

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VERNON ROSS and DEBRA JOSEY,)	
)	
On behalf of themselves and all others)	
similarly situated,)	Civil No. 1:16-CV-2508
)	
Plaintiffs,)	
)	
v.)	CLASS ACTION
)	
LOCKHEED MARTIN CORP.,)	
)	
Defendant.)	

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Vernon Ross and Debra Josey, for their Complaint against Lockheed Martin, allege and state as follows:

I. Nature of the Claim

1. This case arises out of Lockheed Martin Corp.’s (“Lockheed” or “Company”) discriminatory and unfair treatment of African-American employees in violation of federal civil rights laws and its contractual obligations. Plaintiffs assert disparate treatment and disparate impact discrimination claims on behalf of a class of salaried non-represented African-American employees below the level of Vice President (levels 1 through 7), with the exclusion listed in paragraph 171 below.¹

2. During the relevant time period, the Company has maintained a policy of evaluating all salaried employees under the same companywide performance appraisal system. Lockheed uses

¹ Plaintiffs reserve the right to modify the class definition based on information to be gathered through discovery.

this standardized performance appraisal system nationwide to evaluate all salaried employees for pay increases, bonuses, stock awards, promotions, and termination.

3. Lockheed has designed key components of the system in a manner that makes them racially biased. Specifically, three sub-policies within the overall policy of the performance appraisal system largely skew the ratings against African-American employees: (i) the Make the Commitment sub-policy, (ii) the Behavior sub-policy, and (iii) the Calibration and Forced Distribution sub-policy. This skewing produces a disparate impact based on race in evaluation ratings, and consequently in promotions, compensation, and termination.

4. Further, a small group of top-level decisionmakers has ultimate authority and control over the adoption and implementation of the performance appraisal system as well as all salaried employees' performance ratings. This group, which consists of Vice Presidents, Executive or Senior Vice Presidents, and ultimately the CEO, must approve ratings before they are final and may adjust, or request that ratings be adjusted, as they see fit.

5. Lockheed has also engaged in a pattern or practice of systemic intentional discrimination against African-American salaried employees. Lockheed executive management has known for some time that Lockheed's performance evaluation system causes an adverse impact on the ratings, and therefore on the compensation, promotion, and termination, of African-American employees. However, Lockheed management has taken no effective steps to address the ratings disparities or to validate² the ratings system as required under applicable regulations. The

² As described in further detail in Section VI infra, "validation" of a selection procedure is a method of ensuring that a selection procedure such as LM Commit is job-related and consistent with business necessity. The Uniform Guidelines on Employee Selection Procedures, which are standards adopted in 1978 by the Equal Employment Opportunity Commission, Department of Justice, Department of Labor, and U.S. Civil Service Commission, set forth technical requirements that companies must meet in performing such validation analyses.

negative effects of Lockheed's performance evaluation system cannot be fully corrected without remedial action.

6. Further, although Lockheed had a structurally similar performance appraisal system prior to 2009, its impact on African Americans worsened after John Lucas became the head of Lockheed's Human Resources Department in 2009. Despite Lockheed's obligations as a federal contractor, Mr. Lucas set a tone of indifference to the interests of African American employees and, under his leadership through 2015, Lockheed dissolved many programs that had been aimed at the hiring, development, advancement, and retention of African American employees. Mr. Lucas had authority over the human resources employees who guided managers on all human resource decisions.

7. As the nation's largest federal contractor, Lockheed has entered into numerous contracts with the United States. These contracts contain an equal opportunity clause which, among other things, prohibits Lockheed from discriminating against its employees on the basis of race. Dr. Ross, Ms. Josey, and the proposed class members are third-party beneficiaries of these contract clauses. Lockheed has breached its contractual duties to Plaintiffs Dr. Vernon Ross and Ms. Debra Josey, as well as members of the proposed Class.

II. Jurisdiction, Venue, and Exhaustion of Remedies

8. Plaintiffs' claims arise under 42 U.S.C. § 1981, *et seq.*, § 1981a, *et seq.*, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* This Court has jurisdiction over the claims pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §§ 1331 and 1343(a)(4).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1), because Lockheed meets the venue requirements of 28 U.S.C. § 1391(c)(2). Moreover, Lockheed has waived its right to object to venue. ECF 19 ¶ 3.

10. Plaintiff Dr. Ross exhausted his administrative remedies pursuant to 42 U.S.C. § 2000e-5(f). He filed a charge of discrimination against Lockheed with the U.S. Equal Employment Opportunity Commission (“EEOC”) on December 22, 2014, which automatically was cross-filed with the Maryland Commission on Human Relations. The charge alleged that Lockheed maintained a pattern or practice of discrimination against African American salaried employees and had policies producing a disparate impact on African American salaried employees. Among other things, it alleged that Dr. Ross and similarly situated African American employees had, as a result of flaws in Lockheed’s performance appraisal system such as the forced distribution and calibration processes described in further detail *infra*, received lower ratings on their performance reviews, negatively impacting their compensation and promotion opportunities and increasing their risk of termination. The charge tolled the complaint filing deadlines under Title VII for both the individual and class claims alleged herein. Dr. Ross has received his Right to Sue letter from the EEOC.

11. Plaintiff Josey exhausted her administrative remedies pursuant to 42 U.S.C. § 2000e-5(f). Ms. Josey filed a charge of discrimination against Lockheed with the U.S. Equal Employment Opportunity Commission (“EEOC”) on January 6, 2015, which automatically was cross-filed with the Maryland Commission on Human Relations. Ms. Josey’s charge also included allegations of race discrimination on a class basis similar to those of Dr. Ross. Even if Dr. Ross’s charge did not, Ms. Josey’s charge tolled the complaint filing deadlines under Title VII for both the individual and class claims alleged herein. The EEOC has issued Ms. Josey a Right to Sue letter.

III. Parties

12. Plaintiff Vernon Ross is an African-American resident and citizen of Pennsylvania. He was employed by Lockheed from 1991 to 2015, most recently holding the position of Director of STEM, Generations, and Higher Education in Human Resources in a business area called Enterprise Operations. In this position, he was responsible for the design and implementation of the Lockheed Martin STEM Strategy with a focus on K-12, Industry Classroom Connection, Talent Acquisition, and Employee Engagement. Dr. Ross has a Bachelor's degree in Computer Science/Mathematics from Jackson State University, a Master of Science degree in Computer Science Education from Philadelphia University, and a Doctorate in Education from Wilmington University.

13. Plaintiff Debra Josey is an African-American resident and citizen of Florida. She has been employed by Lockheed since 1994 and its predecessors since 1983. She currently serves in the position of Software Engineering Manager in the Rotary and Mission Systems ("RMS") business area in Orlando, Florida. In this position, Ms. Josey is responsible for managing all personnel activities associated with employees, as well as other duties to support her program. Prior to her current position in Florida, Ms. Josey served in the position of Engineering Leadership Development Program Manager in a business area called Information Systems & Global Solutions ("IS&GS"). In this position, Ms. Josey was responsible for coordinating the selection of participants for the development program, planning and managing annual conferences, and coordinating the content and conduct of the technical development curriculum with local universities. Ms. Josey has a Bachelor's degree in Mathematics from Hampton University and a Master of Science degree in Technical Management from Johns Hopkins University.

14. Defendant Lockheed Martin Corp. is a Maryland corporation with its principal place of business in Bethesda, MD. Lockheed is one of the largest aerospace, defense, and technology companies in the world.

15. According to the Federal Procurement Data System maintained by the U.S. General Services Administration, Lockheed is the nation's largest federal contractor, with \$43 billion obligated to Lockheed in U.S. government contracts in fiscal year 2016. Federal government contracts account for nearly 80% of Lockheed's business.

16. Lockheed's principal business areas currently are Aeronautics, Missiles and Fire Control, Rotary and Mission Systems, and Space. Until 2016 Lockheed included another business area: Information Systems & Global Solutions. Each business area is further sub-divided into multiple units, sometimes called business units or market segments.

IV. LM Commit: Lockheed Martin's Biased Performance Appraisal System

17. Since before January 1, 2011, Lockheed made a decision to adopt and maintain a policy of evaluating employees based on its performance appraisal system and compensating, promoting, and terminating them based on the results of those evaluations.

18. Lockheed's performance appraisal system and its component parts have been biased in both design and implementation and have never been validated. Biases in the system have produced a disparate impact on African-American employees in performance ratings. The disparities in ratings in turn have generated disparities in the promotion, compensation, and termination of salaried African-American employees below the level of Vice President who are within the class Plaintiffs seek to represent.

19. African-American salaried employees below the level of Vice President have received lower overall ratings on their annual performance reviews between 2011 and the present than have similarly situated white employees.

20. Upon information and belief, the racial disparity in ratings is strongly statistically significant and contributes to statistically significant disparities in compensation, promotions and terminations.

21. African-American salaried employees receive lower ratings because of three biased sub-policies that are component parts of Lockheed's formal performance appraisal system, explained further in Section V below, and due to intentional discrimination by the Lockheed leadership and management ultimately responsible for using a biased performance appraisal system, as explained further in Section VI below.

22. Although Lockheed's performance appraisal system has been tweaked several times from 2011 to the present, these minor changes have failed to eliminate the flawed policies in the system that cause the racial disparities in overall ratings.

23. Lockheed's performance appraisal system is called "LM Commit." LM Commit is a policy that applies uniformly to all salaried employees in all of the Company's business units.

24. While Lockheed had a structurally similar performance appraisal system previously, the most recent iteration of LM Commit was implemented in 2012. At the rollout, a memorandum entitled, "LM Commit: The Next Generation of Performance Management" explained that "LM Commit will provide an improved, consistent process for employee performance management across Lockheed Martin when it's implemented in 2012." The memorandum noted that while "[t]here are variations by Business Area in performance management," LM Commit "will move us to a consistent process." The memorandum further

emphasized LM Commit's uniformity and consistency across the Company, stating that the intention is to "hav[e] a specific process around measuring results and behaviors," and that "LM Commit represents industry-leading standards in technology, using a web-based tool that will make management more streamlined and consistent across the corporation."

25. LM Commit was rolled out in a top-down manner by headquarters and any changes to LM Commit are made at the top levels of Lockheed and circulated by headquarters to the rest of the Company. For example, a May 2015 Human Resources email stated, "[w]e are making changes to LM Commit this year to simplify processes and focus on quality mid-year check-ins and year-round performance discussions." The email then went on to note that some decisions were still "being finalized" by headquarters, but previewed certain policy changes known at that time.

26. LM Commit is implemented uniformly throughout the Company by way of a series of policy documents, including Guides, FAQs, "Toolkits," Memoranda, Summaries, presentations and briefings, among others. The tenets of LM Commit, and how to execute the various steps in the process, are communicated to employees via Company-sponsored trainings, emails, and handouts. LM Commit policy documents are also available to employees on the shared intranet. For example, a document entitled "Frequently Asked Questions, August 2013," states that "[t]hese FAQs pertain to Lockheed Martin non-represented employees." The FAQs answer employee questions such as, "How will my 2013 performance be assessed?" and "What are validation meetings and what goes on there?"

27. LM Commit begins each year with the implementation of two sub-policies: the "Make the Commitment" sub-policy and the "Behavior" sub-policy. These two sub-policies set

the metrics —and “commitments” and “behaviors” — against which employees are evaluated each performance appraisal cycle.

28. Pursuant to Make the Commitment, Lockheed instructs each employee to identify approximately three to five “commitments” each year. Each commitment’s importance is to be weighted by the employee, with the weight of all commitments adding up to 100%. After employees draft their commitments, their “leaders” (Lockheed’s term in this context for an employee’s supervisor or other person who oversees an employee’s assessment process) approve or revise them.

29. In its Behavior sub-policy, Lockheed specifies certain common criteria upon which all salaried employees will be evaluated each year. These common criteria are called “behaviors.”

30. At the end of each calendar year, salaried employees receive a performance review. Employees and their leaders write comments concerning the employees’ performance during the year as to the behaviors and commitments. “Stakeholders” — individuals selected by employees or leaders at the beginning of each review cycle — may also provide comments to leaders regarding employees’ performance.

31. Each employee’s leader then assigns a preliminary numerical rating to each commitment and each desired behavior. The ratings for employees’ “commitments” constitute 70% of their absolute overall rating, while ratings for “behaviors” constitute 30% of their overall absolute rating.

32. All salaried employees in levels 7 and below are assigned ratings using the same numerical system.

33. For behaviors, the five numerical ratings from 2011 to the present correspond to the following descriptions:

- 5 Advanced
- 4 Transitioning (between Proficient and Advanced)
- 3 Proficient (Expected behaviors)
- 2 Transitioning (between Developing and Proficient)
- 1 Developing

34. For commitments, the five numerical ratings from 2011 to 2017 correspond to the following descriptions:

- 5 Significantly Exceeded
- 4 Exceeded
- 3 Achieved (Par performance)
- 2 Partially Achieved
- 1 Did Not Achieve

35. In 2017, Lockheed modified its commitment rating scale from a five-point scale to a four-point scale, by combining the two lowest ratings as follows:

- 4 Significantly Exceeded
- 3 Exceeded
- 2 Achieved/Substantially Achieved
- 1 Inconsistently Achieved

36. Once a leader has assigned the employee an absolute overall rating, the next step in the process for all salaried employees throughout the company is the calibration session and forced distribution sub-policy — in essence, a series of meetings to rank all employees under a forced distribution system. Through 2015, meetings conducted for employees in level 7 and above were termed “calibration” meetings, and “validation” meetings were conducted for salaried employees

below level 7. Calibration and validation meetings were essentially the same, and all such meetings are referred to as “calibration” meetings below.

37. In calibration meetings, groups of managers and/or executives arrived at relative overall tier rankings for employees in the same level who were compared to each other and, ultimately, forced all employees into a predetermined company-wide distribution. These calibration meetings could involve 20 or more managers or as few as 5 managers depending on the size of the calibration group.

38. In the fall/winter of 2015, Lockheed changed the name of its calibration sessions to “Ratings Reviews.” In the “Ratings Review” model, leaders preliminarily assess employee performance just as they did before 2015, and then meet with one another to compare employees within the same organizational structure (business unit or market segment), as opposed to employees within the same level across business areas. Directors, who are level 7 employees, then review and approve or change the rankings that have been assigned by leaders. After that, Tier 1 & 2 Vice Presidents review and approve or change the overall rankings within business units or market segments.

39. Senior Executives have authority and control over the final rankings. The Business Area rankings are reviewed and approved by Executive Vice Presidents and Senior Vice Presidents. Finally, the CEO reviews the Business Area rankings.

40. Lockheed has had a forced distribution system, or a relaxed form thereof, from 2013 through the present. In this system, the company specifies the percentages of employees who may receive each ranking. At Lockheed, employees receive both an absolute overall rating, which is the weighted average of the ratings for each element in the performance review, and a relative overall tier ranking, which is the score after being subjected to a forced distribution. The relative

overall tier ranking coming out of the calibration sessions is the most important assessment because it determines raises and bonuses.

41. From 2013 through late 2015, employees' tier ranking had to fit into the following forced distribution:

Significantly Exceeded	18% - 22%
Exceeded	35% - 45%
Achieved/Substantially Achieved	25% - 35%
Inconsistently Achieved	3% - 10%

42. The relative overall ranking given to each employee — for example, “Exceeded” or “Inconsistently Achieved” — largely dictated increases in that employee’s salary and the availability and size of bonuses for that appraisal period.

43. Lockheed stated in 2015 that it would move away from a strict forced distribution system. On paper, leaders were instructed not to review or adjust ratings solely to achieve a specific distribution, or to “rank and stack” every employee to identify whose ratings need to change. In practice, the forced distribution remains largely intact and leaders are encouraged to adhere to a bell curve in their rankings.

44. After rankings are assigned to employees during calibration sessions or ratings reviews, employees may appeal.

45. Lockheed has a uniform appeals process throughout the company under which an employee may appeal to his or her leader and a Human Resources Business Partner within sixty business days after receiving the performance feedback and rating. The employee and leader then meet to discuss the concerns of an employee raising an appeal and attempt to resolve the issue. The leader can either (1) change comments, ratings, or the tier ranking on the assessment or (2)

determine that the assessment was accurate and will not be changed. If option 2 is selected, the employee can meet with the next level leader to elevate the appeal. The next level leader then has the same options as the leader. If the leader or the next level leader recommends a change in the overall ranking, that decision must be approved by the HR Director and functional/product line/program Vice President or designee.

46. Upon information and belief, African Americans' overall rankings under LM Commit have been lower than those of similarly situated white employees during each year in the liability period causing statistically significant racial disparities each year with substantial economic consequences. Statistical analyses during discovery will reveal the actual effects of LM Commit and each of its components each year.

V. LM Commit's Disparate Impact on African-American Employees

A. Biased Sub- Policies in LM Commit: Make the Commitment

47. The first step in LM Commit, the Make the Commitment sub-policy subjects employees to a multifaceted process of crafting the commitments upon which they are later evaluated — an evaluation that comprises 70% of an employee's rating. Drafting the commitments requires employees to utilize gamesmanship, knowledge, strategy, and skills that are unrelated to job performance.

48. Under the terms of the Make the Commitment sub-policy, employees are instructed to create their own commitments at the beginning of each performance cycle. Lockheed instructs employees on how they are to "Make the Commitment" in a series of policy documents, including FAQs and flow charts. The process involves at least seven steps, some of which include sub-components.

49. First, employees are asked to review their leaders' commitments to understand what is important to the business. Second, employees are asked to prepare to draft commitments and must also determine "who would make a good stakeholder." Third, employees are directed to write 3 to 5 SMART (specific, measurable, attainable, relevant and time-bound) commitments "that align to the business and are level-appropriate."

50. Fourth, employees must weigh their commitments, assigning a certain percentage to each commitment, with all commitments adding up to 100%. According to a Lockheed policy document, weighing commitments "differentiate[s] between high and low impact commitments."

51. Fifth, employees must send their commitments to their leaders for review, discussion, and approval. Lockheed contemplates that these discussions sometimes will result in changes to the commitments.

52. Sixth, employees must select "stakeholders" who will provide feedback to their leader on the employees' performance visa-a-vis their commitments throughout the year. These "stakeholders" can be colleagues, partners or another leader. An employee may select a stakeholder by asking a specific person to be a stakeholder, or by simply selecting that individual within LM Commit's online tool.

53. The stakeholders that an employee selects are subject to leader approval. An employee's leader may also select stakeholders for the employee. Stakeholders can also decline participation in an employee's appraisal process, if they think they do not have sufficient insight into the employee's performance or for other reasons. The feedback provided by stakeholders to leaders can be oral, written, or both. Leaders then incorporate the feedback of stakeholders into their overall comments to an employee. Employees do not directly receive the feedback from their stakeholders; they only receive feedback from their leaders.

54. Seventh, employees must update their performance plans and stakeholders “as needed throughout the year as [their] responsibilities change.”

55. As though these seven steps were not complicated enough, Lockheed adds to these instructions in tip sheets and FAQs, making clear that employees are required to balance competing objectives.

56. For example, in a pamphlet entitled, “Make the Commitment: Writing Commitments,” Lockheed admonishes employees to “consider if the commitment is level appropriate and challenging,” and to “include stretch assignments” while also making sure that a commitment is “achievable and measurable.” An employee is more likely to meet a commitment that is easily achievable at year-end, but a more ambitious commitment may be viewed more favorably by the employee’s manager, and translate into a higher rating. Employees are told that commitments must be “specific,” yet are also warned against writing “too many” commitments or selecting “too many” stakeholders. The commitments must be “SMART” but also “accurately reflect the needs of the business.”

57. In “commitmentspeak,” the following is a poorly written commitment: “Lead development and management of the product delivery plan (schedule, cost and technical requirements) for the XYZ development team by year-end.” However, this is a well-written commitment: “Lead development and management of the product delivery plan (schedule, cost, and technical requirements) for the XYZ development team, incorporating all internal and external interfaces to the program and ensuring the integrated mast schedule (IMS) reflects all critical path program milestones with 10% slack by year-end.”

58. In order to maximize their chances of receiving high ratings in the LM Commit process, employees must learn and excel in skills completely unrelated to job performance such as acquiring stakeholders and drafting SMART” commitments.

59. Further, an employee’s work is never done in Make the Commitment. As an FAQ document makes clear, “every employee and leader [must] ensure that the formal commitments reflect the reality of current job scope and assignments.” Employees must “add, delete or change commitments and weights in the LM Commit tool as business priorities change.”

60. The Make the Commitment sub-policy is in essence a ratings game that requires successful strategizing and alliance-making like the TV show “Survivor.” Employees must learn a new, complex process divorced from the employee’s everyday job duties and force alliances with others to get ahead. Employees’ success in learning and playing the ratings game has little if any relationship with their job performance. For example, many of the proposed class are engineers doing technical work. Their acumen at playing the ratings game required by Make the Commitment is not a fair way to judge their work as engineers.

61. African American employees are disadvantaged in at least two ways by Make the Commitment that results in a disparate impact in their end-of-year ratings.

62. First, social scientists have identified numerous differences between groups in the behaviors or attitudes of otherwise comparable persons, regardless whether these differences arise from history, culture, socioeconomic status, or other factors. Some of these differences create a structural disadvantage to African American employees playing the ratings game. Studies, for example, show large differences between black and white Americans in risk tolerance, with white individuals being more risk tolerant. Risk aversion is likely to affect the willingness of African American employees to make “stretch” commitments, even if their actual work is just as innovative

as that of white employees. Accordingly, the Make the Commitment sub-policy can result in disparities in ratings between black and white employees — disparities which are unrelated to the black employees' job performance.

63. Second, the Make the Commitment requirement that employees identify and seek out “stakeholders” who will agree to provide feedback to the employee’s leader on the employees’ performance throughout the year requires employees to have strong alliances with others who will advocate on their behalf. In a company with far more white than black employees, this requirement disadvantages black employees.

64. In sum, Make the Commitment tests skills that are unrelated to job performance and disadvantages groups such as African Americans. Requiring employees to play the Make the Commitment game is not required by the business necessity of obtaining accurate job evaluations, and can be replaced with less discriminatory appraisal methods.

B. Biased Sub-Policies in LM Commit: Behaviors

65. Lockheed’s Behavior sub-policy leads to racially disparate results. Lockheed specifies the common criteria, called Behaviors, upon which all salaried employees will be evaluated each year. Employees’ scores on this Behavior sub-policy make it more likely that African Americans will receive lower ratings than white employees.

66. In 2013 through the present, the behaviors for “L-Code” employees, or employees with direct reports, have been “Shape the Future,” “Build Effective Relationships,” “Energize the Team,” and “Model Personal Excellence, Integrity, and Accountability.” During those years, the behaviors for “non-L-Code” or “individual contributor” employees, employees without direct reports, were “Model Corporate Values,” “Add Value to the Team,” and “Be Accountable For Your Tasks.”

67. Each of the Behaviors comes with additional verbiage to describe the Behavior. For employees without direct reports, the description of “Model Corporate Values” is “Do what is right. Respect others. Perform with excellence.” The description of “Add Value to the Team” is “I take action to support an all-inclusive environment by valuing and encouraging diverse perspectives. I energize teammates and build effective relationships through attentive listening, participation and encouragement of ideas. I respect my teammates by delivering on my commitments.” The description of “Be Accountable For Your Tasks” is “I act with integrity and set the example for others. I am reliable and hold myself and others accountable for actions, results and behaviors. I deliver quality results for my customers. I commit to continuous learning and career development by seeking out challenging assignments and collaborating with others.”

68. For employees with direct reports, the description of “Energize the Team” is “Create a positive, engaging work environment where our people can develop and excel. Foster an inclusive culture that builds trust and aligns with our values.” The description of “Model Personal Excellence” is “Demonstrate a commitment to personal excellence and set a high standard for ethical behavior and integrity. Commit to the success of Lockheed Martin by taking ownership and ensuring accountability at all levels.” The description of “Shape the Future” is “Envision the future state, set the direction, and passionately articulate the steps and changes necessary to make it happen. Foster a culture of innovation that leads to discriminating solutions that help us realize that future state.”

69. The description of “Build Effective Relationships” was “Establish enduring, inclusive relationships within Lockheed Martin and with our customers, employees, teammates, and community. Enable mutually beneficial partnerships that take full advantage of internal and

external synergies. Understand the impact of personal behaviors on others and place a high priority on honesty and integrity.”

70. Lockheed’s Behavior sub-policy favors white employees both numerically and for other reasons. Scholarly research indicates that employees prefer to work with others who are like themselves. Among other related findings, such research reveals that white employees in project work groups tend to prefer the inclusion of whites over racial minorities. It is therefore likely that black employees throughout Lockheed have been judged less favorably than have white employees on Behaviors, especially the “Add Value to the Team” Behavior for employees without direct reports (33% of the total) and the “Build[ing] Effective Relationships” Behavior for employees with direct reports (25% of the total).

71. The Behavior “Shape the Future” also works to the disadvantage of African American employees. Scholarly research indicates that, due to the prevalence of favorable leader prototypes, white individuals are more likely to be perceived as effective leaders when responsible for an organization’s success. It is therefore likely that African American employees have, regardless of their actual performance, been judged less favorably on “Shape the Future,” which requires employees to “[e]nvision the future state” and lead others to achieving that future state.

C. Biased Sub-Policies in LM Commit: Calibration Sessions and Forced Distribution

72. After leaders assign tentative commitment and behavior ratings, LM Commit requires employees to be reviewed in calibration sessions and each employee to be forced into one of four tiers. These calibration sessions cascade upward so that, ultimately, rankings are reviewed and approved by Vice Presidents, Executive or Senior Vice Presidents, and Lockheed’s CEO.

73. Calibration meetings at Lockheed from 2013 to late 2015 were supposed to last, and typically did last, only about an hour. Large numbers of employees had to be covered in the

meeting. This meant that the discussion of any particular employee's performance and behavior was cursory at best.

74. The Lockheed senior managers and executives participating in calibrations generally had little knowledge of the performance of many of the employees being evaluated. Typically, leaders in calibration meetings did not receive a completed performance appraisal form for each employee whose performance would be evaluated at that meeting. They did not see the employees' written commitments or the leader's comments on each of them. Instead, typically all the reviewers saw was the absolute overall rating given by the leader, such as the number "3.8."

75. Instead of considering the written summaries of the two people who presumably knew the most about an employee's performance and behavior (the employee and the leader), the calibration meeting participants typically heard a very brief description from someone supposedly with some knowledge of each employee's performance, who may or may not be the leader who had written the comments on the appraisal form. That leader may not have been invited to the calibration meeting at all. Ms. Josey, for example, was called in to a calibration meeting at the last moment to "represent" an employee whose performance she knew nothing about because the former manager who had been scheduled to represent that employee was unable to attend. Luckily, the group of employees under evaluation was so large that the employee's name never came up and Ms. Josey did not have to try to summarize her performance. Other meeting participants could chime in with comments. Frequently they knew nothing about the employee's actual performance beyond hearsay.

76. Indeed, Lockheed's training materials depict participants who have no direct knowledge and are participating based on hearsay or other unreliable sources of information. A September 2012 Human Resources training video entitled "Deliver the Commitment Calibration

Session,” begins with a recorded prelude stating: “what you’re going to see today is a simulated calibration session, designed to provide an experience observing a calibration session that will mimic and reproduce many of the conditions you may encounter in a real LM Commit calibration session that you will be going through as leaders later this year.” The prelude continues that “[t]he objectives of today’s simulated calibration session is really to replicate many of the conditions, these will be physical, emotional, and psychological factors that may be present in a calibration session.”

77. This 2012 training video illustrates the many problems with the calibration meetings. The simulated calibration session portrayed on the video includes “[a leader who has virtually no information about any of the people under review” and “[a]n employee in the calibration pool whose leader is not present because that leader is on vacation.” Leaders in the simulated calibration session made the following observations:

- “I don’t know Ted that well but I have observed some of his performance.”
- “Based on what I know about Ted, I can’t see him outside of the 10%.”
- “I don’t have the commitments and everything to go through in depth at this moment.”
- The person sitting in for Maria’s leader, who was on vacation, observed that she had received “not a lot of information from her leader.”
- “I don’t know a thing about Charles, for what that’s worth, but I’ve heard good things about Sally.”
- “I’m not so much focused on the composite scores.”
- “I don’t know either of the other two people who have the same score [as the employee I supervise]. Truth be told, I really don’t know any of the others well

enough to have a strong opinion except for Ted, who strikes me as a real unpleasant guy.”

78. An employee’s ultimate tier placement was based on ill-informed comparisons that were divorced from actual performance.

79. Despite their lack of knowledge, calibration session members could not just rubber stamp the leaders’ assessment of their own employees because of the predetermined distributions. For example, if every employee being calibrated in a particular session had received a 5, the highest rating achievable, roughly 80% would nevertheless have to be pushed into lower tiers, including a few into the lowest tier. By the time all calibration sessions were completed, every salaried employee at Lockheed had been placed into a tier ranking.

80. Upon information and belief, until 2015 final tier distributions were sent to John Lucas for his final approval. Mr. Lucas was very strict in his adherence to the rankings distribution set by Lockheed. On more than one occasion, he would send a noncomplying distribution back and ask for it to be corrected by adjusting the rankings of employees.

81. Lockheed implemented certain changes to its calibration sessions and forced ranking in 2015, including ending use of the term “calibration session” and ending adherence to a specific, strict ranking distribution. In practice, however, these changes have been primarily cosmetic, and the calibration and forced distribution sub-policy very much remains in force.

82. In fact, the changes in 2015 increased the involvement of higher-level managers and executives in the tier placement of employees, and increased the control of a small group of decision-makers over the rankings of all salaried employees.

83. Currently, leaders continue to gather in a meeting, now called a “Ratings Review,” to compare the performance of different employees against one another, and are still instructed to

move employees' rankings up or down based on what they perceive to be their relative performance. For example, when Ms. Josey participated in a Ratings Review in 2016, she observed that some employees were moved down as a result of the Ratings Review (for example, from Exceeded to Achieved/Substantially Achieved) while other employees were moved up. Participants either did not have access to the reviews of the employees being compared, or did not have time to review them before the Rating Reviews. Leaders often continue to make decisions about employees with little or no direct knowledge of the employees discussed.

84. In an LM Commit training for managers attended by Ms. Josey in early 2018, one of the managers leading the training instructed the participants that, although Lockheed does not officially have a forced distribution, Lockheed maintains the expectation that managers will distribute their employees' ratings in a bell curve fashion. Another manager remarked that this was, in effect, the equivalent of Lockheed's previous forced distribution, thereby suggesting that the 2015 changes had been in name only.

85. Further, after the initial Ratings Reviews occur, leaders meet with their Directors to complete another layer of Ratings Reviews. In those Ratings Review meetings, Directors approve the ratings that have been assigned by leaders. If a Director believes that the overall rankings do not satisfactorily meet a bell curve, he will ask leaders to move certain employees' rankings up or down. Leaders often come to these meetings prepared with a list of employees "on the bubble," meaning employees whose performance has been assessed to be near the breaking point between two tier rankings, who will be the first to be moved up or down to satisfy the bell curve.

86. Directors then meet with Vice Presidents to seek approval of the rankings within the Vice Presidents' organization. Like Directors, Vice Presidents may also request that

employees' tier rankings be changed. According to an LM Commit policy document, one of the goals of including senior management in Ratings Reviews is to ensure that "performance rating results enable differentiated pay" and another is to ensure that both "highest impact" and "low performers" are "appropriately assessed."

87. Subsequently, as explained in a Lockheed document, "Sr. Leadership repeats [the ratings review] exercise as a collective and calibrates talent across [the] broader organization," a process which "ensur[es] that potential ratings were assessed consistency [sic] by various leaders within the organization." In this review by senior leadership, Both Tier 1 and Tier 2 Vice Presidents review the rankings of their direct reports and approve overall organizational rankings. After that, Executive Vice Presidents and Senior Vice Presidents review and approve the Business Area rankings. Finally, the CEO reviews the Business Area rankings.

88. The overwhelming majority of level 6 Senior Managers and level 7 Directors who participate in the calibration sessions are white. The concentration of white employees above level 7, in the Vice President and Executive Vice President level, is even higher. The CEO and all of the Executive Vice Presidents are white.

89. By the time an employee receives his or her ultimate tier ranking, this ranking has been reviewed and approved by every level of Lockheed management, from the employee's leader up to a smaller and more condensed group, finally receiving a stamp of approval by the CEO.

90. As a result of these companywide policies, employee performance is not simply evaluated by the employees' managers but instead is the result of the employees success playing the complicated LM Commit game, which is then further subjected to review and revision by uninformed calibrators and forced into a distribution curve.

D. Sub-policies in LM Commit: Excessive Subjectivity

91. As alleged above, the structure of LM Commit skews rating results against African-Americans. In addition, the flawed structure of LM Commit enables subjective decision-making that results in racial disparities.

92. Lockheed's Make the Commitment sub-policy contains flaws, in addition to those identified above, that subject it to racial bias. Although Lockheed states that commitments are to be written in a "SMART"—specific, measurable, achievable, results-oriented and time-limited—manner, Lockheed has not adequately trained employees how to draft commitments in conformity with SMART principles, nor does it monitor whether employee commitments are actually SMART. As a result, commitments at Lockheed, and written feedback on commitments, is not SMART.

93. Further, Lockheed does not provide any guidance about the level of performance that will receive a rating higher or lower than "achieves," which Lockheed describes as "par performance." Yet most employees receive commitment ratings above the "achieved" level and there may be disastrous consequences to receiving a below par rating. Lockheed's failure to specify the performance necessary to attain an "achieved" rating but ignoring the performance that will yield a higher or lower rating, as well as its failure to adhere to the SMART model that it espouses, leads to a disparate impact on African-American employees..

94. Further, like Commitments, Behaviors come nowhere near to being written in a SMART manner. They are written in sweeping, nonspecific generalities, without effective guidance telling employees or managers what behaviors should equate to a given rating. This flaw, too, contributes to the ultimate disparate impact in ratings of African-American salaried employees.

95. Aside from the flaws in the structure of the Calibration/Forced Distribution process, it is almost entirely subjective and dependent on the good will of the participants to avoid racially biased results.

VI. Disparate Treatment of African-American Employees By Lockheed Leadership and Management

96. Through LM Commit, Lockheed has maintained a pattern or practice of intentional discrimination against African-American salaried employees.

97. LM Commit is created, implemented and, from time to time, changed by Lockheed management. Lockheed management is responsible for shaping LM Commit as a performance appraisal system and a company policy, and for monitoring its impact on employees. Lockheed is a sophisticated, data-driven company. It had to monitor rankings to ensure that the results fit with its forced distribution percentages. Plaintiffs aver on information and belief that monitoring and other safeguards are also contained in Lockheed's contracts with the federal government.

98. It would be incredible for Lockheed for the largest federal contractor in the county to contend that it did not closely monitor how various protected groups, including racial groups, fared during the rating and forced distribution process, and that management was not made aware of the results. Lockheed management thus has been aware throughout the liability period that Lockheed's performance evaluation system causes an adverse impact on the ratings and, consequently, on the compensation, promotion, and termination of African-American employees.

99. Despite this knowledge, Lockheed management has taken no effective steps to address the rating disparities. It has also failed to validate LM Commit under applicable regulations and guidance.

100. The Uniform Guidelines on Employee Selection Procedures (the "Uniform Guidelines") promulgated in 1978 by the EEOC, the Civil Service Commission, the Department

of Labor, and the Department of Justice provide that “the use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines.” 29 C.F.R. § 1607.3. “Selection procedure” is defined as “any measure, combination of measures, or procedure used as a basis for any employment decision.” 29 C.F.R. § 1607.16. Further, “[s]election procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.” *Id.*

101. “Validation” of a selection procedure is a method of ensuring that the selection procedure is job-related and consistent with business necessity. The Uniform Guidelines set forth technical standards for conducting analyses to determine whether selection procedures are job-related and consistent with business necessity.

102. A performance appraisal system such as the one used at Lockheed meets the definition of a “selection procedure” because it is an assessment technique used as a basis for employment decisions, including for selecting employees for pay increases, awards, bonuses, promotions, and termination. At least one decision from this District recognizes that performance appraisals are “selection procedures” subject to the Uniform Guidelines. *Segar v. Civiletti*, 508 F. Supp. 690, 714 (D.D.C. 1981) (explaining that “[w]hen subjective evaluations are an important factor in the promotion process and are shown by statistical evidence to have an adverse impact on Blacks, the inference arises that they discriminatorily affect promotions” and holding that the agency cannot justify use of these evaluations because it “has not, with respect to the promotion

criteria and standards for special agents undertaken any validation studies or reports or validity studies or reports”). Similarly, the Principles for the Validation and Use of Personnel Selection Procedures, a publication of the Society for Industrial and Organizational Psychology, Inc., (“SIOP”), which is a division within the American Psychological Association, recognizes that performance appraisal systems should be held to the same scrutiny as other forms of “tests,” such as initial selection tests used in hiring. This is because performance appraisal systems have the same capacity to produce racially biased outcomes if they do not accurately reflect the performance of those evaluated and do not demonstrate fairness in how they are implemented.

103. “While a finding of a violation of the Uniform Guidelines is not dispositive of the issue of liability, it is entitled to great deference.” *League of Martin v. Milwaukee*, 588 F. Supp. 1004, 1016 (E.D. Wis. 1984) (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975)).

104. Instead of taking necessary steps to correct disparities or validate LM Commit as applicable regulations and guidance require, during the 2009-2015 tenure of John Lucas, Senior Vice President of Human Resources, as well as more recently, Lockheed has taken specific actions that concealed the impact of Lockheed’s employment practices on African-American employees.

105. Mr. Lucas directed HR personnel to group together all “minorities” in numerous internal personnel reports instead of showing figures by each racial group. The effect of this unusual method of presenting statistical evidence was to hide the impact of Lockheed’s practices on African-American salaried employees.

106. The failure to take remedial measures or to conduct validation analyses provide indication that the lower ratings received by African Americans were in part the result of intentional discrimination.

107. Mr. Lucas also took other action intentionally detrimental to the interests of African-American employees at Lockheed. John Lucas joined Lockheed in May 2009 as the Vice President of Human Resources for the Electronic Systems Business Area and was promoted to Senior Vice President of Human Resources in February 2010. He came to Lockheed from Microsoft Corp, where he had served as the head of human resources from 2003 to 2009 and used a controversial forced ranking system

108. Under Mr. Lucas's leadership, Lockheed quickly eliminated or scaled back programs that Lockheed had previously created to promote and strengthen racial diversity at the Company. These actions included eliminating, cutting back, or suspending the Executive Diversity and Inclusion Council, the Talent Management Program, the Human Resources Leadership Development Program, the Diversity Maturity Model, and Diversity and Inclusion Dialogues. During his tenure, Lockheed eliminated classroom training on diversity and replaced it with four essentially worthless two-minute videos on diversity. It drastically scaled back financial contributions to and recruitment from Historically Black Colleges & Universities. These actions sent a message that racial diversity, which had been a high priority under the prior Senior Vice President, was no longer valued. It also ran counter to the Lockheed's obligations as a federal contractor.

109. In addition to these reductions in programs meant to further racial diversity, Mr. Lucas tended to hire prior acquaintances, who were frequently white, to fill open high level HR positions, while more experienced and qualified African-American employees languished. Over the last few years of his tenure Mr. Lucas or his reports promoted white employees from Director-level positions to Vice-President positions after two years or less with Lockheed. Similarly, the process even seeped down to middle level HR managers.

110. By shuttering or reducing programs intended to further diversity, Mr. Lucas and his reports sent the message that promotion of equal employment opportunities was no longer a priority at Lockheed and violated the Company's obligations as a federal contractor. The tone set by Mr. Lucas and some of his reports exacerbated the racially skewed results that LM Commit already facilitated.

111. Lockheed announced Mr. Lucas' retirement on February 1, 2015. It has not, however, taken meaningful, concrete actions to reverse the damage that he and like-minded HR executives caused. Indeed, the pattern or practice of intentional discrimination against African-American salaried employees by all levels of management at Lockheed continues to the present day.

VII. LM Commit's Impact on Compensation, Advancement, and Termination

112. The performance ratings that emerge out of LM Commit have a direct impact on the compensation, promotion, and termination of employees within Lockheed Martin.

A. Impact on Compensation

113. The tiers to which employees are assigned in their tier rankings directly affect the size of the merit increase, if any, they receive each year. Each year Lockheed creates a matrix reflecting the standard percentage increase in salary for employees based on their tier and their place in the salary range for their position ("compa-ratio"). Lower increases are associated with lower rankings.

114. Prior to 2014, managers were not allowed to deviate from those norms by more than two percent; in 2014, no deviations were allowed: raises were based entirely on employees' overall rating and compa-ratio. In 2015, Lockheed announced that it would provide leaders with a "merit increase range" for each performance rating, as opposed to a fixed merit increase based on

an employee's performance rating and compa-ratio. Leaders are still instructed to stay within the merit increase range when determining employee merit increases. In announcing this 2015 change, Lockheed underscored the fact that the Company maintains a "Pay for Performance" philosophy, meaning that employees are still compensated based on their performance rankings. A document explaining the 2015 changes tells Leaders that "[i]t is important to recognize that the performance ratings results has a direct impact on pay differentiation" of employees.

115. Lower rankings for African-American salaried employees thus mean lower raises. Upon information and belief, African-American employees in general, including Plaintiffs, have received lower raises than have similarly situated white employees and the disparities in sizes of increases are statistically significant. These disparities are primarily attributable to discrimination arising from the performance appraisal process.

116. High overall rankings also can translate into larger pay increases in a second way. Lockheed bestows discretionary additional raises on some employees. Typically they are given to employees with overall ratings of "significantly exceeded expectations" with relatively low compa-ratios.

117. Lockheed has a series of incentive bonuses for which various employees are eligible. The tiers to which employees are assigned directly affect the size of their incentive bonus.

118. For executives in levels 7, Lockheed sets a target incentive bonus each year as a percentage of salary, such as 20%, under the Management Incentive Compensation Plan ("MICP"). The bonus percentage is increased or decreased based on the executive's ranking and the rating of the organization to which the executive is assigned. Thus, the ranking of an executive in the top tier is 1.2 to 1.3 (that is, a 20% to 30% increase over the target bonus of 1.0), while the ranking of an executive in the third tier is .8 to 1. (up to a 20% reduction from the target bonus).

119. Lockheed's salaried employees in levels 1-7 are eligible for a variety of other bonuses. One of the principal determinants for who receives most of these bonuses and/or the size of the bonus is employee's performance appraisal tier ranking. For example, under the terms of a certain incentive plan, salaried exempt employees below level 7 who do not participate in other short-term incentive plans are eligible for a bonus calculated based on the employee's annual salary and an individual performance incentive percent set by Lockheed, which is increased or decreased based on the employee's relative overall ranking.

120. Thus, the tier rankings are directly tied to the bonus money, and because, upon information and belief, African Americans receive lower rankings, they also receive less bonus money than their white peers.

121. In addition, at least since 2013, employees in levels 7 have been eligible for restricted stock awards based on their performance assessment and the recommendations of their supervisors. And again, because, upon information and belief, African Americans receive lower rankings, they also receive less in stock awards than their white peers.

122. Upon information and belief, African Americans have received fewer monetary bonuses and stock awards during the liability period than have similarly situated white employees and the bonuses and stock awards received have, on average, been smaller than those given to similarly situated white employees. These disparities are statistically significant. They also are directly tied to disparities in performance appraisal rankings.

B. Impact on Advancement

123. Low performance rankings also translate into limited or no opportunities for advancement within the Company. There exist two types of promotions at Lockheed: in-line promotions and competitive promotions.

124. In-line promotions primarily affect employees in low levels. They are “growth” promotions in which the employee receives a new title but a vacant position is not posted for competitive applications. Upon information and belief, either as a matter of policy or practice, employees with the lowest performance rankings do not receive in-line promotions and employees with higher rankings are more likely to receive in-line promotions.

125. In the competitive promotion process, vacant positions in levels 2 through 7 are posted and interested employees may apply to fill the position. When a Lockheed employee applies for a promotion within the Company, her performance appraisal rankings help determine whether she is selected for an interview. Managers typically ask for the performance assessments from the last three years for any employee who has applied for a promotion. If an employee’s rankings have dropped, questions are asked of the employee’s leader. Upon information and belief, low or declining rankings, which African Americans disproportionately receive, decrease the chances of a promotion, while high or increasing rankings boost the chances of a promotion.

126. Further, promotion decisions require sign-off by high-level managers and executives. Relatively low-level promotions, for example from a level 2 to a level 3, require the signoff of a Director, Vice President, and HR manager. All higher-level promotions require approval from a Vice President, Executive Vice President, and HR manager. For example, when Dr. Ross recommended that one of his level 5 employees be promoted to level 6, Dr. Ross had to discuss his recommendation with the relevant Vice President. The Vice President then further discussed the potential promotion with the Executive Vice President of the business area. Only upon approval of the Executive Vice President can a promotion be submitted for HR review.

127. Upon information and belief, African American employees receive fewer promotions than do similarly situated white employees, and the disparity in promotion rates is

statistically significant. The disparity is attributable at least in large part to disparities in performance appraisal ratings and rankings.

C. Impact on Reductions in Force and Performance-Related Terminations

128. The biased performance appraisal system also has resulted in a disproportionate number of terminations of African American salaried employees through reductions in force (RIFs) and for supposed cause.

129. Low performance appraisal ratings have reduced the chances of African-American employees to survive reductions in force in two ways. First, in RIFs in which Lockheed selects the employees whose jobs will be eliminated, low ratings increase the odds that an employee will be selected. Second, in all RIFs, including those in which entire business areas are closed, low ratings make it more difficult for employees whose jobs are eliminated to find alternative employment within Lockheed. Dr. Ross, as described below, experienced both phenomena.

130. Employees with the lowest tier ranking also are at risk of being terminated for poor performance. Indeed, forced distribution systems often have been characterized by the euphemism “rank and yank.” Lockheed also finds it easier to terminate an employee with the second-tier rating who provides some other cause, such as excessive absenteeism, than an employee with a higher tier rating but a similar cause.

131. Upon information and belief, Lockheed has disproportionately terminated African Americans in RIFs and “for cause” throughout the liability period as a result, in large part, of the discrimination in performance appraisals. The racial disparity in performance rates has been statistically significant.

132. The impact in the differential termination rates can be seen in the number of African-American executives at the Company. For example, Lockheed has several annual

meetings of company leaders who are members of different racial groups (also referred to as “affinity groups”). The number of African Americans executives and senior managers attending the African-American Leadership Forum (“AALF”) plummeted during the liability period because of the decline in the number of African-American leaders. In part this may have been a function of African-American leaders seeking and finding other employment because they were frustrated by the lack of support from the Company’s executives and resultant lack of advancement opportunities, stagnating incomes and fears about involuntary terminations. But in large part this was a function of African Americans’ discriminatorily low rankings and resultant termination of their employment.

VIII. Lockheed’s Contracts with the Federal Government

A. Governmental Regulation of Contractors to Eliminate Racial Discrimination

133. As the nation’s largest federal contractor, Lockheed has entered into many contracts with the federal government. These contracts contain clauses that prohibit Lockheed from, among other things, discriminating against its employees on the basis of race.

134. Executive Orders dealing with employment discrimination have a long history in this country and predate federal legislation on this topic. President Franklin D. Roosevelt issued the first Executive Order dealing with racial discrimination in 1941, which required all federal agencies to include in defense contracts clauses requiring that employers not discriminate against workers because of race, creed, color, or national origin. Exec. Order. No. 8802, 6 Fed. Reg. 3109 (1941). Presidents Eisenhower and Kennedy made further changes expanding the coverage of such Executive Orders. See Exec. Order No. 10479, 18 Fed. Reg. 4899 (1953); Exec. Order 10925, 26 Fed. Reg. 1977 (1961).

135. Executive Order 11246, signed into law by President Lyndon Johnson, greatly expanded the nondiscrimination and affirmative action obligations to include more contractor activities. Executive Order 11246 was intended primarily for the benefit of minority employees as it sought to spearhead equal access to a category of private sector jobs free from the discrimination that had plagued employment opportunity in these areas for decades.

136. Executive Order 11246 also created a new agency to monitor compliance – the Office of Federal Contract Compliance, now known as the Office of Federal Contract Compliance Programs (OFCCP). According to the OFCCP, “EO 11246 became a key landmark in a series of federal actions aimed at ending racial, religious and ethnic discrimination . . . [it] remains a major safeguard, protecting the rights of workers employed by federal contractors.” (emphasis added).

137. The Secretary of Labor has promulgated regulations, found at 41 C.F.R. §§ 60-1.1 et seq, pursuant to Executive Order 11246.

138. The purpose of the regulations “is to achieve the aims of parts II, III, and IV of Executive Order 11246 for the promotion and insuring of equal opportunity for all persons, without regard to race . . . employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts.” 41 C.F.R. § 60-1.1.

139. The regulations state that “[t]he rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract. . . .” 41 C.F.R. § 60-1.1.

140. Pursuant to the regulations, contractors such as Lockheed with at least 50 employees and holding a covered supply and service contract of at least \$50,000 must prepare and implement an Affirmative Action Program (AAP), including a written plan summarizing its workforce utilization and goals. 41 C.F.R. § 60 et seq. Upon information and belief Lockheed

made commitments under the AAP to remedy underutilization of African American professionals and managers.

141. Contractors of Lockheed's size must also update those AAPs annually. 41 C.F.R. § 60-2.1(b)-(c). "Each employee in the contractor's workforce must be included in an affirmative action program." *Id.* § 60-2.1(d). The affirmative action programs must be "designed to ensure equal employment opportunity." *Id.* §60-2.10.

142. The regulations note that an affirmative action plan "includes those policies, practices, and procedures that the contractor implements to ensure that all qualified applicants and employees are receiving an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment." *Id.* § 60-2.10 (emphasis added).

143. These regulations also impose a formal duty to monitor employment practices for potential discrimination as well as barriers to equal opportunity. AAPs must include regular "in-depth analyses" of the contractor's employment practices, including personnel activity, compensation, selection and recruitment procedures, to identify any "impediments to equal opportunity." *Id.* § 60-2.17(b). Based on the results of this analysis, contractors must implement any reforms needed to address identified problems and meet the goals of its plan. *Id.* §60-2.17(c). "In order for these action-oriented programs to be effective, the contractor must ensure that they consist of more than following the same procedures which have previously produced inadequate results. Furthermore, a contractor must demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results."

144. Further, contractors must maintain an "internal audit and reporting system" that includes regular reporting to senior management about its AAP and overall equal employment opportunity performance. *Id.* § 60-2.17(d).

145. Federal contractors are specifically required to follow requirements regarding implementation and monitoring of “tests and other selection procedures which are used as a basis for any employment decision.” 41 C.F.R. § 60-3.2. Employment decisions “include but are not limited to hiring, promotion, demotion . . . retention.” *Id.* § 60-3.2A. These requirements impose additional, specific duties to ensure that any tests and other selection practices of federal contractors are fully in compliance with legal non-discrimination requirements as a condition of federal contracting.

146. “The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race . . . will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines.” 41 C.F.R. § 60-3.3. A different sub-section, 41 C.F.R. § 60-3.5, provides standards for validity studies.

147. Contractors are required to maintain records which “disclose the impact which its tests and other selection procedures have upon employment opportunities of persons identifiable by race . . .” *Id.* § 60-3.4A. The records called for are to be maintained by race, including African-Americans. *Id.* § 60-3.4B.

B. Contractual Protections for Minority Employees of Federal Contractors

148. Also under the regulations passed pursuant to Executive Order 11246, most³ government contracts for supplies, services and construction above \$10,000 threshold incorporate an equal opportunity clause (“EO clause”), stating that “[t]he contractor will not discriminate against any employee or applicant for employment because of race . . .” 41 C.F.R. §60-1.4(a)(1).

³ Limited exemptions exist for contracts governing certain financial transactions and personal services. Upon information and belief, the vast majority of Lockheed’s contracts would not be exempt from containing an EO clause.

Contractors are required to take “affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race. . .” *Id.* Such affirmative action includes, but is not limited to, employment, promotions, compensation, and terminations. *Id.* The EO clause also requires contractors to agree that they “will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.” *Id.* § 60-1.4(a)(5).

149. Lockheed’s contracts with the federal government include the specific provisions regarding equal employment opportunity and affirmative actions discussed above. These requirements, which are contract terms, are intended to support and advance minorities, particularly African Americans. Conduct of Lucas and other senior executives contradicted the contractual obligations of Lockheed. Plaintiffs and the purported class are third party beneficiaries of those contract provisions.

150. Lockheed has breached its contractual duties by racially discriminating against Plaintiffs and the purported class.

IX. Plaintiffs Dr. Ross and Ms. Josey

151. The experiences of Dr. Ross and Ms. Josey highlight the flaws in Lockheed’s performance appraisal process, and how those flaws work to the detriment of African-American employees.

152. Both Dr. Ross and Ms. Josey have been subject to LM Commit, including the Make the Commitment sub-policy, the behavior sub-policy, and the calibration and forced distribution sub-policy, throughout their employment at Lockheed.

153. Both Dr. Ross and Ms. Josey have been harmed as a result of LM Commit. They have received discriminatorily low performance ratings and, as a result, received lower

compensation and were thwarted in their many efforts to obtain promotions. Dr. Ross was also RIF'd; had his ratings been higher, Lockheed would have found it more difficult to justify his termination.

154. Neither Dr. Ross nor Ms. Josey has been placed in the highest relative tier ranking, “significantly exceeds,” during the liability period.

155. Dr. Ross never received the highest rating — a 5.0 — on any of his commitments. He received a numerical rating of 3.0 (out of 5.0) on each of his commitments in both 2013 and 2014.

156. While Ms. Josey has received a score of 5.0 on a few of her commitments during the liability period, the majority of her commitment scores each year have been lower.

157. Both Dr. Ross and Ms. Josey have also been negatively impacted by the Behavior sub-policy. In 2013, Dr. Ross received a low score – a 2.0 – for the Behavior “Build Effective Relationships.” This low score dragged down his overall rating that year.

158. Neither Dr. Ross nor Ms. Josey has achieved the highest score on the Behavior “Shape the Future.”

159. Dr. Ross and Ms. Josey have also been unable to achieve the highest score on “Energize the Team.” Both of their scores on this Behavior have alternated between 3.0 and 4.0.

160. Further, both Plaintiffs believe that calibration sessions have resulted in their being placed in tiers lower than they deserved based on their performance. Lockheed has not placed either of them in the highest tier ranking during any year in the liability period.

161. The contrast between the absolute ratings for Ms. Josey in 2013 and 2014 and her tier placements are jarring, suggesting that calibration sessions and forced ranking had a negative impact on her overall tier placement. Her absolute ratings were 4.1 and 3.9, respectively, out of

5.0. Thus, these ratings show that she substantially exceeded Lockheed's expectations. Yet her relative rating each year was only "Achieved/Substantially Achieved." Assuming that Lockheed followed its forced distribution system, this means that roughly 60% of employees received forced distribution rankings higher than she did, and her relative ranking was somewhere between the 45th and 3rd percentiles from the bottom.

162. Ms. Josey continued to fall short of the highest ranking tier despite stellar performance. For example, in 2015, her absolute overall rating was a 4.5 out of 5.0, yet her relative overall ranking placed her in the second out of four tiers, not the top tier.

163. Both Plaintiffs' unsuccessful encounters with the appeals process show that it is not an effective method of correcting discriminatorily low ratings. When Dr. Ross notified authorities that he intended to appeal his placement in the second lowest overall tier ranking in 2013, he received a phone call at home from Monet Nathaniel, Vice-President of Human Resources for Enterprise Operations, who proceeded to ask twice if she could talk him out of appealing his ranking. He said no, and proceeded to appeal. As a result of the appeal, one of Dr. Ross's behavior ratings and one of his commitment ratings were increased, but his overall ranking remained unchanged. Dr. Ross then attempted to take his appeal to his next level leader, Mr. Lucas, but the head of Human Resources told Dr. Ross, "it ain't happening," and that was the extent of Dr. Ross's second level appeal that Lockheed's policy allowed him.

164. On her 2013 performance assessment, Ms. Josey received the second lowest tier ranking, "achieved/substantially achieved," even though her absolute rating was 4.1 out of 5.0 points and her leader's comments acknowledged that her work was excellent. She appealed, but her ranking was not changed. Ms. Josey then informed her manager and a representative from Human Resources ("HR") that she intended to appeal further. The HR representative warned her

that if she did so, there might be negative consequences because her second level leader was now her customer.

165. The results of LM Commit have stymied Plaintiffs' compensation growth within the Company, as it has for other members of the proposed Class. During his 24 years of employment with Lockheed, Dr. Ross received only one award of restricted stock (before the liability period), presumably based on his design, implementation and leadership of the first-ever Cyber University and Cybersecurity Talent Management Framework, which over the years has contributed to Lockheed winning over \$5.5 billion in new business. And, as Dr. Ross's rankings declined throughout the Lucas years, and were in the second lowest tier in 2013 and 2014, his Merit Increase Compensation Plan ratings fell steadily from a high of 1.15 in 2009 to .8 in 2013 and 2014.

166. During her many years of employment with Lockheed, Ms. Josey has not received any award of restricted stock or cash.

167. Their relatively low rankings also blocked the efforts of Dr. Ross and Ms. Josey to advance during the period. At least one manager has told Ms. Josey that the absence of a history of consistently high or exceptional performance appraisals would negatively affect her ability to advance at Lockheed. Her history bears out the prediction.

168. Ms. Josey applied for at least 55 positions at Lockheed between October 2012 and October 27, 2015, none of which she was offered. At least thirty-seven of these positions, including 23 for which she had applied in the 300 days before filing her EEOC charge, would have been promotions. She was selected for interviews for only seven positions. Upon information and belief, Ms. Josey's discriminatorily low performance reviews contributed to her failure to advance.

169. Dr. Ross's low ratings also prevented him from advancing within the Company. The next step up for Dr. Ross, who had been at the Director level for about 10 years as of 2015, would have been to a Vice Presidency, which involves a tap-on-the-shoulder rather than an application process. Over the last few years of his employment with Lockheed he was repeatedly bypassed in promotions to a Vice President position in favor of white employees who often had lesser credentials than him. Undoubtedly, Dr. Ross's low to middling ratings made it easy for Lockheed not to tap him on the shoulder to become a Vice President.

170. Lastly, Dr. Ross was RIF'd due in part to his low performance ratings. Dr. Ross's supervisor decided to reorganize and RIF one of her direct reports; if Dr. Ross had a recent history of higher relative rankings, it would have been more difficult for Lockheed to justify his selection for RIF. After he received formal notice of his reduction in 2015, Dr. Ross unsuccessfully applied to over 40 jobs within Lockheed Martin, the majority of which were at his current level of Director, and some of which were below the Director level. Dr. Ross did not receive an offer for any of these positions and was terminated effective December 31, 2015. With higher rankings, he would have been more likely to receive a job offer.

X. Class Action Allegations

171. Dr. Ross and Ms. Josey bring this class action pursuant to Fed. R Civ. P. 23(a), (b)(2), and (b)(3), seeking both injunctive relief and monetary damages, on behalf of a Class of all African-American salaried non-represented employees below the level of Vice President (levels 1 through 7) employed by Lockheed in the United States at any time during the liability period. The following individuals shall be excluded, however, from the Class for purposes of monetary relief only: individuals who did not receive any performance evaluations during the liability period with a tier ranking below "significantly exceeded commitments" while employed at Lockheed.

172. Plaintiffs have restricted the class for purposes of monetary damages because, although Lockheed's performance appraisal system has adversely affected all Lockheed salaried African-American employees below the level of Vice President, individuals who nevertheless received only the highest tier rankings during the liability period were eligible for the highest compensation increases, advancement, and retention opportunities available to Lockheed employees. As a result, although these employees were subject to the same discriminatory policies as other members of the Class and are entitled to benefit from injunctive relief, they did not experience the same economic harm as a result of Defendant's discriminatory conduct.

173. Plaintiffs are members of the Class they seek to represent.

174. *Numerosity.* The Class has over 5,000 members who worked in over 40 states across the United States. It would be impracticable, because of their numbers and a justified fear of retaliation, to bring all persons in the Class before the Court as individual plaintiffs through joinder.

175. *Commonality.* There are questions of law and fact common to the Class such that the common issues may be determined in one trial. Common questions include, but are not limited to:

(a) Are Lockheed's evaluation ratings exclusively the result of individual manager decision-making or are they based at least in part on inherently biased companywide policies that are unrelated to job performance?

(b) Does the Make the Commitment component, or sub-policy, of Lockheed's performance appraisal system cause or contribute to a disparate impact on African-American salaried employees in grades 1-7?

(c) Does the Behavior sub-policy cause or contribute to a disparate impact on African-American salaried employees in grades 1-7?

(d) Does the calibration and forced distribution sub-policy cause or contribute to a disparate impact on African-American salaried employees in grades 1-7?

(e) Has the LM Commit policy permitted excessively subjective decisions by managers and executives that are not based on job performance and have disproportionately been adverse to African Americans and thereby caused or contributed to a disparate impact on African-American salaried employees in grades 1-7?

(f) Has Lockheed management known that the performance appraisal system or its component sub-policies have had a disparate impact on African American salaried employees in grades 1-7 and have they failed to take effective remedial action or validate the appraisal system?

(g) Has Lockheed engaged in a pattern or practice of intentional discrimination against the Class by regularly ranking them below what their performance deserves?

(h) Are Plaintiffs and the Class third-party beneficiaries of the equal opportunity clauses of Lockheed's contracts with the federal government or by operation of law?

(i) Did Lockheed violate the EEOC's Uniform Guidelines on Employee Selection Procedures with respect to its performance appraisal system?

(j) Do there exist less discriminatory alternatives to LM Commit or any sub-components thereof?

(k) Has Lockheed breached its duties to Class members under the contracts between it and the federal government?

(l) Could the flaws in Lockheed's performance appraisal system be eliminated in a manner that would make the system as useful or more useful to Lockheed but reduce its disparate impact on African-American salaried employees?

(m) Are biases in the performance appraisal system or its component sub-policies at least a partial explanation for racial disparities in the increases given under Lockheed's merit compensation system to salaried employees in levels 1-7?

(n) Are biases in the performance appraisal system or its component sub-policies at least a partial explanation for racial disparities in bonuses and stock awards to salaried employees in levels 1-7?

(o) Are flaws in the performance appraisal system or its component sub-policies at least a partial explanation for racial disparities in promotion rates among salaried employees in levels 1-7?

(p) Are flaws in the performance appraisal system or its component sub-policies at least a partial explanation for racial disparities in termination rates of salaried employees in levels 1-7?

176. *Typicality.* The claims of Dr. Ross and Ms. Josey are typical of the claims of all class members in the Class because they have all been subjected to the same practices of racial discrimination against African Americans. They both have been adversely affected by that discrimination in that they have received lower ratings and rankings than warranted by their performance, and as a result have been adversely affected in compensation, promotion, and (in Dr. Ross's case) termination decisions. They, like other class members, will benefit from a ruling that Lockheed's practices had a disparate impact on class members and/or that it engaged in a pattern or practice of discrimination because such a ruling will create a presumption that Lockheed discriminated against them. The evidence and legal theories that will establish Lockheed's liability

to the class under disparate impact and/or disparate treatment theories are applicable to Plaintiffs and class members. Dr. Ross and Ms. Josey, like other class members, are third party beneficiaries to Lockheed's equal opportunity and affirmative action obligations created by contract or by virtue of contracting with the United States government.

177. *Adequacy of representation.* Dr. Ross and Ms. Josey are adequate representatives of the Class because: (1) they are willing and able to represent the Class and have every incentive to pursue the monetary claims in this action to a successful conclusion; (2) Ms. Josey is still employed at Lockheed and otherwise has an adequate interest in programmatic relief for purposes of certification under Fed. R. Civ. P. 23(b)(2); (3) their interests are not in any way antagonistic to those of the other members of the Class; and (4) they are represented by counsel experienced in litigating major class actions in the field of employment discrimination.

178. *Propriety of maintenance of class action under Fed. R. Civ. P. 23(b)(2).* Class action status is appropriate under Fed. R. Civ. P. 23(b)(2) because Lockheed acted and/or refused to act on grounds generally applicable to the Class, thereby making declaratory and injunctive relief, such as the elimination of forced distribution ranking, the end of calibration sessions or their equivalent, and the creation of an appeal process culminating in an appeal to an individual not involved in the rating process, appropriate with respect to Ms. Josey and the Class as a whole.

179. *Propriety of maintenance of class action under Fed. R. Civ. P. 23(b)(3).* Class action status is also appropriate under Fed. R. Civ. P. 23(b)(3). The common questions of law and fact identified above predominate over questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of this litigation, partly because only a class action could justify the cost to try to prove the allegations in this Complaint. Courts contemplate that after a finding of liability against an employer on disparate

impact or pattern or practice issues, a second stage of trial will consist of individualized adjudications concerning class members' right to individual relief, with class members benefitting from a rebuttable presumption that the discrimination adversely affected them. If the need for *Teamsters* second stage proceedings meant that certification was inappropriate under Rule 23(b)(3), employment discrimination class actions could not be certified under that Rule. *See International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977).

180. *Propriety of maintaining class action as to certain issues under Fed. R. Civ. P. 23(c)(4)*. Alternatively, if the Court does not approve a class for both liability and relief purposes under Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3), it should approve a class to adjudicate some or all of the issues identified in paragraph 171 above.

Count I

EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE

Disparate Impact

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. (On Behalf of Plaintiffs Ross and Josey and the Class)

181. Dr. Ross and Ms. Josey repeat and re-allege the allegations contained in the above paragraphs, as if fully set forth herein.

182. Dr. Ross, Ms. Josey, and members of the Class are, or were, African-American employees of Lockheed within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.

183. The discriminatory policies and/or practices of Lockheed, as set forth herein, have denied Dr. Ross, Ms. Josey and the members of the Class their right to equal employment opportunity in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. Moreover, the biases and flaws in the design and implementation of the performance appraisal system have had a disparate impact against African-American employees

in performance appraisal ratings that has resulted in a loss of compensation, including but not limited to raises, bonuses, stock awards, and other job benefits, fewer promotions, and a greater percentage of terminations.

184. If any sub-component or sub-policy of the performance appraisal system is found to be job-related and justified by business necessity, there exist less discriminatory alternatives that would not create the same disparate impact against African-American employees.

185. As mentioned above, Lockheed has not validated its performance appraisal system. Because an unvalidated performance appraisal system that has an adverse impact against members of a protected group violates Title VII, a claim that an unvalidated performance appraisal system has had an adverse impact against members of a proposed class, who are members of a protected group, raises common issues.

186. On behalf of themselves and the Class, Dr. Ross and Ms. Josey request relief as provided in the Prayer for Relief below.

Count II

EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE **Pattern or Practice Discrimination – Systemic Disparate Treatment** **Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*** **(On Behalf of Plaintiffs Ross and Josey and the Class)**

187. Dr. Ross and Ms. Josey repeat and re-allege the allegations contained in the above paragraphs, as if fully set forth herein.

188. Dr. Ross, Ms. Josey, and members of the proposed Class are, or were, African-American persons.

189. Lockheed has engaged in a pattern or practice of intentional discrimination against African-American salaried employees. Lockheed has adopted and/or maintained and implemented

uniform employment practices that discriminate against African Americans with respect to compensation, promotion, and termination.

190. Lockheed's practices, as set forth herein, have denied Plaintiffs and the members of the proposed Class their right to equal employment opportunity in violation of 42 U.S.C. § 2000(e) et seq., in assigning African-American employees unwarranted, lower scores than other employees in the performance appraisal system, resulting in African-American employees receiving lower compensation, including lower salaries, raises, bonuses, and stock awards, and fewer promotions than employees of other races. Lockheed has also terminated African-American employees to a greater extent than similarly situated white employees.

191. The pattern of inequity in compensation, promotion and termination on the basis of race is not the result of random or non-discriminatory factors. Rather, it is the result of an ongoing and continuous pattern or practice of race discrimination in the assessment of the performance of salaried employees in levels 1-7.

192. Lockheed's discriminatory conduct caused Plaintiffs and the Class to suffer injury, including but not limited to loss of wages and other job benefits, and emotional and physical distress.

193. On behalf of themselves and the Class, Plaintiffs request relief as provided in the Prayer for Relief below.

Count III

EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE

42 U.S.C. § 1981

(On Behalf of Plaintiffs Ross and Josey and the Class)

194. Dr. Ross and Ms. Josey repeat and re-allege the allegations contained in the above paragraphs, as if fully set forth herein.

195. Dr. Ross, Ms. Josey, and members of the proposed Class are, or were, African-American persons.

196. Lockheed intentionally discriminated against Dr. Ross, Ms. Josey, and members of the proposed Class on the basis of their race by assigning African-American employees unwarranted, lower scores than other employees in the performance appraisal system, resulting in African-American employees receiving lower compensation, including lower salaries, raises, bonuses, and stock awards, and fewer promotions than employees of other races. Lockheed has also terminated African-American employees to a greater extent than similarly situated white employees.

197. Lockheed has violated 42 U.S.C. § 1981, et seq., as it has, among other things, unlawfully discriminated against African Americans in denying them the enjoyment of all of the benefits, privileges, terms, and conditions of their contractual relationship with Lockheed in that, because of discrimination in performance appraisal scores, it paid Plaintiffs and members of the Class lower wages and bonuses and lesser job benefits than it paid to similarly situated Caucasian employees, refused to promote them equally, and disproportionately terminated them.

198. Lockheed maintained the pattern or practice of assigning African-American employees unwarranted, lower performance scores, compensating them less, promoting them less than other employees, and disproportionately terminating them maliciously or with reckless indifference to the rights of African Americans.

199. On behalf of themselves and the Class, Plaintiffs Ross and Josey request relief as provided in the Prayer for Relief below.

Count IV

BREACH OF CONTRACT

200. Dr. Ross and Ms. Josey repeat and re-allege the allegations contained in the above paragraphs, as if fully set forth herein.

201. Plaintiffs and the purported class are third party beneficiaries of Lockheed's contractual provisions requiring equal employment opportunity and affirmative action.

202. Lockheed did not comply with its EO contract requirements. As discussed in further detail *supra*, during the relevant time period Lockheed maintained a policy that discriminated against employees on the basis of their race. Lockheed also failed to take necessary affirmative action to ensure that its practices did not have a disparate impact on African-American employees. Upon information and belief, the actions taken by Mr. Lucas also violated contractual provisions.

203. Plaintiffs Ms. Josey and Dr. Ross, as well as members of the proposed Class, are victims of Lockheed's failure to comply with the EO clause of its qualifying contracts, including its provision requiring compliance with Executive Order 11246 and the rules, regulations, and relevant orders of the Secretary of Labor. They faced discrimination based on their race and received lower performance ratings than similarly situated white employees, and, as a result, received less compensation, fewer promotions, and were also terminated at higher rates.

204. Upon information and belief, Lockheed and the United States government have entered into numerous contracts containing an EO clause. Even if the qualifying contracts do not contain such clauses, the applicable regulations provide that EO clauses are deemed included in all qualifying contracts and subcontracts by operation of law.

205. The United States and Lockheed thus have agreed that Lockheed would not discriminate against employees on the basis of race; that Lockheed would take affirmative action to ensure that employees are treated equally without regard to their race; and that Lockheed would

validate any test or selection procedure which has an adverse impact on the promotion or other employment opportunities of members of any race. Plaintiffs and the proposed class were intended third party beneficiaries of these contracts in that the overriding objective of the EO clauses in the contracts between Lockheed and the United States Government was to protect the rights of workers employed by federal contractors, like Plaintiffs and the proposed Class, and to advance their access to job opportunities through affirmative action. Accordingly, the United States and Lockheed intended African American employees to be the beneficiaries of these contract provisions.

206. Lockheed breached its contractual duties to Plaintiffs and the proposed Class.

XI. Individual Allegations

Count V

RETALIATION

**Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and
42 U.S.C. § 1981
(on behalf of Plaintiff Ross)**

207. Dr. Ross re-alleges each of the paragraphs above as if fully set forth herein.

208. In May 2014, Dr. Ross complained to his direct supervisor, the VP of Culture, Diversity, and Equal Opportunity Programs at Lockheed, that he had received lower performance ratings than he believed he deserved. He also explained that he had been given less support in his role than two of his white peers, Chris Wronsky and Ben Martin.

209. In July 28, 2014, in a meeting with the Vice President and Associate General Counsel and the Vice President of Ethics, Dr. Ross complained about the discrimination that he and other African Americans faced at Lockheed Martin.

210. The VP and Associate General Counsel and the VP of Ethics informed Dr. Ross that the conversation was “off the record” because they and he were all African-American. They accused Dr. Ross of writing letters to the CEO of Lockheed, complaining of race discrimination.

Dr. Ross denied his involvement in writing the letters, but informed the VP and Associate General Counsel and the VP of Ethics of the discrimination he had faced due to his status as an African-American employee. He had been denied staffing and other resources while being tasked with combining two organizations. Moreover, his best reports were removed from under his leadership, leaving him a staff insufficient to perform the duties with which he was charged. In short, Dr. Ross made it clear that he had been set up to fail while white employees in similar situations had received adequate support and resources. Dr. Ross also saw many white employees, both male and female, promoted over him to the level of Vice President despite their having less education and experience than Dr. Ross.

211. In November or December of 2014, the VP of Culture, Diversity, and Equal Opportunity Programs announced a reorganization and informed Dr. Ross that if he wished to keep his position he would be forced to move from Valley Forge, Pennsylvania to Bethesda, Maryland. The VP of Culture, Diversity, and Equal Opportunity Programs knew that Dr. Ross was the longtime pastor of a local church and would be unable to move without abdicating or severely restricting his involvement with the church.

212. Dr. Ross filed his Charge of Discrimination with the EEOC on December 22, 2014.

213. In February 24, 2015, Dr. Ross applied for the position in Bethesda, Maryland. In May 2015, Dr. Ross was informed that he was not selected, and learned that he would be placed on Leave of Absence.

214. On June 12, 2015, Dr. Ross received a formal notice of reduction in force. Although Dr. Ross was putatively given sixty days to seek new employment within Lockheed, Lockheed made the process of receiving and completing interviews nearly impossible. Lockheed dispossessed Dr. Ross of his security badge, meaning that, even when he received interviews, he

was not able to enter the buildings where the interviews were conducted. Dr. Ross was forced to jump through administrative hurdles to gain access to buildings and invariably raised suspicion in the minds of his interviewers as to whether he was still an employee at Lockheed, and question why his badge had been taken away.

215. Dr. Ross was unable to find a new job at Lockheed.

216. Dr. Ross has suffered an adverse employment action in that, on December 22, 2014, Defendant notified him that he would be terminated, and terminated his employment on December 31, 2015.

217. Dr. Ross has suffered this adverse employment action because Defendant retaliated against him for filing a Charge of Discrimination with the EEOC and/or complaining to senior executives at the Company of racial discrimination faced by him and other African-American employees.

218. This retaliation has caused substantial financial and monetary harm to Dr. Ross.

Prayer for Relief

Wherefore Plaintiffs respectfully request this Court to:

- a. Certify the Class defined in paragraph 171 above, or such other class as discovery reveals to be appropriate;
- b. Declare Dr. Ross and Ms. Josey to be representatives of the Class;
- c. Declare undersigned counsel to be Class Counsel for the Class;
- d. Declare that the practices described in this Complaint exist at Lockheed and are unlawful;
- e. Find Lockheed in violation of the EO clauses of its contracts with the federal government and in breach of contract to the Class as third party beneficiaries;

f. Order Lockheed to adopt policies and practices designed to end discriminatory treatment of African-American employees and/or practices that have a disparate impact adverse to African-American employees;

g. Award back pay, bonuses and other job benefits to make the Plaintiffs and Class members whole;

h. Award front pay to the extent that Plaintiffs and Class members cannot be placed into the positions that they would have occupied but for the discrimination;

i. Award punitive damages appropriate to the proof at trial;

j. Award damages for breach of contract;

k. Award reasonable attorneys' fees and costs, including expert fees pursuant to 42 U.S.C. § 1988; and

l. Order such other and further relief as the Court deems just and proper.

Dated: March 23, 2018

Respectfully submitted,

/s/ Cyrus Mehri

Cyrus Mehri
Steven A. Skalet
Michael D. Lieder
Joanna K. Wasik
Mehri & Skalet, PLLC
1250 Connecticut Ave., NW
Suite 300
Washington, DC 20036
Telephone: (202) 822-5100
Facsimile: (202) 822-4997
cmehri@findjustice.com
sskalet@findjustice.com
mlieder@findjustice.com
jwasik@findjustice.com

Charles V. Firth (*pro hac vice*)
Engelmeier & Umanah, P.A.
706 Second Avenue South
Suite 1100
Minneapolis, MN 55402
Telephone: (612) 455-7724
Facsimile: (612) 455-7740
charlief@e-ulaw.com