

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

**Randall E. Dill,**

*Plaintiff,*

v.

**International Business Machines  
Corporation,**

*Defendant.*

Case No. 1:24-cv-000852-HYJ-PJG

Hon. Hala Y. Jarbou

Magistrate Judge: Phillip J. Green

**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S  
FIRST AMENDED ANSWER TO PLAINTIFF'S COMPLAINT  
AND AFFIRMATIVE DEFENSES**

Defendant International Business Machines Corporation ("IBM") hereby files its Answer and Affirmative Defenses to Plaintiff Randall E. Dill's Complaint, dated August 20, 2024. All responses are based solely on the knowledge and information of IBM. To the extent the headings in the Complaint contain factual allegations to which a response is required, they are denied. IBM does not, by noting or admitting the Complaint purports to quote or characterize particular documents, admit the truth of any assertion in the referenced document. IBM denies each and every allegation in the Complaint not expressly and specifically admitted herein. IBM further reserves all rights to amend and supplement its Answer as information becomes available, as may be necessary, or as permitted under the Federal and local rules.

## NATURE OF THE ACTION

1. This is a lawsuit to remedy unlawful employment conduct, namely discrimination based on race and sex. As alleged further herein, Mr. Dill was a model employee at IBM Consulting, most recently having completed a four-year assignment at the Department of Defense, where he received outstanding performance reviews. Then, in July 2023, out of the blue, IBM placed Mr. Dill on a pretextual, vague, and unmeasurable Performance Improvement Plan, offered him no support, and terminated him in October. At the same time, corporate leadership was under pressure from the CEO and financially incentivized to hire people based on their skin color and sex. Mr. Dill, not being in the current preferred demographic, was terminated so IBM could pursue its illegal racial quotas.

**ANSWER: IBM admits that Plaintiff completed an assignment for the Department of Defense, was placed on a Performance Improvement Plan in July 2023, and was terminated in October 2023. IBM denies the remaining allegations in Paragraph 1.**

2. Title VII Civil Rights Act of 1964 prohibits employment discrimination on the basis of race or sex in the United States.

**ANSWER: The allegations in Paragraph 2 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM denies the allegations in Paragraph 2.**

3. Defendant International Business Machines Corporation (“IBM”) engages in intentional discrimination based on race and sex through the guise of “Diversity & Inclusion,” and it pushes its business divisions and subsidiaries, including IBM Consulting, to do the same.

**ANSWER: IBM denies the allegations in Paragraph 3.**

4. As part of its Diversity & Inclusion program, IBM reports demographic statistics regarding its employees in its Annual Reports to investors, its annual ESG Reports, and its Form 10-Ks filed with the United States Securities and Exchange Commission (through incorporation by reference).

**ANSWER: IBM admits that certain Annual Reports, Impact Reports, and Form 10-Ks have referenced non-exhaustive information regarding certain demographic traits of its employees. IBM otherwise denies the allegations in Paragraph 4.**

5. IBM incentivizes its executives to engage in impermissible race and sex discrimination by having “executive compensation metrics that include a diversity modifier to reinforce our focus and continued accountability for improving the diverse representation of our workforce.” Int’l Bus. Mach. Corp., 2022 Annual Report 16 (2023) (available at <https://perma.cc/5PX2-9L2W>). In other words, IBM conditions executive compensation on how much the company discriminates in hiring.

**ANSWER: IBM denies the allegations in Paragraph 5.**

6. In this case, IBM engaged in sex- and race-based employment discrimination against Mr. Dill in violation of the Civil Rights Act of 1866 and Title VII of the Civil Rights Act of 1964.

**ANSWER: The allegations in Paragraph 6 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM denies the allegations in Paragraph 6.**

7. Mr. Dill brings this action to vindicate his rights under these statutes and obtain legal and equitable redress for IBM's unlawful discrimination.

**ANSWER:** The allegations in Paragraph 7 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM denies the allegations in Paragraph 7.

#### **THE PARTIES**

8. The Plaintiff, Randall E. Dill, is a citizen and resident of the State of Michigan. He resides in Muskegon, Michigan. He is a Caucasian male.

**ANSWER:** IBM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies the allegations.

9. Defendant IBM is a Delaware Corporation with its principal place of business in Armonk, New York.

**ANSWER:** IBM admits the allegations in Paragraph 9.

10. IBM has been registered as a foreign corporation in the State of Michigan since December 1, 1933, and its current identification number is 800996961.

**ANSWER:** IBM admits the allegations in Paragraph 10.

#### **JURISDICTION AND VENUE**

11. This Court has subject-matter jurisdiction under 28 U.S.C. §1331 because the federal claims arise under the Constitution and laws of the United States.

**ANSWER:** The allegations in Paragraph 11 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM does not contest that this Court has jurisdiction at this time.

12. This Court has personal jurisdiction over Defendant IBM because IBM does substantial business in Michigan, and Mr. Dill's claims relate to IBM's employment of him and supervision of his activities in Michigan.

**ANSWER:** The allegations in Paragraph 12 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM does not contest that this Court has jurisdiction at this time.

13. As stated above, IBM is a registered foreign corporation in the State of Michigan. IBM's registered agent is CT Corporation System, located in Plymouth, MI. They can accept service for IBM at 40600 Ann Arbor Rd E, Suite 201, Plymouth, Michigan 48170.

**ANSWER:** IBM admits the allegations in Paragraph 13.

14. As a foreign corporation possessing a Certificate of Authority and authorized to transact business in Michigan, IBM "is subject to the same duties, restrictions, penalties, and liabilities of a similar domestic corporation." MICH. COMP. LAWS § 450.2002(1).

**ANSWER:** IBM admits that it is a foreign corporation possessing a Certificate of Authority and authorized to transact business in Michigan. The remaining allegations in Paragraph 14 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM denies the allegations in Paragraph 14.

15. IBM employs many Michiganders and maintains offices in Ann Arbor, Benton Harbor, the Detroit area, Grand Rapids, Kalamazoo, Lansing, Midland, Southfield, and Troy.

**ANSWER: IBM admits that it has offices in Ann Arbor, Benton Harbor, the Detroit area, Grand Rapids, Kalamazoo, Lansing, Midland, Southfield, and Troy, and that IBM has employees in Michigan. To the extent any further response is required, IBM denies the allegations in Paragraph 15.**

16. Venue is proper in this District because it is where the alleged violation occurred and the “judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice.” 42 U.S.C. § 2000e-5(f)(3).

**ANSWER: The allegations in Paragraph 16 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM does not contest that venue is proper in this District at this time.**

17. On July 11, 2024, Plaintiff filed a Charge of Discrimination against each IBM with the Equal Employment Opportunity Commission (EEOC), complaining of acts of discrimination alleged herein. This was assigned EEOC Charge Number 4712024-05834. A true copy of the Charge of Discrimination and the filing documents is attached as **Exhibit A** to the Complaint.

**ANSWER: IBM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies the allegations.**

18. On July 19, 2024, the EEOC issued the Plaintiff a Notice of Right to Sue for his Charge. A true copy of the Right to Sue Letter is attached as **Exhibit B** to the Complaint.

**ANSWER:** IBM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies the allegations.

19. Plaintiff has fully exhausted all administrative remedies and prerequisites for the commencement of this action.

**ANSWER:** The allegations in Paragraph 19 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM denies the allegations in Paragraph 19.

20. An actual and justiciable controversy exists between Plaintiff and Defendant.

**ANSWER:** The allegations in Paragraph 20 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM denies the allegations in Paragraph 20.

## **FACTS**

### **A. Mr. Dill's Outstanding Job History and Performance**

21. Mr. Dill began his employment with IBM in October 2016.

**ANSWER:** IBM admits the allegations in Paragraph 21.

22. Mr. Dill was a Senior Managing Consultant for IBM Consulting, a division within IBM, and worked remotely from his home in Muskegon, Michigan.

**ANSWER:** IBM admits the allegations in Paragraph 22.

23. Mr. Dill's job was to support existing IBM clients on long-term projects.

**ANSWER:** IBM admits that one aspect of Plaintiff's job was to support existing IBM clients. IBM denies any further allegations in Paragraph 23.

24. When he was assigned to a project that was his primary client project for many months or even years.

**ANSWER:** IBM admits that Plaintiff sometimes performed long-term projects for IBM clients. IBM denies any further allegations in Paragraph 24.

25. When his support of that client was done, he would go back into a pool of people awaiting a new long-term assignment, or what was internally called “on the bench.”

**ANSWER:** IBM admits that internally, certain employees colloquially referred to awaiting assignments as being “on the bench.” IBM denies any remaining allegations in Paragraph 25.

26. At no point was Mr. Dill’s job to develop or sign new clients or client leads; all of his work was for *existing* IBM clients.

**ANSWER:** IBM denies the allegations in Paragraph 26.

27. During his tenure, Mr. Dill consistently received high scores on IBM Consulting’s internal employee performance metric, the Net Promoter Score.

**ANSWER:** IBM denies the allegations in Paragraph 27.

28. The Net Promoter Score is mainly derived from client feedback and is a satisfaction measurement based on asking clients how likely they are, on a scale of 1–10, to recommend the IBM employee servicing the contract.

**ANSWER:** IBM denies the allegations in Paragraph 28.

29. The Net Promoter Score is the primary performance metric for IBM Consulting. It is the primary metric for measuring how work at a client site is proceeding. The survey is



initiated by IBM, which goes directly to the client, and the employee being reviewed is not involved.

**ANSWER: IBM denies the allegations in Paragraph 29.**

30. Mr. Dill's leadership discussed the Net Promoter Score routinely at monthly all-hands meetings, where they emphasized the importance of this metric and where they would read quotes from specific reviews to highlight good work.

**ANSWER: IBM admits that Net Promoter Scores are sometimes discussed at employee meetings. IBM denies the remaining allegations in Paragraph 30.**

31. IBM considers a Net Promoter Score of 8/10 as a sign of good work and client satisfaction with the IBM employee.

**ANSWER: IBM denies the allegations in Paragraph 31.**

32. During his last four years with IBM, Mr. Dill worked on a contract for TACOM, a component of the United States Army.

**ANSWER: IBM admits that Plaintiff performed work for TACOM, a component of the United States Army, for a period of his employment.**

33. Mr. Dill received two Net Promoter Scores during those four years. Each time TACOM reviewed Mr. Dill's work, he received a 9/10 Net Promoter Score, among the best scores within his segment of IBM Consulting.

**ANSWER: IBM denies the allegations in Paragraph 33.**

34. Mr. Dill's scores were, on multiple occasions, referenced, quoted, and applauded during monthly all-hands calls by the Division President.

**ANSWER: IBM denies the allegations in Paragraph 34.**

35. In fact, Mr. Dill was recognized for his outstanding work in an all-hands meeting and had verbatims read from his score in June 2022 and again in early 2023.

**ANSWER: IBM denies the allegations in Paragraph 35.**

**B. Mr. Dill's Termination was not Performance Related**

36. In July 2023, with no notice, prior performance complaints, or any warning, IBM—acting through Jay Zook (Mr. Dill's supervisor)—placed Mr. Dill on a Performance Improvement Plan ("PIP").

**ANSWER: IBM admits that Jay Zook was Plaintiff's supervisor and that Plaintiff was placed on a Performance Improvement Plan in July 2023. IBM denies the remaining allegations in Paragraph 36.**

37. Mr. Zook's explanation for placing him on the PIP was his "low utilization" rate and that he was "not bringing in the work."

**ANSWER: IBM admits that one reason Plaintiff was placed on the Performance Improvement Plan was his low utilization. IBM denies the remaining allegations in Paragraph 37.**

38. Before the PIP, IBM never required or made any notice of expectation to Mr. Dill that his job required soliciting or developing new clients. In fact, neither of these activities was ever within his job description or control. The position description of Mr. Dill's role at IBM as a Senior Management Consultant is attached as **Exhibit C**.

**ANSWER:** IBM admits that Exhibit C reflects the job description of a Senior Managing Consultant at Simpler. IBM denies any inaccurate, incomplete, or out of context characterization of Exhibit C and otherwise denies the allegations in Paragraph 38.

39. The PIP was unrelated to Mr. Dill's position description, performance review metrics, and the job functions he had been performing for nearly seven years. A true copy of the PIP is attached as **Exhibit D**.

**ANSWER:** IBM admits that Exhibit D reflects the PIP Plaintiff received in July 2023. IBM denies any inaccurate, incomplete, or out of context characterization of Exhibit D and otherwise denies the allegations in Paragraph 39.

40. IBM's proffered reasoning for placing him on the PIP is that he was not being fully utilized and had not been placed with a client.

**ANSWER:** IBM admits that one reason Plaintiff was placed on the Performance Improvement Plan was his low utilization. IBM otherwise denies the remaining allegations in Paragraph 40.

41. Both of these factors were out of his control, though. In fact, at the time he was terminated, over half of his division was "on the bench" or awaiting a long-term assignment due to a lack of client work for the division.

**ANSWER:** IBM denies the allegations in Paragraph 41.

42. Another Reason IBM gave for placing him on the PIP was "Team member skills not meeting Client demand." *See* Ex. D.

**ANSWER:** IBM admits that Exhibit D reflects that one of the reasons Plaintiff was placed on a PIP is that Plaintiff's "skills [were] not meeting Client demand."

43. This reason is belied by his Net Promoter Scores and the fact that the testimonials from his reviews were read at all-hands meetings.

**ANSWER:** IBM denies the allegations in Paragraph 43.

44. As to the goals of the PIP, the first goal was "Identify the necessary self-improvement steps or actions to better position you to deliver at full utilization." *Id.*

**ANSWER:** IBM admits that Exhibit D reflects the first "Aim" listed in the PIP was "Identify the necessary self-improvement steps or actions to better position you to deliver at full utilization."

45. This goal is entirely subjective and lacks any metric for evaluation.

**ANSWER:** IBM denies that allegations in Paragraph 45.

46. The only tangible metric in the PIP, "Full utilization by November 1," was an outcome that was entirely out of Mr. Dill's control as he possessed no ability to assign himself to projects or client matters. *Id.*

**ANSWER:** IBM admits that Exhibit D reflects that an "Aim" of the PIP was "Full utilization (18 days) by November 1, 2023." IBM otherwise denies the allegations in Paragraph 46.

47. Similarly, the Plan called for Mr. Dill to "Feed yourself – develop and sale new business." *Id.*

**ANSWER:** IBM admits that Exhibit D includes “Feed yourself – develop and sale new business” as one bullet listed under the “Recommended Action Plan.”

48. This, too, was a completely new workstream as Mr. Dill’s job was never sales-related, and he had always worked with existing IBM clients.

**ANSWER:** IBM denies the allegations in Paragraph 48.

49. Despite being caught off guard by being placed on the PIP, due to his history of strong performance reviews, Mr. Dill made a good-faith effort to meet its terms and criteria and stay with IBM by following every piece of the action plan that was within his control.

**ANSWER:** IBM denies the allegations in Paragraph 49.

50. For instance, he looked for and applied to open seats at IBM, including positions that were outside his area of expertise. He also wrote a marketing plan for himself to meet the “internal marketing” action plans.

**ANSWER:** IBM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and therefore denies the allegations.

51. Mr. Dill even worked to leverage personal and professional relationships to try and secure a new client for IBM. He had conversations with his supervisor, Mr. Zook, who was fully aware of the situation.

**ANSWER:** IBM admits that Plaintiff had conversations with his supervisor during his employment. IBM lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 51 and therefore denies those allegations.

52. In fact, Mr. Dill requested business development resources from within IBM to help him turn this lead into an actual client—a modest request, considering sales and client development had never been a part of his work.

**ANSWER: IBM denies the allegations in Paragraph 52.**

53. In response, IBM supplied one person, Lee Alves, to assist. Mr. Alves spoke only once to Mr. Dill before Mr. Dill could no longer get ahold of Mr. Alves, despite several emails and requests for further assistance.

**ANSWER: IBM admits that Plaintiff spoke with Mr. Alves during his employment. IBM otherwise denies the remaining allegations in Paragraph 53.**

54. Then, approximately two weeks prior to his termination, Mr. Zook told Mr. Dill that IBM would not provide him with any more resources to secure the prospective client. Mr. Zook told Mr. Dill, “You are on your own.”

**ANSWER: IBM denies the allegations in Paragraph 54.**

55. As the end date of the PIP approached, Mr. Dill began to realize that the PIP was never about being successful and improving his performance in order to maintain his job with IBM. Rather, the die was cast well beforehand and IBM put Mr. Dill on the PIP as a pretext to force him out of the company due to IBM’s stated quotas related to sex and race.

**ANSWER: IBM denies the allegations in Paragraph 55.**

56. On October 31, 2023, IBM terminated Mr. Dill’s employment.

**ANSWER: IBM admits the allegations in Paragraph 56.**

57. After he was terminated, Mr. Dill requested meetings with IBM's Human Resources department to understand why he was terminated and what recourse he might have. His requests for meetings were denied or left unanswered.

**ANSWER:** After reasonable diligence, IBM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and therefore denies those allegations.

58. On July 11, 2024, Mr. Dill timely filed his Charge of Discrimination with the EEOC. *See* Ex. A.

**ANSWER:** IBM admits the allegations in Paragraph 58.

### **C. IBM's Facially Discriminatory Policies**

59. Since at least 2022, IBM has engaged in sex- and race-balancing in its employment practices.

**ANSWER:** IBM denies the allegations in Paragraph 59.

60. IBM has documented its goals and progress in implementing this race and sex-based balancing initiative in corporate documents. *See* Int'l Bus. Mach. Corp., 2024 Notice of Annual Meeting and Proxy Statement 36 (2024) (available at <https://perma.cc/FE9T-6BJ9>); Int'l Bus. Mach. Corp., 2023 Annual Report 16 (2024) available at <https://perma.cc/Q7KC-PEK7>); Int'l Bus. Mach. Corp., 2022 Annual Report 16 (2023) (available at <https://perma.cc/5PX2-9L2W>).

**ANSWER:** IBM admits that certain of IBM's Annual Reports referenced in Paragraph 60 references information regarding IBM's aspirational workplace diversity and inclusion goals. IBM otherwise denies the allegations in Paragraph 60.

61. Statements by high-ranking corporate officials, including Chief Executive Officer Arvid Krishna, have reinforced these goals.

**ANSWER: IBM denies the allegations in Paragraph 61.**

62. On December 11, 2023, an undercover video posted to the social media platform X showed IBM's Chief Executive Officer and Board Chairman, Arvind Krishna, discussing its discriminatory policies. James O'Keefe (@JamesOKeefeIII), X (Dec. 11, 2023, 6:47 PM), <https://perma.cc/2HLR-X5VT>.

**ANSWER: IBM admits that Plaintiff refers to a post on a third-party social media website made by a third party that purports to include a video containing excerpts with footage of IBM Chief Executive Officer and Board Chairman Arvind Krishna. IBM denies that the video includes discussion of discriminatory policies. IBM lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 62 and therefore denies those allegations.**

63. The video portrays a corporate town hall meeting from 2021, during which Krishna responded to questions, including a question about IBM's "diversity, equity, and inclusion" activity and its efforts to promote and recruit members of employees based on their skin color and sex.

**ANSWER: IBM admits that Plaintiff refers to a video containing selected excerpts of a corporate town hall meeting in 2021 which included topics concerning "diversity, equity, and inclusion." IBM otherwise denies the allegations in Paragraph 63.**



64. At one point, Krishna is asked, “IBM highlights their progress in promoting and recruiting underrepresented minorities in executive roles and holding executives accountable for DE&I goals. At Red Hat, executive representation is dismal, and there is no accountability for DEI work. *Why do you not hold Paul to the same standards for diverse staffing and leadership as IBM does?*” (emphasis added) *Id.* at 7:11–:31.

**ANSWER: IBM admits the allegations in Paragraph 64.**

65. Krishna responded by stating that he holds Paul (the CEO of Red Hat, a company that had recently been acquired by IBM) to the exact same standards as he holds all other IBM executives. Those standards, he said, are that “all executives in the company have to move forward by 1% on both underrepresented minorities ... and gender. You’ve got to move both forward by a percentage.” *Id.* at 7:49–8:06.

**ANSWER: IBM admits that the referenced video appears to reflect Mr. Krishna stating “all executives in the company have to move forward by 1% on both underrepresented minorities” and “and gender. You’ve got to move both forward by a percentage.” IBM otherwise denies the allegations in Paragraph 65.**

66. He then explained that if executives do that, “That leads to a plus on [their] bonus. By the way, if you lose, you lose part of your bonus.” *Id.* at 8:09–:15.

**ANSWER: IBM admits that the referenced video appears to reflect Mr. Krishna stating “That leads to a plus on your bonus. By the way, if you lose, you lose part of your bonus.” IBM otherwise denies the allegations in Paragraph 66.**

67. Krishna continued, “Paul and I have been working together to say, ‘Okay, how do we apply those deeper into the organization?’” *Id.* at 8:19–:22.

**ANSWER:** IBM admits that the referenced video appears to reflect Mr. Krishna stating “Paul and I have been working together to say, ‘Okay, how do we apply those deeper into the organization?’” IBM otherwise denies the allegations in Paragraph 67.

68. Krishna admitted that IBM’s recruitment of women was at 41% but that it intends to “get to the representational demographics of the underlying populations.” He then stated, “I am not trying to finesse this, so for blacks, we should try to get towards 13 point something percent. On Hispanics, you got to get into the mid-teens. On gender, okay, we are somewhere in the mid 30s, I think, for all of IBM. But think, if I know this right, the representational is 50.” *Id.* at 8:47–9:13.

**ANSWER:** IBM admits that the referenced video appears to reflect Mr. Krishna stating “get to the representational demographics of the underlying populations” and “I am not trying to finesse this, so for blacks, we should try to get towards 13 point something percent. On Hispanics, you got to get into the mid-teens. On gender, okay, we are somewhere in the mid 30s, I think, for all of IBM. But think, if I know this right, the representational is 50.” IBM otherwise denies the allegations in Paragraph 68.

69. Paul Cormier, Red Hat Chairman, then added on to give additional “Red Hat flavor,” saying, “We hold the leadership at Red Hat accountable for [DEI]. I mean, I’ll be very candid, without an exception for privacy, I could name multiple leaders over the last year plus

that were held accountable to the point that they're no longer here at Red Hat because they weren't willing to live up to the DE&I standards that we set." *Id.* at 9:48, 10:12–:30.

**ANSWER:** IBM admits that the referenced video appears to reflect Mr. Cormier stating “Red Hat flavor” and “[w]e hold the leadership at Red Hat accountable for that. I mean, I’ll be very candid, without an exception for privacy, I could name multiple leaders over the last year plus that were held accountable to the point that they’re no longer here at Red Hat because they weren’t willing to live up to the DE&I standards that we set.” IBM otherwise denies the allegations in Paragraph 69.

70. In 2021, IBM leadership admitted to reducing the pay and even firing executives who did not do enough to advance gender and racial quotas.

**ANSWER:** IBM denies the allegations in Paragraph 70.

71. Conversely, executives who did engage in race- and sex-based hiring were financially rewarded.

**ANSWER:** IBM denies the allegations in Paragraph 71.

72. On information and belief, after these 2021 comments were made, the culture and pressure to advance race- and sex-based quotas only increased as the corporate leadership’s efforts to “apply those deeper into the organization” ramped up.

**ANSWER:** IBM denies the allegations in Paragraph 72.

73. On information and belief, in order to meet the quotas and still stay under the “headcount” of maximum employees, some people needed to be terminated from IBM.

**ANSWER:** IBM denies the allegations in Paragraph 73.

74. However, IBM did not want the appearance of layoffs in 2021 and 2022.

**ANSWER:** IBM denies the allegations in Paragraph 74.

75. To deal with that problem, the Human Resources department instructed managers to use PIPs and “Resource Actions” to quickly and cheaply separate people from IBM.

**ANSWER:** IBM denies the allegations in Paragraph 75.

76. At the time IBM placed Mr. Dill on the PIP, IBM’s corporate policies incentivized executives to hire and promote individuals with favored race and sex traits, which did not include whites, Asians, or men. For Mr. Dill, being a white man was a double whammy.

**ANSWER:** IBM denies the allegations in Paragraph 76.

77. Thus, the quota system is tied to bonus compensation in such a way that it incentivized impermissible racial discrimination and disincentivizes refusal to engage in such discrimination.

**ANSWER:** IBM denies the allegations in Paragraph 77.

78. Specifically, Mr. Dill’s superiors, Mike Chamberlain (President of Simpler, the unit of IBM Consulting in which Mr. Dill worked), Kevin Henning (Mr. Zook’s supervisor), and Mr. Zook all stood to financially benefit by removing Mr. Dill from IBM’s employment.

**ANSWER:** IBM denies the allegations in Paragraph 78.

## **DAMAGES**

79. As a result of his termination, Mr. Dill has suffered damages including, but not limited to, lost wages, embarrassment, economic and financial damages, and considerable stress and emotional damages.

**ANSWER:** The allegations in Paragraph 79 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM denies the allegations in Paragraph 79.

80. Mr. Dill was unemployed for eight months and was only able to find employment as of June 2024 for a lower wage than what he was earning and outside of his field of expertise.

**ANSWER:** IBM lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80 and therefore denies the allegations.

81. Mr. Dill has suffered reputational harm and embarrassment for being labeled a poor performer when he was terminated because of his skin color and for being a man.

**ANSWER:** IBM denies the allegations in Paragraph 81.

## **CLAIMS FOR RELIEF**

### **Count I**

#### **Racial Discrimination in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.***

82. The Plaintiff repeats and realleges each of the prior allegations.

**ANSWER:** In response to Paragraph 82, IBM incorporates each of its responses to the allegations in the paragraphs above and below as if fully set forth herein.

83. Title VII makes it illegal for an employer “to fail or refuse to hire or 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.” 42 U.S.C. §2000e-2(a)(1).

**ANSWER: IBM admits that 42 U.S.C. § 2000e-2(a)(1) states that it “shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge 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.”.**

84. By instituting bonus incentives tied to racially preferential hiring and promotions quotas, IBM has established a discriminatory race-based employment policy.

**ANSWER: IBM denies the allegations in Paragraph 84.**

85. Because of these quotas, Mr. Dill’s superiors were motivated to find ways to reduce the number of employees in the non-preferred race category.

**ANSWER: IBM denies the allegations in Paragraph 85.**

86. The adverse action on Mr. Dill’s employment directly results from these racially discriminatory quotas.

**ANSWER: IBM denies the allegations in Paragraph 86.**

87. As a result of Defendant IBM’s discriminatory conduct, Plaintiff suffered significant damages, including lost wages, loss of professional and career development opportunities, and significant non-economic injuries, including humiliation, embarrassment, and loss of reputation.

**ANSWER:** IBM denies the allegations in Paragraph 87.

88. IBM's above-described conduct and repeated acts of discrimination targeting Plaintiff for termination on the basis of his race violates Title VII.

**ANSWER:** IBM denies the allegations in Paragraph 88.

89. The violations articulated in this complaint were done with malice and/or reckless indifference to Plaintiff's protected rights and warrant an award of punitive damages.

**ANSWER:** IBM denies the allegations in Paragraph 89.

90. As a direct and proximate result of Defendant's violation of Title VII, Plaintiff has suffered the damages and losses set forth herein.

**ANSWER:** IBM denies the allegations in Paragraph 90.

**Count II**  
**Sex Discrimination in Violation of Title VII of the Civil Rights Act of 1964,**  
**42 U.S.C. § 2000e, et seq.**

91. Plaintiff repeats and realleges each of the prior allegations.

**ANSWER:** In response to paragraph 91, IBM incorporates each of its responses to the allegations in the paragraphs above and below as if fully set forth herein.

92. Title VII makes it illegal for an employer "to fail or refuse to hire or 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." 42 U.S.C. §2000e-2(a)(1).

**ANSWER:** The allegations in Paragraph 92 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM states that the

**language in 42 U.S.C. § 2000e-2(a)(1) speaks for itself, and denies the allegations in this paragraph as untrue to the extent they are inconsistent with that language.**

93. By instituting bonus incentives tied to sex-based preferential hiring and promotions quotas, IBM has established a discriminatory employment policy based on sex.

**ANSWER: IBM denies the allegations in Paragraph 93.**

94. Because of these quotas, Mr. Dill's superiors were motivated to find ways to reduce the number of employees in the non-preferred sex category.

**ANSWER: IBM denies the allegations in Paragraph 94.**

95. The adverse action on Mr. Dill's employment is the direct result of these discriminatory quotas.

**ANSWER: IBM denies the allegations in Paragraph 95.**

96. As a result of Defendant IBM's discriminatory conduct, Plaintiff suffered significant damages, including lost wages, loss of professional and career development opportunities, and significant non-economic injuries, including humiliation, embarrassment, and loss of reputation.

**ANSWER: IBM denies the allegations in Paragraph 96.**

97. IBM's above-described conduct and repeated acts of discrimination targeting Plaintiff for termination on the basis of his race violates Title VII.

**ANSWER: IBM denies the allegations in Paragraph 97.**

98. The violations articulated in this complaint were done with malice and/or reckless indifference to Plaintiff's protected rights and warrant an award of punitive damages.



**ANSWER:** IBM denies the allegations in Paragraph 98.

99. As a direct and proximate result of Defendant's violation of Title VII, Plaintiff has suffered the damages and losses set forth herein.

**ANSWER:** IBM denies the allegations in Paragraph 99.

**Count III**  
**Violation of the Civil Rights Act of 1866, 42 U.S.C. §1981**

100. Plaintiff repeats and realleges each of the prior allegations.

**ANSWER:** In response to Paragraph 100, IBM incorporates each of its responses to the allegations in the paragraphs above and below as if fully set forth herein.

101. 42 U.S.C. §1981(a) prohibits race-based consideration in making and enforcing contracts, including employment contracts.

**ANSWER:** IBM admits that 42 U.S.C. § 1981(a) provides that "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

102. Section 1981 covers private parties like IBM. The Act applies to governmental and "nongovernmental" actors, §1981(c), and provides a cause of action for public or private discrimination based on race. *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 459-60

(1975). Section 1981 authorizes “both equitable and legal relief,” including “damages.” *Id.* at 460.

**ANSWER:** IBM admits that 42 U.S.C. § 1981(c) states that “The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.” IBM further admits that parties may seek both equitable and legal relief for violations of 42 U.S.C. § 1981.

103. Moreover, an employer cannot “discriminate against some employees on the basis of race,” like white men, “merely because he favorably treats other members” of that race, like white women. *Connecticut v. Teal*, 457 U.S. 440, 455 (1982). “So long as the plaintiff’s [race] was one but-for cause” of his exclusion, “that is enough.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 656 (2020); accord *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 340–41 (2020).

**ANSWER:** The allegations in Paragraph 103 contain legal conclusions to which no response is required. To the extent a response is deemed required, IBM admits that *Connecticut v. Teal* contains language stating “It is clear that Congress never intended to give an employer license to discriminate against some employees on the basis of race or sex merely because he favorably treats other members of the employees' group.” 457 U.S. 440, 455 (1982). IBM further admits that *Bostock v. Clayton Cnty.* contains language stating: “So long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law.” IBM denies the allegations in this paragraph as untrue to the extent they are inconsistent with that language.

104. In its quest to achieve its DEI goals, IBM intentionally discriminated against Mr. Dill based on his race. Mr. Dill's race (white) was a "but for" reason or determinative factor in IBM's decision to terminate Plaintiff.

**ANSWER:** IBM denies the allegations in Paragraph 104.

105. The statements by IBM's CEO and other senior corporate officers demonstrate that IBM is motivated by race- and sex-based considerations, showing its intent to discriminate on such bases.

**ANSWER:** IBM denies the allegations in Paragraph 105.

106. IBM intentionally discriminated against Mr. Dill because of race. But for IBM's racial discrimination against the Plaintiff, he would not have been terminated.

**ANSWER:** IBM denies the allegations in Paragraph 106.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Mr. Dill respectfully requests that this Court enter judgment in his favor and against IBM with respect to each separate Count, and provide the following relief:

- A. An order for such equitable relief, including back pay, as will make Randall E. Dill whole for the Defendant's conduct; compensatory damages; punitive damages; and prejudgment and post-judgment interest.
- B. Awarding compensatory damages to Mr. Dill for past pain and suffering, emotional upset, mental anguish, humiliation, and loss of life's pleasures, which he has suffered as a result of Defendant's improper conduct.

- C. An award of other such damages as appropriate for violations of Title VII and 42 U.S.C. §1981.
- D. An order for damages under 42 U.S.C. §1986.
- E. Declaratory Judgment that IBM self-proclaimed DE&I policies violate the Civil Rights Act of 1866 and the Civil Rights Act of 1964.
- F. Reasonable costs and expenses of this action, including attorneys' fees, under 42 U.S.C. §1988 and any other applicable laws.
- G. Such other relief as the Court deems just, proper, or equitable, including other equitable and injunctive relief providing restitution for past violations and preventing future injury and harm.

**ANSWER:** The “Wherefore” clause and other clauses or sentences in subparagraphs A through G of the Prayer for Relief set forth legal contentions and conclusions and Plaintiff’s characterizations of the relief sought in this action, to which no response is required. To the extent a response is deemed required, IBM denies any liability, in totality or for any amount, to Plaintiff. IBM further denies that Plaintiff is entitled to any relief in this action. All remaining allegations are denied.

#### **JURY DEMAND**

The plaintiff herein demands trial by jury on all Counts so triable.

**ANSWER:** IBM admits that Plaintiff purports to demand a jury trial.

### **AFFIRMATIVE DEFENSES**

In further response to Plaintiff's Complaint, subject to discovery, based on information and belief, without assuming the burden of proof on any issue for which Plaintiff bears the burden of proof, and without waiver of any rights, privileges, or defenses, IBM asserts the following additional affirmative defenses:

1. Plaintiff has failed to allege facts sufficient to state a claim on which relief can be granted against IBM.

2. Plaintiff is not entitled to any relief because IBM has not engaged in any conduct that is a violation of any law or regulation.

3. Plaintiff's claims are barred, in whole or in part, because at all relevant times, Plaintiff was an at-will employee of IBM and the employment actions about which Plaintiff complains were taken for legitimate, non-discriminatory reasons.

4. Plaintiff's claims are barred because Plaintiff was not treated less well or materially differently in any respect from any other similarly-situated IBM employee.

5. Plaintiff's claims are barred because neither Plaintiff nor the decisionmaker(s) in his termination were part of the class eligible to receive any compensation that could be impacted by the purported "diversity modifier."

6. Plaintiff's claims are barred because IBM acted at all times reasonably, in good faith, and in compliance with applicable federal and state laws and regulations, and did not directly or indirectly perform or fail to perform any act in violation of Plaintiff's rights.

7. Plaintiff's alleged injuries and damages, if any, were directly and proximately caused by the acts, omissions, and/or negligence of Plaintiff and/or other persons and/or entities other than IBM. IBM has no knowledge of and/or control over Plaintiff and/or those other persons and/or entities, and the conduct of such persons and/or entities constitutes an intervening and superseding cause of the alleged injuries and damages set forth in Plaintiff's complaint.

8. Plaintiff's complaint is barred, in whole or in part, due to the discovery of after-acquired evidence.

9. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

10. Plaintiff's complaint is barred, in whole or in part, by the doctrine of unclean hands.

11. Plaintiff's complaint is barred, in whole or in part, by the doctrine of waiver.

12. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to exercise reasonable diligence in seeking employment since his discharge from IBM and Plaintiff has therefore failed to mitigate his damages, if any.

13. All of Plaintiff's alleged losses or damages are barred, in whole or in part, by his failure to mitigate his alleged damages or losses. Moreover, any such damages must be offset by the amount of any benefits Plaintiff has already received as provided by law.

14. Plaintiff's claims are time-barred to the extent the alleged conduct occurred outside the applicable limitations period.

15. Plaintiff's claims for injunctive relief are barred, in whole or in part, because Plaintiff cannot show a risk of any irreparable harm.

16. Plaintiff's claims for punitive damages are barred because Plaintiff has no factual, statutory, or constitutional right or entitlement to recover punitive damages.

17. IBM expressly and specifically reserves the right to amend this Answer to add, delete, and/or modify defenses based upon legal theories, facts, and circumstances that may or will be divulged through discovery, trial, and/or further legal analysis of Plaintiff's positions in this litigation, including without limitation any equitable defense.

WHEREFORE, IBM respectfully requests that the relief sought by Plaintiff be denied in its entirety, that the Complaint be dismissed with prejudice, and that IBM be awarded its costs, disbursements and reasonable attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: April 30, 2025

Respectfully submitted,

/s/ Kyle M. Asher  
Kyle M. Asher (P80359)  
Jennifer L. Beidel (P86645)  
DYKEMA GOSSETT PLLC  
201 Townsend Street  
Suite 900  
Lansing, MI 48933  
Phone: 517-374-9151  
Email: kasher@dykema.com  
jbeidel@dykema.com

Michael E. DeLarco  
HOGAN LOVELLS US LLP  
390 Madison Avenue  
New York, NY 10017  
Phone: 212-918-3265  
Email: michael.delarco@hoganlovells.com

David M. Foster  
HOGAN LOVELLS US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, D.C. 20004  
Phone: 202-637-5573  
Email: david.foster@hoganlovells.com

Michelle Roberts Gonzales  
HOGAN LOVELLS US LLP  
1999 Avenue of the Stars  
Suite 1400  
Los Angeles, CA 90067  
Phone: 310-785-4670  
Email: michelle.roberts.gonzales@hoganlove-  
lls.com

*Counsel for Defendant International Business  
Machines Corporation*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of April, 2025, I electronically filed the foregoing **DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S FIRST AMENDED ANSWER TO PLAINTIFF'S COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record at their respective addresses as disclosed on the pleadings.

/s/ Kyle M. Asher

Kyle M. Asher