

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

CARLOS SMITH, an individual,

Plaintiff,

v.

SOUTHWEST CONSTRUCTION SUPPLY & SALES, INC., a Colorado corporation; and
PAUL FLORES, an individual,

Defendants.

COMPLAINT

Plaintiff Carlos Smith, through his attorneys, Wilbur Smith and James Brennan, respectfully alleges the following for his Complaint:

INTRODUCTION

1. In the workplace, Defendants used a hangman's noose, a black doll hanging by its neck, racially offensive jokes, and racial slurs to intimidate, frighten, and harass their employee, Carlos Smith, an African American man.

JURISDICTION AND VENUE

2. This action is authorized and instituted pursuant to 42 U.S.C. § 1981 (Section 1981) in that Plaintiff has been subjected to unlawful employment practices, a racially hostile work environment and retaliation, because he is African-American.

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 1988

4. Venue lies in the U.S. District Court for the District of Colorado because the events, acts, and omissions giving rise to Plaintiff's claim occurred within the District of Colorado. 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff Carlos Smith is an African American man and a protected individual under Section 1981.

6. Plaintiff is, and at all relevant times was, a resident of the State of Colorado.

7. At all times relevant to his Complaint, Plaintiff was an employee of Defendant Southwest Construction Supply & Sales, Inc.

8. Defendant Southwest Construction Supply & Sales, Inc. ("Southwest") is, and at all relevant times was, a Colorado corporation with its principal place of business in Denver, Colorado.

9. Defendant Southwest is in the business of fence construction and is also a supplier of fencing products.

10. Defendant Paul Flores ("Flores") is, and at all relevant times was, a resident of the State of Colorado.

11. Defendant Flores is, and at all relevant times was, employed by Defendant Southwest as General Manager.

12. In his capacity as General Manager, Defendant Flores was, at all relevant times, Plaintiff's supervisor.

13. Defendant Flores is, and was at all relevant times, a shareholder of Southwest.

FACTUAL ALLEGATIONS

14. Mr. Smith began his employment with Defendant Southwest on or about January 5, 2009 as a laborer.

15. Mr. Smith's employment with Defendant Southwest ended on or about August 29, 2009.

16. Mr. Smith was interviewed and offered a job with Defendant Southwest over the telephone in December 2008.

17. Shortly after beginning employment with Defendant Southwest, Mr. Smith encountered widespread use of racial slurs and jokes in the work place.

18. Among other things, the words "nigger," "nigga," "nigger-rig" and "ninja," a word used by employees of Defendant Southwest as a synonym for "nigger," were frequently and pervasively used by employees and supervisors of Defendant Southwest in the presence of Mr. Smith, and in the presence of other supervisory personnel. In addition to the slurs, racially offensive jokes were often told in the workplace.

19. In approximately mid-March 2009, Mr. Smith reported and complained about the use of racially offensive language to his field supervisor, Zefrey Stewart.

20. The following day Zefrey Stewart reported to Mr. Smith that he had informed Defendant Flores about Mr. Smith's complaint of racial harassment.

21. The racial slurs did not cease or abate after Zefrey Stewart claimed that he referred Mr. Smith's complaint to Defendant Flores.

22. Defendant Southwest and Defendant Flores failed to correct the use of racial slurs reported by Mr. Smith to his supervisors.

23. The pervasive use of racial slurs and racially offensive jokes continued unabated after Mr. Smith's complaint to his supervisors and remained prevalent in the workplace throughout the remainder of Mr. Smith's employment. This conduct was deeply disturbing to Mr. Smith and was completely unwelcome and uninvited.

24. Approximately two weeks after Mr. Smith reported the use of racial slurs, in mid-to-late-March 2009, Mr. Smith returned to the workplace and discovered a hangman's noose hanging in a prominent and unavoidable location in the workplace. Additionally on a workplace wall, Mr. Smith discovered a black doll hanging by the neck. A nail was driven into the doll's head and a second nail was driven through the crotch area. The doll was posed in a Nazi salute.

25. Both the noose and the black doll were prominently and openly displayed in the workplace in areas where employees, including Mr. Smith, would frequently view them. There they remained through the remainder of Mr. Smith's employment.

26. All Defendants were aware of the existence of both the noose and the black doll at Defendant Southwest's workplace. Both the noose and the doll were so open and notorious that everyone working at Southwest either was, or should have been, aware of them.

27. None of the Defendants took any action to remove the noose or the doll while Mr. Smith was employed by Defendant Southwest.

28. While employed by Defendant Southwest, Mr. Smith was treated less favorably than other employees. Among other things, Mr. Smith was paid less than comparable white and Hispanic employees and was offered fewer hours of employment than comparable white and Hispanic employees.

29. On information and belief, Defendant Southwest responded to Mr. Smith's complaints of racism and discrimination by reducing the number of Mr. Smith's work hours, by prominently displaying the hangman's noose, and by hanging the black doll by the neck.

30. Mr. Smith performed his job duties satisfactorily.

31. Defendant Flores, acting on behalf of Defendant Southwest continued to reduce Mr. Smith's work hours and job opportunities. Ultimately, the pervasive racism perpetuated and permitted by Defendants Southwest and Flores at the workplace, combined with unfavorable wages, reduced hours and retaliation for having objected to the racism, made it impossible for Mr. Smith to continue as an employee of Defendant Southwest.

32. During the term of his employment, Mr. Smith was the only African-American employed by Defendant Southwest.

33. The acts and omissions of Defendants, as alleged herein, have injured Mr. Smith. Specifically, Mr. Smith has suffered lost wages, emotional distress, fear,

humiliation, loss of enjoyment of life, and other pain and suffering as a result of the acts and omissions of Defendants, as alleged herein.

FIRST CLAIM FOR RELIEF
(42 U.S.C. § 1981—Race Discrimination: Hostile Environment)
(Against All Defendants)

34. Mr. Smith incorporates all other paragraphs of this Complaint for purposes of this claim.

35. Mr. Smith was intimidated, harassed, menaced and humiliated by a hangman's noose and a defaced black doll for a substantial period of his employment with Defendant Southwest. Mr. Smith was also subjected to, and was the brunt of, racial slurs and racially offensive jokes.

36. The racial slurs, offensive jokes, hangman's noose, and defaced black doll were so severe and/or pervasive that a reasonable person would find Mr. Smith's work environment to be hostile or abusive.

37. The racial slurs, offensive jokes, hangman's noose, and defaced black doll were sufficiently severe and/or pervasive as to alter the terms and conditions of employment for Mr. Smith and were directed at Mr. Smith's race.

38. The offensive conduct was motivated by the fact that Mr. Smith is African American.

39. Defendants' management level employees knew or should have known of the offensive jokes, racial slurs, hangman's noose, and defaced doll, because of Mr. Smith's explicit complaints and because of the open, notorious and pervasive nature of the conduct alleged. Moreover, certain of Defendant Southwest's supervisory

personnel participated in the making of racial slurs, offensive jokes, and offensive displays.

40. Defendants failed to take reasonable measures to prevent and promptly remedy the racially hostile environment.

41. The unlawful practices alleged herein were intentional.

42. Mr. Smith's race was a motivating factor in Defendants' decision to offer Mr. Smith fewer hours of employment than comparable white and Hispanic employees.

43. Defendants intended to discriminate against Mr. Smith because of his race through their actions and/or inactions as alleged herein.

44. Defendants acted with malice and/or reckless indifference to Mr. Smith's rights under Section 1981 through their actions and/or inactions as alleged herein.

45. The acts and/or omissions of all Defendants were the legal and proximate cause of Mr. Smith's injuries.

SECOND CLAIM FOR RELIEF
(42 U.S.C. § 1981—Race Discrimination: Retaliation)
(Against All Defendants)

46. Mr. Smith incorporates all other paragraphs of this Complaint for purposes of this claim.

47. In response to Mr. Smith's complaints regarding a racially hostile environment as alleged herein, Defendants reduced Mr. Smith's work opportunities and harassed and intimidated Mr. Smith by prominently displaying the hangman's noose and hanging black doll.

48. Mr. Smith's race and his complaint about racially offensive language was a motivating factor in Defendants' decision to retaliate against Mr. Smith, as alleged herein.

49. Defendants intended to discriminate against Mr. Smith because of his race and because of his complaint about racially offensive language through their retaliatory actions, as alleged herein.

50. Defendants acted with malice and/or reckless indifference to Mr. Smith's rights under Section 1981 through their retaliatory conduct, as alleged herein.

51. The retaliatory actions of the Defendants were the legal and proximate cause of Mr. Smith's injuries.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against the Defendants, and grant him the following relief:

- a) Back pay and front pay;
- b) Compensatory and consequential damages, including damages for, emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering, as allowed by law and in an amount to be determined at trial;
- c) Punitive damages as allowed by law and in an amount to be determined at trial;
- d) Attorney's fees and the costs associated with this action as allowed by law;
- e) Pre- and postjudgment interest at the lawful rate; and

f) Any further affirmative and equitable relief that this Court deems just and proper, and any other relief as allowed by law.

PLAINTIFF REQUESTS A TRIAL TO A JURY ON ALL ISSUES SO TRIABLE.

Dated this 10th day of May 2011.

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