

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**FLORENCE DIXON and PAULINE
BARBERA, on behalf of themselves, and all
others similarly situated,**

Plaintiffs,

-against-

TEACHERS FEDERAL CREDIT UNION,

Defendant.

Case No. 18 Civ. 7203

CLASS ACTION COMPLAINT

Jury Trial Demanded

Plaintiffs Florence Dixon (“Dixon”) and Pauline Barbera (“Barbera,” together with Dixon, “Plaintiffs”), on behalf of themselves, and all others similarly situated, by their attorneys Shulman Kessler LLP and Spivak Lipton LLP, allege as follows:

NATURE OF THE ACTION

1. This action seeks to redress discrimination against Plaintiffs and a class of similarly situated job applicants against Teachers Federal Credit Union (“TFCU”), alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”), the New York State Human Rights Law, N.Y. Exec. Law §§ 290 *et seq.* (“NYSHRL”) and the Civil Rights Act of 1866, 42 U.S.C. § 1981, as amended by the Civil Rights Act of 1991 (“Section 1981”).

2. Founded in 1952, TFCU is a federally chartered credit union with more than 300,000 members. https://www.teachersfcu.org/pages/about_aboutTFCU.php (last accessed Dec. 17, 2018). TFCU has more than \$7 billion in assets and maintains more than 25 branch locations on Long Island. *Id.*

3. “TFCU has been a leading employer of Long Islanders since” its founding and is “one of the country’s largest credit unions and one of the largest employers on Long Island.”

<https://www.teachersfcu.org/careers/index.php> (last accessed, Dec. 14, 2018). TFCU encourages prospective employees to apply for employment positions if they “enjoy collaborating in a team atmosphere . . . in an organization that promotes growth and stability.” *Id.*

4. However, what TFCU’s website does not say, is that it provides the benefits of employment in an unequal manner – systematically discriminating against Black individuals in the hiring and promotion to its coveted branch manager position known as Financial Services Manager (“FSM”).

5. TFCU has systematically circumvented and excluded Black individuals from promotion and hiring opportunities to the FSM position.

6. The resultant underrepresentation of Black individuals in TFCU’s FSM ranks is stark.

7. TFCU never hired or promoted a Black woman to the FSM position until after Plaintiffs filed their Charges of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) in March 2018.

8. Upon information and belief, to date, since its founding in 1952, TFCU only employed a two Black FSMs.

9. And, upon information and belief, from TFCU’s founding in 1952 through at least March 2018, TFCU only employed one Black FSM.

10. Despite repeatedly applying for the FSM position, and despite having superior qualifications compared to the non-Black applicants TFCU promoted and/or hired for the position, Plaintiffs were rejected by TFCU for the FSM position.

11. In light of Plaintiffs’ individual experiences and TFCU’s pattern and practice of disproportionately favoring non-Black applicants for the FSM position, Plaintiffs bring this action

on behalf of themselves and a class of similarly situated FSM applicants (the “Class” or “Class Members”) in order to end TFCU’s discriminatory policies and/or practices and to make themselves and the Class whole.

JURISDICTION & VENUE

12. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this action involves federal questions regarding the deprivation of Plaintiffs’ rights under Title VII and Section 1981. The Court has supplemental jurisdiction over Plaintiffs’ related claims arising under the NYSHRL pursuant to 28 U.S.C. § 1367(a).

13. Venue is proper within this Judicial District pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred in the Eastern District of New York.

ADMINISTRATIVE PREREQUISITES

14. Dixon filed an EEOC Charge alleging race, color, and sex discrimination on or before March 12, 2018, which was assigned the Charge No. 520-2018-02608.

15. Barbera filed an EEOC Charge alleging race, color, and sex discrimination on or before March 13, 2018, which was assigned the Charge No. 520-2018-02664.

16. The EEOC issued Notices of Right to Sue to Plaintiffs on September 19, 2018.

THE PARTIES

Plaintiff Florence Dixon

17. Plaintiff Dixon is a resident of the County of Suffolk, State of New York.

18. Plaintiff Dixon is a Black woman.

19. Plaintiff Dixon was employed by TFCU as a Financial Services Assistant Manager (“AM”) from September 2013 until April 2018.

20. Plaintiff Dixon has a Bachelor of Business Administration undergraduate degree.

21. Prior to her employment with TFCU, Plaintiff Dixon had extensive experience in the banking industry.

Plaintiff Pauline Barbera

22. Plaintiff Barbera is a resident of the County of Suffolk, State of New York.

23. Plaintiff Barbera is a Black woman.

24. Plaintiff Barbera was employed by TFCU as an AM from August 2006 until March 2016.

25. Plaintiff Barbera has a Bachelor of Science in Business Management and Communication undergraduate degree, and a post-graduate degree of Master of Business Administration.

26. Prior to her employment with TFCU, Pauline Barbera had extensive experience in the banking industry.

Defendant

27. Upon information and belief, TFCU is a federally chartered credit union, with its principal place of business in the County of Suffolk, State of New York.

28. Upon information and belief, TFCU maintains control, oversight, and direction over the operation of its facilities, including its employment practices.

29. TFCU's headquarters is located at 102 Motor Parkway, Hauppauge, New York 11788.

30. During all relevant times, TFCU was an employer within the meaning of all applicable statutes.

31. Upon information and belief, TFCU has employed more than 500 people during the applicable recovery period.

FACTUAL ALLEGATIONS

32. TFCU maintains uniform employment, compensation, hiring and promotion policies across all branch locations.

33. FSMs are responsible for managing TFCU's branch locations.

34. TFCU posts job openings for the FSM position on both its own website, as well as on third-party websites.

35. TFCU does not have any objective criteria for determining who to promote and/or hire as FSMs.

36. TFCU regularly and systematically hires and/or promotes non-Black individuals with less experience and qualifications than Black applicants with greater experience and qualifications.

37. TFCU's evaluation and promotion systems, insufficient quality standards and controls and implementation metrics, coupled with their lack of transparency and opportunities for redress, had a discriminatory and disparate impact on Black women.

38. TFCU's evaluation and promotion systems, insufficient quality standards and controls and implementation metrics, coupled with its lack of transparency and opportunities for redress, have had led to discriminatory treatment of Black individuals.

39. On at least four occasions between May 2014 and December 2017, Plaintiff Dixon applied for promotion to the FSM position.

40. On each of the occasions when Plaintiff Dixon applied, TFCU filled the FSM position with a less-qualified, non-Black individual.

41. On at least eight occasions, Plaintiff Barbera applied for the FSM position.

42. On each of the occasions when Plaintiff Barbera applied, TFCU filled the FSM position with a less-qualified, non-Black individual.

43. After repeatedly applying for promotion to the FSM position, and watching those promotions go to lesser-qualified non-Black individuals, Plaintiff Barbera resigned her employment with TFCU in April 2016.

44. On May 8, 2017, Plaintiff Barbera applied to be re-hired by TFCU as an FSM.

45. TFCU did not hire Plaintiff Barbera, and upon information and belief, instead hired or promoted a non-Black individual.

46. The non-Black applicant that TFCU hired had significantly less experience than Plaintiff Barbera.

47. During the period of time Plaintiff Barbera applied for the FSM position, at least 18 non-Black individuals were promoted or hired by TFCU.

48. Those 18 non-Black individuals were less qualified than Plaintiff Barbera.

49. AMs and other subordinate employees frequently discussed TFCU's hiring and promotion policies, and the fact that they resulted in non-Black applicants being favored. It was well known amongst TFCU's employees that TFCU was "not ready" to have a Black woman as an FSM.

50. Accordingly, Plaintiffs bring this class action on behalf of themselves individually, and all others who are similarly situated. This action seeks to end TFCU's discriminatory policies, patterns and/or practices, and to make the Class whole by requesting the following remedies: injunctive relief to remedy systemic race and sex discrimination; injunctive relief to remedy systemic race discrimination; an award of back pay and front pay; compensatory and punitive damages; and attorney's fees.

CLASS ACTION ALLEGATIONS

51. Plaintiffs bring this class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and (b)(3) on behalf of a class of Black women, who applied for and were denied hiring and promotion to the FSM position, in violations of Title VII.

52. Plaintiffs also bring this class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and (b)(3) on behalf of a class of Black women, who applied for and were denied hiring and promotion to the FSM position, in violations of the NYSHRL.

53. Plaintiffs also bring this class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and (b)(3) on behalf of a class of Black individuals, male and female, who applied for and were denied hiring and promotion to the FSM position, in violations of the Section 1981.

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

55. The members of the Class are so numerous that joinder of all members is impracticable. Although Plaintiffs do not know the precise number of Class Members, the number is far greater than can be feasibly addressed through joinder.

56. TFCU's hiring and promotion practices and procedures all suffer from a lack of: transparency, adequate quality standards and controls; sufficient implementation metrics; upper management/HR review; and opportunities for redress or challenge. As a result, applicants are hired and/or promoted within a system that is insufficiently designed, articulated, explained or implemented to consistently, reliably or fairly evaluate, manage or reward employees.

57. Within this flawed structure, specific practices negatively affect TFCU's Black job applicants. For example, hiring and promotion decisions for the FSM position are not based on objective transparent metrics. Senior TFCU employees, overwhelmingly male and Caucasian,

mentor and develop prospective FSMs selectively, without appropriate standards, guidelines or transparency necessary to ensure an equitable workplace.

58. These problems are systemic and company-wide, because, upon information and belief, they all stem from flawed policies, practices and procedures emanating from the TFCU's Long Island headquarters.

59. Where human resources and ethics compliance policies exist, they lack meaningful quality controls, standards, implementation metrics, and means of redress. Concerns about discrimination made to supervising staff and HR itself are allowed to go unaddressed. Worse, there is no meaningful separation between HR/Ethics complaint processes and TFCU's hiring and promotion decisionmakers. This dissuades victims of discrimination from voicing concerns altogether.

60. TFCU's development, hiring and promotion policies, practices, and procedures, are completely opaque without any tether to objective metrics, and have had a disparate impact on the Plaintiffs and the Class Members.

61. There are questions of law common to the class, and these questions predominate over any questions affecting only individual class members. Common questions include, among others:

- a. whether TFCU's hiring and promotion policies or practices for the FSM position discriminate against Black women;
- b. whether TFCU's hiring and promotion policies or practices for the FSM position discriminate against Black individuals;
- c. whether TFCU's hiring and promotion policies or practices for the FSM position violates Title VII, the NYSHRL and/or Section 1981;
- d. whether TFCU's failure to institute adequate standards, quality controls, implementation metrics, or oversight in hiring and promotion for the FSM position violates Title VII, the NYSHRL and/or Section 1981;

- e. whether TFCU's lack of transparency and opportunities for redress in its hiring and promotion policies or practice for the FSM position violates Title VII, the NYSHRL and/or Section 1981;
- f. whether TFCU is liable for continuing, systemic violations of Title VII, the NYSHRL and Section 1981; and
- g. whether equitable remedies, injunctive relief, compensatory damages, and punitive damages for the Class are warranted.

62. There are questions of fact common to the Class, and these questions predominate over any questions affecting only individual Class Members. Common questions include, among others:

- a. whether TFCU used a system of hiring and promotion for the FSM position that lacks meaningful or appropriate standards, implementation metrics, quality controls, transparency and opportunities for redress;
- b. whether TFCU used a system of development and mentoring potential FSM candidates that lacks meaningful or appropriate standards, implementation metrics, quality controls, transparency and opportunities for redress;
- c. whether TFCU through the use of that development and mentoring system failed to develop or mentor Black women and Black individuals in general, in a commensurate manner to their similarly-situated non-Black counterparts;
- d. whether TFCU systematically, intentionally or knowingly failed to develop or mentor Black women and Black individuals in general, in a commensurate manner to their similarly-situated non-Black counterparts;
- e. whether TFCU used a hiring and promotion system for the FSM position that lacks meaningful or appropriate standards, implementation metrics, quality controls, transparency and opportunities for redress;
- f. whether TFCU, through use of a hiring and promotion system for the FSM position, precluded or delayed the promotion of Black women and Black individuals in general into higher level jobs traditionally held by non-Black employees;
- g. whether TFCU systematically, intentionally or knowingly precluded or delayed the promotion of Black women and Black individuals in general to the FSM position;

- h. whether TFCU used a system for performance evaluations which lacks meaningful or appropriate standards, implementation metrics, quality controls, transparency and opportunities for redress;
- i. whether TFCU, through use of that performance evaluation system inaccurately, unfairly or disparately measured the performance of Black women and Black individuals in general;
- j. whether TFCU systematically, intentionally or knowingly subjected Black women and Black individuals in general to inaccurate, unfair, or discriminatorily lowered performance evaluations;
- k. whether TFCU systematically, intentionally or knowingly subjected Black women and Black individuals in general to disparate and discriminatory terms and conditions of employment;
- l. whether TFCU systematically, intentionally, knowingly or deliberately showed an indifference to evidence of discrimination in its hiring and promotion practices for the FSM position by minimizing, ignoring, mishandling, or covering up evidence of or complaints about race and gender discrimination; and
- m. whether TFCU failed to adequately or meaningfully train, coach, or discipline senior management on EEO principles and compliance, specifically regarding hiring and promotion for the FSM position.

63. Plaintiffs' claims are typical of the claims of the Class.

64. Plaintiffs will fairly and adequately represent and protect the Class Members' interests. Plaintiffs have retained counsel competent and experience in class actions and employment discrimination.

65. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because TFCU has acted or refused to act on grounds generally applicable to the class, making appropriate declaratory relief with respect to Plaintiffs and the Class as a whole. The Class Members are entitled to injunctive relief to end TFCU's common, uniform, unfair, and discriminatory policies and practices.

66. Class certification is also appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) because common questions of fact and law predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The Class Members have been damaged and are entitled to recovery as a result of TFCU's common, uniform, unfair and discriminatory policies and practices. TFCU has computerized payroll and personnel data that will make damages calculations for specific class members relatively simple. The propriety and amount of punitive damages are based on TFCU's conduct making these issues common to the Class.

67. Because TFCU's pattern-or-practice of race and gender discrimination, Plaintiffs and the Class Members have been adversely affected and have experienced harm, including the loss of compensation, promotion and other advancement opportunities, employment benefits and non-economic damages.

68. Plaintiffs and the Class Members have no plain, adequate, or complete remedy at law to redress the wrongs they allege. This suit is their only means of securing adequate relief. Plaintiffs and the Class have suffered, and will continue to suffer, irreparable injury from TFCU's ongoing, unlawful policies, practices, and procedures as set forth herein unless those policies, practices, and procedures are enjoined by this Court.

69. Plaintiffs seek to represent all of the FSM job applicants described above. The systemic and disparate impact of TFCU's race and sex discrimination described in this Complaint has been, and is, continuing in nature.

70. Plaintiffs' individual claims require resolution of the common question of whether TFCU has engaged in a systemic pattern or practice of race and sex discrimination against Black women and Black individuals, both male and female. Plaintiffs seek remedies to eliminate the

adverse effects of such discrimination in their own lives, career and working conditions, and in the lives, careers and working conditions of the proposed class, and to prevent continued race and sex discrimination in the future.

FIRST CAUSE OF ACTION
Race and Sex Discrimination in Violation of Title VII
(Individual and Class Claims)

71. Plaintiffs reallege and incorporate all allegations in all preceding paragraphs.

72. Plaintiffs bring this first cause of action on behalf of themselves and all others who are similarly situated.

73. Defendant discriminated against Plaintiffs and the Class Members in violation of Title VII, by subjecting them to different treatment on the basis of their race and sex.

74. Plaintiffs and the Class suffered both disparate impact and disparate treatment as a result of Defendant's wrongful conduct.

75. Defendant discriminated against Plaintiffs and all members of the Class by subjecting them to discriminatory hiring and promotion practices relating to the FSM position in violation of Title VII.

76. Defendant's conduct was intentional, deliberate, willful, malicious, reckless and conducted in callous disregard of the rights of Plaintiffs and all Class Members, entitling Plaintiffs and all Class Members to punitive damages.

77. By reason of the continuous nature of Defendant's discriminatory conduct, Plaintiffs and the Class are entitled to application of the continuing violations doctrine to all violations alleged herein.

78. As a result of Defendant's conduct alleged in this complaint, Plaintiffs and the Class suffered and continue to suffer harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities, other financial loss, and noneconomic damages.

79. By reason of Defendant's discrimination, Plaintiffs and the Class are entitled to all remedies available for violations of Title VII, including an award of punitive damages and attorney's fees.

SECOND CAUSE OF ACTION
Race and Sex Discrimination in Violation of the NYSHRL
(Individual and Class Claims)

80. Plaintiffs reallege and incorporate all allegations in all preceding paragraphs.

81. Plaintiffs bring this second cause of action on behalf of themselves and all others who are similarly situated.

82. Defendant discriminated against Plaintiffs and the Class in violation of the NYSHRL, by subjecting them to different treatment on the basis of their race and sex.

83. Plaintiffs and the Class suffered both disparate impact and disparate treatment as a result of Defendant's wrongful conduct.

84. Defendant discriminated against Plaintiffs and all members of the Class by subjecting them to discriminatory hiring and promotion practices relating to the FSM position in violation of the NYSHRL.

85. As a result of Defendant's conduct alleged in this complaint, Plaintiffs and the Class suffered and continue to suffer harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities, other financial loss, and noneconomic damages.

THIRD CAUSE OF ACTION
Race Discrimination in Violation of Section 1981
(Individual and Class Claims)

86. Plaintiffs reallege and incorporate all allegations in all preceding paragraphs.

87. By the acts and practices described above, including but not limited to discriminating against Plaintiffs and the class on the basis of race relating to the hiring and

promotion to the FSM position, Defendant impaired Plaintiffs' and the Class Members' right to make and enforce contracts in violation of Section 1981.

88. Plaintiffs and the class were subjected to discrimination because they are Black.

89. Defendants knew or should have known of the discrimination and failed to remedy it.

90. Defendants are liable as nongovernmental entities pursuant to Section 1981(c).

91. Defendants acted intentionally and with malice and/or reckless indifference to Plaintiffs' and the Class Members' statutory rights.

92. Defendant discriminated against Plaintiffs and all members of the Class by subjecting them to discriminatory hiring and promotion practices relating to the FSM position in violation of Section 1981.

93. Defendant's conduct was intentional, deliberate, willful, malicious, reckless and conducted in callous disregard of the rights of Plaintiffs and all Class Members, entitling Plaintiffs and all members of the Class to punitive damages.

94. By reason of the continuous nature of Defendant's discriminatory conduct, Plaintiffs and Class Members are entitled to application of the continuing violations doctrine to all violations alleged herein.

95. As a result of Defendant's conduct alleged in this complaint, Plaintiffs and the Class suffered and continue to suffer harm, including but not limited to lost earnings, lost benefits, lost future employment opportunities, other financial loss, and noneconomic damages.

96. By reason of Defendant's discrimination, Plaintiffs and the Class are entitled to all remedies available for violations of Section 1981, including an award of punitive damages and attorney's fees.

DEMAND FOR JURY TRIAL

97. Plaintiffs demand a trial by jury for all issues in this action.

PRAYER FOR RELIEF

Wherefore, Plaintiffs on behalf of themselves and the Class, respectfully requests the following relief:

A. Certify the case as a class action under Federal Rules of Civil Procedure Rule 23(b)(2) and/or (b)(3);

B. Declare and adjudge that Defendant's employment policies, practices and/or procedures challenged herein are illegal and in violation of the rights of Plaintiffs and the Class under Title VII, the NYSHRL and Section 1981;

C. Issue a permanent injunction against the Defendant and its partners, officers, trustees, owners, employees, agents, attorneys, successors, assigns, representatives and any and all persons acting in concert with them from engaging in any conduct violating the rights of Plaintiffs and the Class and order such injunctive relief as will prevent Defendant from continuing its discriminatory practices and protect others similarly situated;

D. Issue a permanent injunction against Defendant and its partners, officers, trustees, owners, employees, agents, attorneys, successors, assigns, representatives and any and all persons acting in concert with them from engaging in any further unlawful practices, policies, customs, usages, race and sex discrimination by the Defendant as set forth herein;

E. Order Defendant to initiate and implement programs that will: (i) provide equal employment opportunities for Black women and Black individuals in general; (ii) remedy the effects of the Defendant's past and present unlawful employment policies, practices and/or

procedures; and (iii) eliminate the continuing effects of the discriminatory practices described above;

F. Order Defendant to initiate and implement systems of assigning, training, hiring, evaluating, developing and promoting Black women and Black individuals in general in a nondiscriminatory manner;

G. Order Defendant to establish a task force on equality and fairness to determine the effectiveness of the programs described above, which would provide for: (i) monitoring, reporting, and retaining of jurisdiction to ensure equal employment opportunity; (ii) the assurance the injunctive relief is properly implemented; (iii) a quarterly report setting forth the information relevant to the determination of the effectiveness of the programs described above;

H. Order that this Court retain jurisdiction of this action until such time as the Court is satisfied that Defendant has remedied the practices complained of herein and is determined to be in full compliance with the law;

I. Award compensatory and punitive damages to Plaintiffs and the Class;

J. Award back pay, front pay, lost benefits, preferential rights to jobs and other damages for lost compensation and job benefits with pre-judgment and post-judgment interest suffered by Plaintiffs and the Class;

K. Order Defendant to make whole Plaintiffs and the Class by providing them with appropriate lost earnings and benefits, reinstatement opportunities, and other affirmative relief;

L. Awarding attorneys' fees to Plaintiffs and the Class;

M. Award any other appropriate equitable relief to Plaintiffs and the Class; and

N. Award any additional and further relief as this Court may deem just and proper.

Dated: Melville, New York
December 18, 2018

Respectfully submitted,

By: /s/ Troy L. Kessler
Troy L. Kessler

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