

2000 WL 34542862 (E.D.Ark.) (Trial Pleading)  
United States District Court, E.D. Arkansas.

Eurlene ROBINSON; Rashad L. Atkinson; Carla Droughn; David Fitzpatrick; Kirestin J. Harris; Janice L. Medley; Willie L. Toombs, Jr.; Kahlil Watkins; and Tamera L. Williams, on Behalf of Themselves and all Other Persons Similarly Situated, Plaintiffs,  
v.  
SEARS, ROEBUCK AND CO., Defendant.

Civil No. 4:98cv00739 SWW.  
July 14, 2000.

**First Amended Complaint - Class Action**

Come now the Plaintiffs, by and through their attorneys, James & Carter, PLC, and for their Complaint against the Defendant, state:

**I.**

***NATURE OF CLAIM***

1. This action is brought by the named Plaintiffs on behalf of themselves and all other members of the class defined in the Complaint who are similarly situated.
2. This is an action to redress employment discrimination on the basis of race in violation of and instituted pursuant to Title VII of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C.S. §§ 2000e - 2000e-17 (1996)), and under Section 1 of the Civil Rights Act of 1866 (codified as amended at 42 U.S.C.S. § 1981 (1986)), and under the Arkansas Civil Rights Act of 1993 (codified as amended at Ark. Code Ann. § 16-123-101 to 108 (Michie 1997)). Plaintiffs and the class they represent seek compensatory and punitive damages based upon Defendant's deliberate and willful violation of 42 U.S.C.S. § 1981, 2000e, et. seq., and the Arkansas Civil Rights Act, and for an award of costs, attorneys' fees, and other relief to which they were entitled had they not been victims of the Defendant's racial discrimination. Declaratory relief is also sought under 28 U.S.C.S. §§ 2201, 2202 declaring that Defendant has discriminated against Plaintiffs and members of the class in the terms and conditions of employment.

**II.**

***JURISDICTION AND VENUE***

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C.S. § 1343(3) and (4) and 42 U.S.C.S. § 2000e-5(f). The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of civil rights secured by 42 U.S.C.S. §§ 2000e et seq., as well as 28 U.S.C.S. § 1981 and the Arkansas Civil Rights Act which provide for injunctive and other relief against racial discrimination in employment.
4. Plaintiffs Eurlene Robinson, Rashad L. Atkinson, Carla Droughn, Kirestin J. Harris, Janice L. Medley, Willie L. Toombs, Jr., Kahlil Watkins and Tamera L. Williams are African American citizens of the United States and the State of Arkansas, and reside in Pulaski County.

5. Plaintiff David Fitzpatrick is an Asian American citizen of the United States and the State of Arkansas, and resides in Pulaski County.
6. Defendant is a corporation incorporated under the laws of the State of New York, licensed to do business in the State of Arkansas, and is doing business in the State of Arkansas.
7. Defendant operates a store at 600 South University in Little Rock, Arkansas (“University Store”) at which all the named Plaintiffs are employed.
8. The unlawful employment practices alleged herein were committed within the State of Arkansas.
9. Defendant is an employer within the meaning of 42 U.S.C.S. § 2000e(b) and employs more than 500 people.
10. This is a proceeding for a declaratory judgment as to Plaintiffs’ rights and for a permanent injunction, restraining Defendant from maintaining a policy, practice, custom or usage of discriminating against Plaintiffs and other persons based upon their race with respect to compensation, terms, promotions, privileges, and conditions of employment and in ways that deprive Plaintiffs and other persons in the class of equal employment opportunities and otherwise adversely affect their status as employees because of race. This Complaint also seeks restitution to Plaintiffs and the class they represent of all rights, privileges, benefits, and income that would have been and should be received by them but for Defendant’s unlawful and discriminatory practices.

### **III.**

#### ***PROCEDURAL REQUIREMENTS***

11. All conditions precedent to jurisdiction under 42 U.S.C.S. § 2000e-5(f)(3) have occurred or been complied with, to wit:
  - (a) a charge of employment discrimination was filed with the Equal Employment Opportunity Commission (“EEOC”) within 180 days of the commission of the unfair employment practices;
  - (b) Notifications of Rights to Sue were received from the EEOC; and
  - (c) this complaint has been filed within 90 days of receipt of the Notifications of Right to Sue.
12. Plaintiff Eurlene Robinson filed a charge of discrimination with the EEOC on July 15, 1998 and received a Notice of Right to Sue (“NRTS”) issued October 29, 1998. A copy of Plaintiff Robinson’s NRTS is designated Exhibit 1, attached hereto and made a part hereof.
13. Plaintiff Rashad L. Atkinson filed a charge of discrimination with the EEOC on August 3, 1998, and received a NRTS issued August 6, 1998. A copy of Plaintiff Atkinson’s NRTS is designated Exhibit 2, attached hereto and made a part hereof.
14. Plaintiff Carla Droughn filed a charge of discrimination with the EEOC on July 15, 1998 and received a NRTS issued October 29, 1998. A copy of Plaintiff Droughn’s NRTS is designated Exhibit 3, attached hereto and made a part hereof.
15. Plaintiff David Fitzpatrick filed a charge of discrimination with the EEOC on August 25, 1998, and received a NRTS issued August 31, 1998. A copy of Plaintiff Fitzpatrick’s NRTS is designated Exhibit 4, attached hereto and made a part hereof.
16. Plaintiff Kirestin J. Harris filed a charge of discrimination with the EEOC on September 30, 1998 and received a NRTS issued September 30, 1998. A copy of Plaintiff Harris’ NRTS is designated Exhibit 5, attached hereto and made a part hereof.

17. Plaintiff Janice L. Medley filed a charge of discrimination with the EEOC on August 3, 1998 and received a NRTS issued August 12, 1998. A copy of Plaintiff Medley's NRTS is designated Exhibit 6, attached hereto and made a part hereof.

18. Plaintiff Willie L. Toombs, Jr. filed a charge of discrimination with the EEOC dated July 8, 1998 and marked received by the EEOC July 24, 1998. He received a NRTS issued August 12, 1998. A copy of Plaintiff Toombs' NRTS is designated Exhibit 7, attached hereto and made a part hereof.

19. Plaintiff Kahlil Watkins submitted a charge of discrimination with EEOC dated August 31, 1998 and marked received by the EEOC September 14, 1998. He received a NRTS issued October 30, 1998. A copy of Plaintiff Watkins' NRTS is designated Exhibit 8, attached hereto and made a part hereof.

20. Plaintiff Tamera L. Williams filed a charge of discrimination with EEOC on August 3, 1998, and received a NRTS on August 12, 1998. A copy of Plaintiff Williams' NRTS is designated Exhibit 9, attached hereto and made a part hereof.

#### IV.

#### *FACTS*

21. Plaintiff Tamera L. Williams began working for the Defendant's University Store in October of 1994.

22. Plaintiff Rashad L. Atkinson began working for the Defendant's University Store in August of 1995.

23. Plaintiff Janice L. Medley began working for the Defendant's University Store in October of 1995.

24. Plaintiff Willie L. Toombs, Jr. began working for the Defendant's University Store in November of 1996.

25. Plaintiff Kirestin J. Harris began working for the Defendant's University Store in October of 1996.

26. Plaintiffs Carla Droughn, David Fitzpatrick, and Eurlene Robinson began working for the Defendant's University Store in November of 1997.

27. Plaintiff Kahlil Watkins was re-hired by the Defendant's University Store in August of 1998.

28. The above Plaintiffs, as part time, hourly employees, each received wages in an amount less than \$6.25 per hour until after charges were filed with the EEOC.

29. The above Plaintiffs worked alongside white counterparts who made at least \$6.00 to \$6.25 hourly while the above Plaintiffs, who had more experience and seniority in the Defendant's company, were paid less than their white counterparts.

30. Approximately one month after the above Plaintiffs first began filing charges with the EEOC, the Defendant gave a store wide pay increase to all hourly employees of the University Store.

31. This store wide increase raised each of the above Plaintiffs' pay to \$6.25 per hour. This increase raised Plaintiffs only to the same rate as their lesser experienced white counterparts had already been making.

32. On or about July 4, 1998, the above Plaintiffs learned that their white counterparts were receiving a higher hourly rate for work which required lesser or equal skill, effort, and responsibility under the same working conditions.

33. The above Plaintiffs' white counterparts had no education or experience level above that of the above Plaintiffs which would have entitled the counterparts to more salary than the Plaintiffs received.

34. The above Plaintiffs were given the responsibility of training their new white employee counterparts, who made more

money for the same type position, and those new counterparts were making more money per hour than the Plaintiffs even while Plaintiffs were training the white counterparts.

35. Plaintiff Kahlil Watkins was rehired by the Defendant in October of 1998. Plaintiff Watkins had previously worked for the Defendant from July 1997 to March 1998.

36. In July of 1998, Plaintiff Watkins requested a \$.10 to \$.15 cent increase over the \$5.50 hourly rate, yet Defendant denied this increase.

37. In late July or early August of 1998, Defendant hired a white male with little or no retail sales experience at the hourly rate of \$6.25. The rate for this new employee was higher than that for any of the named Plaintiffs' hourly rates, despite Plaintiffs' seniority and experience.

38. Defendant hired other white employees with less or comparable experience than that of the named Plaintiffs for retail sales positions at the rates from \$6.00 to \$6.50 per hour. This rate was higher than any of the named Plaintiffs' hourly rates.

39. These white counterparts were hired at an hourly rates of \$6.00 to \$6.50, yet Plaintiff Kahlil Watkins was rehired at or after these persons at the rate of \$5.50 per hour.

40. During this time, the other Plaintiffs continued to be paid at rates lower than their white counterparts while maintaining the same part time status, job duties, and responsibilities as their newly hired, higher paid white counterparts.

41. White counterparts of the Plaintiffs have consistently been hired in and maintained rates of pay higher than that which Plaintiffs received, and a raise of all employees to the same level of pay after charges of discrimination were filed with the EEOC does not remedy such racial discrimination.

## V.

### *CLASS ACTION ALLEGATIONS*

42. Plaintiffs bring this action on their own behalf as well as on behalf of other persons similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

43. The class that Plaintiffs represent is composed of all non-white persons who are or who have been employed, or may become employed, by Defendant's University Store who have been and/or continue to be or who will be adversely affected by the practices complained of herein.

44. There are common questions of law and fact affecting the rights of the Plaintiffs and the members of this class who are and continue to be limited, classified, and discriminated against in ways that deprive and tend to deprive them of equal employment opportunities and income and otherwise adversely affect their status as employees because of race, namely:

(a) Whether the Defendant maintained and continues to maintain a policy, practice, custom, or usage of discrimination against non-white, minority personnel based upon their race with respect to compensation, terms, promotions, privileges, and conditions of employment, and otherwise adversely affected their status as employees because of race;

(b) Whether Defendant has established, implemented, and utilized a system of pay, placement, and classification which resulted in and perpetuates discrimination against non-white persons;

(c) Whether Defendant compensated non-white employees at lower rates of pay than white employees who performed work of lesser or equal skill, effort, and responsibility under similar working conditions;

(d) Whether Defendant gave more favorable treatment to white employees than of similarly situated non-white employees;

(e) Whether Defendant hires white employees initially at higher salaries than non-white employees being hired at or near the same time and for the same positions;

(f) Whether Defendant denies promotions, training, and pay raises to non-white employees while allowing the same promotions and pay raises to white employees;

(g) Whether the Defendant pairs members of its management with assistants of the same race;

(h) Whether Defendant maintains a work environment/atmosphere permeated with unprofessional supervision, subjective employment decisions, and racial disparity;

(i) Whether Defendant has continuously maintained or has utilized a subjective evaluation process that has a racially discriminatory effect;

(j) Whether Defendant applies the results of its employees' evaluations in a subjective manner that has a racially discriminatory effect;

(k) Whether such actions by the Defendant constituted discrimination against members of the class based on race in violation of the class' rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e, et. seq.;

(l) Whether such actions by the Defendant constituted discrimination against members of the class based on race in violation of the class' rights under the Civil Rights Act of 1866, 42 U.S.C.S. § 1981; and

(m) Whether such actions by the Defendant constituted discrimination against members of the class based on race in violation of the class' rights under the Arkansas Civil Rights Act (codified as amended at Ark. Code Ann. §§ 16-23-101 to 108 (Michie 1997)).

45. The prosecution of separate actions by individual members of the class would create the risk of inconsistent, varying, and needlessly time consuming adjudications with respect to individual members of the class which would, as a practical matter, also be dispositive of the interests of the other members of the class, or would substantially impair or impede their ability to protect such interests.

46. The questions of law and fact common to members of the class raised by this action predominate over any questions that affect or may affect only individual members of the class. The class action is superior to any other method available for the fair and efficient adjudication of the controversy between the class and the Defendant, in that the questions of law common to the above described class is whether or not the hiring, compensation, and placement of other terms and conditions of employment of the Defendant intentionally deprived the class of civil rights secured to them by the laws of the United States and of the State of Arkansas by denying them beneficial working conditions granted to similarly situated white employees.

47. The named Plaintiffs believe that the members of the class are in excess of 400 employees. The class is so numerous that joinder of all class members is impracticable. The claims of the named individual Plaintiffs are typical of those of the class as a whole. A common relief is sought. The interests of the class are fairly and adequately represented and protected by Plaintiffs who have no interests adverse to those of the class or its members. Plaintiffs will aggressively pursue the interests of the entire class. The named Plaintiffs are actively involved in the current litigation and plan to be actively involved in this case through its conclusion. The named Plaintiffs have stayed in contact with their attorneys and will continue to do so throughout their litigation. The named Plaintiffs wish to pursue this matter for themselves and on behalf of all other potential Plaintiffs.

48. Defendant has acted or refused to act on grounds generally applicable to the class, making appropriate final declaratory and injunctive relief with respect to the class as a whole. The certification of a plaintiff class in this action will avoid a multiplicity of suits with the consequent burden on the court system.

49. Defendant has intentionally and continuously maintained a pattern and practice of employment discrimination against non-whites. The acts, practices, and policies of discrimination for which Defendant is responsible include, but are not limited

to the following:

- (a) Establishment, implementation, and use of a system of pay, placement, and classification which results in and perpetuates discrimination in compensation against non-white employees;
- (b) Compensation at lower rates of compensation for non-white employees than white employees performing work of lesser or equal skill, effort, and responsibility under similar working conditions;
- (c) More favorable treatment of white employees than of similarly situated non-white employees;
- (d) Hires white employees initially at higher salaries than non-white employees;
- (e) Denies promotions, training, and pay raises to non-white employees while allowing the same promotions and pay raises to white employees;
- (f) Pairs members of management with assistants of the same race;
- (g) Maintains a work environment/atmosphere permeated with unprofessional supervision, subjective employment decisions, and racial disparity; and
- (h) The Defendant maintained and still maintains a policy, practice, custom, or usage of discriminating against non-white, minority personnel based upon their race with respect to compensation, terms, promotions, privileges, and conditions of employment and otherwise adversely affects their status as employees because of race.

50. Defendant knowingly and willfully deprived Plaintiffs and the class they represent of their constitutional rights and privileges. As a direct and proximate result of the acts of the Defendant set forth above, Plaintiffs have suffered severe mental anguish, embarrassment, loss of esteem in the eyes of the community and of their fellow employees, and other damages, mental, physical, and emotional. These damages flow directly from and are eminently connected to the deprivations, violations and infringement of the plaintiff's constitutional and statutory rights as guaranteed by the Constitution of the United States and protected by 42 U.S.C.S. § 2000e, et. seq., 42 U.S.C.S. § 1981, and Ark. Code Ann §§ 16-123-101 to 108 (Supp. 1995).

51. Plaintiffs and the class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged, and this suit is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from the Defendant's policy, practice, custom, and usage as set forth herein until and unless enjoined and remedied by this Court.

## VI.

### **RESERVATION OF RIGHTS**

52. Plaintiffs reserve their right to add other individuals who may be employees within the meaning of Title VII, 42 U.S.C.S. § 1981, et seq., and the Arkansas Civil Rights Act.

## VII.

### **RELIEF**

53. WHEREFORE, Plaintiffs pray that this Court:

54. Certify this case, pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, as a class action;
  55. Enter a declaratory judgment that the practices complained of herein are unlawful and violative of the laws plead herein;
  56. Permanently enjoin Defendant, its agents, successors, officers, employees, attorneys, and those acting in concert with it or them from engaging in unlawful practices shown to be in violation of applicable law;
  57. Retain jurisdiction of this action for such period as may be necessary in order to assure compliance with injunctive orders and judgments entered;
  58. Order modification or elimination of the Defendant's practices, policies, customs, and usages set forth herein and all other such practices shown to be in violation of applicable law to eliminate discrimination on the basis of race.
  59. Immediately adjust the wage rates, salaries, bonuses, and benefits for Plaintiffs and the class they represent to that level which they would be enjoying but for the discriminatory practices of Defendant;
  60. Compensate and make whole Plaintiffs and the class they represent for all earnings, wages, and other benefits they would have received but for the discriminatory practices of Defendant, together with prejudgment interest as authorized by 42 U.S.C.S. § 2000e-5(g);
  61. Award Plaintiffs the costs and expenses of this action, including reasonable attorneys' fees and costs in accordance with 42 U.S.C.S. §§ 1988, 2000e-5(k), Ark. Code Ann. § 16-123-105(b); and
  62. Grant such other relief, in law and in equity, as may be just and proper.
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