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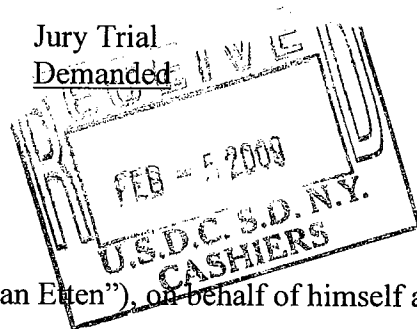
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREW VAN ET TEN, individually and on :
behalf of others similarly situated, :
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 : No. _____
 :
 : Plaintiff, :
 :
 : - against - :
 :
 : MITSUI & COMPANY (U.S.A.), INC. and :
 : MITSUI & COMPANY, LIMITED OF TOKYO, :
 :
 : Defendants. :
 :
 : -----X

CLASS ACTION
COMPLAINT

Jury Trial
Demanded



Plaintiff Andrew Van Etten (“Plaintiff” or “Mr. Van Etten”), on behalf of himself and all similarly situated persons, by and through his attorneys Thompson Wigdor & Gilly LLP, as and for his Class Action Complaint in this action against Defendants Mitsui & Company (U.S.A.), Inc. (“Mitsui USA” or the “Company”) and Mitsui & Company, Limited of Tokyo (“Mitsui Japan”) (together, “Defendants”), hereby alleges as follows:

NATURE OF THE CLAIM

1. Plaintiff brings this action to challenge a pattern and practice of race and national origin discrimination and retaliation committed by Mitsui USA and Mitsui Japan against current and former non-Japanese/non-Asian employees. The violations are systemic in nature, and constitute a pattern and practice of conduct which for many years has and continues to permeate the Company. The employment policies and practices of Mitsui USA, under direction of Mitsui Japan, have the effect and have been undertaken with the purpose of denying promotional and management opportunities, equal compensation, and equal terms and conditions of employment to qualified non-Japanese/non-Asians.

2. This class action therefore seeks declaratory, injunctive and equitable relief, as well as monetary damages, to redress Defendants' unlawful employment practices, including Defendants' discriminatory treatment against Plaintiff and similarly situated persons due to their race and national origin in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. ("Title VII") and Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981").

3. Plaintiff asserts claims herein on his own behalf under Title VII, Section 1981, the New York State Human Rights Law ("NYSHRL"), New York Executive Law §§ 290 et seq., and the New York City Human Rights Law ("NYCHRL"), New York Administrative Code §§ 8-101 et seq. against Defendants Mitsui USA and Mitsui Japan because Defendants engaged in numerous acts which, inter alia, constituted a continuous pattern and practice of discrimination and retaliation based upon Plaintiff's race and/or national origin.

4. In addition, Plaintiff asserts claims herein on his own behalf against Mitsui USA and Mitsui Japan under the Age Discrimination Employment Act of 1967 (the "ADEA"), 29 U.S.C. 621 et seq., the NYSHRL and the NYCHRL for unlawful discrimination and unlawful termination based on his age, which was over forty.

JURISDICTION AND VENUE

5. The Court has jurisdiction over Plaintiff's individual and class-wide claims in this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action involves federal questions regarding the deprivation of civil rights under Section 1981 and/or Title VII. The Court has supplemental jurisdiction over Plaintiff's related individual claims arising under state and local law pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), (c) and (d). Mitsui USA's principal place of business is located in the Southern District of New York and a substantial part of the events or omissions giving rise to this action, including the unlawful employment practices alleged herein, occurred in this district. Additionally, Mitsui Japan does business in the Southern District of New York, including but not limited to directing the conduct of Mitsui USA, which acts as an agent of Mitsui Japan.

ADMINISTRATIVE PROCEDURES

7. On or about June 26, 2007, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII") against him. The charge arises out of the same facts alleged herein.

8. On or about November 12, 2008, Plaintiff received a copy of the right to sue letter issued by the EEOC in connection with his previously filed charge of discrimination. This complaint has been filed within 90 days of Plaintiff's receipt of the EEOC right to sue letter.

9. Prior to the commencement of this action, a copy of this Complaint was served on the New York City Commission on Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the notice requirements of § 8-502 of the New York City Administrative Code.

10. Any and all other prerequisites to the filing of this suit have been met.

PARTIES

11. Plaintiff Andrew Van Etten, a former Senior Director at the Mitsui USA, is a Caucasian male, who resides in Lincoln Park, New Jersey. Mr. Van Etten was born on April 13, 1962. At all relevant times, Mr. Van Etten was an employee of Mitsui USA in its New York office.

12. Defendant Mitsui USA is the wholly-owned subsidiary of Mitsui Japan, a global trading company. Mitsui USA is a New York corporation with a principal place of business located at 200 Park Avenue, in midtown Manhattan. Mitsui USA has approximately 375 employees working in offices throughout the United States, and more than 250 employees work in or out of the New York office. Mitsui USA has business lines in chemicals, metals and steel, minerals, energy, plastics, import/export, international trade and distribution, and strategic venture capital investments. It also has a number of subsidiaries in the United States. During the relevant time period, Mitsui USA met the definition of “employer” under all relevant statutes.

13. Defendant Mitsui Japan is the parent of Mitsui USA. It is a corporation organized under the laws of Japan. It directs the hiring of “rotational staff,” Mitsui Japan employees from Japan, who are exclusively Japanese/Asian, by its wholly owned subsidiary, Mitsui USA. Upon information and belief, Mitsui Japan requires that Mitsui USA give preeminence to the rotational employees by providing them with senior management positions, higher total compensation, more lenient discipline and reduced responsibilities than that provided to non-Japanese/non-Asian employees of Mitsui USA. During the relevant time period, Mitsui Japan met the definition of “employer” under all relevant statutes by acting as a single, integrated enterprise, or joint employer, or single employer with Mitsui USA.

DISCRIMINATORY PRACTICES

14. As set forth more fully below, non-Japanese/non-Asians who are employees at Mitsui USA or jointly with Mitsui Japan are routinely subjected to a pattern and practice of race and/or national origin discrimination affecting their terms and conditions of employment. These practices reflect that discrimination is the standard operating procedure – the regular, rather than the unusual, practice – at Mitsui USA and Mitsui Japan. As a result of this Company-wide

discrimination, non-Japanese/non-Asian employees are denied equal promotional and management opportunities and are further denied equal treatment with respect to compensation, discipline and other terms and conditions of employment.

A. Defendants' Single/Joint Employer Relationship

15. At all relevant times, Mitsui USA and Mitsui Japan were operated as a single, integrated enterprise, or single employer, or as joint employers.

16. For example, not only do Mitsui Japan and Mitsui USA share common ownership, on information and belief, they share common directors and/or officers and common financial control.

17. Moreover, they share common management and control over the labor relations and personnel policies and practices, including the hiring, promotion and firing of employees. In particular, all rotational staff of Mitsui USA are simultaneously employees of Mitsui Japan and are governed by practices and procedures implemented by Mitsui Japan, as well as the policies and procedures implemented by Mitsui USA. Because all higher management positions at Mitsui USA are reserved for rotational staff chosen by Mitsui Japan, the joint or single employment practices of the Defendants discriminates against non-Japanese/non-Asians.

B. Challenged Practices

18. One of the central elements of the pervasive discrimination at Mitsui USA and Mitsui Japan is the use of and favorable treatment towards "rotational staff," who are employees of Mitsui Japan sent to take tours or rotations with Mitsui USA, usually for a term of three to five years. Upon information and belief, rotational staff are jointly employed by Mitsui Japan and Mitsui USA. Rotational employees are exclusively Japanese/Asian. Distinguished from these

rotational employees are the “national staff” – employees hired in the United States by Mitsui USA for indefinite employment. National staff are predominantly American and Caucasian.

19. In addition, Defendants favor Japanese/Asian national staff over similarly situated non-Japanese/non-Asian national staff in the terms and conditions of employment, including but not limited to, compensation, promotions and discipline.

20. Mitsui USA and Mitsui Japan have a strict policy requiring that the top positions and virtually any position managing personnel at the Company be filled by the all Japanese/Asian staff. In fact, upon information and belief, non-Japanese/non-Asian employees or applicants, regardless of how well qualified cannot apply and are never even considered for these positions. This widespread practice institutes two different, and unequal, promotional and advancement tracks on the basis of race/national origin without regard to comparative ability or actual business needs. As a result, non-Japanese/non-Asian employees are denied equal promotional opportunity to and participation in management, and thus face a “glass ceiling” at the Company.

21. Moreover, Mitsui USA and Mitsui Japan have a strict policy requiring all promotions be given in a lock-step manner to ensure that the top positions at the Company be filled by the all Japanese/Asian staff who are always older than their direct reports. By way of example only, Mr. Van Etten learned from his General Manager Yasushi Okazaki about the promotion of a Japanese rotational staff member. In response to the news, Mr. Van Etten asked, “Is it his birthday?” He then asked Mr. Okazaki if it were in fact true that promotions came to Japanese rotational staff when they reached certain ages, and Mr. Okazaki confirmed that it was the practice. In fact, upon information and belief, because non-Japanese/non-Asian employees are never considered for top management positions on account of their race or national origin,

when they come to be older than their direct managers, in order to maintain the strict age hierarchy, Defendants will seek encourage such persons to resign or will terminate them, regardless of how well qualified or how well such older employees perform. This widespread practice is without regard to comparative ability or actual business needs. As a result, non-Japanese/non-Asian employees over 40 are denied equal promotional opportunity to and participation in management.

22. In addition to this strict exclusionary policy regarding top positions, Mitsui Japan and Mitsui USA's other policies and practices further exclude non-Japanese/non-Asian employees from upper management opportunities. For example, non-Japanese/non-Asian employees are consistently excluded from key management meetings and decisions, and Mitsui USA routinely maintains important Company documents, such as business plans, in Japanese, without translating these into English. Non-Japanese/non-Asians are similarly excluded from nearly all internal networking opportunities with top executives and are thereby deprived of key opportunities to connect with the promotional decision-makers. Finally, even the few non-Japanese/non-Asian national staff, such as Plaintiff, who are given managerial titles suffer discrimination in management opportunities because Mitsui USA systematically denies them promotions befitting their elevated responsibilities.

23. In addition to this exclusion from upper management, Mitsui Japan and Mitsui USA's company-wide rotational system also discriminates against non-Japanese/non-Asians with respect to pay. First, the Japanese/Asian rotational staff are paid significantly more compensation than their national staff counterparts simply as a result of being placed at the highest levels of the Company. This effect is exacerbated by Defendants' practice of compensating the Japanese/Asian rotational staff according to a different, more lucrative, system

than the national staff. Upon information and belief, this includes paying allowances for housing, children's education and transportation that are not paid to any national staff. This separate formula for calculating the salary, allowances and bonus for rotational staff provides this all Japanese/Asian group with significantly higher overall compensation than their non-Japanese/non-Asian employees. This compensation practice is implemented throughout Mitsui USA without respect to merit or qualifications or any analysis of whether local candidates could be hired or the Japanese/Asian expatriates could be compensated at local market rates.

24. In addition, Japanese/Asian national staff are compensated better than their non-Japanese/non-Asian counterparts.

25. Mitsui USA and Mitsui Japan also have a policy of applying different, more lenient, standards for employee conduct and discipline to its all Japanese/Asian staff. Non-Japanese/non-Asian employees are held to stricter standards and, consequently are disciplined, formally and informally, more frequently and severely than their Japanese/Asian counterparts.

26. In addition to the above-described discrimination caused by the rotational staff system, Defendants' standard practices and policies applicable to the national staff also result in discrimination against non-Japanese/non-Asian employees. Specifically, Mitsui USA has a policy and practice of giving its upper management employees – who are predominantly Japanese/Asian - subjective decision-making authority over the promotion, compensation and disciplinary decisions for national staff – who are predominantly non-Japanese and non-Asian. The lack of standard, objective criteria for personnel-related decisions regarding national staff allows for the incorporation of the subjective stereotypes and biases of the overwhelmingly Japanese/Asian management into the Defendants' personnel decisions. As a result, non-Japanese/non-Asian employees are significantly underrepresented in management, are paid far

less, and receive stricter discipline and less favorable performance assessments than similarly situated Japanese/Asian colleagues.

27. This Company-wide discrimination against non-Japanese/non-Asian employees is maintained and enforced by Mitsui USA's uniform response toward any employee who challenges or complains of the wrongful treatment. Staff who complain either internally or externally about the Defendants' treatment of non-Japanese/non-Asian employees are unlawfully retaliated against by, inter alia, blocking such employee's advancement, undermining his/her position and in many cases by terminating the employee, either explicitly or constructively. Defendants' policy and practice of retaliating against employees who report or complain of discrimination, by discipline, termination and other adverse actions, is pervasive and Company-wide. It is also facilitated by Defendants' general policy of entrusting the predominantly Japanese/Asian management with discretion in the discharge of their duties, which affords them the unfettered opportunity to apply their own personal preferences and biases in making employment decisions. As a result, qualified non-Japanese/non-Asian employees have been adversely affected by a consistent pattern and practice of unlawful retaliation.

28. Thus, Mitsui USA and Mitsui Japan discriminate against non-Japanese/non-Asian employees with respect to hiring, termination, promotion, discipline and management opportunities by: (a) a policy of appointing rotational staff employees, who are all Japanese/Asian, to the top management positions at the Company, (b) a policy of denying non-Japanese/non-Asian employees access to the Company's management or to important company information, (c) a policy of ignoring or not accepting applications of non-Japanese/non-Asians to the top management positions, (d) relying on subjective judgments, procedures and criteria which permit and encourage the incorporation of the stereotypes and bias held by the

predominantly Japanese/Asian management in making hiring, termination, promotion, discipline and other employment decisions, (e) using informal subjective selection and evaluation methods which otherwise allow for discrimination, (f) refusing or failing to provide non-Japanese/non-Asian employees with opportunities to demonstrate their qualifications, (g) providing Japanese/Asian individuals greater latitude and authority in performing their job duties for management positions and promotional opportunities than similarly situated non-Japanese/non-Asian individuals, and (h) generally by awarding management positions to Japanese/Asian individuals with lesser qualifications than similarly situated non-Japanese/non-Asian individuals.

29. Mitsui USA and Mitsui Japan discriminate against non-Japanese/non-Asian employees with respect to pay by: (a) a policy of exclusively placing rotational staff, who are all Japanese/Asian, into high-level positions, (b) paying the rotational staff on a different and far more lucrative scale than national staff employees, (c) vesting final approval of compensation for national staff with Defendants' all Japanese/Asian rotational executives, (d) relying on subjective judgments, procedures and criteria which permit and encourage the incorporation of the subjective stereotypes and biases held by the predominantly Japanese/Asian management in making compensation decisions, (e) using informal subjective compensation methods which otherwise allow for discrimination, and (f) generally by awarding greater compensation to Japanese/Asian individuals with lesser qualifications than similarly situated non-Japanese/non-Asian individuals.

30. Mitsui USA and Mitsui Japan discriminate against non-Japanese/non-Asian employees with respect to discipline by: (a) applying standards and disciplinary policies and procedures to the Japanese/Asian rotational staff that are different from, and more lenient than, the standards and policies applied to national staff, (b) applying far less severe discipline to

Japanese/Asian employees than that applied to non-Japanese/non-Asian employees, (c) relying on subjective judgments, procedures and criteria for employee discipline which permit and encourage the incorporation of the stereotypes and biases held by Defendants' predominantly Japanese/Asian management in making disciplinary decisions, (d) using informal subjective criteria in discipline which otherwise allows for discrimination, and (e) generally disciplining non-Japanese/non-Asian employees with more severe results for less serious infractions than the Japanese/Asian employees.

31. Mitsui USA and Mitsui Japan unlawfully retaliate against non-Japanese/non-Asian employees who report or protest discriminatory conduct by: (a) a policy and practice of retaliating against the national staff for any complaints about Mitsui USA's discriminatory treatment of non-Japanese/non-Asian employees, (b) vesting subjective discretion in the Japanese/Asian management executives with respect to the discharge of their duties, (c) relying on subjective judgments, procedures and criteria in making employment decisions which permit and encourage the incorporation of the stereotypes and biases held by Defendants' predominantly Japanese/Asian management in making disciplinary and termination decisions, and (d) generally by retaliating against employees who report or complain of discrimination.

32. The above-described discrimination and retaliation is motivated by discriminatory animus against non-Japanese/non-Asians, or an intent to retaliate against those who engage in protected conduct, respectively. Upon information and belief, the all Japanese/Asian management at Mitsui USA, particularly the rotational staff, hold stereotyped views of non-Japanese/non-Asian employees which has resulted in a pattern and practice of discrimination with respect to promotion and management opportunities, compensation, discipline and retaliation of national staff.

33. Alternatively, Mitsui USA and Mitsui Japan jointly maintain common, company-wide discriminatory policies identified above that have a disparate impact on non-Japanese/non-Asian employees at Mitsui USA, yet there is no legitimate business purpose for their use.

C. Patterns of Disparate Treatment and Impact

34. Upon information and belief, the above cited discriminatory practices have resulted in patterns of discriminatory disparate treatment and/or disparate impact toward the non-Japanese/non-Asian employees of Mitsui USA.

35. Throughout the liability period, a disproportionately large percentage of the managers and supervisors at Mitsui USA and Mitsui Japan have been Japanese/Asian. For example, during Mr. Van Etten's entire employment with Mitsui USA, all of his superiors were Japanese/Asian and not a single non-Japanese/non-Asian person ever occupied a position of General Manager or Senior Vice President within an operating or business department, which comprise a significant part of the Company.

36. As a further example, during the course of Mr. Van Etten's employment at Mitsui USA, the Information Business Group where he worked systematically terminated or encouraged the resignation of those non-Japanese/non-Asian employees who were there and replaced them with Japanese/Asian employees, until the Department was thoroughly dominated by the preferred Japanese/Asian staff.

37. Throughout the liability period, Japanese/Asian employees also received disproportionately greater compensation than comparably situated non-Japanese/non-Asian employees.

38. In fact, During Mr. Van Etten's employment, Defendants maintained a written salary summary chart for employees who worked in business units which showed that national staff compensation levels were limited based on their status as national staff, while Japanese/Asian rotational employees had higher levels of compensation. That salary summary chart, as well as other documents at the Company, reflect Defendants' knowledge and intent to discriminate against national staff members simply because they are not Japanese/Asian.

39. Additionally, according to a January 2003 publicly filed discrimination complaint brought by one of Mitsui USA's Marketing Managers, Japanese/Asian employees are compensated at a higher rate than non-Japanese/non-Asian employees performing similar functions. Upon information and belief, this disparity continues today.

40. Throughout the liability period, non-Japanese/non-Asian employees were also disciplined, formally and informally, more frequently and severely than the Japanese/Asian rotational employees. For example, Mr. Van Etten was allegedly terminated for unreconciled corporate expenses. However, upon information and belief, no Japanese/Asian rotational employee has even been reprimanded for similar conduct.

41. Throughout the liability period, national staff were systematically and unlawfully retaliated against for complaining about Mitsui USA's discriminatory treatment of non-Japanese/non-Asian employees.

CLASS ACTION ALLEGATIONS

A. Class Definition

42. Plaintiff requests that the Court certify a class consisting of all current and former non-Asian/non-Japanese employees who have been employed by Defendant Mitsui USA

at anytime between 2000 and the present. Plaintiff reserves the right to amend the definition of the Class following the conclusion of discovery.

B. Efficiency of Class Prosecution of Common Claims

43. Certification of a class of non-Asian employees is the most efficient and economical means of resolving the questions of law and fact which are common to Plaintiff's claims and the proposed claims of the class. Plaintiff's individual claims require resolution of the common question of whether Defendants have engaged in a systemic pattern and/or practice of racial discrimination. Plaintiff has standing to seek such relief because of the adverse effect that such discrimination has had on him individually and on non-Japanese/non-Asian employees generally. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the proposed class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiff, the proposed class and Defendants.

C. Numerosity and Impracticability of Joinder

44. The class members are sufficiently numerous to make joinder of all members impracticable. While the exact number of Class members is unknown at this time, upon information and belief, Defendants employ and employed during the pertinent period more than 250 non-Asian employees. Although the number of Class members is incapable of precise determination at this time, it is significant and satisfies the numerosity requirement of Rule 23.

D. Common Questions of Law and Fact

45. The claims alleged on behalf of Plaintiff raise questions of law or fact common to the class. The common questions of law include inter alia whether Defendants have jointly

engaged in unlawful systemic race discrimination with respect to its promotional, hiring, termination, and management opportunities, compensation and discipline policies, practices and/or procedures, and in the general terms and conditions of work and employment, and whether Defendants have engaged in unlawful systemic retaliation against employees who report or complain of discriminatory treatment. The common questions of fact include, inter alia: whether, through its policies, practices and/or procedures: (a) Defendants have denied or prevented the hire or promotion of non-Japanese/non-Asian employees; (b) Defendants have denied non-Asian employees equal access to top management; (c) Defendants have paid non-Japanese/non-Asian employees less than comparably situated Asian employees; (d) Defendants have subjected non-Japanese/non-Asian employees to differential treatment, including stricter discipline; (e) Defendants have retaliated against non-Japanese/non-Asian employees who have protested discrimination; and (f) Defendants' policies and procedures have had a disparate impact on non-Japanese/non-Asian employees.

46. The employment policies, practices and/or procedures to which Plaintiff and the class members are subject are jointly established at Mitsui USA and Mitsui Japan's corporate level and apply universally to all class members throughout the country. These employment policies, practices and/or procedures are not unique or limited to any department; rather, they apply to all departments, and thus, affect Plaintiff and proposed class members no matter the position in which they work.

E. Typicality of Claims and Relief Sought

47. Plaintiff is a member of the Class he seeks to represent. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff asserts claims in each of the categories of

claims he asserts on behalf of the proposed class. The relief Plaintiff seeks for the discrimination complained of herein is also typical of the relief which is sought on behalf of the proposed class.

F. Adequacy of Representation

48. Plaintiff's interests are co-extensive with those of the members of the proposed class of non-Asian employees that he seeks to represent in this case. Plaintiff is willing and able to represent the proposed class fairly and vigorously as they pursue their similar individual claims in this action. Plaintiff has retained counsel who are qualified, experienced and able to conduct this litigation and to meet the time and fiscal demands to litigate an employment discrimination class action of this size and complexity. The combined interests, experience and resources of Plaintiff and his counsel to litigate competently the individual and class claims at issue in this case clearly satisfy the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4).

G. Requirements of Rule 23(b)(2)

49. Mitsui USA and Mitsui Japan have acted on grounds generally applicable to Plaintiff and the proposed class by adopting and following systemic policies, practices and/or procedures which are discriminatory on the basis of race. This discrimination is reflective of the discriminatory atmosphere that drives Defendants' standard operating procedures. Mitsui USA and Mitsui Japan have refused to act on grounds generally applicable to the class by inter alia: (a) refusing to adopt and apply promotion, management, compensation and discipline policies, practices and/or procedures which do not have a disparate impact on, or otherwise systemically discriminate against non-Japanese/non-Asian employees and (b) refusing to provide equal terms and conditions of employment for non-Japanese/non-Asian employees. Defendants' systemic

discrimination and refusal to act on grounds that are not discriminatory have made appropriate the requested final injunctive and declaratory relief with respect to the class as a whole.

50. Injunctive and declaratory relief are the predominant relief sought in this case because they are the culmination of the proof of Defendants' individual and class-wide liability and the essential predicate for Plaintiff's and the class members' entitlement to monetary and non-monetary remedies to be determined at a later stage of the proceedings. Declaratory and injunctive relief flow directly and automatically from proof of the common questions of law and fact regarding the existence of systemic discrimination against non-Japanese/non-Asian employees at Mitsui USA and Mitsui Japan. Declaratory and injunctive relief are the factual and legal predicates for Plaintiff's and the class members' entitlement to monetary and non-monetary remedies for individual losses caused by, and for exemplary purposes, necessitated by such systemic discrimination.

H. Requirements of Rule 23(b)(3)

51. The common issues of fact and law affecting Plaintiff's claims and those of the proposed class members, including, but not limited to, the common issues identified above, predominate over any issues affecting only individual claims.

52. A class action is superior to other available means for the fair and efficient adjudication of Plaintiff's claims and the claims of the members of the proposed class.

53. The cost of proving Defendants' pattern and practice of discrimination makes it impracticable for Plaintiff and members of the proposed class to pursue their claims individually.

PLAINTIFF'S ALLEGATIONS

Andrew Van Etten's Career at Mitsui USA

54. In 1988, Mr. Van Etten was hired by Mitsui USA and Mitsui Japan's subsidiary, Mitsui Comtek Corporation as a Sales Project Manager. In July 1997, Mr. Van Etten transferred to Mitsui USA, where he continued in a similar position. He was also later promoted to Senior Director.

55. Mr. Van Etten's responsibilities as Sales Project Manager and eventually Senior Director were to find innovative hi-tech business plans in the United States for Mitsui USA and Mitsui Japan to invest in.

56. In 1994, while working for Corporate Defendants' subsidiary, Comtek, Mr. Van Etten introduced a leading internet service provider to Mitsui USA and Mitsui Japan, which culminated in highly successful a joint venture among the companies, worth hundreds of millions of dollars to Mitsui Japan. After the success of that deal, Mr. Van Etten had unmatched status in the hi-tech industry, which in turn fostered more success for him and Defendants.

57. Additionally, during Mr. Van Etten's employment at the Company, his work performance was outstanding, as evidenced by his promotions and positive performance evaluations. In fact, he received virtually perfect scores on his final two performance reviews and did not receive a rating below "exceeds expectations" in his last 5 years with the Company.

58. Moreover, Defendants admit that Mr. Van Etten performed well over the years of his employment at the Company in many respects.

59. Despite Mr. Van Etten's experience, proven record of success and outstanding work performance, he always reported to Asian/Japanese General Managers and Senior Vice Presidents sent to Mitsui USA by Mitsui Japan. These General Managers all had less experience

in the field than Mr. Van Etten. They also lacked his extensive network of contacts, had little or no experience with venture capital deals and had no experience with the boards of directors of U.S. companies, all of which were crucial to the work Mr. Van Etten performed on behalf of Defendants.

60. Examples of the inexperienced managers include Takashi Saito, the General Manager who purportedly supervised Mr. Van Etten beginning in 2005, whose only prior experience was in real estate and had no experience with hi-tech ventures. Another General Manager who supervised Mr. Van Etten from 2002 to 2005, Yasushi Okazaki, predominantly had experience with computer mainframes, but little or no experience with venture capital investments or hi-tech projects and deals, which were Mitsui USA's focus for the past 10 years.

61. Over the course of his employment at Mitsui USA, Mr. Van Etten became well-qualified for the position of General Manager. At all times he performed his duties in a professional and highly capable manner. His excellent work performance included a role in introducing cable television companies in Japan and deals involving infomercials, media, internet and other areas of hi-tech. This accomplishment was particularly important for Mitsui USA and Mitsui Japan because Mr. Van Etten identified companies with business models that would be appropriate for Japanese markets.

Unequal Promotion and Management Opportunities Based on Race/National Origin

62. As set forth above, the policy of placing only the Japanese/Asian rotational staff into the top management positions at the Company excludes non-Japanese/non-Asians from promotional and management opportunities. As a result, the highest levels of management at Mitsui USA/Mitsui Japan are disproportionately Japanese/Asian and entirely Japanese/Asian in the Information Business Group of Mitsui USA, where Mr. Van Etten worked. Moreover, even

those few national staff employees who are given a Vice President or General Manager title are predominantly isolated in the non-operating non-business departments, such as tax, legal and human resources. These policies are all part of the Company-wide discriminatory practice of preventing non-Japanese/non-Asians from participating in the upper echelons of management at Mitsui USA.

63. After approximately three years of conducting himself as Senior Director, Mr. Van Etten eventually came to officially hold that title in 1999 – at least three years late. Indeed, based on his outstanding work performance, Mr. Van Etten should have been promoted to the position of General Manager by 2000. Mitsui USA and Mitsui Japan’s failure to promote him in part comprised the pattern and practice of discrimination at Defendants. The effect of these discriminatory practices was to deny Mr. Van Etten the title of General Manager that he merited and the compensation incumbent with that position, and culminated in his unlawful termination.

64. By way of example only, Mr. Van Etten had more experience than Takashi Saito who, beginning in 2005, held the title of General Manager in the Consumer Services Group, where Mr. Van Etten worked.

65. In addition, Mr. Van Etten repeatedly asked his Japanese/Asian superiors what were the qualifications for General Manager. According to Mitsui USA policy, non-Japanese/non-Asian General Managers had to achieve at least 19 out of 25 points on an internal subjective grading system. However, the grading system was a ruse to create the illusion of fair opportunity while in fact functioning to prevent the promotion of non-Japanese/non-Asians to upper management positions. For example, none of Mr. Van Etten’s General Managers, who were responsible for making recommendations about his promotion, understood the grading

system or what the criteria were for achieving the necessary points. They simply denied that Mr. Van Etten had achieved the required number of points.

66. In fact, Mr. Van Etten was well qualified for the position of General Manager. In 2005 he had brought Mitsui Japan more than \$11 million in profits. Throughout that year he had had been acting as de facto General Manager, reporting on a day-to-day basis to Senior Vice President Bunji Shinoda, rather than General Manager Takashi Saito, including by representing Mitsui USA at the boards of directors for Mitsui USA's portfolio companies. Mr. Van Etten was given the responsibilities of General Manager without the title or commensurate salary.

67. Mr. Van Etten was also disadvantaged within Mitsui USA by the fact that Japanese was used to communicate, orally and in writing, throughout the day by top Mitsui USA/Mitsui Japan executives as well as with/by their underlings. This practice was rampant, notwithstanding the fact that non-Japanese/non-Asian employees would not be able to understand, leading to greater isolation and exclusion of non-Japanese/non-Asian employees. By way of example only, Mitsui USA held monthly, quarterly and annual business meetings where Mr. Van Etten's business was discussed, but the meetings were conducted in exclusively Japanese and no national staff were included.

68. Thus, as set forth above, as an employee at Mitsui USA during the relevant time period, Mr. Van Etten has suffered from the Company-wide pattern and practice of discrimination in management opportunities against non-Japanese/non-Asians.

69. In addition, or alternatively to the above-described disparate treatment, Mr. Van Etten suffered the disparate impact of Mitsui USA and Mitsui Japan's policies of: (a) appointing the Japanese/Asian rotational staff to the Company's top management positions without regard to qualifications, experience or merit; (b) vesting subjective discretion in the predominantly

Japanese/Asian management with respect to decisions affecting the terms and conditions of national staff employment; (c) using informal subjective methods for personnel decisions and management opportunities which otherwise allow for discrimination; (d) refusing or failing to provide non-Japanese/non-Asian employees with opportunities to demonstrate their qualifications; and (e) providing Japanese/Asian individuals greater latitude and authority in performing their job duties than similarly situated non-Japanese/non-Asian individuals.

Unequal Pay Based on Race/National Origin

70. In addition to the above-described discrimination with respect to management opportunities, during Plaintiff's employment at Mitsui USA, he was further subjected to unequal compensation as compared to his Japanese/Asian colleagues, which was part of Defendants' pattern and practice of discrimination against non-Asian/non-Japanese employees.

71. Upon information and belief, Plaintiff's compensation at Mitsui USA has been significantly lower than the Asian/Japanese rotational executives who have considerably less experience and qualifications. As just one example, Mr. Van Etten's annual bonus was typically 8 to 10% of his annual salary. Meanwhile, Plaintiff's Japanese/Asian counterparts were eligible for bonuses of more than 30% of their already higher base salaries.

72. In addition, or alternatively, to the above described disparate treatment, Mr. Van Etten suffered the disparate impact of Mitsui USA and Mitsui Japan's policies of: (a) applying different, more lucrative compensation standards to the all Japanese/Asian rotational staff; (b) vesting subjective discretion in the Japanese/Asian management executives with respect to compensation of national staff employees such as Mr. Van Etten; (c) using informal subjective methods for compensation decisions which otherwise allow for discrimination; and/or (d) other compensation policies, practices or procedures which disparately impacted non-Japanese/non-Asian employees.

Discrimination in Discipline and Termination

73. In addition to the above-described race and national origin discrimination with respect to management opportunities and compensation, Plaintiff was also subject to Defendants' policy of applying different and more lenient standards of discipline to the Japanese/Asian rotational staff. Thus, as described in more detail below, Plaintiff was abruptly and unlawfully terminated without the opportunity to substantially respond to false allegations, despite his dedication, hard work, excellent performance and long history with the Company. In contrast, Japanese/Asian rotational staff who are incompetent or engaged in serious wrongdoing are not terminated or subjected to any meaningful discipline.

74. In addition, or alternatively, to this disparate treatment, Mr. Van Etten suffered from the disparate impact of Defendants' policies of: (a) applying different, more lenient disciplinary standards to the Japanese/Asian rotational staff and/or (b) vesting subjective discretion in the predominantly Japanese/Asian management with respect to discipline of national staff employees. These policies disproportionately harm non-Japanese/non-Asian employees and are not justified by a legitimate business purpose.

Mr. Van Etten's Repeated and Long History of Complaints

75. Despite the discriminatory treatment to which he was subjected, Plaintiff continued to perform his work diligently and persevered in fulfilling his obligations as a Senior Director and loyal employee of Mitsui USA.

76. Nonetheless, it was apparent to Mr. Van Etten as early as 1996 that the Defendants were discriminating against him and other non-Japanese/non-Asians on the basis of race and/or national origin because of the glass ceiling maintained by the rotational system.

77. Starting in 1996 and approximately once a year each year thereafter, Mr. Van Etten repeatedly complained to Steven Menzer of the Human Resources Department of Mitsui USA that Defendants' policies regarding the terms and conditions of his employment were discriminatory on the basis of his race and national origin and that the rotational system was discriminatory in nature. Upon information and belief, Mr. Menzer took copious notes, fully documenting Plaintiff's complaints each time Plaintiff came to him. Upon further information and belief, no investigation was ever conducted regarding the veracity of Mr. Van Etten's complaints.

78. At Mr. Van Etten's annual performance review, held on February 27, 1998, Mr. Van Etten made clear that he believed that the only reason he was not being promoted is discrimination against non-Japanese. Upon information and belief, no investigation was ever conducted regarding the veracity of Mr. Van Etten's complaint.

79. In an email dated February 11, 1999 to Makoto Koto General Manager of the Human Resources Department, Mr. Van Etten complained "Clearly Mitsui USA has a two tier system with top positions only available to rotational staff members. When do you plan [to] eliminate these barriers for the national staff. . . .we are not compensated nor promoted." Upon information and belief, no investigation was ever conducted regarding the veracity of Mr. Van Etten's complaint.

80. That same day Mr. Van Etten sent his General Manager, Junchiro Yamamoto, an email stating "its Mitsui USA's discriminat[ory] pay scale between Japanese and Asian personnel (non rotational) and my salary, that I have a problem with." He went on: "Higher salaries are given to non-rotational, Japanese speaking employees while the responsibilities are

equal or less.” Upon information and belief, no investigation was ever conducted regarding the veracity of Mr. Van Etten’s complaint.

81. On May 22, 2002, Mr. Van Etten sent an email noting to his General Manager at the time, Yasushi Okazaki, that “your position is reserved for Japanese staff” and inquiring “if the GM position is not solely reserved for Japanese, and national staff are allowed to reach this level, then please let me know. It is my understanding that only Japanese are allowed to become a GM within our department.” Rather than respond to Mr. Van Etten, Okazaki forwarded his message to Steven Menzer and others, and who also failed to respond adequately.

82. Again on August 12, 2002, Mr. Van Etten complained to Mr. Okazaki: “How about promoting local national staff to higher level positions within business departments. In the past 10 years, there has never been a promotion of a non-Asian employee to a GM position within NYCSZ not SJMCZ.”

83. Mr. Van Etten also complained about discriminatory compensation practices. In a subsequent email from the May 22, 2002 chain, Barbara Rezza, a national staff member in the Human Resources Department wrote, “Both the HR Dept and Electronic & Info. Biz have a long history with Andy. We have had several meeting[s] with Andy to discuss his compensation as a Mitsui National Staff employee. Andy would like to receive all benefits, compensation and opportunities that rotational staff receive. Compensation conversations with Andy occur frequently throughout the year.”

84. Indeed, Defendants admit that Mr. Van Etten complained that the rotational employees were not qualified for the positions they held and that the practice of bringing Japanese/Asian executives from Japan amounted to discrimination against non-Japanese/non-Asian employees who could have been awarded those positions. They also admit that Mr. Van

Etten complained that he should have been promoted to General Manager and was not because he is not Japanese/Asian.

85. Additionally, in October 2005, Mr. Van Etten was specifically named as a victim of discrimination at the sworn deposition testimony of Susan Gurnett, a former Mitsui USA who brought a federal gender and racial discrimination lawsuit against Mitsui USA (the “Gurnett Lawsuit”). Steven Menzer, the Human Resources official at the Company, attended the deposition and was at all times aware of Mr. Van Etten’s complaints. Upon information and belief, a rotational Japanese manager in the Human Resources Division also attended the deposition with Mr. Menzer and heard the testimony regarding Mr. Van Etten as a victim of the Company’s discrimination.

86. Furthermore, by 2005 Mr. Van Etten was clearly better qualified than his current General Manager, Takashi Saito, but Defendants were unwilling to give Mr. Van Etten his well-deserved promotion and dispense with their policy of reserving such positions for Japanese/Asians.

87. Therefore, when Mr. Van Etten voiced his complaint about the discriminatory promotional practices, upon information and belief, it was a problem that Defendants believed they had to silence by unlawfully terminating his employment in retaliation for his repeated complaints.

Defendants’ Unlawful Retaliation and Age Discrimination

88. In addition to Mr. Van Etten’s repeated complaints, he was over age forty and that presented another problem to Defendants’ who maintained a strict practice of promoting only Japanese/Asians to top management while at the same time ensuring that all the direct reports were younger than their managers. Specifically, Mr. Van Etten was older and better

qualified than his General Manager, Mr. Saito, to whom he was supposed to report. The age difference between Mr. Van Etten and Mr. Saito was a disruption in the strictly maintained hierarchy, but Corporate Defendants would not give Mr. Van Etten the well-deserved promotion to General Manager because he was not Japanese or Asian.

89. Shortly after the Gurnett Lawsuit settled in April 2006, and after his performance review for 2005, given in spring 2006, during which he again complained about Defendants' unlawful policy of permitting only Japanese/Asians to hold upper management positions, the audit department of Mitsui USA undertook an exhaustive review of Mr. Van Etten's business expenses and reimbursements. Upon information and belief, the audit was motivated by retaliatory animus toward Mr. Van Etten because of his repeated complaints about discrimination at Mitsui USA and by discriminatory animus because Mr. Van Etten was non-Japanese/non-Asian and was over forty and reported to a younger General Manager.

90. As part of the discrimination and unlawful retaliation committed against him, on August 29, 2006, Mr. Van Etten was called into the offices of Mitsui USA's legal department. Mr. Van Etten was told for the first time that he had been the subject of a Company audit and that they had allegedly found discrepancies in his reimbursements from 2001 – some five years earlier. Mr. Van Etten insisted that he be informed in detail about the nature of the allegations and be given the opportunity to substantively respond, as he knew that he had not received any undue reimbursements. The Company claimed that it would conduct an investigation and take into account Mr. Van Etten's initial explanations for the purportedly irregular expenses. Mr. Van Etten was then placed on permanent leave.

91. On August 30, 2006, without having conducted the promised investigation or having given Mr. Van Etten an opportunity to understand and adequately respond to the false

allegations against him, the Defendants decided to unlawfully and retaliatorily terminate Mr. Van Etten's employment by a letter sent that day.

92. Upon information and belief, no Japanese/Asian rotational employee was ever reprimanded for inappropriate reimbursements, much less terminated because of the appearance of irregularities in their expenses.

AS AND FOR A FIRST CAUSE OF ACTION

(Class Claims of Discrimination and Harassment in Violation of Title VII)

93. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 92, inclusive, as if fully set forth herein.

94. Defendants have discriminated against Plaintiff and the members of the proposed class by treating them differently from and less favorably than similarly situated Japanese/Asian employees and by subjecting them to discriminatory denials of promotion and management opportunities, disparate pay, discriminatory disciplinary procedures, and other disparate terms and conditions of employment on the basis of their race (non-Asian) and/or nation of origin (non-Japanese) in violation of Title VII.

95. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Title VII, Plaintiff and the members of the proposed class have suffered, and continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which they are entitled to an award of monetary damages and other relief.

96. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Title VII, Plaintiff and the members of the proposed class have suffered, and continue to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-

confidence, and emotional pain and suffering for which they are entitled to an award of monetary damages and other relief.

97. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of Title VII for which Plaintiff and the members of the proposed class are entitled to an award of punitive damages.

AS AND FOR A SECOND CAUSE OF ACTION

(Class Claims of Retaliation in Violation of Title VII)

98. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 97, inclusive, as if fully set forth herein.

99. Defendants retaliated against Plaintiff and the members of the proposed class by, *inter alia*, subjecting them to materially adverse actions that would deter a reasonable employee from engaging in protected activity in violation of Title VII for their opposition to and/or their participation in lodging complaints against Defendants' discriminatory practices against themselves and other employees and applicants at Mitsui USA.

100. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Title VII, Plaintiff and the members of the proposed class have suffered, and continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which they are entitled to an award of monetary damages and other relief.

101. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Title VII, Plaintiff and the members of the proposed class have suffered, and continue to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-

confidence, and emotional pain and suffering for which they are entitled to an award of monetary damages and other relief.

102. Defendants' unlawful and retaliatory actions constitute malicious, willful and wanton violation of Title VII for which Plaintiff and the members of the proposed class are entitled to an award of punitive damages.

AS AND FOR A THIRD CAUSE OF ACTION

(Individual Claim of Discrimination in Violation of Title VII)

103. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 102, inclusive, as if fully set forth herein.

104. Defendants have discriminated against Plaintiff by treating him differently from and less favorably than similarly situated Japanese/Asian employees and by subjecting him to discriminatory denials of management opportunities, disparate pay, discriminatory disciplinary procedures, and other disparate terms and conditions of employment on the basis of his race (non-Asian) and/or nation of origin (non-Japanese) in violation of Title VII.

105. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

106. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

107. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of Title VII for which Plaintiff is entitled to an award of punitive damages.

AS AND FOR A FOURTH CAUSE OF ACTION

(Individual Claim of Retaliation in Violation of Title VII)

108. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 107, inclusive, as if fully set forth herein.

109. Defendants have retaliated against Plaintiff by, *inter alia*, subjecting him to materially adverse actions that would deter a reasonable employee from engaging in protected activity, including the termination of his employment, in violation of Title VII for his opposition to and/or his participation in lodging complaints against Defendants' discriminatory practices against him.

110. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

111. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Title VII, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

112. Defendants' unlawful and retaliatory actions constitute malicious, willful and wanton violation of Title VII for which Plaintiff is entitled to an award of punitive damages.

AS AND FOR A FIFTH CAUSE OF ACTION

(Class Claims of Discrimination in Violation of Section 1981)

113. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 112, inclusive, as if fully set forth herein.

114. Defendants Mitsui USA and Mitsui Japan have discriminated against Plaintiff and the members of the proposed class by treating them differently from and less favorably than similarly situated Asian employees and by subjecting them to discriminatory denials of promotion and management opportunities, disparate pay, discriminatory disciplinary procedures, and other disparate terms and conditions of employment on the basis of their race (non-Asian) in violation of Section 1981.

115. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Section 1981, Plaintiff and the members of the proposed class have suffered, and continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which they are entitled to an award of monetary damages and other relief.

116. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Section 1981, Plaintiff and the members of the proposed class have suffered, and continue to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which they are entitled to an award of monetary damages and other relief.

117. Defendants unlawful and discriminatory actions constitute malicious, willful and wanton violations of Section 1981 for which Plaintiff and the members of the proposed class are entitled to an award of punitive damages.

AS AND FOR A SIXTH CAUSE OF ACTION

(Class Claims of Retaliation in Violation of Section 1981)

118. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 117, inclusive, as if fully set forth herein.

119. Defendants Mitsui USA and Mitsui Japan retaliated against Plaintiff and the members of the proposed class by, *inter alia*, subjecting them to materially adverse actions that would deter a reasonable employee from engaging in protected activity in violation of Section 1981 for their opposition to and/or their participation in lodging complaints against Defendant's discriminatory practices against themselves and other employees and applicants at Mitsui USA.

120. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Section 1981, Plaintiff and the members of the proposed class have suffered, and continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which they are entitled to an award of monetary damages and other relief.

121. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Section 1981, Plaintiff and the members of the proposed class have suffered, and continue to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which they are entitled to an award of monetary damages and other relief.

122. Defendants' unlawful and retaliatory actions constitute malicious, willful and wanton violation of Section 1981 for which Plaintiff and the members of the proposed class are entitled to an award of punitive damages.

AS AND FOR A SEVENTH CAUSE OF ACTION

(Individual Claim of Discrimination in Violation of Section 1981)

123. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 122, inclusive, as if fully set forth herein.

124. Defendants have discriminated against Plaintiff by treating him differently from and less favorably than similarly situated Asian employees and by subjecting him to discriminatory denials of management opportunities, disparate pay, discriminatory disciplinary procedures, and other disparate terms and conditions of employment and terminating his employment on the basis of his race (non-Asian) in violation of Section 1981.

125. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Section 1981, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

126. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of Section 1981, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

127. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of Section 1981 for which Plaintiff is entitled to an award of punitive damages.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(Individual Claim of Retaliation in Violation of Section 1981)

128. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 127, inclusive, as if fully set forth herein.

129. Defendants retaliated against Plaintiff by, inter alia, subjecting him to materially adverse actions that would deter a reasonable employee from engaging in protected activity, including the termination of his employment, in violation of Section 1981 for his opposition to and/or his participation in lodging complaints against Defendants' discriminatory practices against him.

130. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Section 1981, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

131. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Section 1981, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

132. Defendants' unlawful and retaliatory actions constitute malicious, willful and wanton violation of Section 1981 for which Plaintiff is entitled to an award of punitive damages.

AS AND FOR A NINTH CAUSE OF ACTION

(Individual Claim of Discrimination in Violation of New York State Human Rights Law)

133. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 132, inclusive, as if fully set forth herein.

134. Defendants discriminated against Plaintiff on the basis of his race and/or national origin in violation of the New York State Human Rights Law by denying him the same terms and conditions of employment available to employees who are Japanese/Asian, including but not limited to, denying him equal management opportunities, disparate pay, discriminatory disciplinary procedures and terminating his employment on grounds for which Japanese/Asian employees would not be terminated.

135. Defendants also discriminated against Plaintiff on the basis of his age in violation of the New York State Human Rights Law by denying him the same terms and conditions of employment available to employees who are younger, including but not limited to, denying him equal management opportunities, disparate pay, discriminatory disciplinary procedures and terminating him on grounds for which younger employees would not be terminated.

136. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

137. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

AS AND FOR A TENTH CAUSE OF ACTION

(Individual Claim of Retaliation in Violation of New York State Human Rights Law)

138. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 137, inclusive, as if fully set forth herein.

139. Defendants retaliated against Plaintiff by, *inter alia*, subjecting him to materially adverse actions that would deter a reasonable employee from engaging in protected activity, including the termination of his employment, in violation of the New York State Human Rights Law for his opposition to and/or his participation in lodging complaints against Defendants' discriminatory practices against himself and other employees and applicants at Mitsui USA.

140. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

141. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to

depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

(Individual Claim of Discrimination in Violation of New York City Human Rights Law)

142. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 141, inclusive, as if fully set forth herein.

143. Defendants discriminated against Plaintiff on the basis of his race and/or national origin in violation of the New York City Human Rights Law by denying him the same terms and conditions of employment available to employees who are Japanese/Asian, including but not limited to, denying him equal management opportunities, disparate pay, discriminatory disciplinary procedures and terminating his employment on grounds for which Japanese/Asian employees would not be terminated.

144. Defendants also discriminated against Plaintiff on the basis of his age in violation of the New York City Human Rights Law by denying him the same terms and conditions of employment available to employees who are younger, including but not limited to, denying him equal management opportunities, disparate pay, discriminatory disciplinary procedures and terminating his employment on grounds for which younger employees would not be terminated.

145. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the New York City Human Rights Law, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of

past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

146. As a direct and proximate result of Defendants' unlawful and discriminatory conduct in violation of the New York City Human Rights Law, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

147. Defendants' unlawful and discriminatory actions constitute malicious, willful and wanton violations of the New York City Human Rights Law for which Plaintiff is entitled to an award of punitive damages.

AS AND FOR A TWELFTH CAUSE OF ACTION

(Individual Claim of Retaliation in Violation of New York City Human Rights Law)

148. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 147 inclusive, as if fully set forth herein.

149. Defendants retaliated against Plaintiff by, inter alia, subjecting him to materially adverse actions that would deter a reasonable employee from engaging in protected activity, including the termination of his employment, in violation of the New York City Human Rights Law for his opposition to and/or his participation in lodging complaints against Defendants' discriminatory practices against himself and other employees and applicants at Mitsui USA.

150. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the New York City Human Rights Law, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of

past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

151. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the New York City Human Rights Law, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

152. Defendants' unlawful and retaliatory actions constitute malicious, willful and wanton violations of the New York City Human Rights Law for which Plaintiff is entitled to an award of punitive damages.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

(Individual Claim of Discrimination in Violation of the ADEA)

153. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1 through 152, inclusive, as if fully set forth herein.

154. As previously alleged, Plaintiff was over forty years old when he was unlawfully terminated by Defendants. Defendants discriminated against Plaintiff by denying him the same terms and conditions of employment available to younger employees, including, but not limited to, unlawfully terminating Plaintiff's employment because of his age. This conduct violated the ADEA.

155. As a direct and proximate result, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

156. As a direct and proximate result, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including but not limited to depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

157. Defendants' unlawful and discriminatory actions constitute willful violations of the ADEA for which Plaintiff is entitled to an award of liquidated damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the members of the class whom he seeks to represent, request the following relief:

A. Certification of the case as a class action maintainable under the Federal Rules of Civil Procedure Rule 23 (a), (b)(2) and/or (b)(3), on behalf of the proposed plaintiff class and designation of Plaintiff as representative of this class and his counsel of record as class counsel;

B. Declaratory judgment that the actions, conduct and practices of Defendants Mitsui USA and Mitsui Japan complained of herein violate the laws of the United States and the State and City of New York;

C. An injunction and order permanently restraining Defendants Mitsui USA, Mitsui Japan and their partners, officers, owners, agents, successors, employees and/or representatives, and any and all persons acting in concert with them, from engaging in any further unlawful practices, policies, customs, usages, and race/national origin discrimination as set forth herein.

D. An order directing Defendants Mitsui USA and Mitsui Japan to place Plaintiff and the members of the class in the positions they would have occupied but for Defendants' discriminatory, retaliatory and/or otherwise unlawful treatment of them, as well as to take such

other affirmative action as is necessary to ensure that the effects of these unlawful employment practices and otherwise unlawful conduct are eliminated and do not continue to affect Plaintiff and the members of the class;

E. An award of damages in an amount to be determined at trial plus prejudgment interest, to compensate Plaintiff and the members of the class for all monetary and/or economic damages, including but not limited to, the loss of past and future income, wages, compensation, job security and other benefits of employment;

F. An award of damages in an amount to be determined at trial plus prejudgment interest, to compensate Plaintiff and the members of the class for all non-monetary and/or compensatory damages, including but not limited to, compensation for their severe mental anguish and emotional distress, humiliation, depression, embarrassment, stress and anxiety, loss of self-esteem, self-confidence and personal dignity, and emotional pain and suffering and any other physical or mental injuries;

G. An award of damages in an amount to be determined at trial plus prejudgment interest, to compensate Plaintiff and the members of the class for harm to their professional and personal reputations and loss of career fulfillment;

H. An award of liquidated damages in an amount to be determined at trial;

I. An award of punitive damages in an amount to be determined at trial;

J. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff and the members of the class in an amount to be determined at trial, plus prejudgment interest;

K. An award of costs that Plaintiff and/or the class has incurred in this action, including but not limited to expert witness fees, as well as reasonable attorneys' fees and costs to the fullest extent permitted by law; and

L. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff, on behalf of himself and the members of the class, hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: February 5, 2009
New York, New York

THOMPSON WIGDOR & GILLY LLP

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