

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION**

CRISS MURPHY, NORMAN JORDAN,)	
ANDINO WARD, EDDIE BARNES, JR.,)	CLASS ACTION COMPLAINT
PAUL HANNON, CURTIS NELSON,)	
DAVID CHAMBERS, HERION)	
MURPHY, and VINCENT SAFFORD,)	
)	
Individually and on Behalf of Others)	
Similarly Situated,)	
)	
PLAINTIFFS,)	CASE NO. _____
v.)	
)	
SUPER STEEL SCHENECTADY INC.,)	
)	JURY TRIAL DEMAND
DEFENDANT.)	
_____)	

CLASS ACTION COMPLAINT

1. Plaintiffs Criss Murphy, Norman Jordan, Andino Ward, Eddie Barnes, Jr., Paul Hannon, Curtis Nelson, David Chambers, Herion Murphy, and Vincent Safford (“Class Representatives” or “Plaintiffs”), by and through undersigned counsel, bring this action against Defendant Super Steel Schenectady Inc. (“Defendant” or “Super Steel”) on behalf of themselves and the class of persons they seek to represent. Plaintiffs, who are current and former employees of Super Steel, bring this action to redress the racial discrimination and harassment they have suffered while working at Super Steel.

I. PLAINTIFFS’ RACIAL DISCRIMINATION CLAIMS AGAINST SUPER STEEL

2. Plaintiffs Criss Murphy, Norman Jordan, Andino Ward, Eddie Barnes, Jr., Paul Hannon, Curtis Nelson, David Chambers, Herion Murphy, and Vincent Safford all came to Super Steel with common goals: to work hard, to do their jobs well, and to save money to improve their lives.

3. Some of these Plaintiffs came farther than others. Many came from the deep south – from Mississippi, Alabama, Louisiana – only to find that the pervasive racism at Super Steel in New York was far worse than any they had ever confronted in their home states. In the words of one plaintiff, “As a fifty-year-old black man, born and raised in Mississippi, I have never experienced the kind of racism that was at Super Steel.” Another Plaintiff compared his arrival at Super Steel to that of a slave being sold at market. He described being treated as though he had been “ordered up” from “some small farm” in Mississippi, and being given orders as if he was a “boy” that was “not supposed to know any better.”

4. For the limited number of African Americans who pass through Super Steel’s doors, racial discrimination and hostility permeate every aspect of the working day. A typical day for these workers involves using a restroom decorated with graffiti that derides “niggers” and expounds support for the KKK, working in the midst of drawings depicting men hung from “hanging loops,” or nooses, walking past the hostile stares of white co-workers, enduring unending criticism from white supervisors, avoiding the “white” parts of segregated break areas, and trying to ignore the persistent awareness that, at any time, the festering racial hostility might erupt and challenge their physical safety.

5. For those African American employees who find themselves the targets of more vitriolic, directed racism, days are even worse. The hostility directed at one former Super Steel employee included slurs like “nigger monkey” and “nigger bastard.” He was told on one occasion that a “nigger whipping” would make him work faster, and on another that he should be hung. White co-workers laughed when the threat of a hanging was followed with the musing that the hanging would make him “scream like a bitch.” The constant intimidation destroyed this Plaintiff’s sense of well-being, plaguing his thoughts even at home, and lingering long after he closed Super Steel’s plant doors for the final time behind him.

6. Another Plaintiff slogged through months of hard work, trying to ignore the hostility from his white co-workers when his white supervisors consistently ignored his pleas for

intervention. His efforts to succeed in spite of his circumstances were rewarded with graffiti inside of his locker that said “Die Nigger Die” and “KKK,” and a monkey hanging from his coat hook, its head torn off and its body ripped apart.

7. The racism these Plaintiffs have confronted at Super Steel is not limited to wayward employees or outlying miscreants, but is deeply embedded in the Super Steel structure. Super Steel has built racism into its ranks by selecting for supervisory positions white workers who are blatantly racist. The Plaintiffs in this action worked under supervisors who used racial epithets, subjected them to harsh criticism and intense scrutiny, withheld promotions and other opportunities for advancement, and failed to reprimand white employees for racially hostile behavior.

8. When one Plaintiff went to his Supervisor for support in dealing with the racial harassment he was experiencing, his Supervisor replied by turning to another Supervisor and asking, “What does this fucking nigger expect me to do?” The requests for support by other Plaintiffs were alternatively ignored or dismissed.

9. The reaction of Super Steel’s Human Resources Department to complaints of racial discrimination by African American employees was similarly deficient. Despite the numerous complaints and the clear racial antagonism at Super Steel, Human Resources systematically ignored the racism brought to its attention. One Plaintiff’s concerns were pushed aside by a Human Resources Representative with an exasperated “[I thought your] people [were] used to that kind of stuff.” In a letter to a different Plaintiff, Super Steel Human Resources Director Gerald Nelson describes the racist comments of a white co-worker as “isolated,” and the “KKK” hat made by another as constructed “in jest.”

10. In a letter sent March 15, 2006 to yet another plaintiff, Super Steel’s Counsel writes that “no similar incident has occurred ever before or since at the Company’s plant in Glenville.” This letter was written after the police had visited Super Steel at least twice to respond to complaints about racial harassment, after Human Resources Director Gerald Nelson

wrote the above-cited letter to another Plaintiff, and after virtually all of the racially charged incidents described in this Complaint occurred.

11. A police officer investigating the drawing of a man hanging by a noose in one Plaintiff's workstation commented in his police report that Super Steel "had not yet come to an understanding of the serious nature of the incident(s) and was still under the assumption that they would be able to handle everything internally."

12. Super Steel decides time and again to cultivate an atmosphere in which its African American employees are threatened, harassed, criticized, and denied advancement, and in which white employees can threaten, harass, criticize, and deny advancement with impunity. That Super Steel does not welcome African Americans is manifest in its emaciated roster of African American employees. The company has hired so few permanent African American employees that one Plaintiff was taunted as the "default hire" because Super Steel had simply run out of white applicants to choose from.

13. While the "default hire," a Schenectady resident, remains an employee at Super Steel, all of the African Americans listed in this action that traveled to Super Steel from southern states have since returned to their homes. All have expressed relief at being able to return to the relative safety of Alabama, Georgia, Louisiana, and Mississippi.

14. A line in an employment handbook, a few words from the company's president, or a lofty statement about "zero tolerance" will not change the discriminatory policies that Super Steel has so successfully ingrained in its company culture. For these reasons, Plaintiffs seek the support of this Court in securing relief. The relief Plaintiffs seek include: (1) programs that remedy the racially hostile work environment at Super Steel; and (2) one hundred seventy-five million dollars in compensatory and punitive damages.

II. JURISDICTION AND VENUE

15. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(4), 2201 and 2202; and the Civil Rights Act of 1866, 42 U.S.C. § 1981 (hereafter § 1981), to redress and

enjoin employment practices of Super Steel in violation of these statutes. Venue is proper in the District pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. Section 2000e-5(f)(3) because Defendant Super Steel is a resident of this District and because a substantial part of the events or omissions giving rise to these claims occurred in this District.

III. PARTIES

A. CLASS REPRESENTATIVES

16. **Class Representative Criss Murphy** (“Criss Murphy” or “Mr. C. Murphy”) is an African American resident of Lawrenceville, Georgia. Mr. C. Murphy was employed at Super Steel’s facility in Schenectady, New York from approximately April 2005 until April 17, 2006. Mr. C. Murphy took a paid leave of absence from Super Steel on January 3, 2006, when his locker was vandalized with threatening, racist graffiti. On February 20, 2006, Super Steel put Mr. C. Murphy on an unpaid leave of absence, scheduled to end on April 17, 2006. As a result of the continuing hostility displayed by Super Steel towards Mr. C. Murphy, as well as the lack of reliable assurance that Mr. C. Murphy’s safety at Super Steel is assured, Mr. C. Murphy did not return to Super Steel by April 17, 2006, and was terminated on that date.

17. **Class Representative Norman Jordan** (“Norman Jordan” or “Mr. Jordan”) is an African American resident of Lawrenceville, New Jersey. Mr. Jordan was employed at Super Steel from approximately April 2005 to September 2005.

18. **Class Representative Andino Ward** (“Andino Ward” or “Mr. Ward”) is an African American resident of Schenectady, New York. Mr. Ward has been employed at Super Steel from approximately July 27, 2005 until the present.

19. **Class Representative Eddie Barnes, Jr.** (“Eddie Barnes, Jr.” or “Mr. Barnes”) is an African American resident of Moss Point, Mississippi. Mr. Barnes was contracted to work at Super Steel from approximately February 2004 until September 2004, and from approximately February 2005 until October 2005.

20. **Class Representative Paul Hannon** (“Paul Hannon” or “Mr. Hannon”) is an African American resident of Jackson, Alabama. Mr. Hannon was contracted to work at Super Steel from approximately June 2004 until November 2004, and from approximately February 2005 until October 2005.

21. **Class Representative Curtis Nelson** (“Curtis Nelson” or “Mr. Nelson”) is an African American resident of Moss Point, Mississippi. Mr. Nelson was contracted to work at Super Steel from approximately June 2004 until August 2004, and from approximately June 2005 until August 2005.

22. **Class Representative David Chambers** (“David Chambers” or “Mr. Chambers”) is an African American resident of Reserve, Louisiana. Mr. Chambers was an employee at Super Steel from approximately February 2005 until September 2005.

23. **Class Representative Herion Murphy** (“Herion Murphy” or “Mr. H. Murphy”) is an African American resident of Marrero, Louisiana. Mr. H. Murphy was an employee at Super Steel from approximately July 2005 until November 2005.

24. **Class Representative Vincent Safford** (“Vincent Safford” or “Mr. Safford”) is an African American resident of Moss Point, Mississippi. Mr. Safford was contracted to work at Super Steel from approximately April 2005 until the end of August 2005.

B. DEFENDANT

25. **Defendant Super Steel Schenectady Inc.** is a corporation doing business in Schenectady, New York. Super Steel is subject to suit under 42 U.S.C. §1981, as amended.

V. CLASS CERTIFICATION WITH RESPECT TO THE §1981

A. CLASS DEFINITION

26. The Class Representatives seek to maintain claims on their own behalf and on behalf of a class of current, former and future African American Super Steel permanent and contract employees. Each of the Class Representatives is a member of the putative class.

27. The Class consists of all African Americans who are, or have been, employed by Super Steel, whether as permanent or contract employees, and have experienced and/or witnessed racial discrimination and/or harassment at any time during the applicable liability period. All of the Class Representatives are proposed representatives of the class.

B. EFFICIENCY OF CLASS PROSECUTION OF COMMON CLAIMS

28. Certification of a class of similarly situated African Americans is the most efficient and economical means of resolving the questions of law and fact that are common to the individual claims of the named Class Representatives and the class. The individual claims of the Class Representatives require resolution of the common question of whether Defendant Super Steel has engaged in a systemic pattern of racial discrimination and harassment against African Americans. The Class Representatives seek remedies to undo the adverse effects of such discrimination in their own lives, careers and working conditions and to prevent continued racial discrimination in the future. The named Class Representatives have standing to seek such relief, in part because of the adverse effect that racial discrimination and harassment targeted at African Americans has had on their own interest in working conditions free from the pernicious effects of racial bias and hostility. In order to gain such relief for themselves, as well as for the class members, the Class Representatives must establish the existence of systemic racial discrimination and harassment as the premise of the relief they seek. Without class certification, the same evidence and issues would be subject to repeated relitigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the class of African Americans affected by the common questions of law and fact is the most efficient and judicious means of presenting the evidence and argument necessary to resolve such questions for the Class Representatives, the class and Defendant Super Steel. The Class Representatives' individual and class claims are premised upon the traditional bifurcated method of proof and trial for disparate impact and systemic

disparate treatment claims of the type at issue in this Complaint. Such a bifurcated method of proof and trial is the most efficient method of resolving such common issues.

C. NUMEROSITY AND IMPRACTICABILITY OF JOINDER

29. The class is so numerous that it is impracticable to bring all of its members before the Court. On information and belief, the class of black former, current, and future Super Steel employees comprises over fifty persons. The actual number of class members who have been or are currently employed by the defendant during the relevant liability period can be determined from Defendant Super Steel's records.

D. COMMON QUESTIONS OF LAW AND FACT

30. The prosecution of the claims of the Class Representatives will require the adjudication of numerous questions of law and fact common to both their individual claims and those of the class they seek to represent. The common questions of law include, *inter alia*, whether Defendant Super Steel has engaged in systemic racial discrimination and harassment in its selection practices and its terms and conditions of work and employment in a manner made unlawful by the statute under which this action is brought.

E. TYPICALITY OF CLAIMS AND RELIEF SOUGHT

31. The claims of the Class Representatives are typical of the claims of the proposed class. In particular, Super Steel ignores, and in some cases actively supports, racist threats, comments, jokes and behavior among its staff and fails to enforce policies prohibiting racial discrimination.

32. Defendant Super Steel's illegal practices and procedures are premised on an invidious and racially discriminatory animus directed against African American people. It is specifically calculated to deny members of the African American race equal treatment and opportunities guaranteed by §1981.

33. The employment practices at issue in this Complaint are neither unique nor limited to one department, but affect the named Class Representatives and members of the class in the same way throughout Super Steel's operations.

34. The relief necessary to remedy the claims of the named Class Representatives is the same as that necessary for the class.

F. ADEQUACY OF REPRESENTATION

35. The Class Representatives' interests are coextensive with those of the class in that each seeks to remedy Defendant Super Steel's discriminatory employment practices so that racially hostile conditions of work will be eradicated. The Class Representatives are able and willing to represent the class fairly and vigorously, as they pursue their common goals through this action. The Class Representatives have retained counsel who are qualified, experienced and able to conduct the litigation and to meet the time and fiscal demands required to litigate an employment discrimination class action of this size and complexity. The combined interest, experience and resources of the Class Representatives and their counsel to litigate competently the individual and class claims at issue clearly satisfy the Class Representatives' and class members' entitlement to equitable remedies at Stage II of such a trial. Declaratory and injunctive relief flow directly and automatically from proof of the common question of law and fact regarding the existence of systemic racial discrimination against African Americans. Such relief is the factual and legal predicate for the Class Representatives' and class members' entitlement to equitable remedies for individual losses caused by such systemic discrimination.

36. The common issues of fact and law affecting the claims of the Class Representatives and proposed class members predominate over any issues affecting only individual claims.

37. A class action is superior to other available means for the fair and efficient adjudication of the claims of the Class Representatives and members of the proposed class.

38. The cost of proving Super Steel's pattern or practice of discrimination makes it impracticable for the Class Representatives and members of the proposed class to prosecute their claims individually.

VI. ALLEGATIONS OF THE CLASS REPRESENTATIVES

A. CRISS MURPHY

39. **Class Representative Criss Murphy** is currently a resident of Lawrenceville, Georgia. Mr. C. Murphy has been employed as a welder at Super Steel's facility in Schenectady, New York from approximately April 2005 to the present. Mr. C. Murphy took a paid leave of absence from Super Steel from January 3, 2006, when his locker was vandalized with threatening, racist graffiti. On February 20, 2006, Super Steel put Mr. C. Murphy on an unpaid leave of absence, scheduled to end on April 17, 2006. As a result of the continuing hostility displayed by Super Steel towards Mr. C. Murphy, including Super Steel's decision to cancel Mr. C. Murphy's health benefits on March 31, 2006, as well as the lack of reliable assurance that Mr. C. Murphy's safety at Super Steel is assured, Mr. C. Murphy did not return to Super Steel by April 17, 2006, and was terminated on that date..

40. As an employee at Super Steel, Mr. C. Murphy worked daily in an environment that was rife with racial hostility. As an African American employee at Super Steel, this hostility forced Mr. C. Murphy to contend with specific challenges, including racist threats and taunts, disparate terms and conditions of employment, the denial of training opportunities, and other forms of discrimination.

41. Mr. C. Murphy's most recent incident of racial hostility occurred on January 3, 2006. Through the end of December 2005, Mr. C. Murphy was busy working and flying to Atlanta, Georgia to visit his mother, who was recovering from surgery. On January 3, 2006, he flew from Atlanta back to New York in time to work the night shift at Super Steel. When Mr. C. Murphy went to his locker to get his supplies, he found that his locker had been vandalized. Someone had written "KKK" and "Die Nigger Die" with a white welder marker. Hanging from

the coat hook was the head of a black stuffed animal: a monkey. The rest of the monkey was torn apart. Mr. C. Murphy took pictures of his locker and called the police.

42. The police in Schenectady have been investigating this incident as a felonious hate crime.

43. After reporting the incident, Mr. C. Murphy took a paid leave of absence from Super Steel. Mr. C. Murphy returned to Atlanta to see his girlfriend, who, as a result of the stress she experienced due to Mr. C. Murphy's treatment at Super Steel, had suffered a miscarriage.

44. On February 14, 2006, Mr. C. Murphy received a letter from Gerald J. Nelson ("Director Nelson"), Super Steel's Director of Human Resources. Although Director Nelson acknowledged that those who vandalized Mr. C. Murphy's locker had not yet been identified, and that the steps planned to address Mr. C. Murphy's safety concerns had not all been taken, Director Nelson demanded that Mr. C. Murphy return to work.

45. On March 15, 2006, Mr. C. Murphy received notice that, beginning nearly one month earlier, on February 20, 2006, his leave of absence had been changed from paid to unpaid. Mr. C. Murphy further received notice that his unpaid leave of absence would last until April 17, 2006, by which time his failure to return to work would lead to termination.

46. Additionally, without explanation or warning, Super Steel discontinued Mr. C. Murphy's health insurance beginning March 31, 2006. Mr. C. Murphy only became aware of his cancelled benefits when he went to the pharmacy to fill a prescription. The medication he sought was prescribed by his doctor to help Mr. C. Murphy deal with panic attacks, a condition that he developed as a result of the racism at Super Steel. When Mr. C. Murphy called his insurance company to inquire about his inability to collect this prescription, he was told that Super Steel cancelled his health insurance. It was only after that call that Mr. C. Murphy received a letter from Super Steel, verifying that his coverage had been cancelled beginning March 31, 2006.

47. As a result of the continuing hostility from Super Steel, and the lack of reliable assurance that Mr. C. Murphy's physical safety can be assured as an employee there, Mr. C. Murphy did not return to work on April 17, 2006, and was terminated by the company.

48. The racist graffiti on Mr. C. Murphy's locker that precipitated his January 3, 2006 leave of absence was a culmination of months of racism that Mr. C. Murphy experienced almost as soon as he began his employment with the Super Steel. During his second week of employment with the company, Mr. C. Murphy and his cousin, Plaintiff David Chambers, waited on the plant floor with their co-workers while one of the company's Leadmen, white male Ed _____ ("Supervisor Ed"), distributed work assignments. Supervisor Ed ignored Mr. C. Murphy and Mr. Chambers completely during this process, leaving them standing alone after he assigned jobs to all of their white co-workers. Mr. C. Murphy and Mr. Chambers waited for work assignments for forty-five minutes. At that time, realizing that Supervisor Ed had no intention of giving them work assignments, Mr. C. Murphy and Mr. Chambers left.

49. The next day, Mr. C. Murphy and Mr. Chambers returned to Super Steel to collect their checks and quit. Mr. C. Murphy and Mr. Chambers saw little opportunity in working with a company that allowed its managerial employees to so blatantly disregard African American workers. Wayne Allen ("Supervisor Allen") and Kevin Harrington ("Supervisor Harrington"), both white, male, plant Supervisors, intercepted Mr. C. Murphy and Mr. Chambers on their way to quit. Supervisors Allen and Harrington requested that Mr. C. Murphy and Mr. Chambers continue working at Super Steel, and assured Mr. C. Murphy and Mr. Chambers that they would talk to Supervisor Ed. Mr. C. Murphy and Mr. Chambers agreed. Since this incident, however, Supervisor Ed has been promoted to plant Supervisor. On occasion, when Supervisor Ed's department has needed additional workers, Mr. C. Murphy has been forced to work in Supervisor Ed's department.

50. The incident with Supervisor Ed followed a pattern that would be repeated throughout Mr. C. Murphy's employment. Namely, a white co-worker would target Mr. C.

Murphy for hostile treatment, Mr. C. Murphy would report the incident to Supervisor Allen, and Supervisor Allen would promise to “talk” to the co-worker causing problems. In all of these cases, the hostility and intimidation that Mr. C. Murphy was subjected to by his white co-workers was starkly different from the type of treatment extended to white employees, and the response of management to Mr. C. Murphy’s requests for intervention unfailingly inconsistent with Super Steel’s expressed written policies regarding harassment and intimidation.

51. In addition to the harassment that Mr. C. Murphy faced from his white co-workers and the lackadaisical response Mr. C. Murphy received from Super Steel management, Mr. C. Murphy experienced and witnessed other discriminatory acts by management personnel at Super Steel. For example, in 2005 Supervisor Allen was choosing people to send to Milwaukee for training on different types of machines. Mr. C. Murphy requested that he be able to attend. Mr. C. Murphy had reason to believe that he would be chosen, as Supervisor Allen had acknowledged that Mr. C. Murphy’s welding was the best at Super Steel. However, without giving any explanation as to how he chose them, Supervisor Allen announced the next day that he had chosen to send Manny, a co-worker whose harassment Mr. C. Murphy reported to Supervisor Allen, and two white employees. None of those selected for the training had demonstrated the technical expertise of Mr. C. Murphy.

52. On another occasion, Supervisor Allen and Supervisor Harrington asked Mr. C. Murphy if he knew any good welders. The supervisors told Mr. C. Murphy that new hires would be paid \$17 per hour. Mr. C. Murphy’s brother, Plaintiff Herion Murphy, came up from New Orleans, Louisiana for the job. When Mr. H. Murphy started working, however, he only received \$13 per hour. Mr. C. Murphy spoke to Supervisor Allen and Supervisor Harrington about the discrepancy. Supervisor Allen and Supervisor Harrington claimed that Mr. H. Murphy was being paid less because he could not read blueprints. When Mr. C. Murphy challenged this assertion, the supervisors promised to raise Mr. H. Murphy’s salary to \$16 per hour. The supervisors never fulfilled this promise and eventually Mr. H. Murphy returned to New Orleans.

53. Mr. C. Murphy is also aware of a racial bias in hiring at Super Steel. Mr. C. Murphy would regularly see management walk African-American and white applicants through the factory. Although there were at least as many African-American applicants as white applicants, the applicant hired was almost invariably white. When Plaintiff Andino Ward, an African-American male, was hired, Mr. C. Murphy heard other employees call Mr. Ward the “default hire” because the only other applicants for his position, white females that Super Steel had attempted to hire, both failed their drug tests.

54. As a result of Mr. C. Murphy’s hostile work environment at Super Steel, culminating in the threatening, racist graffiti in his locker, Mr. C. Murphy began to have panic attacks. Mr. C. Murphy has seen a doctor and a psychiatrist to deal with this problem. Although Mr. C. Murphy’s doctor prescribed him medication to address his condition, Mr. C. Murphy was unable to get his medication when his health insurance was cancelled by Super Steel on March 31, 2006.

55. As a result of the racial discrimination at Super Steel, Mr. C. Murphy has suffered extreme harm.

B. NORMAN JORDAN

56. **Class Representative Norman Jordan** is a resident of Lawrenceville, New Jersey. Mr. Jordan was hired by Super Steel as a Sandblaster in approximately April 2005. In September 2005, Mr. Jordan was constructively discharged from his position at Super Steel due to continuing racial harassment.

57. As an employee at Super Steel, Mr. Jordan worked daily in an environment that was rife with racial hostility. As an African American employee at Super Steel, this hostility forced Mr. Jordan to contend with specific challenges, including racist threats and taunts, the denial of promotion and other employment opportunities, disparate terms and conditions of employment, and other forms of discrimination.

58. Mr. Jordan's six-month tenure at Super Steel was characterized by a hostile work environment. On August 2, 2005 the Glenville Police Department came to Super Steel to investigate racist graffiti drawn on a train that Mr. Jordan was working on. The graffiti was a drawing of a dead man hanging from a rope around his neck. The dead man had a dot on his forehead, similar to the prostration mark that Mr. Jordan has on his forehead. The police Sergeant investigating the incident, Sergeant Alan Craver, noted in his police report that the Super Steel Plant Manager "had not yet come to an understanding of the serious nature of the incident(s) and was still under the assumption that they would be able to handle everything internally."

59. The blatant, threatening racism exhibited by the graffiti in Mr. Jordan's workspace, and Super Steel's attempt to dismiss and underplay the seriousness of it, is characteristic of Mr. Jordan's experience at Super Steel.

60. As an employee at Super Steel, Mr. Jordan was regularly called "nigger," "fucking nigger," "nigger bastard," and "nigger monkey." These racial slurs were directed at Mr. Jordan from both his white co-workers and his white supervisors. Often, the racial slur was attached to some sort of threat or other hostile comment.

61. For example, Paint Supervisor Ben Rodgers ("Supervisor Ben Rodgers") often expressed his racial hatred towards Mr. Jordan in starkly violent terms. On one occasion, Supervisor Ben Rodgers said to his father, Supervisor Phil Rodgers ("Supervisor Phil Rodgers"), that it would be fun to see Mr. Jordan's "black fat ass" being hung, and that Mr. Jordan would "scream like a bitch." They both started laughing. This comment was heard by co-workers Ernie _____, Chris Kennely, and Mike Clemens.

62. On another occasion, when Mr. Jordan had just finished a prayer, Supervisor Ben Rodgers said to Supervisor Phil Rodgers "What does this nigger Muslim think he's doing?" Supervisor Phil Rodgers replied "we know how to get rid of niggers like this."

63. Supervisor Ben Rodgers also made racist comments directly to Mr. Jordan. One time, Supervisor Ben Rodgers asked Mr. Jordan how he liked working for a white man, adding that white men are superior to black men. Another time, Mr. Jordan was in the sandblast booth when Supervisor Ben Rodgers came in and said he was taking too long. Supervisor Ben Rodgers then said that he knew what would make “these niggers” work faster: “a good old nigger whip.”

64. Supervisor Phil Rodgers confronted Mr. Jordan with racist threats as well. When Mr. Jordan was getting a cup of coffee during his shift, Supervisor Phil Rodgers said that the “bull’s eye” mark on Mr. Jordan’s forehead looked like it needed a bullet in it. When Mr. Jordan asked Supervisor Phil Rodgers what his problem was, Supervisor Phil Rodgers replied that he was just letting Mr. Jordan know “how much [he hates Mr. Jordan’s] black ass.” Supervisor Phil Rodgers also told Mr. Jordan that his days were limited because “we are tired of your kind of people.”

65. During this interaction, Supervisor Phil Rodgers also asked Mr. Jordan why African Americans take a “black god” when a “white god” is the superior god.

66. Gary _____, a white Inspector Supervisor (“Supervisor Gary”) was another Supervisor that made racist comments to Mr. Jordan. One day, as Mr. Jordan came out of the sandblast booth after praying during his lunch hour, Supervisor Gary asked Todd _____, the Plant Manager (“Plant Manager Todd”), why Super Steel hired “somebody like that,” referring to Mr. Jordan. Plant Manager Todd responded that they could not “put up” with it.

67. When Mr. Jordan addressed Plant Manager Todd about the conversation, Plant Manager Todd said that Mr. Jordan was hearing things. When Mr. Jordan approached Supervisor Gary about the conversation, Supervisor Gary said that he did not have a problem letting Mr. Jordan know that he does not like black people or Muslims. Supervisor Gary said that Mr. Jordan should have told Super Steel that he was Muslim, because Supervisor Gary could guarantee that Mr. Jordan would never have been hired.

68. Supervisor Gary also made comments that were physically threatening. For example, Supervisor Gary commented on one occasion that he would “get rid of this black monkey,” referring to Mr. Jordan.

69. Supervisor Gary’s hostility was so apparent that a white co-worker who was friendly with Mr. Jordan, Bob _____, told Mr. Jordan that he should watch out for his physical safety.

70. Paint Supervisor Harry _____ (“Supervisor Harry”), was yet another Super Steel supervisor who threatened Mr. Jordan with impunity. On one occasion when Mr. Jordan was working on the first shift, Mr. Jordan had to leave the plant for an hour and a half for religious services. Normally, a worker is permitted to leave during the first shift for personal business if he clocks in and out, and finishes his work during the second shift. However, when Mr. Jordan clocked in and out for his religious service, Supervisor Harry approached him and told him that he needed a note to excuse his absence. Supervisor Harry told Mr. Jordan that if he left for service, he did not need to come back. Supervisor Harry continued by saying “We’re not here to cater to your black ass or your bullshit services.”

71. Mr. Jordan overheard a related conversation between Supervisor Harry, Supervisor Gary, and his direct Supervisor Chris Fain (“Supervisor Fain”) in which they discussed how they were not willing to “cater” to Mr. Jordan, and in which Supervisor Gary said they should just hang Mr. Jordan to “let all these niggers know who’s really in charge.”

72. Mr. Jordan reported this incident to Kim Evans (“Human Resources Representative Evans”) in Human Resources. Human Resources Representative Evans said that she did not believe Mr. Jordan’s accusation, and, despite its seriousness, took no action to find out whether Mr. Jordan’s claim was true.

73. This was not the first incident that Mr. Jordan brought to Ms. Evans. Mr. Jordan went to Human Resources repeatedly to report the racist threats and taunts he confronted at work.

74. One morning, at approximately 3:00 a.m., Ernie came into the spackling booth where Mr. Jordan was working. Ernie started harassing Mr. Jordan, claiming that Mr. Jordan was not doing his work properly and saying that he was tired of Mr. Jordan's "shit." Ernie then said that Mr. Jordan and his family could go to hell and, while drawing a hand across his throat, Ernie said that he could have Mr. Jordan disappear.

75. Mr. Jordan immediately told Human Resources Representative Evans about Ernie's comments. Human Resources Representative Evans responded by asking Mr. Jordan what he expected her to do about it. Mr. Jordan told Human Resources Representative Evans that he expected her to protect his rights. Human Resources Representative Evans replied that there was nothing that she could do.

76. Later that day, Ernie again approached Mr. Jordan and asked Mr. Jordan why he went "crying" to the office. Ernie said that if Mr. Jordan made any more noise, Mr. Jordan knew what would happen to him.

77. Mr. Jordan again told Human Resources Representative Evans about Ernie's threats. Human Resources Representative Evans again claimed there was nothing she could do. Approximately three weeks later, Ernie made more threats to Mr. Jordan during break. When Mr. Jordan went to Human Resources Representative Evans to report them, her response was that she thought that Mr. Jordan's "people" were "used to that stuff."

78. Mr. Jordan also went to Human Resources only three days before the graffiti of the man hanging appeared on his train. At that time, Mr. Jordan went to Human Resources to report a sign that had been hung in his workspace that said "Kiss my white ass." Mr. Jordan was unsettled by the sign because of the threats he had received and the knowledge that someone had been lurking in his workspace.

79. When Human Resources, yet again, took no action, Mr. Jordan finally accepted that Super Steel would never address his harassment. At that point, Mr. Jordan called the police. The policeman that came to Super Steel to investigate Mr. Jordan's claims told Mr. Jordan's

supervisor that Mr. Jordan was being harassed, and told Mr. Jordan that he should call the police at the next racist comment or action.

80. A few days later, the graffiti of the man hanging appeared on Mr. Jordan's train. The morning that the graffiti was discovered, one of Super Steel's head managers from Milwaukee was visiting the plant. The manager told Ms. Evans, Supervisor Fain, and Plant Manager Todd to erase the drawing and to get everyone back to work. When another employee heard the manager say this, the employee got a camera to take pictures. Mr. Jordan and the employee took the pictures and called the police before Super Steel could erase the drawing.

81. Two days later Human Resources Representative Evans came to the Spackling booth where Mr. Jordan was working. She told Mr. Jordan that he should not have called the police, and that if he did not handle things the way that he was directed to by Super Steel, he would lose his job. Mr. Jordan's co-worker Mike Clemens was standing next to Mr. Jordan when Human Resources Representative Evans threatened Mr. Jordan with termination.

82. The Super Steel employees to whom Mr. Jordan was supposed to report his grievances, including Ms. Evans, were hostile to hearing them. Plant Manager Todd, for example, called Mr. Jordan "nigger bastard" to his face. Mr. Jordan also heard Plant Manager Todd say racist things to other employees.

83. Accordingly, when Mr. Jordan attempted to bring some of his grievances to Plant Manager Todd. Mr. Jordan was met with derision. On one occasion when Mr. Jordan brought his grievances to Plant Manager Todd, Plant Manager Todd said to Supervisor Fain "What does this fucking nigger expect me to do?" Supervisor Fain replied that Plant Manager Todd should just "ignore the nigger monkey." On another occasion, when Mr. Jordan complained to Plant Manager Todd about one of Supervisor Ben Rodgers' racist remarks, Plant Manager Todd said that he did not realize that Mr. Jordan had heard what Supervisor Ben Rodgers said. Plant Manager Todd then dismissed the issue and said that "all niggers" think they can get their way.

84. Mr. Jordan also told Plant Manager Todd he did not feel comfortable working at Super Steel because of all of the racism. Plant Manager Todd told Mr. Jordan that he should be used to it. Plant Manager Todd said that Mr. Jordan should be tougher than he was, that Mr. Jordan was weak, and that Mr. Jordan should be kissing Plant Manager Todd's feet because Mr. Jordan had a job. When Mr. Jordan asked Plant Manager Todd what was being done about the racism and threats to his life, Plant Manager Todd told Mr. Jordan that Super Steel was "still investigating."

85. Mr. Jordan was also rebuffed by his supervisors when he made efforts to improve his employment status at Super Steel. When Mr. Jordan requested that he be considered for a supervisory position that was available in the Sandblaster Department, Supervisor Fain told Mr. Jordan that he would never let a "nigger" take over the department. After Mr. Jordan had requested a number of times that Supervisor Fain let Mr. Jordan demonstrate his painting skills, Supervisor Fain said "you people feel that you can do a whole lot."

86. At Mr. Jordan's ninety-day review, he asked Supervisor Fain about a raise. Supervisor Fain dismissed Mr. Jordan's request by saying that Mr. Jordan had taken too many days off. However, the days off Supervisor Fain was referring to were days that had been approved by Super Steel to allow Mr. Jordan to attend his mother's funeral.

87. Supervisor Fain's perception of Mr. Jordan's proper place in the company was aptly captured in a comment he made to Supervisor Ben Rodgers. When Supervisor Ben Rodgers said that he did not like the fact that he had to work around a "nigger Muslim," Supervisor Fain told Supervisor Ben Rodgers that Supervisor Ben Rodgers should just have Mr. Jordan "sweep the floor" because that "is what they are used to anyway."

88. The threats, comments, and hostility at Super Steel severely diminished Mr. Jordan's well-being. Mr. Jordan had trouble sleeping at night and felt scared and anxious about what might happen to him. Ultimately, the burden of the maltreatment was too heavy, and Mr. Jordan resigned from his position at Super Steel in September 2005.

89. As a result of the racial discrimination at Super Steel, Mr. Jordan has suffered extreme harm.

C. ANDINO WARD

90. **Class Representative Andino Ward** is a resident of Schenectady, New York. Mr. Ward has been employed as an Assembler at Super Steel from approximately July 27, 2005 until the present.

91. As an employee at Super Steel, Mr. Ward worked, and continues to work, in an environment rife with racial hostility. As an African American employee at Super Steel, this hostility has forced Mr. Jordan to contend with specific challenges, including racist threats and taunts, denial of promotions and other employment opportunities, disparate terms and conditions of employment, and other forms of discrimination.

92. On February 16, 2006, Mr. Ward received a letter from Gerald J. Nelson (“Director Nelson”), Director of Human Resources at Super Steel, alleging the recent completion of an “investigation” into the more than six months of racial harassment Mr. Ward has experienced as an employee at Super Steel.

93. The first incident cited in Director Nelson’s letter involved a KKK mask that was left on Mr. Ward’s bag. In approximately September 2005, Mr. Ward’s white co-worker John Kalamant (“Mr. Kalamant”) told Mr. Ward that he had put something on Mr. Ward’s bag to help Mr. Ward “keep up” his work ethic. The item Mr. Kalamant left was a KKK mask with “Kill Blackie” written on the forehead. Mr. Ward told Mr. Kalamant that Mr. Kalamant could not do things like that. Mr. Ward then went to his Supervisor, white male Henry Bendixon (“Supervisor Bendixon”) to tell Supervisor Bendixon what had happened. Supervisor Bendixon, expressing an interest in “keeping the peace,” chose not to take any action.

94. In Director Nelson’s letter, Director Nelson claims that both Mr. Kalamant and Mr. Ward agreed that Mr. Kalamant’s actions were performed in jest. This is not accurate. Mr.

Ward's decision to report the incident to Supervisor Bendixon accurately reflects Mr. Ward's serious concern about what had happened.

95. Mr. Ward was also subject to other harassment by his white co-workers. For example, Jason Bombard ("Mr. Bombard") would block Mr. Ward's path when Mr. Ward was trying to walk, look at Mr. Ward in a hostile way, and lose his temper with Mr. Ward. Another co-worker, Mike _____, would move closer to Mr. Ward when he passed him in the hall. Mike would walk until his face was right next to Mr. Ward's, and stare at him in a threatening manner as he passed.

96. Russ _____, a long-term employee of Super Steel and Supervisor Bendixon's stepson, told Mr. Ward that Mike treated Mr. Ward in such a hostile manner because Mike was part of a white supremacist gang called the Aryan Nation. Russ also told Mr. Ward that there was a lot of racism at Super Steel, and that the company did not like to hire African Americans.

97. Russ's assertion that Super Steel did not like to hire African Americans accorded with Mr. Ward's experience at the company. After Mr. Ward was hired, he was told that there were two white, female applicants for his position, and that Super Steel had tried to hire, in turn, each of them. However, both women failed their drug tests. When Super Steel ran out of white applicants, the company hired Mr. Ward. To commemorate the conditions of his hiring, one of Mr. Ward's white co-workers, Bill Kohinke ("Mr. Kohinke"), called Mr. Ward "DH": "Default Hire."

98. When Mr. Ward began his employment at Super Steel, he was the only African American in his department. The white employees in Mr. Ward's department often spoke derisively about another African American employee, Robert Thomas ("Mr. Thomas"), who worked in the department prior to Mr. Ward's arrival, and who had moved to another department to try to escape the constant racism he had found among the employees with whom Mr. Ward was now working. When Mr. Ward met Mr. Thomas, Mr. Thomas told Mr. Ward to

be careful. Mr. Thomas warned Mr. Ward that the workers in his department were racist, and would gang up on Mr. Ward to attempt to push him out of the room.

99. Mr. Ward quickly found that his white co-workers took part in many racially offensive conversations. One such conversation involved Mr. Kohinke and another white worker, Laurie Jones (“Ms. Jones”). In that conversation, Mr. Kohinke and Ms. Jones were discussing slavery. Ms. Jones turned to Mr. Ward and made numerous comments about how all African Americans are the same. She said that African Americans all think that white people owe them something, and that all African Americans are drug dealers. Mr. Ward tried to ignore these conversations and concentrate on his work.

100. Another of Mr. Ward’s white co-workers, Mary _____, had been making things difficult for Mr. Ward since he started in his department by telling Super Steel management that he was not working. As her claims were false, Mr. Ward decided to ignore them.

101. However, when Mary walked right near Mr. Ward and loudly declared that she “hate[s] negroes,” Mr. Ward felt that he needed to say something. He told Supervisor Bendixon about Mary’s harassment and about what she had said. Supervisor Bendixon took no steps to reprimand Mary for her hostility.

102. Director Nelson, in his February 16, 2006 letter, describes Mary’s comment as “isolated.”

103. However, even Supervisor Bendixon commented to Mr. Ward that there were many racists at Super Steel. While making this comment, Supervisor Bendixon began to point to the employees that he knew were racist. Supervisor Bendixon said that he even had people in his family that were part of the Aryan Nation.

104. After incidents of violence between white and African American employees at Super Steel, including one in which Mr. Ward was pushed by Jason Bombard, and after Plaintiff Criss Murphy’s locker was covered with racist graffiti, Mr. Ward felt so threatened by his work environment that he started to bring a razor blade into the bathroom with him for self-protection.

105. As an employee at Super Steel, Mr. Ward has also faced discrimination with respect to potential promotions and appropriate salary increases. For example, in December 2005 Mr. Ward expressed interest in a better paying position as a forklift operator. Mr. Ward was told that Super Steel wanted him to have the job. As Mr. Ward prepared for the move, however, he was told that the job had been given to a white employee. Mr. Ward was given no explanation as to why he was dropped in favor of this employee.

106. More recently, Mr. Ward was offered an appraisal of his salary. Although he was told that this would result in his first pay raise, Mr. Ward never received the appraisal. Again, Mr. Ward was never given an explanation for this oversight.

107. As a result of the racial discrimination he has experienced at Super Steel, Mr. Ward has suffered, and continues to suffer, extreme harm.

D. EDDIE BARNES, JR.

108. **Class Representative Eddie Barnes, Jr.** is a resident of Moss Point, Mississippi. Mr. Barnes was contracted from Global Manpower to work at Super Steel from approximately February 2004 until September 2004, and from approximately February 2005 until October 2005. Mr. Barnes was hired in February 2004 to blast and spray trains. Mr. Barnes worked in this capacity for one week, after which he was transferred to another department to build trains. Mr. Barnes built trains until September 2004. When Mr. Barnes returned to Super Steel in February 2005, he blasted and sprayed trains for the remainder of his tenure.

109. As an employee at Super Steel, Mr. Barnes worked daily in an environment that was rife with racial hostility. As an African American employee at Super Steel, this hostility forced Mr. Barnes to contend with specific challenges, including racist threats and taunts, disparate terms and conditions of employment, and other forms of discrimination.

110. In February 2004, Mr. Barnes traveled from Moss Point, Mississippi to Schenectady, New York, to blast and spray trains at Super Steel. Upon his arrival at Super Steel, Mr. Barnes was assigned to work with an all-white paint crew. This assignment quickly

proved problematic. Mr. Barnes' white co-workers not only ignored him, but would not let him paint. Approximately one week from his starting date, Mr. Barnes was told that he was not needed in his assigned department, and was transferred to a department where trains were being framed and built. This transfer put Mr. Barnes at a significant disadvantage, as he had no experience framing or building trains. In addition, Mr. Barnes' new group of white co-workers was as hostile as the first group.

111. However, in contrast to his previous department, one other African American employee, Mr. Bill Hall ("Mr. Hall") worked in Mr. Barnes' new department. Mr. Hall taught Mr. Barnes the skills he needed to frame and build trains. With Mr. Hall's assistance, Mr. Barnes was able to continue his employment at Super Steel, and not have to make a financially difficult trek back to Mississippi.

112. In one of his conversations with Mr. Hall, Mr. Barnes commented about the lack of African American employees at Super Steel. Mr. Hall told Mr. Barnes that racism drove Super Steel's limited hiring of African American employees.

113. Mr. Barnes saw one reflection of this racism in the derogatory language used by Super Steel's white employees. The day that Mr. Barnes returned to Super Steel in February 2005, Bennie _____, a white employee, approached Mr. Barnes and asked him where contracted employee Kennard Morris ("Mr. Morris"), was. Mr. Barnes told Bennie that Mr. Morris had found another job. Bennie responded, "Well that nigger told me he was coming back." Bennie used this racial slur on multiple occasions.

114. After one particularly harsh use of the word "nigger," Mr. Barnes raised the issue of Bennie's racist language with Supervisor Woolard. Supervisor Woolard assured Mr. Barnes that he would take care of the problem. However, on information and belief, Bennie received no punishment. Instead, approximately one week after Mr. Barnes lodged his complaint, Bennie was one of a select number of employees chosen to go to Milwaukee for a special job skills training session.

115. In approximately September 2005, Mr. Barnes and other contract employees had to leave Super Steel to deal with the damage to their homes caused by Hurricane Katrina. Although Mr. Barnes explained that his home was flooded with five feet of water, and that his family needed him, Super Steel tried to pressure Mr. Barnes not to go. Super Steel also initially refused the request of some African American employees for some of the money they had already earned.

116. Two weeks later, after confronting the physical devastation at home, Mr. Barnes returned to the hostile work environment at Super Steel. Mr. Barnes arrived in New York at 12:00 a.m. and was at work by 9:00 a.m. When Mr. Barnes arrived at work, he was immediately approached by Supervisor Harry _____ (“Supervisor Harry”). Supervisor Harry said that Mr. Barnes could not “walk the floor,” as Mr. Barnes did every morning to check in with the contract employees. Instead, Supervisor Harry said Mr. Barnes had two options: to clock in and immediately start working or to go home. Mr. Barnes told Supervisor Harry that he worked very hard at his job, that he worked very long hours, and that the short time he spent walking the floor was one of his job responsibilities. Supervisor Harry responded by repeating himself, speaking loudly and rudely, and pointing and clapping at Mr. Barnes like he was a dog.

117. Mr. Barnes told Supervisor Harry that Supervisor Harry could not speak to him in that way. Meanwhile, Supervisor Allen and Project Manager Todd stood by and said nothing. Mr. Barnes clocked in and worked for forty minutes. Disgusted with the situation, he then clocked out and went home.

118. Mr. Barnes reported this incident to the Floor Supervisor, Chris Fain. On information and belief, no action was taken to discipline Supervisor Harry for his actions.

119. Soon after, Mr. Barnes’ contract was finished and he returned to Mississippi.

120. As a result of the racial discrimination he experienced at Super Steel, Mr. Barnes suffered extreme harm.

E. PAUL HANNON

121. **Class Representative Paul Hannon** is a resident of Jackson, Alabama. Mr. Hannon was contracted from Global Manpower to work for Super Steel from June 2004 until November 2004, and from February 2005 until October 2005. Mr. Hannon spent his first six month period at Super Steel as a Spackler in the Paint Department. When he returned to Super Steel in February 2005, he worked as a Straightener in the Straightening Department until April 2005, and then as a Blaster in the Paint Department until October 2005.

122. As an employee at Super Steel, Mr. Hannon worked daily in an environment that was rife with racial hostility. As an African American employee at Super Steel, this hostility forced Mr. Hannon to contend with specific challenges, including racist threats and taunts, disparate terms and conditions of employment, and other forms of discrimination.

123. When Mr. Hannon entered his new workplace in Schenectady, New York, a recent arrival from Jackson, Alabama, Mr. Hannon immediately noticed how few African American employees worked at Super Steel. The small proportion of African Americans in Super Steel's permanent workforce contrasted sharply with the ethnic make-up of Mr. Hannon's peer group from Global Manpower, which consisted mainly of African Americans, with one or two white workers among them.

124. Whereas the few white contract workers from Global Manpower were welcomed by the crowd of white permanent employees at Super Steel, Mr. Hannon and his African American counterparts immediately felt singled out for disparate treatment.

125. Specifically, Mr. Hannon found that the white supervisors at Super Steel targeted African American workers for longer hours, more strenuous work, and blame and criticism when things went wrong.

126. The disparate treatment dispensed by white supervisors was amplified by the generally hostile environment in which it took place. Mr. Hannon found that his workday included using a restroom where "KKK" slogans and other racist graffiti were written on the

walls, trying to complete assignments on time when white co-workers locked up the tools that he and other African American employees needed to do their work, and trying to ignore the racial slurs and racially hostile attitudes that permeated the workplace.

127. Mr. Hannon heard many white employees use racist language at Super Steel. For example, one of the company's Leadmen, Ben Rodgers ("Leadman Rodgers"), used the word "nigger" on multiple occasions.

128. Following one such occasion, Mr. Hannon reported Leadman Rodger's aggressive, racist language to Supervisor Gary Woolard ("Supervisor Woolard") and Project Manager Todd Thelan ("Project Manager Thelan"). Supervisor Woolard and Project Manager Thelan told Mr. Hannon that they would "take care of it."

129. The next day, Project Manager Thelan approached Mr. Hannon and assured him that action was being taken with respect to Leadman Rodgers. When Mr. Hannon asked Project Manager Thelan what action, specifically, was being taken, Project Manager Thelan told him that Leadman Rodgers was being written up to the maximum. Project Manager Thelan said that this meant that if Leadman Rodgers had any other write-ups, he would be terminated.

130. However, Mr. Hannon witnessed Leadman Rodgers get written up for another, non-racial incident consequent to this incident. Leadman Rodgers was not fired. When Mr. Hannon asked a friend in the office about Leadman Rodger's write-ups, Mr. Hannon's friend checked the records and told Mr. Hannon that Leadman Rodgers was never written up for his racial slurs. Moreover, soon after Supervisor Woolard and Project Manager Thelan met with Leadman Rodgers to discuss his racism, Leadman Rodgers was chosen above other employees to attend a special job skills training in Milwaukee.

131. Mr. Hannon was constantly worried that the racial tension at Super Steel would lead to physical confrontations. He was careful to remain vigilant while working to protect himself from such an eventuality. Given the choice of staying to work at Super Steel and

returning home to Alabama to find a new work assignment, Mr. Hannon chose to return to the relative safety of Alabama.

132. As a result of the racial discrimination he experienced at Super Steel, Mr. Hannon suffered extreme harm.

F. CURTIS NELSON

133. **Class Representative Curtis Nelson** is a resident of Moss Point, Mississippi. Mr. Nelson was contracted to work at Super Steel from approximately June 2004 until August 2004, and from approximately June 2005 until August 2005. Mr. Nelson worked as a Metal Straightener during both of his employment periods at Super Steel.

134. As an employee at Super Steel, Mr. Nelson worked daily in an environment that was rife with racial hostility. As an African American employee at Super Steel, this hostility forced Mr. Nelson to contend with specific challenges, including racist threats and taunts, disparate terms and conditions of employment, and other forms of discrimination.

135. Mr. Nelson compares his arrival at Super Steel to that of a slave being sold at market. His white co-workers treated him with such a degree of disrespect and hostility that he felt as though he had been “ordered up” by this group of white New Yorkers from “some small farm” in Mississippi. His white Supervisors gave him orders as if he was a “boy” that was “not supposed to know any better.”

136. During his employment with Super Steel in the summer of 2005, Mr. Nelson was approached by his brother, Vincent Safford (“Mr. Safford”), who appeared upset. Mr. Safford told Mr. Nelson that Mr. Nelson needed to look at the locker that the brothers shared. When Mr. Nelson went to the locker room, he found that someone had drawn a picture of a person with a noose around his neck on the locker door. This was only one day after Plaintiff Norman Jordan filed a police report about a picture that had been drawn on a train that he was working on of someone hanging by a noose.

137. Mr. Nelson immediately reported the incident to the Plant Manager Todd _____ (“Plant Manager Todd”). Plant Manager Todd asked Mr. Nelson to open other lockers to look for more graffiti. Mr. Nelson is aware that similar graffiti was drawn in the locker of at least one other African American. Plant Manager Todd took pictures of the drawings and promised Mr. Nelson that he would “straighten it all out.”

138. However, neither Mr. Nelson nor Mr. Safford was ever informed of any follow-up. Despite the similarity of the racist graffiti found on that day to the racist graffiti targeted at Mr. Jordan, Super Steel chose not to involve the police in the matter.

139. The racist graffiti on Mr. Nelson’s locker followed a number of daily, race-based indignities that Mr. Nelson had been forced to deal with since he was first contracted to work at Super Steel in 2004. For example, the bathrooms were filled with racist graffiti similar to that which Mr. Nelson found in his locker.

140. In addition, Mr. Nelson’s white co-workers told the African American employees that they could not eat at certain tables, and that they could not smoke or take breaks in certain places. Management did not intervene to prevent the racial segregation.

141. Mr. Nelson found it difficult to protest the forced segregation at Super Steel because there were so few African American workers employed by the company. In fact, throughout Mr. Nelson’s tenure at Super Steel, he saw many black applicants walk through the company, but never saw any of them get hired.

142. Mr. Nelson was also hesitant to raise his concerns because of racism among managerial employees at Super Steel. During the summer of 2005, Mr. Nelson’s Supervisor was Ed _____ (“Supervisor Ed”). Supervisor Ed consistently treated Mr. Nelson in a hostile manner. Supervisor Ed would give Mr. Nelson dirty looks and target him for criticism and harassment. For example, Supervisor Ed told Mr. Nelson that he could not make telephone calls and could not smoke during his break, even though Plant Manager Todd had confirmed that Mr. Nelson could do both of these things. Although Plant Manager Todd was aware of Supervisor Ed’s

harassment, Plant Manager Todd never took any steps to stop Supervisor Ed from harassing Mr. Nelson.

143. Near the end of Mr. Nelson's second term at Super Steel, Hurricane Katrina hit the area where many of the African American contractors working at Super Steel lived in Mississippi. When Mr. Nelson and his co-workers told Super Steel that they needed to leave, management insisted that they stay. As the workers needed to return to their families, they repeated their requests to leave. The workers also asked Super Steel to pay them for the work that they had already completed, so that they would have enough money to get home. Super Steel refused on the grounds that it could not get in contact with the company from which the workers had been contracted. Super Steel refused to negotiate even though the contracting company in Mississippi was unavailable because it was flooded during the hurricane. After pleading with different people in management for some small amount of money, Mr. Nelson finally convinced Plant Manager Todd to give him a small amount to cover some of the transportation costs of returning to Mississippi. Although Mr. Nelson received this small advance on his paycheck, he ultimately returned to Mississippi without his earned, final pay.

144. As a result of the racial discrimination he experienced at Super Steel, Mr. Nelson suffered extreme harm.

G. DAVID CHAMBERS

145. **Class Representative David Chambers** is a resident of Reserve, Louisiana. Mr. Chambers was contracted to work as a welder at Super Steel from approximately February 2005 until September 2005.

146. As an employee at Super Steel, Mr. Chambers worked daily in an environment that was rife with racial hostility. As an African American employee at Super Steel, this hostility forced Mr. Chambers to contend with specific challenges, including racist threats and taunts, the denial of promotions and other employment opportunities, disparate terms and conditions of employment, and other forms of discrimination.

147. In September 2005, Mr. Chambers was terminated with four other African American employees that had been contracted to work at Super Steel, including “Slim” and Nick _____. Mr. Chambers had no advance notice of his termination, as he had always completed his job assignments and was never told of any problems with his work.

148. The African American workers terminated at the same time as Mr. Chambers had arrived at Super Steel only two weeks prior to their terminations. The supervisors terminating these workers claimed that the men did not have the appropriate skills for their jobs. To verify this allegation, the supervisors asked the workers questions relating to fitting. However, fitting was not part of the job description that had brought these African Americans from the South to work at Super Steel. Rather, the terminated employees had been hired as welders. Accordingly, they had taken two tests, one given in Mississippi before they came to Super Steel, and the other given upon arrival at Super Steel, to test their welding skills. They passed both of these tests.

149. On information and belief, white contract employees with similar qualifications as the terminated African American employees were kept on at Super Steel even as the African American employees were fired. Super Steel allowed these white employees the time necessary to learn the skills they needed for the additional responsibilities. In contrast, the terminated African American employees were left without employment and with the expenses of traveling between New York and their home states.

150. Although caught unawares by his termination at Super Steel, Mr. Chambers had faced hostility from various supervisors at the company throughout his employment there. For example, one day when Mr. Chambers and his cousin, Plaintiff Criss Murphy, arrived at work, Supervisor Ed _____ (“Supervisor Ed”) was distributing job assignments. Mr. Chambers and Mr. C. Murphy waited for forty-five minutes while Supervisor Ed assigned jobs to the white employees. After Supervisor Ed finished assigning jobs to the white employees, Supervisor Ed walked away, leaving Mr. Chambers and Mr. C. Murphy in the middle of the plant floor alone.

When Mr. Chambers and Mr. C. Murphy realized that Supervisor Ed did not plan to give them work, the two men left.

151. Mr. Chambers and Mr. C. Murphy returned the next day, though only to collect their checks and to quit. On the way to get the checks, Mr. Chambers and Mr. C. Murphy ran into Supervisor Wayne Allen (“Supervisor Allen”) and Supervisor Kevin Harrington (“Supervisor Harrington”). Mr. Chambers and Mr. C. Murphy told the supervisors what had happened. Mr. Chambers and Mr. C. Murphy agreed not to quit after Supervisors Allen and Harrington promised they would talk to Supervisor Ed.

152. However, Supervisor Allen, when distributing job assignments the following day, again left Mr. Chambers standing for thirty-five minutes. When Supervisor Allen was done distributing job assignments to other workers, he approached Mr. Chambers and asked why Mr. Chambers had not left. Mr. Chambers said that he believed that Supervisor Allen would eventually give him work. After this incident, Mr. Chambers was separated from Mr. C. Murphy and transferred to work on the night shift.

153. While working under the command of Supervisor Allen, Mr. Chambers was subjected to various instances of disparate treatment. On one occasion, for example, Mr. Chambers was working hard to complete one of his assigned projects when Supervisor Allen called him away from his work. Supervisor Allen told Mr. Chambers that Mr. Chambers needed to interrupt what he was doing to scrub the paint off of a train that a different group of employees was working on. Mr. Chambers was forced to leave his assigned project to scrub the paint while the white workers who were assigned to finish the train stood around and watched him work.

154. This assignment, like many others given to Mr. Chambers during his employment at Super Steel, did not accord with his position as a welder. Mr. Chambers found that he was often given menial assignments, and often denied opportunities to use and improve his skills as a welder. For example, when work was slow Mr. Chambers asked if he could do some welding

on the stainless steel part of the train, which was more interesting work. Mr. Chambers was told that Super Steel had certified people to do that work. When Mr. Chambers brought attention to his own certification, he was told that his certification was not enough.

155. Super Steel promised to get Mr. Chambers the training and related certification that management claimed was needed for the stainless steel welding. In the meantime, the employees who completed the stainless steel welding were all white. Mr. Chambers was never given the promised certification.

156. On another occasion, Mr. Chambers asked to be transferred to the back room, where he would do more welding and less of the fitting and other projects that did not utilize his skills. Most of the employees in the back room were white. Despite Mr. Chambers' extensive training as a welder, Super Steel refused to transfer him.

157. Mr. Chambers was denied these opportunities, and ultimately terminated, despite his record of good work at Super Steel. Following his termination, Mr. Chambers returned to Louisiana to seek new employment opportunities.

158. As a result of the racial discrimination he experienced at Super Steel, Mr. Chambers suffered extreme harm.

H. HERION MURPHY

159. **Plaintiff Herion Murphy** is a resident of Marrero, Louisiana. Mr. H. Murphy was hired to work as a Mig Welder at Super Steel in approximately July 2005. Mr. H. Murphy resigned from this position in November 2005.

160. As an employee at Super Steel, Mr. H. Murphy worked daily in an environment that was rife with racial hostility. As an African American employee at Super Steel, this hostility forced Mr. H. Murphy to contend with specific challenges, including racist threats and taunts, disparate terms and conditions of employment, and other forms of discrimination.

161. Mr. H. Murphy traveled from New Orleans, Louisiana to Schenectady, New York for a job at Super Steel in July 2005. He traveled to New York with the understanding that he

would be paid \$17.50 per hour. When Mr. H. Murphy arrived at Super Steel, he was given a test that was supposed to measure his skills. Following this test, Super Steel assigned Mr. H. Murphy to the lowest tier of workers, and said they were only going to pay him \$13.00 per hour.

162. When Mr. H. Murphy asked the managers at Super Steel what the problems with his test were, the managers told him that they would look into it and get back to him. In the meantime, Mr. H. Murphy started work.

163. When Super Steel's managers finally responded to Mr. H. Murphy, they told him that he was getting paid so little because he could not read blueprints. This was inaccurate. When Mr. H. Murphy demonstrated to the managers that he could read blueprints, he was promised a raise.

164. Meanwhile, Mr. H. Murphy was performing the same work at the same quality as the top ranked employees at Super Steel. Management at Super Steel demonstrated that they were aware of Mr. H. Murphy's talent by sending the white employees that they hired after and at the same time as Mr. H. Murphy to Mr. H. Murphy for training. While Mr. H. Murphy was training these employees, he was aware that they had been assigned to higher tiers than he was, and, consequently, were getting paid substantially more than he was.

165. Even Mr. H. Murphy's Foreman, Jim _____ ("Foreman Jim"), supported Mr. H. Murphy in his efforts to get a raise. Foreman Jim expressed disbelief that Mr. H. Murphy was getting paid so little for his work. Mr. H. Murphy raised the issue of his pay with Super Steel at least once a month. Each time, Mr. H. Murphy's requests that he be paid fairly were put off or rebuffed.

166. Mr. H. Murphy intensified his requests for the promised raise when Hurricane Katrina hit New Orleans during the summer of 2005. Mr. H. Murphy needed money to send home, and the \$13.00 per hour he was making was paltry compared to what he could have been making elsewhere.

167. Mr. H. Murphy was willing to stay at Super Steel even if the company only gave him the few extra dollars per hour they had promised, and not the \$17.50 that he knew his white trainees were receiving, and which had brought him from Louisiana in the first place. Mr. H. Murphy worked hard and pushed for the money until November, at which time he realized that Super Steel had no intention of paying him the money that he deserved.

168. During his few months at Super Steel, Mr. H. Murphy experienced and witnessed racism throughout the company. Mr. H. Murphy knew of a number of white employees that were openly hostile to African Americans. Some of them would give Mr. H. Murphy and other African Americans hostile looks as they walked by. On one occasion, Mr. H. Murphy saw that someone had written “KKK” and “nigger” on an African American employee’s locker. Similar graffiti was in the bathrooms.

169. When the contract workers came to Super Steel, they greatly increased the number of African Americans at the company. Without them, there were very few African American employees working at Super Steel.

170. Accordingly, Mr. H. Murphy saw that the racism was particularly apparent when directed at this African American group of workers. For example, Mr. H. Murphy frequently heard the African American contract employees being criticized and saw their work being much more closely examined than that of their white counterparts. Mr. H. Murphy’s impression was that Super Steel would fire the African American contract workers for the smallest mistakes. He saw many African American contract workers terminated accordingly. In contrast, Mr. H. Murphy never heard of any white contract employees being terminated.

171. As a result of the racial discrimination he experienced at Super Steel, Mr. H. Murphy suffered extreme harm.

I. VINCENT SAFFORD

172. **Plaintiff Vincent Safford** is a resident of Moss Point, Mississippi. Mr. Safford was contracted from Global Manpower to work at Super Steel as a Heat Straightener in the Integration Department from approximately April 2005 until the end of August 2005.

173. As an employee of Super Steel, Mr. Safford worked daily in an environment that was rife with racial hostility. As an African American employee of Super Steel, this hostility as forced Mr. Safford to contend with specific challenges, including racist threats and taunts, disparate terms and conditions of employment, and other forms of discrimination.

174. As a fifty-year-old African American male, born and raised in Mississippi, Mr. Safford never experienced the type of blatant racism that he found at Super Steel in Schenectady, New York. Being one of only a limited number of African American employees was not in itself a problem for Mr. Safford; he had attended predominantly white schools in Mississippi as a “test case” in the 1960s, beginning when he was in the fifth grade.

175. What became a problem for Mr. Safford was the fact that he was one of a small minority of African American employees in an environment permeated by racism. Racism appeared in the graffiti of nooses and racial slurs about “niggers” in the bathrooms, on the walls in some of the working areas, and in the locker room. Mr. Safford found racism in the hostile manner of his white co-workers, who made the work of Mr. Safford and his African American peers more difficult and unpleasant. Mr. Safford confronted racism when his white supervisors treated him and other African American employees more harshly and more critically than their white co-workers.

176. Recognizing this racism, Mr. Safford made a concerted effort to keep a low profile, not cause any trouble, and stay out of everyone’s way. He wanted to do his work, complete his contract, and return to Mississippi.

177. Despite Mr. Safford's efforts to avoid the racism, he was confronted directly by it in July 2005. During this time, Mr. Safford returned from getting a snack to find that someone had drawn a picture on his locker of a black man hanging from a rope around his neck.

178. Mr. Safford went immediately to tell his brother, Plaintiff Curtis Nelson, with whom he shared the locker, about the drawing. Mr. Safford then reported the incident to Plant Manager Todd _____ ("Plant Manager Todd"), who took pictures of the drawing, told everyone to leave the locker room, and then spray-painted over it. Mr. Safford was told that the company was going to investigate to find out who had drawn the graffiti. To Mr. Safford's knowledge, no follow-up action was taken.

179. It was difficult for Mr. Safford to guess who drew the picture of the hanging man. He felt hostility from many of his white co-workers, despite his conscious efforts to avoid trouble. For example, Mr. Safford did not take his breaks near the picnic tables because it was clear that the white workers that were usually there did not want African Americans to come around.

180. Mr. Safford found his instinct to avoid the picnic tables worthwhile when he learned that one African American that did take a break there, Bobby Fairly ("Mr. Fairly"), ended up in a fight with a white worker, Mark _____. Mark punched Mr. Fairly in the face.

181. Following that altercation, Mr. Safford told Supervisor Ed _____ ("Supervisor Ed") that he needed some safety glasses for his work. Supervisor Ed told Mr. Safford to get the glasses that were left on the bench by Mr. Fairly after the fight. The glasses were bent and scratched. Laughing, Supervisor Ed told Mr. Safford that he could use the glasses if he could fix them.

182. Supervisor Ed was close friends with Mark. After Mark and Mr. Fairly were fired, Mr. Safford saw Mark on Super Steel property talking with Ed and other white Super Steel employees, even though Mark was not supposed to be on Super Steel's premises because he had been terminated.

183. Mr. Safford experienced Supervisor Ed being hostile towards African American workers in a number of ways. For example, Supervisor Ed would always nitpick the work of Mr. Safford and other African American employees, and blame them for any problems with production. Supervisor Ed would also try to find extra work to make the African American employees do.

184. Supervisor Ed's criticisms of the African American employees were echoed by Mr. Safford's white co-workers. These co-workers said that Mr. Safford and his African American co-workers were not doing their work properly, and accused them of not finishing their work. Mr. Safford's white co-workers would say this even though the African American contract employees were working longer hours than the white employees to finish the projects that they were given.

185. If Mr. Safford had another option, he would have chosen to leave the racism at Super Steel. However, Mr. Safford was far from home and he had to work. He also felt a responsibility to complete his contract. Consequently, Mr. Safford endured the racism at Super Steel until his contract expired in September 2005. At that time, he returned to Mississippi.

186. As a result of the racial discrimination he experienced at Super Steel, Mr. Safford suffered extreme harm.

CLASS COUNT

COUNT I (Class Representatives and Class Members)

VIOLATIONS OF § 1981

RACIALLY HOSTILE WORK ENVIRONMENT

(African-American Plaintiffs Against Defendant)

187. African-American Class Representatives re-allege and incorporate by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

188. This Count is brought on behalf of African-American Class Representatives and African-American members of the class.

189. Defendant has denied African-American Class Representatives and members of the class the same right to make and enforce contracts as enjoyed by white citizens employed by Super Steel, including rights involving the making, performance, modification and termination of contracts with Defendants, as well as the enjoyment of all benefits, privileges, terms and conditions of that relationship, in violation of the Civil Rights Act of 1866, 42 U.S.C § 1981, as amended.

190. In the employment practices described above, Defendant intentionally engaged in discriminatory practices with malice or with reckless indifference to the federally protected rights of African-American Class Representatives and the class, entitling Class Representatives and the class to punitive damages.

191. By reason of the continuous nature of Defendant's discriminatory conduct persistent throughout the employment of African-American Class Representatives and members of the class, Class Representatives and the class are entitled to application of the continuing violations doctrine to all violations alleged herein.

192. Defendant's conduct in violation of § 1981 has injured and damaged the African-American Class Representatives and the class.

193. African-American Class Representatives and the class have suffered and continue to suffer harm, including, but not limited to, lost earnings, lost benefits and other financial loss, as well as humiliation, embarrassment, emotional and physical distress and mental anguish.

194. By reason of Defendant's discrimination, African-American Class Representatives and the class are entitled to all legal and equitable remedies available for violations of § 1981, including an award of punitive damages.

195. Attorneys' fees should be awarded under § 1981, *et seq.*

196. The Plaintiffs and the Class Members have no plain, adequate, or complete remedy of law to redress the wrongs alleged herein and this suit for backpay, an injunction, and a declaratory judgment is their only means of securing adequate equitable relief. The Plaintiffs

and the Class Members are now suffering and will continue to suffer irreparable injury from the defendant=s unlawful policies and practices as set forth herein unless enjoined by this Court.

VI. PRAYER FOR RELIEF ON CLASS CLAIMS

197. Wherefore, Plaintiffs, on behalf of themselves and the class members whom they seek to represent, request the following relief:

- a. Acceptance of jurisdiction of this cause;
- b. Certification of the case as a class action maintainable under Federal Rules of Civil Procedure Rule 23 (a) and (b)(2), on behalf of the proposed Plaintiff class, and designation of the Plaintiffs as representatives of the class and their counsel of record as class counsel;
- c. A declaratory judgment that Defendant Super Steel's employment practices challenged herein are illegal and in violation of Section One of the Civil Rights Act of 1866, as amended in 1991, 42 U.S.C. §1981;
- d. A temporary and permanent injunction against Defendant Super Steel and its partners, officers, owners, agents, successors, employees, representatives and any and all persons acting in concert with it, from engaging in any further unlawful practices, policies, customs and usages by Defendant Super Steel set forth herein;
- e. An Order requiring Defendant Super Steel to initiate and implement programs that (i) remedy the racially hostile work environment at Super Steel; (ii) ensure prompt, remedial action regarding all claims of racial harassment; (iii) eliminate the continuing effects of the discriminatory and retaliatory practices described above;
- f. An Order establishing a task force on equality and fairness to determine the effectiveness of the programs described in (e) and (f), above, which would provide for (i) the monitoring, reporting and retaining of jurisdiction to ensure equal employment opportunity, (ii) the assurance that injunctive relief is properly implemented, and (iii) a quarterly report setting

forth information relevant to the determination of the effectiveness of the programs described in (e) and (f), above;

- g. Nominal damages;
- h. Compensatory damages, in an amount not less than \$25,000,000.00;
- i. Punitive damages, in an amount not less than \$150,000,000.00;
- j. An award of litigation costs and expenses, including reasonable attorney's

fees to the Plaintiffs and class members;

- k. Prejudgment and postjudgment interest; and
- l. Such other and further relief as the Court may deem just and proper.

VIII. JURY TRIAL DEMAND

- 198. Plaintiffs and class demand a trial by jury of all issues.

Respectfully submitted this 18th day of April, 2006.

S/

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