

v.	§	CIVIL ACTION NO. 9:97cv063
	§	
LUFKIN INDUSTRIES,	§	
	§	
Defendant	§	

SECOND AMENDED SUPPLEMENTAL COMPLAINT

NOW COME the Plaintiff Class Representatives, Sylvester McClain, Buford Thomas, Patrick Ross, Mary Thomas (Williams), Eddie K. Mask, Leroy Garner, Sherry Calloway Swint, John Doe (a/k/a "A"), Florine Thompson (a/k/a John Doe II a/k/a "B"), John Doe III (a/k/a "C"), Clifford Duirden, Earl Potts and Roald Mark, on their own behalf and on behalf of a class of similarly situated persons, who for their Second Amended Supplemental Complaint state as follows:

I.

Introduction

1. Plaintiff Class Representatives Sylvester McClain, Buford Thomas, Patrick Ross, Mary Thomas (Williams), Eddie K. Mask, Leroy Garner, Sherry Calloway Swint, John Doe, a/k/a "A", Florine Thompson, a/k/a John Doe II, a/k/a "B", John Doe III, a/k/a "C", Clifford Duirden, Earl Potts, Roald Mark, and a certified class of similarly situated persons (collectively "Plaintiffs"), pursue this action under 42 U.S.C. § 1981, as amended ("§ 1981"), which in relevant part provides that all persons in the United States shall have the same right to make and enforce contracts as is enjoyed by white citizens. Plaintiffs also pursue causes of action for race discrimination in employment pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title

VII"), which in relevant part prohibits discrimination in the terms and conditions of employment on account of race. The Court certified the plaintiff class on March 31, 1999, pursuant to Rule 23(b)(2), F.R.C.P.

2. More specifically, Plaintiffs claim they have been employed by Defendant Lufkin Industries who has discriminated against them on account of their race in hiring, job assignments, training, evaluations, promotions, demotions, discipline, compensation, layoffs, recalls, rehires, terminations and other terms and conditions of employment.

3. Plaintiffs bring this cause of action to vindicate their rights guaranteed by Title VII and § 1981. Plaintiffs seek the full measure of available declaratory and equitable relief, on their own behalf and on behalf of members of the Plaintiff Class, along with an award of costs and statutory attorney fees, pursuant to Title VII and 42 U.S.C. § 1988.

II.

Jurisdiction

4. This Court has jurisdiction over the Plaintiffs' claims pursuant to 28 U.S.C. § 1331, which creates original jurisdiction for this Court over all civil actions arising under the Constitution, laws, or treaties of the United States, and 28 U.S.C. § 1343(4), which creates original jurisdiction for this Court over civil actions to secure equitable relief under any Act of Congress providing for the protection of civil rights. This Court also has jurisdiction over the Plaintiffs' Title VII causes of action

pursuant to 42 U.S.C. § 2000e(5)(f)(3).

III.

Parties

Plaintiffs:

5. Plaintiff Class Representative Sylvester McClain is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

6. Plaintiff Class Representative Buford Thomas is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

7. Plaintiff Class Representative Patrick Ross is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

8. Plaintiff Class Representative Mary Thomas (Williams) is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

9. Plaintiff Class Representative Eddie K. Mask is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

10. Plaintiff Class Representative Leroy Garner is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

11. Plaintiff Class Representative Sherry Calloway Swint is a citizen of the United States, a resident of Dallas County, Texas, and a person within the jurisdiction of the United States.

12. Plaintiff Class Representative John Doe, a/k/a "A", is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

13. Plaintiff Class Representative Florine Thompson, previously known as John Doe II and/or "B", is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

14. Plaintiff Class Representative John Doe III, a/k/a "C", is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

15. Plaintiff Class Representative Clifford Duirden is a citizen of the United States, a resident of Angelina County, Texas, and a person within the jurisdiction of the United States.

16. Plaintiff Class Representative Earl Potts is a citizen of the United States, a resident of Houston County, Texas, and a person within the jurisdiction of the United States.

17. Plaintiff Class Representative Roald Mark is a citizen of the United States, a resident of Harris County, Texas, and a person within the jurisdiction of the United States.

Plaintiff Class:

18. The Court has certified a Plaintiff Class consisting of:

All Black persons employed for any period of time by defendant Lufkin Industries on or after March 6, 1994, to date, whose compensation, remuneration, benefits, job assignments, promotional opportunities, career advancement and other terms and conditions of employment have been, may have been, or may become, adversely affected by defendant Lufkin Industries' past or present systems of administering hiring, wages, salaries, job assignments, training, evaluations, promotions, demotions, terminations, layoffs, recalls, and rehires.

Defendant:

19. Defendant Lufkin Industries, Inc. is a Texas corporation licensed to do business in the State of Texas and located within the jurisdiction of the United States District Court for the Eastern District of Texas. Defendant Lufkin Industries can be served through its Secretary, C. James Haley, Jr., 601 So. Raguet, Lufkin, TX 75901.

IV.

Procedural History

20. Plaintiff Class Representative McClain timely filed a charge of discrimination in employment with the United States Equal Employment Opportunity Commission and received his right-to-sue letter on or about December 4, 1996. Plaintiff Class Representative McClain has therefore satisfied all prerequisites to suit for the Plaintiff Class Representative Class' Title VII claims and there remain no unfulfilled exhaustion requirements.

V.

Facts

21. All of the Plaintiffs have been employed by Defendant Lufkin Industries at some timesince March 6, 1994 and are entitled to the protections from employment discrimination offered by Title VII and § 1981.

22. At all times relevant hereto Defendant Lufkin Industries is and was an employer as that term is defined by Title VII, and is and was subject to the prohibitions against race discrimination contained in Title VII and 42 U.S.C. § 1981.

23. Plaintiff Class Representative Sylvester McClain is a black, African American and resident of Angelina County, Texas.

24. Defendant Lufkin Industries hired Plaintiff Class Representative McClain on or about February 16, 1972, paying him approximately \$2.22 per hour to work as a "helper."

25. Throughout his tenure, Plaintiff Class Representative McClain has actively opposed race discrimination in employment at Lufkin Industries.

26. Plaintiff Class Representative McClain worked in many capacities, up to and including the Quality Assurance Manager for Defendant's Trailer Division.

27. At all times relevant hereto, Plaintiff Class Representative McClain has been a loyal, competent, qualified, hard working employee for Defendant Lufkin Industries.

28. From approximately 1990 until June 8, 1996, Plaintiff Class Representative McClain served Defendant Lufkin Industries as its Trailer Division Quality Assurance Manager.

29. While Plaintiff Class Representative McClain was a Quality Assurance Manager, Defendant Lufkin Industries not only refused to treat him in a manner comparable to the manner it treated similar white employees, but Defendant Lufkin Industries refused to consider Plaintiff Class Representative McClain for promotions because of his race.

30. As Quality Assurance Manager Plaintiff Class Representative McClain was not given the compensation, support, authority, equipment or training provided to white employees with similar

responsibilities. As a result, Plaintiff Class Representative McClain had to work considerably longer hours and harder than did white employees with similar responsibilities.

31. In January, 1995, higher management employees at Lufkin Industries attempted to terminate and/or demote Plaintiff Class Representative McClain solely because of his race. When Plaintiff Class Representative McClain complained about this proposed discrimination, he was only able to delay the action.

32. In January, 1996, Defendant Lufkin Industries demoted Plaintiff Class Representative McClain from his position as Quality Assurance Manager to his present position of Inspector. This demotion was the result of Defendant Lufkin Industries' racial hostility and in retaliation for Plaintiff Class Representative McClain's having opposed race discrimination in the workplace.

33. As a direct and foreseeable result of the Defendant Lufkin Industries' actions complained of above, Plaintiff Class Representative McClain suffered and continues to suffer lost pay and compensation.

34. As a direct and foreseeable result of Defendant Lufkin Industries' actions and inactions described above, Plaintiff Class Representative McClain suffered and continues to suffer lost promotional opportunities.

35. As a direct and foreseeable result of the Defendant Lufkin Industries' actions and inactions described above, Plaintiff Class Representative McClain has been required to work a great many more hours than white employees are required to work, without

compensation.

36. Plaintiff Class Representative Buford Thomas is a black, African-American and resident of Angelina County, Texas.

37. From May, 1979 until May 17, 1996 Plaintiff Class Representative Buford Thomas was an employee of Defendant Lufkin Industries.

38. Plaintiff Class Representative Buford Thomas worked in many capacities, starting as a Sales Trainee, and most recently working as a Quality Assurance Technician.

39. From approximately 1984 until May 17, 1996, Plaintiff Class Representative Buford Thomas served Defendant Lufkin Industries as a Quality Assurance Technician.

40. As a Quality Assurance Technician, Plaintiff Class Representative Buford Thomas was required by Defendant Lufkin Industries to perform the work of white employees, who received full credit for Plaintiff Class Representative Buford Thomas' efforts. White employees were not similarly required to perform work for Plaintiff Class Representative Buford Thomas or other black African Americans.

41. While a Quality Assurance Technician, Defendant Lufkin Industries refused to consider Plaintiff Class Representative Buford Thomas for promotions to other positions because of his race.

42. Throughout his tenure, Plaintiff Class Representative Buford Thomas sought training opportunities and opportunities for advancement. While white employees were often afforded these

opportunities, Plaintiff Class Representative Buford Thomas was rarely afforded these opportunities because of his race.

43. On the rare occasions that Plaintiff Class Representative Buford Thomas was provided with training, he never received additional responsibilities or promotions to utilize the skills obtained. For instance, in 1986 Plaintiff Class Representative Buford Thomas received supervisory training, but he was never given an opportunity to supervise other employees. Defendant Lufkin Industries denied Plaintiff Buford Thomas these opportunities and responsibilities because of his race.

44. On or about May 17, 1996, because Plaintiff Class Representative Buford Thomas was required to do the work of others without the opportunity for promotion, he was overworked, undercompensated, and reasonably felt compelled to resign his position because of the discrimination he was subject to.

45. As a direct and foreseeable result of the Defendant Lufkin Industries' actions and inactions described above, Plaintiff Class Representative Thomas suffered lost promotional opportunities.

46. As a direct and foreseeable result of the Defendant Lufkin Industries' actions complained of above, Plaintiff Class Representative Thomas has suffered lost pay and compensation.

47. Plaintiff Class Representative Patrick Ross is a black African American and resident of Angelina County, Texas.

48. In 1997 Plaintiff Class Representative Ross applied for employment at Defendant Lufkin Industries.

49. Defendant Lufkin Industries offered Plaintiff Class Representative Ross employment, but only in the relatively undesirable position of Chipper Grinder in the Foundry Cleaning Room.

50. The work required of a Chipper Grinder in the Foundry Cleaning Room is physically difficult and requires the use of heavy and noisy machines under very hot, dusty and dirty conditions, considered to be the least desirable at Defendant Lufkin Industries.

51. Defendant Lufkin Industries assigned Plaintiff Class Representative Ross to work as a Chipper Grinder in the Foundry, as opposed to assigning him to a more desirable position, because of his race.

52. The working conditions were so onerous that Plaintiff Class Representative Ross resigned after only a few weeks. If Defendant Lufkin Industries has given Plaintiff Class Representative Ross a different work assignment with better working conditions he would have continued to work at Defendant Lufkin Industries.

53. As a direct and foreseeable result of Defendant Lufkin Industries' actions towards Plaintiff Class Representative Ross, Plaintiff Class Representative Ross lost, and continues to lose, valuable compensation and employment opportunities.

54. Plaintiff Class Representative Mary Thomas (Williams) is a black African American and a resident of Angelina County, Texas.

55. Defendant Lufkin Industries hired Plaintiff Class Representative Mary Thomas in May, 1994.

56. Defendant Lufkin Industries employed Plaintiff Class Representative Mary Thomas in different capacities at both hourly and salaried positions.

57. Defendant Lufkin Industries initially assigned Plaintiff Class Representative Mary Thomas to work in the Trailer Division under physically demanding and less desirable work conditions because of her race.

58. Defendant Lufkin Industries denied Plaintiff Class Representative Mary Thomas training, transfers and other employment opportunities because of her race.

59. Defendant Lufkin Industries laid off Plaintiff Class Representative Mary Thomas in 1996 and passed her over for recall because of her race.

60. Defendant Lufkin Industries refused to rehire Plaintiff Class Representative Mary Thomas into a bargaining unit position after the 1996 layoff, but instead only offered her a lower paying, non-bargaining unit position as a security guard where she was again denied training and transfers to better paying and more desirable positions, because of her race.

61. As a direct and foreseeable result of Defendant Lufkin Industries' actions, complained of above, Plaintiff Class Representative Mary Thomas suffered and continues to suffer lost compensation.

62. Plaintiff Class Representative Eddie Mask is a black African American and a resident of Angelina County, Texas.

63. Defendant Lufkin Industries employed Plaintiff Class Representative Mask from 1964 until 1969 and from 1973 until the present in both hourly and salaried positions.

64. Defendant Lufkin Industries has deprived Plaintiff Class Representative Mask promotional and training opportunities throughout his tenure because of his race.

65. As a direct and foreseeable result of Defendant Lufkin Industries' actions, complained of above, Plaintiff Class Representative Mask has suffered, and continues to suffer, lost compensation and employment opportunities.

66. Plaintiff Class Representative Leroy Garner is a black African American and a resident of Angelina County, Texas.

67. Defendant Lufkin Industries employed Plaintiff Class Representative Garner from 1963 until 1998, when he retired.

68. Defendant Lufkin Industries denied Plaintiff Class Representative Garner training and promotional opportunities throughout his tenure because of his race.

69. Defendant Lufkin Industries' actions, complained of above, caused Plaintiff Class Representative Garner to lose compensation and employment opportunities.

70. Plaintiff Class Representative Sherry Calloway Swint is a black African American and resident of Dallas County, Texas.

71. Defendant Lufkin Industries employed Plaintiff Class Representative Swint from 1990 until 1995 in salaried and hourly positions.

72. Defendant Lufkin Industries denied Plaintiff Class Representative Swint training and promotional opportunities during her tenure because of her race.

73. When Plaintiff Class Representative Swint complained of discrimination, Defendant Lufkin Industries subjected her to retaliation, including assignment to onerous and undesirable working conditions resulting in constructive discharge.

74. As a direct and foreseeable result of Defendant Lufkin Industries' actions, complained of above, Plaintiff Class Representative Swint lost, and continues to lose, compensation and employment opportunities.

75. Plaintiff Class Representative John Doe, a/k/a "A", is a black African American and resident of Angelina County.

76. Defendant Lufkin Industries has denied Plaintiff Class Representative John Doe training and promotional opportunities because of his race.

77. Defendant Lufkin Industries has demoted Plaintiff Class Representative John Doe because of his race.

78. Defendant Lufkin Industries assigned Plaintiff Class Representative John Doe to work in its Trailer Division under hot, dirty, physically demanding, undesirable working conditions because of his race.

79. Defendant Lufkin Industries' actions, complained of above, have directly and foreseeably caused Plaintiff Class Representative John Doe to lose valuable compensation and employment opportunities.

80. Plaintiff Class Representative Florine Thompson is an African American and resident of Angelina County.

81. Defendant Lufkin Industries employed Plaintiff Class Representative Florine Thompson in hourly and salaried positions since 1984.

82. Defendant Lufkin Industries has deprived Plaintiff Class Representative Florine Thompson training and promotional opportunities because of her race.

83. Defendant Lufkin Industries has demoted Plaintiff Class Representative Florine Thompson and assigned her to onerous and undesirable job assignments because of her race.

84. Defendant Lufkin Industries gave Plaintiff Class Representative Florine Thompson a lower job classification than white employees doing the same work, just because of her race.

85. Defendant Lufkin Industries refused and failed to give raises to Plaintiff Class Representative Florine Thompson because of her race.

86. Defendant Lufkin Industries subjected Plaintiff Class Representative Florine Thompson to retaliation, including a cut in pay, and demotion, because she complained about discrimination.

87. Defendant Lufkin Industries' actions, complained of above, directly and foreseeably caused, and continues to cause, Plaintiff Class Representative Florine Thompson to lose compensation and employment opportunities.

88. Plaintiff Class Representative John Doe III, a/k/a "C", is a black African American and resident of Angelina County, Texas.

89. Defendant Lufkin Industries has employed Plaintiff Class Representative John Doe III since 1971.

90. Defendant Lufkin Industries has deprived Plaintiff Class Representative John Doe III of training and promotional opportunities because of his race.

91. Defendant Lufkin Industries has subjected Plaintiff Class Representative John Doe III to disciplinary action because of his race.

92. Defendant Lufkin Industries' actions, complained of above, have directly and foreseeably caused, and continue to cause, Plaintiff Class Representative John Doe III to lose compensation and employment opportunities.

93. Plaintiff Class Representative Clifford Duirden is a black African American and a resident of Angelina County, Texas.

94. Defendant Lufkin Industries has employed Plaintiff Class Representative Duirden since 1987.

95. Defendant Lufkin Industries initially assigned Plaintiff Class Representative Duirden to the Foundry Division, to work under dirty, noisy, physically onerous and undesirable conditions because of his race.

96. Defendant Lufkin Industries has denied Plaintiff Class Representative Duirden training and promotional opportunities because of his race.

97. Defendant Lufkin Industries' actions, complained of above, have directly and foreseeably caused, and continue to cause, Plaintiff Class Representative Duirden to lose compensation and

employment opportunities.

98. Plaintiff Class Representative Earl Potts is an African-American citizen residing in Houston County, Texas.

99. Defendant Lufkin Industries has employed Plaintiff Class Representative Potts since 1989.

100. Defendant Lufkin Industries has denied Plaintiff Class Representative Potts training and promotional opportunities because of his race.

101. Defendant Lufkin Industries has required Plaintiff Class Representative to endure various forms of race discrimination, including racial slurs.

102. Defendant Lufkin Industries assigned Plaintiff Class Representative Potts to work in the cleaning booth, the dirtiest, noisiest and physically hardest, least desirable working conditions in the Power Transmission Division because of his race and because he actively opposed discrimination.

103. Defendant Lufkin Industries' actions, complained of above, have directly and foreseeably caused, and continue to cause, Plaintiff Class Representative Potts to lose valuable compensation and employment opportunities.

104. Plaintiff Class Representative Roald Mark is a black African American and a resident of Harris County, Texas.

105. Defendant Lufkin Industries hired Plaintiff Class Representative Mark in April, 1995, initially assigning him to work in the Foundry because of his race.

106. Defendant Lufkin Industries assigned Plaintiff Class Representative Mark to work in the Foundry cleaning room, under the dirtiest, noisiest, most physically demanding and least desirable working conditions at Defendant Lufkin Industries because of his race.

107. Defendant Lufkin Industries required Plaintiff Class Representative Mark to endure different forms of race discrimination, including racial slurs being used by his supervisor.

108. Defendant Lufkin Industries has also retaliated against Plaintiff Class Representative Mark because he has opposed race discrimination. The retaliation included reassignment from a production job to cleaning particularly filthy bathrooms, refusal to schedule Plaintiff Class Representative Mark for work, reassigning him to a non-bargaining unit position, subjecting him to trumped-up and exaggerated discipline, and laying him off on January 7, 1999 even though he had more departmental seniority than employees who were retained and continued to do the work that Plaintiff Class Representative Mark had been doing before the layoff.

109. The actions of Defendant Lufkin Industries, described above, have directly and foreseeably caused, and continue to cause, Plaintiff Class Representative Mark to lose valuable compensation.

110. Defendant Lufkin Industries exercises its subjective discretion to discriminate against the Plaintiffs in job assignments, training, promotional opportunities, compensation, demotions,

layoffs, recalls, terminations, discipline and other terms and conditions of employment.

111. Defendant Lufkin Industries fails or refuses to provide promotional opportunities for its black, African-American employees into salaried and management level positions on the same basis that it is willing to provide promotional opportunities into salaried and management level positions for its white employees.

112. Defendant Lufkin Industries is less likely to hire qualified black African Americans than whites.

113. Defendant Lufkin Industries has assigned disproportionately more black African American class members to difficult and unpleasant jobs and disproportionately fewer black African American class members to less strenuous and more desirable positions.

114. Defendant Lufkin Industries fails or refuses to provide training and promotional opportunities to black African American class members on the same basis as it does its white employees.

115. Defendant Lufkin Industries has disproportionately included more black African American class members than whites in layoffs.

116. Defendant Lufkin Industries compensates black African Americans at disproportionately lower rates than it does whites.

117. Defendant Lufkin Industries disproportionately terminates more black African Americans for cause than it does whites.

118. Defendant Lufkin Industries' refusal to employ African-Americans on the same basis that it is willing to employ whites constitutes a refusal to contract with black, African-Americans on the same basis that it is willing to contract with whites, in

violation of 42 U.S.C. § 1981, as amended.

119. Defendant Lufkin Industries' refusal to employ black, African-Americans under the same terms and conditions of employment that it is willing to employ whites constitutes race discrimination in employment, in violation of Title VII.

120. Defendant Lufkin Industries' subjective decision-making process resulting in discrimination against black African Americans is not reasonably divisible to permit analysis of more specific or discrete employment practices, and must be analyzed as one employment practice.

121. Defendant Lufkin Industries' acts and omissions, complained of above, were undertaken intentionally and willfully.

122. As a direct and foreseeable result of Defendant Lufkin Industries' actions and omissions, complained of above, the named Plaintiffs and members of the Plaintiff Class have been, continue to be, and will in the future be, irreparably harmed and have lost substantial income and promotional opportunities.

123. The named Plaintiffs and members of the Plaintiff Class Representative class have no plain or adequate remedy at law, except for this suit which is their only means of securing redress.

VI.

Causes of Action

First Cause of Action:

124. Defendant's acts and omissions, set forth above, constitute employment discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., for which

Plaintiffs seek the full measure of equitable remedies, individually and on behalf of members of the class.

Second Cause of Action:

125. Defendant's acts and omissions, set forth above, constitute violations of 42 U.S.C. § 1981, for which Plaintiffs seek the full measure of equitable relief.

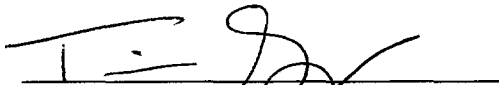
VII.

Prayer for Relief

WHEREFORE, Plaintiffs pray that this Honorable Court:

- a. Enter declaratory judgment against Defendant Lufkin Industries and in favor of Plaintiffs recognizing that Defendant discriminated against them on the basis of their race in violation of Title VII and 42 U.S.C. §1981;
- b. Enter a permanent injunction against Defendant Lufkin Industries and in favor of Plaintiffs, enjoining Defendant from discriminating against them on the basis of race in the future;
- c. Enter judgment for equitable relief against Defendant Lufkin Industries and in favor of Plaintiffs providing all available appropriate relief reasonably necessary to make them whole, including, but not limited to, granting back pay, front pay, retroactive seniority, promotions, priority placements, equal access to training and promotional opportunities, and any other equitable relief appropriate to make the class members whole;
- d. Enter judgment and an Order against Defendant Lufkin Industries and in favor of Plaintiffs providing for reasonable attorney's fees and taxable costs;
- e. Grant any and all other additional relief to which Plaintiffs appear to be entitled.

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

I hereby certify that I have served all counsel of record in this case, including the following, with a true and correct copy of the foregoing Second Amended Supplemental Complaint by sending same via United States certified (return receipt requested) mail, postage prepaid:

John H. Smither/Christopher V. Bacon
Vinson & Elkins
2806 First City Tower
1001 Fannin
Houston TX 77002-6760

on this 7th day of December, 2000.


Timothy B. Garrigan