

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

DANIELLE WOOTEN,)	
ROSETTA SMITH,)	
MISTY EWING,)	
MURTYDELL BARNES,)	
BETTY KING,)	
NYCOLE PRICE,)	
LORITA THOMPSON, and)	
KIM RICHARD,)	
)	
Individually, and as)	
Class Representatives,)	
)	
Plaintiffs,)	Case No. 99-0990-CV-W-3-1
vs.)	
)	
DILLARD’S INC., d/b/a DILLARD’S)	
DEPARTMENT STORES, INC.,)	
)	
Defendant.)	

SECOND AMENDED CLASS ACTION COMPLAINT

COME NOW Plaintiffs Danielle Wooten, Rosetta Smith, Misty Ewing, Murtydell Barnes, Betty King, Nycole Price, Lorita Thompson, and Kim Richard, on behalf of themselves and others similarly situated, and state and allege the following causes of action against Defendant Dillard’s, Inc. (“Dillard’s”):

NATURE OF THE CLAIM

1. Plaintiffs bring this Class Action on behalf of themselves and others similarly situated for racial discrimination in employment with Dillard’s, including discrimination in hiring, pay, promotional opportunities, terms and conditions, and the working environment

provided to African-American persons by Dillard's. Plaintiffs seek declaratory, equitable, and injunctive relief, as well as monetary damages, nominal damages, and punitive damages, to redress the deprivation of rights accorded to Plaintiffs under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000 et seq. ,and applicable regulations thereunder ("Title VII"), and under the Civil Rights Act of 1871, as amended in 1991, 42 U.S.C. § 1981 ("Section 1981"). Plaintiffs assert disparate treatment and disparate impact claims on behalf of themselves and all others similarly situated. Plaintiffs are African-American former and current employees of Dillard's. Plaintiffs and all putative Class Members are qualified current or former employees who have been damaged as a result of a purposefully discriminatory employment policy, pattern and practice of racial discrimination on the part of Dillard's. Defendant has had actual and/or constructive notice of the racial discrimination in these Stores, but has taken no constructive steps to eliminate said discriminatory policies, procedures, and practices.

2. During the course of these Plaintiffs' employment, Dillard's has maintained and continues to maintain unconstitutional and discriminatory policies, practices, and customs of racial discrimination relevant to employment.

3. Plaintiffs and the putative Class Members have had terms and/or conditions of their employment with Dillard's in each of the following ways:

- a. Pursuant to Defendant's pattern and practice of discrimination, Plaintiffs and other African-American employees are paid less than similarly situated or less qualified Caucasian employees;
- b. Pursuant to Defendant's pattern and practice of discrimination, Plaintiffs and other African-American employees are denied promotional opportunities extended to similarly situated Caucasian employees;
- c. Pursuant to Defendant's pattern and practice of discrimination, Plaintiffs and other African-American employees are subjected to a work environment that is racially hostile;

- d. Pursuant to Defendant's pattern and practice of discrimination, Plaintiffs and other African-American employees are subject to job requirements which are materially different from those imposed on similarly situated Caucasian employees; and,
- e. Pursuant to Defendant's pattern and practice of discrimination, Plaintiffs and other African-American employees suffer from the inadequate training of Defendant's managers with regard pay, promotion, other job terms and conditions, EEO, and employee rights/management responsibilities under anti-discrimination and anti-retaliation laws.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is invoked by Plaintiffs pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 22 U.S.C. § 2201; (iii) under 42 U.S.C. § 1981; (iv) under 42 U.S.C. §§ 2000e, *et seq.*; and (v) under 42 U.S.C. §§ 2002 *et seq.*

5. The Court has jurisdiction over Dillard*s because the unlawful employment practices alleged in this Second Amended Complaint were committed in Kansas City, Missouri, and other areas which lie within this judicial district. In addition, Dillard*s has sufficient minimum contacts within this judicial district and the State of Missouri.

6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b), inasmuch as the Defendant has stores, conducts business and can be found in the State of Missouri, and the cause of action has arisen and occurred in substantial part in the State of Missouri. Venue is proper in the Western District of Missouri, Western Division because Plaintiffs were employed by Defendant in this judicial district, and the unlawful acts complained of herein occurred in this district.

PARTIES

7. Plaintiff Danielle Wooten is an African-American female who worked for Dillard's

at the Oak Park and Bannister Mall Stores from November of 1997 through February of 1999. During her employment, Dillard's paid Ms. Wooten less than similarly-situated Caucasian employees. Dillard's also denied Ms. Wooten a promotion to a Counter Manager position in or around January of 1998, as well as several other opportunities for promotion to other Management positions. Further, Dillard's determined Ms. Wooten's job assignment, both as to the cosmetic counter and the store location, based on her race. Dillard's also discriminated against Ms. Wooten in other terms and conditions of her employment and subjected her to a racially hostile working environment. Ms. Wooten was denied employment at the Oak Park Mall Store in April of 1999, after leaving Dillard's employment in good standing two months earlier.

8. Plaintiff Rosetta Smith served as Operations Manager of Dillard's Mission Store for more than ten years after Dillard's purchased it in 1986 from Macy's, where Mrs. Smith already was working the same functional capacity. The Operations Manager position is essentially an assistant Store Manager position, and Mrs. Smith is the only African-American ever to have occupied this high of a position in any of the Dillard's stores in this region. Dillard's did not hire and promote Mrs. Smith, rather Mrs. Smith held a management position with Macy's when it was acquired by Dillard's. Mrs. Smith trained numerous Caucasian persons who Dillard's thereafter promoted to Store Manager positions, yet Dillard's never provided Mrs. Smith the same opportunity or consideration for promotion to Store Manager. In addition, Dillard's paid Rosetta Smith less than similarly situated Caucasian employees. Mrs. Smith further suffered from discriminatory job terms and conditions and a racially-hostile work environment. During her employment, Mrs. Smith's Director of Stores referred to African-Americans in derogatory fashion as "those people," including statements such as "I'm sick of dealing with 'those people,'" and, "Every time I turn around 'those people' are causing problems." In late August of 1997, Dillard's

Director of Stores discriminatorily and unjustly demoted Mrs. Smith, who at that time had over 20 years of combined Macy's/Dillard's experience. In November of 1997, Dillard's Director of Stores discriminatorily terminated Mrs. Smith. Rosetta Smith complained to the EEOC regarding her termination and demotion shortly after November of 1997.

9. Plaintiff Murtydell Barnes is a 57 year-old African-American female. She continues to work for Dillard's at its Ward Parkway Store where she started in October of 1995. During this time period, Dillard's paid Ms. Barnes less than similarly situated Caucasian employees. Despite Ms. Barnes' receipt of sales awards for her work for Dillard's as an Estee Lauder counter associate, Dillard's will not promote Ms. Barnes to the Counter Manager position. On at least three occasions, Dillard's refused to even consider Ms. Barnes for openings for Counter Manager positions, despite Dillard's direct knowledge of her interest in the promotion. On several occasions in 1998 and 1999 alone, lesser experienced and/or qualified Caucasians were promoted to the position of Counter Manager without notice to other potential candidates and without the opportunity for Plaintiff to fairly be considered for the position. Dillard's also discriminated against Ms. Barnes in other job terms and conditions and in subjecting her, and continuing to subject her, to a racially hostile work environment. Finally, Dillard's has retaliated against Ms. Barnes since the filing of her two EEOC Charges of discrimination.

10. Plaintiff Misty Ewing is a former employee at Defendant Dillard's Oak Park Mall Store. During her employment, Dillard's treated Ms. Ewing differently than it treated her Caucasian co-workers in several respects, including Dillard's forcibly detaining and falsely accusing Ms. Ewing of theft. Dillard's paid Ms. Ewing less than similarly-situated Caucasian employees. Dillard's also discriminated against Ms. Ewing in other job terms and conditions, including her termination. Dillard's further subjected Ms. Ewing to a racially hostile work

environment.

11. Plaintiff Betty King worked at Defendant Dillard's Oak Park Mall Store in the Cosmetics Department. Dillard's paid Ms. King less than similarly-situated Caucasian employees. Dillard's refused Ms. King promotional opportunities provided to similarly-situated Caucasian employees. Dillard's also discriminated against Ms. King in other job terms and conditions, including her termination. Dillard's further subjected Ms. King to a racially hostile working environment.

12. Plaintiff Nycole Price worked at Defendant Dillard's Oak Park Mall Store in Cosmetics. Dillard's paid Ms. Price less than similarly-situated Caucasian employees. Dillard's refused Ms. Price promotional opportunities provided to similarly-situated Caucasian employees. Dillard's also discriminated against Ms. Price in other job terms and conditions, including her job assignments and her termination. Dillard's further subjected Ms. Price to a racially hostile working environment.

13. Plaintiff Lorita Thompson is an African-American who worked as a sales associate at the Dillard's Ward Parkway Mall Store in 1996. Dillard's paid Ms. Thompson less than similarly-situated Caucasian employees. In addition, Dillard's also did not offer Ms. Thompson a management position or an opportunity to seek a management position despite her thirty-seven years of management experience with the Internal Revenue Service of the United States Government. Dillard's also subjected Ms. Thompson to a racially-hostile work environment and to discrimination in job terms and conditions. Ms. Thompson filed a Charge with the EEOC in 1996.

14. Plaintiff Kim Richard is an African-American who worked as a sales associate and Department Manager at the Dillard's Ward Parkway Mall Store for eight years. Dillard's

paid Mrs. Richard less than similarly-situated Caucasian employees. Dillard's refused Mrs. Richard promotional opportunities provided to similarly-situated Caucasian employees. On three separate occasions, Mrs. Richards was passed over for a promotion to an Area Sales Manager. After Caucasians received the promotions, Dillard's terminated Mrs. Richard. Dillard's also discriminated against Mrs. Richard in other job terms and conditions, including her termination. Dillard's further subjected Mrs. Richard to a racially hostile working environment.

Mrs. Richard filed a charge with the EEOC for Dillard's race discrimination.

15. At all times relevant hereto, each Plaintiff was an "employee" and "individual" under Title VII, 42 U.S.C. § 2000e et seq., as amended, and a "person" under 42 U.S.C. § 1981 et seq., as amended, who was subject to race discrimination by Defendant.

16. Defendant Dillard*s, Inc. is a corporation organized under the laws of the State of Delaware, and is authorized to do business in Missouri. At all times relevant hereto, Defendant Dillard*s has employed 500 or more employees, and is an "employer" under Title VII, 42 U.S.C. § 2000e et seq., as amended.

CLASS ALLEGATIONS

17. Plaintiffs allege that, since at least 1994, Defendant has engaged in a pattern and practice of racial discrimination which subjects African-Americans to unlawful terms and conditions of employment that were different from similarly situated or less qualified Caucasian employees, including but not limited to, practices related to hiring, pay, promotional opportunities, a racially hostile environment, and job terms and conditions, all in violation of Title VII and 42 U.S.C. § 1981.

18. Plaintiffs sue on behalf of themselves and a Class of similarly situated persons under Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure.

19. The named Plaintiffs bring this case on behalf of the following Class: All African-American persons employed by Defendant Dillard's who worked at any time since October 13, 1994 at Dillard's Stores at St. Joseph, Springfield, Jefferson City, Columbia, Independence Center, Oak Park (north and south), Bannister, Mission, Indian Springs, Metro North, Ward Parkway, Topeka, or Mall of the Great Plains; AND All African-American applicants for employment at any of these same Stores during this same time period. Defendant Dillard's Director of Stores/District Manager for more than ten years in the Region used racial slurs in reference to African American employees and customers, and he regularly exhibited to his direct managers his and Dillard's racial hostility toward African-Americans. This Director of Stores/District Manager was the primary and/or final decision-maker in virtually employment pay and promotion decision in the Stores listed above. This Director of Stores/District Manager is also the Dillard's Executive responsible for all Equal Employment Opportunity policies, practices, and issues for these Stores. Other Dillard's Managers have similarly exhibited racially-discriminatory attitudes. Dillard's was aware of this conduct by its upper level Executive for years, but did not terminate, suspend, or discipline in any way its Director of Stores/District Manager.

20. The African-Americans in the Class identified above are so numerous that joinder of all Members is impracticable. Upon information and belief, there are at least 1,000 Members of the Class.

21. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Members.

22. The claims of the Representative Plaintiffs are typical of the claims of the Class.

23. The Representative Plaintiffs will fairly and adequately protect the interests of the

Class.

24. Defendant has acted and/or refused to act on grounds generally applicable to the Class, thereby making appropriate the rendering of final injunctive and/or corresponding declaratory relief with respect to the Class.

25. A Class Action is manageable and is superior to other available methods for the fair and efficient adjudication of the controversy described herein.

26. There are questions of law and fact common to this Class which predominate over any questions solely affecting individual Members of the Class. The questions of law and fact common to this Class include, but are not limited to, the following:

- a. Whether Defendant engaged in a pattern and practice of discrimination with regard to hiring, pay, promotion, terms and conditions, and the creation of a hostile working environment;
- b. Whether Federal Civil Rights laws were violated by Defendant's policies, procedures, and practices;
- c. Whether Defendant's pattern and practice of discrimination amounted to purposeful discrimination;
- d. Whether Defendant's racially discriminatory policies and practices result in disparate impact and/or disparate treatment of African-Americans;
- e. Whether Defendant subjected the Class of African-Americans to unlawful terms and conditions of employment that were different than those for similarly situated Caucasian employees, including pay, promotional opportunities, hostile environment, and job terms and conditions;
- f. Whether the race of African-American employees was a motivating factor in Defendant's class-wide decision to pay African-American employees at lower rates than similarly situated Caucasian employees;
- g. Whether race was a motivating factor in Defendant's common policy of denying African-Americans promotions and opportunities for advancement to management positions where such opportunities were made available to similarly situated or less qualified Caucasian employees;
- h. Whether Defendant's pattern and practice of discrimination has created a

racially-hostile environment for African-American employees;

- i. Whether Defendant adequately trains its managers with regard to hiring, pay, promotion, and Equal Employment Opportunity issues:
- j. Whether Defendant's racially discriminatory policies and practices continue to affect its employees necessitating injunctive relief and monitoring by the Court;
- k. Whether Defendant's actions were intentional, wilful, wanton, and/or in reckless disregard for the rights of Plaintiffs and Members of the Class; and,
- l. Whether, and in what amount, Defendant should be assessed punitive damages to punish the Defendant and deter others like Defendant from engaging in similar conduct in the future.

DISCRIMINATION IN COMPENSATION
TITLE VII AND SECTION 1981

27. Plaintiffs hereby incorporate paragraphs 1 through 26 of this Second Amended Complaint, by reference, as if fully set forth herein.

28. Defendant maintained and continues to maintain a pattern and practice of compensating African-American employees less than Caucasian employees who hold the same or similar job positions, or who hold job positions that entail similar or comparable responsibilities and duties.

29. As part of this discriminatory pattern and practice, Defendant has set lower starting salaries, raises, and other forms of compensation for African-American employees than for similarly situated or less qualified Caucasian employees.

30. Defendant has utilized salary ranges which are unfairly broad and unduly subjective, enabling Defendant to implement discriminatory pay practices. As part of this discriminatory pattern and practice, Defendant failed and continues to fail to maintain a salary pay scale based on objective, job-related criteria that is uniformly applied to African-American and

similarly situated Caucasian employees.

31. Plaintiffs and other African-Americans have been victims of Defendant's pattern and practice of racial discrimination in pay.

32. Defendant's conduct with regard to compensation constitutes intentional discrimination, with malice, against African-American employees such as Plaintiffs and all Class Members.

33. Defendant's conduct with regard to compensation constitutes disparate treatment of African-American employees such as Plaintiffs and all Class Members, and Defendant's conduct with regard to compensation has a disparate impact on African-American employees, including Plaintiffs and all Class Members.

DISCRIMINATION IN PROMOTIONS
TITLE VII AND SECTION 1981

34. Plaintiffs hereby incorporate paragraphs 1 through 33 of this Second Amended Complaint, by reference, as if fully set forth herein.

35. As part of its common pattern and practice, Defendant has discriminated against qualified African-American employees:

- a. By denying those employees the opportunity for promotion and by refusing to promote qualified African-American employees into management positions;
- b. By denying African-American employees the opportunity to be considered for promotion to management positions; and,
- c. By not allowing African-Americans to acquire the experience and opportunities necessary to obtain the qualifications to be promoted.

36. As part of its practice of denying African-American employees the opportunity for promotion, Defendant's promotion practices have been and still are based on subjective rather than objective, job-related criteria, and which are not uniformly applied to African-American and Caucasian employees.

37. Defendant maintains inadequate written policies, procedures, or guidelines with respect to promotion of its employees. The system employed by Defendant has involved subjective determinations which thereby render the system arbitrary, and such arbitrariness is and has been used as pretext for denying African-American employees promotions for which they are and were qualified.

38. As part of Defendant's practice of denying African-American employees the opportunity for promotion, Defendant has also discriminated against African Americans:

- a. By filling supervisory and managerial level job openings through word-of-mouth recruitment which is subjective and unfairly restricts the promotion of qualified African-Americans;
- b. By generally failing to publicly post job openings for supervisory and managerial positions; and,
- c. By failing to promote African-Americans to higher level managerial or supervisory jobs.

39. Defendant maintained and continues to maintain a pattern of racial discrimination in the terms and conditions of its employment by preventing African-American employees from obtaining the experience and opportunities necessary to become qualified for promotion. For instance, Defendant:

- a. Has relegated African-Americans to jobs with less visibility, prestige, responsibility and prospects for promotion than those held by similarly situated or less qualified Caucasians;
- b. Has denied African-Americans opportunities to be transferred to positions accorded to similarly situated or less qualified Caucasians, thus limiting the

opportunity for African-Americans to obtain promotions; and,

- c. Has manipulated Sale Per Hour requirements in a manner to deny African-Americans opportunities for promotion.

40. Defendant has routinely violated and departed from the few enunciated policies and procedures it has with respect to promotion, including the supposed Sales Per Hour minimum eligibility requirement. Defendant commonly departs from its enunciated rules so that it could establish a pretextual basis to discriminate against African-American employees in promotion and/or so that it could favor Caucasian employees in promotion.

41. Plaintiffs and other African-Americans have been victims of Defendant's pattern and practice of racial discrimination in promotion. Plaintiffs Danielle Wooten, Rosetta Smith, Murtydell Barnes, Kim Richard and other Plaintiffs and Class Members have not been promoted nor given the opportunity for promotion given by Defendant to similarly situated Caucasian employees. Defendant has never had an African-American Store Manager in any of the Stores within the Class Region.

42. Defendant's conduct with regard to promotions constitutes intentional discrimination, with malice, against Plaintiffs and all Class Members.

43. Defendant's conduct with regard to promotions constitutes disparate treatment of African-American employees such as Plaintiffs and all Class Members, and Defendant's conduct with regard to promotions has a disparate impact on African-American employees, including Plaintiffs and all Class Members.

TERMS AND CONDITIONS
TITLE VII AND SECTION 1981

44. Plaintiffs hereby incorporate paragraphs 1 through 43 of this Second Amended Complaint, by reference, as if fully set forth herein.

45. Plaintiffs and other Class Members have also been subject to job terms and conditions different than those of similarly situated Caucasian employees.

46. Plaintiffs and other Class Members have been damaged by Defendant's conduct.

47. Defendant's conduct in racially discriminating as to job terms and conditions constitutes intentional discrimination, with malice, against Plaintiffs and all Class Members.

48. Defendant's conduct in racially discriminating as to job terms and conditions constitutes disparate treatment of African-American employees such as Plaintiffs and all Class Members, and Defendant's conduct has a disparate impact on African-American employees, including Plaintiffs and all Class Members.

HOSTILE WORK ENVIRONMENT
TITLE VII AND SECTION 1981

49. Plaintiffs hereby incorporate paragraphs 1 through 48 of this Second Amended Complaint, by reference, as if fully set forth herein.

50. Since at least October of 1994, Defendant has maintained a pervasive and vile atmosphere perpetuating discriminatory treatment of African-American employees. Plaintiffs and other employees have been subjected to a hostile work environment which is illustrated by the racially-hostile and racially-discriminatory actions and words of Director of Stores/District Manager Richard Eagan, all of which were tolerated by Defendant's Division Headquarters in St. Louis and Defendant's Home Office in Little Rock, Arkansas.

51. Defendant's hostile environment is further illustrated by the targeting of African-American employees and customers for allegations of shoplifting and the overall inferior treatment African-American employees and customers are provided by Defendant. Dillard's security policy

has utilized racial profiles and has included the referencing of “suspicious blacks” as “Code 3s.” The Director of Stores was responsible for implementing Dillard’s security practices in the Stores in this Region.

52. Defendant’s pervasive atmosphere of discriminatory treatment affected and is affecting the terms and conditions of Plaintiffs’ and other African-American employees’ employment, and they have suffered and are still suffering damages from Defendant’s hostile work environment.

53. Plaintiffs and other Class Members have been damaged by Defendant’s conduct.

54. Defendant’s conduct in creating and maintaining a hostile work environment constitutes intentional discrimination, with malice, against Plaintiffs and all Class Members.

55. Defendant’s conduct in creating and maintaining a hostile work environment constitutes disparate treatment of African-American employees such as Plaintiffs and all Class Members, and Defendant’s conduct has a disparate impact on African-American employees, including Plaintiffs and all Class Members.

DISCRIMINATION IN HIRING
TITLE VII AND SECTION 1981

56. Plaintiffs hereby incorporate paragraphs 1 through 55 of this Second Amended Complaint, by reference, as if fully set forth herein.

57. Since at least October 13, 1994, Dillard’s has engaged in a pattern and practice of racial discrimination with respect to hiring thereby seeking to limit or deny African-Americans employment with Dillard’s. Dillard’s purposefully and wilfully fails to hire African-Americans into management and employee positions, despite openings. Dillard’s fails to evaluate an individual’s true qualifications, instead utilizing discriminatory factors.

58. Plaintiffs and other Class Members have been damaged by Defendant's conduct.

59. Defendant's conduct with regard to hiring constitutes intentional discrimination, with malice, against Plaintiffs and all Class Members.

60. Defendant's conduct with regard to hiring constitutes disparate treatment of African-American employees such as Plaintiffs and all Class Members, and Defendant's conduct has a disparate impact on African-American employees, including Plaintiffs and all Class Members.

**ADDITIONAL FACTS AND CLAIMS OF
REPRESENTATIVE PLAINTIFF DANIELLE WOOTEN**

61. Plaintiff Danielle Wooten hereby incorporates paragraphs 1 through 60 of this Second Amended Complaint, by reference, as if fully set forth herein.

62. Plaintiff Wooten began working at Dillard's Oak Park Mall Store in October of 1997.

63. Plaintiff Wooten has been denied pay and pay raises equal to those of similarly situated Caucasian employees at Dillard's.

64. Plaintiff Wooten was denied employment at Dillard's Oak Park Mall Store after having previously worked for Dillard's and having left in good standing.

65. Plaintiff Wooten was given job and store assignments by Dillard's based on her race.

66. Plaintiff Wooten was discriminatorily denied promotions by Dillard's.

67. Plaintiff Wooten was subjected to a racially hostile environment at Dillard's.

68. Plaintiff Wooten suffered retaliation by Dillard's.

69. Plaintiff Wooten was constructively discharged by Dillard's Bannister Mall Store

in February of 1999.

70. Plaintiff Wooten has been damaged by Defendant's discriminatory conduct.

71. Defendant's conduct with regard to Plaintiff Wooten constitutes intentional discrimination, with malice.

**ADDITIONAL FACTS REGARDING
REPRESENTATIVE PLAINTIFF ROSETTA SMITH**

72. Plaintiff Rosetta Smith hereby incorporates paragraphs 1 through 71 of this Second Amended Complaint, by reference, as if fully set forth herein.

72. Plaintiff Smith began working for Dillard's in 1986 when she was already a Personnel Manager for a Store Dillard's had acquire. Plaintiff is the only African-American to have ever held one of the top three management positions in a Dillard's store in this region.

74. Plaintiff Smith has been denied pay and pay raises equal to those of similarly situated Caucasian employees at Dillard's.

75. Plaintiff Smith suffered discriminatory job terms and conditions by Dillard's based on her race.

76. Plaintiff Smith was discriminatorily denied promotions by Dillard's.

77. Plaintiff Smith was subjected to a racially hostile environment at Dillard's.

78. Plaintiff Smith was discriminatorily demoted and discriminatorily terminated by Dillard's Director of Stores.

79. Plaintiff Smith has been damaged by Defendant's discriminatory conduct.

80. Defendant's conduct with regard to Plaintiff Smith constitutes intentional discrimination, with malice.

**ADDITIONAL FACTS REGARDING
REPRESENTATIVE PLAINTIFF MURTYDELL BARNES**

81. Plaintiff Murtydell Barnes hereby incorporates paragraphs 1 through 80 of this Second Amended Complaint, by reference, as if fully set forth herein.

82. As a current sales associate, Plaintiff Barnes works behind a cosmetics counter at the Dillard*s store in the Ward Parkway Shopping Center, selling Estee Lauder cosmetics.

83. Plaintiff Barnes has performed her job duties satisfactorily or better at all times relevant hereto during her employment with Defendants. Plaintiff has received the Associate of the Month Award for the month of March 1998, a sales award for being one of the top ten salespersons in 1997, as well as other congratulatory letters from Defendant.

84. On or about May 11, 1998, Plaintiff Barnes expressed her interest in a promotion to the position of Counter Manager for Estee Lauder and Dillard*s at the Dillard*s store in the Ward Parkway Shopping Center. On or about September 4, 1998, Plaintiff was informed that she was not chosen for the promotion to the position of Counter Manager. Carrie Price was hired for the position of Counter Manager who, based on information and belief, was a female Caucasian and was significantly less experienced and less qualified than Plaintiff for the position of Counter Manager. The decision of Defendant not to promote Plaintiff to the position of Counter Manager was based upon Plaintiff*s race. Plaintiff was qualified for the position for which she applied. Plaintiff Barnes filed a Charge of Discrimination with the EEOC on or about November 2, 1998.

85. Thereafter, Carrie Price left her employment with Defendant, and Defendant had an available job opening of Counter Manager on several subsequent occasions for which Plaintiff Barnes was qualified for and which Defendant was aware of Plaintiff*s interest. Plaintiff made inquiries about filling the position of Counter Manager to Mary Clopton, the Cosmetics Manager at Dillard*s, but Plaintiff was not reconsidered for the position of Counter Manager because of her race and in retaliation for filing her Charge of Discrimination. Plaintiff Barnes* EEOC Charge of

Discrimination about Defendant's unlawful, discriminatory employment practices was a lawfully protected activity. Defendant hired Delaina Renfro who, based on information and belief, was Caucasian and who was significantly less qualified and less experienced than Plaintiff, for the position of Counter Manager vacated by Carrie Price. Plaintiff's race and her complaints about the unlawful employment practices of Defendant were motivating factors in Defendant's actions toward Plaintiff in failing to promote Plaintiff to the position of Counter Manager instead of Delaina Renfro, subsequent to Plaintiff filing her Charge of Discrimination.

86. Delaina Renfro, who was hired for the position of Counter Manager, left her employment with Defendant after a few weeks, and Defendant again had an available job opening of Counter Manager. Plaintiff Barnes was qualified for the position, and Defendant was aware of Plaintiff's interest. Plaintiff again made inquiries about filling the position of Counter Manager to Mary Clopton, the Cosmetics Manager at Dillard's, but Plaintiff was not reconsidered for the position of Counter Manager because of her race and in retaliation for filing her charge of discrimination. Defendant hired Marcia Stovall who, based on information and belief was Caucasian and was significantly less qualified and less experienced than Plaintiff, for the position of Counter Manager vacated by Delaina Renfro. Plaintiff's race and her complaints about the unlawful employment practices of Defendant were motivating factors in Defendant's actions toward Plaintiff in failing to promote Plaintiff to the position of Counter Manager instead of Marcia Stovall subsequent to Plaintiff filing her charge of discrimination.

87. Marcia Stovall, who was hired for the position of Counter Manager, left her employment with Defendant after several weeks, and Defendant again had an available job opening of Counter Manager for which Plaintiff Barnes was qualified for and for which Defendant was aware of Plaintiff's interest. Plaintiff again made inquiries about filling the position of

Counter Manager to Mary Clopton, the Cosmetics Manager at Dillard*s, but Plaintiff was not reconsidered for the position of Counter Manager because of her race and in retaliation for filing her charge of discrimination. Defendant again refused to promote Plaintiff Barnes. Plaintiff's race and her complaints about the unlawful employment practices of Defendant were motivating factors in Defendant*s actions toward Plaintiff in failing to promote Plaintiff.

88. Lisa, who was hired for the position of Counter Manager, left her employment with Defendant after a few weeks, and Defendant again had an available job opening of Counter Manager for which Plaintiff Barnes was qualified for and for which Defendant was aware of Plaintiff's interest. Plaintiff's race and her complaints about the unlawful employment practices of Defendant are motivating factors in Defendant's actions toward Plaintiff in failing to promote Plaintiff to the position of Counter Manager vacated by Lisa, subsequent to Plaintiff filing her charge of discrimination.

89. The Counter Managers for Dillard*s are predominately Caucasian.

90. Defendant acted willfully, maliciously, with discriminatory intent, and with reckless disregard of Plaintiff Barnes's rights. Defendant did not make any reasonable effort to determine whether the decision not to promote Plaintiff violates federal and state laws.

91. Plaintiff Barnes has been damaged by Defendant's discriminatory conduct.

92. Defendant's conduct with regard to Plaintiff Barnes constitutes intentional discrimination, with malice.

93. Plaintiff Barnes has exhausted all of her administrative remedies and prerequisites. Plaintiff filed timely charges of discrimination with the United States Equal Employment Opportunity Commission ("EEOC"), charge numbers 281990134 and 281990397 . Plaintiff received her Notices of Right to Sue from the EEOC on November 18, 1999 and

November 23, 1999.

94. Defendant has also maintained a pattern of retaliation designed to intimidate African-American employees and deter them from objecting to Defendant's discriminatory policies and practices. Defendant has frequently retaliated against African-Americans who assert their civil rights. Defendant has used this pattern of retaliation to intimidate African-American employees and deter them from asserting legal claims based on Defendant's practices including those relating to pay, promotion, hostile environment, and other terms and conditions of employment.

95. Defendant has routinely refused to utilize and/or implement rules and procedures which are delineated as protections against retaliation and protections in the event of improper discipline or termination.

96. Plaintiff Barnes has been damaged by Defendant's retaliatory conduct.

97. Defendant's retaliatory conduct constitutes intentional discrimination, with malice.

**ADDITIONAL FACTS REGARDING
REPRESENTATIVE PLAINTIFF MISTY EWING**

98. Plaintiff Misty Ewing hereby incorporates paragraphs 1 through 97 of this Second Amended Complaint, by reference, as if fully set forth herein.

99. Plaintiff Ewing worked at Dillard's Oak Park Mall Store.

100. Plaintiff Ewing was denied pay and pay raises equal to those of similarly situated Caucasian employees at Dillard's.

101. Plaintiff Ewing was subjected to a racially hostile environment at Dillard's, including being forcibly detained and falsely accused of theft.

102. Plaintiff Ewing suffered retaliation by Dillard's.

103. Plaintiff Ewing was discriminatorily terminated by Dillard's.
104. Plaintiff Ewing has been damaged by Defendant's discriminatory conduct.
105. Defendant's conduct with regard to Plaintiff Ewing constitutes intentional discrimination, with malice.

**ADDITIONAL FACTS REGARDING
REPRESENTATIVE PLAINTIFF BETTY KING**

106. Plaintiff Betty King hereby incorporates paragraphs 1 through 105 of this Second Amended Complaint, by reference, as if fully set forth herein.
107. Plaintiff King worked at Dillard's Oak Park Mall Store.
108. Plaintiff King was denied pay and pay raises equal to those of similarly situated Caucasian employees at Dillard's.
109. Plaintiff King was denied promotional opportunities equal to those of similarly situated Caucasian employees at Dillard's.
110. Plaintiff King was subjected to a racially hostile environment at Dillard's.
111. Plaintiff King was discriminatorily terminated by Dillard's.
112. Plaintiff King has been damaged by Defendant's discriminatory conduct.
113. Defendant's conduct with regard to Plaintiff King constitutes intentional discrimination, with malice.

**ADDITIONAL FACTS REGARDING
REPRESENTATIVE PLAINTIFF NYCOLE PRICE**

114. Plaintiff Betty King hereby incorporates paragraphs 1 through 113 of this Second Amended Complaint, by reference, as if fully set forth herein.
115. Plaintiff Price worked at Dillard's Oak Park Mall Store.
116. Plaintiff Price was denied pay and pay raises equal to those of similarly

situated Caucasian employees at Dillard's.

117. Plaintiff Price was denied promotional opportunities equal to those of similarly situated Caucasian employees at Dillard's.

118. Plaintiff Price was subjected to a racially hostile environment at Dillard's.

119. Plaintiff Price suffered discriminatory job terms and conditions, including job assignments based on race.

120. Plaintiff Price was discriminatorily terminated by Dillard's.

121. Plaintiff Price has been damaged by Defendant's discriminatory conduct.

122. Defendant's conduct with regard to Plaintiff Price constitutes intentional discrimination, with malice.

**ADDITIONAL FACTS REGARDING
REPRESENTATIVE PLAINTIFF LORITA THOMPSON**

123. Plaintiff Lorita Thompson hereby incorporates paragraphs 1 through 122 of this Second Amended Complaint, by reference, as if fully set forth herein.

124. Plaintiff Thompson worked at Dillard's Ward Parkway Mall Store in 1996 and 1997. During her training, when a group of African-Americans walked by, plaintiff Thompson was told "we were told to watch those people."

125. Plaintiff Thompson was paid less than similarly situated Caucasian employees, and she was not offered the management opportunities offered to similarly situated Caucasian employees..

126. Plaintiff Thompson was subjected to a racially hostile environment at Dillard's.

127. Plaintiff Thompson suffered discriminatory job terms and conditions at Dillard's.

128. Plaintiff Thompson has been damaged by Defendant's discriminatory conduct.

129. Defendant's conduct with regard to Plaintiff Thompson constitutes intentional

discrimination, with malice.

**ADDITIONAL FACTS REGARDING
REPRESENTATIVE PLAINTIFF KIM RICHARD**

130. Plaintiff Kim Richard hereby incorporates paragraphs 1 through 130 of this Second Amended Complaint, by reference, as if fully set forth herein.

131. Plaintiff Richard worked at Dillard's Ward Parkway Store for eight years, including many years as a department manager

132. Plaintiff Richard was denied pay and pay raises equal to those of similarly situated Caucasian employees at Dillard's.

133. Plaintiff Richard was denied promotion opportunities equal to those of similarly situated Caucasian employees at Dillard's and was passed over for promotions to Area Sales Manager on at least three occasions.

134. Plaintiff Richard was subjected to a racially hostile environment at Dillard's.

135. Plaintiff Richard was subjected to a racially discriminatory job terms and conditions at Dillard's.

136. Plaintiff Richard was discriminatorily terminated by Dillard's.

137. Plaintiff Richard has been damaged by Defendant's discriminatory conduct.

138. Defendant's conduct with regard to Plaintiff Richard constitutes intentional discrimination, with malice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class respectfully request that this Court grant the following relief:

1. Certify this case as a Class Action.

2. Enter a judgment pursuant to jury verdict(s) that the acts and practices of Defendant complained of herein constitute a pattern and practice of race discrimination in violation of the laws of the United States.

3. Grant Plaintiffs and the Class declaratory relief and equitable relief enjoining Defendants from discriminatory acts and practices and monitoring Defendant's compliance with anti-discrimination laws, along with such other and further relief as this Court finds necessary and proper.

4. Pursuant to jury verdict(s) award Plaintiffs and the Class lost wages, including all lost fringe benefits and back pay, including, without limitation, compensation differential and any lost benefits that would have otherwise been accorded Plaintiffs absent the illegal discrimination.

5. Award Plaintiffs and the Class, pursuant to jury verdict(s), other nominal damages, compensatory damages, and punitive damages.

6. Award Plaintiffs the costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees.

7. Grant an Order restraining Defendant from any retaliation against any Plaintiff or Class Member for participation in any form in this litigation.

Respectfully Submitted,

KLAMANN & HUBBARD, P.A.

By: /s/

John M. Klamann, MO #29335

Dirk Hubbard, MO #37936

7101 College Blvd.

Suite 120

Overland Park, KS 66210

(913) 327-7600

Fax: (913) 327-7800

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED

Stephen R. Bough, MO #46239

4551 West 107th Street, Suite 355

Overland Park, KS 66207

(913) 642-0600

Fax: (913) 642-9629

SANDERS, SIMPSON,
FLETCHER, & SMITH, LLC

Michael R. Fletcher, MO #47495

1125 Grand Ave.

Suite 1400

Kansas City, MO 64106

(816) 471-6444

Fax: (816) 471-6664

THE POPHAM FIRM, P.C.

Dennis Egan, MO #27449

Bert S. Braud, MO #34325

323 West 8th Street, Suite 200

Kansas City, MO 64105

(816) 221-2288

Fax: (816) 221-3999

ATTORNEYS FOR PLAINTIFFS
AND ALL OTHER CLASS MEMBERS

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

KLAMANN & HUBBARD, P.A.

By: _____ /s/
John M. Klamann, MO #29335
Dirk Hubbard, MO #37936
7101 College Blvd.
Suite 120
Overland Park, KS 66210
(913) 327-7600
Fax: (913) 327-7800

SHAMBERG, JOHNSON & BERGMAN,
CHARTERED
Stephen R. Bough, MO #46239
4551 West 107th Street, Suite 355
Overland Park, KS 66207
(913) 642-0600
Fax: (913) 642-9629

SANDERS, SIMPSON,
FLETCHER, & SMITH, LLC
Michael R. Fletcher, MO #47495
Dan Craig
1125 Grand Ave.
Suite 1400
Kansas City, MO 64106
(816) 471-6444
Fax: (816) 471-6664

THE POPHAM FIRM, P.C.
Dennis Egan, MO #27449
Bert S. Braud, MO #34325
323 West 8th Street, Suite 200
Kansas City, MO 64105
(816) 221-2288
Fax: (816) 221-3999