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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 DEREK L. MOBLEY, for and on behalf)
11 of himself and other persons) **CLASS ACTION**
12 similarly situated,)
13 Plaintiffs,) **FIRST AMENDED CLASS ACTION**
14 vs.) **COMPLAINT**
15 WORKDAY, INC.)
16 Defendant.) **JURY TRIAL DEMANDED**
17)

18 **NATURE OF COMPLAINT**

19 Plaintiff, Derek L. Mobley (“Mobley” or “Representative Plaintiff”) brings this suit for
20 injunctive, monetary, and declarative relief against Defendant Workday, Inc. (“Workday”) for
21 engaging in a pattern or practice of illegal discrimination on the basis of race, age, and/or
22 disability in violation of Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866
23 (“42 U.S.C. § 1981), the Age Discrimination in Employment Act of 1967, and the ADA
24 Amendments Act of 2008 (“ADAAA”). Defendant Workday, Inc.’s (“Workday” or
25 “Defendant”) continuous and systemic pattern or practice of discriminatory job screening-which
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1 disproportionately disqualifies African-Americans, individuals over the age of forty (40) and
2 individuals with disabilities from securing gainful employment.

3 Workday provides human resource management services to medium-sized and large,
4 global organizations that span numerous industry categories, including professional and business
5 services, financial services, healthcare, education, government, technology, media, retail, and
6 hospitality. Firms purchase a subscription to Workday’s services and as part of their
7 subscription, customers are provided applicant screening services to include professional
8 consulting to enable them to use Workday applications. In May of 2023, the Bureau of Labor
9 Statistics reported more than 9.8 million job openings in the U.S. Workday recruiting processed
10 2.2 million U.S. job requisition transactions in May, representing nearly 22% of all U.S. job
11 openings that month. At that rate, Workday was projected to process more than 36 million
12 requisitions, screen 266 million applications, and make 24 million job offers in 2023 alone.
13 Workday processes this massive number of applications by using automated screening tools that
14 rely on artificial intelligence.
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17 Defendant Workday, Inc.’s artificial intelligence (“AI”) systems and screening tools rely
18 on algorithms and inputs created by humans who often have built-in motivations, conscious and
19 unconscious, to discriminate. This discrimination is the result of a specific policy: Workday’s
20 decision to employ an automated system—in lieu of human judgment—to determine how the
21 high-volume of applications it reviews should be processed for its clients-customers.
22 Specifically, Workday uses machine-learning algorithms and artificial-intelligence tools
23 (collectively “algorithmic decision-making tools”) to screen out applicants who are African-
24 American, disabled, and/or over the age of 40. Defendant Workday’s algorithmic decision-
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1 making tools and applicant screening system determine whether an employer should accept or
2 reject an application for employment based on the individual's race, age, and or disability.

3 All applicants who attempt to access employment via Workday's platform have been
4 uniformly subject to this policy during the Class Period, including the Plaintiff and the proposed
5 Class. It is thus reasonable to attribute any systematic difference in the rate of successful
6 applicants to Workday's policy of using algorithmic decision-making tools to screen all
7 applications. This causal connection is unsurprising: algorithmic decision-making tools have
8 been known to cause bias in hiring.
9

10 Workday's automated system—for a variety of reasons that Workday should know about
11 and could easily prevent—is much more likely to deny applicants who are African-American,
12 suffer from disabilities and/or are over the age of 40. Because their applications are more likely
13 to be flagged for rejection, African-American, disabled and over 40 applicants are
14 disproportionately more likely to denied jobs. As a result, African-American, disabled, and
15 those over 40, experience greater rates of rejection for employment which negatively impacts
16 their career prospects, earnings, and quality of life.
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18 The Plaintiff and, upon information and belief, the classes he seeks to represent have
19 made numerous applications for employment using the Workday platform only to be rejected.
20 Because of this high rate of rejection, Plaintiff, and the classes he seeks to represent have also
21 been discouraged from seeking employment with firms that use the Workday hiring platform as
22 such application is futile because of Workday's discriminatory algorithmic decision-making
23 tools. The hiring discrimination African-Americans, the disabled, and those over the age of 40
24 have experienced and are experiencing because of Workday's discriminatory algorithmic
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1 decision-making tools cause tangible financial harm, and are unreasonable, vexatious, and
2 humiliating. Accordingly, Plaintiffs seek damages as well as declaratory and injunctive relief.

3 **JURISDICTION AND VENUE**

4 1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(3),
5 and (4), 2201 and 2202, 42 U.S.C. 2000d-2 and 2000e5(f), and 29 U.S.C. § 621, et seq.
6 Supplemental jurisdiction for the state law claims is invoked pursuant to 28 U.S.C. §1367.
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8 2. This is a suit authorized and instituted pursuant to the Act of Congress known as
9 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., as amended, “The Civil
10 Rights Act of 1866,” 42 U.S.C. § 1981, the Age Discrimination in Employment Act of 1967, 29
11 U.S.C. § 621, et seq., and the ADA Amendments Act of 2008 (“ADAAA”).
12

13 3. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(B)
14 & (c) because Workday is located here and the acts complained of occurred in the Northern
15 District of California.

16 **PARTIES**

17 4. Plaintiff, Derek Mobley is an African -American male, over the age of forty (40)
18 and who suffers from depression and anxiety. Mr. Mobley is an applicant.

19 5. Defendant Workday is an employment agency pursuant to Section 703(b) of the
20 Act, 42 U.S.C. § 2000e-2(b). Defendant Workday is also an agent of employers who have
21 delegated to it authority to make decisions in the hiring process, including by relying on the
22 results of selection procedures that Workday administers on the employers’ behalf to make
23 hiring decisions, alternatively Workday is an indirect employer because it controls access to
24 employment opportunities. Defendant Workday’s headquarters and principal place of business is
25 located at 6110 Stoneridge Mall Road, Pleasanton, California.
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1 **CONDITIONS PRECEDENT TO SUIT UNDER**
2 **TITLE VII, THE ADEA AND THE ADA**

3 6. On June 3, 2021, Mr. Mobley filed a charge of discrimination with the Oakland
4 Field Office of the United States Equal Employment Opportunity Commission. On July 19,
5 2021, Mr. Mobley filed an amended charge of discrimination. On November 22, 2022, the
6 EEOC issued Mr. Mobley a Dismissal and Notice of Right to Sue, giving him ninety-days from
7 its receipt to file a case. Thus, Mr. Mobley has satisfied all prerequisites to bring this action
8 pursuant to Title VII, the ADEA, and the ADA.

9 7. Mr. Mobley’s claims arising under 42 U.S.C. § 1981 do not require administrative
10 exhaustion and are subject to a four-year statute of limitations. 28 U.S.C. § 1658.

11 **CLASS ACTION ALLEGATIONS**
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13 8. The Representative Plaintiff brings this action in his own behalf and on behalf of
14 all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and
15 seek to represent the following subclasses:

16 •All African-American applicants or former applicants who from June 3, 2019, to the
17 present were subjected to the challenged discriminatory screening process.

18 •All applicants or former applicants over the age of forty (40) who from June 3, 2019, to
19 the present were subjected to the challenged discriminatory screening process.

20 •All applicants or former applicants who have a diagnosed mental health or cognitive
21 condition who from June 3, 2019, to the present were required to take a Workday branded
22 cognitive assessment or personality tests as part of the application process.
23

24 Mr. Mobley in the case at bar challenges systemic discrimination by, and seeks class-
25 wide relief against, Workday for its utilization of discriminatory screening tools as part of its
26 employment policies and procedures which constitute a pattern and practice of discrimination on
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1 the basis of race, age, and disability with respect to selections. These screening tools have been
2 continuously utilized by the Defendant since at least 2017, and their implementation and use has
3 personally harmed the named the Plaintiff, and the putative class members he seeks to represent.
4 Workday’s client-customers delegate to it the hiring process, recruitment, and onboarding of
5 employees. Workday then utilizes screening tools, to include Workday branded assessments
6 and/or tests, to s process and interpret an applicant’s qualifications and recommend whether the
7 applicant should be accepted or rejected.
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9 Workday’s utilization of these screening tools relies upon subjective practices which
10 have caused disparate impact and disparate treatment to applicants who are African-American,
11 over the age of forty (40) or and/or disabled. Applicants who are not members of these protected
12 groups and who are similarly situated to the Representative Plaintiff, have not been subjected to
13 such discriminatory treatment.
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15 **A. COMMON QUESTIONS OF LAW AND FACT**

16 9. The prosecution of the claims of the Representative Plaintiff requires adjudication
17 of numerous questions of law and fact common to his individual claims and those of the putative
18 classes he seeks to represent. The common questions of law would include, inter alia: (a)
19 whether the Defendant’s screening products cause African-American, individuals over the age of
20 forty (40), and/or individuals with a disability to be disproportionately and more likely denied
21 employment; (b) whether the Defendant’s doing so cannot be justified as a necessary business
22 practice for evaluating potential employees; and (c) whether the Defendant’s screening products
23 have a disparate impact on applicants who are African-American, over the age of forty (40),
24 and/or disabled in violation of the “Civil Rights Act of 1964,” 42 U.S.C. § 2000 et seq., the
25 “Civil Rights Act of 1866,” 42 U.S.C. § 1981 and 1981a, the Age Discrimination in Employment
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1 Act of 1967, 29 U.S.C. § 621, et seq., and the ADA Amendments Act of 2008 (“ADAAA”).
2 The common questions of fact would include, inter alia: (1) whether Workday’s administration
3 of its screening products discriminated against the aforementioned applicants because of their
4 race, age, and/or disability with regards to hiring; (2) whether compensatory and punitive
5 damages, injunctive relief, and other equitable remedies for the class are warranted; and (3)
6 whether Workday discriminated against the aforementioned protected groups in other terms and
7 conditions of employment. The details of the Representative Plaintiff’s claims are encompassed
8 within the claims prosecuted on behalf of the class and set forth in this Complaint.
9

10 **B. TYPICALITY**

11 10. The claims of the Representative Plaintiff are typical of those of the members of
12 the class. The Representative Plaintiff and all class members have been and are similarly
13 adversely affected by the systemic racially discriminatory practices complained of herein.
14 Specifically, the representative claims, like those of the class members, arise out of Defendant’s
15 pervasive discriminatory conduct with regard to aforementioned discrimination in hiring and
16 other terms and conditions of employment. The relief necessary to remedy the claims of the
17 Representative Plaintiff is the same relief that is necessary to remedy the claims of the putative
18 class members in this case. The Representative Plaintiff seeks the following relief for individual
19 claims and class claims asserted herein: (1) declaratory judgment that Defendant has engaged in
20 systemic discrimination against African-Americans, individuals over the age of forty (40),
21 and/or the disabled; (2) a permanent injunction against such continuing discrimination; (3)
22 injunctive relief which reforms Workday’s screening products, policies, practices and procedures
23 so that the Representative Plaintiff and the class members will be able to compete fairly in the
24 future for jobs and enjoy terms and conditions of employment traditionally afforded similarly
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1 situated employees outside of the protected categories; (4) backpay, front pay, compensatory
2 damages, and other equitable remedies necessary to make the Plaintiff, and the class, whole from
3 Workday's past discrimination; and, (5) attorneys' fees, costs, and expenses.

4 **C. NUMEROSITY AND IMPRACTICABILITY OF JOINDER**

5 11. The class that the Representative Plaintiff seeks to represent is too numerous to
6 make joinder practicable. The proposed class consists of numerous former, current, and future
7 applicants who have been denied employment due to the discriminatory administration of
8 Workday's screening products. Workday's pattern or practice of discrimination also makes
9 joinder impracticable by making it impractical and inefficient to identify many members of the
10 class prior to the determination of the merits of Workday's class wide liability. Thus, the
11 number of Class members is currently indeterminate, but is certainly numerous.
12

13 **D. ADEQUACY OF REPRESENTATION**

14 12. The Representative Plaintiff will fairly and adequately protect the interests of the
15 class inasmuch as they are broadly representative, as reflected in the preceding paragraphs.
16 There are no conflicts of interest present with the members of the proposed class as each would
17 benefit from the imposition of a remedy for the Defendant's discriminatory employment
18 practices. The Representative Plaintiff has retained counsel experienced in litigating major class
19 actions in the field of employment discrimination, and who are prepared and able to meet the
20 time and fiscal demands of class action litigation of this size and complexity. The combined
21 interest, experience, and resources of the Representative Plaintiff and his counsel to litigate
22 competently the individual and class claims of employment discrimination at issue satisfy the
23 adequacy of representation requirement under Fed.R.Civ.P. 23(a)(4).
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1 **E. EFFICIENCY OF CLASS PROSECUTION OF COMMON CLAIMS**

2 13. Certification of a class of similarly-situated applicants is the most efficient and
3 economical means of resolving the questions of law and fact that are common to the individual
4 claims of the Representative Plaintiff and the proposed class. The individual claim of the
5 Representative Plaintiff requires resolution of the common question of whether Defendant has
6 engaged in a systemic pattern of discrimination against African-Americans, those over forty (40)
7 and the disabled. The Representative Plaintiff seeks remedies to undo the adverse effects of such
8 discrimination in his own life and career. The Representative Plaintiff has standing to seek such
9 relief because of the adverse effect that such discrimination has had on him individually and on
10 the putative classes he seeks to represent, in general. In order to gain such relief for himself, as
11 well as for the putative class members, the Representative Plaintiff will first establish the
12 existence of systemic discrimination as the premise of the relief they seek. Without class
13 certification, the same evidence and issues would be subject to re-litigation in a multitude of
14 individual lawsuits with an attendant risk of inconsistent adjudications and conflicting
15 obligations. Certification of the subclasses affected by the common questions of law and fact is
16 the most efficient and judicious means of presenting the evidence and arguments necessary to
17 resolve such questions for the Representative Plaintiff, the class and the Defendant. The
18 Representative Plaintiff's individual and class claims are premised upon the traditional
19 bifurcated method of proof and trial for systemic disparate treatment claims of the type at issue
20 in this complaint. Such a bifurcated method of proof and trial is the most efficient method of
21 resolving such common issues.
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1 **F. CERTIFICATION IS SOUGHT PURSUANT TO FED. R. CIV. P. 23(b)(2)**

2 14. Workday has acted on grounds generally applicable to the Representative Plaintiff
3 and the proposed class by adopting and following systemic practices and procedures that
4 discriminate on the basis of race, age, and/or disability. Workday's screening products are
5 regularly used to discriminate on the basis of race, age, and/or disability. Workday has refused
6 to act on grounds generally applicable to the putative class by: (1) refusing to adopt or follow
7 screening productions and selection procedures which do not systemically discriminate on the
8 basis of race, age, and/or disability. Workday's discriminatory screening products have made
9 appropriate final injunctive relief and declaratory relief with respect to the class as a whole. The
10 injunctive relief and declaratory relief are the predominate reliefs sought because they are both
11 the culmination of the proof of the Defendant's individual and class-wide liability at the end of
12 Stage I of a bifurcated trial and the essential predicate for the Representative Plaintiff and the
13 class members entitlement to monetary and non-monetary remedies at Stage II of such a trial.
14 Declaratory and injunctive relief flow directly and automatically from proof of the common
15 questions of law and fact regarding the existence of systemic discrimination against individuals
16 on the basis of race, age, and/or disability. Such relief is the factual and legal predicate for the
17 Representative Plaintiff's and the class members entitlement to injunctive and equitable remedies
18 caused by such systemic discrimination.
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22 **G. ALTERNATIVELY CERTIFICATION IS SOUGHT**
23 **PURSUANT TO FED. R.CIV. P. 23(b)(3)**

24 15. The common issues of fact and law affecting the claims of the Representative
25 Plaintiff and proposed class members, including, but not limited to, the common issues identified
26 above, predominate over any issues affecting only individual claims. A class action is superior
27 to other available means for the fair and efficient adjudication of the claims of the Representative
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1 Plaintiff and members of the proposed class. The cost of proving the Defendant's pattern or
2 practice of discrimination makes it impracticable for the named Plaintiffs and members of the
3 proposed class to control the prosecution of their claims individually. The Northern District of
4 California is the most logical forum in which to litigate the claims of the Representative Plaintiff
5 and the proposed class in this case because the Defendant's home office is here and it engages in
6 or ratifies illegal conduct adversely affecting the Plaintiff here.

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8 **H. ALTERNATIVELY, CERTIFICATION IS SOUGHT PURSUANT TO FED. R.
9 CIV. P. 23(c)(4) FOR INJUNCTIVE AND DECLARATORY RELIEF.**

10 16. Alternatively, claims for injunctive and declaratory relief for the Injunctive Relief
11 Class are properly certified under Federal Rule of Civil Procedure 23(c)(4) because such claims
12 present only common issues, the resolution of which would advance the interests of the parties in
13 an efficient manner.

14 **I. ALTERNATIVELY, CERTIFICATION IS SOUGHT PURSUANT TO FED. R.
15 CIV. P. 23(c)(4) FOR CLASS WIDE LIABILITY.**

16 17. Alternatively, class wide liability claims are properly certified under Federal Rule
17 of Civil Procedure 23(c)(4) for the Classes because such claims present only common issues, the
18 resolution of which would advance the interests of the parties in an efficient manner.

19 **J. PUNITIVE DAMAGES MAY ALTERNATIVELY BE CERTIFIED
20 PURSUANT TO FED.R.CIV.P. 23(b)(2).**

21 18. Punitive damages liability may alternatively be certified under Federal Rule of
22 Civil Procedure 23(b)(2) because such relief focuses on the conduct of Workday and not the
23 individual characteristics of the Plaintiff and are an allowable form of incidental monetary relief.
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CLAIMS OF REPRESENTATIVE PLAINTIFF

Derek Mobley

19. Derek L. Mobley is an African-American male. He is over the age of forty (40) and suffers from anxiety and depression. Mr. Mobley was born in 1974.

20. Mr. Mobley is a graduate of Morehouse College in Atlanta, Georgia.

21. Founded in 1867, Morehouse College remains the only all-male Historically Black College or University in the world.

22. Graduates of Morehouse include Martin Luther King Jr., U.S. Senator Raphael Warnock, Shelton "Spike" Lee (award winning filmmaker), Samuel L. Jackson (award winning actor), and Jeh Charles Johnson (Obama Administration's Secretary of Homeland Security) to name a few.

23. Mr. Mobley graduated Morehouse in 1995 with a bachelor's degree in finance, cum laude.

24. Mr. Mobley is also an honors graduate of ITT Technical Institute. He is also Server+ Certified.

25. Since 2010, Mr. Mobley has worked in various financial, IT help-desk and customer service-oriented jobs.

26. Jobs and positions Mr. Mobley has occupied since graduating college include:

- a. Capitol City Bank & Trust Company-Special Assets Manager/Commercial Credit Analyst;
- b. Internal Revenue Service-Customer Service Representative;
- c. AT&T Digital Life-Support Specialist, Level 1A Manager;
- d. Bank of America-Card Services Collections Supervisor;
- e. GE Capital-Floor Plan Account Manager;

- f. DSD Mortgage, LLC-Owner and Manager Mortgage Company;
- g. EAN Services, Inc. (Enterprise Rental Car)-Insurance Callbacks Representative;
- h. Hewlett Packard Enterprise (HPE)-Advanced Solutions Engineer;
- i. Uber Technologies-Contract Driver; and,
- j. Allstate-Claims Dispatcher and Workflow Processor/Catastrophe Controller.

27. Mr. Mobley possesses extensive knowledge in multiple critical roles within the Enterprise server, banking, finance, and insurance industries.

How Algorithmic Discrimination Works

28. Defendant Workday unlawfully offers “algorithmic decision-making tools” that power applicant screening systems that in turn determine whether an employer should accept or reject an application for employment based on the individual’s race, age, and or disability.

29. Today, discrimination is perpetuated through businesses seeking efficiencies by embracing automation and data mining. Employers use algorithmic models to quickly analyze large numbers of applications automatically based on given criteria such as keywords, skills, former employers, years of experience and schools attended (“data mining”) to detect patterns and assist in making future decisions (“data analytics”).

30. Data mining learns by example and accordingly what a model learns depends on the examples to which it has been exposed.¹ “Biased training data lead to discriminatory models.”

¹ Solon Barocas and Andrew D. Selbst, *Big Data's Disparate Impact*, California Law Review Vol. 104, No. 3 (June 2016), pp. 671-732.

1 31. For hiring purposes data is mined on the front-end from applications via an
2 Applicant Tracking System (“ATS), which can be located on the company’s website or extracted
3 from applicants on job boards. An applicant tracking system (ATS) is a software application that
4 enables the electronic handling of recruitment and hiring needs. Most job and resume boards
5 (Reed Online, LinkedIn.com, Monster.com, Hotjobs, CareerBuilder, Indeed.com) have
6 partnerships with ATS software providers to provide parsing support and easy data migration
7 from one system to another.
8

9 32. Newer applicant tracking systems (often the epithet is next-generation) are
10 platforms as a service, where the main piece of software has integration points that allow
11 providers of other recruiting technology to plug in seamlessly. The ability of these next-
12 generation ATS solutions allows jobs to be posted where the candidate is and not just on-job
13 boards. This ability is being referred to as omnichannel talent acquisition.
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15 33. So-called “machine-learning” algorithms are designed to learn based upon the
16 algorithm’s access to a designated data set or an algorithm-driven search for data residing within
17 an ATS.
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19 34. Unfortunately, algorithms too often have discriminatory effects, even where
20 demographic data such as race, age, and disability are not included as inputs. This is because
21 algorithms can “learn” to use omitted demographic features by combining other inputs that are
22 correlated with race (or another protected classification), like zip code, college attended, and
23 membership in certain groups.
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25 35. Moreover, if the data mined is based on the intentional prejudices or biases of
26 prior trainers or a lack of diversity in the data set, data mining will learn from the unlawful
27 example that these decisions furnish.
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1 36. To illustrate, Amazon famously abandoned a facially neutral hiring algorithm in
2 2017 because of its disparate impact on female candidates. There, the training data presented to
3 the algorithm consisted of resumes submitted to Amazon by applicants over a 10-year period,
4 without presenting data to the algorithm explicitly indicating the applicants' gender. But most of
5 these applicants were white males. Rather than sort candidates by qualifications or merit, the
6 algorithm learned to favor male candidates by prioritizing language more commonly used by
7 males, penalizing the word "women's" in resumes, and devaluing candidates who had graduated
8 from all- women's colleges.
9

10 37. The algorithm simply drew inferences from a biased sample of the population (in
11 the Amazon case all white males) and simply reproduced that prejudice which disadvantaged
12 female applicants.
13

14 38. Upon information and belief, Workday determines which candidates to
15 recommend based on the demonstrated interests of its client-employers in certain types of
16 candidates, Workday will offer recommendations that reflect whatever biases employers happen
17 to exhibit.

18 39. Upon information and belief, if Workday's algorithmic decision-making tools
19 observe that a client-employer disfavors certain candidates who are members of a protected
20 class, it will decrease the rate at which it recommends those candidates. Thus, the
21 recommendation algorithmic decision-making tool caters to the prejudicial preferences of the
22 client-employer.
23

24 40. Algorithmic decision-making and data analytics are not, and should not be
25 assumed to be, race neutral, disability neutral, or age neutral. Too often, they reinforce and even
26 exacerbate historical and existing discrimination.
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1 41. For example, a 2019 study found that a clinical algorithm that many hospitals
2 were using to determine which patients need care was biased: Black patients assigned the same
3 level of risk—and thus allocated the same health care resources—were much sicker than white
4 patients. This happened because the algorithm had been trained on historical health care
5 spending data, which reflects a history in which Black patients had less money to spend on their
6 health care than white patients. From this, the algorithm falsely concluded that Black patients
7 were healthier than equally sick white patients.
8

9 42. Academics and government actors alike have cautioned that when approached
10 without appropriate forethought and oversight, data analytics “can reproduce existing patterns of
11 discrimination, inherit the prejudice of prior decision makers, or simply reflect the widespread
12 biases that persist in society. It can even have the perverse result of exacerbating existing
13 inequalities by suggesting that historically disadvantaged groups actually deserve less favorable
14 treatment.”
15

16 43. Indeed, according to Federal Trade Center (“FTC”) Commissioner Kelly
17 Slaughter, “[i]n recent years, algorithmic decision-making has produced biased, discriminatory,
18 and otherwise problematic outcomes in some of the most important areas of the American
19 economy. These harms are often felt most acutely by historically disadvantaged populations,
20 especially Black Americans and other communities of color.” Interest in the susceptibility of
21 data analytics and algorithmic decision-making to bias has become increasingly widespread.
22

23 44. For example, in 2022, the California Department of Insurance released the
24 bulletin *Allegations of Racial Bias and Unfair Discrimination in Marketing, Rating,
25 Underwriting, and Claims Practices by the Insurance Industry*, which declared that:

26 “technology and algorithmic data are susceptible to misuse that results in bias,
27 unfair discrimination, or other unconscionable impacts among similarly-situated
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1 consumers. A growing concern is the use of purportedly neutral individual
2 characteristics as a proxy for prohibited characteristics that result in racial bias,
3 unfair discrimination or disparate impact. The greater use by the insurance
4 industry of artificial intelligence, algorithms, and other data collection models
have resulted in an increase in consumer complaints relating to unfair
discrimination in California and elsewhere. . . .”

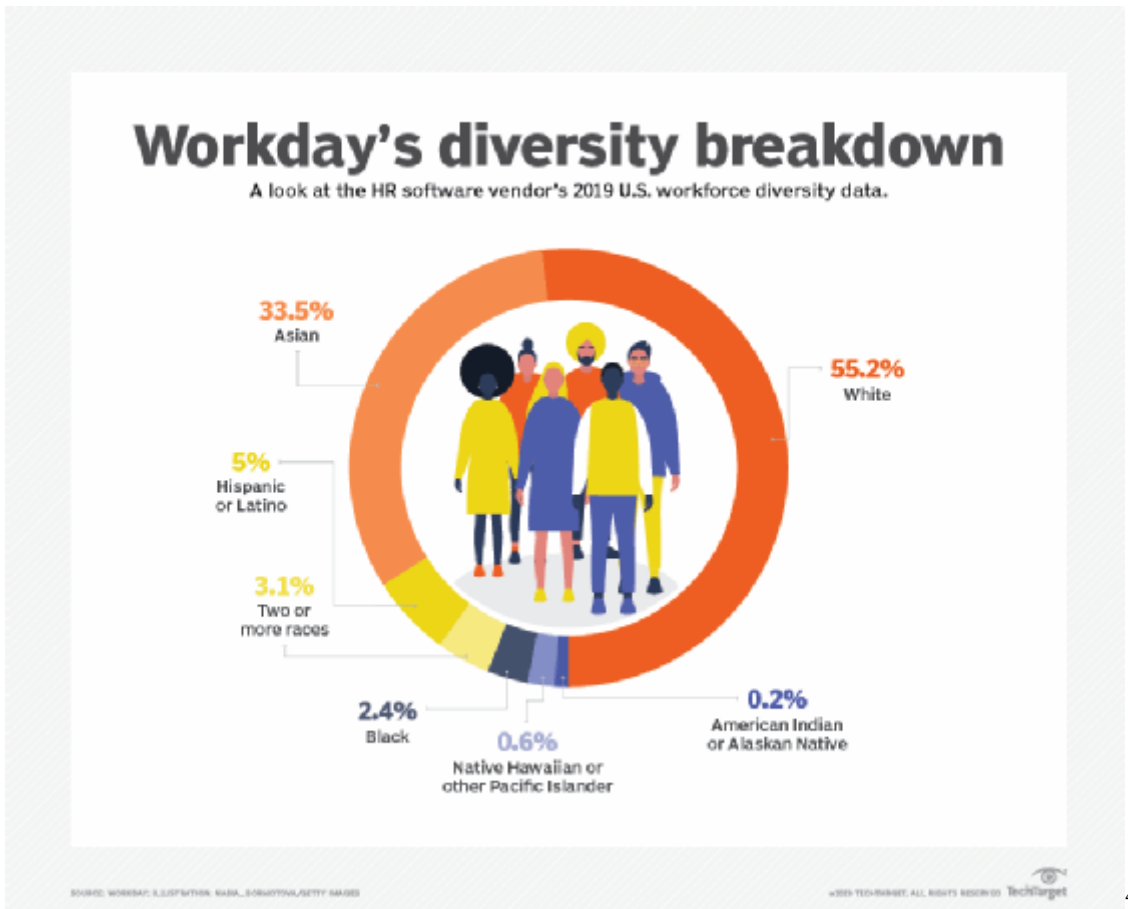
5 45. Upon information and belief, Workday’s algorithmic decision-making tools lack
6 sufficient guardrails to prevent discrimination. The conscious failure to include such guardrails
7 is intentional and shows a reckless disregard for the anti-discrimination laws.

8 46. Further, lack of guardrails creates a phenomenon referred to as AI drift. AI drift
9 occurs when an AI system’s performance and behavior change over time, often due to the
10 evolving nature of the data it interacts with and learns from. This can result in the Artificial
11 intelligence system making predictions or decisions that deviate from its original design and
12 intended purpose. “AI drift can perpetuate or amplify existing biases present in training data,
13 leading to discriminatory or unfair outcomes. For instance, a hiring AI might start favoring
14 certain demographics or perpetuating gender or racial biases” . . . i.e. disparate impact.²

15 47. Donald Tomaskovic-Devey, a sociology professor who heads the Center for
16 Employment Equity commented as follows on Workday’s diversity “Workday’s website makes
17 strong claims of corporate commitment to diversity, but at 2.4% Black, it is one of the poorest
18 performing tech companies I have encountered.”³

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26 ²<https://www.analyticsinsight.net/what-is-ai-drift-and-the-risks-associated-with-it/>

27 ³ <https://www.techtarget.com/searchhrsoftware/news/252485468/Workday-admits-to-Black-diversity-problem-pledges-to-improve>



48. Safiya Umoja Noble, Associate Professor, University of California, Los Angeles explained “The use of automated HR technologies has already shown many failings with respect to ensuring diversity -- and, in fact, many undermine it by screening out qualified women and perpetuating discrimination against African Americans who don't 'whiten' their resumes, who are often evaluated through software screening systems.”⁵ Limited diversity in the workforce responsible for creating models for training leads to bias in data mining which in turn leads to discriminatory and biased selection decisions.

⁴Id.

⁵Id.

1 **Mobley’s Applications**

2 49. Since 2017, Mr. Mobley has applied for over 100 positions that exclusively use
3 Workday, Inc. as a screening platform for talent acquisition and/or hiring. Each time he has been
4 denied.

5 50. Workday is currently used by more than 10,000 organizations around the world
6 and across industries—from medium-sized businesses to more than 50 percent of the Fortune
7 500.⁶ The Workday customer community has 65 million users, and as of April 2023, nearly one
8 in four of all U.S. job openings was processed on the Workday platform.

9 51. Mr. Mobley’s application process generally began with him responding to a job
10 advertisement or posting by a prospective employer on a third-party website such as LinkedIn,
11 Indeed, Monster, or Careerbuilders.

12 52. Mr. Mobley then clicks on the job advertisement or posting link which directs him
13 to the Workday platform on the employer’s website.

14 53. For example, a job posting or advertisement link for Hewlett Packard Enterprise
15 would say hpe@myworkday.com.

16 54. Mr. Mobley would then be prompted by the Workday platform to create a
17 username and password to access the employment opportunity.

18 55. After creating a username and password, Mr. Mobley would then upload his
19 resume` or enter his information manually. Mr. Mobley’s resume` includes his graduation from
20 Morehouse, a leading Historically Black College or University, and shows his extensive
21 employment history which could be assessed as a proxy for age.
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27 ⁶ <https://newsroom.workday.com/company-overview>

1 56. Numerous positions for which Mr. Mobley applied required him to take a
2 Workday branded assessment and/or personality test.

3 57. Upon information and belief, these assessments and personality tests are unlawful
4 disability related inquiries designed to identify mental health disorders or cognitive impairments
5 and have no bearing on whether Mr. Mobley would be a successful employee.

6 58. These assessments and personality tests are likely to reveal mental health
7 disorders and cognitive impairments and test for characteristics that correlate with them.

8 59. Persons with these disorders and impairments are likely to perform worse on these
9 assessments and tests and be screened out. Mobley suffers from depression and anxiety.

10 60. Upon information and belief, these tests are “disability inquiries” and/or “medical
11 examinations” in that they are designed to reveal mental-health disorders such as excessive
12 anxiety, depression, and certain cognitive impairments.

13 61. In September 2017, Mr. Mobley applied for a position with Hewlett Packard
14 Enterprise, a company for which he was already working on a contract basis, via
15 hpe@myworkday.com.

16 62. His application was for a Service Solutions Technical Consultant’s position
17 whose qualifications mirrored the position he occupied at the time.

18 63. On October 16, 2017, Mr. Mobley was notified of his rejection for this position
19 via email, even though he met its experiential and educational requirements.

20 64. In September 2018, Mr. Mobley applied for a Fraud Analyst position with
21 Equifax, via equifax@myworkday.com.

22 65. On October 1, 2018, Mr. Mobley was notified of his rejection for this position via
23 email, even though he met its experiential and educational requirements.

1 77. That same day at 12:52 a.m., Mr. Mobley was notified of his rejection for this
2 position via email, even though he met its experiential and educational requirements.

3 78. On September 1, 2019, Mr. Mobley applied for a Purchase Specialist position
4 with Quicken Loans, via the Quicken Loans Workday System quickenloans@myworkday.com.

5 79. On September 3, 2021, Mr. Mobley was notified of his rejection for this position
6 via email, even though he met its experiential and educational requirements.

7 80. On March 25, 2021, Mr. Mobley applied for a Service Center Representative
8 position with Sedgwick, via sedgwick@workday.com.

9 81. On April 6, 2021, Mr. Mobley was notified of his rejection for this position via
10 email, even though he met its experiential and educational requirements.

11 82. On April 1, 2021, Mr. Mobley applied for a Virtual Telesales Representative
12 position with Comcast, via comcast@myworkday.com.

13 83. On April 12, 2021, Mr. Mobley was notified of his rejection for this position via
14 email, even though he met its experiential and educational requirements.

15 84. On January 29, 2022, at 12:55 a.m., Mr. Mobley applied for a Customer Services
16 Specialist [Full-time or Part-time & remote working] with Unum, via unum@myworkday.com.

17 85. Less than one-hour later [1:50 a.m.], Mr. Mobley was notified of his rejection for
18 this position via email, even though he met its experiential and educational requirements.
19 Clearly, Mobley's applications are being processed by Workday's algorithmic decision-making
20 tools.
21

22 86. On January 9, 2024, Mr. Mobley applied for a Customer Support Representative
23 position with ResMed, via resmed@myworkday.com.

1 87. On January 11, 2024, at 3:52 a.m., Mr. Mobley was notified of his rejection for
2 this position via email, even though he met its experiential and educational requirements.

3 88. Despite being qualified, and in many instances over-qualified, Mr. Mobley has
4 not been successful at securing employment with any employer that uses the Workday platform
5 as a screening tool for applicants.

6 89. Mr. Mobley has applied to firms that form Workday's core business which is
7 medium-sized and large, global organizations that span numerous industry categories, including
8 professional and business services, financial services, healthcare, education, insurance,
9 government, technology, media, retail, and hospitality.

11 **Workday is an Employment Agency**

12 90. Firms purchase a subscription for Workday's services and as part of their
13 subscription, customers are provided support services, including professional consulting, to
14 enable them to delegate their human resource hiring function to the Workday platform.

15 91. Workday acts as an agent on behalf of the employers, who have delegated their
16 employment hiring decision-making authority to it.

17 92. Acting expressly or impliedly and at the direction of employers, Workday denied
18 Mr. Mobley and the putative class members employment unless they participated in the Workday
19 platform. The Workday platform is the only way to gain employment with these employers.
20

21 93. Workday's subscription-based service reflects an on-going relationship with their
22 client-employers and includes significant engagement in the process of hiring employees.
23

24 94. Workday's website states that it can "reduce time to hire by automatically
25 dispositioning or moving candidates forward in the recruiting process."
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1 109. Chief among those was the decision to screen out Class Members from gaining
2 employment.

3 110. Employers directed job applicants to the Workday job screening platform which
4 then determines if they receive a job.

5 111. According to Workday’s Marketing Materials, “Our skills intelligence foundation
6 helps you build diverse teams by expanding candidate pools with equitable, AI- and ML-driven
7 job recommendations.”⁷

8 112. Disposing of candidates “en masse” through the use of algorithmic decision-
9 making tools delegates to Workday the responsibility to oversee the applicant hiring process.
10

11 113. This process is the only means an employee who applies for a job with an
12 employer who uses the Workday platform can obtain employment.
13

14 114. Workday is contracted to provide these services.

15 **Workday is an Indirect Employer**

16 115. Workday’s ability to limit the employment opportunities of Mobley and the
17 putative Class Members directly interferes with any direct employment relationship between
18 them and prospective employers.

19 116. Workday’s client contracts with them to provide these services via their
20 algorithmic screening tools.
21

22 117. Workday is an indirect employer by virtue of its ability to discriminatorily
23 interfere and exert peculiar control over the prospective employee’s relationship with the direct
24 employer.
25

26 _____
27 ⁷<https://www.workday.com/en-us/products/talent-management/talent-acquisition.html>

1 **Challenged Discriminatory Practices**

2 118. Mr. Mobley is challenging the use of these common discriminatory screening
3 tools per se, and not merely the individualized manifestations of their use, the fact that the
4 common components may vary to some small degree or be applied by different customers is of
5 no consequence.

6 119. Individuals impacted the same way by these processes number in the thousands if
7 not tens of thousands.

8 120. The selection tools, assessments, and/or tests utilized by Workday, Inc. in making
9 selection decisions-to include screening and hiring applicants discriminate on the basis of race in
10 violation of §703(k) of Title VII, 42 U.S.C. §2000e-2(k).

11 121. Upon information and belief, these processes disparately impact African-
12 American applicants because they have the effect of disproportionately excluding African-
13 Americans from jobs.

14 122. Furthermore, these selection procedures are not job-related, nor are they
15 consistent with any business necessity.

16 123. Title VII prohibits discrimination by employment agencies. Section 703(b) of the
17 Act, 42 U.S.C. § 2000e-2(b), reads: “it shall be an unlawful employment practice for an
18 employment agency to fail or refuse to refer for employment, or otherwise to discriminate
19 against, any individual because of his race, color, religion, sex, or national origin, or to classify
20 or refer for employment any individual on the basis of his race, color, religion, sex, or national
21 origin. Section 701(c) of the Act, 42 U.S.C. § 2000e(c), defines the term “employment agency”
22 as: any person regularly undertaking with or without compensation to procure employees for an
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1 employer or to procure for employees opportunities to work for an employer and includes an
2 agent of such a person.

3 124. Workday, Inc. is an employment agency as that term is defined by Title VII
4 because employers delegate to them the authority to act on the employer's behalf and rely on
5 Workday's recommendation on whom to hire.
6

7 125. Upon information and belief, Mr. Mobley and other African-Americans have been
8 intentionally discriminated against because of their race (African-American), in violation of Title
9 VII Civil Rights Act of 1964, as amended.

10 126. Furthermore, the screening tools, to include assessments and tests, marketed by
11 Workday for the administration of its products discriminate on the basis of disability in violation
12 of the ADA Amendments Act of 2008 (ADAAA).
13

14 127. Upon information and belief, these screening tools disparately impact disabled
15 applicants because they have the effect of disproportionately excluding individuals with
16 disabilities. Furthermore, the screening tools are not job-related, nor are they consistent with any
17 business necessity.

18 128. Finally, the screening tools marketed by Workday for hiring applicants
19 discriminate on the basis of age in violation of the Age Discrimination in Employment Act of
20 1967 (ADEA).
21

22 129. Upon information and belief, these screening tools disparately impact applicants
23 over the age of 40 because the assessments and/or tests have the effect of disproportionately
24 excluding them. Furthermore, they are not job-related, nor are they consistent with any business
25 necessity.
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28

CLASS CLAIMS

COUNT ONE

**Intentional Employment Discrimination in
Violation of Title VII of the Civil Rights Act of 1964**

130. Representative Plaintiff restates and incorporates by reference all applicable paragraphs above as part of this Count of Complaint.

131. Workday as an employment agency, agent, and/or indirect employer has intentionally discriminated against the Representative Plaintiff and the class he seeks to represent with regards to selection procedures and other terms and conditions of employment because of their race, African-American, in violation of Title VII of the Civil Rights Act of 1964.

132. Workday's conduct has been intentional, deliberate, willful and conducted with disregard for the rights of the Plaintiff and members of the proposed class.

133. By reason of Workday's discriminatory employment practices, the Representative Plaintiff and the proposed class members have experienced extreme harm, including loss of compensation, wages, back and front pay, and other employment benefits, and, as such, are entitled to all legal and equitable remedies available under Title VII of the Civil Rights Act of 1964.

134. Employers have delegated to Workday the decision to either permit or withhold Class Members from gaining employment. Prospective applicants cannot gain employment without accessing the Workday platform.

135. Workday utilizes "AI", "ML", assessments, tests and other screening tools in a discriminatory fashion that blocks African-American applicants from employment opportunities.

136. Workday has also interfered with the present and future employment prospects of class members that have used its application platform in violation of Title VII.

1 137. In the absence of a direct employment relationship Workday can still be held liable
2 under Title VII for its discriminatory treatment of the class members because it has interfered
3 with their opportunity to gain employment.

4 **COUNT TWO**

5 **Disparate Impact Discrimination on the**
6 **Basis of Race and Disability in Violation of Title VII**
7 **of the Civil Rights Act of 1964, and the ADA Amendments Act of 2008.**

8 138. Representative Plaintiff restates and incorporates by reference all applicable
9 paragraphs above as part of this Count of the Complaint.

10 139. The algorithmic decision-making tools that Workday uses to screen out African-
11 American and disabled applicants make it an employment agency under Title VII and the ADA.
12 For purposes of these statutes, Workday is also an agent and/or indirect employer because (1) it
13 has been delegated authority to make hiring decisions by direct employers and (2) it has the
14 ability to interfere with and control access to employment opportunities with direct employers.

15 140. Workday as an employment agency, agent, and/or indirect employer utilizes
16 discriminatory screening tools that consciously or unconsciously discriminate against applicants
17 on the basis of race and/or disability. There is no business necessity justifying the disparate
18 impact these screening tools have on individuals in these protected categories.

19 141. Because there are no guardrails to regulate Workday's conduct, the algorithmic
20 decision-making tools it utilizes to screen out applicants provide a ready mechanism for
21 discrimination.

22 142. Workday's algorithmic decision-making screen out tools discriminated against the
23 Representative Plaintiff and the proposed class both within and outside the liability period in this
24 case.
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1 143. As a direct result of Workday’s discriminatory screening tools as described above,
2 the Representative Plaintiff and the class he seeks to represent have suffered damages including,
3 but not limited to, lost past and future income, compensation, and benefits.

4 144. Workday has also interfered with the present and future employment prospects of
5 class members that have used its application platform in violation of Title VII and the ADA.
6

7 145. In the absence of a direct employment relationship Workday can still be held
8 liable under Title VII and the ADA for its discriminatory treatment of the class members because
9 it has interfered with their opportunity to gain employment.

10 **COUNT THREE**

11 **Intentional Discrimination**

12 **Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623(a)(1)**

13 146. Representative Plaintiff restates and incorporates by reference all applicable
14 paragraphs above as part of this Count of the Complaint.

15 147. This claim is brought by the Representative Plaintiff on behalf of himself and the
16 collective he seeks to represent.

17 148. Employers delegated hiring decisions to Workday who then, upon information
18 and belief, utilized algorithmic decision-making tools that screened out applicants on the basis of
19 age. For purposes of the ADEA, Workday is also an agent and/or indirect employer because (1)
20 it has been delegated authority to make hiring decisions by direct employers and (2) it has the
21 ability to interfere with and control access to employment opportunities with direct employers.
22

23 149. Workday intentionally utilized algorithmic decision-making tools to screen out
24 the Representative Plaintiff and the collective on the basis of age in violation of the ADEA.
25

26 150. The discriminatory conduct that constitutes Workday’s pattern and/or practice of
27 discrimination have occurred both within and outside the liability period in this case.
28

1 164. Workday utilizes “AI”, “ML”, assessments, tests and other screening tools in a
2 discriminatory fashion that blocks African-American applicants from employment opportunities.

3 165. Workday has also interfered with the present and future employment prospects of
4 class members that have used its application platform in violation of 42 U.S.C. § 1981.

5 166. In the absence of a direct employment relationship Workday can still be held
6 liable under 42 U.S.C. § 1981 for its discriminatory treatment of the class members because it
7 has interfered with their opportunity to gain employment.
8

9 **COUNT SIX**

10 **Aiding and Abetting Race, Disability, and Age Discrimination**

11 **Cal. Gov. Code §12940(I)**

12
13 167. Representative Plaintiff restates and incorporates by reference all applicable
14 paragraphs above as part of this Count of Complaint.

15
16 168. In perpetrating the abovementioned actions and omissions, Workday as
17 employment agency, agent, or indirect employer engaged in a pattern and practice of unlawful
18 aiding and abetting of discrimination in violation of California’s Fair Employment and Housing
19 Act, Cal. Gov. Code §12940(i).

20
21 169. Workday attempted to and did in fact, aid, abet, incite, compel, and/or coerce their
22 client-customers to engage in unlawful race, disability, and age discrimination the class members
23 as described above.

24
25 170. As a direct and proximate result of the aforesaid discrimination based on race,
26 disability, and age, the class members have sustained injury in the form of severe emotional
27

1 distress, humiliation, embarrassment, and mental anguish, all to their damage in an amount
2 according to proof.

3
4 171. Workday's acts were wanton, willful and intentional, and were committed with
5 malicious and reckless disregard for the rights and sensibilities of the class members.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Representative Plaintiff and the Proposed Classes pray for relief as
9 follow:

- 10 1. Certification of the case as a class action on behalf the proposed subclasses;
- 11 2. Designation of Plaintiff as representative of the subclasses;
- 12 3. Designation of Plaintiff's Counsel of record as Class Counsel;
- 13 4. A declaratory judgment that the practices complained of herein are unlawful and
14 violate Title VII, 42 U.S.C. § 1981, the ADEA, the ADAAA, and Cal. Gov. Code §12940(I);
- 15 5. A preliminary and permanent injunction against the Company and its officers,
16 agent, successors employees, representatives, and any and all persons acting in correct with them
17 from engaging in each of the unlawful policies, practices, customs, and usages set forth herein;
- 18 6. An order that the Company institute and carry out policies, practices, and
19 programs that provide equal employment opportunities for all minorities, and that it eradicate the
20 effects of its past and present unlawful employment practices;
- 21 7. For back pay, front pay and other monetary relief according to proof (including
22 interest and benefits);
- 23 8. For all damages sustained as a result of the Company's conduct according to
24 proof;
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1 9. For compensatory damages, nominal damages, and liquidated damages according
2 to proof;

3 10. For exemplary and punitive damages in an amount commensurate with the
4 Company's ability to pay, to deter future conduct, and to set an example for others;

5 11. For reasonable attorneys' fees and cost including under to the extent allowable by
6 law;
7

8 12. Pre-judgment and post-judgment interest, as provided by law;

9 13. For such ancillary orders, decrees and such further legal and equitable relief as
10 may be necessary to enjoin and restrain the improper conduct and wrongdoing of Defendant; and

11 14. For such other and further relief as the Court deems proper.
12

13 **JURY TRIAL DEMANDED**

14 Respectfully submitted,

15 /s/Roderick T. Cooks

16 /s/Lee D. Winston

17 Lee D. Winston
18 Roderick T. Cooks
19 Attorneys for the Plaintiffs and Proposed
20 Classes and Collective Members

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8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on **February 20th, 2024**, I electronically filed the foregoing
10 document with the United States District Court for the Northern District of California by using
11 the CM/ECF system. I certify that the following parties or their counsel of record are registered
12 as ECF Filers and that they will be served by the CM/ECF system:

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