

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

**DONRUDY LOISEAU, QUINTON L.
HEBRON and DWAYNE SMALL,
individually and, on behalf of all others
similarly situated,**

Plaintiffs,

v.

**BOZZUTO'S INC., JAMES JONES,
CHUCK CERRETA and JOEL
SANTIAGO**

Defendants.

CIVIL ACTION NO.: 3:22CV01485(JCH)

JURY TRIAL DEMANDED

SEPTEMBER 8, 2023

SECOND AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is an action brought by the Plaintiffs, for themselves and on behalf of all others similarly situated, Black or African-American employees, for damages against the Defendant for its discriminatory actions as prohibited by Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §1981, ("Section 1981"), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000 et seq, ("Title VII") to redress the deprivation by Defendant of rights secured to the Plaintiffs and all other similarly situated individuals by the laws of the United States.

2. Defendant repeatedly use and condone the use of anti-Black racial slur, e.g., **“F...k Nigger”** **“nigger”** or **“my nigga”**, to address the Plaintiff, Mr. Loiseau and other Black employees. In one instance referring to a Black employee as the leader of other monkeys.

3. Defendant also treated Plaintiffs more harshly than white American employee by not disciplining white American employee at all for severe misconduct while disciplining Mr. Loiseau for contrived claims of absence from work or for lesser workplace misconduct.

4. Plaintiff, Mr. Loiseau filed an internal written complaint that a white American called him **“F...k Nigger”** and within two weeks of the complaint, Defendant began disciplining Mr. Loiseau by issuing him multiple warnings, instructing Mr. Loiseau he **“would have to leave and go home”** if he did not sign baseless written warnings and then forcing Mr. Loiseau to quit his job.

5. Defendant’s actions as above stated constitute unlawful discrimination against Plaintiffs on the basis of their race and/or color of their skin in violation of Section 1981 and Title VII, as set forth in the facts stated herein.

II. ADMINISTRATIVE PROCEDURES

6. On August 11, 2021, Plaintiff, Mr. Loiseau filed a Charge of Discrimination with the Commission On Human Rights and Opportunities (“CHRO”) and with the Equal Employment Opportunity Commission (“EEOC”), an administrative pre-requisite to

filing an action under Title VII. On 09/06/2022, the EEOC issued a Right To Sue letter to the Plaintiff, Mr. Loiseau, to file this lawsuit. Plaintiffs, Mr. Hebron and Mr. Small filed Charges of Discrimination with the EEOC on May 1, 2023, and received their Right to Sue letters on May 30, 2023. The Plaintiffs will amend this action to include claims under and the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. §§ 46a-60, et seq., (“CFEPA”), at the appropriate time after obtaining a release of jurisdiction from the CHRO.

7. Plaintiff, Mr. Loiseau, has complied with any and all other prerequisites to filing this action.

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as this action involves federal questions regarding the deprivation of Plaintiffs’ rights under 42 U.S.C. § 1981.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) (1) & (2) because the Defendant resides in this District and because a substantial part of the events or omissions giving rise to the claim in this action occurred in this District.

10. Any claims under state law brought by the Plaintiffs are proper under the doctrine of supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a).

11. Plaintiffs are not required to exhaust any administrative remedies under 42 U.S.C. §1981.

IV. PARTIES

12. The Plaintiff, Don-Rudy Loiseau, a black, African-American, male, hereinafter (“Plaintiff” or “Mr. Loiseau”), at all times relevant to this complaint resides in Connecticut.

13. The Plaintiff, Quinton L. Hebron, a black, African-American, male, hereinafter (“Plaintiff” or “Mr. Hebron”), at all times relevant to this complaint resides in Connecticut.

14. The Plaintiff, Dwayne Small, a black, African-American, male, hereinafter (“Plaintiff” or “Mr. Small”), at all times relevant to this complaint resides in Connecticut.

15. The Defendant, Bozzuto’s, Inc., (“Bozzuto’s” or “Defendant”) is a company with headquarters at 275 Schoolhouse Rd, Cheshire, CT, 06410. Bozzuto’s is a family-owned, leading total service wholesale distributor, established in 1945, and based in Cheshire, Connecticut. Bozzuto’s provides goods and services to independently owned retailers in the North East and Mid-Atlantic with customers from Maine to Maryland.

<https://careers.bozzutos.com/who-we-are>. (Last visited on November 18, 2022).

16. The Defendant, James Jones (“Mr. Jones” or “Defendant”) is a supervisor and management officer of Bozzuto’s and at all times relevant to this complaint resides in Connecticut.

17. The Defendant, Chuck Cerreta (“Mr. Cerreta” or “Defendant”) is a

supervisor and management officer of Bozzuto's and at all times relevant to this complaint resides in Connecticut.

18. The Defendant, Joel Santiago ("Mr. Santiago" or "Defendant") is a supervisor and management officer of Bozzuto's and at all times relevant to this complaint resides in Connecticut.

V. FACTS

19. Defendant, Bozzuto's first hired Mr. Hebron on May 15, 2017, as Selector at Bozzuto's location at 400 North Frontage Road, North Haven, CT 06473. The Selector position was a warehouse floor position.

20. Bozzuto's paid Mr. Hebron as a Selector at the rate of \$12 per hour. Mr. Jones was Mr. Hebron's supervisor at this time.

21. Plaintiff, Mr. Hebron worked as was a Returns clerk for a short period in 2017, before Mr. Hebron was promoted to a Forklift Driver in 2018, at Bozzuto's North Haven location. The Forklift Driver position was a warehouse floor position.

22. At the time Mr. Hebron worked as a Returns Clerk at Bozzuto's North Haven location, Mr. Hebron spoke to other Black employees who complained that the supervisor, Mr. Cerrata treated White employees more favorably than Black employees.

23. For example, Mr. Cerrata gave a White employee named Josh a

higher hourly rate of pay more than Mr. Hebron and other black employees although the Black employees worked harder than Josh.

24. Josh would leave work and go home to rest and then return before the end of the shift to clock out. Bozzuto's later discovered that Josh was stealing and terminated him although Mr. Cerreta wanted to keep Josh as an employee.

25. A White American named Dino started as a Selector at the North Haven location. In less than one year, Dino was promoted to the position of a Loader and was paid over \$22.00 per hour.

26. At around the same time in 2017/2018, Mr. Hebron requested to become a Loader but Mr. James Jones denied Mr. Hebron the position of a Loader.

27. In December 2018, Plaintiff, Mr. Hebron was in a meeting with Mr. Jones, Archie and other employees when Mr. Jones said Archie, "you remind of Caesar," who is a monkey in the movie "Planet of the Apes." Everyone started laughing, including a supervisor.

28. Caesar is a fictional character in the Planet of the Apes franchise:



29. Caesar, commander in chief of the apes in the new “War for the Planet of the Apes,” has been the heart and soul of the franchise since appearing as a baby chimp, raised by humans, in “Rise of the Planet of the Apes.”

<https://www.nytimes.com/2017/07/16/movies/andy-serkis-war-planet-apes-ending.html>.

(Last visited February 22, 2023).

30. In 2018, Plaintiff, Mr. Hebron was promoted to be a Forklift Driver at the North Haven location and was paid at the rate of \$16.00 per hour.

31. As a Forklift Driver, Mr. Hebron’s supervisor was a White American with the first name, Adam. At this time Mr. Jones became the warehouse floor manager at the North Haven location.

32. Around 2018, another White American named Justin, who was a Forklift Driver was paid at a higher rate than the Plaintiffs.

33. Although Bozzuto’s management knew Justin was addicted to opioid and used this drug at the workplace, Justin was never disciplined for it.

34. Instead, at one time, Bozzuto's management sent Justin to a drug rehab program and reinstated to his job after rehab and then promoted him to a Loader, paying him even at a much higher rate of pay per hour than before he went to rehab.

35. Justin reported directly to Mr. Jones who had become the warehouse floor manager.

36. On another occasion in 2018, Plaintiffs, Mr. Hebron overheard Mr. Jones refer to a Black employee as "**Nigger**", after the Black left Adam's office. Mr. Jones, Chris, a supervisor, and Adam were in Adams' office at the time. Mr. Hebron was standing nearby a refrigerator outside Adam's office when Mr. Hebron heard the word "**Nigger**" in Mr. Jones' voice.

37. On yet another occasion in 2020/2021, Plaintiffs, Mr. Hebron was on the warehouse floor, when Adam was telling a joke, and Mr. Hebron heard Adam use the word "**Nigger.**" Adam made fun of Black people often, he usually told a lot of jokes with Blacks as the punchline, e.g., his jokes would contain such phrase "**a room full of black people.....**"

38. On June 18, 2021, Mr. Hebron was in the next aisle when he heard Mr. Voloshin arguing with Donrudy during the incident. Mr. Hebron heard Voloshin only at the time Mr. Voloshin was cursing out Mr. Donrudy.

39. Donrudy later told Mr. Hebron soon after that Voloshin called him a **Nigger**. Mr. Hebron observed Donrudy to be crying with his eyes watering at the time.

40. Another employee, a Black employee heard Voloshin use the word **Nigger** to address Donrudy. This black employee confirmed to Mr. Hebron in person that he heard Voloshin use the word Nigger to address Donrudy.

41. Plaintiff, Mr. Hebron remained a Forklift Driver until he left Bozzuto's in the summer of 2021. At this time in 2021, Mr. Hebron was being paid \$18.00 per hour. Mr. Hebron's supervisor was Adam and Mr. Hebron's warehouse floor manager was Mr. James Jones until Mr. Hebron left Bozzuto's in the summer of 2021.

42. In the fall of 2021, Plaintiff, Mr. Hebron returned to the same position of Forklift Driver at the North Haven location. Mr. Hebron's supervisor was still Adam and Mr. Hebron's warehouse floor manager was still Mr. Jones. Plaintiffs, Mr. Hebron's hourly rate was the same at \$18.00 per hour.

43. Plaintiff, Mr. Hebron remained in this position as a Forklift Driver until Mr. Hebron ended his employment with Bozzuto's in November of 2022.

44. Mr. Hebron's pay was the same rate of \$18.00 per hour as of November 2022. Mr. Hebron's supervisor was Adam and Mr. Hebron's warehouse floor manager was Mr. James Jones until Mr. Hebron left Bozzuto's in November 2022.

45. The Plaintiff, Mr. Small was hired in around 2017, as Selector at Bozzuto's location at 400 North Frontage Road, North Haven, CT 06473. The Selector position was a warehouse floor position.

46. Bozzuto's paid Mr. Small as a Selector at the rate of \$16.30 per hour by 2020. Mr. Santiago, a White or non-Black American, was Mr. Small's supervisor at this time.

47. Mr. Smalls worked second shift as a Selector, from 1:00PM to 9:00PM, although Mr. Small frequently worked overtime till after midnight. Mr. Small was a Selector until 2020.

48. While employed as a Selector, Mr. Small was frequently denigrated by Mr. Santiago. Whenever Mr. Small would ask for a wage raise during each 6-month evaluation process, Mr. Santiago would dismiss Mr. Small or shut Mr. Small down or ignore Mr. Small or tell Mr. Small to get back to work.

49. Yet, during each 6-month evaluation process, Mr. Santiago frequently gave wage raise to Matt, a White employee who worked as a Selector with Mr. Small, although Mr. Small had 1 and ½ years of experience or seniority over Matt as a Selector. Matt was hired as soon as he came out of prison.

50. Mr. Santiago later promoted Matt to Product manager and paid a higher wage although Mr. Small had a longer work experience than Matt and Mr. Small had no criminal record.

51. In 2020, Mr. Small was assigned to work as a Support clerk stocking meats in the Fridge Room. Temperature in the Fridge Room was below zero degrees Fahrenheit. Mr. Small worked the first shift in the Fridge Room, from 7:00 AM to 3:00PM.

52. Working in the Fridge Room was the worst assignment at North Haven location of Bozzuto's as no one wanted to work in the Fridge Room and Bozzuto's allowed only one break per shift. Workers frequently suffered frozen fingers while working in the Fridge Room.

53. Mr. Small was one of the two African Americans assigned to work in the Fridge Room. Mr. James Jones, a White American, was the Warehouse Floor manager of the first shift.

54. Mr. Small's employment at Bozzuto's ended in 2022 when he took an extra break to warm up outside the Fridge Room.

55. In May 2020, Bozzuto's hired Plaintiff, Mr. Loiseau for the employment position of Selector at Bozzuto's location at 400 North Frontage Road, North Haven, CT 06473. The Selector position was a warehouse floor position.

56. In August 2020, Bozzuto's assigned Plaintiff, Mr. Loiseau to the employment position of Product Integrity Clerk at the North Haven location. The Product Integrity position was a warehouse floor position.

57. About 7 months after he was hired, Plaintiff, Mr. Loiseau applied for a Fork Lift Driver position at Bozzuto's location in Cheshire. The Fork Lift Driver position was a warehouse floor position.

58. Subsequently, Bozzuto's Human Resource (HR) personnel informed

Plaintiff, Mr. Loiseau that he was not qualified for this position. However, two weeks later, the same HR personnel contacted Mr. Loiseau to offer him the Fork Lift position. At this time, Mr. Chuck Cerreta, a White or non-Black American and manager, (“Mr. Cerreta”) at Bozzuto’s offered Mr. Loiseau the position as Quality Control in the North Haven location.

59. On February 9, 2021, Plaintiff, Mr. Loiseau began working in the position of Quality Control at the North Haven location. The Quality Control position is an office position.

60. Plaintiff, Mr. Loiseau accepted this Quality Control (QC) position because Mr. Cerreta told Mr. Loiseau that the QC position, was a higher position as it was part of management, with higher pay than the Fork Lift Driver position. The Fork Lift Driver position paid \$23.00 per hour.

61. One month after Plaintiffs began working in the QC position, Mr. Cerreta then told Plaintiffs that his pay was actually \$16.60 per hour, which was \$0.50 higher than Mr. Loiseau’s previous position as Product Integrity Clerk. Plaintiffs believes Mr. Cerreta denied him the opportunity to take the higher paying Fork Lift Driver position in the Cheshire location.

62. Upon information and believe Bozzuto’s management segregates its workplace by assigning the lower paying positions to Black or African-American employees while assigning White American employees to higher paying positions.

63. Until Mr. Loiseau's assignment to the QC position, Bozzuto's employed only White American employees in office positions at the North Haven location.

64. Of the more than 200 employees working in positions on warehouse floor at the North Haven location, the majority of these employees were Black Americans or African-Americans. The next largest group of warehouse floor employees were Latino Americans. White American were in the minority in warehouse floor positions at the North Haven.

65. Upon information and belief, the employment positions at Bozzuto's are segregated by the skin color of its employees.

66. The segregation at Bozzuto's on the basis of skin color resulted in Black American or African-American employees being paid low wages while White American employees were paid high wages.

67. On Friday, June 18, 2021, at approximately 4:30pm, Mr. Loiseau sent an email to Ms. Christina Rindos, White American at Bozzuto's HR. See, June 18, 2021, Email, attached here as **Exhibit 1**.

68. The June 18, 2021, email narrated that Mr. Matthew Voloshin, a White American, who was working as a Selector was speeding with his Centre Rider down the aisle of the warehouse floor. Mr. Voloshin crashed into the pallet that Mr. Loiseau had on his forklift. Mr. Loiseau then told Mr. Voloshin to slow down. Mr. Voloshin responded,

by calling Mr. Loiseau “**F....k Nigger**” and “**spit on**” (sic) the forklift Mr. Loiseau was using. See, as **Exhibit 1**.

69. Bozzuto’s surveillance video recorded the occurrence of the conduct of Mr. Voloshin and response of the Plaintiffs.

70. Immediately after this June 18, 2021, incident, Mr. Loiseau went to look for the warehouse floor supervisor on duty and approached-Mr. Santiago and Manager at Bozzuto’s and reported the incident to him.

71. Mr. Santiago and Mr. Loiseau went to find and approach Mr. Voloshin. Mr. Santiago then told Mr. Loiseau to go back to work and that he’d take care of it.

72. After talking with Mr. Voloshin alone, Mr. Santiago and Mr. Voloshin Mr. Voloshin then returned to meet with Mr. Loiseau. During this meeting, Mr. Voloshin attempted to apologize and shake Mr. Loiseau’s hand but Mr. Loiseau refused to shake Mr. Voloshin’s hand. Mr. Santiago then asked if they were “all good” and Mr. Loiseau said “no”.

73. Mr. Loiseau went back to the office after the meeting with Mr. Santiago and Mr. Voloshin and drafted and sent the email (**Exhibit 1**) to HR.

74. The following workday, Monday, June 21, 2021, Mr. Loiseau immediate supervisor, Mr. Cerreta and the warehouse manager, Mr. James Jones, White American, (“Mr. Jones”), met with Mr. Loiseau in Bozzuto’s conference room to discuss the June 18, 2021, incident.

75. After narrating the incident of June 18, 2021, to Bozzuto's management, management told Mr. Loiseau that Bozzuto's management will follow up with him on June 23rd.

76. Soon after the meeting of June 21, with Mr. Cerreta and Mr. Jones, Mr. Loiseau started receiving silent treatment from his coworkers and colleagues who used to stop at his desk to chat.

77. On Wednesday, June 23, 2021, Mr. Loiseau was again summoned to meet with Bozzuto's management: Ms. Rindos, Mr. Cerreta, Mr. Santiago and Mr. Jones. Bozzuto's management was made up of White or non-Black Americans.

78. At the June 23 meeting, Mr. Loiseau perceived that Bozzuto's management was "ganging up on him" and "talking like they were against" him.

79. In particular, Mr. Jones asked Mr. Loiseau at this June 23 meeting to clarify if Mr. Voloshin had said "nigger" or "my nigga," repeating the use of the anti-black racial slur and its derivative.

80. Mr. Jones and the other members of Bozzuto's management at this June 23, 2021 meeting he email of June 18, 2021, read or should have read the June 18, 2021, Email (Exhibit 1) which stated, "**HE call me F....k Nigger**" (sic) "**and spit on my Forklift.**" (Sic). See Email of June 18, 2021 (Exhibit 1).

81. After explaining to Bozzuto's management that Mr. Voloshin's apology

should be considered as Mr. Voloshin's admission that he used the anti-Black American racial slur, Mr. Jones pushed back, vigorously arguing with Mr. Loiseau and telling Mr. Loiseau that the fact that Mr. Voloshin apologized was irrelevant.

82. At the conclusion of the interrogation of Mr. Loiseau on June 23, 2021, Ms. Rindos stated that Bozzuto's management would conduct an investigation and get back to Mr. Loiseau in two weeks.

83. Bozzuto's management never got back to Mr. Loiseau. And Bozzuto's management made no changes to the work place to address Mr. Loiseau's complaint of the June 18, 2021, incident.

84. Bozzuto's management compelled Mr. Loiseau to continue to work with Mr. Voloshin.

85. Bozzuto's management did not discipline Mr. Voloshin.

86. On July 8, 2021, Plaintiff, Mr. Loiseau called out of work after following Bozzuto's policy for calling out of work.

87. When Mr. Loiseau returned to work, the next workday, Mr. Cerreta claimed Mr. Loiseau did not call to report he would be absent from work.

88. Mr. Cerreta later discovered that he had falsely accused Mr. Loiseau of "no call no show" on July 28, 2021, but still gave Mr. Loiseau a warning.

89. In a subsequent disciplinary meeting, Mr. Cerreta again accused Plaintiff,

Mr. Loiseau of engaging in another no call no show. Plaintiff, Mr. Loiseau explained to Mr. Cerreta that he followed Bozzuto's policy for calling out of work by called his then supervisor, Mr. Raymond Gilbert, the night before the start of his scheduled shift.

90. Mr. Cerreta did not review Bozzuto's telephone records and proceeded to issue Mr. Loiseau negative 3-points.

91. Mr. Cerreta then instructed Plaintiffs to sign the written disciplinary warning, threatened Mr. Loiseau by telling him that if he did not sign and consent to the written disciplinary warning that Mr. Loiseau would **"have to leave and go home."**

92. Mr. Loiseau signed the written disciplinary warning under this threat and duress.

93. Mr. Cerreta continued to harass and threaten. During one occasion when a non-Black employee wanted Mr. Loiseau to give up the PC cart Plaintiffs was using for work, Mr. Cerreta told Mr. Loiseau that he either use a forklift instead of the PC cart or **"go home."**

94. In this same occasion, Mr. Cerreta made a second threat, by telling Mr. Loiseau if he did not give up the PC cart to the non-Black employee that **"he would be fired."**

95. On July 9, 2021, Mr. Cerreta gave Plaintiff, Mr. Loiseau another written disciplinary warning to sign based on the two false claims of unexcused absence and no-call-no show as shown above. Plaintiff, Mr. Loiseau refused to sign this written

disciplinary warning and he quit his job before Mr. Cerreta could fire him as Mr. Cerreta already threatened to do.

96. Plaintiffs experienced work-related stress Bozzuto's management caused him to suffer. Plaintiff, Mr. Loiseau then sought medical treatment and on June 1, 2022, he was diagnosed with Post-Traumatic Stress Disorder and Generalized Anxiety Disorder.

VI. RULE 23 CLASS ACTION

97. This is a class action pursuant to Federal Rule of Civil Procedure ("FRCP"), Rule 23, brought by Plaintiffs for themselves and on behalf of a putative class of similarly situated employees. The putative class (subject to future revision as may be necessary), is defined as follows:

Class: All Black or African-American employees who the Defendant, Bozzuto's employed in Connecticut during the period of November 21, 2018, until the date of final judgment in this matter, who were paid at a lower rate of pay than White employees with comparable position.

Sub-Class: All Black or African-American employees who the Defendant, Bozzuto's employed in Connecticut during the period of November 21, 2018, until the date of final judgment in this matter,

who were subjected to segregated work assignments or employment positions on the basis of skin color.

Sub-Class: All Black or African-American employees employed in Bozzuto's North Haven location during the period of November 21, 2018, until the date of final judgment in this matter, who were subjected to anti-Black racism hostile workplace.

98. Class certification for these discrimination claims is appropriate under Fed. R. Civ. P. 23 (a) and Fed. R. Civ. P. 23 (b)(3) because all the requirements of the Rules are met.

99. The putative class is so numerous that joinder of all members is impracticable. The exact number of the putative class members is unknown because such information is in the exclusive control of the Defendant and requires discovery. Upon information and belief, Defendant employed 40 or more Black or African- American employees in Connecticut during the past four (4) years. In addition, for the sub-class, upon information and belief, Defendant employed 40 or more Black or African-American employees in North Haven, CT location during the past four (4) years.

100. There are questions of law and fact common to the putative class,

including, but not limited to: whether the putative class members have been subjected to a policy or practice of repeated use and or condoning of the use of anti-Black American racial slur; whether the putative class members have been subjected to disparate terms and conditions of employment, including, but not limited, to subjecting Black or African-American employees to the use or condoning the use of anti-Black American slur but not subjecting White American employees to the use or condoning the use of anti-White American racial slur; whether the putative class members have been subjected to disparate terms and conditions of employment, including, but not limited, to discriminatory disciplinary practices and/or termination decisions in whole or part due to race and/or color; whether the putative class members have been subjected to disparate terms and conditions of employment, including, but not limited, to discriminatory retaliatory practices and/or decisions in whole or part due to race and/or color and; whether the putative class members have been subjected to disparate terms and conditions of employment, including, but not limited, to discriminatory segregation at Bozzuto's on the basis of skin color resulting in Black or African-American employees being paid low wages while White American employees were paid high wages.

101. The named Plaintiffs' claims are typical of those of the putative class members. Plaintiffs' claims encompass the challenged practices and course of conduct of Defendant. Furthermore, Plaintiffs' legal claims are based on the same legal theories as

the claims of the putative class members. The legal issues as to which federal and state laws are violated by such conduct apply equally to Plaintiffs and to the class.

102. The named Plaintiffs are willing and able to represent the putative class fairly and vigorously as they pursue their similar individual claims. The named Plaintiffs will fairly and adequately protect the interests of the class. The Plaintiffs' claims are not antagonistic to those of the putative class and Plaintiffs have hired counsel qualified, skilled and experienced in the prosecution of employment class action litigation. Counsel is able to meet the time and fiscal demands necessary to litigate a class action of this size and complexity.

103. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action under Fed. R. Civ. P. 23 presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them.

VII. LEGAL CLAIMS

COUNT ONE: *Don-Rudy Loiseau, Quinton L. Hebron and Dwayne Small, individually and on behalf of others similarly situated v. Bozzuto's Inc., James Jones, Chuck Cerreta and Joel Santiago*
Disparate Treatment in Violation of 42 U.S.C. §1981

104. The foregoing allegations in paragraph one through ninety-three (1-103) are repeated and incorporated as if fully set forth herein.

105. As described above, Defendant, Bozzuto's discriminated against Plaintiffs and the putative class on the basis of race and/or color in violation of 42 U.S.C. §1981 by (i) discriminatorily subjecting them to the use or condoning the use of anti-Black American slur but not subjecting White American employees to the use or condoning the use of anti-White American racial slur, (ii) discriminatorily subjecting them to disciplinary practices and/or termination decisions in whole or part due to race and/or color, (iii) subjecting them to discriminatory retaliatory practices and/or decisions in whole or part due to race and/or color; (iv) subjecting them to discriminatory segregation at Bozzuto's on the basis of skin color resulting in Black or African-American employees being paid low wages while White American employees were paid high wages; (v) subjecting them to discriminatory work assignment practices and/or decisions in whole or part due to race and/or color and (vi) subjecting them to discriminatory wage practices and/or decisions in whole or part due to race and/or color.

106. Defendant, Bozzuto's fostered, condoned, accepted, ratified and/or otherwise failed to prevent or remedy discriminatory conduct due to race and/or color.

107. As a direct and proximate result of Defendant, Bozzuto's' unlawful discriminatory conduct in violation of Section 1981, Plaintiffs and the putative class have suffered, and continue to suffer, economic damages, loss of opportunity and mental anguish, such as but not limited to racial denigration, insult, intimidation, abuse, shock, embarrassment, humiliation, mental anguish and emotional pain and suffering

embarrassment, anxiety, stress, depressions, panic attack, anger and emotional distress, pain and suffering, mortification, shame, and fear.

108. Plaintiffs and the putative class member are entitled to an award of damages as a result of the foregoing economic and non-economic injuries.

109. Defendant, Bozzuto's' unlawful discriminatory actions constitute reckless, malicious, willful and wanton violations of Section 1981 for which Plaintiffs and the putative class are entitled to an award of punitive damages.

COUNT TWO: *Don-Rudy Loiseau, Quinton L. Hebron and Dwayne Small, individually and on behalf of others similarly situated v. Bozzuto's Inc., James Jones, Chuck Cerreta and Joel Santiago: Hostile Workplace in Violation of 42 U.S.C. §1981*

110. The foregoing allegations in paragraph one through ninety-three (1-103) are repeated and incorporated as if fully set forth herein.

111. As described above, Defendants discriminated against Plaintiffs and the putative class on the basis of race and/or color in violation of 42 U.S.C. §1981 by (i) subjecting the Plaintiffs and putative class members to a policy or practice of repeated use and or condoning of the use of anti-Black American racial slur. (ii) discriminatorily subjecting the Plaintiffs and putative class members to the use or condoning the use of anti-Black American slur but not subjecting White American employees to the use or condoning the use of anti-White American racial slur, (iii) discriminatorily subjecting them to disciplinary practices and/or termination decisions in whole or part due to race

and/or color, (iv) subjecting them to discriminatory retaliatory practices and/or decisions in whole or part due to race and/or color; (v) subjecting them to discriminatory segregation at Bozzuto's on the basis of skin color resulting in Black or African-American employees being paid low wages while White American employees were paid high wages; (v) subjecting them to discriminatory work assignment practices and/or decisions in whole or part due to race and/or color and (vi) subjecting them to discriminatory wage practices and/or decisions in whole or part due to race and/or color.

112. Defendants fostered, condoned, accepted, ratified and/or otherwise failed to prevent or remedy discriminatory conduct due to race and/or color.

113. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of Section 1981, Plaintiffs and the putative class have suffered, and continue to suffer, economic damages, loss of opportunity and mental anguish, such as but not limited to racial denigration, insult, intimidation, abuse, shock, embarrassment, humiliation, mental anguish and emotional pain and suffering embarrassment, anxiety, stress, depressions, panic attack, anger and emotional distress, pain and suffering, mortification, shame, and fear.

114. Plaintiffs and the putative class member are entitled to an award of damages as a result of the foregoing economic and non-economic injuries.

115. Defendants' unlawful discriminatory actions constitute reckless,

malicious, willful and wanton violations of Section 1981 for which Plaintiffs and the putative class are entitled to an award of punitive damages.

COUNT THREE: *Don-Rudy Loiseau, individually and on behalf of others similarly situated v. Bozzuto's Inc., James Jones and Chuck Cerreta: Retaliation in Violation of 42 U.S.C. §1981*

116. The foregoing allegations in paragraph one through ninety-three (1-103) are repeated and incorporated as if fully set forth herein.

117. As described above, Defendants discriminated against Plaintiffs and the putative class on the basis of race and/or color in violation of 42 U.S.C. §1981 by (i) subjecting the Plaintiffs and putative class members to a policy or practice of discriminatory retaliatory practice and/or decision in whole or part due to race and/or color.

118. Defendants fostered, condoned, accepted, ratified and/or otherwise failed to prevent or remedy discriminatory conduct due to race and/or color.

119. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of Section 1981, Plaintiffs and the putative class have suffered, and continue to suffer, economic damages, loss of opportunity and mental anguish, such as but not limited to racial denigration, insult, intimidation, abuse, shock, embarrassment, humiliation, mental anguish and emotional pain and suffering embarrassment, anxiety, stress, depressions, panic attack, anger and emotional distress, pain and suffering, mortification, shame, and fear.

120. Plaintiffs and the putative class member are entitled to an award of damages as a result of the foregoing economic and non-economic injuries.

121. Defendants' unlawful discriminatory actions constitute reckless, malicious, willful and wanton violations of Section 1981 for which Plaintiffs and the putative class are entitled to an award of punitive damages.

COUNT FOUR: *Don-Rudy Loiseau, Quinton L. Hebron¹ and Dwayne Small, individually and on behalf of others similarly situated v. Bozzuto's Inc.: Disparate Treatment and Disparate Impact in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000 et seq.*

122. The foregoing allegations in paragraph one through ninety-three (1-103) are repeated and incorporated as if fully set forth herein.

123. As described above, Defendant, Bozzuto's discriminated against Plaintiffs and the putative class on the basis of race and/or color in violation of Title VII by (i) discriminatorily subjecting them to the use or condoning the use of anti-Black American slur but not subjecting White American employees to the use or condoning the use of anti-White American racial slur, (ii) discriminatorily subjecting them to disciplinary practices and/or termination decisions in whole or part due to race and/or color, (iii) subjecting them to discriminatory retaliatory practices and/or decisions in whole or part

¹ Plaintiff Hebron's Title VII claims are limited, pursuant to the Court's September 5, 2023 Order (Dkt. 48) to "a Title VII disparate treatment claim for the allegedly disparate pay that he received within the two years before he filed his EEOC charge [in May 2023]."

due to race and/or color; (iv) subjecting them to discriminatory segregation at Bozzuto's on the basis of skin color resulting in Black or African-American employees being paid low wages while White American employees were paid high wages; (v) subjecting them to discriminatory work assignment practices and/or decisions in whole or part due to race and/or color and (vi) subjecting them to discriminatory wage practices and/or decisions in whole or part due to race and/or color. The aforementioned practices are both intentionally discriminatory and also result in a disparate impact on Plaintiffs and the class. For instance, Defendant, Bozzuto's work assignment and promotion practices, which do not discriminate on the basis of race or color on their face, have generally resulted in White Americans being placed and/or promoted into higher-level, more lucrative roles, whereas Black and African American employees are disproportionately placed into lower paid, lower level positions and denied promotions.

124. Defendant, Bozzuto's fostered, condoned, accepted, ratified and/or otherwise failed to prevent or remedy discriminatory conduct due to race and/or color.

125. As a direct and proximate result of Defendant, Bozzuto's' unlawful discriminatory conduct in violation of Title VII, Plaintiffs and the putative class have suffered, and continue to suffer, economic damages, loss of opportunity and mental anguish, such as but not limited to racial denigration, insult, intimidation, abuse, shock, embarrassment, humiliation, mental anguish and emotional pain and suffering

embarrassment, anxiety, stress, depressions, panic attack, anger and emotional distress, pain and suffering, mortification, shame, and fear.

126. Plaintiffs and the putative class member are entitled to an award of damages as a result of the foregoing economic and non-economic injuries, along with injunctive relief, including reinstatement.

127. Defendant, Bozzuto's' unlawful discriminatory actions constitute reckless, malicious, willful and wanton violations of Title VII for which Plaintiffs and the putative class are entitled to an award of punitive damages.

COUNT FIVE: *Don-Rudy Loiseau, individually and on behalf of others similarly situated v. Bozzuto's Inc.: Hostile Workplace in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000 et seq.*

128. The foregoing allegations in paragraph one through ninety-three (1-103) are repeated and incorporated as if fully set forth herein.

129. As described above, Defendant, Bozzuto's discriminated against Plaintiffs and the putative class on the basis of race and/or color in violation of Title VII by (i) subjecting the Plaintiffs and putative class members to a policy or practice of repeated use and or condoning of the use of anti-Black American racial slur. (ii) discriminatorily subjecting the Plaintiffs and putative class members to the use or condoning the use of anti-Black American slur but not subjecting White American employees to the use or condoning the use of anti-White American racial slur, (iii) discriminatorily subjecting

them to disciplinary practices and/or termination decisions in whole or part due to race and/or color, (iv) subjecting them to discriminatory retaliatory practices and/or decisions in whole or part due to race and/or color and; (v) subjecting them to discriminatory segregation at Bozzuto's on the basis of skin color resulting in Black or African-American employees being paid low wages while White American employees were paid high wages; (v) subjecting them to discriminatory work assignment practices and/or decisions in whole or part due to race and/or color and (vi) subjecting them to discriminatory wage practices and/or decisions in whole or part due to race and/or color.

130. Defendant, Bozzuto's fostered, condoned, accepted, ratified and/or otherwise failed to prevent or remedy discriminatory conduct due to race and/or color.

131. As a direct and proximate result of Defendant, Bozzuto's' unlawful discriminatory conduct in violation of Title VII, Plaintiffs and the putative class have suffered, and continue to suffer, economic damages, loss of opportunity and mental anguish, such as but not limited to racial denigration, insult, intimidation, abuse, shock, embarrassment, humiliation, mental anguish and emotional pain and suffering embarrassment, anxiety, stress, depressions, panic attack, anger and emotional distress, pain and suffering, mortification, shame, and fear.

132. Plaintiffs and the putative class member are entitled to an award of damages as a result of the foregoing economic and non-economic injuries.

133. Defendant, Bozzuto's' unlawful discriminatory actions constitute

reckless, malicious, willful and wanton violations of Title VII for which Plaintiffs and the putative class are entitled to an award of punitive damages.

COUNT SIX: *Don-Rudy Loiseau, individually and on behalf of others similarly situated v. Bozzuto's Inc.: Retaliation in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000 et seq.*

134. The foregoing allegations in paragraph one through ninety-three (1-103) are repeated and incorporated as if fully set forth herein.

135. As described above, Defendant, Bozzuto's discriminated against Plaintiffs and the putative class on the basis of race and/or color in violation of Title VII by subjecting the Plaintiffs and putative class members to a policy or practice of discriminatory retaliatory practice and/or decision in whole or part due to race and/or color.

136. Defendant, Bozzuto's fostered, condoned, accepted, ratified and/or otherwise failed to prevent or remedy discriminatory conduct due to race and/or color.

137. As a direct and proximate result of Defendant, Bozzuto's' unlawful discriminatory conduct in violation of Title VII, Plaintiffs and the putative class have suffered, and continue to suffer, economic damages, loss of opportunity and mental anguish, such as but not limited to racial denigration, insult, intimidation, abuse, shock, embarrassment, humiliation, mental anguish and emotional pain and suffering embarrassment, anxiety, stress, depressions, panic attack, anger and emotional distress, pain and suffering, mortification, shame, and fear.

138. Plaintiffs and the putative class member are entitled to an award of damages as a result of the foregoing economic and non-economic injuries.

139. Defendant, Bozzuto's' unlawful discriminatory actions constitute reckless, malicious, willful and wanton violations of Title VII for which Plaintiffs and the putative class are entitled to an award of punitive damages.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enters judgment in their favor and against the Defendants for the following relief:

1. Certification of the class action pursuant to Fed. R. Civ. P. 23 and the appointment of Plaintiffs and their counsel to represent the class;
2. An award of damages to Plaintiffs and the putative class and against the Defendants, in an amount to be determined at trial, to compensate them for all monetary and/or economic damages;
3. An award of damages to Plaintiffs and the putative class and against the Defendants, in an amount to be determined at trial, to compensate them for all non-monetary and/or compensatory damages, including, but not limited to, loss of opportunity and racial denigration, insult, intimidation, abuse, shock, embarrassment, humiliation, mental anguish and emotional pain and suffering;
4. An award of punitive damages to Plaintiffs and the putative class and against the Defendants in an amount to be determined at trial;

5. A permanent injunction against Defendant and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in unlawful policies, practices, customs, and usages set forth herein;
6. Order Defendant to adopt a valid, non-discriminatory method for hiring, staffing, pay, promotion, and termination, and other employment decisions;
7. Order Defendants to post notices concerning its duty to refrain from discriminating against employees on the basis of race, national origin, or color;
8. Award Plaintiffs and the classes front- and back-pay, reinstatement or instatement to an appropriate position, and such other equitable relief as the Court deems just and appropriate;
9. Award pre-judgment and post-judgment interest on any award of damages to the extent permitted by law;
10. An award reasonable attorneys' fees and costs to the Plaintiffs and the putative class, pursuant to 42 U.S.C. § 1988 and any other applicable law and;
11. Grant such other relief as the Court may deem appropriate.

JURY DEMAND

Plaintiffs request a trial by jury on all claims so triable.

Dated: September 8, 2023

Don-Rudy Loiseau, Quinton L. Hebron and
Dwayne Small, individually and on behalf of
other similarly situated individuals

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 2023, a copy of foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail for anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Nitor V. Egbarin
Nitor V. Egbarin, Esq.

Exhibit 1

Donrudy Loiseau

From: Donrudy Loiseau
Sent: Friday, June 18, 2021 4:28 PM
To: Janelle Margolies
Subject: Discrimination at work

My Name is Donrudy Loiseau , I am working NHDC as Quality Control.
I was in Aisle 82 , doing my job Checking dates, one Selector speeding with
Centre rider, I tell him to slow down <cause I don't get hurt HE call me
F.....k Nigger and spit on my Forklift.
I went to a Supervisor to complain about it
Supervisor said everything is fine , I talk to him.

I need you to consider that please

Donrudy Loiseau
Quality Control
dloiseau@bozzutos.com
(203)672-7484

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