IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

AnnSharee Webb-Harrison, Plaintiff, v. Associates Asset Recovery, LLC, Tony Cooper, and Michelle Rogers, Defendants.	Case No.: 4:23-cv-03812-JD-TER **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT ASSOCIATES ASSET RECOVERY, LLC'S RENEWED MOTION FOR RULE 50(b) JUDGMENT AS A MATTER OF LAW OR, ALTERNATIVELY, FOR A NEW TRIAL**

INTRODUCTION

Defendant AAR moves for new trial under Rule 59(a)(1)(A), or the alternative, new trial *nisi remittitur* and to alter and amend the judgment pursuant to Rule 59(e). However, each finding of the jury on the special verdict form, as well as the amount of compensatory and punitive damages, are well supported by the evidence. AAR cannot meet its heavy burden for new trial or remittitur. Its motion should be DENIED.

ARGUMENT

I. AAR'S MOTION FOR NEW TRIAL SHOULD BE DENIED BECAUSE SUBSTANTIAL EVIDENCE SUPPORTS THE JURY'S VERDICT.

AAR's motion is built around the premise that the jury should have believed AAR's witnesses and disbelieved Plaintiff's witnesses. That premise is improper under Rule 50(b). The jury was entitled to credit Plaintiff, Lisa Frazier, Shemale Graham, and other evidence supporting Plaintiff's hostile work environment claim. The jury was equally entitled to reject AAR's denials and inconsistent explanations.

A hostile work environment claim requires evidence of unwelcome conduct based on race that is sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment, and that is imputable to the employer. *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998); *E.E.O.C. v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 315 (4th Cir. 2008); *McIver v. Bridgestone Americas, Inc.*, 42 F.4th 398, 407-08 (4th Cir. 2022). The same standard applies to Plaintiff's hostile work environment claim under 42 U.S.C. § 1981. *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015).

A. The jury heard evidence of a racially hostile environment.

AAR attempts to reduce the trial record to two isolated slurs and anonymous text messages. That framing ignores the totality of the evidence. Plaintiff presented evidence that Rogers and other AAR employees used racial slurs, referred to Plaintiff as a "black bitch," used the phrase "n-word lover" toward employees who associated with Plaintiff, and that Plaintiff received anonymous racist and threatening messages during her employment. Plaintiff also presented evidence that management knew of racial conduct and failed to respond in a manner reasonably calculated to end it.

Notably, Defendant's own witness, Shane Foster, testified that he recalled Plaintiff reporting anonymous racially offensive text messages to him. Moreover, Foster testified that he had a conversation with Defendant Cooper and they determined the messages could only have come from one or two employees based on their content. Further, AAR's 30(b)(6) witness testified that there were cameras in the office building that would have recorded who was working during the time the text messages were sent. Some of the messages were sent during the early morning hours when only two or three employees would have been working at the AAR office building, but no action was taken to determine who those employees were. Moreover, there was evidence that Drew Andrews referred to Plaintiff as "that n-word" and was only given a two-day suspension. There was also evidence that Andrews "harassed multiple people during the time he worked [at AAR]" but nothing was done to address this behavior.[1]

AAR's motion asks the Court to reconsider and discredit Plaintiff's testimony as "self-serving." Plaintiff testified under oath, was cross-examined, and was observed by the jury. The jury was entitled to credit her testimony. The jury also heard corroborating testimony from Graham and Frazier regarding Rogers' actions. The jury also heard testimony from Tyreka Moses that Brandy Hayes improperly dismissed her complaint that she had been called the "n-word" by telling her to call the police if she did not like it. The jury also heard testimony from defense witnesses Rogers, Hayes, and Foster that Plaintiff was the type of person who would make complaints if she felt offended. This was important because Defendants took the position that Plaintiff did not report the offensive text messages she received to management. The existence of contrary testimony from Rogers, Hardee, Moses, Cooper, and other defense witnesses created credibility issues for the jury. It did not require judgment as a matter of law for AAR.

The "severe or pervasive inquiry" is based on the totality of the circumstances. *Sunbelt Rentals*, 521 F.3d at 315. It does not permit the Court to isolate each slur, message, complaint, and response, strip it of context, and then ask whether each item would independently establish liability. The jury properly considered the cumulative effect of the conduct and AAR's response.

B. AAR's attack on the Rogers evidence is a credibility argument for the jury.

AAR argues that Graham's testimony regarding Rogers was speculative because Graham heard, but did not see, the interaction. That argument goes to weight, not legal sufficiency. Graham

[1] These are only examples of the evidence presented at trial. Plaintiff will not attempt to identify every issue raised during the seven-day, 14-witness trial to support the verdict.

testified that she was present in the same office area and heard Rogers make racially derogatory remarks. Graham testified she recognized Rogers' voice and was close enough to hear Rogers' statements. AAR acknowledged that Graham worked at AAR at the same time and in the same location as Plaintiff and Rogers. AAR cross-examined Graham and argued that she should not be believed. AAR further offered testimony from Rogers, Hardee, and Moses denying the incident. That conflict was placed squarely before the jury and the jury chose to credit Plaintiff's version of events fully backed by Graham and partially supported by Rogers.[2]

The jury was entitled to decide whether Graham could recognize Rogers's voice, whether Rogers's denial was credible, and whether other defense witnesses had reasons to minimize or deny the conduct. The fact that AAR offered contrary testimony does not mean Plaintiff's evidence was speculative as a matter of law.

Here, Plaintiff's hostile work environment claim did not depend solely on proving the identity of the sender of anonymous messages. The jury heard evidence of direct and corroborated racial slurs, complaints to management, and AAR's response. The anonymous messages were part of the totality of the hostile environment evidence; they were not the only evidence.

Further, the jury heard circumstantial evidence connecting the messages to AAR's workplace. The messages occurred during Plaintiff's employment, contained racial content tied to Plaintiff's workplace experience, involved the TextNow platform used in connection with AAR communications, and were not properly investigated or documented by AAR. AAR emphasizes that Cooper and Foster also received anonymous messages, but that does not exonerate AAR. A jury could reasonably infer that the messages came from someone within AAR's orbit targeting

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[2] Rogers testified she did have a disagreement with Hardee about Plaintiff's work and has referred to Hardee as a "bitch." Rogers denied calling Hardee a "n-lover." The jury was entitled to accept parts of Rogers' testimony and reject other parts of that same testimony.

multiple people during an internal workplace conflict. At a minimum, the evidence permitted more than one reasonable inference.

Moreover, the anonymous messages were not the only evidence of a hostile work environment. The jury was also permitted to consider Rogers' actions as a manager and the way those actions contributed to the hostile environment. There was testimony from Plaintiff, Frazier, and Graham that Rogers called Hardee and Frazier "n-lovers" for supporting Plaintiff at work. There was also testimony that Cooper instructed Frazier not to help Plaintiff at work. Even further, there was testimony that Tammy Reason, a co-owner of AAR, instructed Frazier to stop hiring "dark colors" and to limit Plaintiff's involvement in hiring employees because Plaintiff was black.

D. The jury was entitled to consider the anonymous text messages.

AAR argues that the anonymous messages must be disregarded because Plaintiff could not identify the sender. That is not the law. The identity of the harasser may matter to the adequacy of the employer's response, but employer liability for harassment does not always require the plaintiff to prove exactly who sent the racist messages.

Once an employer knows or should know of racial harassment, it must take action reasonably calculated to end the harassment. *Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325 (4th Cir. 2003); *Dennis v. County of Fairfax*, 55 F.3d 151 (4th Cir. 1995); *Pryor v. United Air Lines, Inc.*, 791 F.3d 488 (4th Cir. 2015). In *Pryor*, the Fourth Circuit recognized that anonymous racial harassment does not impose a lesser duty on the employer.[3] The employer must respond reasonably to protect the employee and investigate the harassment.

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[3] "The anonymous nature of severe threats or acts of harassment may, in fact, heighten what is required of an employer, particularly in circumstances where the harassment occurs inside a secure space accessible to only company-authorized individuals." *Pryor v. United Air Lines, Inc.*, 791 F.3d 488, 490 (4th Cir. 2015).

There was evidence for the jury to find that AAR knew Plaintiff was receiving racist messages. Cooper and Foster acknowledged awareness of anonymous messages, and the jury heard conflicting testimony about whether Plaintiff reported the racial content to management. The jury was entitled to resolve that conflict in Plaintiff's favor. The jury could also find that AAR's response was inadequate. AAR says Cooper and Foster consulted police and could do nothing more. But there was evidence from which the jury could conclude that AAR did not file a police report,[4] did not conduct a meaningful internal investigation, did not audit or restrict workplace use of TextNow, did not interview employees in any meaningful way, did not warn employees, and did not take steps reasonably calculated to stop recurrence. Moreover, AAR's technology policy noted that it retained the right to monitor activity on its computers, but did not take any steps to contact its IT department to research what could be done to identify who was sending the messages.

There was sufficient evidence in the record for the jury to decide whether the anonymous messages contributed to the hostile environment and whether AAR's response was adequate.

E. Plaintiff's continued work performance does not defeat her hostile work environment claim.

AAR repeatedly argues that Plaintiff continued working, performed well, and left after a pay dispute. Those facts do not defeat a hostile work environment claim as a matter of law.

A hostile work environment claim does not require constructive discharge or require an employee to immediately resign from his or her position. Employees often endure hostile conditions because of economic necessity, professionalism, or hope that management will address

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[4] The testimony from Foster was clear. The police were not contacted for the specific purpose of discussing the anonymous text messages. Instead, Foster asked a police officer who was present at AAR for other purposes about the messages without requesting a report be filed or an investigation be conducted. Moreover, AAR never contacted TextNow directly.

the problem. Here, Plaintiff testified that she moved to South Carolina "for a fresh start," enjoyed the type of work she was doing, and left when she felt she had been assaulted.

The jury heard Plaintiff's testimony about her subjective experience. It also heard evidence of racial slurs, racist messages, complaints to management, and management's response. That evidence allowed the jury to find both subjective and objective hostility.

II. THE COURT DID NOT ERR BY ALLOWING EVIDENCE OF OTHER HOSTILE WORK ENVIRONMENT COMPLAINTS AGAINST AAR FOR IMPEACHMENT

AAR next argue that the Court erred by allowing evidence of other hostile work environment complaints. The Court will recall that during the plaintiff's case in chief, Plaintiff's counsel asked AAR owner Tony Cooper if he and AAR took complaints of racial harassment very seriously. Mr. Cooper, out of the blue, responded, that he had "never personally experienced" racial harassment, that he had never been around it, and heard people act like that.

This was an unresponsive answer—Mr. Cooper had not been asked about whether he had ever experienced or been aware of racial harassment. But now that he had claimed that he had never experienced racial harassment, the door appeared to be open to impeachment evidence on this subject.

Plaintiff's counsel asked for a side-bar and advised the Court that it seemed Mr. Cooper had opened the door to impeach on other hostile work environment complaints at AAR. The Court allowed Plaintiff's counsel to lay additional foundation on the issue by asking Mr. Cooper if he was aware of other complaints of hostile work environment at AAR.

Plaintiff's counsel asked Mr. Cooper if he meant that in running the company, he had never had complaints of racial harassment at AAR. Mr. Cooper testified that he "did not know" if there had ever been complaints of racial harassment at AAR.

Upon objection by the defense counsel, a second side-bar was held. After hearing argument from the parties, the Court ruled that the Plaintiff had "every right to explore and to impeach him" on the subject. And that if Mr. Cooper "disavowed any knowledge about any matters involving any racial slurs," then Plaintiff would be entitled to impeach him on that topic.

Defense counsel objected that Mr. Cooper may have been confused about the question. So the Court directed Plaintiff's counsel to lay the foundation again. The Court explained the Plaintiff had "every right to impeach him" if he was not truthful.

Mr. Cooper was then asked whether in his 30 years of running AAR he had a memory of any other complaint of racial harassment besides the Plaintiff's complaint. He answered, "**no sir**." At this point, the door was indisputably opened to impeachment on the subject of other complaints of racial harassment that had been made at AAR.

AAR argues that this evidence did not meet the standard for the admission of "other-employee evidence," citing to *King v. McMillan*, 594 F.3d 301 (4th Cir. 2010), an unpublished fourth circuit opinion which is not controlling authority. But this is the wrong standard: this Court allowed evidence of other hostile work environment claims in order to impeach Mr. Cooper on untruthful testimony. AAR has not explained why this evidence was not admissible for the purpose of impeachment. *See King v. McMillan*, 594 F.3d 301 (4th Cir. 2010).

In addition, it was AAR's own witness who opened the door to the testimony by volunteering that he had never been aware of racial harassment, when he had not been asked this by Plaintiff's counsel. In light of the motion in limine order, Mr. Cooper should have been advised by his counsel not to raise this issue unless asked. Mr. Cooper's voluntarily opening the door on this subject was a self-created problem by AAR and as such, cannot be the basis for a new trial. See *Remy Holdings Int'l, LLC v. Fisher Auto Parts, Inc.*, 90 F.4th 217, 235 (4th Cir. 2024) ("Remy 'invited' the allegedly erroneously admitted testimony by introducing the issue in a question that elicited the response it now complains of, this testimony provides 'no basis for reversal.' ")

AAR also argues that under the motion in limine order, the Plaintiff counsel was required to make a proffer to the court before questioning witnesses on other hostile work environment complaints.

But Plaintiff's counsel *did* seek leave from the Court outside the presence of the jury before examining Mr. Cooper was asked about the other complaints of hostile work environment. What is more, Plaintiff's counsel informed the Court of each complaint of racial harassment he intended to ask Mr. Cooper about. And the Court granted leave for Plaintiff's counsel to ask Mr. Cooper about these complaints. There was no violation of the motion in limine.

In addition, the Court will recall that it gave a limiting instruction on this evidence, instructing the jury that it may only consider for certain purpose and not others. [Rough Draft 445-6.] The jury is presumed to follow the Court's instructions. AAR has failed to make any showing as to how the impeachment evidence of other complaints of hostile work environment caused it substantial harm or had a material effect on the verdict, or why the limiting instruction was inadequate. This is fatal to its motion.

In sum, AAR has not shown that the Court erred by allowing the Plaintiff to impeach AAR's witness with other complaints of hostile work environment or that a motion in limine was violated. And even that were not so, the evidence was allowed because of invited error on the part of AAR. And on top of that, AAR cannot show that any of this was more than harmless error. All of this precludes a new trial.

III. THE QUESTION POSED BY PLAINTIFF'S COUNSEL TO MR. WILLIAMSON WAS OBJECTED TO, AND NO TESTIMONY WAS ELICITED

During trial, Plaintiff's counsel asked Mr. Williamson if he was aware of other hostile work environment claims against AAR. This was after the Court ruled that Mr. Cooper's testimony had opened the door to impeachment evidence on that issue. The defense objected, and the Court stopped the witness before he could answer the question. The Court directed Plaintiff's counsel to "focus on the claim that's present here," and so Plaintiff's counsel moved on.

The jury is instructed that questions and objections by a lawyer are not evidence. No testimony was given by the witness on the subject. AAR claims that the witness answered, "Yes" to the question, even though that is not in the transcript. Even if that was true, the jury had already heard Tony Cooper cross examined about other hostile work environment complaints at AAR. Therefore, even if this witness squeaked out a "yes," he was only telling the jury what they already knew. This is no basis for a new trial.

IV. THE COURTNEY MACK MATTER WAS A COMPLAINT OF RACIALLY HOSTILE WORK ENVIRONMENT, WHICH PLAINTIFF'S COUNSEL OBTAINED THE COURT'S PERMISSION TO ELICIT

AAR argues, without any evidentiary support, that Plaintiff's counsel violated RPC 3.4(c) (disobeying an obligation under the rules of a tribunal) and (e) (alluding to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue) by asking Mr. Cooper about a charge of discrimination filed by former AAR employee Courtney Mack and insinuating that it was a complaint about racial harassment.

Ms. Mack is white and her husband is black. She is in a bi-racial marriage and has bi-racial children. She kept photos of her children on her desk at work. She filed a charge of discrimination with the EEOC against AAR alleging a hostile work environment. She alleged that a co-worker made highly offensive racially harassing comments to her concerning her bi-racial marriage and bi-racial children, which were reported to a supervisor and no action was taken. [Exhibit A.]

This was one of the hostile work environment complaints that Plaintiff's counsel told the Court about during trial. [Rough Draft at 256 ("If allowed, I will ask him about a charge of discrimination from Courtney Mack that involves an accusation of a racial slur that was reported to AAR.")] Following this proffer, the Court gave its permission for Plaintiff's counsel to question Mr. Cooper about this and the other complaints of hostile work environment for the purpose of impeachment.

In questioning Mr. Cooper about this matter, Plaintiff's counsel did not violate a Court order. Nor did he allude to a matter that he did not reasonably believe to be relevant or supported by admissible evidence. AAR's salacious accusations are baseless and unfounded. Moreover, AAR has not made any showing to explain how it was allegedly prejudiced by this evidence.

V. LIABILITY WAS PROPERLY IMPUTED TO AAR.

AAR argues that liability cannot be imputed to it because it had policies, investigated some complaints, and disciplined Andrews. However, AAR fails to appreciate that the jury's finding on the special verdict form precluded a *Faragher/Ellerth* defense.

In some instances, an employer may attempt to defend a harassment claim with evidence that (a) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise; *Burlington Indus. v. Ellerth*, 524 U.S. 742, 765, 118 S. Ct. 227 (1998). However, that defense is ***not*** available "when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment." *Id.*

Consistent with that law, after asking the jury the predicate questions to establish whether there had been a racially hostile work environment, question 4A on the special verdict form asked the jury the hostile work environment was created by a supervisor. The jury answered, "yes."

Having answered yes, the jury was directed to question 4B, which asked if the verdict form asked if the supervisor harassment resulted in a tangible employment action. The jury answered, "yes."

The jury instructions and the special verdict form in this matter correctly allowed the jury to find, consistent with the controlling case law, that there was no *Faragher/Ellerth* defense.

Importantly, AAR did not object to the jury instructions or the special verdict form. Following those instructions, the jury findings preclude a *Faragher/Ellerth* defense. AAR has made no showing that those findings were against the great weight of the evidence.

Despite this, AAR argues that it had an anti-harassment policy and gave training on that policy. All of this is irrelevant because AAR has no *Faragher/Ellerth* defense in this matter.

Even if that were not so, the jury had more than enough evidence to impute liability to AAR. Rogers was a manager in the Florence office. Plaintiff reported racially hostile conduct. AAR's own motion acknowledges that the corporate designee knew of the Rogers complaint and that there was no documentary record of a formal investigation beyond a denial. That alone permitted the jury to find AAR's response inadequate. The jury could also find that AAR's response to the anonymous racist messages was not reasonably calculated to end the harassment. AAR's policies do not resolve the issue. A written policy is not a shield if the jury finds that the employer failed to enforce it. The jury could find that AAR had policies on paper, but failed to protect Plaintiff in practice. That finding is supported by the evidence and forecloses judgment as a matter of law.

When *Faragher/Ellerth* is available, it is the employer who has the burden to establish that it exercised reasonable care to prevent and correct harassment and that Plaintiff unreasonably failed to take advantage of preventive or corrective opportunities. The jury rejected both prongs. Plaintiff presented evidence that she reported racial conduct and racist messages to management. The jury could also find that AAR failed to take reasonable corrective action. AAR therefore cannot establish the *Faragher/Ellerth* defense as a matter of law, even if it was available.

VI. AAR'S "SEVERE OR PERVASIVE" ARGUMENT FAILS UNDER THE TOTALITY OF THE CIRCUMSTANCES.

AAR relies on summary judgment cases involving materially different records and argues that the conduct here was not severe or pervasive. That argument fails for two reasons. First, this case is post-verdict. The Court is not deciding whether a plaintiff has presented enough evidence to reach a jury. A jury already heard the witnesses, evaluated credibility, considered the exhibits, and returned a verdict. AAR must show that no reasonable jury could find for Plaintiff. It has not done so.

Second, the conduct here involved the most severe form of racial language, repeated race-based hostility, anonymous racist and threatening messages, complaints to management, and evidence of inadequate response. The Fourth Circuit has recognized that even a limited number of severe racial epithets may be enough, depending on the circumstances. *Boyer-Liberto*, 786 F.3d at 280-81. The law does not require a plaintiff to endure a fixed number of slurs before a jury may find the environment hostile.

AAR's reliance on *Belton v. City of Charlotte*, 175 F. App'x 641 (4th Cir. 2006), is particularly misplaced. AAR cites *Belton* as if it were a hostile work environment case holding that one use of the n-word was insufficient to establish a racially hostile environment. But *Belton* addressed different factual assertions.[5] Notably, in *Belton*, plaintiff claimed that he heard a co-worker say the "n-word" in 1989, approximately 13 years before *Belton* filed his 2002 charge of discrimination. *Belton*, 175 F. App'x at 651. AAR's citation of *Belton* does not justify setting aside a jury verdict based on the trial record in this case.

AAR also relies on *Addison v. CMH Homes, Inc.*, 47 F. Supp. 3d 404 (D.S.C. 2014), and *Green v. Martin Marietta Materials, Inc.*, 2024 WL 3219185 (D.S.C. June 27, 2024). Those cases, like *Belton*, were decided at summary judgment and involved their own records. They do not authorize the Court to disregard the jury's findings here. The question is not whether some other court on some other record found different conduct insufficient. The question is whether this jury had a legally sufficient basis to find a racially hostile work environment based on this record. Here, the jury had sufficient evidence to support its verdict.

VII. THE COURT DID NOT ABUSE ITS DISCRETION BY DENYING BIFURCATION

AAR argues that the Court erred in denying bifurcation on liability and damages. It argues further, without explanation, that this information harmed AAR significantly as to the jury's compensatory award as well as punitive damages.

Here the Court found that AAR had not shown that bifurcation would promote convenience, expedition, or economy, nor that it is necessary to avoid undue prejudice. [Dkt. 66.] AAR has not

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[5]See *Belton*, 175 F. App'x at 657 (4th Cir. 2006) ("[plaintiff]'s hostile environment claim hinges on five main allegations, also covering his nearly thirty-year career: (I) in approximately 1989 Fincher used the word 'nigger' when describing a neighborhood to [plaintiff] and told [plaintiff] to "go and cook [me] some grits," F.J.A. 97; (ii) at some point since 1988, Deputy Chief Weaver drew an imaginary line across his desk and warned [plaintiff] that "he was going to get [plaintiff]" if [plaintiff] "cross[ed] that line," F.J.A. 101; (iii) in 1998 he was told secondhand that a lower-ranking firefighter in a different battalion made a racist remark, though [plaintiff] did not know if this report was 'truth or hearsay,' […]; (iv) Fincher has raised his voice when speaking with [plaintiff] on at least two occasions; and (v) [plaintiff] has not been promoted to Deputy Chief.").

made any showing as to why this was an abuse of discretion. Nor has AAR explained how the Court's ruling caused it substantial harm or had any effect on the verdict. There is nothing here that requires a new trial.

III. AAR IS NOT ENTITLED TO A NEW TRIAL.

AAR is not entitled to a new trial under Rule 59(a). The verdict was not against the clear weight of the evidence, was not based on false evidence, and does not result in a miscarriage of justice. Instead, AAR's motion recasts trial disputes as legal errors.[6] The jury heard conflicting evidence about the Rogers slurs, the Andrews text, anonymous messages, Plaintiff's reports, AAR's knowledge, AAR's response, and Plaintiff's harm. The jury resolved those disputes in Plaintiff's favor. That is the function of a jury.

AAR offers no evidence of jury misconduct or improper influence. It points to the size of the award, the anonymous messages, and its disagreement with the verdict. That is not enough. The damages were tied to the jury's view of the harm and the need for punishment and deterrence. The punitive award was lower than the compensatory award. Nothing about the verdict compels an inference that the jury acted from passion or prejudice rather than from the evidence.

IV. AAR HAS NOT MET THE HEAVY BURDEN TO JUSTIFY REMITTITUR

A. Standard for remittitur

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[6] See also *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 553, 104 S. Ct. 845, 848, 78 L. Ed. 2d 663 (1984) (citing *Brown v. United States*, 411 U.S. 223, 231–232, 93 S.Ct. 1565, 1570–1571, 36 L.Ed.2d 208 (1973); *Bruton v. United States*, 391 U.S. 123, 135, 88 S.Ct. 1620, 1627, 20 L.Ed.2d 476 (1968); *Lutwak v. United States*, 344 U.S. 604, 619, 73 S.Ct. 481, 490, 97 L.Ed. 593 (1953)) ("This Court has long held that '[a litigant] is entitled to a fair trial but not a perfect one,' for there are no perfect trials.'[…] Trials are costly, not only for the parties, but also for the jurors performing their civic duty and for society which pays the judges and support personnel who manage the trials. It seems doubtful that our judicial system would have the resources to provide litigants with perfect trials, were they possible, and still keep abreast of its constantly increasing case load.').

It is well established that a jury's damages determination is entitled to the "utmost respect." *See Price v. City of Charlotte*, 93 F.3d 1241, 1250. (4th Cir. 1996). In reviewing jury verdicts, courts are constrained by the Seventh Amendment and must "tread gingerly." *Id.* at 1249. Accordingly, "a jury's award of damages stands unless it is grossly or excessive or shocking to the conscience." *Fox v. GMC*, 247 F.3d 169, 180 (4th Cir. 2001) (quoting *O'Rourke v. City of Providence*, 235 F.3d 713, 733 (1st Cir. 2001).

"Courts defer to a jury's award of damages for intangible harms, such as emotional distress, 'because the harm is subjective and evaluating it depends considerably on the demeanor of the witnesses.' " *Id.* at 180 (quoting *Giles v. Gen. Elec. Co.*, 245 F.3d 474 (5th Cir. 2001)). For all of these reasons, a party challenging the sufficiency of the evidence to support a verdict "bears a heavy burden." *See Boley v. Armor Corr. Health Servs*., Civil Action No. 2:21CV197 (RCY), 2023 U.S. Dist. LEXIS 60393, at *39 (E.D. Va. Apr. 5, 2023).

"A trial court's evaluation of an award of compensatory damages is less searching than its evaluation of an award of punitive damages." *King v. McMillan*, 594 F.3d 301, 313 (4th Cir. 2010). And the trial court's ruling is reviewed for abuse of discretion and given every benefit of the doubt, as it is in the best position to weigh evidence and assess witness credibility. *See Ramaco Res., LLC v. Fed. Ins. Co.*, 74 F.4th 255, 266 (4th Cir. 2023)

AAR argues that the jury's $2 million compensatory award is not supported by the evidence. In fact, the jury heard extensive and credible evidence of egregious racial harassment and of Ms. Webb-Harrison's past and future emotional distress, pain, suffering, inconvenience, mental anguish, humiliation, embarrassment, and damage to reputation.

B. Evidence to support the award of compensatory damages

As to racial harassment, this was not a few isolated incidents, as AAR argues. The jury heard testimony that AnnSharree was targeted with "constant name" calling by AAR supervisor Michelle Rogers. [Rough Draft at 429.] Rogers called AnnSharee "that n-word," "black n-word," and "black bitch." *Id.* Rogers called her these names, when in fact she was doing what her supervisor told her to do and doing her job correctly. Ms. Hardie told her put on headphones so she wouldn't have to listen Rogers, and that she would "talk to Tony about it." *Id.* at 430.

To add insult to injury, when AAR supervisor Debbie Hardie explained to Rogers that AnnSharee she had just been doing what she had told her to do, Rogers called her an "n-lover" for standing up for AnnSharree.

Rogers said, "Tony is going to have to choose between me and her." A leadership meeting was held later that day about the situation. And Mr. Cooper chose the supervisor who was engaging in racial harassment over the victim. Instead of standing up for AnnSharee and showing that he does not tolerate racial harassment, he asked, "what are we going to do with AnnSharee?" Instead of punishing Rogers, he moved AnnSharee to another department.

This occurred in a meeting with AnnSharee present along with all of AAR's leadership. AnnSharee was humiliated, embarrassed and broken by this betrayal. She broke down. She buried her head and cried—in front of Mr. Cooper and AAR's entire leadership team. *Id.* at 432-3.

And because AAR supervisor Lisa Frazier stood up for AnnSharee ("I'll take AnnSharee"), she was later called an "n-lover" by Rogers.

Lisa became a target for being AnnSharee's protector and was so uncomfortable with how she was treated that she eventually quit.

To add insult to injury, Rogers never suffered any consequences whatsoever for her racial harassment of AnnSharee. She remains a high-level supervisor with AAR and is highly paid.

All of this was supported with the testimony of Lisa Frasier, Shemale Graham, in addition to the Plaintiff's own testimony.

In addition, AAR's majority owner, Tammy Reason, who is also an AAR supervisor, told Lisa Fraiser that it was "too dark" in her department, meaning that she needed to stop hiring African Americans. Reason told her to stop involving AnnSharee in the hiring process. AnnSharee was not only humiliated by this, she had this responsibility taken away her.

Rogers and Reason are of course both AAR supervisors, and Reason is the AAR's majority owner. It is important to note that, "in measuring the severity of harassing conduct, the status of the harasser may be a significant factor—e.g., 'a supervisor's use of [a racial epithet] impacts the work environment far more severely than use by co-equals.' Simply put, 'a supervisor's power and authority invests his or her harassing conduct with a particular threatening character." *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 278 (4th Cir. 2015) (citing authority.)

Ultimately, AAR moved AnnSharee away from Lisa Frazier into a different department. At this point, Tony Cooper told Lisa Fraizer not to talk to AnnSharee anymore. It was Cooper himself who separated and isolated her and the only member of AAR leadership who treated her with dignity instead of racial animus.

Finally, there is the deeply degrading and humiliating final incident with Mr. Cooper. While the jury found that this did not constitute an assault, this evidence can also be considered part of the hostile work environment. She testified that when Mr. Cooper yelled at her, got spit on her face, and tossed a $100 bill at her instead of honoring the promised raise, it humiliated her, like he looked at her like she was garbage or a prostitute with no value to him.

She was so distressed by Mr. Cooper's egregious treatment of her, that she suffered from high blood pressure. She had "diahrea, head pressure, everything." [Rough Draft at 526,] She could not come in to work for two days, and then ultimately decided to resign.

While Mr. Cooper's treatment of AnnSharee on that occasion was race neutral on its face, the jury could reasonably view it as part of racial hostility with AAR treated her. As this Court has recently observed:

> "[H]arassment need not be accompanied by a contemporaneous statement of [racial] animus to be actionable under [§ 1981]—rather, the connection between animus and conduct may be inferred from the totality of the circumstances." The court may consider facially race-neutral conduct where a "connection to or nexus with an obvious or overt racial incident" exists. Incidents sharing a "congruency of person or incident" are more likely to be sufficiently connected.

Wright v. Enviri Corp., No. 3:23-cv-04978-JDA, 2026 LX 120494, at *10-12 (D.S.C. Mar. 31, 2026) (Austin, J.) (internal citation omitted).

Mr. Cooper presided over a company whose supervisors engaged in racial harassment, which he himself tolerated inadequate and in some instances, nonexistent responses. And it was not just Ms. Webb-Harrison, the jury heard that that were other complaints of racial harassment that Mr. Cooper knew about. The company's leadership was exclusively white, and the few African American lower-level managers they employed, were not treated or compensated like managers. A fish rots from the head. A jury could easily conclude that Mr. Cooper shared the racial animus of majority owner Tammy Reason and his longtime supervisors.

Ms. Webb Harrison testified that while Mr. Cooper did not call her the n-word during that incident, he treated her like she was an "n-word." [Rough Draft at 491.] In light of the totality of the evidence, the jury could easily conclude but-for Ms. Webb-Harrison's race, Mr. Cooper would not have treated her as he did, including his final act of degradation and humiliation.

AnnSharee was also a victim racial harassment by co-worker and an anonymous third party who, AAR investigation established to be an AAR employee. Specifically, co-worker Drew Rogers referred to her as “that n-word”, in a text message, again for doing what she was told to do by a supervisor. Rogers got off with a slap on the wrist and AnnSharee had to continue to work in close proximity with him.

Over a period of three months, Ms. Webb-Harrison received highly offensive and harassing anonymous text messages. These messages came in in the middle of the night—making them more disturbing. The message continued racial slurs included the n-word, porch monkey, and slave. One message said, “He snap his finger you come running like yes master yes master.”

AAR tried to undermine its portrayal of as a racist company through the testimony of three black female AAR employees who testified that they were or had been supervisors at AAR. However, the jury heard evidence that these “supervisors” were supervisors in name only. They had one or zero direct reports. And they were shockingly underpaid. For example, Ms. Patricia Ann Jefferson (Ms. Pat) testified that she had had a bachelor’s degree in economics and marketing and an MBA degree in management and human resources. [Rough Draft 592.] She testified that before AAR, she had worked for 27 years as an operational manager at Blue Cross and Blue Shield where she managed a call center of over 500-600 people. Despite these credentials, AAR paid her only $18. And in her eight years with AAR, she had never received a raise. While AAR called her a “manager,” AAR did not include her in any management meetings and there was only one other person in her department. [Rough Draft 602]

This is contrasted with AAR’s treatment of Michelle Rogers, a white female, who had only been a supervisor at AAR for six years, and was paid $30 an hour—nearly double Ms. Pat. [Rough Draft at 208.] Debbie Hardie, a white female who was the manager of the billing department, was paid $20 an hour despite only working 8-16 hours a week. [Rough Draft 626.] Lisa Frazier, a white female and manager of the DRN Department was paid $25 per hour. Tyreeka Moses, a black female that AAR claimed was a manger, was paid $13 per hour. [Rough Draft 732.] And Ms. Webb-Harrison despite her promotion to supervisor, and was paid $12 per hour, if that. [See Rough Draft 523.]

The jury found that Plaintiff suffered actual harm from a racially hostile work environment. The evidence supported that finding. The jury heard Plaintiff's testimony, observed her demeanor, considered the nature of the racial conduct, and assessed the harm. The jury heard testimony that being called the n-word is like "50 insults in one." That it meant that her ancestry was disgraceful, that she was dirty, that she was not worthy to do her job, that was "not sufficient in their eyesight." [Rough Draft 492.]

It is like being called a slave, she testified, which is the lowest thing she could be called. The mere fact that she had to sit in front of a jury in federal court an explain why it is humiliating was degrading in itself. She testified that avoided jobs that would put her in a management position because of her treatment at AAR, and that the word "n-lover" would stay with her for the rest of her life.

Even though Mr. Cooper testified he would have hired her back, she testified that she would have never returned because they wanted her to "take the disrespect." They wanted her to be OK with being treated like an "n-word" instead of like AnnSharee.

And the jury heard evidence that Ms. Webb-Harrison's damages continued to the present date and beyond. She testified that she thinks about the harassment she experienced at AAR "all the time" when she is trying to work. [Rough Draft 579.] She is now 'hypersensitive to different situations. *Id.* And while she has the capability of working at the management level, she now avoids this. After AAR, she needed "something easy"; she "didn't want to get in a role where [she] would have to be combative." *Id*. at 580. Her first job after AAR she was paid $800 an hour.

She testified that of her whole ordeal with AAR, the one thing that is going to stay with her forever is the word, "n-lover." Id. at 582.

Ms. Webb-Harrison worked at AAR for two years, but the trauma for this experience had changed her, and will stay with her for the rest of her life.

There is also background contextual evidence that the jury may consider in assessing her damages. She testified that she grew up in the church and that rules were important to her. [Rough Draft at 418.] This formative value made AAR betrayal of its own rules all the more painful.

In addition, she told a story that showed just what she was capable of someone recognizes her potential and gives her an opportunity to shine. One of her passions was hair. In New Jersey, a stranger named Olga was impressed with the haircut on a boy whose mother had taken to her salon for a haircut. She found out that it was AnnSharee who had done it. So she asked the woman to bring her in. Olga hired her, trained her, showed her the ropes, and then eventually sold her the hair salon. *Id.* at 419. This is how she came to operate her own hair salon before moving to South Carolina.

This is more than a sweet story. AAR had a valuable resource in Ms. Harrison. It could have recognized her worth as a human being and given her an opportunity to direct her work ethic, loyalty, and passion to innovate toward the betterment of AAR's business. Instead, it looked at the color of skin and saw an "n-word." And instead of giving her a beautiful opportunity to realize her potential, it degraded and humiliated her. It is a tragic story and illustrates why AAR's humiliation of AnnSharee was so painful. And it illustrates how tragic it is that AnnSharee won't allow herself to shine today, because of the trauma she experienced with AAR.

Six jurors heard all of this evidence and unanimously decided to award $2 million in compensatory damages. This verdict is supported by the evidence and not grossly excessive.

Defendant argues that the verdict is not supported because did not seek medical attention for her mental distress from AAR. But this not required, so long as there is evidence to support "demonstrable distress" that is "sufficiently articulated" and "not conclusory." *See Hicks v. Ferreyra*, 64 F.4th 156, 175 (4th Cir. 2023)

AAR argues also that her emotional suffering is not supported because she went to the doctor three months after her termination and did not mention AAR to her doctor. But she was seeing the doctor for "women things," not workplace trauma. The jury plainly found this evidence unpersuasive.

AAR also argues that the compensatory damages are not supported, because Ms. Webb-Harrison remained on the job "for months following the racial slurs." But the fact that an employee continues to work under difficult conditions and perform well despite experiencing harassment does not foreclose or undermine her claims related to that harassment. See *Holsten v. Barclays Servs. LLC,* Civil Action No. 3:24CV844 (RCY), 2025 LX 477512, at *34 (E.D. Va. Sep. 22, 2025). But there was testimony from Mr. Cooper that she didn't have enough money to pay her bills or fix her car and that she was came to him several times for money. [Rough Draft at 392.] There are many reasons why a single woman would be reluctant to quit a job, even if they are miserable.

AAR presents a compendium of lower jury verdicts in South Carolina in attempt to argue that the verdict in this case is excessive. But if the Court is going to evaluate whether this verdict in this case was grossly excessive based on other verdicts, it should look at other recent racial harassment verdicts. *See Farfaras v. Citizens Bank & Tr.,* 433 F.3d 558, 566 (7th Cir. 2006) (noting the limited usefulness of comparison of verdicts in cases that are not similar). *None* of the verdicts cited by AAR helpful because none of them involve racial harassment. And most *are more than 20 years old.*

Racial harassment cases are sui generis, particularly when the protected class if African American. This is true not only because of this country's history of slavery and segregation, but also because of many recent events which necessarily shape a jury's attitude about an employer that tolerates racial harassment in the workplace in the present day.

And the Court is not limited to South Carolina verdicts; when it comes to Federal discrimination verdicts, courts look nationwide. See e.g., *Fox v. GMC*, 247 F.3d 169, 180 (4th Cir. 2001) (comparing and ADA discrimination verdict in the 4th circuit to ADA verdicts in the First Circuit). [7]

The most recent such verdict was in *Danielson v. Seattle Child.'s Hosp*., No. 87793-3-I, 2026 LX 223438 (Ct. App. May 26, 2026). The plaintiff in Danielson was an African American doctor who served as the medical director of a hospital. He alleged that during his 21-year tenure, he was called a racial slur in 2007, which was not adequately addressed. He also alleged that colleagues doubted his intelligence and competence and made him feel unwelcome; did not address his concerns about disparities in funding and treatment of African American patients and staff, and that he was investigated for a HIPAA violation after he raised the hospitals lack of commitment to the African American community at a board meeting.

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[7] Indeed, the Court must look outside of South Carolina, as it appears this is the state's only jury verdict in racially hostile work environment case.

The jury award $21 million in compensatory damages—$1 million for each year of the plaintiff's employment. Here too, the jury awarded $1 million for each year of Ms. Webb-Harrison's employment with AAR. The two verdicts are thus in-line with each other. And in *Danielson,* the trial court denied remittitur, and that ruling was upheld on appeal. *Id.*[8]

AAR has not met its "heavy burden" to show that the compensatory award was weight of the evidence, is based on false evidence, or will result in a miscarriage of justice. The motion for remittitur should be DENIED.

C. The Jury's punitive damage award is supported by the evidence and consistent with the constitutional guiderails.

As this Court correctly instructed the jury, the jury may award punitive damages upon a finding that AAR acted with malice *or* reckless indifference to Plaintiff's federally protected right to be free from racial harassment in the workplace. The Court further explained, "Reckless indifference" means that the Defendant acted in the face of a perceived risk that its conduct would violate federal law. It is not enough that the Defendant intentionally engaged in conduct that you find unlawful. Plaintiff must prove that the Defendant knew or perceived that its conduct risked violating Plaintiffs federally protected rights and acted despite that risk. This instruction was a correct statement of the law and was not objected to.

AAR corporate designee testified that AAR was aware that federal law prohibited racial harassment in the workplace. [Rough Draft at 125-6.] AAR's witnesses admitted that it would be negligent, even indeed reckless, to allow racial harassment in the workplace. [Rough Draft at 22.] Despite this, the jury heard evidence that AAR was aware of racial harassment of the

[8] This case was brought under the Washington Law Against Discrimination (WLAD), because it has no caps and being a state claim, little risk of summary judgement. The WLAD has very similar burden of proof to Title VII and 42 USC 1981, except that is use substantial factor rather than but-for causation.

plaintiff by its own supervisors, as the anonymous text messages, and took inadequate, or in some cases no effort to stop it. This alone is sufficient evidence for the jury to conclude that AAR had engaged in reckless indifference to her federally protected rights.

But also, the jury heard evidence that her complaints were not properly investigated, documented, or and that harassers went unpunished. It heard AAR witnesses lie and contradict each other. It heard evidence that important documents were inexplicably lost or not produced until the middle of trial. Andi heard AAR improbably accusing her of manufacturing the harassment with falsified documents. It heard evidence that there had been other employee complaints about racial slurs. This evidence supports the reprensibility required for an award of punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *E.E.O.C. v. Fed. Express Corp.*, 513 F.3d 360, 376 (4th Cir. 2008).

The ratio between the jury's compensatory and punitive damages awards strongly supports the constitutionality of the award. The Supreme Court in *BMW of N. Am. v. Gore*, as explained, "ratio to the actual harm inflicted on the plaintiff" is the "most commonly cited indicium of an unreasonable or excessive punitive damages award[.]" U.S. 559, 560, 116 S. Ct. 1589, 1602 (1996). It reasoned that a 4-1 to ration of compensatory damages to punitive damages might be close to the constitutional line. 517) Here, the punitive damages award is $1,000,000 and the compensatory damages award is $2,000,000. That is a 0.5-to-1 ratio. Instead of a multiple of the compensatory award, it is a fraction. This is well within the constitutional limits.

The $1 million punitive award was also reasonable in light of evidence of AAR's financial condition and its ability to pay. There was testimony that AAR's revenue in 2022 was $22,580,993.00. [Rough Draft at 56.] While AAR witnesses also testified that the company was having difficulties financially, these witnesses were not credible, AAR is a large company with 25 locations that operates in 4 states. In light of this evidence, $1 million was an appropriate punitive award that served the function of punishment and deterrence but not in an amount designed to financially destroy the company.

Persuasive authority confirms that AAR's ratio argument is weak. In *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020 (9th Cir. 2003), the Ninth Circuit affirmed a $2.6 million punitive damages award in a § 1981 employment discrimination case where the compensatory award was $360,000. The court held that a punitive award with a ratio slightly above seven to one was not constitutionally excessive because it was a single-digit ratio and because intentional discrimination is a serious harm. *Id.* at 1044-45. The court explained that "intentional discrimination is a different kind of harm, a serious affront to personal liberty," and that intentional deprivation of freedom from race or ethnicity discrimination is "highly reprehensible conduct." *Id.* at 1043. The ratio here is far lower than the ratio upheld in *Zhang*. AAR therefore cannot show that a punitive award amounting to half of the compensatory award is constitutionally excessive.

Moreover, the Supreme Court has acknowledged that low awards of compensatory damages may support a higher ratio if a particularly egregious act has resulted in a small amount of economic damages. *Hampton v. Dillard Dep't Stores, Inc.*, 247 F.3d 1091, 1117 (10th Cir. 2001) (citing *Deters v. Equifax Credit Info. Servs.*, 202 F.3d 1262 (10th Cir. 2000) (referencing *BMW of N. Am. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589 (1996)). Additionally, where the injury is primarily personal, a greater ratio than 10:1 may be appropriate. *Hampton*, 247 F.3d at 1116.

Notably, in *Hampton*, the court found that intentional discrimination on the basis of race is especially reprehensible and that a $1,000,000 punitive damages award for race discrimination under § 1981 is not unconstitutionally excessive. *Hampton*, 247 F.3d 1091 (10th Cir. 2001).

V. AAR's REQUEST FOR RULE 59(e) RELIEF IS NOT SUPPORTED BY THE RECORD.

AAR also invokes Rule 59(e), but identifies no proper basis for altering or amending the judgment. There has been no intervening change in controlling law. AAR identifies no newly discovered evidence unavailable at trial. And AAR has not shown clear error or manifest injustice. AAR's motion is a request to relitigate issues already tried to the jury. *Becker*, 305 F.3d at 290 ("[M]ere disagreement does not support a Rule 59(e) motion.") Rule 59(e) does not permit that. The Court should deny Rule 59(e) relief.

CONCLUSION

The jury's verdict is supported by substantial evidence. AAR's renewed motion asks the Court to credit AAR's witnesses, reject Plaintiff's witnesses, draw inferences against the verdict, and reduce damages the jury awarded after hearing the evidence. Rule 59(a), and Rule 59(e) do not permit that result.

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant Associates Asset Recovery, LLC's Renewed Motion for Rule 50(b) Judgment as a Matter of Law or, Alternatively, for a New Trial in its entirety.

Respectfully submitted,
FERGUSON LAW AND MEDIATION, LLC

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Charleston, South Carolina

July 2, 2026

EXHIBIT A

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s)

☐ FEPA

☒ EEOC 415-2023-00877

S.C. Human Affairs Commission and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)	Home Phone (Incl. Area Code)	Date of Birth
Mrs. Courtney Mack	843-260-0539	2/22/2000

Street Address	City, State and ZIP Code
108 Blue St., Unit O	Darlington, SC 29532

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No. (Include Area Code)
Associates Assets Recovery	15+	(800)488-6869

Street Address	City, State and ZIP Code
3601 E. Palmetto St	Florence, SC 29506

Name	No. Employees, Members	Phone No. (Include Area Code)

Street Address	City, State and ZIP Code

DISCRIMINATION BASED ON (*Check appropriate box(es).*)

☒ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN

☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ GENETIC INFORMATION

☐ OTHER (*Specify*)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest Latest

Jan.-Feb. 2023

☐ CONTINUING ACTION

THE PARTICULARS ARE (*If additional paper is needed, attach extra sheet(s)*):

Please see attached Statement of Particulars.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – *When necessary for State and Local Agency Requirements*

I declare under penalty of perjury that the above is true and correct.

3/10/2023 Courtney R Mack

Date Charging Party Signature

Anthony C. Watkins

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (*month, day, year*)

3-10-2023

ANTHONY C. WATKINS NOTARY PUBLIC

STATEMENT OF PARTICULARS
COURTNEY MACK V. ASSOCIATES ASSET RECOVERY, LLC

Introduction

This Charge alleges that Associates Asset Recovery, LLC ("AAR") allowed a co-worker to sexually and racially harass a female employee, which management was aware of, but tolerated.

Statement of the Facts

1. Associates Asset Recovery, LLC (AAR) is a company that does business in North Carolina and South Carolina and operates an office out of Florence, SC.

2. AAR is a repossession company providing auto and collateral recovery services.

3. AAR has more than 15 employees and is subject to Title VII of the Civil Rights act of 1964 (Title VII).

4. AAR is responsible for having a policy for employees to report harassment and for training supervisors to properly respond to reports of harassment when they occur.

5. On November 10, 2022, AAR hired Courtney Mack, Claimant, as a Customer Service Representative at the Florence facility.

6. Claimant is a member of a protected class: she is female, she is in a bi-racial marriage and has bi-racial children.

7. Ms. Mack is White and her husband is African American. As noted, her children are bi-racial.

8. On January 23, 2023, Ms. Mack's Supervisor, Wendy Johnson witnessed the owner's brother-in-law, Burnie _______, notice photos of Ms. Mack's children on her desk and ask Claimant if her children were black. Burnie asked, "Why would you do that? No white man is going to want you after that." He continued to make inappropriate comments, including "I don't understand why white women do it. Is it because they have a big penis?" Although several staff were present in the office and witnessed this interaction (including Ms. Johnson), no one said or did anything.

9. After Burnie left, Ms. Mack was in tears and asked Ms. Johnson why she did not intervene. Ms. Johnson replied, "You have to take that with a grain of salt."

10. Burnie apologized to Ms. Mack a few days after the incident, but did not clarify what he was apologizing for.

11. On January 26, 2023, Ms. Johnson received an email form Ms. Mack advising that she was extremely hurt by the things that Burnie had said to her and even more hurt by the fact that no one who witnessed this said or did anything.

12. On January 27, 2023, Ms., Johnson replied to Ms. Mack's email and advised that "something was said to Mr. Burnie, why do you think he apologized?" Ms. Johnson went on to explain, "…like with the rest of the family that works here...........Courtney, Ms. Tammy, Tim, Mandy, Danny, Burnie, and Mrs. Debbie (I think that's all).....it won't ever change. Tony nor Ms. Tammy are going to fire their family… I think he knows he screwed up and I don't foresee it being a prob going forward but here my hands are tied as well. I chewed his ass good fashion but I don't have the power to fire him, not even Michelle. Apologize for him, yes I do because you can't fix ignorance and just know it won't/better not hap again." [Exhibit 1.]

13. Since the beginning of 2023, Burnie would make daily comments to Claimant about female attributes and what the ideal female should look like. Ms. Mack was five months pregnant at the time and this made her very uncomfortable.

14. Ms. Mack made multiple attempts to complain to Mr. Howard in the HR Department, but he was never there.

15. Ms. Mack was never provided an Employee Handbook and to her knowledge, AAR has no sexual harassment policy.

16. Ms. Mack had hoped to find different employment, but was so uncomfortable in the office, she went ahead and resigned on February 3, 2023.

Prima Facia Case

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of gender. 42 USCS § 2000e-2. Sexual harassment falls within sex discrimination under Title VII because "sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality." *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 67 (1986) (quoting *Henson v. Dundee*, 682 f.2d 897, 902(1982)). Title VII also prohibits discrimination against an individual because the individual is in a bi-racial relationship or has bi-racial children. *Tetro v. Elliott Popham Pontiac*, 173 F.3d 988, 995 (6th Cir. 1999); Morey v. Carroll Cnty., Civil Case No.: ELH-17-2250 (D. Md. May 3, 2018); *Greenan v. Board of Education of Worcester County*, 783 F. Supp. 2d 782, 789 n.3 (D. Md. 2011).

To prevail on a hostile work environment claim, "a plaintiff must show that there is '(1) unwelcome conduct; (2) that is based on the plaintiff's [protected characteristic]; (3) which is sufficiently severe or pervasive to alter the plaintiff's conditions of employment and to create an abusive work environment; and (4) which is imputable to the employer." *Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 221 (4th Cir. 2016)

There can be no dispute that Bernie's discriminatory comments were unwelcome and based on Ms. Mack's gender, as well as her bi-racial marriage and bi-racial children. The hostile work environment was pervasive because Bernie's made offensive comments on a daily basis and continued to do so until Ms. Mack could no longer tolerate it and resigned. Ms. Mack's distress was heightened by the fact that her supervisor, Ms. Johnson was aware, and actually witness Bernie's harassment, but tolerated it. Worse, Johnson she told Ms. Mack that she needed to tolerate it and that there was nothing they could do stop Bernie. Bernie's harassment was further compounded by the fact that AAR did not disseminate information about how employees could report sexual harassment, and its HR representative was unavailable for complaints.

When the harassing employee is a co-worker, the employer will be liable if it was negligent in controlling the working conditions. *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 278 (4th Cir. 2015). Here, the supervisor was aware of the harassment, but thought there was nothing she could do because Burnie was family, so the company wasn't going to do anything about it. Thus, the harassment may be imputed to the employer.

Ms. Mack has therefore set forth facts to establish a prima facie case of hostile work based on gender discrimination and race discrimination as well as constructive discharge.

Conclusion

For the foregoing reasons, the Claimant respectfully requests that the Commission issue a CAUSE finding in this matter.

EXHIBIT 1

-------- Original Message --------
Subject: Re: Fwd: Boost Team Engagement with the 3 C's 🏆
Date: Fri, 27 Jan 2023 14:49:19 -0500
From: "WENDY JOHNSON" <wendy_johnson@associatesassetrecovery.com>
To: cmack@associatesassetrecovery.com

I completely understand everything you've just said in this email and for the most part I agree with everything and just know something was said to Mr. Burnie, why do you think he apologized? But like with the rest of the family that works here...........Courtney, Ms. Tammy, Tim, Mandy, Danny, Burnie, and Mrs. Debbie (I think that's all).....it won't ever change. Tony nor Ms. Tammy are going to fire their family. Mrs. Debbie's almost been beat up because of her mouth too and I agree its disrespectful and I didn't like it anymore than you did but even Michelle in her possession doesn't even try to supv the family because it does no good. I think he knows he screwed up and I don't foresee it being a prob going forward but here my hands are tied as well. I chewed his ass good fashion but I don't have the power to fire him, not even Michelle. Apologize for him, yes I do because you can't fix ignorance and just know it won't/better not hap again.