

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

EMPLOYEES COMMITTED FOR  
JUSTICE, *et al.*,

Plaintiffs,

v.

EASTMAN KODAK COMPANY,

Defendant.

CIVIL ACTION NO.: 6:04-cv-06098-CJS

**THIRD AMENDED COMPLAINT**

**[CLASS ACTION]**

**JURY TRIAL DEMANDED**

## I. INTRODUCTION

Plaintiff Employees Committed for Justice (the “ECJ”), an organization of past and current African American employees of Defendant Eastman Kodak Company (“Kodak”), and individual Plaintiffs Gladys Alston, Travis Curry, Courtney Davis, Cynthia Gayden, Robert Gibson, Jannie Nesmith, Noralean Pringle, Carrie Rice, Maria Scott, Olin Singletary, Victor Smith, and Edna Williams (the “Individual Plaintiffs”) (the ECJ and the Individual Plaintiffs together referenced as the “Plaintiffs”), individually and on behalf of the class they seek to represent, by and through their counsel of record, bring this Third Amended Class Action Complaint (the “Complaint”), against Kodak, and allege upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon the investigation made by and through their attorneys, as follows:

## II. NATURE OF THE ACTION

1. Plaintiffs bring this action as representatives of a class of all past, current and future African American employees of Kodak (the “Class”). The ECJ brings this action under the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“Section 1981”), for class-wide injunctive relief, and the Individual Plaintiffs bring this action under Section 1981 for class-wide injunctive relief, compensatory damages and punitive damages arising from the terms and conditions of employment imposed by Kodak on the Class.

2. Individual Plaintiffs Gladys Alston, Courtney Davis, Robert Gibson, Carrie Rice, Maria Scott and Olin Singletary, who have each received Right To Sue Letters from the United States Equal Employment Opportunity Commission (the “EEOC”), also assert claims against Kodak

for class-wide injunctive relief, compensatory damages and punitive damages on behalf of themselves and the Class under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981(a), and the New York Human Rights Law, 15 N.Y. Exec. Law §§ 291 *et seq.*

3. Kodak has engaged in an ongoing pattern and practice of discrimination against its African American employees. Specifically, as set forth more fully herein:

a. *Discrimination in Compensation.* Beginning at least as early as 1990, weekly pay rates for Caucasian employees have been consistently higher than weekly pay rates for African American employees. The net advantage for Caucasian employees, according to the EEOC, is approximately one additional wage grade. In addition, Kodak's discrimination in pay has diminished the pension benefits available to Class members.

b. *Discrimination in Promotions.* African American employees are promoted at a significantly lower rate than Caucasian employees. Kodak's failure to promote African American employees to higher levels results in a "Glass Ceiling" preventing African Americans from achieving upward advancement to senior levels at Kodak.

c. *Discrimination in Wage Classifications and Job Assignments.* Kodak assigns higher wage grades and step increases to Caucasian employees than it does to African American employees. Kodak also assigns better job assignments to Caucasian employees, thus allowing these employees to move ahead and obtain promotions while hindering the advancement of African American employees. Further, Kodak assigns the less desirable, "dirty," more dangerous jobs to its African American employees, which also limits their advancement opportunities.

d. *Harassment/Hostile Work Environment.* Kodak maintains and/or has failed

to control a continuing pattern and practice of harassment of African American employees by Caucasian employees, resulting in a hostile work environment for Kodak's African American employees.

e. *Retaliation.* When African American employees of Kodak complain about the above practices and bring them to the attention of management, they are subjected to retaliation.

4. The racial disparities in compensation, promotions, job classifications and job assignments result from, *inter alia*, Kodak's company-wide policy of delegating discretionary authority to managers and department supervisors to make these employment decisions. Kodak's managers and department supervisors exercise their subjective discretion in a racially discriminatory manner that has a disparate impact on African American employees. Kodak is aware of this practice as it has existed over the years but has failed to remedy its effects. Further, management has not put in place meaningful oversight procedures to ensure that instances of racial discrimination are appropriately addressed.

5. This discrimination represents an ongoing company-wide pattern and practice, rather than a series of isolated incidents. Kodak's written and unwritten policies and practices subject the Individual Plaintiffs and Class members who are currently employed by Kodak to ongoing discrimination and disparate treatment based on their race. Kodak's actions constitute a continuing violation of the rights of Plaintiffs and the Class.

6. Absent injunctive relief, Kodak's unlawful practices will continue, to the detriment of the Class. Broad, class-wide injunctive and declaratory relief is necessary to redress Kodak's unlawful conduct.

### III. PARTIES

7. Plaintiff ECJ is an unincorporated association consisting of approximately one thousand African American current and former employees of Kodak. ECJ was founded in 2002 to bring an end to Kodak's pattern and practice of racial discrimination and the existence at Kodak of a racially hostile work environment. ECJ is governed by an Executive Committee elected by its membership.

8. To pursue its goals and assist its members, ECJ has undertaken the following:

- a. attempting to negotiate, through its counsel, a remedy to the ongoing discrimination at Kodak;
  - b. providing information to members regarding its efforts to remedy the racial discrimination;
  - c. holding monthly meetings for its membership;
  - d. organizing informational picketing outside of Kodak's Rochester, New York, facilities regarding the discriminatory practices and environment at Kodak;
  - e. distributing information regarding discrimination at Kodak;
  - f. engaging in public information activities regarding discrimination at Kodak;
- and
- g. retaining counsel.

9. In connection with these activities, ECJ has expended funds contributed by its members. Its Executive Committee and members have expended time and energy to pursue the goals of ECJ.

10. Plaintiff Gladys Alston is an African American female citizen and resident of the

State of New York, who has been injured by the acts and practices described herein. She is a former employee of Kodak. Ms. Alston is a member and Executive Secretary of the ECJ.

11. Plaintiff Travis Curry is an African American male citizen and resident of the State of Texas, who has been injured by the acts and practices described herein. He is a former employee of Kodak.

12. Plaintiff Courtney Davis is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former employee of Kodak.

13. Plaintiff Cynthia Gayden is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of Kodak. Ms. Gayden is a member of the ECJ.

14. Plaintiff Robert Gibson is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of Kodak. Mr. Gibson is a member of the ECJ.

15. Plaintiff Jannie Nesmith is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of Kodak. Ms. Nesmith is a member of the ECJ.

16. Plaintiff Noralean Pringle is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of Kodak. Ms. Pringle is a member of the ECJ.

17. Plaintiff Carrie Rice is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a former

employee of Kodak. Ms. Rice is a member of the ECJ.

18. Plaintiff Maria Scott is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of Kodak. Ms. Scott is a member of the ECJ and a member of the ECJ's Executive Committee.

19. Plaintiff Olin Singletary is an African American male citizen and resident of the State of New York, who has been injured by the acts and practices described herein. He is a former employee of Kodak. Mr. Singletary is a member of the ECJ and a member of the ECJ's Executive Committee.

20. Plaintiff Victor Smith is an African American male citizen and resident of the State of Texas, who has been injured by the acts and practices described herein. He is a current employee of Kodak.

21. Plaintiff Edna Williams is an African American female citizen and resident of the State of New York, who has been injured by the acts and practices described herein. She is a current employee of Kodak. Ms. Williams is a member of the ECJ.

22. Defendant Eastman Kodak Company ("Kodak"), is incorporated under the laws of the State of New Jersey, with its corporate headquarters located in this District at 343 State Street, Rochester, New York 14650. Founded in 1880, Kodak reported world-wide sales totaling \$12.8 billion in 2002 and \$13.3 billion in 2003. Kodak employs approximately 64,000 full time equivalent people, of whom approximately 35,400 full time equivalents are employed in the United States. According to Kodak, the actual number of employees may be even greater because some individuals work part-time. Most of Kodak's employees in the United States work at its facilities in Rochester,

New York.

#### **IV. JURISDICTION AND VENUE**

23. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 2000e-5. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over claims under the New York Human Rights Law, 15. N.Y. Exec. Law §§ 291 et seq.

24. Venue is proper in this District pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1391(b) and (c). The unlawful employment practices alleged herein were committed in this District, and the employment records relevant to such practices are maintained and administered in this District. Kodak has its corporate headquarters, can be found, and conducts business, in the Western District of New York, and acts and omissions giving rise to this action occurred in the Western District of New York.

#### **V. CLASS ACTION ALLEGATIONS**

25. Plaintiffs bring this action individually, and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all past, present and future African American employees of Kodak (the "Class"). The Individual Plaintiffs are members of the Class they seek to represent.

26. The members of the Class are so numerous that joinder of all members is impracticable. It is believed by Plaintiffs that the Class numbers in the thousands.

27. There are questions of law or fact common to the Class, including, without limitation:

a. whether Kodak's common operating practices and procedures since at least 1990 discriminate against African American employees;

b. whether Kodak's policies have an adverse impact upon the Class, and, if so, whether this impact is justified by business necessity;



c. whether Kodak's policy or practice of granting discretionary authority to its managers and supervisors to make decisions concerning compensation, promotions, job evaluations, job classifications and job assignments negatively affects Class members;

d. whether Kodak has a policy or practice of paying African American employees less than Caucasian employees for the same work;

e. whether Kodak has a policy or practice of grooming Caucasian employees for advancement, while denying these same opportunities to African American employees;

f. whether Kodak has a policy or practice of failing to promote qualified African American employees to higher positions within the Company;

g. whether Kodak has a policy or practice of assigning lesser job classifications or wage grades to African American employees than are assigned to similarly situated Caucasian employees;

h. whether Kodak has a policy or practice of making less desirable work assignments to African American employees than to Caucasian employees;

i. whether African American employees at Kodak are subject to a pattern and practice of racial harassment;

j. whether Kodak's conduct alleged herein constitutes a hostile work environment for the Class;

k. whether Kodak has a policy and practice of retaliating against Class members who object to or who oppose Kodak's unlawful employment practices;

l. whether equitable relief is warranted and the nature of such relief;

m. whether class-wide compensatory damages are warranted; and

n. whether Kodak's conduct warrants an award of punitive damages.

28. Plaintiffs' claims are typical of the claims of the members of the Class. The Individual Plaintiffs have been subjected to each form of the discriminatory common operating policies and practices and hostile work environment caused by Kodak. The policies and practices complained of in this Complaint affect the entire Class.

29. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no conflict with the Class members and have retained counsel who are experienced in class action litigation and cases of this nature.

30. This action is properly maintainable under Rules 23(b)(2) and/or (b)(3) because: a) Kodak has maintained an ongoing pattern and practice of discrimination on the basis of race and a hostile work environment, thereby acting or refusing to act on grounds generally applicable to the Class, making appropriate final injunctive or declaratory relief with respect to the Class as a whole; and b) questions of law and fact common to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this case.

## **VI. FACTUAL ALLEGATIONS**

31. Kodak employs uniform employment and personnel policies throughout the United States. Kodak's Human Resources administration is centralized at Kodak headquarters, in Rochester, New York. A Human Resources Director for each of Kodak's business units is located in New York, and any policies and/or practices regarding human resources or employee benefits emanate from Kodak headquarters to the company's other units nationwide.

32. In early 1998, a group of approximately 130 African American employees took their

complaints of discriminatory compensation to the President of the Rochester Chapter of the NAACP, the Reverend Norvel Goff, who communicated the complaints to Kodak.

33. Kodak then conducted an internal wage and promotion analysis, and as a result, *acknowledged a disparity in pay and promotions for African American employees in some departments*. Kodak announced that it would “pay \$10 million in back pay, as well as \$3 million in annual raises, to correct race and gender inequalities dating to 1996.” Pursuant to this program, which Kodak publicly called the “Do The Right Thing Award,” Kodak gave some African American employees in some departments an upgrade, along with a small lump-sum payment. Other awards were made to female employees to correct gender-based pay discrepancies.

34. Hundreds of Class members who had suffered racial discrimination were not included in the “Do The Right Thing Award,” and thus, complaints against Kodak by Class members continued to mount.

35. Some Class members filed class-wide Charges of Discrimination with the EEOC. For example, in October 1999, the EEOC’s Buffalo Local Office received multiple Charges of Discrimination against Kodak, alleging, *inter alia*, that African American employees: 1) received unequal pay; 2) were repeatedly denied promotions; 3) were given lesser job classifications; 4) were given less desirable work assignments; 5) were subjected to a pattern and practice of ongoing harassment and a hostile work environment; and 6) were retaliated against for complaining about these practices to management.

36. Separately, Kodak established an alternative dispute resolution mechanism through discussions with Norvel Goff to address the issues raised by the African American employees who submitted complaints to Goff. Specifically, Kodak called this program the “ADR Peer Review

Process” and Goff and Kodak agreed on African American employees to serve on five “Peer Review” panels (Panels A through E), who would hear the claims submitted through this process.

37. According to Kodak, the ADR Peer Review Process was created “for resolving conflict for individuals who have worked with Reverend Goff.” Kodak never publicized the process or made it available to all employees; rather, it was devised by Kodak to quietly deal with the claims of Goff’s constituents. As a result, it was available only to a subset of those who had been subjected to racial discrimination by Kodak.

38. Later, Dan Carp, the CEO of Kodak, would state openly that he would “always be eternally grateful to Rev. Goff for not having filed a lawsuit in 1997, because it would have brought the Company to its knees, because [Kodak was] so vulnerable.”

39. In fact, the ADR Peer Review Process did not effectively deal with or remedy Kodak’s illegal conduct, but instead, only served to exacerbate and perpetuate Kodak’s discriminatory policies and practices.

40. Complainants were told that a panel of their peers would hear their claims and reach a “final determination” that would be swiftly acted upon.

41. In training provided by Kodak in late 1999, panelists were told that they were empowered to recommend back pay, a wage increase, a promotion, and/or an improvement in work conditions. Kodak documents issued to the panelists indicated that the panels would issue a “final determination” after hearing a claimant’s case, and that Kodak would implement the decision. Indeed, the panels were advised that the only changes to their “final determination” that Kodak would make would be to increase the amount they awarded. Applicants were advised that the panel “listens, discusses and decides” their claim.

42. In reality, however, Kodak ignored the panels' "final determinations" and instead instituted whatever relief the Company deemed "appropriate." Kodak simply used the panelists to lend an air of credence to the process that convinced complainants to utilize it and that ultimately allowed Kodak to obtain liability releases from claimants for little in return.

43. The panels began hearing claims in November 1999, based on forms submitted to Kodak by Norvel Goff. Such forms were captioned: "NAACP Kodak Employee Questionnaire, Class Action/Multiple Action/Consolidated Actions (Confidential - Litigation Preparation)." Class members who filled out this form were thus led to believe that they were participating in a class action. Further, the complainants were solicited to make a contribution to a "litigation fund to help cover the costs and disbursements of a class action suit [at] \$300 or \$500." No information has ever been provided with respect to the disbursement of these funds. And, of course, no such suit was filed.

44. The panelists' "final determination" was submitted to a "Corporate Sponsor" who was a senior Kodak official. The "Sponsor" then contacted the complainant directly with a settlement offer for his or her case. The offer would include a "Settlement Agreement, Waiver and Release" that, among other things, contained a provision stating:

*Following a review by a peer Review Panel, Kodak has agreed to pay....*

\* \* \*

In return for this payment, Claimant agrees to release Kodak from, and waive all claims or causes of action relating to Claimant's employment or termination of Claimant's employment, including but not limited to any claims for discrimination that may exist under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the New York State Human Rights Law, or any other state or federal law

that may apply (“claims”). In addition, Claimant agrees that he or she will not sue Kodak or any current or former employee of Kodak upon such claims or based upon facts which Claimant raised or could have raised to support such claims. In the event Claimant brings a lawsuit or commences other legal proceedings, Claimant agrees to return all payments received pursuant to this agreement. By signing this agreement, Claimant does not waive claims that arose after [his/her] hearing with the Peer Review Panel on [DATE].

45. The panelists and the complainants did not know that the settlement offer made directly by Kodak did not in fact communicate the “final determination” of the Peer Review panels. Kodak failed to implement the “final determinations” of the panels.

46. The offers communicated by the “Corporate Sponsors,” including the language of the release, were carefully couched to lead the complainant to believe that the determination was the decision of the Peer Review panel rather than Kodak.

47. In inducing Class members to execute releases pursuant to the ADR Peer Review Process, Kodak made materially misleading representations as set forth above.

48. Subsequently, Norvel Goff and Joe Brown, the then Vice President of the Rochester Chapter of the NAACP, accepted employment and other gratuities from Kodak. Goff currently sits on Kodak’s “Diversity Board” and Brown is a Manager at the Company.

49. The entire ADR Peer Review Process represented a policy, practice or procedure that perpetuated and continued the pattern and practice of race discrimination in which Kodak engaged.

50. While Kodak engaged in the ADR Peer Review Process, the EEOC was busy conducting an extensive investigation of the Charges of Discrimination that were filed in October 1999 and thereafter. This investigation spanned almost four-and-a-half years, culminating in multiple Letters of Determination issued on February 6, 2004 and thereafter.

51. The EEOC concluded:
- a. “weekly pay rates for white employees were consistently higher, on average, than weekly pay rates for black employees”;
  - b. Kodak’s “Do The Right Thing Award” was implemented in an inadequate and inconsistent manner, and as a result, the mean pay differential between Kodak’s Caucasian and African American employees remained “statistically significant”;
  - c. “white employees, on average, occupy higher wage grades than black employees”; “[*t*he net advantage for white employees is approximately one additional wage grade”;
  - d. “black employees are promoted at a rate lower than white employees”;
  - e. the Do The Right Thing Award program did not rectify Kodak’s discriminatory conduct with respect to promotions;
  - f. with regard to job assignments, Caucasian employees at Kodak are consistently given higher-end job assignments that allowed them to move ahead, while African American employees are given less desirable, “dirty,” more dangerous tasks;
  - g. Kodak has maintained a work environment that is hostile to its African American employees;
  - h. prior to 1999, Kodak had no consistent policy to address harassment complaints, that often went unanswered;
  - i. Kodak’s ADR Peer Review Process failed to resolve the issues that were presented to it, because Kodak failed to take the appropriate remedial action recommended by the Panel, and consequently, “egregious incidents of harassment continue today”; and

j. Kodak engages in and tolerates a practice of retaliation against African American employees who participate in protected activities in attempting to enforce their rights under the federal civil rights laws, including African American employees who participated as panelists in the ADR Peer Review Process.

52. Kodak employees' compensation depends upon the wage grade to which they are assigned.

53. Within each wage grade there is a minimum, middle and maximum pay. Kodak's compensation department determines how much compensation will be allocated to a specific department and then informs that department's supervisor. The supervisors are then given discretion to decide how the money will be allocated between the employees of the department, *i.e.*, how much of a raise, if any, each employee will receive. Kodak policies and practices provide for a number of factors to be employed, including an employee's performance appraisals, attendance, training at Kodak and education. This compensation system allows excessive managerial discretion and assigns significant weight to Kodak's unreliable and discriminatory evaluation system, leading to discrimination on the basis of race.

54. Because Class members received less money within a specific wage grade, it was possible, and often did occur, that a Caucasian employee in a lower wage grade would be paid more than a similarly situated African American employee placed in a higher wage grade. The step amounts that Kodak employees are paid within a certain wage grade are the result of subjective decision-making by Kodak supervisors and managers, which policies negatively impact Class members.

55. As confirmed by the EEOC's investigation and determination, this system allowed



Kodak to perpetuate racially discriminatory practices in compensation, wage classifications, job assignments and promotions.

56. Kodak also knowingly permitted and failed to remedy persistent acts of harassment and retaliation against Class members, that have perpetuated an ongoing hostile environment.

57. Examples of harassment perpetrated against Class members include, without limitation:

a. Class Members subjected to racial epithets by Caucasian employees and supervisors -- the following are set forth as examples, and is far from an exhaustive list:

- i. racist jokes;
- ii. “Nigger” and many variations thereof, for example, a Class member being told that “Niggers are only good for cleaning floors and toilets”;
- iii. referring to African Americans and/or their children as “monkeys” or “porch monkeys”;
- iv. Class members being told that “Blacks shouldn’t get promoted”;
- v. a Class member being told that they were a “good black boy”;
- vi. a Class member being told that “You black people should start school earlier so white people can understand you better”;
- vii. a Class member being told, “What are you doing over here? Stay with your own kind”;
- viii. a Caucasian employee stating to other workers, “We better start to be careful on how we treat that nigger because one day he might our boss”;
- ix. a Caucasian supervisor asking a Class member in front of co-workers,

“What are you here for from Africa?” “Do you sleep in trees?” “Do you eat monkey food?” and “How do you know English?”;

x. a Class member was barred from attending a department meeting by his Assistant Group Leader. When asked why he couldn’t attend, the Assistant Group Leader said, “I said you couldn’t go, Nigger”;

xi. a Class member told by his supervisor that he didn’t have to worry about being a supervisor because he “was too dark to be a supervisor at Kodak”;

xii. a Caucasian employee telling a Class member that “the reason blacks have sickle cell is because they lick too many food stamps”;

xiii. referring to all African Americans as “You People”;

xiv. Class members being told that “You people never come up with good ideas”.

b. racist graffiti on Kodak’s walls, in Kodak’s bathrooms, on Kodak’s lockers, in Kodak’s elevators and on the sides of Kodak’s delivery trucks, including, for example, “Nigger,” “Nigger lover,” “Jigaboo,” “Jungle Bunnies,” and depictions of African Americans hanging from nooses;

c. Racist documents or materials distributed, for example:

i. hangman’s nooses being left on the desks of Class members or on filing cabinets;

ii. a photo of apes obviously meant to depict African Americans placed in a Class Member’s office mailbox;

iii. a racist photo of African Americans depicted as dogs posted on

Kodak's wall;

iv. a Class member finding Caucasian co-workers laughing about documents titled, "A Good Nigger Is A Dead Nigger," and the other one referring to African Americans as "Porch Monkeys";

v. A Caucasian employee circulating a printed joke about, "open season on coons," and referring to "blacks as coons and killing coons because it was hunting season"; and

vi. A Caucasian employee passing around a picture of an African American person eating watermelon.

58. Further, female Class members were frequently victims of unwelcome sexual advances made by Caucasian employees and supervisors who regularly groped, touched and fondled them, particularly in Kodak's "Dark" areas. When these Class members complained, managers would fail to take remedial action, and often appeared amused by the wrongful conduct.

59. Whenever an issue involving unlawful conduct was raised, Class members as a matter of practice were presumed by Kodak to be the ones responsible.

60. When Class members complained about these incidents, Kodak failed to take remedial action, and instead, would criticize the complainant and scrutinize their work. Conversely, Caucasian employees or supervisors who engaged in unacceptable discriminatory conduct were given numerous opportunities to correct it, or were not disciplined at all. Further, Kodak managers and supervisors were given discretion as to whether to investigate a claim of racial discrimination. As a result, such claims were not investigated adequately and remain unresolved.

61. In 2001, an African American Human Resources Director and Senior Vice President of Kodak attempted to respond to ongoing incidents of racial harassment at Kodak. A Human

Resources meeting was held to make the point that racist activity at Kodak would absolutely not be tolerated. In response, a number of long-time Caucasian employees commented, “Who the hell does she think she is?” and several Caucasian employees walked out of the meeting before its conclusion. The Kodak vice president resigned after working there less than one year.

## **VII. THE INDIVIDUAL PLAINTIFFS’ ALLEGATIONS**

62. As alleged below, the Individual Plaintiffs have collectively suffered each of the forms of discrimination alleged herein on behalf of the Class. They have been paid less than similarly situated Caucasian employees. Among other things, this form of class-wide discrimination has reduced the pensions to which retired Class members would otherwise be entitled absent discrimination. They have received unfair performance appraisals, and been assigned lower job classifications, and lower wage grades, and have been denied opportunities for training, mentoring, promotion and advancement provided to similarly situated Caucasian employees. They have been assigned more difficult and dangerous job than their Caucasian counterparts, and they have been subjected to a continuing pattern and practice of harassment and been subjected to a ongoing racially hostile work environment. Finally, when they have complained to their supervisors and Human Resources about these practices, they have been retaliated against.

### **Gladys Alston**

63. Ms. Alston worked for Kodak from 1979 through May 15, 2002.

64. From 1979 through 1998, Kodak assigned Ms. Alston to a number of lateral positions within the Company, during which time, her wage grade increased by several grades. However, Kodak consistently paid similarly situated Caucasian employees assigned to the same wage grade as Ms. Alston, higher salaries within that grade.

65. In approximately 1998, Ms. Alston was working in the Benefits Information Department as a Benefits Information Representative, when she was informed that her position was being eliminated due to a reduction in force. However, several months later, Kodak posted job openings for five positions for Benefits Information Representatives. Ms. Alston complained to her supervisors concerning why she had been eliminated from her position under these circumstances. Kodak failed to take remedial action by providing Ms. Alston with her job back, and instead, hired five Caucasian employees to fill those positions.

66. Within a year, this scenario repeated itself when Ms. Alston was downsized from her position in the Health Imaging Department. Ms. Alston constantly met or exceeded expectations in her performance appraisals but was unable to advance within the Company. Similarly situated Caucasian employees are not treated in this fashion.

67. In approximately 2000, Kodak transferred Ms. Alston to the Human Resources Department as a Human Resources Associate (“HRA”). Ms. Alston was the only African American HRA, and suffered disparate treatment and harassment by her Caucasian co-workers. Further, because she was the only African American in the department, Ms. Alston lacked mentoring opportunities, necessary for advancement, that were available to similarly situated Caucasian employees.

68. Ms. Alston participated as a complainant in Kodak’s ADR Peer Review Process, pursuant to which, on May 14, 2001, Kodak offered her approximately \$4,992 to settle her claim. When Ms. Alston told the Corporate Sponsor, Thomas Ellebie, that this was not fair, he immediately doubled the offer to \$8,268. Ms. Alston refused to accept this amount as well because it was unjust and did not remedy the years of unequal pay and lack of advancement opportunity that she suffered.

In response to Ms. Alston's rejection of the offer, Mr. Ellebie told her, "you should take this money; otherwise you won't get a dime."

69. On October 19, 2001, Ms. Alston filed a Charge of Discrimination with the EEOC, and on May 23, 2003, she received her notice of right to sue.

**Travis Curry**

70. Plaintiff Travis Curry worked at Kodak from 1998-1999, and from 2000 through August 2004.

71. Mr. Curry worked as a temporary employee in a position as Primary Technical Support Specialist (later called "Customer Support Specialist") in the Health Imaging Division from July 1998 through 1999. After a brief period of employment at another company, he returned to Kodak.

72. In 2000, Mr. Curry was hired as a full-time employee in the position of Primary Technical Support Specialist. His salary was approximately \$16 per hour. Kodak paid Mr. Curry less than a similarly situated Caucasian employee hired a few months before him.

73. In approximately Spring 2002, when Mr. Curry expressed interest in selection for a Team Leader position, Kodak informed him that he would be promoted to Team Leader after he performed in the position for some time. Despite Mr. Curry performing Team Leader duties for approximately six months, Kodak selected for the position a less qualified Caucasian employee that Mr. Curry had previously trained to be a Customer Support Specialist. Unlike Mr. Curry, the Caucasian individual had no college degree and no relevant experience. Within one year, however, she was promoted from Team Leader to Manager, and was subsequently permitted to write Mr. Curry's performance appraisals.

74. Mr. Curry complained to his Caucasian managers about denial of the Team Leader position, but no remedial action was taken. Prior to Mr. Curry's complaint, he had received outstanding performance appraisals, however, after Mr. Curry complained, his performance appraisals declined.

75. Mr. Curry was again passed over for the Team Leader position in 2004, in favor of a less qualified Caucasian employee who did not have a college degree. Mr. Curry had trained this individual for the Customer Support Specialist position.

76. Throughout the remainder of his employment, Mr. Curry applied for promotions at Kodak for which he was qualified, including a Customer Sales Support position, however, he was not selected for the positions.

77. During Mr. Curry's employment, Kodak on numerous occasions unfairly denied Mr. Curry credit and monetary prizes for work he had successfully performed, and instead gave the credit and prizes to Caucasian employees.

78. In approximately August 2004, Mr. Curry arrived at work six minutes late and was suspended for three days without pay. Caucasian employees who arrived late were not reprimanded or disciplined with such severity.

79. Approximately one week later, Kodak terminated Mr. Curry.

**Courtney Davis**

80. Plaintiff Courtney Davis worked at Kodak from August 7, 2000 through September 27, 2002.

81. She began her employment in the Human Resources Development Program and remained in this position until October 2001, when Kodak hired her into its Global Diversity Office,

where she remained until the end of her employment.

82. Throughout her employment, Kodak paid Ms. Davis less than similarly situated Caucasian employees. In October 2001, when she joined the Global Diversity Office, Ms. Davis complained to her supervisors concerning her salary level, and was told that the situation would be addressed in January 2002.

83. In January 2002, however, Ms. Davis' salary review was postponed until April 9, 2002, at which time she received her performance appraisal for the prior year, and was told that she would only receive a two percent raise. Ms. Davis complained to an African American supervisor, who acknowledged that Ms. Davis was underpaid, and told Ms. Davis that racially-based pay discrepancies also existed for supervisors. No remedial action was taken.

84. In August 2002, Ms. Davis told her supervisors that she had conducted a pay analysis demonstrating that she was underpaid by between \$20,000 and \$30,000 per year as compared to similarly situated Caucasian employees. Again, Kodak took no remedial action.

85. Ms. Davis informed Kodak that if nothing were done, she would be forced to tender her resignation. On September 6, 2002, Ms. Davis did just that.

86. During her employment, Ms. Davis also suffered through a continuing pattern and practice of racial harassment. For example, soon after being hired, at which time Ms. Davis was 33 years old, a Caucasian employee instructed her not to speak to him until she was 40. Ms. Davis complained to her supervisor, who instead of disciplining the Caucasian employee, instructed Ms. Davis not to speak with that person.

87. Kodak also retaliated against Ms. Davis after she reported several incidents of racial harassment to her supervisors, for example, by incorporating various derogatory comments on her



performance appraisal.

88. Ms. Davis filed a Charge of Discrimination with the EEOC on October 19, 2002. On August 12, 2003, the EEOC issued her notice of right to sue.

89. On November 12, 2003, Ms. Davis filed a Complaint alleging similar allegations as are set forth above in Davis v. Eastman Kodak Co., Civil Action No. C-03-05020 (JCS) (N.D. Cal.). On March 11, 2004, the United States District Court for the Northern District of California transferred Davis to this Court.

### **Cynthia Gayden**

90. Plaintiff Cynthia Gayden has worked at Kodak from February 18, 1985 to the present.

91. Ms. Gayden began her employment with Kodak as a secretary on a temporary basis before obtaining a permanent position in the Information Services (“IS”) department (Wage Grade J5). In 1990, Kodak transferred Ms. Gayden to Business Support Services (“BSS”) (Wage Grade J9), and in 1992, went to the Human Resources Department (Wage Grade J9) as an Executive Secretary.

92. During this time, Ms. Gayden was denied promotions and was assigned to lesser job classifications and wage grades than similarly situated Caucasian employees with less experience, some of whom she was asked by Kodak to train.

93. In approximately 1995, Kodak transferred Ms. Gayden to the Finance Department as an Executive Secretary to David Pollock, Kodak’s Assistant Treasurer (Wage Grade K2). In subsequent years, Ms. Gayden’s performance appraisals were excellent, and she received a wage grade increase from K2 to K4 in 1996. However, this amounted to an increase of only \$12.00 per week.

94. In 1998, Mr. Pollock was promoted to Treasurer. Kodak's policy or practice was for Executive Secretaries to follow the executives for whom they worked to new positions unless there was an incumbent secretary in the position, and also to receive commensurate promotions and increases in pay. Ms. Gayden learned, however, that the administrative assistant post for Mr. Pollock's new position was being posted, and that she would not receive the position. Similarly situated Caucasian employees at Kodak were not denied promotions and increases in compensation in this fashion. Ms. Gayden complained to Human Resources, but no remedial action was taken. In fact, her supervisors told her that indeed she was qualified for the position, but would not receive it. Instead, Ms. Gayden was asked to train the Caucasian employee eventually selected for the position, who was assigned Wage Grade K8.

95. In July 2000, Ms. Gayden transferred to Kodak's Research Laboratories as an Administrative Assistant (Wage Grade K4), and in April 2003, transferred to her current position as an Administrative Assistant in the Health Imaging Department (Wage Grade K4). In each of these positions, Ms. Gayden has received less pay than her Caucasian counterparts as a result of the subjective decision-making of her supervisors.

96. Ms. Gayden did not participate in the ADR Peer Review Process because she was unaware of its existence.

**Robert Gibson**

97. Plaintiff Robert Gibson worked at Kodak from December 12, 1993 until December 13, 2000.

98. Mr. Gibson was hired as a two-year "supplemental" employee in the Exchange Department (Building 605) as a Shipping and Receiving Clerk (Wage Grade 5). In 1994, Kodak

transferred him to a position as a Shipping Clerk (Building 601), and in 1995, transferred him again to a position as a Truck Handler in the Professional Film Dept. (Building 58). Subsequently, Mr. Gibson was assigned the position of Product Covering Operator, working in Kodak's "Dark Room" areas.

99. Kodak did not promote Mr. Gibson from a "supplemental" employee to a permanent employee until July 1996, six months after the completion of his two-year term. During this time, similarly situated Caucasian "supplemental" employees with less seniority than Mr. Gibson, were promoted to permanent employees. Permanent employees received benefits and higher pay not available to supplemental employees. Mr. Gibson complained to his supervisor, Arturo Garza, but no remedial action was taken. Other supervisors confirmed that individual supervisors had discretion to make these kinds of employment decisions.

100. Kodak also paid Mr. Gibson a lower wage than similarly situated Caucasian employees. In fact, Mr. Gibson remained at Wage Grade 5 for the entire length of his employment, during which time, similarly situated Caucasian employees received wage grade and commensurate pay increases and lump sum bonuses.

101. On or about July 16, 2000, following a back injury suffered from a heavy lifting assignment at work, Mr. Gibson took a short-term disability leave, during which time he treated for depression and anxiety caused by Kodak's discriminatory conduct. Mr. Gibson attempted to return to work in November 2000 with a reasonable accommodation, but Kodak informed him that there were no positions available. Similarly situated Caucasian employees were not treated in this fashion.

102. Kodak terminated Mr. Gibson on December 13, 2000 for the stated reason that his disability leave had expired.

103. Mr. Gibson filed a Charge of Discrimination on July 13, 2001. The EEOC issued a “for cause” determination on February 6, 2004, and a notice of right to sue on April 30, 2004.

**Jannie Nesmith**

104. Plaintiff Jannie Nesmith has worked at Kodak from 1980 to the present.

105. She began her employment as a Cleaner in Building Services (Building 6) (Wage Grade 6). Subsequently, Ms. Nesmith occupied positions of Mail Deliverer/Picker in Mail Services (Building 311) (Wage Grade 6), and in the Glass Shop (Building 59) (Wage Grade 6). Several years later, Kodak assigned Ms. Nesmith the position of a Packer in the Paper Production Department (Building 9), and actually decreased her wage grade from a 6 to a 5. Ms. Nesmith remained in this wage grade for approximately the next twenty years.

106. During this time period, Kodak paid Ms. Nesmith less than similarly situated Caucasian employees, denied her opportunities for training and advancement within the Company, and assigned her “dirty jobs” that would not be assigned to Caucasian employees. At various times, Ms. Nesmith complained to her supervisors, all of whom were Caucasian, but no remedial action was taken.

107. Throughout her employment, Ms. Nesmith’s performance appraisals have met or exceeded expectations and she has even received “Perfect Attendance” gift certificates from Kodak.

108. In 2001, Kodak transferred Ms. Nesmith to a position as a Fork-lift Truck Driver in the Master Roll Department (Building 9). When Ms. Nesmith complained to her supervisor about not receiving a wage grade increase in approximately twenty years, the supervisor replied, “they screwed you. They have been screwing you for years.” The supervisor instructed Ms. Nesmith to report her complaint to another supervisor, who provided no relief.

109. Ms. Nesmith then went to Human Resources and spoke to a Caucasian employee in that department, who stated coldly, “*You people* already got enough money from Reverend Goff to make up for the money you lost from not getting your bracket change and proper raises.” Human Resources then told Ms. Nesmith that they would investigate the situation, but never did, and her wage grade remained the same. When Ms. Nesmith complained to an African American supervisor in the diversity department, that employee told her that she feared for her own job, and that “there is not much I can do.”

110. Kodak has also subjected Ms. Nesmith to a continuous and ongoing pattern and practice of racial harassment and a hostile work environment. For example, on one occasion in 2000, a Caucasian employee harassed her by stating in a meeting attended by six co-workers and a supervisor that she smelled because “she don’t take baths,” and that “it must be the soap she uses or the hair-spray that blacks use in their hair.” Instead of disciplining this employee, the supervisor laughed in front of the entire group. This employee continued to harass and degrade Ms. Nesmith throughout 2001 and 2002, and, on one occasion, even threatened to hit her with his fist.

111. Throughout 2001, Ms. Nesmith was assigned to training in the Master Roll Department. Frequently, the Trainer referred to Ms. Nesmith as “stupid” and “dumb,” embarrassing her in front of her co-workers.

112. Despite Ms. Nesmith’s frequent complaints to supervisors concerning the above examples of racial harassment, no remedial action was taken. Instead, during a meeting in 2002 to discuss these events with a Kodak Group Leader, further racially harassing comments were made. Instead of disciplining the employees responsible for the harassment, the Group Leader just laughed. In addition, one of the Caucasian employees about whom the complaints were made threatened

bodily harm to Ms. Nesmith, telling her, "I used to kill a lot of people in the army."

113. Following this meeting, Ms. Nesmith suffered a stress-related breakdown and had to be taken to Kodak's medical department, and then to St. Mary's Hospital.

**Noralean Pringle**

114. Ms. Pringle has worked at Kodak from 1977 to the present.

115. She began her employment as a secretary and receptionist (Wage Grade J9). From 1977 to 1987, she worked at Kodak's New York City and Dayton, New Jersey offices and was transferred to the Kodak Office in Rochester, NY, as a customer service representative in 1988. While working as a customer service representative, Ms. Pringle received her first pay raise in over ten years with the Company -- to Wage Grade K2.

116. Kodak gave Ms. Pringle the responsibilities of a Team Leader in the Customer Service Department in November 2000, but denied her an increase in pay. Ms. Pringle complained to her supervisors, and even went before a committee of supervisors to prove that she deserved a raise. Kodak, however, took no remedial action and did not increase Ms. Pringle's salary.

117. Ms. Pringle did not receive an increase in her Wage Grade until April 2001, when it was increased from K2 to K4. However, she continued to be underpaid as compared to similarly situated Caucasian employees.

118. In March 2002, Ms. Pringle received Kodak's Service Excellence Award -- one of the highest awards Kodak gives, but did not receive a wage grade increase.

119. During her employment, Kodak subjected Ms. Pringle to harassment and an ongoing hostile work environment, in part, by giving her unjustified poor performance appraisals to avoid having to increase her compensation. Ms. Pringle complained to Human Resources, and while they

acknowledged a problem with Ms. Pringle's supervisor, they took no remedial action.

120. Ms. Pringle participated in the ADR Peer Review Panel process. She accepted an award she believed to be unfair because she thought it was the determination of the panel that heard her claim, and would not have participated in the process had she known that Kodak could simply disregard the panel's determinations.

121. Kodak retaliated against Ms. Pringle after she participated in the ADR Peer Review process, by, among other things, removing her from her position and replacing her with a Caucasian employee with no experience. Ms. Pringle complained to her supervisors and through Kodak's Resolution Support Services program, but no remedial action was taken. As a result of the discrimination and retaliation, Ms. Pringle has suffered severe stress and numerous medical problems. Like many Class members, she is also fearful of additional retaliation as a result of her participation in this suit.

#### **Carrie Rice**

122. Ms. Rice worked for Kodak from 1968 until December 1, 2003.

123. She began her employment with Kodak in the Graphic Arts Department, performing production work in the "Dark Room" (Wage Grade 5). She was transferred several times in subsequent years but did not receive a pay increase. From 1974 to 1983, she worked in the Instant Film Department ("IFD"), during which time, she received one wage grade increase -- from a 5 to a 7. Ms. Rice remained at wage grade 7 for six months, at which time, Kodak reduced her wage grade to a business support code, resulting in a pay decrease. Ms. Rice remained at this wage grade until she retired from Kodak.

124. Ms. Rice often trained less experienced Caucasian employees, who were then

advanced to levels above her. Conversely, in or around 1993, Kodak transferred Ms. Rice to an entry-level position, despite her twenty-five years of experience. Ms. Rice had to complain to get her job back.

125. In 1996, Ms. Rice overheard one Caucasian supervisor tell another, “I hate that black bitch,” referring to Ms. Rice. Caucasian supervisors often tried to blame Ms. Rice for problems caused by Caucasian employees and make her a scapegoat.

126. During this time, Ms. Rice was assigned the work of a “Planner” within her department, but was given lesser job classifications and compensation.

127. In 1997, Kodak informed Ms. Rice that her position was being eliminated. Similarly situated Caucasian employees in similar positions that Ms. Rice *had trained*, however, did not have their jobs “eliminated”, and in fact, one of those employees replaced Ms. Rice in the job she had been performing.

128. In November 1999, Ms. Rice accepted a position as an ADR Peer Review Panelist, and remained in this position until September 4, 2001. As a panel member, Ms. Rice heard numerous complaints of discriminatory treatment and made “final determinations” concerning the resolution of those complaints. Kodak failed to follow through on those “final determinations” and failed to take genuine remedial action, including on a claim presented by Ms. Rice.

129. When Ms. Rice accepted the position as an ADR Peer Review Process panelist, Kodak informed her that she could return to her former job and that her employment was guaranteed for one year after her tenure on the panel ended. Following her tenure as a panelist, Kodak retaliated against Ms. Rice by refusing to allow her to return to work, stating that it had no job for her.

130. Ms. Rice filed a Charge of Discrimination with the EEOC on April 19, 2002. The



EEOC issued a “for cause” determination on February 6, 2004, and a notice of right to sue on April 30, 2004.

**Maria Scott**

131. Maria Scott has worked at Kodak from 1991 to the present.

132. She began her employment as an Assembler in the Apparatus Division in Department 686/Single Use Cameras (Wage Grade 1).

133. Despite positive performance appraisals that regularly met or exceeded expectations, Kodak did not advance Ms. Scott to a higher wage grade. Similarly situated Caucasian employees in the Single Use Department with the same or less experience than Ms. Scott were classified by Kodak as Wage Grade 3. Ms. Scott and other Class members in the Single Use Department were told by supervisors that Wage Grade 1 was the highest rating possible.

134. In approximately 1992, Ms. Scott complained to Human Resources about her Caucasian supervisor who referred to all African Americans as “you people.” When the supervisor became aware of the complaint, she called Ms. Scott a “nigger.” In further retaliation, the supervisor assigned Ms. Scott “dirty” work and duties not in her job description, and changed her performance appraisal from a 7 to a 6. The 7 rating would have entitled Ms. Scott to a wage grade increase.

135. During subsequent years, Ms. Scott advised supervisors concerning Kodak’s discrimination against Class members in compensation and promotion and about the racially hostile work environment at Kodak. Supervisors labeled her an “agitator” and retaliated against her by lowering her performance appraisals.

136. On one occasion, Ms. Scott filled out an application for a promotion and gave it to her supervisor. Minutes later, Ms. Scott found the application on the floor next to a garbage can.

137. Ms. Scott trained numerous similarly situated Caucasian employees who then were advanced by Kodak to higher job classifications and wage grades, but she never received the title of “Trainer” or the pay commensurate with these responsibilities.

138. In 1996, Ms. Scott took a short-term disability leave because of stress and severe depression caused by Kodak’s illegal discriminatory conduct. She returned to work at Kodak in 1997.

139. In November 1999, Ms. Scott accepted a position as an ADR Peer Review Panelist, and remained in this position until August 2001. As a panel member, Ms. Rice heard numerous complaints of discriminatory treatment and made “final determinations” concerning the resolution of those complaints. Kodak failed to follow through on those “final determinations” and failed to take genuine remedial action.

140. Following her tenure as a panelist, Kodak reneged on an earlier promise that Ms. Scott could obtain a job in the Human Resources Department. Instead, Ms. Scott returned to her previous job and since then, has been subjected to harassment and intimidation from her supervisors in retaliation for her participation as a panelist. To this day, Kodak continues to deny Ms. Scott training and promotional opportunities made available to similarly situated Caucasian employees.

141. Ms. Scott filed a Charge of Discrimination with the EEOC on August 29, 2002, and received a notice of right to sue on April 30, 2004.

**Olin Singletary**

142. Plaintiff Olin Singletary worked at Kodak from 1967 through January 1, 2002.

143. Mr. Singletary began his employment as a “Bottle Washer” in the Solution Preparation Department, and approximately eighteen months later, transferred to the Production

Department as an Assistant Maker (Wage Grade 8). In 1972, Kodak assigned Mr. Singletary Wage Grade 10. Mr. Singletary remained at this wage grade for approximately eleven years until 1983, when he received a promotion to a Full-Maker (Wage Grade 12). Twelve years later in 1995, Mr. Singletary became a Top Maker (Wage Grade 13). He remained in this position until he became an ADR Peer Review Panelist in November 1999.

144. During his employment, Kodak consistently paid Mr. Singletary less than similarly situated Caucasian employees. Further, Mr. Singletary trained Caucasian employees with less experience who were then advanced by Kodak to higher levels within the Company.

145. Kodak often assigned Mr. Singletary “dirty” work that Caucasian employees refused to do. This included working with carcinogens and dangerous chemicals, that could and did cause serious bodily injury.

146. Kodak also subjected Mr. Singletary to racial harassment and a racially hostile work environment. Caucasian supervisors and employee frequently subjected Class members to racial slurs and racist graffiti, such as “Nigger,” “Jigaboos,” “Jungle Bunnies” and depictions of African American in nooses, written or drawn on bathrooms walls, elevator walls and delivery trucks. Mr. Singletary also witnessed a hang-man’s noose attached to a filing cabinet.

147. In November 1999, Mr. Singletary accepted a position as an ADR Peer Review Panelist, and remained in this position until August 2001. As a panel member, Mr. Singletary heard numerous complaints of discriminatory treatment and made “final determinations” concerning the resolution of those complaints. Kodak failed to follow through on those “final determinations” and failed to take genuine remedial action.

148. Following his tenure as a panelist, Kodak reneged on an earlier promise that Mr.

Singletary could obtain a job in the Human Resources Department. Instead, Kodak placed Mr. Singletary in a position purportedly created for him, but he was subjected to harassment and intimidation in retaliation for his participation as a panelist.

149. Mr. Singletary subsequently learned that his position was eventually going to be terminated. Seeing no opportunity for advancement, Mr. Singletary was forced to retire.

150. Mr. Singletary filed a Charge of Discrimination with the EEOC on August 28, 2002. The EEOC issued a “for cause” determination on February 6, 2004, and a notice of right to sue on April 30, 2004.

### **Victor Smith**

151. Plaintiff Victor Smith has worked at Kodak from September 1985 to the present.

152. Mr. Smith began his employment at Kodak as a Field Engineer (Wage Grade E1) in the Office Imaging Division.

153. In approximately 2000, Mr. Smith observed that his supervisor (Hispanic), was unfairly terminating experienced employees in order to replace them with individuals of his choosing. In order to avoid termination, Mr. Smith transferred to the position of Technical Support Engineer in the Health Imaging Department (Wage Grade 41).

154. When Mr. Smith received his performance appraisal for the 2001 year, he discovered that it contained a number of false and negative statements about him that had never been raised previously. Furthermore, Kodak had permitted Mr. Smith’s former supervisor to write his performance appraisal even though he had supervised Mr. Smith for only approximately three months.

155. When Mr. Smith complained to his new Caucasian supervisor about the negative

performance appraisal, he sided with Mr. Smith's former supervisor. Mr. Smith, therefore, complained to Human Resources, who investigated and concluded that the performance appraisal should be re-written.

156. Following Mr. Smith's complaints about the appraisal, his relationship with his supervisors deteriorated.

157. In retaliation for his complaints, Mr. Smith was denied opportunities for promotion and advancement provided to similarly situated Caucasian employees, and was assigned more difficult work than most of his Caucasian counterparts.

158. In approximately 2001, Mr. Smith attempted to transfer to a position as Instructor in the Training Department. Mr. Smith's Caucasian supervisor blocked the transfer, however, insisting that Mr. Smith work as a Technical Support Engineer for at least one year before he could transfer to another position. In contrast, Caucasian employees were permitted to transfer without completing one year in their positions.

159. In approximately 2002, Mr. Smith expressed to his supervisor his interest in selection for a position as MIM Advocate, which though a lateral transfer, would have brought greater responsibility and career advancement. Although Mr. Smith was more qualified for the position, a less qualified Caucasian employee was selected. In approximately 2004, this same Caucasian employee was selected to advance to a Technical Support Lead position.

160. In approximately Fall of 2004, Mr. Smith expressed his interest in promotion to a position as CR Sales Support. Although Mr. Smith was more qualified for the position, a less qualified Caucasian employee was selected.

161. Mr. Smith repeatedly had to challenge negative and inaccurate statements about him

in his performance appraisals. He complained to Human Resources but no remedial action was taken.

162. In approximately August 2005, Mr. Smith was promoted to CR Sales Support, however, Kodak denied him the pay increase for the position. As a result, Mr. Smith continues to be paid less than Caucasian employees assigned to the position.

163. Furthermore, Kodak assigned Mr. Smith additional work not required of the previous Caucasian CR Sales Support, and imposed restrictions on Mr. Smith not imposed on the previous position holder, which negatively impacted Mr. Smith's ability to do his job.

164. In effect, Kodak required Mr. Smith to perform the work of both Technical Support Engineer and CR Sales Support, without paying him for performing the work of two people, which Caucasian employees were not required to do.

165. Mr. Smith complained to his supervisor and Human Resources about the restrictions and workload, but no remedial action was taken.

**Edna Williams**

166. Plaintiff Edna Williams has worked at Kodak from 1974 until the present.

167. She began her employment in the Industrial Department as an Inspector of Film Decks (Wage Grade "Trainee"). In 1975, Kodak transferred Ms. Williams to a position as a Laboratory Assistant in Department 75, Quality Control Testing Services (Wage Grade 55). She was the only African American female in the department until 1994, and only one of two African Americans total.

168. In approximately 1977, Kodak converted Ms. Williams wage grade to T4 -- reflecting a change in wage grade scale but not a change in pay -- and she remained at this wage grade for

approximately twenty-two years, receiving no pay increases, despite satisfactory annual performance appraisals. Similarly situated Caucasian employees during this time period were assigned higher job classifications and wage grades, received greater compensation, and were provided opportunities for promotion that were not provided to Ms. Williams.

169. In 1999, as part of Kodak's "Do The Right Thing Award," Ms. Williams received a \$1,500/year "merit raise," and her wage grade was increased to a T5. This constitutes an admission by Kodak that Ms. Williams had been underpaid by the Company. However, the "award" received by Ms. Williams was grossly inadequate.

170. In 2002, Kodak increased Ms. Williams' wage grade to a T6, where it remains today. Ms. Williams is still paid less than numerous similarly situated Caucasian employees who she has trained over the years and have less experience than her. Ms. Williams has frequently complained to her supervisors, but has been provided no relief.

171. Ms. Williams has also been subjected to a continuous pattern and practice of racial harassment while employed by Kodak. Examples of recent harassment include, without limitation: 1) an unidentified person(s) placing mucus and ground orange peel on the mouthpiece and earpiece of Ms. Williams' telephone; 2) a co-worker slicing Ms. Williams' desk chair and inserted thumb-tacks facing upward; 3) co-workers vandalizing family pictures and other items on Ms. Williams' desk; 4) being harassed by a Caucasian supervisor after she requested a reasonable accommodation for a disability resulting from a torn right rotator cuff suffered in 2002 while at work; and 5) as recently as June 2004, the arms of her desk chair were slashed. Similarly situated Caucasian employees are not treated in this fashion. Ms. Williams complained to her supervisors about each of the events but no remedial action was taken.

172. Further, Ms. Williams has witnessed and been advised that Caucasian employees often make unwanted sexual advances on female Class members, including groping them in Kodak “Dark Rooms,” often after returning to work after drinking alcohol on lunch or breaks.

**XI. TOLLING OF RELEVANT STATUTES OF LIMITATION**

173. By agreement, Kodak has agreed to toll the relevant statutes of limitation applicable to this Complaint, with respect to claims made under Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C. § 1981. Specifically, Kodak entered into agreements dated April 16, 2003, July 10, 2003, October 14, 2003 and April 6, 2004, tolling the relevant statutes of limitation between February 6, 2003 and June 30, 2004, for any African Americans who have worked at any of the Kodak facilities located in Rochester, New York, at any time between January 1, 1999, and the present.

**COUNT I  
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964  
42 U.S.C. § 2000e *et seq.*  
(By Plaintiffs Gladys Alston, Courtney Davis,  
Robert Gibson, Carrie Rice, Maria Scott and Olin Singletary)**

174. Plaintiffs reallege and incorporate by reference, Paragraphs 1-173, above.

175. Plaintiffs have filed Charges of Discrimination with the EEOC, and have received notices of their right to sue.

176. Kodak has discriminated against Plaintiffs and the Class with respect to the terms and conditions of employment because of their race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended by the Civil Rights Act of 1991.

177. Kodak’s conduct has been intentional and/or has had disparate impact on Plaintiffs and the Class with respect to the terms and conditions of their employment.



178. By virtue of Kodak's conduct as alleged herein, Plaintiffs and the Class have been injured.

**COUNT II**  
**THE CIVIL RIGHTS ACT OF 1866**  
**42 U.S.C. § 1981**  
**(By All Plaintiffs)**

179. Plaintiffs reallege and incorporate by reference paragraphs 1-173, above.

180. Kodak has discriminated against Plaintiffs and the Class by denying them the same rights as enjoyed by Caucasian employees with regard to the making, performance, modification and termination of their employment relationship with Kodak and with regard to the enjoyment of all benefits, privileges, terms and conditions of that relationship in violation of the Civil Rights Act of 1866 as amended, 42 U.S.C. § 1981.

181. Kodak's conduct has been intentional, deliberate, willful and conducted in callous disregard of the rights of Plaintiffs and the Class under the law.

182. By virtue of Kodak's conduct as alleged herein, Plaintiffs and the Class have been injured.

**COUNT III**  
**THE NEW YORK HUMAN RIGHTS LAW**  
**15 N.Y. Exec. Law §§ 291 et seq.**  
**(By Plaintiffs Gladys Alston, Courtney Davis,**  
**Robert Gibson, Carrie Rice, Maria Scott and Olin Singletary)**

183. Plaintiffs reallege and incorporate by reference paragraphs 1-173, above.

184. Plaintiffs have filed Charges of Discrimination with the EEOC that were dual-filed by that agency with the New York Division of Human Rights, and have received notices of their right to sue.

185. Kodak has discriminated against Plaintiffs and the Class by denying them the same rights as enjoyed by Caucasian employees with regard to the terms and conditions of their employment in violation of 15 N.Y. Exec. Law §§ 291 *et seq.*

186. Kodak's conduct has been intentional and/or has had disparate impact on Plaintiffs and the Class with respect to the terms and conditions of their employment.

187. By virtue of Kodak's conduct as alleged herein, Plaintiffs and the Class have been injured.

### **JURY DEMAND**

Plaintiffs hereby demand a trial by jury as to all issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that the Court enter an order:

1. Certifying this action as a class action, with Plaintiffs as the Class Representatives and their counsel of record as Class Counsel;
2. Adjudicating and declaring that Kodak's conduct as set forth above is in violation of 42 U.S.C. § 2000e *et seq.*, 42 U.S.C. § 1981 and 15 N.Y. Exec. Law §§ 291 *et seq.*;
3. Permanently enjoining and prohibiting Kodak and its officers, agents, employees and successors from continuing to engage in the practices complained of herein;
4. Permanently enjoining and requiring Kodak to adopt policies and practices that ensure the cessation of all discriminatory practices affecting the Individual Plaintiffs and the Class and requiring the institution of such measures as to ensure that these practices do not re-emerge;
5. Awarding Plaintiffs and the Class such equitable remedies, including, without

limitation, back pay and front pay, necessary to provide the Individual Plaintiffs and the Class with full relief from the discrimination they have suffered;

6. Awarding the Individual Plaintiffs and the Class compensatory damages justified under the circumstances;

7. Awarding the Individual Plaintiffs and the Class punitive damages justified under the circumstances;

8. Awarding attorneys' fees and reimbursement of costs associated with this action to Plaintiffs' Counsel;

9. Retaining jurisdiction to ensure that Kodak fully complies with the equitable relief ordered; and

10. Awarding Plaintiffs and the Class such other and further legal and equitable relief as may be appropriate in the interest of justice.

March 1, 2006

/s/ Judith A. Biltekoff

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