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9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 Deborah Howington

14 Plaintiff,

15 v.

16 Taiwan Semiconductor Manufacturing
17 Co., TSMC North America Co. Ltd.,
18 TSMC Technology, Inc., TSMC
19 Arizona Corporation and TSMC
20 Washington, LLC,

21 Defendants.

Case No. 5:24-cv-5684

COMPLAINT

FOR EMPLOYMENT
DISCRIMINATION

CLASS ACTION

DEMAND FOR JURY TRIAL

22 Plaintiff Deborah Howington brings this action on behalf of herself and two
23 classes of similarly situated individuals to remedy pervasive, ongoing race and
24 citizenship discrimination by Taiwan Semiconductor Manufacturing Co., TSMC North
25 America Co. Ltd. (“TSMC North America”), TSMC Technology, Inc. (“TSMC
26 Technology”), TSMC Arizona Corporation (“TSMC Arizona”), and TSMC
27 Washington, LLC (“TSMC Washington”) (collectively, “TSMC”) and alleges as
28 follows:

NATURE OF THE ACTION

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1. TSMC is the world’s leading manufacturer of semiconductors, the chips that power everything from smartphones to cars to satellites to weapons systems. TSMC manufactures over 90% of the world’s leading-edge logic chips, supplying well-known customers such as Google, Nvidia, and Apple with the chips used in their technology. TSMC is headquartered in Taiwan, but has subsidiaries in the United States, Canada, Japan, China, South Korea, and Europe. TSMC employs over 76,000 employees worldwide, including 2,668 workers in North America as of December 31, 2023,¹ the vast majority of whom are Asian. As discussed below, this grossly disproportionate workforce is the result of TSMC’s intentional pattern and practice of employment discrimination against individuals who are not Asian and not Taiwanese citizens, including discrimination in hiring, staffing, and termination decisions.

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2. TSMC’s employment practices violate the Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981 (“§ 1981”). Plaintiff seeks, on her own behalf, and on behalf of two classes of similarly situated individuals, declaratory, injunctive, and other equitable relief, compensatory and punitive damages, including pre- and post-judgment interest, attorneys’ fees, and costs to redress TSMC’s pervasive pattern and practice of discrimination.

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¹ Form 20-F at 49 (Dec. 31, 2023), <https://investor.tsmc.com/sites/ir/sec-filings/2023%2020F.pdf>.

PARTIES

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2 3. Plaintiff Deborah Howington was born in the United States, is of American
3 national origin and ancestry, and is Caucasian. She currently resides in California.
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5 4. Taiwan Semiconductor Manufacturing Co., Ltd. is a Taiwanese company, and
6 is located at No. 8, Li Hsin Road VI, Hsinchu Science Park, Hsinchu 300-78, Taiwan,
7 R.O.C. It is the parent corporation of Defendants TSMC North America, TSMC
8 Technology, TSMC Arizona, and TSMC Washington.
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10 5. TSMC North America is a California corporation with its principal place of
11 business at 2851 Junction Avenue, San Jose, California 95134. TSMC North America
12 provides primarily sales, technical support, business operations, and customer service
13 support in North America for its ultimate parent, Taiwan Semiconductor
14 Manufacturing Co., Ltd.
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17 6. TSMC Technology is a Delaware corporation, with its principal place of
18 business at 2851 Junction Avenue, San Jose, California 95134. TSMC Technology
19 provides primarily technology support at customer sites and research and development
20 support in North America for its ultimate parent, Taiwan Semiconductor
21 Manufacturing Co., Ltd.
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24 7. TSMC Arizona is an Arizona corporation, with its principal place of business
25 at 5088 W. Innovation Circle, Phoenix, AZ 85083. TSMC Arizona provides
26 semiconductor manufacturing support to its ultimate parent, Taiwan Semiconductor
27 Manufacturing Co., Ltd.
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1 8. TSMC Washington is a Delaware corporation. Its principal place of business is
2 at 5509 N.W. Parker Street, Camas, Washington 98607. TSMC Washington provides
3 semiconductor manufacturing support to its ultimate parent, Taiwan Semiconductor
4 Manufacturing Co., Ltd.
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6 **JURISDICTION**
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8 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 42
9 U.S.C. § 1981(a).

10 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) as
11 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
12 and costs, and is between a citizen of a state and a foreign corporation.
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14 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) as
15 this matter is a class action with an amount in controversy of greater than \$5 million,
16 exclusive of interest and costs, and involves at least one class member who is a citizen
17 of a state and is brought against a foreign corporation.
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19 12. This Court has personal jurisdiction over TSMC because each Defendant
20 engages in continuous and systematic business contacts within the State of California
21 and maintains a substantial physical presence in this State. Further, Defendant TSMC
22 North America and TSMC Technology Inc., subsidiaries of Taiwan Semiconductor
23 Manufacturing Co., Ltd., maintain their headquarters in San Jose, California.
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26 **VENUE**
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28 13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §

1 1391 because TSMC resides in this District, conducts business in this District, engaged
2 in discriminatory conduct in this District, and maintains and administers in this District
3 employment records relevant to TSMC’s pattern and practice of discrimination.
4 Additionally, TSMC engages in continuous and systematic business contacts within
5 this District, and maintains a substantial physical presence in this District, including
6 TSMC North America and TSMC Technology Inc.’s operation of offices in San Jose,
7 California (their U.S. headquarters).
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10 **DIVISIONAL ASSIGNMENT**

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12 14. Assignment in this Division is proper pursuant to Civil L.R. 3-2(c) and (e)
13 because a substantial part of the events giving rise to this matter’s claims occurred in
14 this Division given that Plaintiff is employed by TSMC North America, in San Jose,
15 California.
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17 **STATEMENT OF FACTS**

18 *Overview of TSMC’s Business Model*

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20 15. TSMC is a manufacturer and supplier of semiconductors (or microchips), a key
21 component of a vast array of electronic devices. Unlike other major microchip
22 manufacturers, TSMC does not produce its own products—rather, it works with
23 customers like Google and Apple to design and manufacture microchips for use in their
24 products. This business has been enormously profitable for TSMC, generating a net
25 revenue of over \$66 billion in 2023. While TSMC is a Taiwanese company and its
26 operations are centered in Taiwan, the majority (68%) of TSMC’s customers are
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1 headquartered in North America.² As such, TSMC has also established a strong
2 presence in the United States, including the operation of its subsidiaries, TSMC North
3 America and TSMC Technology Inc., both of which are headquartered in San Jose,
4 California, proximate to many of TSMC’s key Silicon Valley-based customers. Those
5 two entities employ approximately 600 individuals in the United States—mostly in San
6 Jose, CA, but also in Austin, TX, San Diego, CA, Boston, MA, and Washington,
7 D.C.—and focus primarily on research and development (“R&D”) and sales, which
8 entail working closely with customers to create and innovate chips to be manufactured
9 at TSMC’s facilities. TSMC North America is also the employment entity for TSMC’s
10 Human Resource (“HR”) function that supports both TSMC North America and TSMC
11 Technology Inc in the U.S. and Canada.
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16 16. TSMC also maintains a semiconductor manufacturing facility (or “fab”) in
17 Washington State (under the TSMC Washington employment entity) and has plans to
18 build three fabs in Phoenix, AZ (under the TSMC Arizona employment entity).
19 Construction on the first Arizona fab began in 2021 and commercial production is
20 targeted in 2025. In December 2022, TSMC announced plans for the second fab, which
21 is currently under construction. And TSMC just recently announced plans for its third
22 fab in Phoenix, Arizona in April 2024.³ TSMC’s plans for the latter two fabs were
23 announced after the Biden administration passed the CHIPS and Science Act (the
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27 ² Form 20-F at 15 (Dec. 31, 2023), <https://investor.tsmc.com/sites/ir/sec-filings/2023%2020F.pdf>.

28 ³ *Id.* at 22.

1 “CHIPS Act”), which designated \$53 billion to boost semiconductor manufacturing in
2 the U.S. Those applying for CHIPS Act funding committed to “guarantee[ing] all
3 workers access to a safe environment that is free of harassment, discrimination, and
4 retaliation,”⁴ and were required to submit a plan “demonstrat[ing] appropriate
5 investments and commitments to recruit, train, hire, retain, and upskill a skilled and
6 diverse workforce.”⁵
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9 17. TSMC submitted a diversity plan in applying for CHIPS Act funding and, in
10 return, was awarded \$6.6 billion in direct funding under the Act to support TSMC’s
11 Arizona facilities.⁶ TSMC’s investment in Phoenix will create about 6,000 direct
12 manufacturing jobs and more than 20,000 construction jobs.⁷ As of December 31,
13 2023, TSMC employed 2,668 employees in North America, the vast majority of whom
14 work in the U.S., with plans to drastically increase that number in the coming years as
15 it completes construction on its Arizona fabs.
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18 *TSMC’s Discriminatory Scheme*

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20 18. TSMC has willfully disregarded diversity commitments it made in its CHIPS
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22 ⁴ CHIPS for America Fact Sheet, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (Feb. 28,
23 2023), <https://shorturl.at/30u0N>

24 ⁵ Workforce Development Planning Guide, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
25 (Mar. 27, 2023), <https://shorturl.at/nHfxo>

26 ⁶ TSMC Arizona and U.S. Department of Commerce Announce up to US\$6.6 Billion in Proposed
27 CHIPS Act Direct Funding, the Company Plans Third Leading-Edge Fab in Phoenix, TSMC (Apr.
28 8, 2024), <https://shorturl.at/INvtI>.

⁷ TSMC Will Receive \$6.6 Billion to Bolster U.S. Chip Manufacturing, NEW YORK TIMES (Apr. 8,
2024), <https://shorturl.at/dDJsR>.

1 Act application for which it received \$6.6 billion in government funding. And while
2 TSMC claims that it “believes strongly in the value of a diverse workforce,”⁸ its leaders
3 have made clear that the company has a cultural preference for Taiwanese employees.
4 As Morris Chang (TSMC’s former CEO who remains the company’s public face)
5 stated in a 2021 talk, “[c]omputers of different brands can often be hooked together,
6 but not people of different culture.” He also stated that, “[t]he fact that TSMC’s top-
7 flight executives can deliver top results in Taiwan is no guarantee of similar
8 performance when they are posted overseas.” Despite these reservations, TSMC was
9 motivated to grow its U.S. presence due to its proximity to TSMC’s customers and the
10 U.S. government’s willingness to provide billions in funding to TSMC. However, in
11 growing its U.S. workforce, TSMC prefers to employ people of Asian race and
12 Taiwanese national origin, including by bringing workers over from Taiwan on visas
13 rather than hiring locally. This preference is reflected in every aspect of TSMC’s U.S.-
14 based business—in sales, R&D, engineering/manufacturing, and even in HR and
15 administrative support roles. For instance, in 2023, 80% of employees hired to TSMC
16 North America and TSMC Technology Inc. (which primarily do R&D and sales) in the
17 U.S. self-identified as Asian. Similarly, approximately half of the hires to TSMC
18 Arizona Corporation that are slated to work at the Phoenix fabs have been deployed on
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28 ⁸ Diversity and Inclusion at TSMC, TSMC (Sept. 16, 2019), <https://shorturl.at/Y05ub>.

1 visas from Taiwan.⁹ TSMC effectuates this preference in at least three ways.

2 19. First, Asians are preferred in hiring. In many instances, the HR team from
3 TSMC in Taiwan sends HR in the U.S. the resumes of Asian/Taiwanese candidates in
4 the United States that typically already have the ability to work in the U.S., who they
5 have already vetted and found suitable for hire. The U.S. HR team then simply hires
6 these Asian/Taiwanese candidates without question, even if no open roles have been
7 posted in the U.S. In the rare instances when TSMC posts the job roles that these
8 candidates ultimately fill, the jobs are posted for only a very short period of time, and
9 candidates who apply are typically not reviewed or interviewed. The job postings are
10 then summarily closed and the preferred Asian/Taiwanese candidates, who were
11 referred by TSMC in Taiwan, are hired. Recruiters in the U.S. have also been explicitly
12 instructed by the Taiwan Headquarters (“Taiwan HQ”) Global Recruitment Program
13 Leaders that the goal for recruiting new graduates from U.S. universities is to hire
14 primarily Asian candidates. As a result of these practices, Global Recruitment
15 interview and hiring reports document a clear preference for Asian U.S. new graduate
16 candidates and hires.

17 20. When U.S. roles are posted as available, TSMC adds to the job posting that
18 “Mandarin / Chinese” is either required, preferred, or “a plus” in the job posting. There
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27 ⁹ Viola Zhou, TSMC’s debacle in the American desert, REST OF WORLD (Apr. 23, 2024),
28 <https://restofworld.org/2024/tsmc-arizona-expansion/>

1 is no legitimate business reason why such a requirement would be necessary—TSMC
2 conducts business in English and requires proficiency in English not only for U.S.
3 employees, but also for employees at TSMC headquarters in Taiwan and other
4 countries in which TSMC operates. As such, a TSMC employee in the U.S. need not
5 speak Mandarin / Chinese even if communicating with colleagues abroad. Rather, the
6 requirement is used to attract TSMC’s preferred candidates (Asians and Taiwanese
7 citizens) and to dissuade non-Asian candidates from applying to the roles. When non-
8 Asian candidates do secure an interview, the hiring managers, most of whom are Asian,
9 often make excuses to reject them to effectuate TSMC’s cultural preference for Asian
10 employees. The above practices allow TSMC to effectuate its preference for candidates
11 that are Asian and / or Taiwanese citizens without explicitly stating it and belie
12 TSMC’s claims that it hires Asians and Taiwanese citizens due to a lack of U.S. talent
13 in the semiconductor industry.
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18 21. Moreover, TSMC’s bias towards Asians and Taiwanese citizens extends not
19 only to engineering positions, but also to HR and administrative roles and to lower-end
20 technician jobs, such as jobs inspecting and maintaining equipment. With respect to
21 lower-end technician jobs, TSMC reportedly requires minimal experience or
22 qualifications from applicants in Taiwan for jobs in the U.S.¹⁰ Conversely, TSMC has
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27 ¹⁰ Mark Tyson, TSMC’s Arizona Fab Hiring Woes Prompt Calls for Willing Taiwanese Migrants,
28 TOM’S HARDWARE (Apr. 21, 2022), <https://www.tomshardware.com/news/tsmc-arizona-taiwanese-workers>.

1 required U.S. hires to train in Taiwan for six months to a year (or longer) for these
2 positions, a requirement that was designed to further TSMC's goal of culling the pool
3 of non-Asian prospective employees.
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5 22. TSMC's bias in favor of Asians and Taiwanese citizens was even apparent
6 when it was hiring construction workers to build its first Arizona fab (via TSMC
7 affiliates United Integrated Services (UIS) and Marketech International Corp.). TSMC
8 chairman Mark Liu complained of "an insufficient amount of skilled workers" to build
9 the facility and planned to fly workers in from Taiwan.¹¹ TSMC agreed to focus on
10 local hiring for those positions only after massive and public outcry from Arizona labor
11 unions.¹²
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14 23. Second, non-Asian employees and non-Taiwanese citizens are frequently
15 denied opportunities to advance and succeed at TSMC. Non-Asians and non-
16 Taiwanese citizens are frequently excluded from business discussions, as
17 conversations are often conducted in Mandarin, and business documents are routinely
18 written in Mandarin. A related practice was acknowledged in the Q3 2023 U.S. HR
19 Quarterly All-Hands meeting by Jen Kung, Head of Compensation, who casually
20 commented on the use of "Chenglish" when Asians wanted to limit information being
21 shared with non-Asians and/or to try to confuse them. Even though the entire US HR
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27 ¹¹ Taiwan Semiconductor Manufacturing (TSM) Q2 2023 Earnings Call Transcript, THE MOTLEY
FOOL (July 20, 2023), <https://shorturl.at/lHDzl>.

28 ¹² See n. 9, *supra*.

1 team was present (including the Head of HR, Judy Chiu), and there was widespread
2 agreement that “Chenglish” was commonly used in the organization, TSMC took no
3 action to correct the practice.
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5 24. In engineering positions, non-Asians and non-Taiwanese citizens are denied
6 training opportunities that would allow them to thrive. For instance, in the 2021 time
7 frame, TSMC required U.S. hires to its Arizona fab to train in Taiwan, where they
8 were, according to reports, excluded from “higher-level meetings conducted in
9 Mandarin” and “rarely had a chance to handle problems themselves, and were mostly
10 tasked with observing.”¹³ Back at the fab in Arizona, it was reported that “managers
11 trusted Taiwanese workers with important tasks, starving the Americans of hands-on
12 experience.”¹⁴ For instance, a Process Integration Engineer in Arizona stated that “an
13 employee may be hired as an engineer [by TSMC,] but only taught technician-level
14 jobs unless they are Taiwanese.” An employee at TSMC’s Washington fab complained
15 that upper management “tends to play favorites with Taiwanese workers,” “favoring
16 and assisting Taiwanese engineers.” Americans training for engineering positions in
17 Taiwan reported of a meeting at which “a manager said Americans were less desirable
18 than Taiwanese and Indian workers, according to people who saw leaked notes, which
19 [were] circulated among trainees.”¹⁵
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26 ¹³ *See id.*

27 ¹⁴ *See id.*

28 ¹⁵ *See id.*

1 25. Employees have also complained that TSMC seems to encourage animosity
2 between Taiwanese and U.S. employees, and have spoken of memorandums from
3 higher management having surfaced that contained disparaging remarks about U.S.
4 employees, who “are constantly seen as sub par.” Employees assert that TSMC has
5 fostered a culture in which “Senior American leaders within the company are
6 apprehensive about voicing concerns due to potential job repercussions from
7 executives based in Taiwan.”
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10 26. Non-Asian employees and non-Taiwanese citizens are reviewed more harshly
11 than their Asian colleagues (including those who are Taiwanese citizens), which
12 inhibits their advancement in the company. Employees at TSMC are evaluated by their
13 managers, and the available rankings are: Outstanding (O), High Satisfactory (S+),
14 Satisfactory (S), and Needs Improvement (I). Asian employees and Taiwanese citizens
15 are consistently ranked higher than non-Asian employees and non-Taiwanese citizens.
16 At TSMC North America, a rating of S or below has significant implications, as rating
17 is a factor in calculating an employee’s Annual Bonus payout (with higher bonuses
18 being paid to those with ratings of S+ and O), and employees who receive ratings of S
19 or below are less likely to be promoted (and receive lower bonuses) and more likely to
20 be forced to leave the company (or are eventually terminated). For example, in 2023
21 Taiwanese “assignees”—visa workers from Taiwan—were particularly favored in
22 ratings and did not receive ratings of less than S in the 2023 review cycle, even if they
23 performed poorly. In addition, they received their expected bonuses regardless of their
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1 performance ratings, and, if they were identified to be failing, were simply transferred
2 to another role or another TSMC location. It is understood that Asian employees
3 (particularly Taiwanese assignees/citizens) receive a +1 factor for every aspect of being
4 at TSMC to include job assignments, performance ratings, and bonus payouts.
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6 27. Third, non-Asian employees and non-Taiwanese citizens are either terminated
7 or effectively forced to resign at much higher rates than their Asian counterparts
8 (including those of Taiwanese citizenship), and are frequently replaced with Asian
9 employees, including assignees from Taiwan. For example, since 2022, TSMC
10 Arizona and TSMC North America removed the majority of non-Asian managers and
11 leaders and replaced them with Asian employees, maintaining non-Asians and non-
12 Taiwanese citizens in management roles primarily, for a select number of customer- or
13 public-facing positions. TSMC's anti-American culture, practice of denying training
14 and advancement opportunities to non-Asian employees and non-Taiwanese citizens,
15 and practice of reviewing non-Asians and non-Taiwanese citizens more harshly
16 contribute to the higher termination rates for non-Asian employees. TSMC also creates
17 a hostile work environment for non-Asians employees and non-Taiwanese citizens that
18 causes them to resign at higher rates (these resignations constitute acts of constructive
19 discharge by TSMC). For instance, a Process Integration Engineer in Arizona stated
20 that "the company has recently begun to bully some employees into resigning due to
21 poor performance without proper training" and that "[t]hose who quit are often
22 replaced by Taiwanese locals."
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Ms. Howington’s Experience

28. Ms. Howington began her employment with TSMC on February 13, 2023 as Deputy Director, Talent Acquisition. Ms. Howington is employed by TSMC North America (in San Jose, California) and supported hiring at three TSMC entities: TSMC North America, TSMC Technology Inc., and TSMC Canada.

29. At the time of her hire in February 2023, Ms. Howington reported to the Head of Human Resources (“HR”), Teresa Harnois, who is Caucasian, but within a few months, Ms. Harnois told Ms. Howington that she was “squeezed out of her role” and soon replaced by Judy Chiu, who is Asian. Following Ms. Harnois’ replacement in September 2023, Ms. Howington was the only non-Asian U.S. member of the HR Leadership Team. And only 4 of 17 employees on the U.S. HR team were non-Asian during Ms. Howington’s employment with TSMC.

30. Ms. Howington’s role involved developing and executing hiring programs, strategies, and processes for the 3 entities that she supported in the U.S. and Canada. Ms. Howington initially excelled at her position under the management of Ms. Harnois, working collaboratively with others in U.S. and Global Talent Acquisition. She was requested to spearhead and participate in U.S. and global projects, aimed at, among other things, improving TSMC’s employer reputation among prospective global candidates and increasing diversity hiring. Within the first 6 months of her tenure, Ms. Howington’s performance was so strong that Ms. Harnois added Ms. Howington to the succession plan for the role of Head of HR. But afterwards, Ms. Harnois noted that she

1 had received a “strong negative reaction and pushback” from members of the (almost
2 entirely Asian) local HR team, and that Ms. Harnois had been forced to “go around”
3 local HR to add Ms. Howington’s name to the succession list that was provided to
4 Taiwan HQ. Ms. Howington also created and led an initiative to improve the
5 company’s employer brand which became a \$250,000+ 10-person global project, and
6 was nominated by Taiwan HQ for the role of TSMC North America Functional Expert
7 and Employer Brand lead for the U.S. In addition, while not directly responsible for
8 the TSMC Arizona Manufacturing site, she created and presented to members of
9 Taiwan HQ HR and local Arizona Head of HR, a U.S. Military Veteran hiring initiative
10 to help them meet the Chips Act diversity hiring goals. She received glowing feedback,
11 including in her 90-day probation period review, in the form of verbal and written
12 accolades from Ms. Howington’s previous manager (whom Ms. Chiu replaced), and in
13 written feedback from co-workers, peers, and managers that Ms. Howington
14 proactively requested in order to ensure continuous improvement. She was praised as
15 “strategically minded” with “[e]xcellent communication and presentation skills.”
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21 31. Ms. Howington learned from Anne Hu, Head of Executive Recruitment that it
22 is common practice at TSMC for HR manager and other high-level HR
23 jobs/assignments not to be posted for internal or external job interest, and that selection
24 for HR assignments and advancements are frequently determined by the HQ HR
25 leadership team - behind closed doors.
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28 32. Over time, Ms. Howington became very concerned about practices she

1 witnessed at TSMC that appeared heavily skewed in favor of Asians and Taiwanese
2 citizens. For instance, when Ms. Harnois was removed from her role, Ms. Howington
3 was assigned by the Hiring Manager, TSMC North America President, David Keller,
4 to schedule interviews for the three finalists identified for the Head of HR replacement
5 role. All three finalists were Asian and had been referred to TSMC by an Asian
6 headhunter who was engaged to confidentially recruit for this role. Ms. Howington also
7 routinely witnessed and raised concerns that well-qualified, non-Asian candidates
8 (including non-Taiwanese citizens) were being routinely overlooked and/or ignored by
9 hiring managers without proper justification. Often, global presentations and
10 documents were provided by Taiwan HQ written in Mandarin, despite proficiency in
11 English being a requirement to work at TSMC. On one occasion, in December 2023,
12 Judy Chiu held a meeting which included Ms. Howington, and Asian members of the
13 Business and HR team of which a significant portion was conducted in Mandarin,
14 including the provision of important HR-related information, despite Ms. Chiu
15 knowing that Ms. Howington was the only person at the meeting who could not
16 understand and participate. Afterwards, Ms. Howington told Ms. Chiu that she felt
17 uncomfortable and excluded, but Ms. Chiu dismissed her concerns, stating that she was
18 just trying to make the other participants in the meeting feel comfortable.

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25 33. In February 2024, Ms. Howington received an email from an HR Manager in
26 Taiwan HQ stating that making offers to Asian candidates for U.S. positions should be
27 done by “someone familiar with Asian culture in order to handle offer
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1 communication.” That guidance was similar to what Ms. Howington had been told on
2 multiple occasions by the Jen Kung, who told Ms. Howington that she (Ms. Kung)
3 “should make offers to U.S. candidates who are Asian so they can understand better in
4 Chinese.”

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6 34. In addition to complaining to Ms. Chiu about the use of Mandarin during
7 meetings where Ms. Howington was in attendance, Ms. Howington raised concerns
8 about TSMC’s preference for hiring Asians (including Taiwanese citizens) and
9 rejection of non-Asian candidates on multiple occasions to both of her managers,
10 initially Ms. Harnois, and later to Ms. Chiu. Additionally, in December 2023, Ms.
11 Howington raised concerns to Ms. Chiu about the circumstances under which TSMC
12 hired an Asian candidate in the U.S.—specifically that the candidate had been hired
13 despite failing the technical interview and was given a higher rate of pay than nearly
14 all others in the same job grade. (The details related to this candidate’s hire were
15 discussed at the meeting conducted in Mandarin described above (*see* ¶ 32, *supra*)
16 such that Ms. Howington had been unable to participate in the discussion.) Ms. Chiu
17 shut down Ms. Howington’s complaints, reminding Ms. Howington that TSMC
18 leaders valued “execution” to remain working at TSMC and when considering
19 promotions, which Ms. Howington perceived as a threat of retaliation for voicing a
20 complaint.
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27 35. In January 2024, Ms. Howington submitted a formal whistleblower complaint
28 on TSMC’s internal employee website, voicing concerns that the Asian hire

1 potentially violated discrimination laws (as well as provisions of the TSMC Employee
2 Handbook) and that Ms. Chiu had seemingly threatened retaliation in her handling of
3 Ms. Howington's initial complaint. Two weeks later, Ms. Howington had a brief
4 meeting regarding the whistleblower complaint with the Director of Legal, Steven
5 Schulman, but he refused to provide any information about whether there would be an
6 investigation. Ms. Howington received no further written or verbal follow-up
7 thereafter from anyone at TSMC, in violation of TSMC's internal policies and
8 procedures for investigating whistleblower complaints.
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12 36. TSMC's internal policies also prohibit "retaliat[ion] against any employee in
13 the terms and conditions of ongoing employment" for complaining about potential
14 legal violations. But shortly after complaining about discrimination against non-Asians
15 (including non-Taiwanese citizens) in hiring and treatment, and submitting her
16 whistleblower complaint, Ms. Howington began to experience just that. Specifically,
17 despite having received no complaints from TSMC regarding her performance or
18 otherwise, in February 2024, Ms. Howington received a lower-than-expected
19 Performance Review Rating of "S" (Satisfactory) by Ms. Chiu, for work Ms.
20 Howington performed during 2023. Ms. Chiu refused to provide any details in writing
21 for this lesser performance rating, and when Ms. Howington requested examples and
22 specific details substantiating the rating, Ms. Chiu not only refused to provide them but
23 responded by telling Ms. Howington that she would now either be placed on a
24 Performance Improvement Plan ("PIP") or face other HR Intervention due to her (poor)
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1 performance (even though the performance rating, while unjustly low, was still an “S”
2 (Satisfactory), not an “I” rating which indicates “needs improvement”). Ms.
3 Howington was shocked by this reaction from Ms. Chiu, as none of Ms. Chiu’s prior
4 communications had included any of her purported concerns about Ms. Howington’s
5 performance (verbally or in writing), and Ms. Chiu’s new critiques of Ms. Howington’s
6 performance were mostly vague and generalized. Following this performance review
7 discussion, Ms. Howington realized that at least 50%—2 of the 4—non-Asian
8 members on the HR Leadership team in the U.S. received ‘S’ (Satisfactory) ratings in
9 February 2024 for their performance in 2023.
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13 37. After Ms. Chiu shared this unjustifiably low Performance Review Rating with
14 Ms. Howington, Ms. Chiu began badmouthing Ms. Howington’s performance to
15 colleagues and peers publicly, insinuating that Ms. Howington appeared “confused,”
16 and making other disparaging comments during leadership meetings regarding Ms.
17 Howington’s capabilities when Ms. Howington asked for clarification or additional
18 information. By comparison, when Asian HR team members asked for clarification or
19 additional information during leadership meetings, Ms. Chiu answered them without
20 hesitation or comment.
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24 38. Shortly thereafter, Ms. Chiu and other team members began withholding
25 resources and support from Ms. Howington. For instance, Ms. Chiu refused Ms.
26 Howington’s request to add temporary staff after Ms. Howington lost 50% of her team
27 in January 2024 and experienced a significant and extended increase in workload,
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1 while making baseless accusations that Ms. Howington was lying to Ms. Chiu about
2 the need for support.

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4 39. Ms. Howington complained about Ms. Chiu's treatment to Ms. Chiu's direct
5 manager, TSMC North America President David Keller, and her dotted line manager,
6 Lora Ho, the Global Head of HR in Taiwan HQ, but both individuals dismissed Ms.
7 Howington's concerns and directed her back to Ms. Chiu. Ms. Howington later learned
8 that it is common at TSMC to withhold resources and support from employees that the
9 company wants to get rid of, with the goal of creating a workplace environment so
10 severely burdened that the incumbent will decide to leave. Ms. Howington was made
11 aware of multiple instances of this occurrence at TSMC North America and TSMC
12 Arizona.

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16 40. Ms. Chiu was similarly critical with other non-Asian HR employees, but was
17 never critical about the Asian HR team members. For instance, Ms. Chiu told the HR
18 Leadership Team ("HRLT") in a leadership meeting that the HR Program Manager,
19 Kathryn Agarpao, who is not Asian, was "making mistakes, was not doing a good job,
20 [and] needed help." Ms. Chiu said the same of a non-Asian recruiter Nick Barroga-
21 Trumbo, who directly reported to Ms. Howington. Specifically, Ms. Chiu told Ms.
22 Howington that in preparing Mr. Barroga-Trumbo's performance rating, Ms.
23 Howington should weigh feedback from the HRLT that he was "making mistakes, not
24 doing a good job, [and] needed help," but Ms. Chiu also refused to provide examples
25 of the alleged mistakes complained of by the HRLT. These examples are characteristic
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1 of the environment at TSMC, in which non-Asian employees and non-Taiwanese
2 citizens are subjected to a stricter level of scrutiny than similarly situated Asian
3 employees (including Taiwanese citizens).
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5 41. In April 2024, Ms. Howington became so distressed by the openly hostile and
6 discriminatory work environment at TSMC that her health began to suffer, and she
7 requested FMLA leave. Upon her return from FMLA leave to the company in May
8 2024, she was told by Ms. Chiu that her responsibilities would be significantly curtailed
9 and her role had seemingly been minimized. Ms. Chiu informed Ms. Howington that
10 Ms. Howington’s direct reports would no longer be reporting to her and repeatedly
11 referred to Ms. Howington’s role as the “TA Lead”—which would be a demotion from
12 the title of Deputy Director—but refused to answer when Ms. Howington asked
13 whether her role had changed. Ms. Chiu also provided a number of directives to Ms.
14 Howington, such as a requirement that Ms. Howington copy Ms. Chiu on all
15 communications she had with members of her team and provide Ms. Chiu written
16 summaries of what Ms. Howington discussed during team meetings. Ms. Chiu read
17 these directives from her computer screen, indicating that she was maintaining, in
18 writing, a list of new expectations for Ms. Howington, but refused to provide Ms.
19 Howington with the written list when Ms. Howington requested it. During this
20 discussion, Ms. Howington repeatedly asked if she was being put on a Performance
21 Improvement Plan, but Ms. Chiu consistently ignored her questions and simply stated
22 that, as the Head of HR, she was making the decision to implement these new
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1 directives. Following this meeting, Ms. Howington did not feel capable of continuing
2 to work in such a hostile environment and informed TSMC on June 5, 2024 that she
3 had retained counsel and would no longer be coming into the office. Ms. Howington
4 remains on leave to-date.
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6 **CLASS ACTION ALLEGATIONS**
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8 42. Plaintiff brings this Class Action pursuant to Federal Rule of Civil Procedure
9 23(a), (b)(2), (b)(3), and (c)(4), seeking injunctive, declaratory, equitable, and
10 monetary relief for TSMC’s systematic pattern and practice of discrimination against
11 non-Asian individuals in the United States and non-Taiwanese citizens in the United
12 States. This action is brought on behalf of the following classes:
13

14 All individuals who are not of Asian race who applied for positions
15 with TSMC in the United States and were not hired, who were
16 employed by TSMC in the United States and were not promoted,
17 and/or who were employed by TSMC in the United States and were
18 terminated between August 21, 2020 and the date of class
certification.

19 All individuals who are not Taiwanese citizens who applied for
20 positions with TSMC in the United States and were not hired, who
21 were employed by TSMC in the United States and were not
22 promoted, and/or who were employed by TSMC in the United States
23 and were terminated between August 21, 2020 and the date of class
certification.

24 43. Members of the classes are so numerous and geographically dispersed across
25 the United States that joinder is impracticable. While the exact number of class
26 members is unknown to Plaintiff, it is believed to number in the thousands.
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1 Furthermore, class members are readily identifiable from information and records in
2 TSMC possession.

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4 44. There are numerous questions of law and fact common to members of the
5 classes. Among the common questions of law or fact are: (a) whether TSMC has
6 intentionally discriminated against individuals who are not of Asian race and/or not
7 Taiwanese citizens in making hiring, staffing, appraisal, and termination decisions; (b)
8 whether TSMC has intentionally favored Asians and/or Taiwanese citizens in hiring,
9 staffing, appraisal, and retention decisions and/or whether TSMC has intentionally
10 disfavored non-Asians and/or non-Taiwanese citizens in hiring, staffing, appraisal,
11 and termination decisions; (c) whether TSMC's policy and practice of relying on Asian
12 local hires and Taiwan citizens is intentionally discriminatory; (d) whether TSMC has
13 violated § 1981; (e) whether equitable and injunctive relief is warranted for the classes
14 and (f) whether compensatory and/or punitive damages are warranted for the classes.
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18 45. Plaintiff's claims are typical of the classes. Members of the classes were
19 damaged by the same discriminatory policies and practices employed by TSMC in
20 favor of Asians and Taiwanese citizens.
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22 46. Plaintiff will fairly and adequately protect the interest of other class members
23 because she has no interest that is antagonistic to or which conflicts with those of any
24 other class member, and Plaintiff is committed to the vigorous prosecution of this
25 action and has retained competent counsel experienced in class litigation to represent
26 her and the classes.
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1 47. Plaintiff and the classes she seeks to represent have suffered substantial losses
2 in earnings and other employment benefits and compensation as a result of TSMC's
3 actions.
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5 48. Class certification is appropriate pursuant to Federal Rule of Civil Procedure
6 23(b)(2) because TSMC has acted and/or refused to act on grounds generally
7 applicable to the classes, making declaratory and injunctive relief appropriate with
8 respect to Plaintiff and the classes as a whole. Members of the classes are entitled to
9 declaratory and injunctive relief to end TSMC's systematic, common, uniform, unfair,
10 and discriminatory policies and practices.
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13 49. Class certification is appropriate pursuant to Federal Rule of Civil Procedure
14 23(b)(3) for determination of the damages claims of individual class members because
15 the issue of liability is common to the class and the common nucleus of operative facts
16 forms the central issue, which predominates over individual issues of proof. The
17 primary question common to the class is whether TSMC has discriminated on the basis
18 of race and citizenship in its employment practices. This question is central to the case
19 and predominates over individual issues among the members of the proposed class.
20 TSMC has engaged in a common course of discriminatory conduct in a manner that
21 has harmed all of the class members. Class certification under Rule 23(b)(3) would be
22 superior to other methods for fair and efficient resolution of the issues because
23 certification will avoid the need for repeated litigation by each individual class
24 member. The instant case will be eminently manageable as a class action. Plaintiff
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1 knows of no difficulty to be encountered in the maintenance of this action that would
2 preclude its maintenance as a class action.

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4 50. Class certification is appropriate pursuant to Federal Rule of Civil Procedure
5 23(c)(4) to litigate Plaintiff’s claims for prospective classwide compliance and
6 affirmative injunctive relief necessary to eliminate TSMC’s discrimination.
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8 Certification under this rule is also appropriate to decide whether TSMC has adopted
9 a systemic pattern and practice of racial discrimination in hiring, staffing, appraisal,
10 promotion, and termination decisions. Certification under this rule is also appropriate
11 to determine classwide damages, including punitive damages.
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14 **COUNT I**
15 **(Disparate Treatment on the Basis of Race)**
16 **(Violation of Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981)**
17 **(On behalf of all Plaintiff and the Class)**

18 51. Plaintiff re-alleges each preceding paragraph as though fully set forth herein.

19 52. This claim is brought by Plaintiff on behalf of herself and the class.

20 53. Throughout the class liability period, TSMC has engaged in a pattern and
21 practice of discriminating against individuals who are not of Asian race by: (a)
22 knowingly and intentionally favoring individuals of Asian race in employment
23 decisions (i.e., hiring/staffing, appraisal, and termination decisions) (b) knowingly and
24 intentionally disfavoring individuals who are not of Asian race (including Plaintiff) in
25 employment decisions (i.e., hiring/staffing, appraisal, and termination decisions), and
26 (c) knowingly and intentionally creating and maintaining an overwhelmingly
27 disproportionate workforce in the United States consisting of approximately 90% or
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1 more Asian employees.

2 54. As a direct and proximate result of TSMC’s intentional discrimination, Plaintiff
3 and class members have been denied employment and continued employment with
4 TSMC.
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6 55. TSMC’s actions constitute unlawful discrimination on the basis of race in
7 violation of 42 U.S.C. § 1981.
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9 **COUNT II**
10 **(Disparate Treatment on the Basis of Citizenship)**
11 **(Violation of Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981)**
12 **(On behalf of all Plaintiff and the Class)**

13 56. Plaintiff re-alleges each preceding paragraph as though fully set forth herein.

14 57. This claim is brought by Plaintiff on behalf of herself and the class.

15 58. Throughout the class liability period, TSMC has engaged in a pattern and
16 practice of discriminating against individuals who are not Taiwanese citizens by: (a)
17 knowingly and intentionally favoring Taiwanese citizens in employment decisions
18 (i.e., hiring/staffing, appraisal, and termination decisions) and (b) knowingly and
19 intentionally disfavoring individuals who are not Taiwanese citizens (including
20 Plaintiff) in employment decisions (i.e., hiring/staffing, appraisal, and termination
21 decisions).
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24 59. As a direct and proximate result of TSMC’s intentional discrimination, Plaintiff
25 and class members have been denied employment and continued employment with
26 TSMC.
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28 60. TSMC’s actions constitute unlawful discrimination on the basis of citizenship

1 in violation of 42 U.S.C. § 1981.

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3 **COUNT III**
4 **(Retaliation in Violation of Civil Rights Act of 1866, as amended, 42 U.S.C. § 1981)**
5 **(On behalf of Plaintiff)**

6 61. Plaintiff re-alleges each preceding paragraph as though fully set forth herein.

7 62. This claim is brought by Plaintiff on behalf of herself.

8 63. Ms. Howington engaged in a protected activity under Section 1981 by reporting
9 to TSMC concerns about the corporation’s discriminatory practices, including its
10 preference for Asians and Taiwanese citizens in hiring and other employment decision.
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12 64. Ms. Howington suffered harm as a result of engaging in this protected activity.
13 She was given a negative performance review, threatened to be placed on a PIP,
14 subjected to a hostile work environment, and had her responsibilities curtailed,
15 requiring her to take a leave of absence.
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17 65. A causal link exists between the harm Ms. Howington suffered and the
18 protected activity. TSMC retaliated against Ms. Howington because she engaged in
19 protected activity under Section 1981. Ms. Howington was given a negative
20 performance review, threatened to be placed on a PIP, and subjected to hostile
21 treatment shortly after complaining about TSMC’s discriminatory employment
22 practices, including the company’s discriminatory preference for Asian and Taiwanese
23 citizens and its practice of conducting meetings in Mandarin. But for TSMC’s
24 retaliation, Ms. Howington would not have been treated in such a hostile manner and
25 subjected to changes in the terms and conditions of her employment.
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1 66. TSMC’s actions constitute unlawful retaliation in violation of 42 U.S.C. § 1981.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the class pray for relief as follows:

- a. Certification of the case as a class action pursuant to Federal Rule of Civil Procedure 23;
- b. Designation of Plaintiff as representative of the classes;
- c. Designation of Plaintiff’s counsel as counsel for the classes;
- d. A declaratory judgment that the practices complained of herein are unlawful and violate the Civil Rights Act of 1866, 42 U.S.C. § 1981;
- e. A permanent injunction against Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in unlawful policies, practices, customs, and usages set forth herein;
- f. Order Defendant to adopt a valid, non-discriminatory method for hiring, staffing, performance appraisals, termination, and other employment decisions;
- g. Order Defendant to post notices concerning its duty to refrain from discriminating against employees on the basis of race and citizenship;
- h. Award Plaintiff and the Class compensatory damages for the harm they suffered as a result of Defendant’s violations § 1981;
- i. Award Plaintiff and the Class pre- and post-judgment interest at the prevailing rate on the compensatory damages as a result of Defendant’s discriminating against them in violation of § 1981;
- j. Award Plaintiff and the Classes front- and back-pay, and such other equitable relief as the Court deems just and appropriate;
- k. Award Plaintiff and the Class exemplary and punitive damages;
- l. Award reasonable attorneys’ fees, expert witness fees, expenses, and costs of this action and of prior administrative actions; and
- m. Award Plaintiff and the Classes such other relief as this Court deems just and appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff and the Classes respectfully demand a trial by jury on all issues properly triable by a jury in this action.

DATED: August 22, 2024

Respectfully submitted,

By: /s/Daniel Low
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Attorney for Plaintiff and the Classes

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