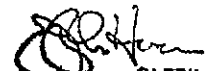


**FILED**

DEC 12 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

  
CLERK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 06-4176
	)	
GEORGE CLARK, JR., RICKEY JOHNSON, and JAMES MEIER,	)	
	)	
	)	
Plaintiffs/Intervenors,	)	<b>INTERVENORS' COMPLAINT</b>
	)	
vs.	)	
	)	
SARA LEE CORPORATION, d/b/a SARA LEE BAKERY GROUP,	)	
	)	
	)	<b>Jury Trial Demanded</b>
Defendant.	)	

**NATURE OF THE ACTION**

This is an action under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, SDCL Chapter 20-12 on Human Rights, and other tort actions under South Dakota law to correct unlawful employment practices on the basis of constructive wrongful termination, retaliation, intentional infliction of emotional distress, inter alia on the basis of race, in that Plaintiffs were denied promotions because of their race, and then suffered retaliation for bringing their complaints.

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action by the Plaintiffs/Intervenors is authorized and instituted pursuant to Section 706 (f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). This Court has supplemental jurisdiction,

pursuant to 28 U.S.C. 1367, to address violations of Intervenor's pendant claims under South Dakota law.

2. The employment practices alleged to be unlawful have been committed within the jurisdiction of the United State District Court for the Southern District of South Dakota.

### PARTIES

3. The Equal Employment Opportunity Commission (the "EEOC"), is the agency of the United State of America charged with administration, interpretation, and enforcement of Title VII, and is expressly authorized to bring this action. The EEOC filed suit in U.S. District Court on September 26, 2006.

4. Plaintiffs/Intervenor, George Clark, Jr., Rickey Johnson, and James Meier are African Americans who were employed by Defendant Sara Lee Corporation d/b/a Sara Lee Bakery Group in Sioux Falls, South Dakota, at all relevant times under the definitions of Title VII and South Dakota law.

5. At all relevant times, the Defendant Sara Lee Corporation has continuously been a foreign corporation doing business in the State of South Dakota and the City of Sioux Falls, and has continually had at least 15 employees.

6. At all relevant times, the Defendant has continuously engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

### STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Intervenor filed charges with the EEOC, alleging violation of Title VII by Defendant. The EEOC issued a determination that Defendant had discriminated against Plaintiff/Intervenor James

Meier on May 31, 2005, and against Plaintiffs/Intervenors Rickey Johnson and George Clark, Jr. on June 5, 2006 by subjecting them to racial discrimination. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Defendant subjected Plaintiffs/Intervenors to racial discrimination by excluding them from supervisory jobs and giving those jobs to workers who were not African American, but who also were less qualified; Defendant further punished Plaintiffs for contacting Defendant's Human Resources Department, in addition to contacting the Union and governmental entities. With respect to Plaintiffs Johnson and Meier, Defendant placed another supervisor who was selling illegal drugs and asking Johnson and Meier to sell drugs that the supervisor wanted to supply. Plaintiffs refused and reported the requests to Defendant's management. Defendant retaliated by allowing the supervisor to create a hostile work environment for Meier and Johnson, resulting in constructive discharge and ultimately causing them severe emotional distress.

#### COUNT I

9. Defendant's actions and omissions constitute unfair and discriminatory practice and employment as defined under SDCL Chapter 20-13.

10. That unlawful employment actions of Defendant have proximately caused and will continue to cause loss of employability, emotional distress and loss of enjoyment of life.

11. That Defendant Sara Lee is responsible for the acts of their supervisors by reasons of respondeat superior under South Dakota law.

#### COUNT II

12. That as a result of Defendant's unlawful actions and omissions,

Plaintiffs/Intervenors came under severe emotional distress, requiring medical and clinical treatment.

13. That Defendant's acts were deliberate, willful and wanton, with the intent of causing Plaintiffs/Intervenors severe emotional distress under South Dakota law.

14. That Defendant's actions were the legal cause of psychological injury, requiring extensive care and treatment for the Plaintiffs/Intervenors.

15. That Defendant's acts were malicious, fraudulent and oppressive, giving rise to a claim for punitive damages to Plaintiffs/Intervenors.

### COUNT III

16. That Defendant's actions constitute deceit within the meaning of SDCL § 20-10-1 and 20-10-2.

17. That Defendant's actions also constitute deceit within intent to defraud a particular class of persons under SDCL § 20-10-3.

18. That Defendant's actions were the legal cause of wages, employability, mental anguish and severe emotional distress, severe and permanent injuries, including medical, hospital and therapeutic treatment, pain and suffering and loss of enjoyment of life.

19. That Defendant's combined actions were malicious, fraudulent and oppressive from which Plaintiffs/Intervenors have a claim for punitive damages under South Dakota law.

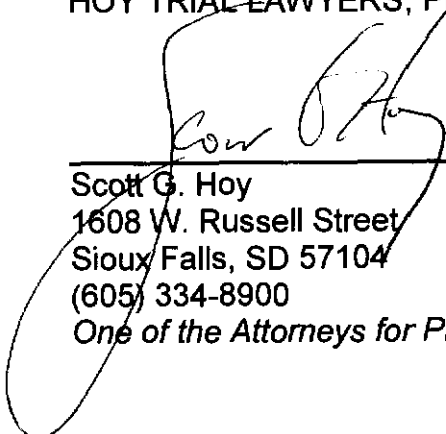
### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs/Intervenors respectfully request that this Court:

- (a) Order Defendant to pay for actual damages for past and future pecuniary losses, severe and permanent injuries, medical, hospital and therapeutic treatment and expense, permanent disability, and loss of earnings.
- (b) Order Defendant to pay for damages for emotional distress, pain and suffering, and loss of enjoyment of life.
- (c) Order Defendant to pay punitive damages under South Dakota law in an amount to be determined at trial. Plaintiffs/Intervenors request a separate hearing for discovery and trial of punitive damages under SDCL § 21-1-4.1.
- (d) Order Defendant to pay for Plaintiffs/Intervenors' attorney fees and costs under state and federal law.
- (e) Order such other and further relief as the Court may deem just and equitable.

Dated at Sioux Falls, South Dakota this 12<sup>th</sup> day of December, 2006.

HOY TRIAL LAWYERS, PROF. L.L.C.



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