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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

)
Cassandra WELCH, Jarmaine BROMELL,)
Sheryl A. DAVIS, and Raynard TYSON,)
Individually and on behalf of a similarly)
situated class,)
)
Plaintiffs,)
)
)
v.)
)
ELI LILLY & Company)
)
)
Defendant.)

Civil Action No.
1:06-cv-0641-RLY-VSS
CLASS ACTION COMPLAINT

Jury Demand

1. Plaintiffs, individually and on behalf of the class described in this Complaint, seek relief for violations of the prohibitions against race discrimination in employment of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (hereafter sometimes “Title VII”) and 42 U.S.C. § 1981, as amended.

2. This Court has jurisdiction of this case under 28 U.S.C. § 1331 and § 1343 and under Section 706(f)(3) of Title VII, 42 U.S.C. § 2000e(5)(f)(3).

3. Venue in this district is appropriate.

4. Defendant ELI LILLY & CO. (“Lilly”) is a Corporation with headquarters in the Southern District of Indiana.

5. Plaintiffs Cassandra Welch, Jarmaine Bromell, and Raynard Tyson were employees of the defendant under the law. Plaintiff Sheryl A. Davis is still an employee of defendant.

6. Plaintiff Cassandra Welch (“Welch”) is an African American woman who resided in Indianapolis, Indiana while she was employed by defendant in this District from 1992 until 2004.

7. Plaintiff Jarmaine Bromell (“Bromell”) is an African American man who was employed by defendant as a sales representative in the Philadelphia, Pennsylvania area from February 2003 through October 2005.

8. Plaintiff Dr. Sheryl A. Davis (“Davis”) is an African American woman who has been employed by defendant as a sales representative in the Memphis, Tennessee area since March 2000.

9. Plaintiff Raynard Tyson (“Tyson”) is an African-American man who resided in North Carolina at all times relevant to this action. He was employed by Lilly as a sales representative from 1999 through December 2004.

10. Defendant Eli Lilly (“Lilly”) employs thousands of employees and is an employer within the meaning of the law.

ADMINISTRATIVE PREREQUISITES

11. Plaintiffs Welch and Tyson have met the administrative prerequisites to enforce their rights under Title VII. There are no administrative prerequisites for filing suit under 42 U.S.C. § 1981.

12. Plaintiff Welch signed a Complaint of Discrimination with the Indiana Civil Rights Commission on September 20, 2004 which was duly filed under docket number EMra04100511 and cross-filed with the United States Equal Opportunity Commission (“EEOC”) as Charge No. 24FA500039. The charge alleges race discrimination and retaliation and includes the allegation that:

“There was also a pay disparity between blacks and whites. Whites made more money for doing the same job.” Ms. Welch filed a second charge relating to post-employment issues that was ultimately consolidated with her first charge.

13. In addition to other issues raised by her charge, the equal pay question was investigated and was a subject of submissions made to the Indiana Civil Rights Commission by defendant Lilly.

14. During the course of the investigation, counsel for Ms. Welch served Lilly with a demand letter, dated June 1, 2005, which also referenced the equal pay issues and which stated explicitly that plaintiff would pursue class-wide claims if there was no settlement.

15. During the course of the investigation, Ms. Welch and her counsel asked the Indiana Civil Rights Commission, by telephone and by letter of July 8, 2005, to investigate the equal pay claim on a class-wide basis by obtaining specific data regarding employees by race and pay levels.

16. Plaintiff Welch requested a right to sue letter from the EEOC on December 7, 2005. A Notice of Right to Sue was issued on January 23, 2006.

17. Plaintiff Tyson signed a charge of race discrimination with the United States Equal Employment Opportunity Commission on August 25, 2004. The charge describes discrimination in pay, ratings, promotions and discipline as well as retaliation. The charge describes “a discouraging trend”. The company would hire African Americans, but they never lasted long with the company and were “coached” out or encouraged to resign rather than face termination. Plaintiff Tyson also submitted statements to the EEOC by at least three other victims of the kinds of discrimination he described.

18. The EEOC issued a Right to Sue letter to Mr. Tyson on April 10, 2006.

19. Charges by plaintiffs Bromell and Davis are currently pending at the EEOC. The charges are captioned “Class Action Charge.” They expressly allege a pattern of discrimination and the charging party’s desire to assert claims on

behalf of the class of victims of race discrimination.

20. The charges of Plaintiffs Tyson and Welch and the ensuing investigation and efforts at conciliation gave notice to the EEOC and to defendant that plaintiffs Tyson and Welch charged defendant with engaging in systemic discrimination against African American employees.

21. The EEOC has received numerous administrative charges from African American employees alleging racially discriminatory practices against them, in favor of white, non-Hispanic employees. Such charges provided the EEOC and defendant with repeated notice of the kinds and nationwide scope of the practices that the employees believe to be discriminatory.

22. In addition, the defendant has been repeatedly sued under Title VII and 42 U.S.C. § 1981 for racially discriminatory employment practices. Many such cases have been filed in this District.

CLASS ALLEGATIONS

23. Pursuant to Fed.R.Civ.P. 23(b)(2) and/or 23(b)(3), plaintiffs bring this action on behalf of themselves and a class of similarly situated employees of Lilly who have suffered harm as a result of defendant's pattern and practice of race discrimination in the terms and conditions of employment that includes the following:

- Paying African American workers in both hourly and salaried positions less than other comparably situated workers;
- Offering lower starting pay rates to African Americans than to other comparably situated workers;
- Race discrimination in grooming employees for promotion - i.e.: providing African Americans with fewer opportunities to bid for promotional positions, fewer desirable duties that are likely to lead to promotions and inferior ratings and recommendations;
- Promoting African Americans less often and after longer waits than for other comparable workers;
- Paying African Americans less compensation for comparable work;
- Race discrimination in ratings and recognition of accomplishments;
- Race discrimination in discipline;
- Race discrimination in terminations and in encouraging employees to seek employment elsewhere; and
- Retaliation against employees who complain of discrimination.

24. *Numerosity.* Defendant employs thousands of African Americans.

On information and belief, well over 1,000 African American employees of Lilly have suffered the kind of discrimination described herein during the time from

August 2003 to the present. The claims of the members of the class are so numerous that joinder would be impractical.

25. *Commonality.* The questions of fact and law of Plaintiffs Welch, Bromell, Davis, and Tyson are common to the other plaintiffs and other members of the class. Common questions of fact and law predominate over questions affecting individual employees. The following allegations of fact are common to the class (Fed. R. Civ. P. Rule 23(c)(2) and (3)):

- The class members are African American employees of Defendant who have been employed by the Defendant for at least three months at some time after August 1, 2002.
- Statistical evidence of disparate pay, promotions and discipline will, on information and belief, establish a pattern or practice of class-wide discrimination which will be highly relevant in evaluating individual manifestations of those patterns.
- The class members are all victims of a corporate practice and culture that allows managers to provide African Americans with less favorable terms and conditions of employment - including base pay, assignments, bonus pay, ratings, recommendations for promotion, selections for promotion and discipline - than other employees with

similar or inferior education, knowledge, skills ability and performance.

26. *Typicality.* Plaintiffs Welch, Bromell, Davis, and Tyson have claims that are typical of those of the other class members.

27. *Adequacy.* The class representatives will adequately represent the class. The class representatives have no interests that conflict with the interests of unnamed members of the class. They are interested in pursuing relief against Lilly vigorously. They have retained qualified counsel. Their legal representative, Rose & Rose, P.C., will adequately represent the class.

28. Pursuit of the claims of the class members in separate individual actions by employees carries a risk of inconsistent and varying adjudications. As a practical matter, adjudications with respect to individual employees may be dispositive of the interests of other employees, or may substantially impede or impair their ability to protect their interests with regard to the class claims.

29. A class action is superior to other methods for the fair and efficient adjudication of the claims of the class members because the claims involve the interpretation of common documents and work situations. It would not be in the best interests of the present and former employees to individually control the prosecution of the claims. Without a class action, it is unlikely that most

individual employees would be economically able to bring suit.

30. There are no unusual legal or factual issues creating class manageability problems.

REPRESENTATIVE CLAIMS

Bromell

31. Plaintiff Bromell was an experienced sales representative with an MBA in marketing when he was hired by Lilly. He was offered a position as a “sales representative” and was told that this was the highest level available for a person with his credentials.

32. Mr. Bromell later learned that white representatives with no better credentials were hired in the same office at a higher pay level with the title of “Senior Sales Representative.”

33. Bromell was a top performer who exceeded the quota for his territory for 2.5 years.

34. Bromell was not paid or provided with desirable opportunities at a level equivalent to his white peers with comparable performance and credentials.

35. At least one other African American who worked with Bromell in Philadelphia was similarly paid less than white employees with comparable or inferior credentials and was provided with inferior opportunities for bonus,

assignments and promotions.

36. Bromell complained that his base pay and bonus pay were not equal to the pay provided to white employees with comparable objective performance. He raised equal pay and equal assignment issues with his managers in 2005 and filed an internal EEO complaint in November 2005. Defendant did not provide him with the information he requested to support his equal pay complaint.

37. Bromell's sales quota was adjusted in 2005 to make it difficult for him to maintain his high level of performance.

38. Following his equal pay complaints, Bromell's manager advised him that his subjective ratings would be low and that she would not consider him for promotion or allow him to apply for promotional positions. Bromell reasonably understood her message as a constructive discharge and found other employment.

Davis

39. Plaintiff Davis was a practicing dentist for 11 years and had 8 years' experience in pharmaceutical sales before joining Lilly as a Senior Sales Representative in early 2000.

40. Davis has repeatedly been provided with assignments that involve the training and mentoring of inexperienced sales representatives who have been promoted to more desirable assignments. Yet Davis has not been recognized for

her leadership and training roles. Instead she has been advised that her “behaviors” in those areas are inadequate to lead to desirable assignments and promotions.

41. Davis has repeatedly identified available positions and requested transfers and/or promotions to more desirable assignments that are likely to lead to promotions - such as speciality representative assignments. Her managers have refused to provide her with the desirable assignments and/or to support her in competing for promotional opportunities. These include an institutional representative position filled by a less qualified white male in February 2004; and a second institutional sales representative position assigned to his wife - a less qualified white female in November 2005; and an account executive position that was given to the same white male in March 2006.

42. Dr. Davis has repeatedly advised her managers that her pay is well below what her white peers are paid - most recently in 2006.

43. Dr. Davis filed an internal complaint of race discrimination in pay, job assignments and promotions in late 2005. Shortly thereafter, her manager advised her that she was too valuable in her current position to allow her to post for a hospital representative position that she wanted - yet he encouraged her to post for a position that had long been vacant because it was not likely to lead to

success and promotions.

Tyson

44. Plaintiff Tyson was an excellent sales representative who specialized in sales to hospitals. He did well under three different managers from November 1999 until July 2003. In July 2003, however, he came under the supervision of a fourth manager.

45. In March 2004, his fourth manager gave Tyson three “needs development” ratings on three out of the seven categories. The same manager rated a younger white female sales representative whom Tyson had trained with fewer “needs development” ratings.

46. At the time of the interim review, Lilly maintained a record in the form of an EXCEL spreadsheet called “Dashboard.” The Dashboard for the first three months of 2004 showed that Tyson had reached 123% of his sales quota. Nevertheless his manager told Tyson that he didn’t care what the Dashboard said, it was a mistake, and he lowered Tyson to 99% of quota. With that percentage, a sales person is given a “miss” instead of a “hit.” Tyson told his manager that with such an evaluations “if I were on the Board of Directors, I wouldn’t promote myself” and the manager responded “Yeah, I know” and added: “If that is going to affect your morale” you need “to find another job.”

47. On August 17, 2004, Tyson filed an informal complaint with Human Resources alleging that the manager's actions "were discriminatory based upon my race."

48. Within 24 hours Human Resources contacted Tyson and advised him that a "thorough investigation had been conducted" which found no discrimination against him. No one interviewed Tyson or attempted to do so during the 24 hour period of the investigation.

49. After he filed an internal complaint Tyson's manager became verbally abusive to him and discriminated against him further. Plaintiff Tyson left the employment of Eli Lilly & Co. on December 31, 2004. He was ranked Sixth or so out of 178 sales representatives during that period.

Welch

50. Plaintiff Welch was hired by defendant on August 17, 1992 as a production worker and paid an hourly wage. From 1992 through 2000, defendant promoted Plaintiff Welch repeatedly to positions within the corporate headquarters area. During the same time, she obtained a bachelor's degree and training in accounting and information technology. Her last hourly position was in the finance area of corporate headquarters.

51. In January 2000, Defendant promoted Welch to a salaried position described as “Business Consultant” with business integrator duties in the Corporate Information Technology area. She performed well initially, but was assigned to a supervisor who did not provide Ms. Welch with assignments commensurate with her position or of similar quality to those provided to her peers of other racial heritage.

52. During the summer of 2002, Defendant informed Ms. Welch that her position would be eliminated and that she would have to bid for a job in another area in order to stay on her career path.

53. In September 2002, defendant invited Welch to join a high level team of project managers and business integrators that was assigned to respond to an FDA warning and to correct any problems underlying it. Her job was described as Senior Project Administrator job in the Parenteral Site Information Technology Group, with business integrator duties. Her performance on the team was excellent, but her white male counterpart and other white male employees received substantial bonuses, merit awards, and promotions while she did not.

54. Although Plaintiff Welch posted and was selected for a pay level 56-58 position in 2000 and again in 2002 and performed duties consistent with those postings, defendant paid her at Level 50.

55. White employees with similar duties and qualifications that were no better than Welch's were paid more than Welch during the time from 2000 forward.

56. In the Parenteral Manufacturing Department, plaintiff Welch was the only African American employee in a salaried position in her work area. Racist comments by and among white employees against black employees and other blacks were common in that department. On one occasion, Welch found a dark colored doll with a noose around its neck on her desk. She believes the doll was placed there by one or more white employees.

57. In 2001 and again in March 2003, plaintiff Welch filed internal complaints of race discrimination that included the equal pay issues. She also raised the issue with her supervisors during annual reviews in 2003 and 2004. Defendant did not provide her with equal pay.

58. In early 2004, plaintiff Welch brought her complaints about racially discriminatory remarks and conduct and her comparatively low rate of pay to the attention of management officials, including Jim Telford.

59. When she complained of discrimination, James Stefanek, one of Welch's managers told her that manufacturing managers view upper level managers who write diversity policies as "yahoos . . . [they] will not tell

manufacturing how to manage these people. ”

60. She then discussed the discrimination issue and reported Mr. Stefanek’s comments to Mike Roesner, her Human Resources representative. He told her that manufacturing management consider Lilly corporate management to be “nigger lovers.” He later told Welch that “you are not in corporate IT any more” - meaning that management would not address her concerns.

61. In early 2004, Welch also advised a higher level executive, that African American employees of the Defendant were not receiving equal compensation in the Parenteral IT department under his jurisdiction.

62. After Plaintiff Welch’s informal complaints in 2004, Mr. Elliott took away her assignments.

63. In March 2004, Welch was advised that Bryan A. Mitchell (who had been Welch’s partner in a non-Lilly real estate venture), complained to the Human Resources Office of defendant that Plaintiff was engaged in “office harassment” against him.

64. On or about June 8, 2004, the defendant, acting through two representatives of its Human Resources department and plaintiff’s manager and team leader, discharged plaintiff Welch for alleged misconduct. Defendant’s four officials asserted that plaintiff had engaged in misconduct by falsifying one or

more e-mails using the company e-mail system. The subject e-mails were part of the Bryan A. Mitchell investigation.

65. The allegation that plaintiff Welch had falsified one or more e-mails was false. She did not engage in any misconduct.

66. Upon information and belief, defendant has never discharged or punished a non-African American employee for the kind of conduct it used to discharge Welch.

COUNT I - VIOLATION OF TITLE VII

67. Plaintiffs incorporate the allegations of paragraphs 1 through 66 herein by reference.

68. Defendant was an “employer” of plaintiffs and has been an employer of other African American employees. Plaintiffs and other African Americans are or were “employees” of defendant.

69. Plaintiffs Welch and Tyson, for themselves and as class representatives, have fulfilled the administrative prerequisites to seeking relief under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et. seq.* Plaintiffs Bromell and Davis have filed charges under Title VII which will become mature after 180 days.

70. Defendant Eli Lilly & Co. has followed and continues to follow a pattern and practice of race discrimination against African Americans in the terms and conditions of their employment.

71. Defendant pays its African American employees in managerial and sales positions less than what it pays most of its white employees who hold the same or similar positions.

72. Defendant disproportionately grooms white employees for rapid promotion and does not provide similar opportunities for most African Americans.

73. Defendant disproportionately promotes white employees earlier and more often than comparably situated African Americans.

74. Defendant has engaged in race discrimination with regard to ratings and discipline of employees.

75. Defendant engages in retaliation against employees who claim of race discrimination.

76. Defendant intentionally discriminates against African American employees.

77. Defendant engages in practices that have the effect of provided lower pay, fewer promotions, shorter job tenure and less desirable terms and conditions of employment to African Americans as compared to comparably situated whites.

78. Defendant's discriminatory practices have harmed plaintiffs and other similarly situated employees and former employees of defendant, in violation of Title VII. Those practices resulted in the termination of the employment of some members of the class. Other class members have suffered from a loss of income and other benefits as well as from less prestigious titles and duties and emotional harm.

79. Unless restrained by order of this Court, Defendant will continue to pursue policies and practices that cause Plaintiffs and other similarly situated African Americans further harm.

COUNT II - VIOLATION OF 42 U.S.C. §1981, AS AMENDED

80. Plaintiffs incorporate the allegations of paragraphs 1-79 herein by reference.

81. Defendant has intentionally denied plaintiffs and similarly situated African Americans the right to contract with it on the same basis as whites.

82. Defendant pays its African American employees in managerial and sales positions less than what it pays most of its white employees who hold the same or similar positions.

83. Defendant grooms most white employees for rapid promotion and does not provide similar opportunities for most African Americans.

84. Defendant promotes most white employees earlier and more often than comparably situated African Americans.

85. Defendant engages in race discrimination with regard to ratings and discipline of employees.

86. Defendant engages in retaliation against employees who complain of race discrimination.

87. Defendant intentionally discriminates against African American employees in favor of white employees.

88. Defendant's discriminatory practices have harmed plaintiffs and other similarly situated employees and former employees of defendant, in violation of 42 U.S.C. 1981, as amended. Those practices resulted in the termination of the employment of some members of the class. Other class members have suffered from a loss of income and other benefits as well as from less prestigious titles and duties and emotional harm.

89. Unless restrained by order of this Court, defendant will continue to pursue policies and practices that cause plaintiffs and other similarly situated African Americans further harm.

WHEREFORE, Plaintiffs pray this Court to:

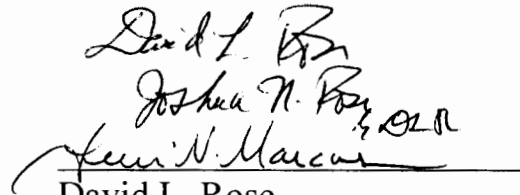
- 1) Enter an Order granting class certification under Rule 23, Fed. R. Civ.

P.;

- 2) Find that defendant has engaged in a pattern or practice of discrimination against African Americans because of their race;
- 3) Enjoin the defendant from engaging in the same or like practices in the future;
- 4) Enter judgment awarding the plaintiffs back pay, and other loss of income, loss of retirement and health benefits, and other make-whole relief, in an amount to be determined after trial;
- 5) Award compensatory and punitive damages, in amounts to be determined by the jury after trial;
- 6) Award to the plaintiffs of the costs of litigation including reasonable expenses, attorneys' fees and expert witness fees;
- 7) Provide such other relief as is just.

JURY DEMAND

Plaintiffs hereby demand trial by jury.

Handwritten signatures of David L. Rose, Joshua N. Rose, and Terri N. Marcus. The signatures are written in black ink and are positioned above a horizontal line.

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April 19, 2006