

1 Dan Stormer, Esq. [S.B. #101967]
 Barbara Enloe Hadsell, Esq. [S.B. #086021]
 2 Brian Olney, Esq. [SB. #298089]
 Tanya Sukhija-Cohen, Esq. [S.B. #295589]
 3 HADSELL STORMER RENICK & DAI LLP
 128 N. Fair Oaks Avenue
 4 Pasadena, California 91103
 Telephone: (626) 585-9600
 5 Facsimile: (626) 577-7079
 Emails: dstormer@hadsellstormer.com
 6 bhadsell@hadsellstormer.com
 bolney@hadsellstormer.com
 7 tanya@hadsellstormer.com

8 Kristina Mazzocchi, Esq.
 Ria Julien, Esq.
 9 MIRER MAZZOCCHI & JULIEN, PLLC
 1 Whitehall Street, 16th Floor
 10 New York, NY 10004
 Telephone: (212) 231-2235
 11 Facsimile: 212-409-8338
 Emails: kmazzocchi@mmsjlaw.com
 12 rjulien@mmsjlaw.com

13 Attorneys for Plaintiff
 LONNIE PATE

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

18 LONNIE PATE,

19 Plaintiff,

20 v.

21 PACIFIC HARBOR LINE, INC.;
 ANACOSTIA RAIL HOLDINGS
 22 COMPANY; GREGORY PETERS; ERIC
 FLORES; and DOES 1-10
 23 .

24 Defendants.

Case No.:

COMPLAINT FOR DAMAGES:

1. Race Discrimination
(42 U.S.C. § 1981)
2. Harassment and Hostile Work
Environment (42 U.S.C. § 1981)
3. Retaliation (42 U.S.C. § 1981)

DEMAND FOR JURY TRIAL

1 PLAINTIFF LONNIE PATE (“Plaintiff”), brings this action against
2 DEFENDANTS PACIFIC HARBOR LINE, INC. (“PHL”), ANACOSTIA RAIL
3 HOLDINGS COMPANY (“Anacostia”), GREGORY PETERS, ERIC FLORES, and
4 DOES 1-10 (collectively “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. Defendant PHL is a short-line railroad corporation. PHL was formed in
7 1998 to provide rail transportation, maintenance, rail switching,¹ and dispatching
8 services (directing and monitoring the movement of freight trains) to and from the Ports
9 of Long Beach and Los Angeles, which together form the largest container port in the
10 United States. According to PHL’s website as of the date of filing this Complaint, PHL
11 has 189 employees.

12 2. Anacostia is the parent company of PHL and was formed in 1997 for the
13 purpose of owning and developing short line railroads and related transportation and
14 logistics firms. Anacostia is the owner and manager of six subsidiary U.S. short-line
15 freight railroads operating in seven states, including PHL. According to Anacostia’s
16 website, Anacostia and its subsidiaries together handle the equivalent of approximately
17 2 million train carloads per year, provide freight rail service to major metropolitan
18 centers and other smaller communities throughout the United States, and operate more
19 than 760 miles of track. Anacostia’s services also include car switching for intermodal
20 terminals (terminals through which goods are transported by two or more modes of
21 transport, such as trains and ships) and various industries, track maintenance and repair,
22 freight trans-loading and train dispatching. On information and belief, Anacostia is

23 _____
24 ¹ Rail switching includes (1) putting cars in a specific order, (2) placing cars for loading
25 or retrieving empty cars, (3) adding or removing cars from a train at an intermediate
26 point or (4) the movement of cars from one point to another within a rail yard. See
27 “Switching”, Railroad Dictionary, CSX Corporation, *available at*
28 <https://www.csx.com/index.cfm/about-us/company-overview/railroad-dictionary/?i=S>
(*last visited July 25, 2021*); *see also* Freight Rail and Reciprocal Switching, Association
of American Railroads, *available at* <https://www.aar.org/freight-rail-and-reciprocal-switching/> (*last visited July 25, 2021*).

1 organized as a holding company and directly manages and controls marketing, human
2 resources, and financial management services for and on behalf of PHL.

3 3. Plaintiff Lonnie Pate is a former railroad engineer jointly employed by
4 PHL and Anacostia (collectively the “Corporate Defendants”) at the Ports of Long
5 Beach and Los Angeles. Plaintiff had about 14 years of tenure with the Corporate
6 Defendants. Plaintiff is black/African American.

7 4. This lawsuit centers on the Corporate Defendants’ decades-long
8 discrimination including disparate treatment and impact, harassment, and creation and
9 tolerance of a hostile work environment based on race or color, as well as retaliation for
10 complaining of the same. Rather than taking any steps to remedy the discrimination and
11 harassment, the Corporate Defendants by their acts and failures to act have permitted
12 Plaintiff’s co-workers and supervisors to openly act in a racially hostile manner and
13 failed to protect black workers, including Plaintiff, from such conduct. The Corporate
14 Defendants’ management has endorsed and continues to endorse and direct
15 discriminatory policies and practices against their black workforce, as well as retaliation
16 against black and non-black workers those who speak out against the racism.

17 5. Throughout the course of Plaintiff’s employment by the Corporate
18 Defendants, but particularly once new management came on board in about 2009,
19 Plaintiff and other black workers have been subjected to an egregious, racially hostile
20 work environment, because of their actual or perceived race or color as black workers,
21 while similarly situated non-black workers receive preferential treatment. Plaintiff and
22 other black workers have been subjected on a regular basis to “Jim Crow” type racism
23 used by workers at all levels including members of management in an open and
24 notorious manner, including but not limited to being called racial epithets such as
25 “n***er”; exposed to images of nooses and Ku Klux Klan (“KKK”) imagery; and
26 demeaned by denigrating racist stereotypes of black people as “lazy”.

27 6. Non-black members of the Corporate Defendants’ management, including
28 Defendant Gregory Peters, PHL’s Operations Support Manager, and Defendant Eric

1 Flores, one of PHL's Trainmasters, personally have participated in harassing conduct
2 and the creation of a hostile work environment for black workers such as calling black
3 workers "n***er" or "monkeys".

4 7. The dwindling proportion of black workers in PHL's workforce tells the
5 story of a railroad that across time has increasingly become utterly hostile to black
6 labor, resulting in the Corporate Defendants' workplaces in the Ports of Los Angeles
7 and Long Beach becoming among the most difficult and racist work environments for
8 black industrial workers in the country. Anacostia maintains this pattern not just in
9 PHL, its California subsidiary, but elsewhere, including in its New York subsidiary,
10 New York and Atlantic Railway. Indeed, Defendants PHL and Anacostia have
11 maintained an entrenched and officially sanctioned system of disparate treatment based
12 on race.

13 8. Defendants' unlawful conduct continued up through Plaintiff's
14 termination. Many of the managers who have known, tolerated, encouraged, and even
15 directly participated in said environment across the span of years remain in their
16 positions.

17 PARTIES

18 9. Plaintiff Lonnie Pate ("Plaintiff") is a black male. He is a resident of
19 Riverside County. Plaintiff was employed in Los Angeles County by Defendants PHL
20 and Anacostia from about 2002 to November 21, 2016, first as a conductor and, since
21 about 2004, as an engineer.

22 10. Defendant PHL's headquarters and principal place of business are located
23 in Los Angeles County at 705 North Henry Ford Avenue, Wilmington, California
24 90744. On information and belief, all or nearly all of its 189 employees work in Los
25 Angeles County.

26 11. Defendant Anacostia is the parent company of PHL. Its headquarters and
27 principal place of business are located in Cook County at 224 South Michigan Avenue,
28 Suite 330, Chicago, Illinois 60604.

FACTUAL ALLEGATIONS

The Defendants Subjected Plaintiff To Harassment And A Racially Hostile Work Environment.

18. Throughout the course of his employment, but particularly once new management came on board in or about 2009, Plaintiff was subjected to vile and discriminatory racial slurs and epithets, and unambiguous disparate treatment, directed to him personally and/or utilized in his presence. Among such epithets, spoken openly in the workplace and at all times tolerated, encouraged, and even participated in by managers, are the following, which are examples only and not an exhaustive list: “n***er”, “slave”, “monkey”, “baboon”, “gorilla”, “coon”, and “dummy”. Plaintiff was called “n***er” or heard the word used in his presence by coworkers or managers—including Defendant Flores, Defendant Peters, and other non-black managers—on a weekly or near weekly basis.

19. The following racist conduct, which likewise is not an exhaustive list, was directed to Plaintiff personally and/or utilized in his presence: threatening KKK imagery and slogans such as “the only good n***er is a dead n***er”; demeaning statements regarding his race such as being told that “blacks are not intelligent” or are “lazy”; harassing slave “jokes”; insulting and negative racial stereotypes regarding black workers’ supposed love of watermelons and fried chicken; and mocking the color of black workers’ skin , and “joking” that it was hard to see their black faces at night. Indeed, this pattern of conduct became such a regular part of the workplace that such harassment was a term and condition of Plaintiff’s employment, causing immeasurable harm and emotional distress that persists to this day. Despite black employees’ skills, experience, and expertise, throughout Plaintiff’s employment, they were a permanent underclass treated as interlopers by Defendants.

20. In addition to the above examples, Plaintiff and other black workers on numerous occasions were subjected to racist chalk drawings on the bridges in the railyard and on or in black workers’ lockers, including but not limited to pictures of

1 nooses, black men hanging, monkeys with big lips, hooded KKK figures, the words
2 “n***er” or “no n***ers” and other KKK imagery. See Exhibits A and B, which are
3 reproductions of racist images that were in full view in the railyard and to which
4 Plaintiff and another black engineer, who worked for the Corporate Defendants for well
5 over a decade, were exposed, respectively. Plaintiff was subjected to seeing ropes tied
6 in a noose hanging throughout the yard.

7 21. Non-black workers pelted Plaintiff and other black workers (which was
8 known to Plaintiff at the time) with oranges, apples, beer bottles, rocks, flares, and even
9 urine-filled bottles with holes in them. Although Plaintiff and other black workers
10 reported this hostile and discriminatory conduct to the Corporate Defendants’
11 management, nothing was done about it.

12 22. Non-black workers urinated or spit on portions of locomotives which they
13 knew the black engineers, including Plaintiff, had to touch. On one occasion, two black
14 workers entered an engine only to find a bucket of feces that someone had left for them.

15 23. Defendant Flores personally participated in harassment and the creation of
16 a hostile work environment based on race, for example, by often referring to black
17 workers including the Plaintiff as “n***er”, “lazy”, “monkeys” or “you people”; and
18 stating that black workers needed to be “spoon fed”, as though they are children.
19 Defendant Flores often engaged in racist caricatures and impressions of black people as
20 “ghetto”, directed at or in the presence of Plaintiff, such as pretending to walk like an
21 old school seventies pimp, and miming “what’s crack a lacking with you”, talking about
22 “pimps and hoes,” and exclaiming “what’s up my ninja!” as code for the word
23 “n***er”.

24 24. Defendant Peters also personally participated in harassment and the
25 creation of a hostile work environment based on race, directed toward or in the presence
26 of Plaintiff, including use of “stupid a** n***ers” and “f***ing monkeys”.

27 25. Richard Guindon, one of the Corporate Defendants’ former Trainmasters
28 who is non-black, also engaged in a campaign of harassment against Plaintiff beginning

1 in or about 2008. For example, on or about February 17, 2009, when Plaintiff told Mr.
2 Guindon that he could not use a particular train because it was not functioning correctly,
3 Guindon became angry and said, “you f***ing blacks don’t get it.”

4 26. On or about March 18, 2009, after Plaintiff was relieved of work at the end
5 of his shift and took prescribed medication, Mr. Guindon asked Plaintiff to stay on
6 because a worker from a later crew called in sick or was otherwise unable to work.
7 When Plaintiff informed Mr. Guindon that though he had taken medication, he felt he
8 could still work, Mr. Guindon became angry, yelled, and cursed at Plaintiff, and called
9 him a “stupid f***” and “stupid n***er”.

10 27. Following one of Plaintiff’s earliest complaints about Mr. Guindon in or
11 about 2009, and after Plaintiff returned to work following a leave of absence, Plaintiff’s
12 coworkers told him that Mr. Guindon had, during Plaintiff’s leave, stated openly in the
13 workplace words to the effect of “if Lonnie Pate thinks he’s been discriminated against
14 wait until he gets his a** back to work”.

15 28. On another occasion, in addressing disparate treatment, Plaintiff stated to a
16 group of managers that it appeared it him “You gotta be white to be right,” and a
17 manager responded with a thumbs up.

18 29. That open and notorious racist conduct by the Corporate Defendants’
19 employees including Defendants Flores and Peters is not only tolerated but is actually
20 reflective of the Corporate Defendants’ policies and practices at the highest levels, is
21 exemplified by the conduct of Stephane Perri, formerly PHL’s Superintendent and now
22 Vice President, who is non-black, and who has made racist and demeaning comments
23 toward black workers. Other examples of highly placed management directly engaging
24 in or tolerating discriminatory conduct based on race include the conduct of Elvia
25 Maciel, PHL’s former Administration and Human Resources Manager who is non-
26 black, who made slave “jokes” in the presence of Plaintiff and other black workers,
27 including that “black women can handle anything because they used to be slaves”, and
28 of PHL’s non-black former Vice President Daniel Micklos who called a black worker a

1 “black sonofab**ch.”

2 **The Corporate Defendants Subjected Plaintiff To Pretextual Discipline Up To And**
3 **Including Wrongful Termination.**

4 30. Black workers, including Plaintiff, routinely have been subjected to
5 disparate terms and conditions of employment including targeting for disparate
6 discipline, wrongful termination, and constructive discharges and demotions based on
7 race, for which pretextual reasons are given, compared to similarly situated non-black
8 workers who received preferential treatment. Further, during the course of Plaintiff’s
9 employment, such unfair treatment was part of a pattern and practice of the Corporate
10 Defendants unlawfully discharging or forcing black employees to quit so as to
11 significantly decrease the black workforce at PHL and Anacostia. This occurred not
12 only as a result of the failure to hire or promote black workers, but also by targeting
13 black workers for unwarranted write ups, pretextual disciplines, unfair work
14 assignments which were more onerous or lengthy than those assigned to non-black
15 workers, by terminating their employment based on discriminatory and pretextual
16 reasons, or by rendering the work environment so hostile as to effectuate a constructive
17 discharge or demotion. This conduct contributed to the hostile work environment
18 Plaintiff experienced.

19 31. For example, Defendant Flores denigrated the work performance of the
20 Plaintiff and other black workers, such as stating he was waiting for them to f*** up”,
21 so as to find a reason to fire them, as well as threatening black workers with dire
22 consequences if the work was not performed correctly, including pantomiming being
23 hung by a noose. Defendant Peters has threatened black workers with taunts that if they
24 “have an incident” which comes to his attention, he will “find them guilty.” Mr.
25 Guindon often told Plaintiff words to the effect of, “I’m going to get you.” Such
26 conduct makes clear that the Corporate Defendants intentionally and purposefully
27 discriminated against Plaintiff. Indeed, the Corporate Defendants carried out these
28 threats by wrongfully terminating Plaintiff, and otherwise subjecting Plaintiff and other

1 black workers to pretextual discipline.

2 32. Plaintiff was wrongfully terminated, effective November 21, 2016, for an
3 alleged “blind shove”—which is when engineers move a train without being able to see
4 the back of it—for which non-black workers were not terminated but rather received a
5 lesser penalty. In deciding to terminate Plaintiff, the Corporate Defendants treated him
6 differently compared to at least two non-black workers involved in substantially similar
7 incidents (i.e., blind shoves) who were not terminated.

8 33. Plaintiff had an extensive history of reporting racial discrimination,
9 harassment, and a hostile work environment at PHL and Anacostia. Not only were his
10 complaints consistently ignored, they resulted in a target being placed on Plaintiff’s
11 back.

12 34. Beginning in or about 2008 or 2009, Mr. Guindon routinely over-
13 supervised Plaintiff, including by following the locomotive Plaintiff was operating,
14 calling Plaintiff while he knew Plaintiff was in the midst of operating the locomotive,
15 thereby forcing Plaintiff to stop the locomotive to answer the telephone call, and then
16 threatening Plaintiff that he better call back later.

17 35. In another example, when Plaintiff reported to a manager that someone had
18 broken into his work locker and stolen equipment including his rule book, lantern, and
19 radio, he was written up for being without these items of equipment.

20 36. Another black worker, Rodney Williams, served in management during the
21 time that Plaintiff worked for the Corporate Defendants. Upper management tasked Mr.
22 Williams with implementing disparate disciplinary practices, requiring him to meet a
23 quota of giving 20 efficiency failures to employees each month, which, on information
24 and belief, the Corporate Defendants then provided to the Federal Railroad
25 Administration. If a manager did not meet this quota, the manager would be written up.
26 In management meetings, upper management made clear that it was predominantly the
27 black employees who were the personnel “needing more attention”, and the workers
28 whom managers should target in order to meet the quota.

1 37. In addition to the above, the Corporate Defendants’ managers kept a
2 “buddy list” which identified employees to focus on for write-ups, and which appeared
3 to disproportionately include black employees. For those individuals on the “buddy
4 list”, shift managers increased the intensity of supervision and frequency of safety
5 testing, including looking for efficiency failures such as not wearing glasses. Because
6 the individuals targeted on the “buddy list” were tested more than others, they were
7 marked down for more efficiency failures, which were documented in the employee’s
8 file. The “buddy list” was also ranked based on efficiency failures or incidents.
9 Managers used this quota for efficiency failures and the “buddy list” as ways to harass
10 and over-supervise black employees, under the guise of safety training.

11 38. One example of the racially biased use of the “buddy list” and efficiency
12 failures occurred in or about 2016, when Plaintiff arrived to work early and was eating
13 in the breakroom. When Plaintiff went outside of the building to throw out his trash, he
14 saw that Defendant Flores had pulled up and was chatting with a non-black on-the-
15 clock crew that did not appear to be working. Upon seeing Plaintiff, Defendant Flores
16 got out of his truck and stated words to the effect of, “Hey Pate, you know I’m going to
17 have to write you up. That’s an efficiency failure. You don’t have your PPE [personal
18 protective equipment] on,” referring to Plaintiff’s work boots etc. The on-the-clock
19 workers that Defendant Flores was chatting with were not wearing PPE as required.
20 Upon information and belief, Defendant Flores did not white up the non-black crew, but
21 rather only sought to target Plaintiff and other black workers.

22 **The Corporate Defendants Subjected Plaintiff To A Disparate Workload.**

23 39. Plaintiff and other black workers were required to work longer shifts than
24 their similarly situated non-black counterparts. For example, managers including
25 Defendant Flores and Mr. Guindon made Plaintiff and other black workers remain at
26 work after their shift was complete without any justification or required them to work
27 shifts longer than 10 hours and up to the maximum 12 hours even when there were new
28 crews who could have done the work. At various times, black workers were required to

1 complete the work of non-black crews who were permitted to leave early even when
2 they arrived after black workers. Despite this, Plaintiff was rarely if ever recognized for
3 his accomplishments at work. This conduct contributed to the hostile work environment
4 Plaintiff experienced.

5 40. As another example, when a non-black worker refused to do a work
6 assignment and was insubordinate to Defendant Flores in Plaintiff's presence, instead of
7 reprimanding or disciplining that non-black worker, Flores required Plaintiff to
8 complete the work assignment.

9 41. For example, in or about late 2015, Defendant Flores required Plaintiff's
10 crew to perform the work of a non-black outgoing crew that had accomplished very
11 little. When Plaintiff complained, Defendant Flores assigned Plaintiff's crew extra
12 work, over and above both their own workload and the workload of the outgoing crew,
13 whose work Plaintiff's crew was required to complete.

14 **The Corporate Defendants Failed To Take Remedial Action In Response To**
15 **Complaints Of Racial Discrimination And Harassment, And Instead Engaged in**
16 **Retaliation.**

17 42. The Corporate Defendants have been on notice of complaints about
18 discrimination including disparate treatment and impact and harassment based on race
19 for many years, during which time they completely failed to adequately address, much
20 less prevent, discrimination including disparate treatment and impact, harassment, the
21 continuation of a hostile work environment, and retaliation. Over the past more than ten
22 years, numerous black employees have lodged complaints of racism with the Corporate
23 Defendants' management, including but not limited to allegations of verbal harassment,
24 racial epithets and slurs, and disparate treatment and discipline by its managers and
25 employees. The Corporate Defendants took no or completely ineffective remedial or
26 disciplinary action in response to these complaints. They Defendants failed to provide
27 anti-discrimination and harassment training, enhanced reporting procedures or
28 antiretaliation measures, and/or failed to effectively enforce any such training,

1 procedures, and measures. Throughout the course of Plaintiff's employment, the
2 Corporate Defendants failed to investigate, discipline, remedy, or prevent
3 discrimination, harassment, the hostile work environment, or retaliation at PHL and
4 Anacostia. The corporate culture of extreme racist denigration by managers resulted in
5 continuing harassment, hostile work environment, and disparate treatment and impact
6 by new managers brought in, and in retaliation against those who lodged complaints.

7 2009-2011: Plaintiff's Complaints To The DFEH And EEOC

8 43. In or about April 2010, Plaintiff filed charges with the California
9 Department of Fair Employment and Housing ("DFEH") against the Corporate
10 Defendants and individual non-black managers alleging harassment, hostile work
11 environment, denial of promotion, failure to prevent discrimination or retaliation, and
12 retaliation because he was black.

13 44. On or about July 2010, Plaintiff filed a charge with the U.S. Equal
14 Employment Opportunity Commission ("EEOC") alleging that beginning in 2008, Mr.
15 Guindon had subjected him to continuing racial harassment and retaliation, including
16 but not limited to calling Plaintiff "stupid n***er" and "dumb a**", over-supervising
17 him, and writing him up without justification, and that other managers to whom he
18 complained did nothing. The current president of PHL was well aware of the history of
19 complaints, having attended a conference at the EEOC in connection with Plaintiff's
20 charge. Despite this knowledge at the highest level of PHL, the discrimination and
21 harassment did not cease.

22 45. Plaintiff repeatedly complained to other managers about Mr. Guindon. Not
23 only did those managers do nothing, but each time he complained about Mr. Guindon,
24 he found a write-up in his locker from Mr. Guindon immediately following the
25 complaint.

26 2014: Plaintiff's Grievance Protesting Discrimination To PHL

27 46. Despite the Corporate Defendants' inaction and Plaintiff's fears that it
28 would be futile to complain about the ongoing racial harassment, Plaintiff continued to

1 stand up for his rights and those of other black workers. Specifically, on or about
2 September 15, 2014, Plaintiff sent a written complaint to PHL, complaining about a
3 non-black worker who harassed him and subjected him to a racially hostile work
4 environment. The worker harassed Plaintiff with egregiously denigrating epithets and
5 physical threats to the point that Plaintiff feared not only for his job but also his safety,
6 including saying “It’s whatever I say that goes you f***ing monkey” and “If you don’t
7 want to do what I ask you to do, then you need to find another job stupid n***er!”

8 47. Despite the complaints made by Plaintiff and other black workers, the
9 Corporate Defendants took no or completely ineffective action to remedy, discipline, or
10 prevent the discrimination and harassment. Instead, the Corporate Defendants retaliated
11 against and continued to harass and discriminate against Plaintiff for speaking up about
12 the racial discrimination, harassment, and a hostile work environment, and against other
13 workers who had done the same. Following these complaints, the severe and pervasive
14 racial hostility remained unchanged until Plaintiff’s wrongful termination.

15 **During 2015-2016 And Following Plaintiff’s Complaints, The Corporate**
16 **Defendants Escalated Their Harassment Against Plaintiff.**

17 48. From about 2015 through the time of Plaintiff’s wrongful termination in
18 November 2016, Plaintiff continued to experience egregious discriminatory and
19 retaliatory harassment meant to intimidate him. He continued to be subjected to racist
20 epithets, including the word “n***er”, on a weekly basis from Defendant Flores, among
21 others.

22 49. On one occasion in or about the spring or early summer of 2015, Plaintiff
23 was required to complete the work of a non-black crew before beginning his assigned
24 work. After completing the other crew’s work, Plaintiff returned to the break room to
25 find his bagged lunch left on a breakroom table. The table was covered with urine and it
26 appeared that someone had urinated on his lunch.

27 50. In or about June 2015, Plaintiff had resorted to keeping his personal items
28 in an electrical cabinet due to his locker having been repeatedly broken into. Upon

1 going to the cabinet to retrieve his items, he found the words “black n***er” scrawled
2 in black rail chalk on the door. The cabinet was also smeared with feces, which
3 appeared to be human feces. Plaintiff was distraught by this hostile act.

4 51. Within a week or so of the locker incident, Defendant Flores stated to
5 Plaintiff while driving through the rail yard, “You’re going to work tonight, my n***a!”

6 52. Sometime after July 4, 2015, Plaintiff met with Ms. Maciel in Human
7 Resources to discuss potentially taking leave pursuant to the Family and Medical Leave
8 Act. During this conversation Ms. Maciel said words along the lines of “black women
9 use to be slaves... they’re strong!”

10 53. In or about late 2015, while Plaintiff was washing his hands in the
11 restroom at the terminal, Defendant Peters entered the restroom and stood beside
12 Plaintiff facing the mirror. Defendant Peters pointed to Plaintiff in the mirror and stated,
13 “Look! Do you see that n***er?” Plaintiff just looked at Defendant Peters and walked
14 out of the restroom.

15 54. During 2015-2016, Plaintiff was subjected to menacing and
16 oversupervision from Defendant Flores and others. As before, managers and other non-
17 black employees continued to refer to black workers by various racial epithets on a
18 regular basis. It had gotten so bad that Plaintiff would become fearful and anxious when
19 he saw a white truck that was reserved for management, that he sometimes resorted to
20 hiding for his safety.

21 55. In fact, about a few months before his wrongful termination, Plaintiff was
22 working in the railyard one night as a white management truck approached and one of
23 its passengers shone a bright flashlight, scanning the area. Plaintiff could not see which
24 manager was in the truck. As the truck drove by, he heard a manager say in a sing-song
25 voice, as though calling an animal: “Heeere, n***er, n***er, n***er!” Hearing this,
26 Plaintiff felt hunted and feared for his life.

27 56. Indeed, during the time that Plaintiff was employed by the Corporate
28 Defendants, other black employees endured the same racially hostile work environment

1 and complained about the same. Because Plaintiff witnessed and/or was aware of what
2 other black workers endured, the conduct against other black workers exacerbated
3 Plaintiff's own hostile work environment.

4 57. Additionally, after the Corporate Defendants received notice that Plaintiff
5 and other black workers were pursuing legal action, black workers continued to be
6 subjected to a racially hostile work environment in retaliation, including unwarranted
7 discipline and being called racial epithets.

8 **The Corporate Defendants Engaged In A Pattern Of Denying Black Workers**
9 **Equal Employment Opportunities By Their Failure To Hire And Promote Black**
10 **Workers.**

11 58. The Corporate Defendants engaged in a pattern of failing to hire or
12 promote black workers and denying them opportunities for advancement consistent
13 with their training. Plaintiff and other black workers suffered the humiliation of being
14 tasked with training less qualified persons, including persons who have participated in
15 the harassment of them, for supervisory and managerial jobs they themselves had
16 applied and unlawfully been rejected for.

17 59. For example, Plaintiff observed that when he was a conductor, other non-
18 black workers who had less experience were promoted to engineer before him.

19 60. In or about 2011, Mr. Magana openly admitted to another black employee
20 that the Corporate Defendants' discriminatory failure to promote black workers was
21 intentional, by stating to that black employee, "We don't hire black people as
22 supervisors. You guys are slaves." He continued, "If you don't like it, go work at
23 McDonald's."

24 61. After being terminated by the Corporate Defendants, Plaintiff has tried to
25 obtain other jobs in the railroad industry but has been unable to secure a comparable
26 position. Plaintiff is informed and believes that this is due to the Corporate Defendants'
27 refusal to offer a reference on Plaintiff's behalf or providing an unfair and appraisal of
28 Plaintiff's work performance to other railroad employers.

1 employer to discriminate against an employee on the basis of the employee's race.

2 68. Defendants subjected Plaintiff to disparate treatment and impact, adverse
3 employment actions, and discriminated against Plaintiff in whole or part based on his
4 race, through numerous illegal acts as described in this Complaint. Plaintiff suffered
5 adverse actions including but not limited to wrongful termination, disparate discipline
6 and workload, retaliation, and/or failure to promote. The above-described actions were
7 intentional and purposeful and were perpetrated and/or ratified by the managing agents,
8 officers, or directors of Defendants PHL and Anacostia.

9 69. Plaintiff's race as black and/or African American was a motivating factor
10 for the Defendants' conduct against Plaintiff.

11 70. Defendants PHL and Anacostia knew or should have known of the
12 unlawful conduct, including by their supervisors, and failed to take prompt, effective
13 remedial action.

14 71. As a result of Defendants' conduct, Plaintiff has suffered, and continue to
15 suffer, monetary and/or economic harm. Plaintiff has also suffered, and continue to
16 suffer, severe mental anguish and emotional distress, including, but not limited to,
17 depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-
18 confidence, as well as emotional pain and suffering. Plaintiff is thereby entitled to
19 compensatory damages including general and special damages in amounts to be proven
20 at trial.

21 72. Defendants' discriminatory practice(s) were done with malice or callous or
22 reckless indifference to the Plaintiff's rights, for which Plaintiff is entitled to an award
23 of punitive damages.

24 **SECOND CAUSE OF ACTION**

25 **HARASSMENT AND HOSTILE WORK ENVIRONMENT**

26 **(42 U.S.C. § 1981)**

27 **(Plaintiff Lonnie Pate against All Defendants)**

28 73. Plaintiff re-alleges and incorporates by reference paragraphs 1-63 of this

1 Complaint as though fully set forth herein.

2 74. At all times relevant to this Complaint, Plaintiff was an employee of
3 Defendants PHL and Anacostia and members of a protected class.

4 75. Plaintiff is black, African American, and/or was perceived by Defendants
5 as such.

6 76. At all times herein mentioned, 42 U.S.C. § 1981 was in full force and
7 effect and was binding on Defendants. Under 42 U.S.C. § 1981, it is unlawful for an
8 employer to subject an employee to harassment or a hostile work environment on the
9 basis of the employee's race.

10 77. Defendants subjected Plaintiff to harassment and a hostile work
11 environment in whole or part based on their race through numerous illegal acts as
12 described in this Complaint. Plaintiff suffered adverse actions including but not limited
13 to wrongful termination, disparate discipline and workload, retaliation, and/or failure to
14 promote, all of which contributed to the hostile work environment.

15 78. The above-described actions were perpetrated and/or ratified by the
16 managing agents, officers, or directors of Defendants PHL and Anacostia.

17 79. Defendants' conduct was not welcomed by Plaintiff.

18 80. Plaintiff's race as black and/or African American was a motivating factor
19 for the Defendants' conduct.

20 81. Defendants' conduct was so severe or pervasive that reasonable person in
21 Plaintiff's position would find the work environment to be hostile, intimidating,
22 offensive, oppressive, or abusive.

23 82. Plaintiff believed the work environment to be hostile, intimidating,
24 offensive, oppressive, or abusive as a result of Defendants' conduct.

25 83. Defendants PHL and Anacostia knew or should have known of the
26 unlawful conduct, including by their supervisors, and failed to take prompt, effective
27 remedial action.

28 84. As a result of Defendants' conduct, Plaintiff has suffered, and continue to

1 suffer, monetary and/or economic harm. Plaintiff has also suffered, and continue to
2 suffer, severe mental anguish and emotional distress, including, but not limited to,
3 depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-
4 confidence, as well as emotional pain and suffering. Plaintiff is thereby entitled to
5 compensatory damages including general and special damages in amounts to be proven
6 at trial.

7 85. Defendants' discriminatory practice(s) were done with malice or callous or
8 reckless indifference to the Plaintiff's rights, for which Plaintiff is entitled to an award
9 of punitive damages.

10 **THIRD CAUSE OF ACTION**

11 **RETALIATION**

12 **(42 U.S.C. § 1981)**

13 **(Plaintiff Lonnie Pate against All Defendants)**

14 86. Plaintiff re-alleges and incorporates by reference paragraphs 1-63 of this
15 Complaint as though fully set forth herein.

16 87. At all times relevant to this Complaint, Plaintiff was an employee of
17 Defendants PHL and Anacostia and member of a protected class.

18 88. Plaintiff is black, African American, and/or were perceived by Defendants
19 as such.

20 89. At all times herein mentioned, 42 U.S.C. § 1981 was in full force and
21 effect and was binding on Defendants. Under 42 U.S.C. § 1981, it is unlawful for an
22 employer to retaliate against an employee for engaging in protected activity to redress a
23 violation of a person's right to be free from racial discrimination. *CBOCS West, Inc. v.*
24 *Humphries*, 553 U.S. 442, 446 (2008).

25 90. Plaintiff engaged in protected activity by complaining about the
26 Defendants' wrongful conduct based on race as alleged in this Complaint. Plaintiff
27 acted under a reasonable and good faith belief that his or someone else's right to be free
28 from racial discrimination was violated. Plaintiff reasonably believed that various laws

1 and statutes prohibiting race-based discrimination, harassment, and hostile work
2 environment were violated including but not limited to the Fourteenth Amendment to
3 the U.S. Constitution; California Constitution Art. I, §§ 7, 8, 31; the Unruh Act, Cal.
4 Civ. Code §§ 51, 51.5; the Fair Employment and Housing Act, Cal. Gov. Code §§
5 12940(a), (j), (k); Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e-2(a), (b); and
6 42 U.S.C. § 1981(a).

7 91. Defendants retaliated against Plaintiff for engaging in protected activity by
8 complaining about racial discrimination or harassment, and subjecting Plaintiff to
9 materially adverse actions at the time or after the protected conduct took place. Plaintiff
10 suffered adverse actions including but not limited to wrongful termination, disparate
11 discipline, and/or failure to promote.

12 92. The Plaintiff was subjected to the adverse employment actions because of
13 his participation in protected activity.

14 93. Defendants PHL and Anacostia knew or should have known of the
15 unlawful conduct, including by their supervisors, and failed to take prompt, effective
16 remedial action.

17 94. As a direct and proximate result of Defendants' conduct, Plaintiff has
18 suffered, and continue to suffer, monetary and/or economic harm. Plaintiff has also
19 suffered, and continue to suffer, severe mental anguish and emotional distress,
20 including, but not limited to, depression, humiliation, embarrassment, stress and
21 anxiety, loss of self-esteem and self-confidence, as well as emotional pain and
22 suffering. Plaintiff is thereby entitled to compensatory damages including general and
23 special damages in amounts to be proven at trial.

24 95. Defendants' discriminatory practice(s) were done with malice or callous or
25 reckless indifference to the Plaintiff's rights, for which Plaintiff is entitled to an award
26 of punitive damages.

27 ///

28 ///

PRAYER FOR RELIEF

96. WHEREFORE, Plaintiff requests relief of the Defendants, jointly and severally, as follows:

- For compensatory damages including general and special damages, according to proof;
- For an award of money judgment for mental pain and anguish and severe emotional distress, including medical special damages, according to proof;
- For punitive damages;
- Declaratory and injunctive relief;
- For attorney’s fees and costs pursuant applicable law; and
- For such other relief allowed by law and as the Court deems proper and just.

DEMAND FOR JURY TRIAL

97. Plaintiff hereby demand trial by jury in this action.

Dated: August 2, 2021

Respectfully Submitted,
HADSELL STORMER RENICK & DAI LLP

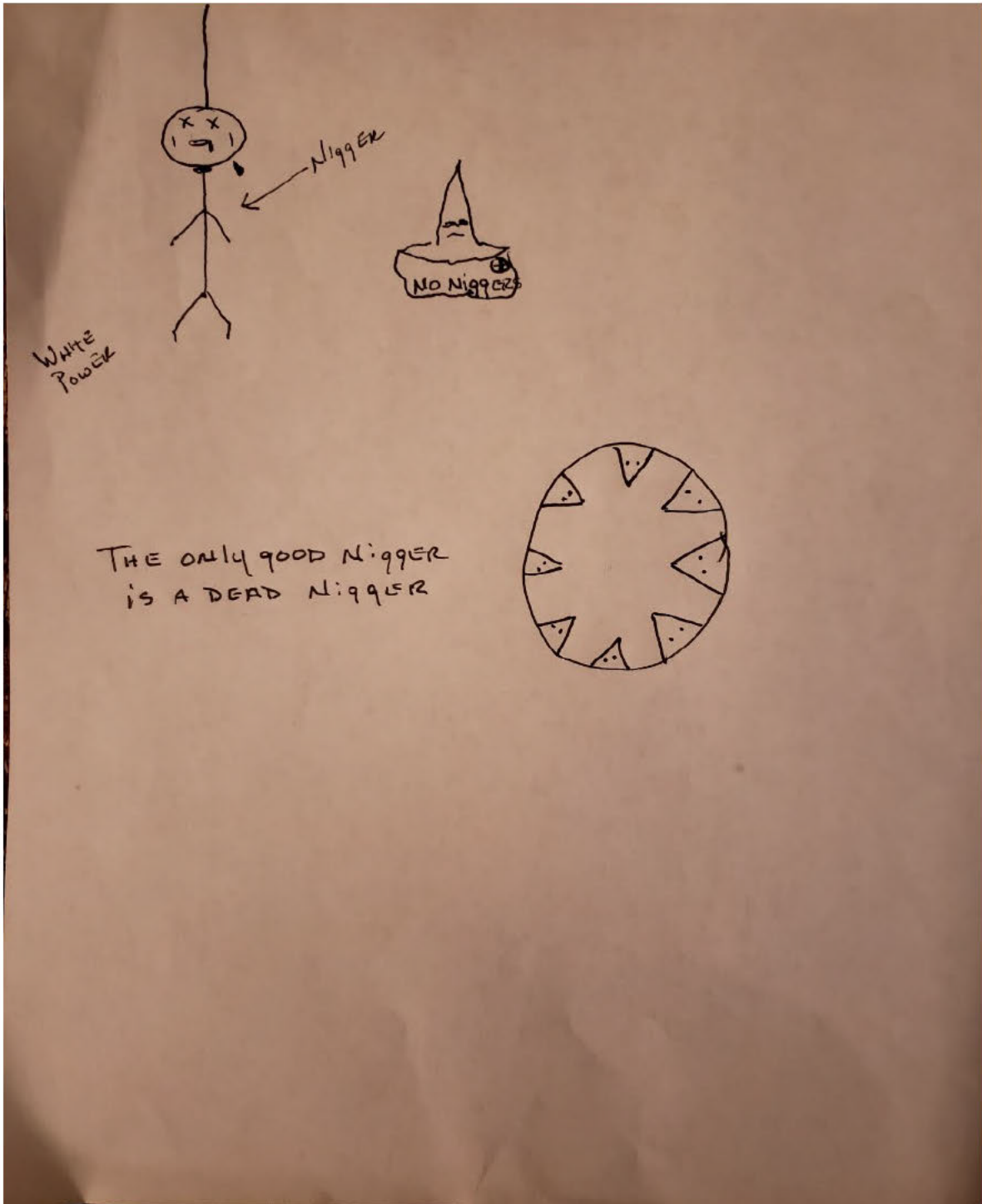
By: /s/ Tanya Sukhija-Cohen
Dan Stormer
Barbara Enloe Hadsell
Brian Olney
Tanya Sukhija-Cohen
Attorneys for Plaintiff LONNIE PATE

Dated: August 2, 2021

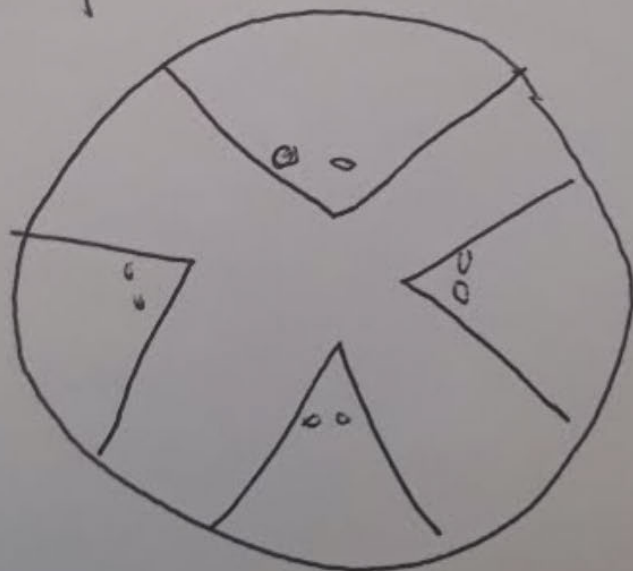
MIRER MAZZOCCHI & JULIEN, PLLC

By: /s/ Kristina Mazzocchi
Kristina Mazzocchi
Ria Julien
Attorneys for Plaintiff LONNIE PATE

Ex. A



Ex. B



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