

**August 12, 2009**

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Fort Lauderdale Division

DAVE A. KELLY,

Plaintiff,

vs.

**Complaint — Jury Trial Demanded**

PRECISION METAL INDUSTRIES,  
INC., a Florida corporation,

**09-CV-61245-Dimitrouleas/Snow**

Defendant.

\_\_\_\_\_  
Plaintiff, Dave A. Kelly sues defendant, Precision Metal Industries, Inc.,  
and shows:

**Introduction**

1. This is an action for race discrimination and retaliation brought by a black spot welder whom the Precision Metal Industries, Inc. fired after a white co-worker initiated a physical confrontation with him.

**Jurisdiction and Venue**

2. This is an action arising under, inter alia, the Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act of 1992. This court has federal-question jurisdiction over plaintiff's federal claims pursuant to 28 U.S.C. § 1331. Because the state claims arise out of the



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same nucleus of operative facts as do the federal claims, this court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the Fort Lauderdale Division of the United States District Court for the Southern District of Florida because the claims arose in Broward County, Florida.

### **Parties**

4. Plaintiff, Dave A. Kelly ("Kelly"), is a black welder who at all times material was employed by defendant Precision Metal Industries, Inc..

5. Precision Metal Industries, Inc. ("Precision") is a Florida municipal corporation. It is an "employer" as defined by 42 U.S.C. § 2000e(b) and § 760.02(7), FLA. STAT. (2007).

### **Satisfaction of conditions precedent**

6. Plaintiff, on or about May 30, 2008 filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Florida Commission on Human Relations ("FCHR"), alleging race.

7. The EEOC on or about May 14, 2009 issued Kelly a Dismissal and Notice of Rights, entitling him to file a civil action pursuant to Title VII of the

Civil Rights Act of 1964, as amended, on his discrimination claim within 90 days of its receipt.

8. More than 180 days have elapsed since the filing of the Charge of Discrimination without the FCHR's making a finding adverse to Kelly or conciliating the matter.

### **The applicable statutes**

9. Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), provides in pertinent part at 42 U.S.C. § 2000e-2(a) as follows:

It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

10. The Florida Civil Rights Act ("FCRA") provides at § 760.10(1), as follows:

It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such

individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

**Count I: Race discrimination in violation of Title VII**

11. Plaintiff incorporates the allegations of ¶¶ 1-7 and 9 as if they were fully set forth in Count I.

12. Precision employed Kelly as a spot welder from June 2005 until October 2007.

13. Kelly was at all times material qualified for his job and up until April 2007 received good reviews.

14. In or about October 2007, however, a white employee, Mark Gagnon, and his wife, Sherry Gagnon, also white, another Precision employee, who both complained about the fast pace that Kelly maintained while working across from the considerably slower Tom Gagnon, began taunting Kelly:

a. Sherry Gagnon showed Kelly a hangman's noose;

b. Mark Gagnon called Kelly a "stupid mother fucker" as Kelly was attempting to assist another black employee who, just having returned from surgery, appeared to be feeling badly; and

c. Mark Gagnon then picked up a pipe and moved towards Kelly.

15. When Kelly moved towards Gagnon to take the pipe away, Gagnon dropped the pipe and left.

16. Although the white human resources manager had witnessed the incident, and although Kelly showed Gerald Flint, a vice president, the noose, Flint:

- a. denied that there was any noose displayed;
- b. told Kelly that Precision wished him, but not Gagnon, to go to anger management class;
- c. sent Kelly home early when he questioned why he, alone, was being selected for anger-management training;
- d. told him the following morning that Precision no longer needed his services.

17. Plaintiff's race was a substantial motivating cause of his termination by Precision.

18. The racially discriminatory conduct of Precision proximately, directly, and foreseeably caused plaintiff damages, including but not limited to lost wages and benefits, future pecuniary losses, emotional pain,

suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

19. Kelly has no plain, adequate, or complete remedy at law for the actions of Precision, which have caused, and continue to cause, irreparable harm.

20. Precision's conduct, as more particularly alleged above:

a. violated Kelly's federal statutory rights against race discrimination, damaged him and is continuing to cause him irreparable harm;

b. were the actions of Precision's upper management, and was in such wilful and reckless disregard of Kelly's federally protected rights against race discrimination as to entitle him to exemplary damages, to punish Precision and to teach it and others not to engage in similar conduct in the future.

21. Plaintiff is entitled to recover attorneys fees and litigation expenses under § 760.11(5), FLA. STAT. (2007), and 42 U.S.C. § 2000e-5(k).

WHEREFORE, Plaintiff, Dave A. Kelly prays that this court will grant judgment:

**One**, permanently enjoining defendant Precision, its officers, agents, servants, employees and all other persons in active concert or participation

with it from violating Title VII's prohibition against race discrimination as to him;

**Two**, awarding judgment against Precision for the back pay and benefits to which Kelly would have been entitled but for Precision's racially discriminatory termination of him;

**Three**, awarding judgment against Precision for compensatory damages;

**Four**, awarding judgment against Precision for punitive damages;

**Five**, awarding plaintiff his costs, including a reasonable attorney's fee; and

**Six**, granting such other and further relief as is just.

**Count II: Race discrimination in violation of FCRA**

22. Plaintiff incorporates the allegations of paragraphs 1-6, 8, 10, NS 12-19 as if they were fully set forth in Count II.

23. Precision's conduct, as more particularly alleged above:

a. violated Kelly's Florida statutory rights against race discrimination, damaged him and is continuing to cause him irreparable harm; and

b. was the action of Precision's upper management, and was in such wilful and reckless disregard of Kelly's Florida protected rights

against race discrimination as to entitle him to exemplary damages, to punish Precision and to teach it and others not to engage in similar conduct in the future.

WHEREFORE, Plaintiff, Dave A. Kelly prays that this court will grant judgment:

**One**, permanently enjoining defendants Precision, its officers, agents, servants, employees and all other persons in active concert or participation with it from violating the FCRA's prohibition against race discrimination as to him;

**Two**, awarding judgment against Precision for the back pay and benefits to which Kelly would have been entitled but for Precision's racially discriminatory termination of him;

**Three**, awarding judgment against Precision for compensatory damages;

**Four**, awarding judgment against Precision for punitive damages;

**Five**, awarding plaintiff his costs, including a reasonable attorney's fee; and

**Six**, granting such other and further relief as is just.

#### **Demand for Jury Trial**

Plaintiff, Dave A. Kelly demands trial by jury on all issues so triable.

Respectfully Submitted,



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Attorneys for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

August 12, 2009

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

I. (a) PLAINTIFFS

Dave A. Kelly,

DEFENDANTS

Precision Metal Industries, Inc., a Florida co

(b) County of Residence of First Listed Plaintiff Broward (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Broward (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Amlong & Amlong, P.A. 500 N.E 4th Street, Fort Lauderdale, FL 33301 Telephone 954 462 1983

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF 1 1 Incorporated or Principal Place of Business In This State PTF DEF 4 4 Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5 Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

09-61245 Dimitrova/Snow

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO (See instructions second page): JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 42 USC § 2000e, et. seq. LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE August 12, 2009

FOR OFFICE USE ONLY

AMOUNT 350 RECEIPT # 547156 IFP