) for the equitable relief sought on plaintiffs' pattern or practice claim under Title VII. For plaintiffs' third cause of action for compensatory, as specifically limited in this complaint, and punitive damages under §1981a, plaintiffs seek class certification under either Rule 23(b)(2) as part of the relief available at Stage I of a bifurcated trial of their pattern or practice claim for injunctive relief, or as a hybrid certification under both Rules 23(b)(2) and 23(b)(3).

II. JURISDICTION AND VENUE

5. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(3),1343(a)(4), and 42 U.S.C. § 2000e-5.

6. Plaintiff, Linda Smith, is a resident of Walker County, Alabama; plaintiff, Heather McGuffie is a resident of Bibb County, Alabama; and plaintiffs Arleen Thomas, Christy Warren, Angela Farmer, Jamie Allen, Teresa Davis, Lucie Johnson, Ginger Beasley, Annette Pack, Odora Beckwood, Phyllis Andrews and Ann Shaw are residents of Jefferson County, Alabama. The defendant does business throughout the United States, including its

facilities located in Jefferson County, Alabama. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5.

III. EXHAUSTION OF CONDITIONS PRECEDENT TO SUIT

7. Plaintiff Smith filed a charge of discrimination against the defendant with the Equal Employment Opportunity Commission within 180 days of being denied employment. Such EEOC Charge alleged on-going sex discrimination against all women who sought production jobs, may in the future seek such jobs, or who would in the past have sought such jobs in the absence of the discriminatory practices challenged in this case. Defendant has previously acknowledged that it was given notice of class allegations in Smith's EEOC Charge when it responded in writing to such Charge on October 15, 2004, stating, among other things, that "[t]he Company denies that it engages in a pattern and practice of discriminating against females in its hiring process and other selection processes," and that it "also denies that its selection process disparately impacts females." Smith has instituted this action on behalf of herself and all such women within 90 days of receiving a Right to Sue Notice from the Equal Employment Opportunity Commission.

8. Smith's EEOC charge and timely institution of this action tolled the limitations period for all women who sought production jobs, may in the future

seek such jobs, or who would in the past have sought such jobs in the absence of such discriminatory practices from 180 days before the filing of her EEOC Charge to the date that a final judgment regarding her class allegations is entered. The claims brought by plaintiffs Heather McGuffie, Arleen Thomas, Christy Warren, Angela Farmer, Jamie Allen, Teresa Davis, Lucie Johnson, Ginger Beasley, Annette Pack, Odora Beckwood, Phyllis Andrews and Ann Shaw arose during such tolling period.

9. As an additional procedural precaution on behalf of themselves and other women affected by the discriminatory practices challenged in this case, plaintiffs Arleen Thomas and Teresa Davis, also filed their own EEOC Charges during the tolling period. Their EEOC Charges were filed on behalf of the named Charging Parties and all women who sought production jobs, may in the future seek such jobs, or who would in the past have sought such jobs in the absence of the discriminatory practices challenged in this case. Within the 180 days prior to plaintiff Smith's EEOC Charge, plaintiffs, Arleen Thomas and Teresa Davis, filled out an application for employment with the defendant for the same or similar production type job as Smith, and they were rejected for employment. After Smith filed her EEOC Charge, Thomas and Davis applied again for the same or similar production type job, took a test and

were rejected at that stage, again allegedly because they did not have two years of related heavy industrial experience. Davis filed her own EEOC Charge against the respondent on May 5, 2006, complaining about not being hired after she took the test in late 2005, and a Right-To-Sue letter was issued on September 20, 2006. Thomas filed her own EEOC charge against the respondent on June 16, 2006, complaining about not being hired when she applied in May 2006. On November 16, 2006, the EEOC issued a Right-To-Sue letter to Ms. Thomas. This Amended Complaint adding Arleen Thomas and Teresa Davis is filed within the 90 days allowed by Title VII.

IV. PARTIES

10. Each of the named plaintiffs are female citizens of the United States, over the age of nineteen, are residents of the State of Alabama.

11. The defendant, United States Steel Corporation is an employer within the meaning of that term as used in Title VII. At all times pertinent to the matters alleged herein, the defendant has employed fifteen (15) or more employees.

V. FACTUAL ALLEGATIONS

12. The plaintiffs reallege and incorporate by reference paragraphs 1-11 above with the same force and effect as if fully set out in specific detail

hereinbelow.

13. On or about May 12, 2004, plaintiff Smith filled out an application for employment with the defendant for a production position, and she was subsequently given a telephone interview for the position.

14. On or around June 15, 2004, the defendant rejected Smith's application in writing after her telephone interview.

15. At all times, Smith was qualified to perform the production jobs she sought.

16. On September 9, 2004, Smith filed an EEOC Charge against the defendant on her own behalf and on behalf of all women who sought production jobs, may in the future seek such jobs, or who would in the past have sought such jobs in the absence of the discriminatory practices challenged in this case.

17. On October 15, 2004, the defendant responded to Smith's EEOC Charge stating that she was not selected because she did not satisfy the following requirement: "Two years of related heavy industrial experience (steel mill/mining/construction/industrial)."

18. In particular, the defendant stated the following in the position statement to the EEOC as its reasons for not selecting Smith:

> The position is within a heavy industrial environment, which may be hot, cold, dirty, greasy, wet or noisy, depending on the area. Two years of related heavy industrial experience is a required minimum qualification for the Entry Level Production position. In the Particulars of her charge, Charging Party claims that she has nearly twenty (20) years of industrial experience working in a plant. Even if true, as stated above, the minimum requirement is two years of related heavy industrial experience, a requirement Charging Party clearly does not meet. . . .
> In summary, Charging Party did not meet the minimum qualifications required for the Entry Level Production position. She does not have two years of related heavy industrial experience.

19. Upon information and belief, the requirement or consideration of heavy industrial experience disparately impacts female applicants, including the named plaintiffs, in the same way as it impacted plaintiff Smith. Such practice also discourages female applicants from applying for production positions for which the defendant requires or considers "heavy industrial experience" and/or tests or other selection criteria that incorporate or were affected by such experience.

20. Defendant relies upon such heavy industrial experience throughout its selection process for production positions, including, but not limited to, initial screening, internet application screening, testing, phone interviews, face-to-face interviews, and the selection decision itself. Defendant discriminates on the basis of sex at each such stage of the selection process as well as throughout the selection process as a whole. Such discrimination

is accomplished through: (a) disparate impact; (b) disparate treatment; and (c) a pattern or practice of sex discrimination.

21. The named plaintiffs were rejected at one or more stages of the selection process for production jobs because of their sex and/or defendant's discriminatory consideration of heavy industrial experience which was used as a proxy for sex discrimination. Plaintiff Smith was rejected on this basis at the telephone interview stage of the defendant's selection process; Heather McGuffie was rejected on this basis at the internet application screening phase of defendant's selection process; Arleen Thomas, who applied more than once, was rejected on this basis each time she applied at the testing phase of the defendant's selection process; Christy Warren, who applied more than once, was rejected on this basis at the internet application phase and the testing phase of the defendant's selection process; Angela Farmer, who applied more than once, was rejected on this basis at the internet application phase and the testing phase of the defendant's selection process; Jamie Allen, who applied more than once, was rejected on this basis, at the internet application phase and the face-to-face interview phase of the defendant's selection process; Teresa Davis, who applied more than once, was rejected on this basis at the internet application phase and the testing phase of the

defendant's selection process; Lucie Johnson, who applied more than once, was rejected on this basis in or around April 2004 and November 2005 at the internet application phase of the defendant's selection process; Ginger Beasley was rejected on this basis at the internet application phase of the defendant's selection process; Annette Pack was rejected on this basis at the testing phase of the defendant's selection process; Odora Beckwood, was rejected on this basis at the internet application phase of the defendant's selection process; Phyllis Andrews, was rejected on this basis at the telephone interview phase of the defendant's selection process; Ann Shaw, who applied more than once, was rejected at the testing phase of the defendant's selection process.

22. The requirement or consideration of heavy industrial experience serves no legitimate business purpose. On information and belief, defendant does not require such experience at its other steel manufacturing plants. Other companies involved in similar manufacturing processes also successfully operate without requiring two years heavy industrial experience for production jobs. Male employees hired into the same or similar positions at defendant's Fairfield Works are trained on the job for the production work involved in such jobs. Males have also been employed in production jobs at

such plant without two years heavy industrial experience.

23. In addition to having disparate impact on women interested in production jobs, defendant's requirement or use of heavy industrial experience as a selection device is part of a pattern and practice of discouraging women from applying for traditionally male production positions and rejecting them for such positions whenever they express interest in or apply for such jobs at its Fairfield, Alabama plant. The defendant does not require many male applicants to have two years of heavy industrial experience for production jobs at such plants or at its other steel manufacturing plants. The defendant has hired male employees into the production positions at such plants, including the Fairfield, Alabama plant, without requiring them to have two years of related heavy industrial experience. Women, however, are not afforded or made aware of such opportunities to be employed in production positions at the Fairfield, Alabama plant without two years heavy industrial experience. Women are notified instead that such experience is required, and they have been consistently rejected whenever they lack such experience. Women are also rejected for such jobs even when they have two or more years of heavy industrial experience and are obviously qualified for the production work involved. For example, Arleen Thomas, Christy Warren, Angela Farmer,

Teresa Davis, Lucie Johnson and Annette Pack were qualified to perform the production jobs they sought, but they were rejected despite having two years of heavy industrial experience.

24. Within the 180 days prior to plaintiff Smith's EEOC Charge, plaintiff, Heather McGuffie, filled out an application for employment with the defendant, on or about April 15, 2004, for the same or similar production type job as Smith. She was qualified to perform the production job she sought, but she was denied such position on the pretext that she did not have two years of related heavy industrial experience.

25. Within the 180 days prior to plaintiff Smith's EEOC Charge, plaintiff, Arleen Thomas, filled out a application for employment on or about April 15, 2004, with the defendant for the same or similar production type job as Smith, and she was rejected for employment, allegedly because she did not have two years of related heavy industrial experience. After Smith filed her EEOC Charge, Thomas applied again on or about May 25, 2006, for the same or similar production type job as Smith, took a test and was again rejected for employment on the pretext that she was not qualified and/or that she did not have two years of related heavy industrial experience. Thomas did have the required industrial experience.

26. After Smith filed her EEOC Charge, Christy Warren, filled out an application for employment in early 2006 with the defendant for the same or similar production type job as Smith. She was qualified for the work involved in such job, but she was rejected without ever being tested or interviewed. Warren subsequently reapplied, around April 2006, took a test and was again rejected. At all times, she was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or she did not have two years related heavy industrial experience. Warren did have two years of related heavy industrial experience.

27. After Smith filed her EEOC Charge, plaintiff, Angela Farmer, filled out an application for employment with the defendant in May 2005, for the same or similar production type job as Smith. She was qualified for the work involved, but like the other plaintiffs she was rejected for employment. After Smith filed her EEOC Charge, Farmer reapplied for the same or similar production type job, took a test and was again rejected. At all times, she was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or she did not have two years of related heavy industrial experience. Farmer did have two years of related of related heavy industrial experience.

28. Within the 180 days prior to plaintiff Smith's EEOC Charge, plaintiff, Jamie Allen, filled out an application on April 12, 2004, took a test, went through a phone interview and was given a face-to-face interview for employment with the defendant for the same or similar production type job as Smith. She was rejected at that face-to-face interview stage, on or around June 2004, on the pretext that she did not have two years of related heavy industrial experience. After Smith filed her EEOC Charge, Allen reapplied around February 2006, for the same or similar production type job, and was rejected at the internet application phase, once again because she allegedly did not have two years of related heavy industrial experience. At all times, she was qualified to perform the production job she sought, but she was denied such position on the pretext that she did not have two years of related heavy industrial experience.

29. Within the 180 days prior to plaintiff Smith's EEOC Charge, plaintiff, Teresa Davis, filled out an application for employment on or around April 15, 2004, with the defendant for the same or similar production type job as Smith. She was qualified for the work involved, but was rejected in spite of her qualifications. After Smith filed her EEOC Charge, Davis reapplied again for the same or similar production type job in 2005, took a test and was once

again rejected in late 2005 despite her obvious qualifications for the job she sought. At all times, she was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or on the pretext that she did not have two years of related heavy industrial experience. Davis did have two years of related heavy industrial experience.

30. Within the 180 days prior to plaintiff Smith's EEOC Charge, plaintiff, Lucie Johnson, filled out an application for employment with the defendant on or about April 13, 2004, for the same or similar production type job as Smith. She was qualified for the work involved, but was rejected in spite of her qualifications. After Smith filed her EEOC Charge, Johnson applied again for the same or similar production type job, on or about November 22, 2005, and once again was not hired despite her qualifications for the job she sought. At all times, she was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or on the pretext that she did not have two years of related heavy industrial experience. Johnson did have two years of related heavy industrial experience.

31. After plaintiff Smith filed her EEOC Charge, plaintiff, Ginger

Beasley, filled out an application for employment with the defendant on or about September 2, 2005, for the same or similar production type job as Smith. She was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or she did not have two years of related heavy industrial experience.

32. After plaintiff Smith filed her EEOC Charge, plaintiff, Annette Pack, filled out an application for employment on May 3, 2005, with the defendant for the same or similar production type job as Smith. She was qualified for the work involved, but was rejected after taking the test in spite of her qualifications. At all times, she was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or on the pretext that she did not have two years of related heavy industrial experience. Pack did have two years of related heavy industrial experience.

33. Within the 180 days prior to plaintiff Smith's EEOC Charge, plaintiff, Odora Beckwood, filled out an application for employment with the defendant in April 2004 for the same or similar production type job as Smith. She was qualified for the work involved, but like the other plaintiffs she was rejected for employment. At all times, she was qualified to perform the

production job she sought, but she was denied such position on the pretext that she did not have two years of related heavy industrial experience.

34. After plaintiff Smith filed her EEOC Charge, plaintiff, Phyllis Andrews, filled out an application for employment with the defendant in or around June of 2006, for the same or similar production type job as Smith. She was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or she did not have two years of related heavy industrial experience. Andrews filed her own timely EEOC Charge, which has been pending at the EEOC over 180 days.

35. After plaintiff Smith filed her EEOC Charge, plaintiff, Ann Shaw, filled out an application for employment with the defendant for the second time in or around May of 2006, for the same or similar production type job as Smith. She was qualified to perform the production job she sought, but she was denied such position on the pretext that she was not qualified and/or she did not have two years of related heavy industrial experience. Shaw filed her own timely EEOC Charge, which has been pending at the EEOC over 180 days.

VI. FIRST CAUSE OF ACTION — DISPARATE IMPACT

36. Plaintiffs restate and incorporate paragraphs 1 through 35 above,

with particular emphasis on paragraphs 13-22, 24, 28, 30, and 31, as part of this first count of their amended complaint.

37. The criteria utilized by the defendant in making selection decisions for production positions discriminate on the basis of sex in violation of §703(k) of Title VII, 42 U.S.C. §2000e-2(k). Among other things, defendant's reliance upon "heavy industrial experience" and other selection criteria that incorporate or apply such experience has disparate impact on female applicants and discourages women as a class from applying for employment in traditionally male production jobs.

38. Plaintiffs seek only equitable relief, including backpay, declaratory and injunctive relief for such unlawful disparate impact, making class certification appropriate under Federal Rule of Civil Procedure 23(b)(2).

39. Defendant's reliance on heavy industrial experience as a selection criteria is not valid, job related or justified by business necessity. There are alternative selection procedures available to the defendant that have less disparate impact on females and equal or greater validity and job relatedness, but the defendant has refused to consider or use such alternatives. Not being valid or necessary, heavy industrial experience is used by the defendant as a pretext to exclude women from traditionally male production jobs.

40. Such discrimination further adversely affects the plaintiffs and the class they seek to represent by promoting and reinforcing sexual stereotypes and sexual bias. Such stereotypes and bias adversely affected all women interested in production jobs, including those who have two years or more of related heavy industrial experience, by maintaining the production areas of the plant as a predominantly male workforce, making it less likely for any women, including those with two years or more heavy industrial experience, from gaining a foothold in such jobs. Only a token number of women have ever been employed in such production jobs. In the absence of such sexual discrimination, the plaintiffs and the class they seek to represent would have had a greater opportunity of employment and to otherwise move into production positions, as well as a greater corresponding opportunity to then move into other jobs, including supervisory and management positions.

41. The plaintiffs and the class they seek to represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for backpay, instatement, and other injunctive and declaratory remedies is their only means of securing adequate relief. The plaintiffs and the class they seek to represent are now suffering, and will continue to suffer, irreparable injury from the defendant's unlawful policies and practices as set

forth herein unless enjoined and remedied by this Court.

VII. SECOND CAUSE OF ACTION — DISPARATE TREATMENT

42. The plaintiffs restate and incorporate by reference Paragraphs 1 through 41 above, with particular emphasis on paragraph 23, 25, 26, 27, 29, 30, and 32, as part of this second count of their amended complaint.

43. The defendant has engaged in a pattern and practice of discriminating against females on the basis of their sex with respect to production positions, which then prevents females from moving into supervisory and management positions.

44. The defendant's selection procedures are intended to have a disparate impact on the individual female plaintiffs and the class they seek to represent. Such practices form a part of the defendant's overall pattern and practice of keeping female employees out of its production and maintenance workforce. The defendant's selection system perpetuates the defendant's decades-old policy and practice of keeping females out of its workforce. By requiring female employees seeking employment with the defendant in production positions to have experience that can only be gained in traditionally male positions, the defendant perpetuates prior sexual discrimination and a predominately male workforce.

45. Plaintiffs seek only equitable relief in this count of the Complaint, including backpay, instatement, retroactive seniority and status and other declaratory and injunctive relief for such unlawful disparate treatment, making class certification appropriate under Federal Rule of Civil Procedure 23(b)(2).

46. The defendant's selection procedures have adversely affected the named plaintiffs and the class they seek to represent by, among other things, failing to select women for traditionally male job classifications. Because of the defendant's discriminatory employment practices, the plaintiffs have experienced harm, including the loss of wages, back and front pay, and other employment benefits.

47. The plaintiffs and the class they seek to represent seek to redress the wrongs alleged herein and this suit for back-pay (plus interest), instatement, retroactive seniority and status, and other declaratory and injunctive relief is their only means of securing adequate relief.

VIII. THIRD CAUSE OF ACTION — COMPENSATORY AND PUNITIVE DAMAGES

48. Plaintiffs restate and incorporate paragraphs 1 through 47 above, with particular emphasis on paragraphs 23, 25, 26, 27, 29, 30, and 32, as part of this third count of their amended complaint.

49. Reliance on practices requiring or applying heavy industrial

experience as a selection criteria is such an obvious barrier to women being selected for production jobs, and is so inconsistent with ordinary business practices at defendant's other plants and in the steel industry in general, that defendant acted maliciously, willfully, and with reckless disregard for the rights of the plaintiffs and the class they seek to represent, making punitive damages an appropriate remedy under 42 U.S.C. §1981a.

50. Such punitive damages are sought for the defendant's conduct towards women, not for any individualized injury or harm. As such, the entitlement to such damages are properly part of the same proof at Stage I of a bifurcated trial for classwide injunctive relief sought as part of plaintiffs' Second Cause of Action, and do not require individualized proof from each member of the class of women towards whom such discrimination was directed.

51. Each of the named Plaintiff's also seek Compensatory Damages for the emotional damages they suffered as a result of Defendant's actions.

IX. CLASS CERTIFICATION ALLEGATIONS

52. Class certification is sought separately for each of plaintiffs' three causes of action set forth above. Class certification is sought pursuant to Federal Rule of Civil Procedure 23(b)(2) for the equitable relief on plaintiffs'

disparate impact claim. Class certification is also appropriate under Rule 23(b)(2) for the equitable relief sought on plaintiffs' pattern or practice claim under Title VII. For plaintiffs' third cause of action for punitive damages under §1981a, plaintiffs seek class certification under either Rule 23(b)(2) as part of the relief available at Stage I of a bifurcated trial of their pattern or practice claim for injunctive relief, or as a hybrid certification under both Rules 23(b)(2) and 23(b)(3).

53. The named plaintiffs are members of the class they seek to represent for each of the three causes of action stated hereinabove. The prosecution of the claims of the named individual plaintiffs require adjudication of the question common to the putative class: does use of heavy industrial experience and selection procedures incorporating the effects of such experience have disparate impact on women or is otherwise part of an overall pattern or practice of excluding women from traditionally male production jobs? The claims of the named individual plaintiffs are embedded in common questions of law and fact because the defendant has prevented the hiring of female applicants and discouraged qualified female applicants from applying for production positions on the basis of such practices.

54. The relief necessary to remedy the claims of the plaintiffs are the

same relief that is necessary for the class, and therefore satisfies the typicality requirement of Rule 23(a)(3). The named plaintiffs seek the following relief for their individual claims and those of the class: a declaratory judgment that the defendant has engaged in systemic gender discrimination by limiting the employment opportunities of females; a permanent injunction against such continuing discrimination; a restructuring of the defendant's selection procedures so that females are able to learn about and fairly compete in the future for jobs; a restructuring of the defendant's workforce so that females are assigned to jobs that they would have held in the absence of the defendant's past sex discrimination; back pay and any other monetary relief, instatement or front pay, and other non-monetary remedies necessary to make the plaintiffs and the class they seek to represent whole from the defendant's past discrimination; and attorneys' fees and expenses.

55. The class that the named plaintiffs seek to represent is too numerous to make joinder practicable. The proposed class consists of all women who sought production jobs, may in the future seek such jobs, or who would in the past have sought such jobs in the absence of the discriminatory practices challenged in this case. The challenged employment discrimination makes joinder impracticable by discouraging females from applying for or

pursuing employment opportunities, thereby making it impractical and inefficient to identify many members of the class prior to a determination of the merits of the defendant's class-wide liability.

56. The class representatives' interest is coextensive with those of the class in that they seek to remedy the defendant's discriminatory employment practices so that females will no longer be prevented from obtaining production positions at the defendant company. The class representatives are able and willing to represent the class fairly and vigorously, as they pursue their goals common to the class through this action. The plaintiffs' counsel is also 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 plaintiffs and their counsel to litigate competently the individual and class claims of gender-based employment discrimination at issue satisfy the adequacy of representation requirement under Fed. R. Civ. P. 23(a)(4).

57. Certification of a class of similarly situated females 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 plaintiffs. The individual

claims of the named plaintiffs require resolution of the common question of whether the defendant has engaged in a systemic pattern of gender discrimination against females. The named plaintiffs seek remedies to undo the adverse effects of such discrimination in their own lives and careers and to prevent continued gender discrimination in the future. The named plaintiffs have standing to seek such relief in part because of the adverse effect that gender discrimination against females has on their own interest in working and living in conditions free from the pernicious effects of gender bias. In order to gain such relief for themselves, as well as for the putative class members, the named plaintiffs must first establish the existence of disparate impact and/or systemic gender discrimination as the premise of the relief they seek. Without class certification, the same evidence and issues would be subject to repeated re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the class of females affected by the 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 plaintiffs, the class and the defendant. The named plaintiffs' 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 complaint. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

58. The defendant has acted on grounds generally applicable to the class by adopting and following systemic practices and procedures that are discriminatory on the basis of gender. The defendant's gender discrimination is its standard operating procedure rather than a sporadic occurrence. The defendant has refused to act on grounds generally applicable to the class by refusing to adopt or follow selection procedures which do not have disparate impact or otherwise systemically discriminate against females. The defendant's systemic discrimination and refusal to act on grounds that are not sexually discriminatory have made appropriate final injunctive relief and declaratory relief with respect to the class as a whole.

59. Injunctive and declaratory remedies are the predominant relief sought. They are both dependent upon proof of the defendant's individual and class-wide liability at the end of Stage I of a bifurcated trial. Such determination at Stage I is also the essential predicate for the named plaintiffs and class members' entitlement to monetary and non-monetary remedies at Stage II of such a trial. Declaratory and injunctive relief flows directly and

automatically from proof of the common questions of law and fact regarding the existence of systemic gender discrimination against females. Such relief is the factual and legal predicate for the named plaintiffs and the class members' entitlement to monetary and non-monetary remedies for individual losses caused by such systemic discrimination.

60. Alternatively, certification is sought pursuant to Fed. R. Civ. P. 23(b)(3). The common issues of fact and law affecting the claims of the named plaintiffs and the proposed class members, including, but not limited to, the common issues identified in the above paragraphs, predominate, over any issues affecting only individual claims. A class action is superior to other available means for the fair and efficient adjudication of the claims of the named plaintiffs and members of the proposed class. The cost of proving the defendant's pattern and practice of discrimination makes it impracticable for the named plaintiffs and members of the proposed class to control the prosecution of their claims individually.

61. Alternatively, certification is sought under a combination of Fed. R. Civ. P. 23(b)(2) and 23(b)(3). The plaintiffs restate and incorporate by reference the above paragraphs.

X. PRAYER FOR RELIEF

Wherefore, the plaintiffs, on behalf of themselves and the class members whom they seek to represent, request the following relief, pursuant to Title VII of the act of Congress known as the "Civil Rights Act of 1964," U.S.C. § 2000e *et seq*. as amended, the "Civil Rights Act of 1991," and 42 and 42 U.S.C. § 1981a.

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) and/or (b)(3), 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 defendant's employment practices alleged herein are illegal and in violation of Title VII of the Act of Congress known as the Civil Rights Act of 1964, as amended;

d. A preliminary and permanent injunction against the defendant and its partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in gender discrimination in hiring;

e. An Order requiring the defendant to initiate and implement programs that (i) provide equal employment opportunities for female

employees to be hired; (ii) remedy the effects of the defendant's past and present unlawful hiring practices; and (iii) eliminate the continuing effects of the discriminatory hiring practices described above;

f. An Order requiring the defendant to initiate and implement systems of recruiting and selecting female employees into Entry Level Production positions in a non-discriminatory manner;

g. An Order establishing a task force on equality and fairness determine the effectiveness of the defendant's hiring procedures 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 these programs;

h. An Order placing or restoring the plaintiffs and the class they seek to represent into those jobs they would now be occupying but for the defendant's discriminatory practices;

i. An award of back pay, instatement or front pay, retroactive seniority or status, lost benefits, preferential rights to jobs, and any other appropriate equitable relief to the plaintiff and class members;

j. An award of punitive damages and nominal damages

pursuant to Title VII of the Act of Congress known as the Civil Rights Act of 1964, as amended and 42 U.S.C. §1981a;

k. An award of compensatory damages for each of the Named Plaintiffs pursuant to 42 U.S.C. §1981a;

l. An award of litigation costs and expenses, including reasonable attorneys' fees, to the plaintiffs and class members;

m. Prejudgment and post judgment interest; and

n. Such other and further relief as the Court may deem just and proper.

THE PLAINTIFFS' DEMAND A TRIAL BY STRUCK JURY OF ALL CLAIMS TRIABLE TO A JURY

Respectfully submitted,

s/Jon C. Goldfarb
Robert F. Childs, Jr.
Jon C. Goldfarb
Counsel for Plaintiff

OF COUNSEL:

WIGGINS, CHILDS, PANTAZIS & QUINN LLC
The Kress Building
301 19th Street North
Birmingham, Alabama 35203
Telephone No.: (205) 314-0500
Facsimile No.: (205) 254-1500