

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOSE DIAZ,

Case No.

Plaintiff,

COMPLAINT

- against -

TARGET CORPORATION

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

Defendant.
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Plaintiff, JOSE DIAZ, (hereinafter “Plaintiff”) by his attorneys, PHILLIPS & ASSOCIATES, Attorneys at Law, PLLC, hereby complains of Defendant, upon information and belief, as follows:

NATURE OF THE CASE

1. Plaintiff, JOSE DIAZ, complains pursuant to **42 U.S.C. § 1981** and the **New York State Human Rights Law, New York State Executive Law §§ 296, et seq.** (“NYSHRL”) and seeks damages to redress the injuries Plaintiff has suffered as a result of being **discriminated against, and retaliated against by his employer solely due to his race, actual and/or perceived national origin (Hispanic/Latino).**
2. Defendant employed Plaintiff from October 2018 to November 2018.
3. During his brief employment with Defendant, Plaintiff was subjected to discrimination and retaliation by his supervisors.
4. After making a complaint to his supervisors regarding the discriminatory treatment, to which he was being subjected to, Plaintiff was then unlawfully terminated in retaliation for engaging in protected activity.
5. As a result, Defendant left Plaintiff without income and facing undue financial hardship, unemployed and humiliated, among other things, in violation of his rights under federal and

state laws.

JURISDICTION AND VENUE

6. Jurisdiction of this Court is proper under 28 U.S.C. §§ 1331 and 1343.
7. The Court has supplemental jurisdiction over the claims of Plaintiff brought under state law pursuant to 28 U.S.C. §1367.
8. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §1391(b), as the acts complained of occurred in Nassau County, New York.

PARTIES

9. That at all times relevant hereto, Plaintiff JOSE DIAZ is an 18-year-old male, who is of El Salvadorian descent and is a resident of the State of New York, Nassau County.
10. At all times relevant hereto, Defendant TARGET CORPORATION (hereinafter “TARGET”) is a department store retailer and currently operates 1,822 stores throughout the United States.
11. At all times relevant hereto, Defendant TARGET maintains a store located at 248 Sunrise Highway, Freeport, NY 11520, Nassau County.
12. Upon information and belief, KRISTEN (hereinafter “KRISTEN”) is a Supervisor for Defendant TARGET. KRISTEN was, at all times relevant to this case, Plaintiff’s direct supervisor who had the ability to make decisions regarding the terms and conditions of Plaintiff’s employment.
13. Upon information and belief, CHRISTINA (hereinafter “CHRISTINA”) is a Supervisor for Defendant TARGET. CHRISTINA was, at all times relevant to this case, Plaintiff’s supervisor who had the ability to make decisions regarding the terms and conditions of Plaintiff’s employment.
14. That at all times, Plaintiff was an employee of Defendant.

15. That at all times, Plaintiff was hired as a Sales Associate and worked at Defendant's retail store located at 248 Sunrise Highway, Freeport, NY 11520.

MATERIAL FACTS

16. On or about October 1, 2018, Defendant TARGET, hired Plaintiff as a Sales Associate earning approximately \$12.75 per hour.

17. During Plaintiff's first week of employment, Plaintiff's supervisor, KRISTEN, told Plaintiff his nametag should be "Jonathan" instead of his given birth name, Jose.

18. Defendant went on to explain to Plaintiff that his name does not "fit" the pre-dominantly white neighborhood demographics and his birth name would incite fear and uneasiness in customers.

19. **Plaintiff understood KRISTEN's comment to be discriminatory based on Plaintiff's race and/or actual/perceived national origin.**

20. Plaintiff objected to this and feeling insulted, he expressed his discomfort and dislike for having to change his name to "Jonathan." To him, it was as if Defendant wanted to hide his Hispanic ethnicity and Latino heritage.

21. Nonetheless thereafter, Plaintiff was forced to wear a nametag that says "Jonathan."

22. Plaintiff's first name and name given at birth is Jose.

23. Plaintiff is known to family and friends as Jose and introduces himself as such.

24. For the duration that Plaintiff worked with Defendant, he was called, referred to and addressed as Jonathan, stripping Plaintiff of his Hispanic/Latino identity.

25. On or about October 15, 2018, Plaintiff complained to another supervisor, CHRISITNA, about wearing a nametag that does not show his ethnic given birth name.

26. Defendant CHRISITNA was dismissive towards Plaintiff. She advised Jose that he could easily quit if he does not like his nametag.

27. It was clear to Plaintiff that in order to continue working for Defendant, he had to acquiesce to being called by a non-Hispanic sounding/ethnic name.
28. Plaintiff engaged in protected activity when he made this complaint about the discriminatory treatment of being referred to as a whitewashed version of his name.
29. Immediately after making a complaint, Plaintiff was subjected to a retaliatory hostile work environment.
30. Though he was new employee, Plaintiff was given no guidance or training on his duties and responsibilities.
31. Plaintiff had asked KRISTEN for guidance, but KRISTEN refused and ignored Plaintiff's questions and concerns. Kristen did not treat other employees, who had not complained of discrimination, in this way. The lack of instruction and guidance made it more difficult for Plaintiff to learn his job and an easy target for termination.
32. On or about November 14, 2018, Defendant KRISTEN terminated Plaintiff's employment.
33. On or about November 19, 2018, Plaintiff made a complaint to Defendant' human resources department.
34. Upon information and belief, no formal investigation or disciplinary actions were taken in response to Plaintiff's complaints.
35. Upon information and belief, Defendant took no action concerning Plaintiff's complaint.
36. Defendant's purported reasons for terminating Plaintiff's employment were pretextual.
37. In turn, Defendant retaliated against Plaintiff for making complaints about discrimination by terminating his employment.
38. Plaintiff was callously removed from his employment for discriminatory and retaliatory reasons after Plaintiff engaged in a protected activity.
39. Causation between Plaintiff's engagement in protected activity and his termination is clear

- and absolute herein by the temporal proximity between the two actions of less than a month.
40. As a result of Defendant's actions, Plaintiff has been unlawfully discriminated against, retaliated against, extremely humiliated, degraded, victimized, and embarrassed.
41. As a result of Defendant's actions, Plaintiff has been caused to be further emotionally distraught, depressed, anxious, and jobless.
42. **Defendant's actions and conduct were intentional and intended to harm Plaintiff.**
43. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer emotional pain, suffering Plaintiff suffered a loss of income, the loss of a salary/pay, special damages, loss of benefits and other compensation which such employment entails, and Plaintiff has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.
44. Defendant's conduct was malicious, willful, outrageous, and conducted with full knowledge of the law, and/or violation thereof.
45. As such, Plaintiff demands punitive damages as against all Defendant's, jointly and severally.

**AS A *FIRST* CAUSE OF ACTION
FOR DISCRIMINATION UNDER 42 U.S.C. § 1981**

46. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
47. 42 U.S.C. Section 1981 states in relevant part as follows:
- (a) Statement of equal rights
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like

punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) “Make and enforce contracts” defined

For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

48. Defendant engaged in unlawful employment practices prohibited under 42 U.S.C. § 1981 by discriminating and/or retaliating against Plaintiff because of his race and/or perceived/actual national origin (Latino).
49. Plaintiff, who is Latino, was discriminated against and constructively removed from employment because of his race/color as provided under 42 U.S.C. § 1981 and have suffered damages as set forth herein.
50. Plaintiff was also subjected to a racially hostile work environment, differential treatment, discrimination, humiliation, offensive stereotypical comments, insulting comments/statements, threatening conduct, embarrassment, adverse employment actions (including termination) and loss of employment due to his race and national origin.
51. Defendant had no valid business justification for their discriminatory treatment against Plaintiff.
52. As a result of Defendant’s actions, Plaintiff was extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.
53. As a result of the acts and conduct complained of herein, Plaintiff have suffered loss of income, special damages, loss of benefits, inconvenience and other compensation, which such volunteer employment entails, emotional pain, stress, fear, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.
54. Defendant’s conduct has been malicious, willful, and conducted with full knowledge of the

law.

55. Plaintiff is entitled to the maximum amount allowable under this law.

**AS A SECOND CAUSE OF ACTION
FOR RETALIATION UNDER 42 U.S.C. § 1981**

56. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

57. By the acts and practices described above, Defendant retaliated against Plaintiff for his opposition to unlawful discrimination under 42 U.S.C. §1981.

58. Plaintiff was retaliated against by Defendant for engaging in protected activity.

59. Plaintiff complained about the discriminatory treatment he faced and said complaints were ignored.

60. Instead, Plaintiff was further subjected to a racially hostile work environment, and acts of unlawful discrimination, retaliation and adverse employment actions - including wrongful termination, in the presence of and/or with the knowledge of DEFENDANT.

61. Defendant conduct has been malicious, willful, and conducted with full knowledge of the law.

62. Plaintiff is entitled to the maximum amount allowable under this law.

**AS A THIRD CAUSE OF ACTION FOR DISCRIMINATION
UNDER THE NEW YORK STATE HUMAN RIGHTS LAW**

63. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

64. New York State Executive Law § 296(1)(a) provides that, “It shall be an unlawful discriminatory practice for an employer or licensing agency, because of an individual’s... race, color, national origin . . . to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges

of employment.”

65. Plaintiff was subjected to discrimination and retaliation.
66. Defendant engaged in an unlawful discriminatory practice by discriminating against Plaintiff because of his race and national origin.
67. Defendant had no good faith justification for their actions against Plaintiff.

**AS A FOURTH CAUSE OF ACTION FOR RETALIATION
UNDER NEW YORK STATE EXECUTIVE LAW**

68. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
69. New York State Executive Law § 296(1)(e) provides that, “It shall be an unlawful discriminatory practice for any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.” This also forbids retaliation for engaging in protected activity.
70. Plaintiff was retaliated against by Defendant for engaging in protected activity.
71. Instead, Plaintiff was further subjected to increased racially discriminatory ridicule, hostile environment, retaliation and adverse employment actions.
72. Defendant engaged in an unlawful retaliatory practice by terminating Plaintiff following his engagement in protected activity.
73. Defendant has no valid business justification for the retaliatory and termination actions taken against Plaintiff following his engagement in protected activity.
74. Plaintiff is entitled to the maximum amount damages allowed under this law.

PUNITIVE DAMAGES

75. Defendant's conduct was malicious, willful, outrageous, and conducted with full knowledge of the law.
76. As such, punitive damages are appropriate as a result of Defendant's above-described conduct and Plaintiff demands Punitive Damages as against Defendant.

PRAYER FOR RELIEF

77. Plaintiff DIAZ hereby demands a jury trial on all issues to be tried.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendant:

- A. Declaring that Defendant engaged in unlawful employment practices prohibited by 42 U.S.C. § 1981, and NYSHRL in that Defendant discriminated against and/or retaliated against Plaintiff on the basis of his race, actual and/or perceived national origin, and retaliated against for complaining of the discriminatory act;
- B. Awarding damages to Plaintiff for all damages including lost wages and benefits resulting from Defendant's unlawful discrimination and retaliation and to otherwise make him whole for any losses suffered as a result of such unlawful employment practices;
- C. Awarding Plaintiff compensatory damages related to injuries suffered as per Plaintiff's State-law claims;
- D. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to his reputation in an amount to be proven;
- E. Awarding Plaintiff punitive damages against the Individual Defendant;
- F. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action; and

G. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendant's unlawful employment practices.

Dated: New York, New York
September 10, 2019

**PHILLIPS & ASSOCIATES,
ATTORNEYS AT LAW, PLLC**

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