

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
ILLINOIS  
EAST ST. LOUIS DIVISION**

JOHN TUCKER, ANGELA MILLER,  
JOVAN HANEY, LEON BRADLEY, ARIEN  
JACKSON, WILLIAM STRICKLAND,  
OSCAR GREEN, MIKE JACKSON, KEVIN  
RIDDLE, AVERY ANDERSON, TRACI  
DANSBERRY, CARLOS ZIMMERMAN,  
CHRIS DARGIN, and KIMBERLY  
WAFFORD on behalf of themselves and others  
similarly situated,

Plaintiffs,

vs.

WALGREEN COMPANY,

Defendant.

Case No.: 05-cv-440-GPM

**PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT**

COME NOW the Plaintiffs, JOHN TUCKER, ANGELA MILLER, JOVAN HANEY, LEON BRADLEY, ARIEN JACKSON, WILLIAM STRICKLAND, OSCAR GREEN, MIKE JACKSON, KEVIN RIDDLE, AVERY ANDERSON, TRACI DANSBERRY, CARLOS ZIMMERMAN, CHRIS DARGIN and KIMBERLY WAFFORD and on behalf of themselves and others similarly situated, state to the Court:

**I. INTRODUCTION**

1. This class action is brought to remedy a pervasive policy of race discrimination instituted and maintained by Walgreen Co. ("Walgreens") in a continuing violation of federal law on behalf of all former, current, and future African-American management employees and applicants for management nationwide, as well as current and former African-American pharmacists. Walgreens has engaged in a continuing pattern and practice of race discrimination in hiring, promotion and store assignment of African-American employees. This illegal policy

and/or pattern or practice of discrimination has been furthered by subjective decision-making by a predominately white managerial workforce, with little oversight or monitoring by Walgreens.

2. Class action treatment is sought pursuant to Federal Rule of Civil Procedure 23. Plaintiffs seek a permanent injunction enjoining Walgreens from maintaining a policy and practice of discriminating against Plaintiffs and other African-American class members because of their race, or retaliating against them for complaining about prohibited acts of discrimination in violation of 42 U.S.C. §1981, as amended (“Section 1981”), and Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000, et seq.

3. Among other relief, this action seeks a declaration that Walgreens’ conduct violates Title VII and section 1981, an injunction ending Walgreens’ discriminatory practices and providing prospective relief, and restitution for Plaintiffs and the class for all hiring, promotions, back pay, front pay and related employee benefits they would have received but for Walgreens’ unlawful and discriminatory practices, compensatory and punitive damages.

## **II. JURISDICTION AND VENUE**

4. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331 and 1343, and Title VII, 42 U.S.C. § 2000(e)-5(f)(3).

5. This is a case arising under the laws of the United States, specifically Section 1981 and Title VII. Plaintiffs Tucker, Haney, Bradley, M. Jackson, A. Jackson, Strickland, Green, Riddle, Anderson, Zimmerman, Dargin and Wafford have filed timely charges of discrimination and have requested and received, or are entitled to, Right-to-Sue Notices under Title VII.

6. The unlawful employment practices alleged below were and are being committed nationwide, including within the Southern District of Illinois.

7. Venue is proper in the Southern District of Illinois under 28 U.S.C. § 1391 (b) & (c) and 42 U.S.C. § 2000e-5(f)(3).

### III. THE PARTIES

#### A. Plaintiffs

8. Plaintiff John Tucker is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Missouri. He was hired by Walgreens on February 6, 1986 as a Clerk and is currently employed as a Store Manager at store number 5873. Tucker timely filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”). On December 2, 2005, the EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Tucker requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

9. Plaintiff Angela Miller is an African-American female citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Missouri. She was hired by Walgreens in June 1997 as an Assistant Store Manager/Management Trainee (MGT) and left the employ of Walgreens as a Store Manager at store number 4602 in 2002.

10. Plaintiff Jovan Haney is an African-American female citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Illinois. She was hired by Walgreens in 2002 as an Assistant Store Manager/MGT and left the employ of Walgreens as an MGT at store number 6691 in 2005. Haney timely filed a charge of discrimination with the EEOC. Haney has requested that the EEOC issue a Right-to-Sue Notice to her and has received a Right-to-Sue notice.

11. Plaintiff Leon Bradley is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the states of Missouri or Texas. He was hired by Walgreens in October 2000 as an Assistant Store Manager/MGT and is currently employed as a Store Manager (SM) at store number 5443. Bradley timely filed a charge of discrimination with the EEOC. On December 2, 2005, the

EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Bradley requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

12. Plaintiff Arien Jackson is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Missouri. He was hired by Walgreens in April 2000 as an Assistant Store Manager/MGT and left the employ of Walgreens as an EXA at store number 5263 in October 2004. Jackson timely filed a charge of discrimination with the EEOC. On December 2, 2005, the EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Jackson requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

13. Plaintiff William Strickland is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Florida. He was hired by Walgreens on September 25, 1999 as a Service Clerk and is currently employed as a Store Manager (SM) store number 7350. Strickland timely filed a charge of discrimination with the EEOC. On February 2, 2006, the EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Strickland requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

14. Plaintiff Oscar Green is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Florida. He was hired by Walgreens in July 2000 as an Assistant Store Manager/MGT and is currently employed as a Store Manager at store number 4081. On February 2, 2006, the EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Green timely filed a charge of discrimination with the EEOC. Green requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

15. Plaintiff Mike Jackson is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Florida. He was hired by Walgreens on May 22, 2000 as an Assistant Store Manager/MGT and is currently employed as an MGT at store number 7979. On February 2, 2006, the EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Jackson timely filed a charge of discrimination with the EEOC. Jackson requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

16. Plaintiff Kevin Riddle is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Florida. He was hired by Walgreens on September 18, 2001 as an Assistant Store Manager/MGT and is currently employed as an EXA at store number 4081. Riddle timely filed a charge of discrimination with the EEOC. On February 2, 2006, the EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Riddle requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

17. Plaintiff Avery Anderson is an African-American male citizen and resident of the United States and at all times relevant to this complaint was a citizen and resident of the state of Michigan. He was hired by Walgreens on April 12, 2001 as an Assistant Store Manager/MGT and is currently employed as a Store Manager at store number 5321. Anderson timely filed a charge of discrimination with the EEOC. On February 1, 2006, the EEOC issued a Determination, finding against Walgreens as to the class allegations of the charge. Anderson requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

18. Plaintiff Traci Dansberry is an African-American female citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Missouri. She was hired by Walgreens in August 1998 as a Student Pharmacist and left the

employ of Walgreens as a Pharmacy Manager at store number 4602 in approximately August 2003.

19. Plaintiff Carlos Zimmerman is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Florida or Georgia. He was hired by Walgreens on September 6, 1996 as a Staff Pharmacist and is currently employed in that same capacity at store number 6206. Zimmerman timely filed a charge of discrimination with the EEOC. Zimmerman has requested that the EEOC issue a Right-to-Sue Notice to him.

20. Plaintiff Chris Dargin is an African-American male citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Texas. He was hired by Walgreens on January 20, 1993 as a Staff Pharmacist and the left employ of Walgreens as a Pharmacy Manager at store number 4203 on February 2, 2006. Dargin timely filed a charge of discrimination with the EEOC. Dargin requested that the EEOC issue a Right-to-Sue Notice to him and has received a Right-to-Sue Notice.

21. Plaintiff Kimberly Wafford is an African-American female citizen and resident of the United States and at all times relevant to this Complaint was a citizen and resident of the state of Indiana. She applied to Walgreens for a Management Trainee position in August 2004 following her graduation from college, was rejected, and has been employed by Walgreens in non-management positions since August 24, 2004 during which time she has again applied for the Management Trainee position and been rejected. Wafford timely filed a charge of discrimination with the EEOC.

**B. Defendant**

22. Defendant Walgreens is an Illinois corporation authorized and registered to do business in the State of Illinois with its headquarters in Deerfield, Lake County, Illinois. Walgreens conducts business throughout the United States and operates more than 5,000 stores nationwide in 45 states.

#### **IV. GENERAL PATTERNS OF DISCRIMINATION AND SEGREGATION**

23. Walgreens practices nationwide systemic racial discrimination against its African-American management and employees, Staff Pharmacists, and African-Americans seeking to enter the “Retail Career Path.” (a) Walgreens discriminates against African-Americans in selections of Assistant Manager/Management Trainees, the entry level positions in the Retail Career Path. (b) Walgreens discriminates against African-American employees seeking to advance in the Retail Career Path. (c) Walgreens discriminates against African-Americans seeking to promote in the Pharmacy Career Path. (d) Walgreens discriminates against African-Americans seeking promotion into district and corporate management. (e) Lastly, Walgreens discriminates against African-American management employees and Pharmacists in store assignments by steering them into stores which fall into predominately African-American and/or lower income peer groups and/or by assigning them to stores whose characteristics such as low bonus, low sales and high shrink reduces employees’ ability to earn bonus compensation.

24. These decisions to discriminate and segregate are based primarily on very subjective judgments of predominately white upper level management. Walgreens’ managers exercise considerable discretion in making decisions about the promotion and store assignment of employees in the Retail and Pharmacy Career Paths. Walgreens fails to train its managers adequately regarding compliance with anti-discrimination laws, managing a diverse workforce, or Human Resources processes. Walgreens does not provide its managers with specific guidelines for making hiring and promotion decisions. Walgreens fails to adequately monitor the personnel decisions of its managers to ensure that those decisions are not racially discriminatory and/or do not have an adverse impact on African American employees. The subjective decision-making systems implemented by Walgreens’ managers in the Retail and Pharmacy Career Paths result in an adverse impact on African-Americans seeking promotions and favorable store assignments. These policies and practices are systemic continuing violations.

**A. Discrimination in Selections and Promotions**

25. **Selections of Assistant Store Managers/Management Trainees.** The normal promotional progression in the Retail Career Path commences with the Assistant Store Manager or Management Trainee (MGT) positions. Walgreens practices systemic discrimination against African-Americans in selecting employees for Assistant Store Manager and MGT from both external applicants and those seeking to promote from non-management jobs at Walgreens.

26. **Discrimination in Promotions at Each Level of the “Retail Career Path.”** Once in the Assistant Store Manager or MGT position, the normal progression is to Executive Assistant (EXA) to Store Manager to District Manager and above. This is known as the “Retail Career Path.” Walgreens discriminates against African-Americans in each of these promotional opportunities. Walgreens’ managers have broad discretion in making their promotion decisions in the Retail Career Path, using highly subjective criteria with little or no training or guidelines. African-Americans are routinely denied and passed over for promotions despite their seniority, work experience and/or qualifications while less senior, less experienced and/or less qualified white persons are selected for promotions to the positions. One of the keys to promotion from Store Manager to District Manager is participation in the “Emerging Leaders Program.” Walgreens practices intentional discrimination in selecting employees for the Emerging Leaders Program that contributes to intentional discrimination in promotions into those jobs. Walgreens’ managers make highly subjective promotion decisions in the Retail Career Path, including but not limited to selection of employees for the Emerging Leader Program, vague and subjective criteria that result in an adverse impact on African-Americans. Intentional discrimination and unlawful adverse impact are reflected in the disproportionate number of white persons selected for District Managers compared to the racial composition of the appropriate feeder pool.

27. **Discrimination at Each Level of the “Pharmacy Career Path.”** Once employed as a Staff Pharmacist, the normal progression is to Pharmacy Manager to Pharmacy Supervisor and above. This is known as the “Pharmacy Career Path.” Walgreens’ managers have broad discretion in making their promotion decisions in the Pharmacy Career Path, using



highly subjective criteria with little or no training or guidelines. Walgreens practices discrimination against African-Americans in each of these promotional opportunities. African-Americans are routinely denied and passed over for promotions despite their seniority, work experience and/or qualifications while less senior, less experienced and/or less qualified white persons are selected for promotions to the positions. In addition, Walgreens' managers make highly subjective promotion decisions in the Pharmacy Career Path that result in an adverse impact on African-Americans. Intentional discrimination and unlawful adverse impact are reflected in the disproportionate number of white persons selected for Pharmacy Manager and Pharmacy Supervisor, compared to the racial composition of the appropriate feeder pools.

28. **Discrimination in Promotion to District and Corporate Management.**

Intentional discrimination and unlawful adverse impact also are reflected in the disproportionate number of white persons selected for promotion into district and corporate management positions, compared to the racial composition of the feeder and/or applicant pools.

29. **Official Store Categorization -- "Peer Groups."** Rather stunningly, Walgreens has actually categorized each of its stores according to the racial/ethnic composition and income demographics of the customers in the geographic vicinity of each store. These classifications, called "Peer Groups," are routinely and consistently used by Walgreens in its company documents and management decisions. African-American management and pharmacy employees suffer discrimination and are damaged in that they are intentionally and systemically steered into stores that have a higher percentage of African-American customers and/or a higher percentage of lower-income customers. Their segregation into these stores has a number of adverse career and economic consequences for the African-American management employees and Pharmacists. Often these stores have a higher customer volume in the retail area and lower prescription volume in the pharmacy, but lower profitability than other stores. Working conditions in these stores are often more difficult and/or stressful than those in other stores.

30. **Bonuses.** The economic implications of being steered and segregated into stores which have characteristics such as low bonus, low sales and high shrink are substantial as

Managers and Pharmacists in these stores tend to receive significantly less compensation than Managers in other stores.

31. **The Discriminatory Impact of Placement of African-Americans. The placement of African-American management and pharmacy employees in stores which fall into predominately African-American and/or lower income peer groups and/or stores which have characteristics such as low bonus, low sales and high shrink has a racially discriminatory impact on career opportunities.**

a. **The stores to which African-American managers and Pharmacists tend to be over-assigned are traditionally understaffed.** The consistent pattern that emerges from this understaffing is that Assistant Store Managers/MGTs, EXAs, and Store Managers spend a substantial part of their time performing non-management tasks. This has the general effect of depriving them of the on-the-job management training, which managers would naturally experience in their jobs helping them to become more knowledgeable about the company and make them better prepared for advancement.

b. **Pharmacy Test Preparation.** An important deprivation of management training in stores to which African-American and Pharmacists tend to be over-assigned that has a substantial effect is the preparation for the pharmacy test that EXAs must generally pass to be eligible for Store Manager (the Pharmacy Technician Certification Board or “PTCB” examination). In upscale stores EXAs traditionally have enough time to study for the test on company time and observe the operations in the pharmacy to assist them in preparation for the test. This results in a higher percentage of African-Americans failing the test or having to take it twice. This is discrimination against the African-Americans because of the corporate decisions as to how to staff these stores and the segregation of African-Americans into these stores. In another form of discrimination, on occasion, white EXAs have been promoted to Store Manager without passing the test.

c. **Store within a Store.** Part of the training of EXAs required in preparation for promotion to Store Manager is the “Store within a Store” or “SWIS” program. The EXA is

assigned special responsibility for the consumable area of the store. It is anticipated that the area will remain appropriately stocked and be clean and attractive. In the stores to which African-Americans tend to be over-assigned, it is difficult for the EXAs to have time and to expend special energy on this assignment because they are consistently expected to do other routine tasks such as stocking and checkout.

d. **EXA Pharmacy Project.** Part of the training required for EXAs in preparation for promotion to Store Manager is completion of the EXA Pharmacy Project wherein the District Manager selects EXAs in the district to spend two weeks working exclusively in the store pharmacy. The EXAs selected are those who will be next in line for promotion to Store Manager. African-American EXAs are selected proportionately less frequently than white EXAs for participation in the Pharmacy Project, which directly affects their career opportunities.

e. **Excel Project Book.** To become eligible for promotion from MGT to EXA, the candidate must complete the Excel Project Book. Part of this process is to choose an area of the store for extra attention with a goal of improving profit in that sector of the store. In the stores to which African-Americans tend to be over-assigned, it is difficult for MGTs to have the time and energy to devote to this assignment because they are consistently expected to do other routine tasks such as stocking and checkout. Further, the grading of one's performance on the Excel Project Book is a highly subjective judgment of the District Manager and has had the purpose and effect of injuring promotional opportunities of African-American MGTs based on their race. Walgreens now imposes a 12-month limit on completion of the Excel process. As Walgreens knows or should know, such a requirement inhibits the promotional opportunities of the segregated African-American MGTs in the predominantly African-American and/or lower income stores or stores which have characteristics such as low bonus, low sales, high shrink. Failure to comply within 12 months is grounds to consider demotion or dismissal.

f. **Initial Segregation Is Perpetuated.** Steering and segregation is forced upon African-Americans at each management level. Thus, an African-American who is initially assigned as an Assistant Store Manager/MGT or Staff Pharmacist in an African-American and/or

lower income peer group store or a store with characteristics such as low bonus, low sales, high shrink is more likely than other managers to remain in such class of stores when s/he advances to EXA. This same pattern of assignment continues in “The Retail Path” when promoting from EXA to Store Manager. Class members are intensely aware of the disadvantages of such store assignments and have as a group made great efforts to gain assignment to better stores, but such efforts have tended to be without success. Another very specific effect of the perpetuation of the segregation is that African-American managers who are ready to promote have often been deprived of such opportunities because they have not been deemed “eligible” for the preferred stores.

## **V. CLASS ACTION ALLEGATIONS**

### **A. The Scope of the Class**

32. This action is brought on behalf of all African-American individuals who have been employed at Walgreens in its Retail and Pharmacy Career Paths at any time between June 20, 2001 and the date of trial, as well as any African-American individuals who have applied for employment with Walgreens in its Management Trainee Position or any African-American Walgreens’ non-management employees who applied or were deterred from applying for the Management Trainee Position during the same time period, and who have been, are being, or may be in the future adversely affected by Walgreens’ continuing policy of discrimination in hiring, store assignment, compensation, training, promotion, and terms and conditions of employment because of their race or color.

### **B. The Case Satisfies All Elements of Rule 23(a)**

33. The class is so large that joinder is impracticable. The class covers more than 5,000 stores in 45 states. While the number of incumbent African-American employees seeking management positions is not known, it is reasonable to infer that they number in the thousands. Further, the number of African-American persons seeking Assistant Store Manager/MGT positions from outside the incumbent workforce is unknown but exceedingly large.

34. The systemic pattern and practice of discrimination against, and segregation of African-American employees and adverse impact of Walgreens' subjective decision making on the class are common questions of fact and law for the class case. The overwhelmingly white upper management implements the pattern and practice of discrimination and segregation on highly subjective bases that lend themselves to racial discrimination. These systematic patterns and practices also have disparate impact on the class as pleaded.

35. The claims of the representative Plaintiffs are typical of those of the class as a whole.

36. The claims of Kimberly Wafford are reflective of systemic discrimination in the selection of Assistant Store Managers/MGTs both as initial promotions from non-management Walgreens' positions and as new hires to Walgreens.

37. The claims of Kevin Riddle and Jovan Haney are reflective of systemic discrimination in the selection of EXAs from Assistant Store Managers/MGTs.

38. The claims of Leon Bradley, William Strickland, Oscar Green, Mike Jackson and Avery Anderson are reflective of the systemic discrimination in the selection of Store Managers from EXAs.

39. The claims of John Tucker and Angela Miller are reflective of the systemic discrimination in the selection of District Managers and higher management in the Retail Career Path.

40. The claims of Arien Jackson are reflective of systemic discrimination in promotion to district management positions. The claims of Chris Dargin are reflective of systemic discrimination in promotions to corporate management positions.

41. The claims of Traci Dansberry, Carlos Zimmerman and Chris Dargin are reflective of systemic discrimination in the selection of Pharmacy Managers and Pharmacy Supervisors and above in the "Pharmacy Career Path."

42. The claims of each and every named Plaintiff (other than Kimberly Wafford) are reflective of the racially discriminatory patterns of placement of African-American management and pharmacy employees as described in Paragraph 31.

43. Plaintiffs are more than adequate class representatives. They have substantial knowledge of the class and the employment practices of Walgreens. The Plaintiffs represent seven different states. They are committed to being adequate representatives of the class. There are no conflicts between the Plaintiffs and the class they seek to represent.

44. The Plaintiffs have retained counsel experienced in prosecuting class action employment discrimination cases to protect the interests of the class. Those lawyers have agreed to advance the costs of the out-of-pocket expenses of this litigation and have the ability to do so. They are more than adequate class counsel.

**C. The Class is Appropriate for Hybrid Certification Under Subsection (b)(2)/(b)(3).**

45. Hybrid certification under sections (b)(2)/(b)(3) is appropriate. Such certification has often been deemed appropriate in employment discrimination class actions. Under such certification, Stage I would be tried under (b)(2) and Stage II would be tried under (b)(3). In Stage I, liability and punitive damages would be tried. In Stage II, individual relief would be determined including back pay and front pay for the class, and compensatory damages and individual injunctive relief for those class members who allege entitlement to such relief.

46. Rule 23(b)(2) treatment for Stage I is appropriate in that Walgreens has acted and refused to act on grounds generally applicable to the class making prohibitory injunctive and declaratory relief appropriate as to the class as a whole. Such relief would include, but not be limited to, enjoining the practices of:

- a. Denying African-American employees promotions in the Retail Career Path, Pharmacy Career Path and district and corporate management positions;
- b. Denying African-American employees training;

c. Disproportionately assigning and segregating African-Americans to store locations that are less profitable in bonus-potential and have more difficult and/or stressful working conditions than those to which white persons tend to be assigned;

d. Disproportionately assigning African-Americans to stores with characteristics such as low bonus, low sales and high shrink which affect their compensation;

e. Disproportionately assigning and segregating African-American employees to locations and facilities which are located in areas that have predominantly African-American customers;

f. Disproportionately assigning and segregating African-American employees to locations and facilities in areas that have predominantly lower income customers;

g. Providing African Americans unequal terms and conditions of employment, based on their race;

h. Failing to hire African-Americans into the Assistant Store Manager/Management Trainee positions on the same basis as whites.

47. The class has inadequate remedies at law thus making injunctive and declaratory relief necessary.

**D. The Class is Appropriate for Certification Under Subsection (b)(3).**

48. Questions of fact and law common to the class predominate over any question affecting only individual members. The patterns and practices which will be proven in part by statistical proof are common to the class as pleaded and clearly predominate over any question affecting only individual class members. There exists generalized evidence that proves many elements on a class-wide basis.

49. A class action is superior to other available methods for fair and efficient adjudication of the controversy. Individual members of the class do not have the resources to marshal the kind of statistical proof and cumulative anecdotal evidence that can be adduced by these Plaintiffs in a class action.

50. The individual members of the class have no interest in individually prosecuting separate actions. Quite the contrary is true. Individual class members have an incredibly strong interest in having class representatives prove up the company-wide practices in a way that no individual class member could.

51. There is value in concentrating the claims in a single forum.

52. In light of the nature of the claims of the class there is no likelihood that difficulties will be encountered in managing the case as a class action. The class is defined with precision. The great preponderance of claims will involve proof of a pattern of selections for four job titles in the “Retail Career Path,” two job titles in the “Pharmacy Career Path,” and segregation of African-American management and pharmacists in African-American and/or lower income stores and/or stores with characteristics such as low bonus, low sales and high shrink. The job titles and practices are essentially identical in more than 5,000 stores in 45 states. Defendant has uniform computerized payroll and personnel data that will make calculation of back pay, front pay and other compensation for specific class members relatively simple. The propriety and amount of punitive damages are issues common to the class and do not present a management problem.

## **VI. FACTS MATERIAL TO THE PLAINTIFFS’ CLAIMS**

### **A. Facts Material to Plaintiff John Tucker**

53. John Tucker is an African-American male hired as a Service Clerk by Walgreens on February 6, 1986 in Topeka, Kansas. He was promoted to Assistant Store Manager/MGT after about one year and to EXA after about four years. He became a Store Manager in 1993 and is currently a Store Manager in Independence, Missouri. Throughout his employment with Walgreens and for all times relevant to this lawsuit, Tucker has been assigned predominantly to African-American and/or lower income stores. The work environment at these stores makes Tucker’s employment more difficult and stressful because of the high customer volume, theft, and safety issues, among other things.



54. Tucker was assigned to store number 4212 located at Linwood and Prospect in Kansas City, Missouri for three years. This was the longest period of time any Store Manager had been assigned to that store. Store number 4212 is one of the most difficult stores in the district and is replete with security and safety issues. When transferred to store number 4212, Tucker did not receive the normal promotional pay for transferring to the store and was later told by his Regional Vice President that the transfer was not considered a promotion. Other Store Managers received the promotional pay requested by Tucker when assigned to number 4212. One white Store Manager also received special incentive pay when transferred to store number 4212. This incentive pay was never offered to Tucker.

55. After managing store number 4212 for over a year, Tucker told his Regional Vice President, his Loss Prevention Manager and his District Manager that he wanted to be reassigned. He was unable to get reassigned to another store until he was forced to take disability leave as a result of the stress from his continued assignment and his treating physicians told Walgreens he could not return to work there.

56. In 2002, Tucker was included in Walgreens' "Emerging Leaders Program." Out of 175 emerging leaders in his division, he was one of only two African-American employees selected. Moreover, while in the Emerging Leaders Program, Tucker was selected to participate in an extensive testing program designed to evaluate the skills of future District Managers and provide information that will be helpful to the employee's success as a District Manager. Participation in the testing program is by invitation only and is the final step before promotion to District Manager. Tucker was subsequently removed from the Program allegedly because he did not have a college degree and was not enrolled in classes. However, when Tucker was initially placed in the Program, Walgreens knew he did not have a college degree and was not enrolled in courses. Despite his qualifications and experience, Tucker has never been promoted to the district level.

57. Tucker is an accomplished and dedicated worker who has been denied promotional opportunity to District Manager and has been discriminated against by Walgreens'

pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 29 and 31(f). He has received lower bonuses and been required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a).

58. As a result of the aforesaid conduct, Tucker has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**B. Facts Material to Plaintiff Angela Miller**

59. Angela Miller is an African-American female hired as an Assistant Store Manager/MGT by Walgreens in June 1997 in St. Ann's, Missouri. She was promoted to EXA after six months. She became a Store Manager in March 1999. Throughout her employment as a Store Manager with Walgreens, Miller was assigned predominantly African-American and/or lower income stores. The work environment at these stores made Miller's employment more difficult and stressful because of the high customer volume, theft, and safety issues, among other things. Furthermore, despite having all the qualifications to participate in the Emerging Leaders Program, Miller was not asked to be an Emerging Leader and, therefore, was denied the opportunity to be promoted to District Manager or above. Miller was further denied the opportunity to transfer to another district unless she was willing to be demoted from Store Manager.

60. In April 1999, Miller learned that the existing Walgreens store in East St. Louis, Illinois was being condemned and a new store was opening in May. At that time, Ed Catani, Miller's District Manager, and Gene Slade, Walgreens' Corporate Attorney, met with Miller regarding her being transferred to the new East St. Louis store, store number 4602. This store was 40 miles from Miller's residence. Catani and Slade told Miller that the store was being opened in a tough area in an African-American neighborhood and it needed to be opened by an African-American manager. store 4602 was staffed with predominantly African-American management employees as well as off-duty, armed police officers.

61. While Miller was managing store number 4602, Catani and Walgreens' Senior Vice President of Operations, Jerome Karlin, visited the store. During one such visit, Karlin made numerous racist comments to Miller. For example, while looking at Miller's vitamin display, Karlin asked Miller "Why don't black people take vitamins'." During this same visit, while inspecting the store cooler, Karlin asked Miller if she "actually sold the Edy's and Haagen Dazs ice cream" that was stocked in the cooler, but before Miller could respond, Karlin stated, "Of course you don't. We are in East St. Louis. Everyone here is on welfare." He went on to say, "What do you people eat? Oh, that's right. Fried chicken and okra." At the end of the visit, Karlin turned to Catani and told Catani that he needed to get a different Store Manager at the store number 4602 because Miller "wasn't black enough to run the store."

62. After Karlin and Catani's visit to store number 4602, Miller complained to Catani about Karlin's racist attitude and told Catani that she noticed Walgreens placed African-American store managers in lower income and/or African-American customer-based stores. Catani told Miller that she shouldn't worry about it. Miller then sent a written complaint to Dan Jorndt, Walgreens' CEO at that time, and David Bernauer, Walgreens' current CEO. Miller did not receive a response to her complaint. Thereafter, she confronted Jorndt during a managers meeting asking him why he did not respond to her complaint. Jorndt told her to "not let this become a rock in her shoe."

63. Subsequent to her complaints, Miller continued to experience discriminatory behavior and began experiencing retaliatory behavior. Catani frequently told Miller she should stock more "ethnic products" in her store such as "cheap hair care and hot or spicy food." On one occasion, Catani told Miler that she should stock her store with hot and spicy cornbread. When Miller asked why she should stock hot and spicy cornbread, Catani told her "because it was hot and because it was cornbread." On another occasion Catani shipped several boxes of hair weaves to Miller's store without speaking with Miller about her need for such products. Furthermore, Miller's bonuses were reduced and in 2002, loss prevention personnel began investigating Miller's store accusing Miller of padding her inventory. This false accusation was

completely without merit and could only have resulted from racial profiling and retaliation directed toward Miller by Walgreens' management for asserting her rights to work in a workplace free of discrimination.

64. Miller was an accomplished and dedicated worker who was denied promotional opportunity to District Manager and was discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 29 and 31(f). She received lower bonuses and was required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a).

65. As a result of the aforesaid conduct, Miller has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**C. Facts Material to Plaintiff Jovan Haney**

66. Jovan Haney is an African-American female hired by Walgreens as an Assistant Store Manager/MGT in 2002. She was assigned to various African-American and/or lower income stores and/or stores with characteristics such as low bonus, low sales and high shrink in Illinois, Florida and Indiana before resigning in October 2005.

67. Haney did not receive a promotion to EXA despite expressing interest in the position, applying for EXA, and having all the necessary qualifications for advancement to EXA. Less qualified white employees were promoted to this position over Haney.

68. Haney worked as an acting EXA and filled in when a store manager was absent without receiving EXA compensation. She did not qualify for bonuses based on store profitability because she was never promoted to EXA.

69. As a result of the aforesaid conduct, Haney has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**D. Facts Material to Plaintiff Leon Bradley**

70. Leon Bradley is an African-American male hired by Walgreens as an Assistant Store Manager/MGT in October 2000 and is currently an Store Manager (SM) Texas.

Throughout Bradley's employment, he was assigned to African-American and/or lower income stores. Furthermore, stores with characteristics such as low bonus, low sales and high shrink to which he has been assigned, as described in paragraph 30, have negatively impacted Bradley's bonuses.

71. Bradley had all the necessary qualifications to be promoted to Store Manager, yet he was consistently passed over while less qualified and less experienced white individuals were being promoted, as described in paragraph 26. Furthermore, Bradley was subjected to stricter standards than white employees which hindered his promotional opportunities and he has suffered discrimination related to his SWIS duties as described in paragraph 31(c). In December 2004, Bradley was told by his Regional Vice President that he would not receive an "A" on his SWIS report because the Regional Vice President found some dirt in the dairy area. He then told Bradley that he must receive an "A" on his SWIS report to be promoted. White employees' promotions were not conditioned on their SWIS report grades.

72. Bradley is an accomplished and dedicated worker who was denied promotional opportunity to Store Manager and has been discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 30 and 31(f). He has received lower bonuses and was required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a).

73. As a result of the aforesaid conduct, Bradley has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**E. Facts Material to Plaintiff Arien Jackson**

74. Arien Jackson is an African-American male employed by Walgreens in Missouri and Kansas as an EXA from April 2000 through October 2004. Jackson resigned to pursue better advancement opportunities in a workplace free from racial discrimination with one of Walgreens' retail drug store competitors. Since leaving Walgreens, Jackson has received three promotions in his current job and now holds a district position.

75. During Jackson's employment, he repeatedly applied for promotions to District Training Supervisor, a non-retail district position described in paragraph 28. Despite being qualified for the position, Jackson was rejected each time in favor of less qualified whites. Jackson was never given a reason why he was denied the position. On information and belief African-American class members are rarely selected for the District Training Supervisor and Photo Supervisor.

76. Jackson was an accomplished and dedicated worker who was denied promotion to District Training Supervisor and Photo Supervisor and was discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 29 and 31(f). He received lower bonuses and was required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a).

77. As a result of the aforesaid conduct, Jackson has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**F. Facts Material to Plaintiff William Strickland**

78. William Strickland is an African-American male hired by Walgreens as a Service Clerk in 1999. Strickland was promoted to MGT in 2001 and EXA in 2002 and is currently a Store Manager (SM).

79. For over five years, Walgreens assigned Strickland to work at African-American and/or low income stores. Shortly after Strickland filed a charge of discrimination with the

EEOC in late 2004, Walgreens transferred him to a more racially diverse/higher income store without explanation.

80. Strickland had not been promoted to Store Manager allegedly because he had not received his pharmacy technician certification, yet white EXAs were promoted without having that certification. As described in paragraphs 31(a) and (b), Strickland worked in African-American and/or lower income stores where he has had less opportunity to study for the certification test and inadequate opportunity to observe the operation of the pharmacy, primarily due to high customer volume and the need for managers to perform non-management tasks. Strickland had not, therefore, been able to take full advantage of opportunities available to EXAs assigned to non- "African-American and/or lower income" stores to prepare for the certification test. Once moved to store number 3746 Strickland had the opportunity to spend time in the pharmacy and passed the certification test.

81. Walgreens' pattern and practice of assigning its minority management employees to African-American and/or lower income stores is evident through Strickland's job promotions. Normally, Walgreens' employees are transferred to different stores after receiving promotions. Although Strickland has received promotions during his Walgreens' career, he was always kept in the same African-American and/or lower income store (known to be the most difficult store in his district). Strickland was removed from the store only after filing a charge of discrimination with the EEOC.

82. Strickland is an accomplished and dedicated worker who was denied promotional opportunity to Store Manager and has been discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 29 and 31(f). He has received lower bonuses and been required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a). He received fewer opportunities to train and prepare for the pharmacy certification test as described in paragraphs 31(b) and (d).

83. As a result of the aforesaid conduct, Strickland has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**G. Facts Material to Plaintiff Oscar Green**

84. Oscar Green is an African-American male hired by Walgreens as an Assistant Store Manager/MGT in 2002. He was promoted to EXA in 2004 and Store Manager in 2005.

85. Until January 2005, Green was assigned only to African-American and/or lower income stores in Florida. Shortly after Green filed a charge of discrimination with the EEOC in late 2004, Walgreens promoted him to Store Manager in a higher income and 80% white customer base store without explanation.

86. Green is an accomplished and dedicated worker who was denied promotional opportunity to Store Manager and has been discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 29 and 31(f). He has received lower bonuses and been required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a).

87. As a result of the aforesaid conduct, Green has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**H. Facts Material to Plaintiff Mike Jackson**

88. Mike Jackson is an African-American male hired by Walgreens in 2000 as an Assistant Store Manager/MGT. Jackson was promoted to EXA in 2002 and in September 2006 voluntarily stepped down to MGT because of the stress of his working conditions.

89. Until January 2005, Jackson was assigned only to African-American and/or low income stores in Florida. Prior to filing his EEOC charge, Jackson requested to be transferred from the African-American and/or low income store. His District Manager said he could transfer but would be staying on the north side of Jacksonville (which has all African-American and/or low income stores). When Jackson asked why he would be staying on the north side, his District



Manager said it was because Walgreens wanted to keep its management employees in stores near where they lived. Jackson does not live on the north side. When he told his District Manager that he didn't live on the north side of Jacksonville, the District Manager told him that he was staying on the north side because he was "unfortunately better suited" for the stores on the north side.

90. Shortly after Jackson filed a charge of discrimination with the EEOC in late 2004, Walgreens transferred him to a high income, 80% white customer base store without explanation.

91. Jackson has not been promoted to Store Manager allegedly because he has not received his pharmacy technician certification, yet white EXAs have been promoted without having that certification. As described in paragraphs 33(a) and (b), Jackson has worked in stores where he has had less opportunity to study for the certification test and inadequate opportunity to observe the operation of the pharmacy, primarily due to high customer and the need for managers to perform non-management tasks.

92. Jackson is an accomplished and dedicated worker who has been denied promotional opportunity to Store Manager and has been discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 29 and 31(f). He has received lower bonuses and been required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a). He has received fewer opportunities to train and prepare for the pharmacy certification test as described in paragraphs 31(b) and (d).

93. As a result of the aforesaid conduct, Jackson has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

#### **I. Facts Material to Plaintiff Kevin Riddle**

94. Kevin Riddle is an African-American male hired by Walgreens as an Assistant Store Manager/MGT in 2001 in Jacksonville, Florida. Riddle has worked as an "acting" EXA

but was not paid at that level and did not receive a promotion to EXA despite having all the necessary qualifications. Less qualified white employees have been promoted to EXA instead of Riddle. Shortly after Riddle filed a charge of discrimination with the EEOC, Riddle received a promotion to EXA without explanation.

95. Walgreens states that employees must pass a company-created math test in order to be promoted to EXA. Riddle was told sixteen correct answers out of twenty questions is considered a passing score. After Riddle took the test, his Store Manager initially told him he had failed the test. Riddle asked to see the result of his test and found that of the 18 questions he answered, only 2 were incorrect. Riddle's District Manager acknowledged that Riddle passed, but told Riddle that he still did not consider Riddle qualified for the promotion because Riddle had only answered 18 questions and because his Store Manager felt he was not ready to be an EXA.

96. Riddle also experienced discriminatory treatment in connection with his Excel Project Book as described in paragraph 31(e). Riddle learned that his store manager had not signed his Excel Project Book. Riddle did his project in the cosmetics department and increased sales by \$20,000. When he asked his Store Manager about his success, the Store Manager told Riddle that he just "got lucky."

97. Prior to March 2005, all of the stores to which Riddle was assigned were African-American and/or low income stores on the north side of Jacksonville, Florida. When Riddle asked his District Manager to be transferred from store number 1981 located on the north side of Jacksonville, he was told that Walgreens likes managers to work close to where they live, but Riddle does not live near the stores to which he has been assigned. The second time Riddle requested transfer out of the north side, he was told that he was "better suited" for the north side stores.

98. Riddle is an accomplished and dedicated worker who has been denied promotional opportunity to Store Manager and has been discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower

income stores as described in paragraphs 23, 26, 29 and 31(f). He has received lower bonuses and been required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a). He has received fewer opportunities to train and prepare for the pharmacy certification test as described in paragraphs 31(a) and (b).

99. As a result of the aforesaid conduct, Riddle has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**J. Facts Material to Plaintiff Avery Anderson**

100. Avery Anderson is an African-American male hired by Walgreens as an Assistant Store Manager/MGT in 2001 in Michigan. He was promoted to EXA in 2002. He was promoted to Store Manager in January 2005. For the majority of his career, Anderson has been assigned to African-American and/or lower income stores.

101. Anderson has been passed over for promotions given to less qualified and less experienced white employees. He has observed white EXAs receive Store Manager promotions who have been EXAs for less time than him. Anderson is aware of two white employees in his district who were promoted to Store Manager within two weeks of becoming EXAs and three other white employees who were promoted within three months of becoming EXAs. Shortly after Anderson and the other named plaintiffs filed Charges of Discrimination with the EEOC in late 2004, Walgreens promoted Anderson to Store Manager without explanation.

102. Anderson is an accomplished and dedicated worker who was hindered in his promotional opportunity to become Store Manager and has been discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income stores as described in paragraphs 23, 26, 29 and 31(f). He has received lower bonuses and been required to perform more non-management tasks in understaffed stores as described in paragraphs 30 and 31(a).

103. As a result of the aforesaid conduct, Anderson has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**K. Facts Material to Plaintiff Traci Dansberry**

104. Traci Dansberry is an African-American female hired as a Student Pharmacist by Walgreens in June 1998 in St. Charles, Missouri. She became a Staff Pharmacist on the midnight shift in June 1999, after graduating from pharmacy school. She became a Pharmacy Manager in May 2001. Throughout her employment as a Pharmacy Manager with Walgreens, Dansberry was assigned predominantly to African-American and/or lower income stores. The work environment at these stores made Dansberry's employment more difficult and stressful.

105. While working as a Staff Pharmacist on the midnight shift, Dansberry told her Pharmacy Supervisor, Chris Wilburn, that she was interested in being promoted to Pharmacy Manager. Wilburn told her she could not become a Pharmacy Manager until she worked the day shift. Yet, shortly after being told she had to work days to be promoted, Walgreens promoted a white male whom had worked only the midnight shift. Dansberry continued to express her desire to become a Pharmacy Manager and was continually told that she would be kept in mind. Yet, during this time white pharmacy employees filled numerous Pharmacy Manager openings without Dansberry even being notified about the open positions.

106. Because of the continuing discrimination in promotional opportunities and segregation of African-American pharmacy employees, Dansberry and other African-American pharmacists complained in writing to Nimesh Javeri, Regional Pharmacy Director, and Jerome Karlin, Senior Vice President of Operations. Thereafter, Mr. Hunt telephoned Dansberry and told her that a Pharmacy Manager position would be opening in East St. Louis, Illinois. This store was 35 miles away from Dansberry's residence, was a African-American and/or lower income store, and was located in a different state which would have required her to have a different license. Fortunately, Dansberry had already completed the necessary steps to obtain an Illinois license and took the position as it had become apparent to her that there would be no other options open to her for Pharmacy Manager.

107. Also in response to the complaint, one other African-American female pharmacist was promoted to the Pharmacy Manager position and one African-American female was

promoted to Pharmacy Supervisor but both were still segregated to African-American and/or lower income stores. After the promotions of Dansberry and these two other African-American pharmacists, less qualified white employees continued to be awarded promotional opportunities over more qualified African-American pharmacists.

108. While working as a Pharmacy Manager in the East St. Louis, Illinois store, Dansberry became aware of an opening for a Pharmacy Supervisor and expressed her desire to be promoted to Pharmacy Supervisor to Mr. Hunt. After learning that interviews were being conducted for this position and realizing she had not heard anything further from Hunt about her interest in the position, Dansberry called Nimesh Javeri to express her interest. Dansberry was never promoted to the Pharmacy Supervisor position.

109. Subsequent to becoming a Pharmacy Manager in East St. Louis, Illinois, Dansberry tried on numerous occasions to be transferred to a pharmacy nearer to her home where the stores were located in more suburban and higher income areas. Despite her efforts, Dansberry was never transferred to a store near her home and instead was transferred to other stores located in African-American and/or lower income areas located a significant distance from her residence. Dansberry resigned her employment with Walgreens to pursue better advancement opportunities in a workplace free from racial discrimination.

110. Dansberry was an accomplished and dedicated worker who had been denied promotional opportunity to pharmacy supervisor and was discriminated against by Walgreens' pattern and practice of steering African-American pharmacy employees to African-American and/or low income as described in paragraphs 22 and 29. She received lower bonuses as a result of the discriminatory behavior as described in paragraphs 27, 29 and 30.

111. As a result of the aforesaid conduct, Dansberry has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**L. Facts Material to Plaintiff Carlos Zimmerman**

112. Carlos Zimmerman is an African-American male hired as a Staff Pharmacist by Walgreens. From September 6, 1996 to December 1998 he worked in Jacksonville, Florida, at store numbers 3382 and 3746. From December 1998 to late 2005, Zimmerman worked in the Tallahassee, Florida market primarily at store number 3430. He is currently working at store number 6206.

113. In 2003, Zimmerman became aware of two openings for Pharmacy Manager in the Tallahassee market and began completing the on line Pharmacy Manager tests in preparation for applying for these positions. However, prior to applying for the Pharmacy Manager positions, Zimmerman's Pharmacy Supervisor, Jim Goodale, told him he could not apply because he worked the night shift and needed to work the day shift for a year before being eligible for the Pharmacy Manager. At that time, Zimmerman had worked the day shift for more than two years while employed as a Walgreens' Staff Pharmacist in Jacksonville, Florida. Both of the Pharmacy Manager positions were given to white employees or either equal or less qualification than Zimmerman. The instruction that he work the day shift prior to applying was a pretext for intentional racial discrimination.

114. Zimmerman continued to express his desire to become a Pharmacy Manager up to and including 2005, when Pharmacy Manager positions became available, yet the prohibition from applying for the position remained in place. Each promotional opportunity was given to Pharmacists who were not members of the class and who had with fewer qualifications than Zimmerman including white pharmacy graduates from the University of Florida School of Pharmacy who were placed into Pharmacy Manager positions immediately after graduating.

115. Realizing that his ability to advance with the company as a Pharmacist was hampered by his race, Zimmerman completed the necessary requirements to become an EXA in the retail career path hoping to be able to find a means in which to advance with the company. Having been precluded from becoming a Pharmacy Manager in Tallahassee, he applied for and

was granted a transfer to the Atlanta, Georgia market hoping for a better chance for race-neutral promotion practices to Pharmacy Manager.

116. Zimmerman is an accomplished and dedicated worker who has been denied promotion to Pharmacy Manager and discriminated against by Walgreens' pattern and practice of failing to promote African-American Pharmacists as described in paragraph 27. He received lower bonuses as described in paragraph 30.

117. As a result of the aforesaid conduct, Zimmerman has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**M. Facts Material to Plaintiff Chris Dargin**

118. Chris Dargin is an African-American male hired as a Staff Pharmacist by Walgreens. From January 20, 1993 to June 1996 he worked in Indianapolis, Indiana. From June 1996 until his resignation on February 25, 2005, Dargin worked in the Dallas/Fort Worth, Texas market. He was promoted to Pharmacy Manager in October 1994. Dargin resigned his employment with Walgreens to pursue better advancement opportunities and a workplace free from racial discrimination with another independent pharmacy.

119. During Dargin's employment, he repeatedly applied for promotions to Pharmacy Supervisor. Despite being qualified for the position, he was rejected each time in favor of less qualified individuals. Dargin completed every requirement for promotion to Pharmacy Supervisor, including participation in the Emerging Leaders Program. Dargin was continually given changing reasons why he was denied the position of Pharmacy Supervisor. These reasons were false and a pretext for discrimination. On information and belief, African-American class members are rarely selected for Pharmacy Supervisor or above.

120. Also during Dargin's employment with Walgreens he repeatedly applied for corporate pharmacy positions including Managed Care Coordinator, Specialty Clinical Pharmacist and Manager, Medication Use Evaluation among others. Again, despite being highly

qualified for these positions, he was rejected each time. On information and belief, African-American class members are rarely selected for corporate pharmacy positions.

121. Dargin was an accomplished and dedicated worker who was denied promotion to Pharmacy Supervisor and corporate pharmacy positions as described in paragraph 28 and was discriminated against by Walgreens' pattern and practice of steering African-American employees to African-American and/or lower income as described in paragraphs 23 and 29. He received lower bonuses as described in paragraph 30.

122. As a result of the aforesaid conduct, Dargin has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

**N. Facts Material to Plaintiff Kimberly Wafford**

123. Kimberly Wafford is an African-American female. She graduated from Purdue University in 2004 with a degree in chemical engineering. She wanted to work for Walgreens because she felt there would be opportunity for advancement and found the benefits package attractive.

124. She first applied for the MGT position in August 2004. She completed the application online from her home. She was not hired as an MGT because of her race.

125. Wafford was offered a position as a Photo Technician. Though she was disappointed that she was not hired as an MGT, she decided to accept the job. Even though it was not her choice, she reasoned that it would provide her with an opportunity to demonstrate her managerial skills to Walgreens.

126. Wafford began her employment as a Photo Technician with Walgreens on August 24, 2004 at store number 3045.

127. She commenced her first internal online application for management in approximately October 2004. Her Store Manager (white male) knew of her interest in management and approached her to discuss her interest. He said that he would like for her to take the job of SIMS Coordinator or Head Photo Specialist before going into management. He



said taking either position would allow her work performance to be more easily measured and would also give the District Manager (white female) a chance to see her work.

128. Wafford was interviewed for a SIMS Coordinator and accepted the position in early January 2005.

129. Around March/April 2005, Wafford completed her internal online application for MGT when one of the Assistant Managers at her store, transferred to another location. Wafford told her Store Manager, that she had completed the application.

130. When Wafford didn't hear anything after a few months, she wrote (e-mailed) her District Manager regarding the status of her application. District Manager Thompson stated that she would be in touch about a possible interview. Before Wafford was contacted about her application or scheduled for an interview, she learned that another white SIMS Coordinator without a college degree had been promoted to MGT.

131. In early October 2005, Store Manager Paul Stark interviewed Wafford and told Wafford he could see her moving up to a Store Manager position within three to five years. He also made the point that Walgreens was focusing on hiring people with college degrees for management positions. He said that many district employees would be retiring soon and the company would need good people to fill the vacancies. He told her that he would be recommending her for a second interview and asked her to call or e-mail him if she didn't hear anything in a couple of weeks.

132. When Wafford did not hear anything by November 3, 2005, she e-mailed Stark to ask if he knew when the next interview would be taking place. He replied that he had talked with District Manager Thompson and Wafford's Store Manager recently and would be back in touch in a few days.

133. Ms. Wafford did not hear anything until she e-mailed Stark again in January, 2006. He did not reply. However, on January 19, 2006, Robinson told Wafford that the company was not interested in promoting her at that time. He also stated that the company was not currently hiring many, or any, MGTs. In 2006, the MGT position in Wafford's store

became vacant. At first several white persons filled in, including one employee who had not been with the company long, lacked a college degree, and was promoted to MGT without an interview. The permanent replacement for MGT was transferred in from another store and does not have a college degree.

134. Walgreens' rejection of Wafford for promotion to MGT was on account of her race, and the reasons she was proffered were a pretext for this discrimination.

135. As a result of the aforesaid conduct, Wafford has suffered past and future lost wages and related employee benefits, and emotional pain and suffering, and humiliation.

## **VII. FIRST CLAIM FOR RELIEF**

### **INTENTIONAL RACE DISCRIMINATION UNDER 42 U.S.C. § 1981**

136. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 135 above as if set forth herein.

137. All the Plaintiffs and members of the class are African-American.

138. Walgreens has intentionally discriminated against Plaintiffs and the class on the basis of their race as set forth above in violation of Section 1981.

139. Walgreens intentionally has allowed its managers to make hiring, promotion, training, compensation, and store assignment decisions in its Retail and Pharmacy Career Paths in a discriminatory manner and based on highly subjective criteria, and without specific training in equal employment opportunity practices or oversight. Such subjective decision-making predictably and actually results in adverse impact on African-American employees in the Retail and Pharmacy Career Paths.

140. Plaintiffs and the class have suffered, are now suffering, and will continue to suffer irreparable injury from Walgreens' policies, practices and procedures as set forth in this Complaint.

141. Plaintiffs and the class have suffered substantial economic loss of compensation and benefits and emotional pain and suffering, and humiliation as a result of Walgreens' intentional discrimination.

142. Walgreens' actions were intentional and in willful, gross or reckless disregard of the Plaintiffs' and class rights under Section 1981.

143. As a direct and proximate result of Walgreens' intentional discrimination against them, Plaintiffs and the class are entitled to the relief set forth in the Prayer below.

**VIII. SECOND CLAIM FOR RELIEF**  
**DISPARATE TREATMENT UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

Plaintiffs Tucker, Miller, Haney, Bradley, M. Jackson, A. Jackson, Strickland, Green, Riddle, Dansberry, Anderson, Zimmerman, and Dargin allege disparate treatment under Title VII.

144. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 143 above as if set forth herein.

145. Walgreens has intentionally discriminated against Plaintiffs and the class in violation of Title VII by (1) denying African-American employees promotions in the Retail and Pharmacy Career Paths and corporate/district jobs on the basis of race; (2) assigning African-American employees in the Retail Career Path to African-American and/or lower income stores on the basis of race; (3) assigning African-American employees in the Pharmacy Career Path to African-American, and/or lower income stores on the basis of race; (4) assigning African-American managers in the Retail and Pharmacy Career Paths to stores with characteristics such as low bonus, low sales and high shrink which adversely affect their opportunity to earn bonus compensation; (5) denying African-Americans seeking promotion into management positions in the Retail and Pharmacy Career Paths equal training opportunities on the basis of race; (6) denying African-Americans seeking management positions in the Retail and Pharmacy Career

Paths equal hiring opportunities on the basis of race; and (7) denying African-American employees equal terms and conditions of employment.

146. As a result of the violation of the Title VII rights of Plaintiffs and the class, Plaintiffs and members of the class are entitled to equitable and injunctive relief, including “rightful place” and “make whole” remedies and equitable monetary relief, compensatory and punitive damages to remedy and compensate for the effects of Defendant’s unlawful actions.

**IX. THIRD CLAIM FOR RELIEF AND DISPARATE  
IMPACT UNDER TITLE VII**

Plaintiffs Tucker, Miller, Haney, Bradley, M. Jackson, A. Jackson, Strickland, Green, Riddle, Dansberry, Anderson, Zimmerman, and Dargin allege illegal disparate impact under Title VII.

147. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 146 above as if set forth herein.

148. Walgreens’ policies and practices for determining promotions and job transfers in the Retail and Pharmacy Career Paths have a disparate racial impact on African-American employees and are neither job-related nor consistent with business necessity, and therefore violate the rights of Plaintiffs and members of the class under Title VII.

149. Walgreens’ policies and practices for determining store assignments in its Retail and Pharmacy Career Paths have a disparate racial impact on African-American employees and are neither job-related nor consistent with business necessity, and therefore violate the rights of plaintiffs and members of the class under Title VII.

150. Walgreens’ policies and practices for determining compensation for managers in its Retail and Pharmacy Career Paths have a disparate racial impact on African-American

employees and are neither job-related nor consistent with business necessity, and therefore violate the rights of Plaintiffs and members of the class under Title VII.

151. Walgreens' policies and practices for determining training opportunities for those seeking management positions in its Retail and Pharmacy Career Paths have a disparate racial impact on African-American employees and are neither job-related nor consistent with business necessity, and therefore violate the rights of Plaintiffs and members of the class under Title VII.

152. As a result of the violation of the Title VII rights of Plaintiffs and the class, Plaintiffs and members of the class are entitled to equitable and injunctive relief, including "rightful place" and "make whole" remedies and equitable monetary relief, to remedy and compensate for the effects of Defendant's unlawful actions.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

A. That the Court certify this case as a class action as pleaded, appointing the named Plaintiffs as class representatives and their attorneys, Foland, Wickens, Eisfelder, Roper & Hofer, P.C.; Goldstein, Demchak, Baller, Borgen & Dardarian; and Spriggs Law Firm, as class counsel;

B. That the Court enter judgment for Plaintiffs and members of the class against Walgreens on the claims made in the First, Second, and Third Claims for Relief stated above;

C. That the Court enter an order declaring that the acts and practices of Walgreens and their officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with them are in violation of the law, specifically Section 1981 and Title VII, and that they be preliminarily and permanently enjoined from engaging in each of the unlawful practices, policies, customs and usages set forth herein;

D. That the Court enter an order to institute and carry out policies, practices and programs which effectively and affirmatively provide equal employment opportunities for African-Americans and eradicate the vestiges and effects of its past and present unlawful employment

practices, and grant such injunctive and equitable relief as is necessary to cure the effects of Walgreens' unlawful practices and to prevent future unlawful discrimination;

E. That the Court award Plaintiffs and the class punitive damages;

F. That the Court enter judgment awarding Plaintiffs and the class lost back pay, front pay and related employee benefits that they would have earned but for Walgreens' discrimination;

G. That the Court order individual injunctive relief for the Plaintiffs and the class including promotion or other placement according to proof;

H. That the Court order individual compensatory damages to Plaintiffs and the class according to proof;

I. That the Court enter an award to Plaintiffs of reasonable attorneys' fees and costs incurred in this action and pre-judgment interest; and

J. That the Court award such other and further relief as this Court deems just and appropriate.

**JURY DEMAND**

Plaintiffs demand trial by jury of all counts alleged in this Complaint triable by jury.

Dated: September \_\_\_, 2006

Respectfully submitted,

/s/ Tiffany B. Klosener

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on the \_\_\_ day of September, 2006, the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, who will send notification of such filing to the following CM/ECF participants:

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