

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**LAUREL KEENAN-CONIGLIO,
CHASE BOND, AUSTIN GOODWIN,
and DYLAN HUTSON,**

Plaintiffs,

v.

Case No.: 1:23-cv-01051-LF-KK

**CUMBRES & TOLTEC SCENIC OPERATING
COMMISSION, CUMBRES & TOLTEC OPERATING,
LLC, MARVIN CASIAS, MAX CASIAS,
GLEN AVERY, and SCOTT GIBBS, individually,**

Defendants.

**PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES FOR
DISCRIMINATION AND RETALIATION IN VIOLATION OF TITLE VII, FOR
VIOLATION OF THE NEW MEXICO WHISTLEBLOWER PROTECTION ACT, AND
FOR CIVIL RIGHTS VIOLATIONS UNDER 42 U.S.C. § 1983**

COME NOW Plaintiffs, Laurel Keenan-Coniglio, Chase Bond, Austin Goodwin and Dylan Hutson, by and through their attorneys, Jerry Todd Wertheim and Carol Clifford, Jones, Snead, Wertheim & Clifford, P.A. and Linda G. Hemphill, The Hemphill Firm, P.C., and submit their Complaint for Damages for Discrimination and Retaliation in Violation of Title VII, the New Mexico Whistleblower Protection Act and 42 U.S.C. Section 1983 against Defendants, Cumbres & Toltec Scenic Operating Commission, Cumbres & Toltec Operating, LLC, Marvin Casias, Max Casias, Glen Avery and Scott Gibbs, individually.

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are all former employees of the non-individual Defendants. As set forth more fully below, each of them was discriminated against, harassed and subjected to a hostile work environment based on their gender, or race, were subjected to retaliation for complaining about unlawful, discriminatory, unsafe, illegal, or unethical practices and were either terminated or constructively discharged from employment. They seek redress under Title VII of the Civil Rights Act of 1964, the New Mexico Whistleblower Protection Act, NMSA 1978, Sections 10-16C-1 to 10-16C-6 (the “NMWPA”) and 42 U.S.C. Section 1983.

2. Plaintiff Laurel Keenan-Coniglio (“Keenan-Coniglio”) is currently a resident of Valentine, Texas and was at all times material an employee of the Cumbres & Toltec Scenic Railroad (“C & T SRR”), owned and operated by the non-individual Defendants. The C & T SRR is a tourist train that runs along the former San Juan extension of the Denver and Rio Grande Railroad between Chama, New Mexico and Antonito, Colorado.

3. Plaintiff, Chase Bond (“Bond”) is currently a resident of Keller, Texas and was at all times material an employee of the C & T SRR.

4. Plaintiff, Austin Goodwin (“Goodwin”) is currently a resident of Lancaster, Pennsylvania and was at all times material an employee of the C & T SRR.

5. Plaintiff, Dylan Hutson (“Hutson”) is currently a resident of Lancaster, Pennsylvania and was at all times material an employee of the C & T SRR.

6. According to its website, www.commission.ctsrr/about, C & T SRR is owned and operated by Defendant Cumbres & Toltec Scenic Railroad Commission (the “Commission”), a bi-state agency established by a bi-state compact, with congressional consent in 1977, which acts on behalf of the States of Colorado and New Mexico. The website further explains that the

Commission is comprised of four members, with two appointed by the Governor of each state and is responsible for setting the policies that manage C & T SRR. According to the Commission's Policies and Practices Manual (the "PP Manual"), adopted March 29, 2012, revised October 28, 2017, the Commission is an independent interstate agency and not part of either state's government. PP Manual, p. 22, 24.

7. The PP Manual further elaborates that the Commission does business through Cumbres & Toltec Operating, LLC (the "LLC"), a wholly-owned subsidiary responsible for railroad operations and administrative support of the activities of the Commission. The LLC's sole partner is the Commission, with its four members serving as the CTO Board. The LLC is a New Mexico limited liability company with a principal place of business in Chama, New Mexico. The LLC issued regular paychecks to all four Plaintiffs during their employment with C & T SRR. Although the LLC was formed pursuant to the provisions of the New Mexico Limited Liability Act, and "the rights, duties and liabilities of the Commission shall be as provided in the NM LLC Act," this is "subject to the limitations imposed by the governing documents of the Compact." PP Manual, at p. 65. Further, all assets of the railroad are held in the name of the Commission, with no assets held separately by the LLC. *Id.* at 66. According to the PP Manual, "the Commission remains responsible for all matters of governance and policy" and has delegated to the LLC railroad operations and administrative support. PP Manual, page. 11. Portions of the PP Manual are attached hereto as Exhibit "A."

8. The Defendants Commission and LLC operate C & T SRR as a tourist railroad running steam locomotives in revenue passenger service, which is governed by the Federal Railroad Administration under 49 CFR Part 230: Steam Locomotive Inspection and Maintenance Standards. Steam locomotives are governed by these federal standards because their operation

can be extremely dangerous if they are not maintained in suitable conditions or are not properly operated.

9. Defendants Marvin Casias (“at times, Casias”), Max Casias (“Max Casias”) and Glen Avery (“Avery”), at all times material, were supervisors employed by C & T SRR through the non-individual Defendants, and are, upon information and belief, residents of Chama, New Mexico or Antonito, Colorado.

10. Defendant Scott Gibbs (“Gibbs”), at material times, was a Commissioner of the Commission, and acted as the LLC’s President and CEO. As such, Gibbs had responsibility for the day-to-day operations of the LLC as its General Manager. As General Manager, Gibbs was appointed by the Commission and could be removed by it with or without cause. PP Manual, p. 11, 68.

11. At all material times, Defendant Commission alone or in conjunction with its operating arm, the LLC met the definition of an employer under Title VII, a public employer under the NMWPA, and fell within the definition of a state actor pursuant to 42 U.S.C. Section 1983.

12. At all material times, the Commission and LLC acted through their employees and agents, for whose conduct they are responsible under the doctrine of respondeat superior.

13. All four individual defendants, Casias, Max Casias, Avery and Gibbs, fall within the definition of state actor for purposes of liability under 42 U.S.C. Section 1983.

14. All four Plaintiffs meet the definition of an employee under all applicable statutes.

15. All four Plaintiffs timely filed Charges of Discrimination with the Equal Employment Opportunity Commission and received a right-to-sue letter from the EEOC. The

Complaint filed was timely filed within the 90-days of receipt of the right-to-sue letters. Thus, all conditions precedent to filing suit under Title VII have been met by Plaintiffs.

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action involves federal questions regarding the deprivation of Plaintiffs' rights under Title VII and 42 U.S.C. Section 1983.

17. This Court has supplemental jurisdiction over Plaintiff's state law claims under the NMWPA and should exercise it to hear those claims.

18. Venue is proper in the district pursuant to 28 U.S.C. § 1391.

II. GENERAL ALLEGATIONS

A. PLAINTIFF LAUREL KEENAN-CONIGLIO

19. Keenan-Coniglio is a trained carpenter, mechanic, and electrician. After doing a volunteer work-week session with the Friends of Cumbres & Toltec, a non-profit group, Keenan-Coniglio sought work with C & T SRR on its Operations Team. When she could not get C & T SRR Superintendent Marvin Casias to return her calls, she approached Amy Rector, former Retail and On-Board Manager for C & T SRR, and accepted a position as a parlor car attendant to get her foot in the door. Although Rector told Keenan-Coniglio that many professional opportunities would be open to her, such as learning to become a fireman or brakeman, Keenan-Coniglio would later learn that there was no way she could be considered for those opportunities as long as Casias was in charge. During her first month on the job, Engineer Jeff Stebbins called Keenan-Coniglio a "sexually frustrated middle-aged woman," "just like the rest around here." At the same time, Keenan-Coniglio was subjected to unwanted physical attention from Engineer Carlos Llamas, who asked her out on dates, hugged her and put his arm around her waist.

20. Approximately one month later, Keenan-Coniglio heard that C & T SRR needed fire patrol workers and saw it as an opportunity to begin working on the Operations Crew. Then Fire Patrol Supervisor, Ken Throneberry (“Throneberry”), hired her to work part-time in a fire patrol position, and began training her for that position around August 15, 2021, while she continued to work part-time as a patrol car attendant.

21. In late August, 2021, Casias announced at a staff meeting attended by former employees Stathi Pappas (“Pappas”) and Throneberry that he did not want a woman on Fire Patrol and that if there was a woman on the Operations Team, she would have to be either ugly or married. Around the same time, Keenan-Coniglio witnessed Casias ramming the front of his truck into the rear bumper of Pappas’ truck. She also witnessed another male employee, Lucas Maez (“Maez”), sexually harassing a female employee, Lainey Zook, by asking her what sex acts she could do with her tongue ring to him, in front of a group of people.

22. When Human Resources Manager Lynn Lemler and Chief of Staff Kim Smith-Casford learned that Keenan-Coniglio was going on to go to work on fire patrol, they demanded that she attend a meeting 100 miles from where she lived in Taos, and when Keenan-Coniglio attended, she was told that she could not hold both jobs, despite having been told by Throneberry that she could do so and learning that another male employee was allowed to work at both in retail and operations simultaneously. Thereafter, Throneberry and Business Manager, Tomas Campos acknowledged that there were no other fire patrol applicants, that the job needed to be filled, and that if they did not allow Keenan-Coniglio to proceed, “it was a lawsuit waiting to happen.”

23. Thereafter, Keenan-Coniglio reported directly to Throneberry in her fire patrol position. Although Throneberry was supportive, Casias, to whom Throneberry reported, ignored her, except to call her “princess” a couple of times.

24. Keenan-Coniglio was C & T SRR’s first female fire patrol member, and the only female operations crew member during the 2021 season. She worked until the end of the season and got high marks on her performance review by Track Supervisor, John Matthews. Even so, the atmosphere at C & T SRR was charged, as Keenan-Coniglio heard employees and supervisors make remarks suggesting that she, as an Anglo woman, was not welcome in the workplace.

25. In March, 2022, Keenan-Coniglio got paperwork from C & T SRR asking her to return for the 2022 season and asking what positions she desired, and she responded that she would like to be considered for a brakeman position as well as fire patrol. When she returned to work, she also tried to gain training that she would need to advance in Operations. In May, 2022, when she asked Casias, “how do I get to train to be a brakeman,” Casias threw up his hands, backed away, and said “it wasn’t up to him,” although he, in fact, was the Superintendent of the Railroad and oversaw the employee who trained brakemen, Maez. A minute later, Throneberry heard Casias say to Keenan-Coniglio and another individual that he was going to “kick their asses,” if they didn’t do things his way, which Throneberry reported to H.R. Eventually, Throneberry would resign his job in frustration and sue the LLC in New Mexico State Court related to the discrimination, harassment and retaliation he had also endured at C & T SRR.

26. From the beginning of her work at C & T SRR, Keenan-Coniglio came into a hyper-masculine, unbearable environment that included bullying, physical intimidation, and threats of violence and of the defacement of personal property. This included routine references

to male employees as “pussy” and references to female genitalia. Bond and another co-worker reported to Keenan-Coniglio that Casias, and one of his three sons who also worked at C & T SRR, Max Casias, and Maez were talking about her in a sexual manner, saying “stay away from her, she’s gay and she’ll shove something so far up your ass you’ll never be able to get it out,” and referring to a “big black dildo.”

27. Keenan-Coniglio came to fear retaliation if she spoke up about what she witnessed and experienced, and she feared for her safety. Beyond threats of violence, she had heard references to slashing tires. Nevertheless, on or about July 13, 2022, just before a scheduled vacation, Keenan-Coniglio, as a courageous and conscientious person, decided she had to overcome her fear and report what was happening to the Commission’s Human Resources (“H.R.”) personnel and sent them an email outlining the discriminatory practices to which she was regularly subjected.

28. Although Keenan-Coniglio was interviewed by an investigator, Robert Jahn, on August 9, 2022, when she later received a draft of her statement, it did not include crucial details about the harassment she had endured and other hostile behavior she witnessed. Instead of advising Keenan-Coniglio about the results of any investigation by Jahn, C & T SRR put Keenan-Coniglio on administrative leave, depriving her of work and advancement opportunities. When on September 26, 2022, Keenan-Coniglio inquired about the status of the Jahn investigation, H.R. advised her that the investigator was “finished” but “hadn’t turned in anything yet,” which Keenan-Coniglio found curious, since her main witness, Steve Duran, who had resigned around September 1 after voicing many of the same concerns about racism and sexism concerns that she had, had never been contacted.

29. On October 23, 2022, the last day of the season, Keenan-Coniglio heard from H.R., saying that they found nothing wrong in the course of their investigation and that they were sorry she took comments that were made “the wrong way.” There was no offer to return to work, no promises of protection against retaliation, and no statements that would lead Keenan-Coniglio to believe that she was welcome in the workplace or had a future at C & T SRR. In the spring of 2023, Keenan-Coniglio did not receive any offer letter as she had received in the spring of 2022.

30. The Commission and LLC knew or had reason to know of the unbearable, toxic, and pervasive hostility exhibited by managers and employees of C & T SRR towards female and white employees such as Keenan-Coniglio, based on her complaints and the complaints of others including but not limited to Throneberry, Duran, and Pappas.

31. In keeping with the Commission and LLC’s sexist and racist discriminatory intent, Keenan-Coniglio’s shop supervisors denied Keenan-Coniglio opportunities for training and mentoring that would permit her to learn train crew jobs and about the equipment.

32. The comments and behavior exhibited by Keenan-Coniglio’s supervisors and the other trains shop employees arose from Keenan-Coniglio’s sex and race and created a pervasive, hostile work environment that no reasonable person could be expected to tolerate.

33. The conduct described in this complaint was both severe and pervasive, and Keenan-Coniglio never welcomed it. It interfered with the performance of her job duties; denied her opportunity for advancement, promotion and training; subjected her to an intimidating, hostile and offensive work environment, and ultimately resulted in her discharge or constructive discharge, as no reasonable person could be expected to endure the hostilities to which Keenan-Coniglio was subjected.

B. PLAINTIFF CHASE BOND

34. Bond originally worked for C & T SRR from March, 2018 to December, 2018, and left because of on-the-job harassment he experienced, including racial discrimination. He came back to work for C & T SRR in July, 2021 as a brakeman and fireman after being assured by Gibbs that he would not encounter discrimination again, and because, by then, Plaintiffs Goodwin and Hutson had begun working there. Bond, who had known Goodwin and Hutson previously, was hopeful that the workplace had improved with the presence of Goodwin and Hutson.

35. By the end of October, 2021, Bond had been assigned to the shop to work under Avery, who also made racist comments, such as “there are too many white people” working for C & T SRR. Additionally, Avery warned Bond that he should be “careful who he associated with,” making clear that he was referring to Goodwin and Hutson, whom he referred to as “faggots”.

36. Bond was concerned not only about the racist and sexist conduct of his supervisors, but also about serious issues of safety that arose in the workplace, including the following: (a) sometime during the fall of 2021 or winter of 2022, Max Casias engaged in unsafe boiler work on a locomotive and also painted a boiler before a visit by the Federal Railway Administration (“FRA”) to hide areas of concern on the boiler, such as deep pitting and eroding rivets, which made the locomotive at risk for an explosion; (b) on January 3, 2022, when employees returned to work after the Christmas break, Superintendent Marvin Casias installed a second lock on the fire exit, making the door unusable as a fire exit and creating a risk for employees to be trapped in the event of a fire; (c) on March 15, 2022, Max Casias instructed only family members and friends of Hispanic descent to put on personal protective equipment because

the FRA was making a visit,; (d) on May 10, 2022, Max Casias ignored Bond's hand signals to stop the movement of a train, creating an unsafe condition, and was talking on the phone and looking forward while operating the locomotive in reverse, resulting in the flatcar slamming into a locomotive. Following that incident, Max Casias appointed Maez to operate one of the locomotives, and Maez repeatedly missed hand-signals because he was texting on his cell phone and also was listening to music on ear buds while operative the locomotive. Bond made safety complaints, verbally, to Gibbs, regarding these and other matters.

37. Despite being qualified, Bond was not scheduled for a single locomotive fireman shift during the 2022 season.

38. Throughout his employment with the C & T SRR, Bond faced discrimination that included being called "white boy" by more than one person in the shop or being skipped over for promotions that were given to less qualified Hispanic employees. Casias threatened Bond on multiple occasions. Casias once stated that he was going to beat Bond with a brake club and shoot his kneecaps out.

39. After witnessing safety concerns and the discriminatory treatment of Keenan-Coniglio, on or about May 23, 2022, Bond filed a complaint with Gibbs, which included the fact that Max Casias had created a highly unsafe, toxic and hostile workplace, that he was showing favoritism towards Hispanic workers and was discriminating against non-Hispanic workers, that he was expressing his hatred of other races and that he was describing how he was prepared to take action against non-Hispanic workers if they engaged in any behaviors of which he did not approve. Bond also reported how Max Casias, James Garcia, and Maez constantly talked about sexual matters, including talking about their sex lives and about who got sexually transmitted diseases, sometimes in the presence of Keenan-Coniglio, whom they called a "dyke".

40. On July 4, 2022, Bond witnessed Casias violating the dictates of the FRA by taping flags to the handrails of a caboose, which obstructed the ability to climb on and off the caboose. On July 6, 2022, Max Casias again operated a locomotive while taking on his cell phone and ignoring hand-signals, during which time Bond was attempting to train a student brakeman. Max Casias' conduct could easily have resulted in customers being run over. In the days following that incident, concerned that Gibbs had not acted on his verbal reports and his May 23, 2022 complaint, Bond also filed a report with both the Environmental Protection Agency and OSHA, detailing unsafe practices he had observed.

41. On July 25, 2022, Bond participated in an investigation conducted by Robert Caswell Investigations in Albuquerque pertaining to his May 23, 2022 complaint, which Bond later heard had concluded that there "was not enough evidence" of the matters about which Bond had complained. After Max Casias learned of Bond's complaint, his behavior towards Bond escalated.

42. On September 19, 2022, Bond submitted a statement to Robert Jahn, the investigator assigned to handle the complaint filed by Keenan-Coniglio. In his statement, Bond corroborated Keenan-Coniglio's complaints and also stated that he, too, had been subjected to sexual harassment at the Antonito, Colorado shop on a daily basis. This harassment included conduct by Max Casias from November 2021 to May 2022 in which he would push another employee, James Garcia, to tell Bond that he was going to shove his "cock" down Bond's girlfriend's throat and make her "gargle" his semen. Whenever James Garcia was gone from work, Max Casias and Marvin Casias would tell Bond that James Garcia was at Bond's house "f--king" my girlfriend and making sure that Bond would have "brown kids." They also stated that James Garcia couldn't wait to leave work before me and "eat his girlfriend's pussy" and "f--k her

brains out” before Bond would get home. The two Casias’s would then tell Bond that after his girlfriend became pregnant and delivered, he would notice that the child born wasn’t his. On one occasion, Max Casias stuck his finger between Bond’s buttocks while he was climbing into the firebox door of locomotive 315, laughing about it with his friends. Lastly, Bond noted in his September 19, 2022 statement, Gibbs had been made aware of many of these issues and had continued to ignore these concerns.

43. On or about October 21, 2022, Bond made an official report to the FRA about these matters. Two days later, on October 23, 2022, Bond was fired for allegedly committing time-card fraud. Although Bond attempted to explain to H.R. how he had not committed time-card fraud, he was summarily silenced. Bond’s termination was pre-textual, as he was clearly discharged in a discriminatory and retaliatory manner for his having reported the unsafe, hostile and discriminatory practices outlined above.

C. PLAINTIFF AUSTIN GOODWIN

44. C & T SRR hired Goodwin in May, 2018, and he worked there until his constructive discharge on or about November 28, 2022. Goodwin began employment as a locomotive mechanic, then worked as a fireman and eventually as shop foreman. Goodwin initially reported to Shop Manager, Defendant Avery, but also kept in close touch with Gibbs 45. Almost from the outset of his employment, Goodwin could see that the staff had evolved a set of unsafe guidelines in maintaining steam locomotives and were not following the Code of Federal Regulations governing the railroad, 49 CFR 230, which was designed to protect the safety of both consumers and workers. Goodwin intervened when he observed and reported safety issues, both verbally and in writing, to Gibbs.

45. From the outset of his employment, Goodwin received racist treatment. Goodwin and non-Hispanic workers often heard slurs on a regular basis: “white boy,” “white-boy faggot,”

“gringo,” and “guero”. C & T SRR managers used these slurs, including Donald Martinez, who acted as the Chama Shop Foreman in 2018; Tom Garcia, Martinez’s successor in 2019-2020, and Avery, who was the Chama Shop Manager from the time of Goodwin’s hire until Goodwin resigned in 2022. The managers’ slurs gave permission for subordinate employees to join in the racist taunts.

46. Avery prohibited Goodwin from disciplining Hispanic employees Goodwin supervised when they violated federal railroad safety regulations. Goodwin was not permitted to hire workers who had the fabrication skills and knowledge needed for the job if they were non-Hispanic. Although Goodwin brought concerns to Gibbs that there were many instances where employees were violating federal railroad regulations, Gibbs prohibited him from disciplining them if they were Hispanic.

47. C & T SRR also permitted supervisors to create a sexually divisive work environment. Avery stood at the forefront in regularly telling sexual jokes and making sexual comments .

48. On or about March 7, 2022, Goodwin, along with Hutson, confronted Gibbs over the quality of boiler repair work being done on the Antonito side of the railroad. He told both Avery and Gibbs that Max Casias was using a noncompliant boiler welding procedure on locomotive 315 in violation of the repair standards outlined by the applicable Code of Federal Regulations. Goodwin’s had the good faith belief, based upon pictures he was sent by Bond, who was assisting on the project, that the welds in the area that was being worked on were poor and had a high likelihood of failure, potentially injuring the crew of the locomotive or passengers riding behind the engine. Goodwin knew the poor quality of Max Casias’s work and was

concerned that what he had seen in the pictures would be covered up with more weld until it could be ground down and hidden to pass federal inspection, in violation of national standards.

49. When Goodwin reported the matter to Gibbs, he asked Gibbs to assure him that his report would be anonymous. Goodwin knew that if Max Casias found out that Goodwin had reported him, he would bar Goodwin's promotion to engineer. Later on, Goodwin discovered that Max Casias was, in fact, told about Goodwin's report and Max Casias did, in fact, bar Goodwin's promotion. He had denied the promotion despite the fact that Goodwin was qualified for the promotion: he had earned perfect scores on all engineman tests and demonstrated outstanding performance in his duties as a fireman and student engineer for several years.

50. On or about May 30, 2022, Goodwin was assigned the position of Chama Shop Foreman, as the prior foreman had quit, and several new hires were expected. For the entirety of the railroad's 52 years of existence, C & T SRR had no training manual for new hires to brief themselves on the operation of steam locomotives. Gibbs asked that Hutson, with Goodwin's assistance, create one. After he did so, however, Avery refused to implement the training and Goodwin had to step in because Avery could not or would not handle the foreman and manager positions.

51. On or about June 30, 2022, Goodwin was unofficially transferred out of the mechanical shop into the operations department as a fireman, working under Max Casias, to train employees on how to operate a new type of firing method on a recently retrofitted locomotive.

52. Max Casias had a double standard for Hispanic and Non-Hispanic employees. Any time a schedule change needed to be made, Max Casias made sure that Hispanic employees got the better deal, resulting in Goodwin's losing five shifts in a two-month period.

53. Following his unofficial transfer to operations, Goodwin rarely received more than one full day per week doing mechanical work in the shop. He was officially given only one student, Harry Haas (“Haas”), who Max Casias made clear he wanted pushed out. At that time, Goodwin learned from two Antonito employees that Max Casias stated that he did not want any whites in the cabs of the locomotives and only wanted his close friends and family, who are Hispanic. In furtherance of his plan, Max Casias instructed Goodwin to be as hard on Harry as he could so he would not want to return the following season.

54. On the morning of Hass’s first day of training, Max Casias called Goodwin and informed him that if he pushed Hass out and made him quit, he would get his shifts as an engineman. Goodwin refused to comply with this plan because he found Hass to be entirely competent and to have passed applicable tests.

55. During the summer of 2022, Goodwin brought a number of safety issues to Gibbs’ attention, including the following: (a) On July 1, 2022, Goodwin informed Gibbs that the work done on Locomotive 484, supervised by Max Casias and his father, Marvin Casias, was sub-par and had cost the railroad approximately \$10,200 in wasted wages and materials; (b) on July 27, 2022, when an eastbound train hit a rock at milepost 304, Goodwin stated that the crew would need to undergo drug tests in compliance with CFR 219.203 because damage had been done to the locomotive while passengers occupied the train behind them; (c) On August 4, 2022 locomotive 484, operated by Gibbs and Max Casias, left the Chama yard limits without any functioning interior lights, in violation of CFR 230.87 (all cab lights must be functional); (d) On August 14, 2022 Goodwin wrote a long list of repairs needed on Locomotive 484 and instructed Desi Manzanares (“Manzanares”) that several critical items on the report needed to be addressed before the engine was to go out again. When Goodwin confronted Manzanares about the repair

form having been tossed aside, he and Manuel Torrez denied not having made the repairs, but they had not been done; (e) On August 19, 2022, Goodwin reported Marvin Casias to the FRA for operating locomotive 488 in the Chama yard while talking on his cell phone; and (f) On September 6, 2022, Goodwin reported Manzanares to Gibbs for destroying a blue flag over a dispute with two white employees who were apparently working slower than Manzanares cared for. When Manzanares returned from a smoke break and discovered their progress, he descended into a fit of rage, tossing the blue flag like a javelin across the shop and snapping it. This precluded the locomotive leaving that night from being fitted with a blue flag, despite having had work necessitating a blue flag to protect employees working on the equipment, in violation of CFR 218.21; and (g) Goodwin also became aware of and reported eleven different CFR or national boiler standard violations.

56. To Goodwin's knowledge, management at C & T SRR did nothing to address these specific and systemic issues.

57. In July, 2022, Goodwin became involved in Bond's May 23, 2022 discrimination and gave a statement to an investigator supporting Bond's complaint.

58. Following his participation in the investigation, hostilities between Max Casias and Goodwin, already at a breaking point, increased.

59. In August, 2022, Goodwin reported to H.R. that Manzanares, who had a close friendship with Avery and Max Casias, had threatened him with violence, stating that he would "kick [Goodwin's] ass," after Goodwin confronted him about a performance issue. Because Manzanares had already been arrested for assault in April, 2022, Goodwin viewed his threats as extremely concerning.

60. In September, 2022, Goodwin himself was suspended, inequitably and unjustly, for having spoken negatively about the company. The sum total of what Goodwin had done was to respond to a student's question about a locomotive in trouble, "are they going to fix [the problem]," to which Goodwin stated "probably not," out of frustration for the lack of adherence to safety standards.

61. In keeping with C & T SRR's policy of disciplining only non-Hispanic employees, on or about September 11, 2022, Haas was suspended for two weeks for hitting a rock two months' prior. The suspension was delivered following several instances of Haas having submitted Form No. 2 reports to Gibbs (President) showing repeated mechanical issues with locomotives that had not been addressed for weeks by Max Casias and Avery.

62. Goodwin subsequently learned that he was under investigation for racial discrimination, based on the fact that he had assigned Hispanic employees to do some unskilled jobs. Upon information and belief, only Hispanic employees were interviewed. None of the non-Hispanic employees under Goodwin's supervision were interviewed. Apparently as a result of the investigation, on September 20, 2022, as Goodwin got off the engine after a day's shift as a fireman, he was informed by Gibbs that he would no longer be working in the Chama locomotive shop under Avery and was transferred into operations full time. By having raised the issues of Manzanares' and Torrez's failure to make repairs, Goodwin no longer was on speaking terms with Avery, who regularly yelled and screamed obscenities at and about Goodwin.

63. On September 25, 2022, Goodwin presented Gibbs with a pile of eighteen different form no. 2s that spanned through the end of August 2022. Goodwin had found them left on the clipboard in his assigned locomotive when going to sign the form no. 2 for the day's morning inspection. With the forms still being on the locomotive, it seemed clear that they had

not even been looked at, let alone considered—not a single form had a signature on it. Gibbs took the forms and made copies of them to present to Casias.

64. Although H.R. told Goodwin, after his report, that it would address the threats made by Manzanares to Goodwin and investigate, it never did so. Even though, following his threats to Goodwin, Manzanares had committed other infractions, including the incident where he flew into a rage over the two new employees who failed to meet his time expectations and an incident where he destroyed company property. Upon information and belief, Manzanares had also failed a drug test at some point in his employment. In mid-October, 2022, H.R. representative Roseann Talamante (“Talamante”) told Goodwin that although she was still gathering information, she had spoken to Manzanares about his statements. She defended Manzanares, saying “that is just how Desi talks when he is upset.”

65. On October 22, 2022, Goodwin informed Talamante that he would not be available for the shift he was assigned in an impromptu schedule change and would be using all of his accrued PTO to return to work in November.

66. The next day, both Bond and Hutson, employees and friends Goodwin had depended upon to accomplish skilled work, were wrongfully fired for time-card fraud over time discrepancies with FRA hours of service and the company time clock. Goodwin believed the firings to be pretext for discrimination and retaliation, as both had also repeatedly made complaints about discrimination and safety concerns.

67. With Hutson and Bond having been fired, Goodwin had no one to depend upon at the railroad who could do skilled labor. Faced with a grim future of working with employees who had little regard for CFR compliance, habitually put out poor quality work and discriminated on a regular basis against non-Hispanic employees and women, Goodwin informed

Gibbs that he would not continue to work in a hostile environment. Consequently, on or about November 28, 2022, Goodwin was constructively discharged from his employment because no reasonable person could be expected to continue to endure the work environment to which he had been subjected.

D. PLAINTIFF DYLAN HUTSON

68. Hutson began employment at C & T SRR in May, 2017 and worked there five and a half years, until he and Bond were both wrongfully terminated in November, 2022 after being falsely accused of time card fraud. The non-individual Defendants subjected Hutson, like the other three Plaintiffs, to systematic discrimination throughout his tenure at C & T SRR, and after he reported discrimination and safety concerns, he was retaliated against for his reporting.

69. Mr. Hutson was originally hired as a seasonal employee, then as full-time in the fall of 2017, first working as a machinist, mechanic, fireman, hostler, then as student engineer.

70. Beginning in 2017, Hutson was subjected to racial slurs, including "white boy" and "guero". Chama Shop Foreman Donald Martinez was the first supervisor to verbally abuse Hutson based on his race throughout 2017 and 2018. Martinez would talk about how he preferred "Spanish people" working at the railroad. He would also refer to Hutson as the "f--kin' white guy" who "doesn't know a f--kin' thing."

71. Hutson also faced the same racial discrimination and harassment from his supervisors, Avery and Max Casias. Avery was his direct supervisor and became hostile towards Hutson once Hutson began working closely with then Vice President Pappas on certain mechanical projects. In fact, Avery admitted to Hutson in confidence during a private discussion that he was racially prejudiced, and on at least one occasion, Avery lost his temper with Hutson, shouting and cursing at him in a furious rage.

72. During the course of his employment with C & T SRR, Hutson raised safety and compliance concerns to the attention of Gibbs, including the following: (a) On September 26, 2021, Avery attempted to coerce Hutson into fraudulently signing a 31-Day Inspection Form after the mandatory work had not been done to inspect the water glass fittings for scale buildup on locomotive 487, as required by 49 CFR Parts 230.14 and 230.53—Hutson refused to sign the form and extinguished the coal fire that had been built up inside the locomotive’s boiler because he knew the work had not been done to complete the minimum requirements, seriously delaying a revenue train the following day, to the consternation of Avery; (b) On March 7, 2022, Hutson (along with Goodwin) told Avery and Gibbs that a noncompliant boiler welding procedure was being conducted on locomotive 315 in violation of the repair standards outlined by the applicable Code of Federal Regulations sections; (c) On May 20, 2022, Hutson told both Gibbs and Avery that locomotive 488 had not received its five-year inspection as required by 49 CFR Part 230.16; (d) On August 14, 2022, Hutson arrived at work as a scheduled train crew member in Antonito, Colorado and began conducting his morning inspection of locomotive 463, but soon discovered that the right hand side #2 driving wheel leaf spring was broken, making the engine illegal for service, this time to the consternation of Casias; (e) On August 25, 2022, locomotive 488 experienced a bearing failure in revenue service that led to one of the driving axles being severely overheated and damaged, which required the department to remove the locomotive from service and extract the wheelset. Following an investigation by Hutson and Goodwin, they determined the cause of the overheated bearing: another shop employee having failed to adhere to a standard practice that had been adopted several years prior on Hutson’s recommendation. When the issue was addressed with Avery, he rejected the findings, falsely maintaining that the bearing had failed for another reason entirely; (f) In August or September of 2022, upon arriving

in Chama at the end of the shift on locomotive 484, he reported to the shop crew that the drain valve for the water column was not closing properly and that the locomotive needed to be removed from service and bled of its steam pressure so this repair could be performed—without the repair, the defect could cause the water glass to display a false reading; (g) On September 11, 2022, Hutson told Gibbs that a train service employee had conducted an unsafe move, allowing a locomotive and train to pull ahead without surveying the surroundings. Because a sewage drain hose had been attached to one of the cars and it broke apart, raw sewage was spewed about the area in front of the station. These matters were all reported to management.

73. During the week of September 12, 2022, Hutson and Goodwin held a call with the company's regional FRA safety inspector, Mike Smith. They told Smith of their beliefs that unsafe and noncompliant practices were occurring at the C&TSRR, and they agreed to follow up with him at a later date. Smith visited the property later in the year to conduct inspections.

74. Recognizing that Avery was a problem, Gibbs had, confidentially, asked both Goodwin and Hutson to submit a plan for reorganizing the department and for developing a training manual to cover relevant topics including general railroad safety and steam locomotive practices. Although Hutson created the manual, Avery would not allow new hires to be trained with the manual by Hutson. Although both Hutson and Goodwin had both expressed to Gibbs that Avery was unfit emotionally and underqualified professionally to be in charge of the locomotive shop, Gibbs did nothing to rectify the situation.

75. Hutson was a model employee, who dedicated himself to the safe and successful operation of the railroad. By 2022, he had become a skilled manual machinist and fabricator, and a promising student engineer.

76. Defendants manufactured the claim of time-card fraud to terminate Hutson. He had not committed time fraud, but the C & T SRR used it as a pretext to deny him a promotion and to retaliate for him raising safety and discrimination issues.

77. Having been in the engineer training program for about two and a half seasons at the time of his termination, Hutson should have had the opportunity to take the third and final of the three sections of engineer tests. Hutson and Goodwin scored 100% on the second test late in the fall of 2021, and Max Casias then said he would give them the study material for the third test early in 2022; however, neither of them were ever issued the study material. Throughout the entire 2022 season, Max Casias never once scheduled an in-train service in order to provide on-the-job training to Hutson or Goodwin or to evaluate Hutson's performance and progress as a student engineer. As a result of Hutson revealing the locomotive 315 boiler issue, Max Casias had to cut out his old welds and then work alongside a hired contractor to redo the work. Not only did this cause Max Casias to experience toil and embarrassment, it also had a financial effect, ultimately devastating the budget of the project by costing the Durango Rail Historical Society tens of thousands of dollars to redo the work. Such work, though expensive, had to be done to assure the safety of railroad operations.

78. Max Casias repeatedly and continually belittled and trash-talked Hutson behind his back to other employees. At one point, upon seeing Hutson's initials stamped into a part Hutson had manufactured, Max Casias angrily expressed to Bond how much he hated Hutson. Max Casias supervised Hutson during shifts when he was employed in engine service. Hutson and Bond were both fired on the same day for the same specious reasons.

79. After Hutson participated in the investigation of Bond's discrimination complaints against Max Casias in July, 2022, Max Casias mostly ignored Hutson, even though he was one of Hutson's supervisors. Max Casias also expressed racial bias against Hutson.

80. Even though Hutson was told he scored 100% on the second of three sections of the written engineer's test in the fall of 2021, and was told he would be given the third section of the test in 2022, Max Casias never provided any further training material for the engineer training program, nor did he ever schedule Hutson on the locomotive for hands-on training throughout the 2022 season.

81. Max Casias did, however, begin scheduling himself on a frequent basis with other, less experienced Hispanic employees, teaching them how to run the locomotives, even though Hutson had seniority in the program and was listed in the 2021 C & T SSR Engineman's Manual as one of the two student engineers at the time.

82. After having participated in an investigation for racially motivated harassment against Max Casias in July 2022, Hutson was denied promotion to train service engineer and then fired on October 23, 2022, the last day of train operations for the 2022 tourist season. Hutson was fired without any previous form of discipline, warning, or notice.

COUNT I: VIOLATION OF TITLE VII: DISCRIMINATION

83. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

84. At all relevant times Plaintiffs were "employees" within the meaning of Title VII, and Defendants, Commission, and LLC were "employers" within the meaning of Title VII.

85. As outlined above, Defendants Commission and LLC violated Title VII when they discriminated against Plaintiffs by actually or constructively discharging them, and denying them promotions or reemployment because of gender or race, or both.

86. As a direct and proximate result of the discriminatory conduct by Defendants Commission and LLC in violation of Title VII, Plaintiffs have suffered, and continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income (“back pay” and “front pay”), compensation, and benefits, as well severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem, reputation and self-confidence, and emotional pain and suffering, for which Plaintiffs are entitled to an award of compensatory damages, reasonable attorney's fees, costs and pre- and post-judgment interest.

COUNT II: VIOLATION OF TITLE VII: HARASSMENT

87. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

88. As outlined above, Defendants Commission and LLC violated Title VII when they subjected Plaintiffs to harassment and a hostile work environment because of Plaintiffs’ gender and race.

89. Defendants Commission and LLC are liable for the sexual and racial harassment of Plaintiffs during the course of their employment because C & T SRR had no effective anti-harassment policy, because they reported their concerns to these Defendants and these Defendants failed to take prompt remedial action, and because supervisors participated in the severe and pervasive harassment based on protective classifications, making these Defendants strictly liable for supervisory actions.

90. As a direct and proximate result of these Defendants’ harassing conduct in violation of Title VII, Plaintiffs have suffered, and continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income (“back pay” and “front

pay”), compensation, and benefits, as well severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem, reputation and self-confidence, and emotional pain and suffering, for which Plaintiffs are entitled to an award of compensatory damages, reasonable attorney's fees, and costs, pre- and post-judgment interest, in an amount to be determined at trial.

COUNT III: TITLE VII RETALIATION

91. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

92. As outlined above, Defendants Commission and LLC violated Title VII when they retaliated against Plaintiffs by harassing them, actually or constructively discharging them, as well as denying them promotions and reemployment, because Plaintiffs engaged in activity protected by Title VII in reporting the discriminatory, harassing, sexist, and racist actions at C & T SRR.

93. Defendants Commission and LLC terminated, constructively discharged, denied reemployment and promotion, and created a hostile work environment for Plaintiffs because they opposed practices made unlawful by Title VII, including but not limited to discrimination because of sex and race, and the race of others, in violation of 42 U.S.C. § 2000e-3(a).

94. As a direct and proximate result of these Defendants’ retaliatory conduct in violation of Title VII, Plaintiffs have suffered, and will continue to suffer, monetary and/or economic damages, including, but not limited to, loss of past and future income (“back pay” and “front pay”), compensation, and benefits, as well severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem, reputation and self-confidence, and emotional pain and suffering, for which Plaintiffs are

entitled to an award of compensatory damages, reasonable attorney's fees and costs, and pre- and post-judgment interest in an amount to be determined at trial.

COUNT IV: VIOLATION OF THE NEW MEXICO WHISTLEBLOWER PROTECTION ACT

95. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

96. The Commission is a public commission of the State of New Mexico, created by the Cumbres and Toltec Scenic Railroad Act. Defendants Commission and LLC are thus public employers within the meaning of the Whistleblower Protection Act, NMSA 1978, Section 10-16C-3.

97. Plaintiffs engaged in protected activity within the meaning of the New Mexico Whistleblower Protection Act, including but not limited to the following:

- a. By opposing discriminatory conduct of supervisors and other railroad employees to the public employer that amounted to violations of Title VII, the New Mexico Human Rights Act and 42 U.S.C. Section 1983.
- b. By opposing conduct of supervisors and other railroad employees to the public employer that amounted to violation of the policies of the public employer, including but not limited to violations of the Employee Manual of the C & T SRR.
- c. By raising safety concerns related to the operation of C & T SRR with Gibbs and federal regulators, including Federal Railway Safety Act administrators, citing violations of OSHA regulations and other applicable safety statutes and regulations.

98. Such conduct constitutes protected activity under NMSA 1978, Section 10-16C-3.

99. Defendants Commission and LLC retaliated against Plaintiffs because they had reported their good faith beliefs regarding illegal, unethical, and improper behavior, or because

they had refused to participate in or tolerate practices they believed in good faith constituted unlawful or improper acts, or both, resulting in retaliatory actions against Plaintiffs, which included actual and constructive discharge, denial of promotion, re-employment and other opportunities and creating a hostile work environment for Plaintiffs.

100. As a direct and proximate result of these Defendants' retaliatory conduct in violation of the NMWPA, Plaintiffs have suffered, and will continue to suffer, monetary and economic damages, including, but not limited to, loss of past and future income ("back pay" and "front pay"), compensation, and benefits, as well severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem, reputation and self-confidence, and emotional pain and suffering, for which Plaintiffs are entitled to an award of compensatory damages, including double back pay plus interest as specified in the NMWPA, reasonable attorney's fees and costs, and post-judgment interest in an amount to be determined at trial.

COUNT V: VIOLATION OF 42 U.S.C. SECTION 1983 AGAINST INDIVIDUAL DEFENDANTS

101. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

102. Plaintiffs brings their claims against Casias, Max Casias, Avery and Gibbs, individually, pursuant to 42 U.S.C. §1983 seeking redress for violation of Plaintiffs' constitutional right to equal protection protected by the Fourteenth Amendment, which protects the rights of Plaintiffs to be free from discrimination and harassment based on their race and/or gender.

103. Casias, Max Casias, and Avery acted under color of state law to deprive Plaintiffs of their constitutional rights when they harassed, discriminated against, and created a hostile

work environment for Plaintiffs, as described more particularly above. Gibbs knew about the discriminatory treatment by the other individual Defendants, but acquiesced in, condoned or promoted such discriminatory treatment by failing to properly supervise his subordinate employees, including but not limited to Casias, Max Casias and Avery, and to take appropriate corrective action, demonstrating an attitude of callous or reckless indifference to the constitutional rights of Plaintiffs.

104. The contours of Plaintiffs' constitutional rights to equal protection of the law and the right to be free from discrimination and harassment based on race and gender were clearly established at the time that the individual defendants took action against them, and Gibbs failed to rectify these conditions. The contours of these rights were sufficiently clear that a reasonable official would understand that what he or she was doing violated that right.

105. As a direct and proximate result of these individual Defendants' conduct in violation of 42 U.S.C. Section 1983, Plaintiffs have suffered, and will continue to suffer, monetary and economic damages, including, but not limited to, loss of past and future income ("back pay" and "front pay"), compensation, and benefits, as well severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem, reputation and self-confidence, and emotional pain and suffering, for which Plaintiffs are entitled to an award of compensatory damages.

106. Casias, Max Casias, Avery and Gibbs acted knowingly, recklessly or with deliberate indifference to and in callous disregard of the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages under 42 U.S.C. Section 1983.

107. Plaintiffs are also entitled to pre-judgment and post-judgment interest, reasonable attorney's fees, and costs pursuant to 42 U.S.C. §1988.

COUNT VI: VIOLATION OF 42 U.S.C. SECTION 1983 AGAINST COMMISSION

108. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

109. The Commission is liable for violation of Plaintiffs' constitutional rights because it acted to deprive Plaintiffs of their rights pursuant to a well-established custom or practice of ignoring a racially and sexually division work environment, because it supplied deliberately indifferent training, hiring or supervision of its employees, because it allowed Plaintiffs to be treated differently than similarly situated employees, and because Gibbs' acted as its final decision maker in failing to rectify working conditions and allowing the Commission and LLC to terminate, constructively discharge, harass and deny promotion to Plaintiffs based on their race and gender.

110. The Commission acted in a deliberately indifferent manner towards Plaintiffs because it had actual or constructive notice that its actions or failures to act were substantially certain to result in a constitutional violation and consciously chose to disregard the risk of harm.

111. As a direct and proximate result of the Commissions' actions and inactions in violation of 42 U.S.C. Section 1983, Plaintiffs have suffered, and will continue to suffer, monetary and economic damages, including, but not limited to, loss of past and future income ("back pay" and "front pay"), compensation, and benefits, as well severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress, anxiety, loss of self-esteem, reputation and self-confidence, and emotional pain and suffering, for which Plaintiffs are entitled to an award of compensatory damages.

112. Plaintiffs are also entitled to pre-judgment and post-judgment interest, reasonable attorney's fees, and costs pursuant to 42 U.S.C. §1988.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment against Defendants, after a trial by jury, as follows:

- a. Judgment be entered against all Defendants for compensatory damages, including permissible past and future lost wages, damages for emotional distress and special damages as permitted under Title VII, the NMWPA and 42 U.S.C. Section 1983;
- b. Judgment be entered requiring the Commission and LLC to pay Plaintiffs an amount equal to two times the amount of Plaintiffs' back pay, plus interest under the NMWPA;
- c. Judgment be entered requiring all four individual Defendants to pay punitive damages based on violation of 42 U.S.C. Section 1983; and
- d. Judgment be entered requiring Defendants to pay attorney's fees, costs, pre-judgment and post-judgment interest, as allowed by applicable statutes.

Respectfully submitted,

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