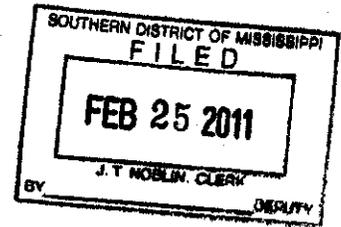


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION



VERONICA COOK, YOLANDA PHELPS
CHARLYN DOZIER, AND SELEATHA MCGEE,
ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY SITUATED

PLAINTIFFS

V.

CIVIL ACTION NO: 2:11CV41KS-MTP

HOWARD INDUSTRIES, INC.

DEFENDANT

FIRST AMENDED COMPLAINT
(Jury Trial Demanded)

COME NOW plaintiffs, individually and on behalf of those similarly situated, by and through their counsel, and bring this cause of action for racial discrimination in violation of 42 U.S.C. § 1981. Plaintiffs, on behalf of themselves and the proposed class, seek a preliminary and permanent injunction as well as compensatory and punitive damages in an amount to be proven at trial. In support of their claims, Plaintiffs hereby allege the following:

JURISDICTION AND VENUE

1.

This Court has jurisdiction of the action under 28 U.S.C. §§ 1331 and 1343. This action arises under federal law, 42 U.S.C. § 1981.

2.

This Court has personal jurisdiction over the parties.

3.

Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391 since all, or at least a substantial part, of the events giving rise to the plaintiffs' claims occurred in the Hattiesburg Division of the Southern District of Mississippi.

PARTIES

4.

The named Plaintiffs herein all are non-Latino, all applied for employment at Howard Industries' Laurel, Mississippi transformer manufacturing plant during the relevant time period, and all were not hired by Howard Industries due to their race. The individual plaintiffs are:

1. Yolanda Phelps is an adult African-American resident of Jones County, Mississippi.
2. Veronica Cook is an adult African-American resident of Jasper County, Mississippi.
3. Seleatha McGee is an adult African-American resident of Jones County, Mississippi.
4. Charlyn Dozier is an adult African-American resident of Erie County, Mississippi.

5.

The defendant, Howard Industries, Inc. ("Howard Industries"), is a Mississippi corporation with its principal place of business in Laurel, Mississippi. Howard Industries can be served with process through its registered agent, Richard L. Yoder, at 415 N. Magnolia Street, Suite 400, Laurel, Mississippi 39441.

6.

During the relevant times set forth herein, Howard Industries owned and operated a large transformer manufacturing plant in Laurel, Mississippi. Howard Industries hired hundreds of employees to work in its Laurel, Mississippi transformer plant, and Howard Industries devised, implemented, carried out, and controlled the discriminatory hiring policies and practices discussed herein. Howard Industries is responsible for the actions, omissions, and admissions of its employees and agents.

CLASS ACTION ALLEGATIONS

7.

Plaintiffs bring this action on their own behalf and on behalf of a Class of persons pursuant to Fed. R. Civ. Pro. 23(b)(2) and 23(b)(3). The named Plaintiffs bring this action on behalf of the following class: All “non-Latino” persons who applied for employment at Howard Industries’ transformer manufacturing plant in Laurel, Mississippi during the relevant time period and were refused employment by Howard Industries. As used herein, “Non-Latino” means persons of the Caucasian race and persons of the African-American race who are not of Latino or Hispanic descent.

8.

The above-described individuals constitute the “Class” for the purposes of this action. Plaintiff reserve the right to amend this class identification.

9.

Plaintiffs seek to maintain this class, pursuant to Rules 23(b)(2) and 23(b)(3), on the issue of whether the defendants engaged in unlawful discrimination in its hiring practices and the amount of damages owed to Plaintiffs and members of the Class as a result of such unlawful discrimination.

10.

The Class is so numerous that joinder of all its members is impracticable. The defendants received hundreds of employment applications each year at its Laurel, Mississippi transformer manufacturing plant. Plaintiffs do not know the identity of the Class members or the precise number of rejected applicants but can ascertain this information from the defendant's records.

11.

There exists a common question of law and fact as to all members of the Class that predominates over any questions solely affecting members of the Class, to wit, whether the defendant violated 42 U.S.C. § 1981 by discriminating against certain job applicants on the basis of race.

12.

Plaintiffs' claims are typical of the claims of the members of the Class, and they are adequate representatives of the Class. Plaintiffs and members of the Class have sustained damages because of the defendant's unlawful activities alleged herein. Plaintiffs have retained counsel competent and experienced in race discrimination litigation and intend to prosecute this action vigorously. Plaintiffs will fairly and adequately protect the interests of the Class.

13.

A class action is superior to other available means for the fair and efficient adjudication of

the controversy.

FACTS

14.

At all times material to this action, Howard Industries was a leading manufacturer of electrical transmission and distribution equipment with a transformer manufacturing facility in Laurel, Mississippi.

15.

As early as August 2000, Howard Industries devised, implemented, carried out, and controlled an employment policy whereby Latino job applicants, all or nearly all being undocumented Mexican immigrants, were given preferential treatment in hiring at Howard Industries' transformer manufacturing facility in Laurel, Mississippi. Pursuant to this policy, non-Latino applicants for employment were intentionally and routinely refused employment at Howard Industries' Laurel facility due to their race.

16.

In furtherance of this discriminatory policy, and as evidence of Howard Industries' discriminatory preference for Latino applicants and employees, Howard Industries accepted false identity documents from undocumented Latino applicants and employees, concealed the fact that hundreds of its employees were undocumented Latino immigrants, hired undocumented Latino immigrants without regard for the fact that they did not have valid Social Security numbers, instructed undocumented Latino applicants and employees regarding how to obtain false identity documents, and would warn undocumented Latino employees if federal immigration officials were expected to conduct an inspection at the Laurel facility.

17.

Humberto Gonzalez, Howard Industries' Human Resource Manager during the relevant time period, has been convicted of federal criminal charges arising from his participation in the scheme described herein. Howard Industries has been convicted of conspiracy to violate immigration laws arising out of its hiring and retention of undocumented employees.

18.

During the relevant time period, Howard Industries refused to hire non-Latino job applicants, or considered their applications with disfavor, due to their race.

19.

There existed no compelling legal reason to justify Howard Industries' discriminatory preference for Latino applicants and employees.

20.

Beginning in July of 2006 and continuing through July of 2008, Plaintiff Yolanda Phelps repeatedly applied for employment at Howard Industries' transformer manufacturing plant in Laurel. Yolanda Phelps was qualified to be hired inasmuch as she passed all examinations administered by Howard. Yolanda Phelps also passed the drug tests. Yolanda Phelps was not offered employment due to the fact that she was not Latino. Howard Industries concealed from Yolanda Phelps the fact that she was not hired due to her race. Howard Industries hired Yolanda Phelps on August 28, 2008, three days after its Laurel facility was raided and immigration officials found approximately 592 undocumented employees. As a result of Defendant's conduct, Plaintiff has suffered economic loss, humiliation, embarrassment, physical and emotional distress, and mental anguish.

21.

Plaintiff Veronica Cook applied for employment at Howard Industries' transformer

manufacturing plant in Laurel in 2006. Veronica Cook was qualified to be hired was qualified to be hired inasmuch as she passed all examinations administered by Howard. Veronica Cook also passed the drug tests. Veronica Cook was not offered employment due to the fact that she was not Latino. Howard Industries concealed from Veronica Cook the fact that she was not hired due to her race. Howard Industries hired Veronica Cook after its Laurel facility was raided and immigration officials found approximately 592 undocumented employees. As a result of Defendant's conduct, Plaintiff has suffered economic loss, humiliation, embarrassment, physical and emotional distress, and mental anguish.

22.

Beginning in July of 2006 and continuing through 2008, Plaintiff Seleatha McGee repeatedly applied for employment at Howard Industries' transformer manufacturing plant in Laurel. Seleatha McGee was qualified to be hired was qualified to be hired inasmuch as she passed all examinations administered by Howard. Seleatha McGee also passed the drug tests. Seleatha McGee was not offered employment due to the fact that she was not Latino. Howard Industries concealed from Seleatha McGee the fact that she was not hired due to her race. Howard Industries hired Seleatha McGee in October of 2008, nearly three months after its Laurel facility was raided and immigration officials found approximately 592 undocumented employees. As a result of Defendant's conduct, Plaintiff has suffered economic loss, humiliation, embarrassment, physical and emotional distress, and mental anguish.

23.

Plaintiff Charlyn Dozier applied for employment at Howard Industries' transformer manufacturing plant in Laurel every three to six months beginning in 2002 and continuing through

2008. Charlyn Dozier was qualified to be hired inasmuch as she passed all examinations administered by Howard. Charlyn Dozier also passed the drug tests. Charlyn Dozier was not offered employment due to the fact that she was not Latino. Howard Industries concealed from Charlyn Dozier the fact that she was not hired due to her race. Howard Industries hired Charlyn Dozier after its Laurel facility was raided and immigration officials found approximately 592 undocumented employees. As a result of Defendant's conduct, Plaintiff has suffered economic loss, humiliation, embarrassment, physical and emotional distress, and mental anguish.

VIOLATION OF 42 U.S.C. § 1981

25.

Plaintiffs reallege and incorporate by reference paragraphs 1-24, above, as if fully set forth herein.

26.

This claim is brought on behalf of Plaintiffs and all member of the Class Plaintiffs represent.

27.

By the actions described above, Defendant, on the basis of race and national origin, has denied Plaintiffs and members of the Class employment, and thereby the right to make and enforce contracts, in violation of 42 U.S.C. § 1981.

DAMAGES AND RELIEF

28.

Plaintiffs reallege and incorporate by reference paragraphs 1-27, above, as if fully set forth herein.

WHEREFORE, Plaintiffs, on behalf of Plaintiffs and Class members, pray that the Court grant them relief as follows:

- certify this action as a class action under Rule 23 of the Federal Rules of Civil Procedure;
- enter a preliminary and permanent injunction against Defendant and its directors, officers, owners, agents, successors and representatives, and any and all persons acting in concert with them, from engaging in unlawful practices, policies, customs and usages set forth herein;
- award compensatory damages in an amount that would fully compensate Plaintiffs and Class members for the economic loss, humiliation, embarrassment, physical and emotional distress, and mental anguish caused by Defendant's violation of the law alleged in this Complaint;
- award punitive damages to Plaintiffs and Class members in an amount that would punish Defendant for the willful, wanton, and reckless misconduct alleged in this Complaint and that would effectively deter Defendant from future discriminatory behavior;

- award Plaintiffs and Class members their reasonable attorneys' fees, expert fees, and costs; and
- award any other relief the Court deems just and equitable.

Respectfully submitted,

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