

IN THE UNITED STATES DISTRICT COURT FILED - CLERK
FOR THE EASTERN DISTRICT OF TEXAS J.S. DISTRICT COURT
LUFKIN DIVISION

2003 SEP 29 PM 3:51

SYLVESTER MCCLAIN, on his own
behalf and on behalf of a class of similarly
situated persons, et al.,

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TX EASTERN - LUFKIN
BY 

Plaintiffs,

CIVIL ACTION NO. 9:97-CV-063

vs.

JUDGE COBB

LUFKIN INDUSTRIES,

Defendant.

DEFENDANT LUFKIN INDUSTRIES'
MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant Lufkin Industries, Inc. moves for partial summary judgment on Plaintiffs' initial assignment claims, which are based solely on the factually unsupported allegation that there is a statistically significant over-assignment of African-American employees to the entry level position of General Foundryman.¹ Plaintiffs' initial assignment allegations do not state a claim because they were not included in the EEOC charge of either Sylvester McClain or Buford Thomas, on which this lawsuit is predicated.

I. Plaintiff Fails To State A Timely Initial Assignment Claim.²

Plaintiffs' class initial assignment claims proceed solely on the basis of the EEOC charges of the named Plaintiffs – Sylvester McClain and Buford Thomas. Sylvester McClain was hired by Lufkin Industries on February 16, 1972 in its Trailer division. On August 12, 1996,

¹ Plaintiffs also challenge Lufkin's employment processes with respect to (i) promotions and advancement for hourly jobs, and (ii) pay rates of hourly employees. This motion is limited to Plaintiffs' initial assignment claim.

² Contrary to Plaintiffs' claims from time to time, this is not a hiring case. The Court has never certified a class of applicants and has specifically rejected past attempts by Plaintiffs to add additional class representatives to represent an applicant class. (Order of March 31, 1999, denying Plaintiffs' Motion for Leave to File First Amended Supplemental Complaint Adding Eric Knighton As A Plaintiff).

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McClain filed a charge of race discrimination with the EEOC, complaining about his demotion from Quality Manager to Inspector on January 6, 1996 and alleging that “[s]ince January of 1995 and continuing, I have been subjected to different terms and conditions of employment by being denied comparable training, access to supplies and equipment needed to do a satisfactory [sic] job; given unsatisfactory evaluations.” (Ex. 1, McClain EEOC Charge). McClain further complained about “low pay” in other documents submitted to the EEOC. (*Id.* at Intake Questionnaire).

Buford Thomas’ charge is no different. (Ex. 2, Thomas EEOC Charge). Buford Thomas was hired by Lufkin Industries in May 1979 in its Power Transmission Division. (*Id.*). Following his resignation in May 1996, on February 24, 1997, Thomas filed a charge of race discrimination with the EEOC, alleging constructive discharge, denial of promotional and training opportunities, and being “required to not only do my own work, but also that of my white colleagues.” (*Id.*).

Notably missing from McClain’s and Thomas’ EEOC charge and other correspondence is any allegation or complaint about initial assignment generally, much less initial assignment to the Foundry division as alleged in this lawsuit. Furthermore, both McClain and Thomas would have been statutorily time-barred from asserting an initial assignment claim based on their own employment experience. *See Huckabay v. Moore*, 142 F.3d 233, 238 (5th Cir. 1998). At the time McClain and Thomas complained to the EEOC, more than 15 years had passed since Thomas’ hiring and initial assignment to Power Transmission, and more than 20 years had passed since McClain’s hiring and initial assignment to Oilfield and rehire and initial assignment to Trailer. (Ex. 1 & Ex. 2).

While it is not disputed that class members may “piggyback” on the EEOC charge of a named plaintiff, to enjoy the benefits of the “single filing rule,” class members must be similarly

situated to the person or persons actually filing the EEOC complaint. See *Bettcher v. Brown Schs., Inc.*, 262 F.3d 492, 494 (5th Cir. 2001); *Allen v. United States Steel Corp.*, 665 F.2d 689, 695 (5th Cir. 1982) (“[I]n a multiple-plaintiff, non-class action suit, if one plaintiff has filed a timely EEOC complaint as to that plaintiff’s individual claim, then co-plaintiffs with individual claims arising out of similar discriminatory treatment in the same time frame need not have satisfied the filing requirement.”).

Applying the well-established principles articulated in *Allen* and other “single filing” cases, the only issues that may be brought in this action by class members “piggybacking” on McClain’s and Thomas’s EEOC charges are those practices properly asserted by McClain and Thomas in their EEOC charges and reasserted in the complaint. *Oatis v. Crown Zellerbach Corp.*, 398 F.2d 496, 499 (5th Cir. 1968). Because McClain and Thomas did not assert – and could not have properly asserted – hiring or initial assignment claims, these issues may not be considered in this action. *Id.*; see also *Allen*, 665 F.2d at 696 (“[P]laintiffs ... who have not themselves filed timely EEOC complaints, cannot rely upon the EEOC complaint of another, when the latter complaint itself is not timely as to the filing party’s own individual claims.”).

Nor is Plaintiffs’ class initial assignment claim saved by the reasonable expectation rule announced in *Sanchez v. Standard Brand, Inc.*, 431 F.2d 455 (5th Cir. 1970), which addresses the scope of judicial complaints brought by an individual who filed a timely EEOC charge. In such cases, the judicial complaint is limited to the scope of the EEOC investigation which can reasonably be expected to grow out of the charge. (*Id.*) The reasonable expectation rule requires that the scope of allegations made in a judicial complaint be “like or related” to allegations made in the EEOC charge. (*Id.*) Plaintiffs may not bootstrap a proper claim, however, simply through the intervention of class representatives. Unless the other class representatives filed charges with

the EEOC, they and other class members must proceed “within the periphery of the issues which [the named plaintiffs] could assert.” *Vuyanich v. Republic Nat’l Bank of Dallas*, 723 F.2d 1195, 1201 (5th Cir. 1984) (citing *Oatis*, 398 F.2d at 499). Because McClain and Thomas did not file a charge asserting an initial assignment claim and any such charge would have been untimely as to McClain and Thomas, it is not a claim which they “could assert,” and therefore neither can the class.

It is also beyond cavil that Thomas’ and McClain’s charges would not reasonably be expected to initiate an investigation of hiring and initial assignment in Lufkin’s Foundry. Since Thomas and McClain were hired and assigned to divisions other than Foundry, there would have been no basis to investigate a claim that black entry-level employees are relegated to the Foundry division as alleged in this lawsuit. There is likewise no basis to suggest that the EEOC would have investigated employment and assignment decisions accruing 15 or 20 years before a charge was filed. Thomas, who was initially hired in Power Transmission, makes no mention of the Foundry in his charge. McClain, who was initially hired in Oilfield and, when rehired in 1972, assigned to the Trailer division, specifies that the organization charged in his complaint is “Lufkin Industries/Trailer Division.” (Ex. 1, Intake Questionnaire) (emphasis added).

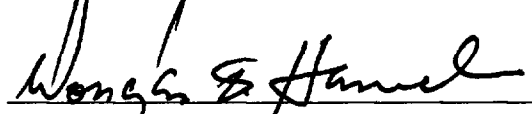
The McClain and Thomas EEOC charges simply will not support Plaintiffs’ class initial assignment claims. *See, e.g., Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 929 (11th Cir. 1983) (holding that district court did not err in denying class certification on initial job assignment/hiring claims because EEOC charge only alleged discrimination in promotions, unspecified terms and conditions of employment, harassment, and union representation); *Dennis v. County of Fairfax*, 55 F.3d 151, 156 (4th Cir. 1995) (affirming district court’s dismissal of hiring claim as a matter of law because EEOC charge only alleged “disparate disciplinary

treatment”); *Hyatt v. CNG Producing Co.*, No. 91-4654 §G, 1992 U.S. Dist. LEXIS 17017, at **12-13 (E.D. La. Oct. 28, 1992) (dismissing as a matter of law discriminatory job assignment claim because EEOC charge alleged only discriminatory discharge) *Gustafson, Inc. v. Bunch*, No. 3:97-CV-2102-D, 83 Fair Empl. Prac. Cas. (BNA) 375, 1999 U.S. Dist. LEXIS 7107, at **21-22 (N.D. Tex. May 7, 1999) (dismissing as a matter of law claim that employer “unlawfully discriminated by failing to hire [the plaintiff] for other jobs” because EEOC charges alleged only “discrimination arising from Gustafson’s decision not to hire him for the Northeast Territory TSR position” and retaliation); *Simmons v. Iberville Operating Co.*, No. 89-3483, 1990 U.S. Dist. LEXIS 1336, at **10-12 (E.D. La. Feb. 2, 1990) (dismissing as a matter of law claims regarding “discrimination resulting from allegedly segregated job classifications, job assignments, [and] refusals to hire” because EEOC charges only alleged discriminatory demotion, harassment, suspension, and retaliatory discharge). *Cf. Thomas v. Capital Sec. Servs.*, 836 F.2d 866, 884 (5th Cir. 1988) (discussing possible Rule 11 sanctions based on plaintiffs’ counsel’s “expansion of the judicial complaint beyond the EEOC complaint,” in that the EEOC charges alleged discriminatory layoff but the complaint included “shotgun allegations” such as hiring, promotion, and on-the-job treatment claims).³

³ See also *Hubbard v. Rubbermaid, Inc.*, 436 F. Supp. 1184, 1187 (D. Md. 1977) (granting employer’s motion to dismiss as a matter of law “recruitment, job classification, hiring, [and] assignment” claims because EEOC charge only alleged discrimination in wages, benefits, and terms and conditions of employment); *Jackson v. Ohio Bell Tel. Co.*, 555 F. Supp. 80, 83 (S.D. Ohio 1982) (dismissing as a matter of law job assignment claim because EEOC charge only alleged discrimination in termination and discipline); *Grant v. Morgan Guar. Trust Co. of NY*, 548 F. Supp. 1189, 1191-92 (S.D.N.Y. 1982) (dismissing as a matter of law assignment claim because EEOC charge only alleged failure-to-promote); *Combs v. C.A.R.E., Inc.*, 617 F. Supp. 1011, 1011-13 (E.D. Ark. 1985) (dismissing as a matter of law hiring and placement claims because EEOC charge only alleged discriminatory discharge); *Harris v. Caterpillar Tractor Co.*, No. S-Civ.-78-3037, 1978 U.S. Dist. LEXIS 16232, at **2-4 (S.D. Ill. Aug. 1, 1978) (same); *Plaisance v. Travelers Ins. Co.*, 880 F. Supp. 798, 805-07 (N.D. Ga. 1994) (dismissing job assignment claim as a matter of law because EEOC charge only alleged failure-to-promote and retaliation), *aff’d*, 56 F.3d 1391 (11th Cir. 1995), *cert. denied*, 516 U.S. 931 (1996).

Because McClain and Thomas did not make, and could not have made, timely hiring or initial assignment claims in their EEOC charges, Plaintiffs' initial assignment claims must be dismissed as a matter of law.

Respectfully submitted,



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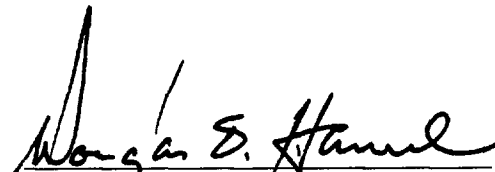
VINSON & ELKINS, L.L.P.

First City Tower

Houston, Texas 77002-6760

CERTIFICATE OF SERVICE

I certify that on this 23rd day of September, 2003, a copy of the foregoing Defendant Lufkin Industries' Motion for Partial Summary Judgment was forwarded to Plaintiffs by facsimile transmission (without attachments) and by Federal Express as follows: Timothy B. Garrigan, 2803 North Street, Nacogdoches, TX 75963-1902, (936) 560-9578, and Teresa Demchak, Saperstein, Goldstein, Demchak & Baller, 300 Lakeside Drive, Suite 1000, Oakland, CA 94612, (510) 835-1417.



Attorney for Defendant

EXHIBIT

1



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Houston District Office**

1919 Smith St, 7th Floor
Houston, TX 77002-8049
PH: (713) 209-3320
TDD: (713) 209-3439
FAX: (713) 209-3381
LEGAL: (713) 209-3401

2/20/01 - Copies to:
Paul Perez
John H. Smither
Douglas E. Hamel
Christopher V. Bacon
M. Michelle Mahony

CERTIFICATION OF DOCUMENTS

I, Javier Chacon, Deputy Director of the Houston District Office of the Equal Employment Opportunity Commission ("Commission"), certify that:

As Deputy Director, all administrative files in the Houston District Office are under my custody, care and control;

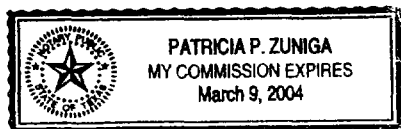
An administrative file was prepared in the regular course of business in the Houston District Office of the Commission pertaining to **Charge Number 330-96-3069, Sylvester McClain v. Lufkin Industries, Inc.;**

The documents attached hereto are true and accurate copies from the above noted administrative file. I declare under penalty of perjury that the foregoing is true and correct.



JAVIER CHACON, DEPUTY DIRECTOR

Sworn to and Subscribed before me this 13th day of February, 2001.





NOTARY

This form is affected by title VII of 1974; See Privacy Act Statement when completing this form. FEPA EEOC 330 96 3069

Texas Commission on Human Rights and EEOC
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.) HOME TELEPHONE (Include Area Code)
 Mr. Sylvester McClain (409) 639-6545 406

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH
 P. O. Box 734, Lufkin, TX 75901 11/11/11

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)
 Lufkin Industries Cat A (15-100) (409) 634-2211

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY
 Highway 69 South, Lufkin, TX 75901 005

NAME TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE
 RACE COLOR SEX RELIGION NATIONAL ORIGIN EARLIEST LATEST
 RETALIATION AGE DISABILITY OTHER (Specify) 01/06/96 01/06/96
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):
 Since January of 1995 and continuing, I have been subjected to different terms and conditions of employment by being denied comparable training, access to supplies and equipment needed to do a satisfactory job; given unsatisfactory evaluations. On January 6, 1996 I was demoted from my position as Quality Manager to Inspector. Respondent is foundry that employs more than twenty employees.

I believe that I am being discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures. NOTARY - (When necessary for State and Local Requirements)
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. SIGNATURE OF COMPLAINANT

Date 8-12-96 Charging Party (Signature) *Sylvester McClain* SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

INTAKE QUESTIONNAIRE

EEOC USE ONLY
Name (Intake Officer)

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

Please answer the following questions, telling us briefly why you have been discriminated against in employment. An officer of the EEOC will talk with you after you complete this form.

(Please Print)

NAME Sylvester McClain DATE 1-8-96
(First) (Middle Name or Initial) (Last)

ADDRESS P.O. BOX 734 TELEPHONE NO. disconnected (409) 437 4545
(include area code)

CITY Lufkin STATE Texas ZIP CODE 75901 COUNTY Angelina

Please provide the name of an individual at a different address who is in the local area and who would know how to reach you.

NAME REDACTED PHONE _____

ADDRESS _____

What action was taken against you that you believe to be discriminatory? What harm, if any, was caused to you or others in your work situation as a result of that action? (If more space is required, use reverse.)

I have been discriminated against through denial of equal opportunity, pay and treatment since I became chief Inspector in 1988 up until this action of demotion now from

Do you believe this action was taken against you because of: (Check the one(s) that apply and specify your race, sex, age, religion or ethnic identity.)

- RACE SEX RELIGION NATIONAL ORIGIN AGE RETALIATION COLOR
- OTHER, EXPLAIN BRIEFLY BELOW _____

I WAS DISCRIMINATED AGAINST BY: (Check the one(s) that apply)

- EMPLOYER UNION (Give Local No.) EMPLOYMENT AGENCY OTHER (Specify)

NAME <u>Lufkin Industries / Trailer Division</u>	NAME _____
ADDRESS <u>601 S. Roquet</u>	ADDRESS _____
CITY, STATE, ZIP CODE <u>Lufkin, Texas 75901</u>	CITY, STATE, ZIP CODE _____

APPROXIMATE NUMBER EMPLOYED BY THIS EMPLOYER <u>Trailer Division: Approx. 300</u>	WHAT WAS THE MOST RECENT DATE THE HARM YOU ALLEGED TOOK PLACE? <u>1-6-96</u>
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Are you now employed by the Employer that harmed you? Answer below.

YES: FROM Feb 16, 1972 (Date) NO: I APPLIED FOR _____ (Position)

OR: I WAS EMPLOYED AS _____ (Position)

CURRENT POSITION Inspector ON _____ (Date) UNTIL _____ I WAS _____ (Laid off, fired, etc.)

Normally, your identity will be disclosed to the organization which allegedly discriminated against you.

Do you consent or not consent to such disclosure?

Have you sought assistance about the action you think was discriminatory from any Government agency, from your union, an attorney, or from any other source?

No Yes (if answer is yes, complete below)

NAME OF SOURCE OF ASSISTANCE _____ DATE _____

RESULT, IF ANY:

Pending

Have you filed an EEOC Charge in the past? No Yes (If answer is yes, complete below)

APPROX. DATE FILED JAN 14 1995 ORGANIZATION CHARGED Lufkin Industries / Trailer Division CHARGE NUMBER (IF KNOWN) _____

SIGNATURE Sylvester McClain DATE 1-8-96

INFORMATION SHEET

The EEOC has the responsibility for enforcing four laws covering employment discrimination because of your protected status:

Title VII of the Civil Rights of 1964, as amended (which covers difference in treatment because of race, religion, national origin, sex, or color).

Age Discrimination in Employment Act - coverage for persons 40 years or older.

Americans with Disabilities Act - protects those persons with disabilities.

Equal Pay Act - difference in wages for the same job functions based on sex.

PLEASE ANSWER THE FOLLOWING QUESTIONS. UPON COMPLETION, SIGN, DATE AND RETURN THE ENTIRE PACKAGE TO THE RECEPTIONIST.

1. How have you been harmed?

Discharged/Fired		Demoted	Yes
Denied a Promotion		Denied Employment	
Subjected to unequal treatment	Yes	Suspended	
Wages	Yes	Maternity	
Other:			

Who caused the harm: Demotion Date of harm: 1-6-96
 Title of the person (also include the race, sex, age, national origin, etc.)

2. What reason was given for the harm? Cut cost and duplication of responsibilities

3. Who informed you of this reason? Doug Williams

4. Why do you believe the harm or action taken against you was discriminatory?
These actions began in Jan. 1995 when Arden Jenkins my previous supervisor tried to demote me based upon untruths and slanderous attacks upon my ability and integrity.

5. Include information on others of a different race, sex, national origin, etc., who were treated more favorably or better than you in the same or similar situation. Steve Crawford, who was or still is parts manager, but will become branches - coordinator and the branch manager of one of our trailer branches that was closed for whom a job of branch manager at the Lufkin Trailer Division, which we have never had and Matt Harris gets promoted to parts manager during this current situation of a downturn in business
Sylvester Amellan 1-8-95
 Signature Date

for which is used as the excuse to demote me, when in fact that had been the plan all along because of my race.

Date : August 12, 1995
To : Equal Employment Opportunity Commission
Bernie L. Jackson / Investigative Assistant
Re : Employment Discrimination

Dear Mr. Jackson :

This is to acknowledge late receipt of the Charge of Discrimination papers needing my signature of which I am now giving as prompt attention as time would allow as well as the extreme stressful conditions under which I am working. This is also to inform you that there is much more depth of facts and information to be disclosed and investigated concerning the denial of equal opportunity, pay and treatment to me by Lufkin Trailer Division / Lufkin Industries Incorporated.

The discrimination complaint that I submitted to you Jan. 8, 1995 consisted of discriminatory actions of unequal pay, opportunity and treatment through vicious slanderous attacks upon my ability and integrity based upon untruths with the deliberate intent to stereotype me as a black man. The Charge of Discrimination papers that I signed do address some of issues of employment discrimination practices by the management of Lufkin Trailer Division that I have suffered from as well as Corporate management of Lufkin Industries through their condoning and support of these discriminatory actions committed against me.

I am asking for a thorough investigation into these immoral, unjust and illegal conditions of employment discrimination that I have suffered through as well as my family, which has caused irreparable harm to me and my family. Although many might would have give up because of the anguish and mental fatigue of dealing with the unfair and unjust discriminatory practices and racial stereotyping in the work place daily, I refuse to even entertain the thought of giving up and I am determined to stand up for justice and equality and for all that are oppressed also.

If you have any questions or I can be of any further help please let me know.

Respectfully,

Sylvester McClain
Sylvester McClain

Date: Jan. 8, 1996

To: Equal Employment Opportunity Commission

Re: Employment Discrimination / Trailer Division
Lufkin Industries, Inc.
661 S. Raguet
Lufkin, Texas 75901
Ph: (409) 6342211

RECEIVED
DISCRIMINATION OFFICE

JAN 10 11 7:19

I am requesting a federal investigation into discriminatory actions of denial of equal opportunity, pay and treatment committed against me as a black manager by the management of Lufkin Trailer Division, Lufkin Industries, Inc. These actions began when my supervisor, Arden Jenkins in Jan. 1995, tried to demote me based upon untruths and slanderous attacks upon my ability and integrity. The need to cut costs and eliminate duplication of job responsibilities stated to me as the reasons for demotion by my supervisor, Doug Williams are just a cover up for discriminatory actions committed against me that was and still is supported by statements made to me and another production supervisor by Arden Jenkins that he was directed by the General manager Jim Barber to get rid of me. This demotion and continued lack of training and resources, low pay, bias double standard of perfection applied to me but not white managers and the continued stereotyping and lack of respect of me as a black manager are a clear violation of Lufkin Industries equal opportunity policy and my civil and constitutional rights according to state and federal laws that are designed to protect all Americans against such unjust and unfair actions. I was demoted from quality manager to inspector which was my previous job classification and which the union contract requires when there is a reduction in the workforce. I am requesting prompt action on this matter to prevent further injustice from occurring through retaliatory acts that might be committed against me because I have the courage to stand up against employment discrimination committed against me and others who are suffering through the same injustice.

Respectfully,

Sylvester McClain
Sylvester McClain

- cc: U. S. Justice Department
- U. S. Treasure Department / Revenue Sharing
- U. S. Labor Department
- U. S. Human Rights Department
- U. S. Attorney General

DATE: JAN. 29, 1995

RE: JOB PERFORMANCE REVIEW

Lufkin Industries employment policy states that Lufkin is an equal opportunity and affirmative action employer, pledged to equal treatment to each employee in all aspects of employment, without regard to race, color, religion, sex, age, handicap, national origin, status as a disabled veteran or as a veteran of the Vietnam era. This policy assures equal opportunity in recruitment, advertising, or solicitation for employment; hiring, placement, upgrading, transfer and promotion; selection for and types of training; rates of pay, benefits and other forms of compensation. Since Arden Jinkins became my supervisor, I as a black manager have been the recipient of the most ruthless and vicious attacks upon my integrity and professionalism that I have ever suffered in my life. I have been subjected to a bias double standard of perfection requirements under almost impossible workload conditions and racial stereotyping by implications of inferior ability and achievements. Mr. Jinkins as my boss in 1988 prior to the Chief Inspector job posting, after I had filled in and performed the job satisfactory for several months tried to deny me equal opportunity when the job was posted and I applied. It took the intervention of Mr Frank Stevensen, the President and CEO to prevent a unjust act based upon prejudice against me as a black man designed to deny me equal opportunity through racial discrimination. In Jan. 1995, Mr. Jinkins took the unprecedented action of trying to have me demoted or fired because of unsatisfactory work performance by two of the nine inspectors that I supervise, of which I had no knowlege of and when I did I took appropriate corrective action to prevent it from happening again. I have had my honesty, trustworthiness, ability and achievements questioned and ridiculed beyond all reason before all that has cause me to suffer pain and anguish of which I would like no other human being to have to go through. It has been only my faith and trust in God that has sustained and carried me through this painful and agonizing ordeal of suffering I have been made to go through.

Since I have been in this position I have continually asked for more training and equipment(computer/printer) for recording of statistical quality data, a valuable tool that would help me and others in solving problems. All around me I see others getting all kind of new computers, printers and other equipment and training without cost being be a factor yet all I get are excuses, double standards, bias evaluations, racial stereotyping and lower pay, all of which contribute to the denial of equal opportunity. The used computer and printer I recieved several years ago was obsolete then and never had the processing or printing capability needed. The recent denial of access to the

front office by use of key, where I need the use of the copy machines that have the sorting capability for multiple copies of reports that I distribute to personnel in the front office and the shop as well as for bias intentions, especially the note left for the gate guards by our safety coordinator stating that if Sylvester McClain came out during the p.m. or weekend hours that the front office doors were locked, that he was not to be given access to the front office without calling Earl Dover, the Production Superintendent to get his permission. Mr. Dover knew himself that was wrong and stated to me that he expressed that upper management must decide if I the Quality manager was trustworthy, which was absolutely ridiculous and a bias and stereotype attack upon my character and integrity as a man of god (minister), as a responsible black man who has worked for this company for 22 years and a leader in the community at large who for the last twelve years has stood and even risked his life for right. All the other personnel in the front office, managers, buyers and secretaries had keys and access to the offices, as well as the van production foreman of which made the implication that I was not trustworthy to be clearly based upon racial and stereotype reasons, all because of the prejudicial feeling and views toward me as a black man. Just prior to all this taking place Mr. Jenkins brought to my attention a memo dated back in 1991 that expressed concern about thefts in the front office which supposedly was coincidentally was left in his incoming office in-mail box during this time and of which I questioned him, what did this have to do with the difficulty of getting him to get me a key for access to the front office for which he did not have an answer. The increased workload assignment with a double standard of perfection imposed along with spot lighting any potential fault or error that is not required of any other supervisor or manager represented a deliberate attempt to create impossible conditions that would prevent me from being able to get the job done correctly. When I responded to this challenge by working 12 to 15 hour days and 6 to 7 days a week, to imply that the long hours of work represented a lack of organization was simply an attempt at distortion and a refusal to give me credit for the dedication I have for getting the job done, seeing that I do not receive over time pay. Last, but not least, to accuse me having a defensive attitude when I am just responding rightfully so to gross mistreatment for racial reasons is just an attempt to try to cover up the discriminatory treatment that I have been receiving for some time.

Therefore after much mind and soul searching I have decided that enough is enough and that more effort must be made to correct these unjust and unfair discriminatory acts against me by Mr. Jenkins, which includes the unjust and unfair disciplinary write up without my knowledge and without justification and with total disregard for company policy and due process which I entitled

to by the law and constitution. I will acknowledge that my new supervisor, as of March 1, Doug Williams seems to be totally opposite of what Mr. Jenkins stands for and I look forward to as a quality and warranty team working together for the good of all. Yet I must say that the damage to me personally and professionally has been done and the suffering of having to go through this painful ordeal continues even though Mr. Jenkins is going to retire March 1, especially since there were other participants who are guilty of helping commit these and other discriminatory acts against me as a black manager. It is a cultural problem that must be addressed to prevent discriminatory practices in Lufkin Trailer Division or any other part of Lufkin Industries, especially by those in supervision who are entrusted as leaders carry out the policies of Lufkin Industries and to be good examples for all the men and women they have the responsibility to lead. In conclusion I am requesting a full investigation of these discriminatory acts committed against me that have violated my civil rights and denied me equal opportunity and due process guaranteed by the law and constitution.

Respectfully,



Sylvester McClain
Quality Manager

CC: DOUG SMITH / PRESIDENT & CEO
PAUL PEREZ / VICE PRESIDENT-HUMAN RESOURCES
JIM BARBER / VICE PRESIDENT-TRAILER DIVISION

EXHIBIT

2



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Houston District Office

1919 Smith Street, 7th Floor
Houston, TX 77002
PH: (713) 209-3377
TDD: (713) 209-3439
FAX: (713) 209-3381
LEGAL: (713) 209-3401

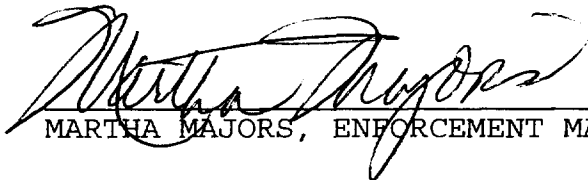
CERTIFICATION OF DOCUMENTS

I, Martha Majors, Enforcement Manager of the Houston District Office of the Equal Employment Opportunity Commission ("Commission"), certify that:

As Enforcement Manager, all administrative files in the Houston District Office are under my custody, care and control;

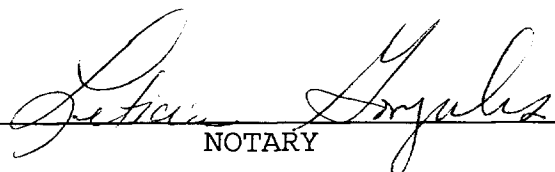
An administrative file was prepared in the regular course of business in the Houston District Office of the Commission pertaining to Charge Number 330-97-1502, Buford Thomas v. Lufkin Industries, Inc.;

The documents attached hereto are true and accurate copies from the above noted administrative file. I declare under penalty of perjury that the foregoing is true and correct.


MARTHA MAJORS, ENFORCEMENT MANAGER

Sworn to and Subscribed before me this 1st day of July, 1997.




NOTARY

CHARGE OF DISCRIMINATION

AGENCY CHARGE NUMBER
 FEPA
 EEOC 330 97-1502

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

Texas Commission on Human Rights
 State or local Agency, if any

DISTRICT OF COLUMBIA
 FEDERAL BUREAU OF INVESTIGATION
 RECEIVED
 APR 26 PM 11

NAME (Indicate Mr., Ms., Mrs.) **Mr. Buford Thomas** HOME TELEPHONE (Include Area Code)

STREET ADDRESS DATE OF BIRTH

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)
Lufkin Industries, Inc. **more than 20** **409/637-5662**

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY
Angelina

NAME TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE
 RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify)
 EARLIEST LATEST
May, 1979 05/17/96
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. Personal Harm and Wrongful Discharge

- A. I am a black African-American.
- B. I began working for Respondent in May of 1979, and worked in a variety of positions until May, 1996, when I was constructively discharged. At all times relevant hereto I was a loyal, hard working, qualified, competent employee.
- C. During my tenure I was denied promotional and training opportunities because of my race.
- D. During my tenure I was required to not only do my own work, but also that of white colleagues. White colleagues were not required to do my work. I was overly burdened with work because of my race.
- E. Because of the denial of opportunity for advancement, and because I was being overloaded with work, I reasonably felt compelled to resign on May 17, 1996.

II. Respondents' Reasons for Adverse Actions

I have no idea; I am sure they will come up with something, but the real reason is that I am a black African American.

III. Discrimination Statement

I believe I have been discriminated against because I am a black African American. Respondent has therefore violated Title VII of the Civil Rights Act of 1964, as amended. I believe Respondent has similarly discriminated against other black African-Americans.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY (When necessary for State and Local Requirements)
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.
 Date **2/24/97**
 Charging Party (Signature)

SIGNATURE OF COMPLAINANT
D. Thomas
 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
24 02 97

EEOC FORM 5 (Rev. 06/92) Buford Thomas

NOTARY PUBLIC
 STATE OF TEXAS
 LORETTA BIGGERS
 Notary Public
 STATE OF TEXAS
 My Comm. Exp. 5-19-98