

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEBRA DAVIS and FRANCIENIA CANION, individually and on behalf of all other similarly situated persons	: : : : : :	: CIVIL ACTION : NO. 03-6060 : : :
v.		
KRAFT FOODS NORTH AMERICA, INC.		

**AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Debra Davis and Francenia Canion (“Plaintiffs”), individually and on behalf of the class they seek to represent, by and through their counsel, bring this Amended Class Action Complaint against defendant Kraft Foods North America, Inc. (“Kraft” or “Defendant”) and aver as follows:

**NATURE OF THE ACTION**

1. Plaintiff Debra Davis (“Davis”) is an African-American female adult who resides in Philadelphia, Pennsylvania.
2. Plaintiff Francenia Canion (“Canion”) is an African-American female adult who resides in Media, Pennsylvania.
3. Plaintiffs bring this action 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 Civil Rights Act of § 1866, 42 U.S.C. 1981, for class-wide injunctive relief, declaratory relief and equitable financial relief, and for damages for the individual named plaintiffs, arising from the terms and conditions of their employment at Kraft.

4. The class is defined as follows:

All African-Americans who were employed in hourly and/or unionized positions at Kraft's Philadelphia bakery, located at 12000 Roosevelt Boulevard, at any time between November 3, 1999 and the present.

5. Kraft's parent company, Kraft, Inc., is the largest branded food and beverage company in North American and the second largest in the world, employing nearly 100,000 employees in one hundred and fifty (150) countries. Kraft operates through many familiar brand names, including but not limited to Kraft, Jacobs, Philadelphia, Maxwell House, Oscar Meyer and Post.

6. In 2000, Kraft Inc.'s parent company, Philip Morris Companies, Inc. (now known as Altria Group, Inc.) acquired Nabisco Holdings ("Nabisco"), which is one of the world's largest producers of cookies, crackers and other snack foods. In 2001, it integrated the Nabisco brands into Kraft's worldwide business. Kraft is now a public corporation and its stock is substantially controlled by Altria.

7. Nabisco has a long history of discriminating against African American employees which was not remedied by Kraft when Kraft took over the brand.

8. This class action is brought by two current employees of Kraft who, along with Defendant's other African-American employees, were subjected to Kraft's continuing policies and practices of racial discrimination. Specifically, Plaintiffs allege that Kraft discriminates against African-American employees by exacting discipline against African-American employees that is disproportionate to these employees' alleged offenses, and by disciplining African-Americans more severely than White employees for the same alleged offenses. Plaintiffs seek an injunction from this Court requiring Kraft to cease its discriminatory and retaliatory practices, declaratory relief, equitable relief including back and front pay, and damages for the individual named plaintiffs.

## **JURISDICTION AND VENUE**

9. This Court has original jurisdiction to hear this Complaint and adjudicate the claims stated herein under 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 2000e-5, and to declare the rights of the parties under 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the acts and/or omissions giving rise to this action occurred in this District.

## **CLASS ACTION ALLEGATIONS**

11. Plaintiffs bring this action individually and on behalf of a class of all African-Americans who were employed in hourly and/or unionized positions at Kraft's Philadelphia bakery, located at 12000 Roosevelt Boulevard, at any time between November 3, 1999 and the present.

12. The members of the Class are sufficiently numerous that joinder of all members is impracticable. It is the estimate of Plaintiffs that the Class exceeds 250 individuals.

13. Several questions exist that are common to the Class, including but not limited to:
- a. Whether Class members are subject to disciplinary sanctions based on their race that are not imposed on similarly situated White employees;
  - b. Whether Class members are subject to more severe disciplinary sanctions than White employees for the same or similar alleged offenses;
  - c. Whether Kraft's alleged conduct herein constitutes a hostile work environment for the Class;
  - d. Whether Kraft's common operating practices and procedures discriminate against its African-American employees;

- e. Whether Kraft has a policy and practice of retaliating against Class members who object to or oppose Kraft's unlawful employment practices;
- f. Whether Kraft knows or has reason to know of the discriminatory practices committed against the members of the Class;
- g. Whether Kraft's conduct warrants an award of declaratory, injunctive or equitable relief and, if so, the nature of such relief; and
- h. Whether Kraft's conduct warrants an award of damages.

14. Plaintiffs' claims are typical of the claims of the members of the Class, in that they have been subjected to or threatened with the discriminatory disciplinary practices caused by Kraft and/or have been subject to a hostile work environment. These practices, complained of herein, affect the entire Class.

15. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have no interests that conflict with those of the Class members and have retained new counsel who are experienced in both class-action and civil rights employment litigation.

16. Certification of the Class is warranted under Fed. R. Civ. P. 23(b)(2) because Kraft, by maintaining an ongoing pattern and practice of discrimination on the basis of race and a hostile work environment, has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory and/or equitable relief with respect to the Class as a whole.

**HISTORY OF NABISCO/KRAFT'S OPERATIONS AND ITS GENERAL PRACTICES OF DISCRIMINATION AGAINST ITS AFRICAN-AMERICAN EMPLOYEES**

17. In 1999, the Office of Federal Contract Compliance Programs ("OFCCP"), conducted an audit of Nabisco. The audit addressed Nabisco's Affirmative

Action Programs, racial diversity, equal pay, and disciplinary measures regarding minority employees, and specifically, African American personnel.

18. At the time of the audit, Sondra L. Dean was employed by Nabisco as its Employee Relations Manager. Ms Dean assisted David Matthews, Nabisco's National EEO Director of Diversity, in collecting the audit data and providing it to the OFCCP.

19. On numerous occasions during and following the audit, Mr. Matthews confirmed Ms. Dean's growing suspicion that Nabisco was guilty of numerous in fractions regarding racially disparate hiring, firing, job assignments, equal pay, promotions and disciplinary decisions issued against African Americans. Mr. Matthews told Ms. Dean that Nabisco was lacking in affirmative action compliance.

20. Nabisco/Kraft exacted disproportionate and disparate measures of discipline on African American employees. For example, Plaintiff has obtained disciplinary statistics for several categories of discipline, for the years 1997 and 1998, as follows:

**DISCIPLINE 1997**

	<b>Totals</b>	<b>Minorities</b>	<b>Caucasians</b>	<b>%</b>
<b>Coaching/Counseling</b>	18	11	7	61%
<b>Verbal Warnings</b>	21	9	12	43%
<b>Written Warnings</b>	25	20	5	80%
<b>Suspensions</b>	25	18	7	72%

Thus, it can easily be seen that during 1997, African American employees at Nabisco were disproportionately more often disciplined, and frequently given more severe

disciplinary sanctions than Caucasian employees. These discriminatory trends continued in 1998:

	<b>Totals</b>	<b>Minorities</b>	<b>Caucasians</b>	<b>%</b>
<b>Coaching/Counseling</b>	20	19	1	95%
<b>Verbal Warnings</b>	13	11	2	85%
<b>Written Warnings</b>	20	13	7	65%
<b>Suspensions</b>	20	7	5	58%

Documents obtained by Plaintiff indicate that African American employees continued to be disciplined more frequently than Caucasian employees and with greater severity throughout 1999 and 2000. Upon information and belief, these policies continued after Kraft acquired Nabisco, and continue to this day.

Kraft retaliated against African American employees who complained either internally or externally about discriminatory treatment of African-Americans with the Company.

21. This information led Mr. Matthews and Ms. Dean to conclude that significant bias existed against Nabisco's (and later, Kraft's), African American employees with respect to discipline, pay and promotional opportunities.

22. On November 22, 2002, Ms. Dean filed her own individual lawsuit against Kraft in this Court stemming from Kraft's illegal discrimination. Ms. Dean alleged that she was subjected to differential and disparate standards of treatment, was denied pay increases on a routine basis, was denied performance reviews, was discouraged and denied from seeking promotional opportunities, and was discharged in a disparate manner and in retaliation for opposing racial discrimination. On August 29, 2002, only fourteen days before she was

terminated by Kraft, Ms. Dean wrote a letter to James Norman, Kraft's EEO Diversity Director (who replaced David Matthews after he left the Company), concluding that "there are major racial issues and inconsistencies occurring within the Philadelphia Plant. These inconsistencies have become so institutionally entrenched that they have been viewed as everyday policy. My attempts to correct or address these issues have been stonewalled. My character has been called in question, my job put in jeopardy and my reputation within the Plant slandered." This letter was copied to Terry Foulke, Senior Vice President of Kraft.

23. Following the 1999 audit of Nabisco, Mr. Matthews further concluded: 1) that there existed a racial disparity concerning the severity of disciplinary measures exacted upon African American employees as compared to Caucasian employees; 2) that African American employees were disciplined more frequently than Caucasian employees; 3) that racial disparity existed with respect to work place diversity; and 4) that African Americans were often paid less than Caucasian employees in the same or similar positions.

24. This pattern and practice of lack of advancement opportunities, unequal discipline and unequal pay are not the result of random, nondiscriminatory factors. To the contrary, these issues are the result of an ongoing and continuous pattern and practice of intentional race discrimination in assignments, training and promotions, discipline, pay and other discriminatory practices that have had an adverse impact on African American employees. Kraft's discriminatory policies cannot be justified by business necessity.

25. Alternative policies and practices with less discriminatory impact could be utilized that equally serve any asserted justification for Kraft's discriminatory policies.

26. Because the data compiled by Mr. Matthews did not comport with the findings of the 1999 Audit submitted to the United States Government that indicated that Nabisco was in full

compliance, Mr. Matthews voiced his opposition to these practices in many members of Nabisco corporate management.

27. Specifically, Mr. Matthews voiced his concerns regarding the racially disparate treatment of African Americans at Nabisco to Larry Jeffers, the Philadelphia Bakery plant manager, and Larry Doyle, the Philadelphia Bakery Human Resources Manger. Although Mr. Matthews registered complaints and provided Mr. Jeffers and Mr. Doyle with relevant documentation and data to support his position, these Management Officials failed to take any corrective remedial action regarding the racial disparity that existed within the Philadelphia Bakery.

28. Thereafter, Mr. Matthews reported his concerns to Joan Anchovy, Nabisco's EEO Senior Director, as well as to Gary Trider, Nabisco's Vice President of manufacturing. These high ranking corporate managers similarly failed to address Mr. Matthews' concerns regarding racial discrimination at Nabisco. They also failed to take any further action to investigate or remedy the situation.

29. During 2000 and 2001, Ms. Dean, who by then had become a Kraft employee following its acquisition of Nabisco, attended affirmative action meetings conducted by the new management structure formed by Kraft. During these meetings, James Norman, the new Kraft EEO Diversity Director, made numerous remarks with respect to the fact that the former Nabisco Bakeries, including the Philadelphia Bakery, were still lagging behind in terms of racial diversity.

30. Subsequent to Kraft's acquisition of Nabisco, moreover, various management officials who had overseen the discriminatory treatment of African American employees and failed to take remedial measures, remained in management capacities. These employees



included, without limitation, Gary Trider, Senior Vice President of Manufacturing, Terry Foulk, Senior Vice President of Human Resources, Larry Doyle, Philadelphia Bakery Human Relations Manager, Larry Campbell, Philadelphia Bakery Plant Manager, and Milt Mintor, Senior Director of Human Resources.

31. Upon information and belief, these management officials were aware of the racial discrimination that existed at the Philadelphia Bakery, yet took no affirmative measures to correct the situation.

### **PLAINTIFFS' ALLEGATIONS**

32. Plaintiff Davis was employed by Nabisco/Kraft at its Philadelphia Bakery as a Machine Operator from August 12, 1997 until on or about June 11, 2002.

33. During the course of her employment, Davis performed her job function in a dutiful, competent and satisfactory manner.

34. On or about April 1, 2002, one of Davis' co-workers, Veronica Naulty (Caucasian), alleged that she had been assaulted while at work in the women's locker room within the facility. Ms. Naulty later stated that she had never even seen the person(s) who assaulted her, and that there were no witnesses. Ms. Naulty even told police that she was assaulted "by an unknown female."

35. Ms. Naulty is now believed to have fabricated the entire story of the assault. For example, medical records reflect that her alleged injuries were self-inflicted and/or were sustained prior to the date of the alleged assault.

36. However, following the Naulty incident, Kraft rounded up three African American females, including Davis, as the suspects.

37. On or about April 3, 2002, Kraft suspended Davis indefinitely without even telling her the reason for her suspension. Two other African-American employees, Angela Price and Tracy Dunston, were also suspended at that time by Kraft, based solely on their “association” with Davis, or for in some way participating in the alleged assault.

38. The accusations leveled against Davis and her African-American female co-workers were completely unwarranted in that there was no justification or logical basis to conclude that they had any involvement whatsoever in the alleged assault on Ms. Naulty. Indeed, all three African American suspects were working on a line in the Philadelphia Bakery at the time Ms. Naulty alleged that she was assaulted.

39. Shortly thereafter, Ms. Dean, the employee relations manager who assisted with Kraft’s investigation of the incident, told Kelly Wojakowski, Kraft’s Human Resources Manager, and Larry Campbell, the Plant Manager, that she concluded that Davis had no involvement in the incident. Still, these employees continued to be suspended by the Company.

40. On June 11, 2002, approximately two and a half months after Davis was suspended without pay, Kraft finally wrote a letter to Davis stating that its investigation revealed that Davis had no direct involvement in the incident that occurred on April 1, 2002. Kraft further informed Davis that the “company reserves the right to continue the investigation as new information is received.”

41. Although Davis was cleared of any wrongdoing with respect to the Naulty incident, Kraft further stated in its letter that its “investigation has uncovered that [Davis] created a hostile and disruptive work environment for [her] co-workers on 3/15/03, as well as used abusive and harassing language, including profanity, racial and sexual oriented slurs towards

other co-workers.” Based on these brand new and unsubstantiated allegations, Kraft discharged Davis in that same correspondence absolving her of any wrongdoing in the Naulty incident.

42. Prior to her April 3, 2002, unjust suspension by Kraft, Davis had never been written up or disciplined by the company, during her five years working there.

43. In addition, Caucasian employees accused of engaging in offensive conduct on the job have not been similarly discharged from their employment, and have received lesser discipline for those offenses.

44. For example, shortly after Davis was terminated a verbal altercation arose between three Caucasian employees, Joseph Zimmer, Fred Novack and Dan McTaggart. These three employees used profanity and hurled abusive language at each other and created a disturbance in the workplace. All three had previously been written-up for workplace infractions, and two of the three had previously been issued final warnings.

45. In sharp contrast to the punishment exacted on Davis, who had no prior discipline, all three of these Caucasian employees remained employed by Kraft.

46. Plaintiff believes and therefore avers that she was subjected to unfounded accusations that were motivated solely by reasons of her race, was subjected to an unnecessary and protracted suspension with loss of pay, and was subjected to differential treatment in terms of the new accusations leveled against her, culminating in her unlawful discharge from employment.

47. As a result of these aforesaid instances of race discrimination, Davis filed a Charge of Discrimination with the Philadelphia Human Relations commission and the United States Equal Employment Opportunity commission on April 9, 2002. She received notice of her right to sue from the EEOC on August 6, 2003.

48. Plaintiff Canion is an African-American employee of Kraft who has been working at the Philadelphia Bakery for more than 30 years.

49. Canion personally has received discipline that is disproportionate to what has been received by white employees in the same situation.

a. In 1997, Canion was attacked at work by a fellow employee named Darcella Allen, and Canion's employment was terminated after she was falsely accused of starting the fight. When Canion obtained a restraining order against Ms. Allen, Canion was allowed to return to work but was forced to sign a "last chance" agreement, although she was not at fault for the incident.

b. To the best of Canion's knowledge and belief, a white employee involved in a similar incident has not been forced to sign a "last chance" agreement to retain his or her employment.

c. Canion has been disciplined several times for incidents in which white employees, who were not disciplined, were equally or more at fault.

d. In 2004, Canion was disciplined for allegedly using threatening language and threatening a white coworker, Terry Natividad. In fact, Canion did not touch Ms. Natividad, and spoke to her only to tell her to "move" away from the Oreo line after a supervisor determined that Ms. Natividad was not doing her job correctly and instructed Canion to run the entire line.

e. In 2004, Canion was disciplined for allegedly committing an error on the Oreo line that resulted in unusable cookies. A white employee was responsible for the error, but this employee refused to take responsibility, so Canion was disciplined. In situations in which

two white employees refuse to take the blame for similar errors, Canion has witnessed several incidents in which Kraft does not choose to discipline anyone.

f. In 2004, Canion was disciplined for failing to turn on a belt on the line that resulted in a chute becoming jammed. Although Ms. Natividad was equally responsible for this task, she was not disciplined.

g. In 2005, Canion was sitting with her feet on a chair during a period in which the line was down. Another employee, Lucy Bell, walked by and pulled the chair out from under her feet. Canion yelled at Ms. Bell that she would've moved her feet if Ms. Bell had asked her to. Ms. Bell then yelled back that she would "do it again," leading to further argument. Canion was suspended and allowed to return only after signing another Last Chance Agreement.

50. Canion has noted that when white employees are involved in an altercation in which Kraft cannot establish the instigator, Kraft will choose not to discipline anyone involved and will describe the incident as a "he said/she said" situation. When the employees involved are African-American, however, Kraft always claims to have found the person at fault and disciplines him or her, no matter how inconclusive the evidence. For example, after an argument between an African-American employee (Carol Moses) and a white employee, the African-American employee was terminated and did not get her job back until she went to court, while the white employee was not disciplined.

**COUNT I**  
**TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**42 U.S.C. § 2000e, et seq.**

51. Plaintiffs reallege and incorporate by reference Paragraphs 1-50, above.

52. Plaintiff Davis has filed a Charge of Discrimination with the Pennsylvania Human Relations commission and the EEOC on behalf of a class of African-American workers of the Philadelphia bakery and has received her notice of right to sue, as set forth above.

53. Kraft 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 Acts of 1964, 42 U.S.C. § 200e *et seq.*, as amended by the Civil rights Act of 1991.

54. Kraft'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.

55. By virtue of Kraft's conduct as alleged herein, Plaintiffs and the Class are entitled to an injunction ordering Kraft to cease its discriminatory policies, as alleged above. [Individually, Plaintiff is also entitled to compensatory damages in an amount to be determined at trial. Plaintiff also seeks an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.]

**COUNT II**  
**THE CIVIL RIGHTS ACT OF 1866**  
**42 U.S.C. § 1981**

56. Plaintiffs reallege and incorporate by reference Paragraphs 1-55, above.

57. Kraft has discriminated against Plaintiff 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 Kraft 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.

58. Kraft's conduct has been intentional, deliberate, willful and conducted in callous disregard of the rights of Plaintiff and the class under the law.

59. By virtue of Kraft's conduct as alleged herein, Plaintiff and the class are entitled to all equitable remedies available under the Civil Rights Act of 1866, as amended, as well as punitive damages. Individually, Plaintiff is entitled to compensatory damages, Plaintiff seeks an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

### **JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury as to all issues so triable.


### **PRAYER FOR RELIEF**

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

- a. Certifying this action as a class action, with Plaintiffs as the class Representative;
- b. Adjudicating and declaring that Kraft's conduct as set forth above is in violation of 42 U.S.C. § 2000e *et seq.*, and 42 U.S.C. § 1981;
- c. Permanently enjoining and prohibiting Kraft and its officers, agents, employees and successors from continuing to engage in the practices complained of herein;
- d. Permanently enjoining and requiring Kraft to adopt policies and practices that ensure the cessation of all discriminatory practices affecting Plaintiffs and the Class and requiring the institution of such measures as to ensure that these practices do not re-emerge;
- e. Requiring Kraft to provide such relief to Plaintiffs and the class that would put them in the positions that they would otherwise be in but for Kraft's illegal discrimination;
- f. Awarding Plaintiffs and the class such equitable remedies, including, without limitation, back pay and front pay, necessary to provide Plaintiffs and the Class with full relief from the discrimination they have suffered.

- g. Awarding Plaintiffs and the Class punitive damages justified under the circumstances;
- h. Awarding Plaintiffs compensatory damages on an individual basis;
- i. Awarding attorneys' fees and reimbursement of costs associated with this action to Plaintiff's Counsel;
- j. Retaining jurisdiction to ensure that Kraft fully complies with the equitable relief ordered; and
- k. Awarding Plaintiffs and the Class such other and further legal and equitable relief as may be appropriate in the interest of justice.

Dated: June 30, 2006



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**CERTIFICATE OF SERVICE**

I, Martin J. D'Urso, hereby certify that, on this 30<sup>th</sup> day of June, 2006, a true and correct copy of Plaintiffs' Amended Class Action Complaint was served upon the following via facsimile and first class mail:

Marguerite S. Walsh, Esquire  
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