

PARTIES

2. Mitchell is a Texas citizen.
3. Reynolds is a Texas citizen.
4. Defendant HealthCARE Express, L.L.P. is a Texas Limited Liability Partnership with its principle place of business located in Texarkana, Texas. At all relevant times, HealthCARE Express, L.L.P. has met the definition of an “employer” under all applicable statutes.
5. Defendant HealthCARE Express Management, Ltd. Is a Texas limited company with its principle place of business located in Texarkana, Texas. At all relevant times, HealthCARE Express Management, Ltd. has met the definition of an “employer” under all applicable statutes.

JURISDICTION AND VENUE

6. HealthCARE Express Defendants are Texas companies and/or citizens; hire citizens of the state of Texas; contract with companies in Texas; and own or rent property in Texas. As such, the exercise of personal jurisdiction over HealthCARE Express Defendants comports with due process.
7. This Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this action involves federal questions regarding the deprivation of Mitchell’s rights under Title VII and Section 1981.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to this action, including the unlawful employment practices alleged herein, occurred in this district.

ADMINISTRATIVE PROCESS

9. Prior to instituting this action, Mitchell filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”), Charge No. 450-2019-04935, alleging that HealthCARE Express Defendants had discriminated against him because of his race; had retaliated against him for reporting unlawful harassment and discrimination; and had engaged in unlawful post-employment retaliation.
10. The EEOC issued Mitchell a Right to Sue Notice on January 23, 2020.
11. A true and accurate copy of Mitchell’s Right to Sue letter is attached hereto as Exhibit “A.”
12. Pursuant to 29 C.F.R. § 1614.407(b), Mitchell has properly exhausted his administrative remedies prior to initiating this action.
13. Any and all other prerequisites to the filing of this suit have been met.

FACTUAL ALLEGATIONS

14. Mitchell is African American
15. Mitchell is a former employee of HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd.
16. At all times referenced herein, HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd. operated as one company.
17. HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd. share the same owners, managers, and employees, operate out of the same physical locations, share equipment and supplies, and provided the same aligned services to their customers.
18. At all times referenced herein, both HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd retained and exercised the power to hire and fire Mitchell.

19. At all times referenced herein, both HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd. retained and exercised the power to administer discipline to their shared employees.
20. At all times referenced herein, Both HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd. maintained records of hours, handled the payroll, and/or provided insurance to and for the benefit of their shared employees.
21. At all times referenced herein, Both HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd. directly supervised their shared employees.
22. HealthCARE Express, L.L.P. and HealthCARE Express Management, Ltd. are hereinafter referred to collectively as “HealthCARE Express” and/or “HealthCARE Express HealthCARE Express Defendants.”
23. Mitchell was jointly employed by HealthCARE Express HealthCARE Express Defendants.
24. Mitchell was hired by HealthCARE Express HealthCARE Express Defendants to serve as their Chief Financial Officer (“CFO”) on or about July 23, 2018.
25. At the time Mitchell was hired by HealthCARE Express HealthCARE Express Defendants, he was residing in Miami, Florida.
26. On or about August 1, 2018, Mitchell and his family relocated from Miami to Texarkana for the purpose of Mitchell starting his employment with HealthCARE Express HealthCARE Express Defendants.
27. Shortly after Mitchell began his employment as CFO, he was transitioned to the role of Chief Operations Officer (“COO”) as part of a lateral transfer.
28. At all times referenced herein, Mitchell was directly supervised by Reynolds, HealthCARE Express HealthCARE Express Defendants’ Chief Executive Officer (“CEO”) and founder.

29. During Mitchell's employment with HealthCARE Express HealthCARE Express Defendants, Reynolds regularly made inappropriate, racially charged remarks about Mitchell and other African Americans.
30. Reynolds made remarks to Mitchell connecting Mitchell's sexual prowess and/or performance to his race.
31. In or around November of 2018, Reynolds opined to Mitchell that Mitchell's wife must enjoy having sex with Mitchell because "black men have big penises."
32. Reynolds did not make comments to Caucasian employees regarding the size of their penises.
33. Reynolds made comments to Mitchell about the size of his penis because Mitchell is African American.
34. Reynolds was perpetuating racist stereotypes when he opined that African American men have large penises.
35. At all times referenced herein, HealthCARE Express HealthCARE Express Defendants maintained a policy against unlawful discrimination and/or harassment on the basis of race ("Equal Employment Practices Policy").
36. A supervisor commenting on the size of an employee's genitalia because that employee is African American violates HealthCARE Express Defendants' Equal Employment Practices Policy.
37. Alternatively, a supervisor commenting on the size of an employee's genitalia because that employee is African American is permitted by HealthCARE Express Defendants.
38. A supervisor's perpetuation of racial stereotypes in the workplace violates HealthCARE Express Defendants' Equal Employment Practices Policy.
39. Alternatively, HealthCARE Express Defendants permit their supervisors to perpetuate racial stereotypes.

40. Mitchell was offended by Reynold's racist statements about the size of Mitchell's penis and Mitchell's sex life with his wife.
41. Mitchell asked Reynolds not to make comments about the size of his penis or his sex life and told Reynolds that these subjects were none of Reynold's business.
42. On several occasions, Reynolds "thanked" Mitchell for being the "exception" to Reynold's stated belief that "most blacks" were ignorant and/or illiterate.
43. Mitchell was offended by Reynold's statement that he believes that "most blacks" are ignorant and/or illiterate.
44. A supervisor's stating that he believes that "most blacks" are ignorant and/or illiterate violates HealthCARE Express Defendants' Equal Employment Practices Policy.
45. Alternatively, HealthCARE Express Defendants permits their supervisors to make comments disparaging the intellectual capabilities of African Americans.
46. Reynolds regularly referred to Mitchell's race when talking to HealthCARE Express employees and would frequently make Mitchell's race the butt of his jokes.
47. Mitchell was embarrassed and offended by Reynold's jokes about his race.
48. Making jokes based on employee's race violates HealthCARE Express Defendants Equal Employment Practices Policy.
49. Alternatively, HealthCARE Express Defendants permit supervisors and employees to make jokes regarding the race of other employees.
50. Reynolds frequently addressed and referred to Mitchell as "the black guy" or "the big black guy" rather than using Mitchell's name.
51. Mitchell was offended when Reynolds repeatedly addressed him or referred to him by his race rather than by his name.

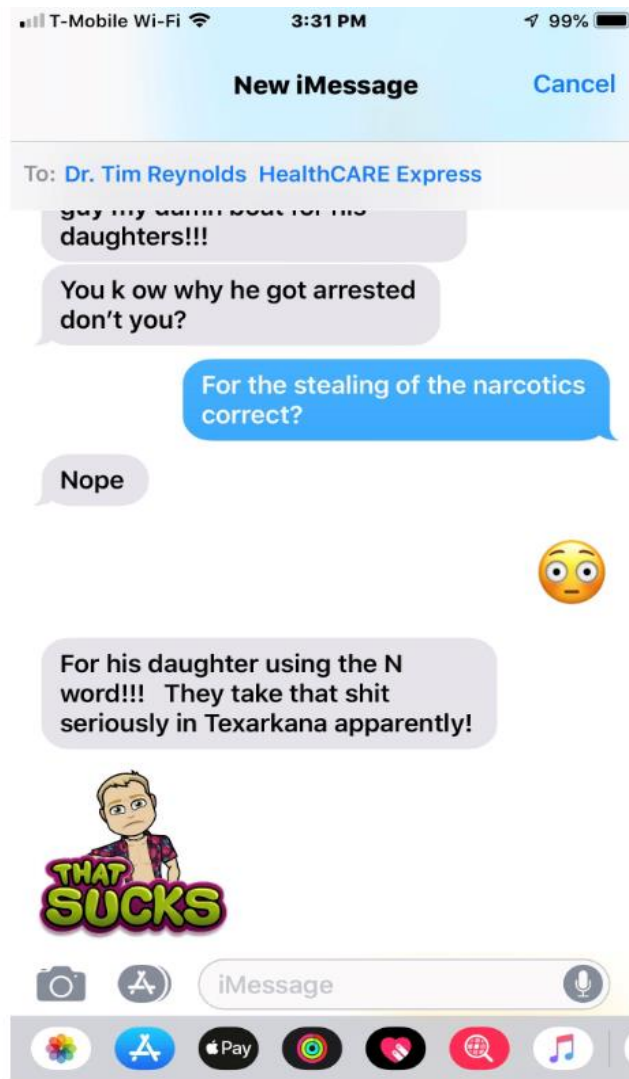
52. Reynolds did not address or refer to Caucasian employees as “the white guy” rather than by their names.
53. Reynolds addressed and referred to Mitchell by his race because Mitchell is African American.
54. A supervisor’s repeatedly addressing and/or referring to an employee by their race rather than by their name violates HealthCARE Express Defendants’ Equal Employment Practices Policy.
55. Alternatively, HealthCARE Express Defendants permit their supervisors to repeatedly address and/or refer to an employee by their race rather than by their name.
56. Mitchell asked Reynolds to stop making racist jokes and remarks on several occasions throughout the late fall and winter of 2018, but Reynolds dismissed Mitchell’s complaints, stating “I’m only joking” and/or “you know I am only playing around.”
57. On one occasion, Reynolds responded to Mitchell’s complaints about his racist jokes and harassment by texting Mitchell an image of an article titled “hire people who have endured adversity.”
58. On several occasion, Reynolds suggested to Mitchell that his racist jokes and comments were not actually racist because Reynolds had hired Mitchell, an African American.
59. In or around late November/ early December of 2018, Mitchell’s son was called a “nigger” at school by the Caucasian daughter of a HealthCARE Express employee named Clifford.
60. Mitchell complained to Reynolds about the HealthCARE Express employee’s daughter calling his son a “nigger.”
61. In response to learning about Mitchell’s son being called a “nigger,” Reynolds first asked Mitchell if Clifford’s daughter “just” used the word “nigger” “like a rap artist,” or she meant it “the other way.”
62. Mitchell told Reynolds that in his view, there was no difference between a Caucasian female calling an African American a “nigger” “like a rap artist” or some other way.

63. Reynolds then laughed and told Mitchell “relax, Cliff is a good guy, no worries there. If you want to talk to him go ahead.”
64. Reynolds downplayed and laughed off Mitchell’s complaint about his son being called a “nigger” because Reynolds believed it would be acceptable for a Caucasian person to call an African American a “nigger” as long as it was done in the manner that rap artist might use the term.
65. Reynolds downplayed and laughed off Mitchell’s complaint about his son being called a “nigger” because Reynolds thought the incident was funny.
66. Mitchell was offended by Reynold’s response to his complaint about his son being called a “nigger” by the child of another HealthCARE Express employee.
67. A supervisor’s suggesting to an African American employee that it would be acceptable for their child to be called a “nigger” under certain circumstances violates HealthCARE Express Defendants’ Equal Employment Practices Policy.
68. Alternatively, a supervisor’s suggesting to an African American employee that it would be acceptable for their child to be called a “nigger” under certain circumstances is permissible to HealthCARE Express Defendants.
69. Subsequently, Mitchell reported Reynold’s numerous racist and inappropriate remarks to Theresa Hugg, Defendant’s Director of Human Resources (“First Formal Racial Harassment Complaint”).
70. Hugg dismissed Mitchell’s First Formal Racial Harassment Complaint, telling him that “Tim is just being Tim.”
71. At all times referenced herein, HealthCARE Express Defendants maintained a policy to investigate reports of unlawful discrimination and harassment (“Investigation Policy”).

72. Pursuant to HealthCARE Express Defendants' Investigation Policy, an investigation of discrimination or harassment should include interviewing the complainant.
73. Pursuant to HealthCARE Express Defendants' Investigation Policy, an investigation of discrimination or harassment should include interviewing the subject of the complaint.
74. Pursuant to HealthCARE Express Defendants' Investigation Policy, an investigation of discrimination or harassment should include interviewing the subject of the reported discrimination or harassment.
75. Pursuant to HealthCARE Express Defendants' Investigation Policy, an investigation of discrimination or harassment should include interviewing witnesses to the reported discrimination or harassment.
76. Pursuant to HealthCARE Express Defendants' Investigation Policy, an investigation of discrimination or harassment should include getting a written statement from the complainant.
77. Pursuant to HealthCARE Express Defendants' Investigation Policy, an investigation of discrimination or harassment should include getting a written statement from the subject of the complaint.
78. Pursuant to HealthCARE Express Defendants' Investigation Policy, an investigation of discrimination or harassment should include getting a written statement from the subject of the reported discrimination.
79. In response to the First Formal Racial Harassment Complaint, HealthCARE Express Defendants did not interview Mitchell.
80. In response to the First Formal Racial Harassment Complaint, HealthCARE Express Defendants did not interview Reynolds.
81. In response to the First Formal Racial Harassment Complaint, HealthCARE Express Defendants did not get a written statement from Mitchell.

82. In response to the First Formal Racial Harassment Complaint, HealthCARE Express Defendants did not get a written statement from Reynolds.
83. In response to the First Formal Racial Harassment Complaint, HealthCARE Express Defendants did not get a written statement from anyone.
84. HealthCARE Express Defendants did not investigate the First Formal Racial Harassment Complaint at the time it was made.
85. By failing to take any action in response to Mitchell's First Formal Racial Harassment Complaint, HealthCARE Express Defendants endorsed and condoned Reynold's conduct.
86. Reynolds continued to make racially charged remarks and jokes to Mitchell and other employees after Mitchell's First Formal Racial Harassment Complaint.
87. For example, shortly after Mitchell's First Formal Racial Harassment Complaint, Reynolds remarked to Mitchell that "damn boy you must have a huge dick, I know black men have big dicks" as he noticed the size of Mitchell's shoes as Mitchell and Reynolds were walking down the stairs together ("Big Dick Comment")
88. Reynolds then told Mitchell "I have a pretty big piece of meat myself."
89. At the time Reynolds made the Big Dick Comment to Mitchell, Reynolds was aware that Mitchell had made the First Formal Racial Harassment Complaint to Hugg.
90. Reynolds made the Big Dick Comment to Mitchell in order to intimidate Mitchell and to demonstrate that Reynolds was in charge and that Mitchell's complaints would not result in any change in Reynold's behavior.
91. Reynolds made the Big Dick Comment to Mitchell and continued to make racial comments to Mitchell as means of retaliating against Mitchell for making the First Formal Race Harassment Complaint.

92. Reynolds has never suggested to any non-African American employee that they must have a “big dick” based on their race.
93. Reynolds made the Big Dick Comment to Mitchell because Mitchell is African American.
94. Reynolds was again perpetuating racial stereotypes when he suggested that Mitchell must have a “big dick” because he is African American.
95. Mitchell was offended by Reynold’s Big Dick Comment.
96. A supervisor’s suggesting to an African American employee that he must have a “big dick” because of his race violates HealthCARE Express Defendants’ Equal Employment Practices Policy.
97. Alternatively, a supervisor’s suggesting to an African American employee that he must have a “big dick” because of his race is permissible to HealthCARE Express Defendants.
98. Dismayed that his First Formal Racial Harassment Complaint had caused no change in Reynold’s behavior, Mitchell decided that he would attempt to “go along” with Reynold’s behavior for a time in hopes that Reynolds would eventually stop making racist remarks once he believed doing so would no longer agitate Mitchell.
99. In or around mid to late December of 2018, Clifford was arrested after it was learned that he had been stealing narcotics from HealthCARE Express.
100. On or about January 4, 2019, Reynolds sent Mitchell a picture of Clifford’s mugshot by text message and stated “just sad. life just changed for him.”
101. Mitchell responded to Reynolds by agreeing it was a sad situation, and further stating that he believed that Clifford was and had been manipulative.
102. Reynolds then responded through a series of text messages that the “real” reason the nurse had been arrested was because his daughter had called Mitchell’s son “the N word” at school:



103. Afraid to complain directly to Reynolds, Mitchell tried to go along with Reynolds's humor, responding to Reynolds that he was "certified crazy."
104. In reality, Mitchell was offended and angered by Reynolds's text message.
105. It was difficult for Mitchell to stomach his supervisor making light of the fact that his son had been called a "nigger" at school.
106. Pretending to find Reynolds comments about his son being called a "nigger" at school funny was highly damaging to Mitchell's pride and self-respect.
107. Reynolds then further responded to Mitchell by doubling down on his racist remarks, randomly stating he had a "large dick" even though he was "not black":



108. Mitchell was further offended by Reynold’s “large dick” text, but again felt compelled to respond positively so in hopes that Reynolds would become bored with harassing Mitchell on the basis of his race if Mitchell did not push back.
109. Because his past complaints had not been effective, Mitchell did not initially complain to Reynolds about his “large dick” text message.
110. Subsequently, Reynolds began to escalate his racial harassment of Mitchell.
111. On several occasions Reynolds asked Mitchell “is your boy still being called the N word at school? Don’t worry, I would never call you a nigger” while laughing.
112. Reynolds told Mitchell that he had a “nigger dick” despite being white.
113. During the last three months of Mitchell’s employment, Reynolds used the word “nigger” on an increasing, frequent and near daily basis while talking to Mitchell or while in Mitchell’s presence.
114. Mitchell was offended by Reynold’s frequent use of the phrase “the ‘N’ word” and/or the word “nigger.”
115. During a conversation that took place in or around February of 2019, Reynolds and two other physicians employed by and/or associated with HealthCARE Express, Kevin McCann and

Steven Foltz, told Mitchell that “all white people in Texarkana carry guns...it would be wise for you to be armed” (“Gun Statement”)

116. Mitchell was offended by the Gun Statement.
117. Mitchell felt threatened by the Gun Statement.
118. As evidenced by the inclusion of the phrase “all white people” in the Gun Statement, the Gun Statement was made to Mitchell because of his race.
119. At all times referenced herein, HealthCARE Express Defendants maintained a “violence in the workplace” policy, which prohibits acts or threats of violence in the workplace (“Violence Policy”).
120. A supervisor’s suggesting to an African American employee that they should buy a gun because “all white people” in the area own a gun violates Defendant’s Equal Employment Practices Policy and Violence Policy.
121. Alternatively, supervisor’s suggesting to an African American employee that they should buy a gun because “all white people” in the area own a gun is permissible to HealthCARE Express Defendants.
122. Between January and March of 2019, Reynolds regularly made references to nooses, hangings, and lynching to Mitchell and in front of Mitchell when describing his unhappiness with certain HealthCARE Express employees.
123. Reynolds used the terms “noose” and “lynching” while speaking with or near Mitchell because Mitchell is African American.
124. Reynolds used the terms “noose” and “lynching” in order to racially intimidate Mitchell.
125. On one or more occasions, Hugg was present when Reynolds referenced a hanging, noose, and/or lynchings to Mitchell or in front of Mitchell.

126. A supervisor's attempting to intimidate an African American employee by referencing nooses and/or lynchings violates HealthCARE Express Defendants' Equal Employment Practices Policy and Violence Policy.
127. Alternatively, it is permissible for a supervisor to intimidate his African American employees with references to hangings, nooses, and lynchings at HealthCARE Express.
128. Despite witnessing Reynold's remarks regarding hangings, nooses, and lynchings, Hugg took no action to correct Reynold's conduct.
129. Mitchell was offended by Reynold's frequent references to "nooses" and "lynching."
130. Mitchell felt threatened by Reynold's frequent references to "nooses" and "lynching."
131. Reynold's frequent references to "nooses" and "lynching" interfered with Mitchell's ability to perform his job duties.
132. During the week of March 11, 2019, Mitchell met with Hugg and again complained about Reynold's conduct, to include Reynold's frequent use of the term "the 'N' word" and the word "nigger"; frequent references to Mitchell's penis size based on Mitchell's race; the Guns Statement, and repeated references to hangings, nooses, and lynchings ("Second Formal Racial Harassment Complaint").
133. Mitchell showed Hugg Reynold's text messages regarding his son being called a "nigger" at school and the "large dick" text message.
134. Mitchell expressed his outrage to Hugg that Reynolds had trivialized and made jokes about his son being called a "nigger" at school.
135. Mitchell cried when he made the Second Formal Race Harassment Complaint to Hugg.
136. Mitchell demanded that Hugg do something about Reynolds conduct.
137. Hugg refused to take any action or to conduct any investigation in response to Mitchell's Second Formal Racial Harassment Complaint.

138. Hugg flatly told Mitchell that Reynolds was not going to listen to his complaints and would “never be constrained by HR.”
139. Hugg failed to follow or enforce the Equal Employment Practices Policy in response to Mitchell’s Second Formal Racial Harassment Complaint.
140. Hugg failed to follow or enforce the Violence Policy in response to Mitchell’s Second Formal Racial Harassment Complaint.
141. Hugg failed to follow the Investigation Policy in response to Mitchell’s Second Formal Racial Harassment Complaint.
142. On March 19, 2019 – approximately a week after Mitchell’s Second Formal Racial Harassment Complaint - Reynolds suddenly terminated Mitchell.
143. When Mitchell asked Reynolds why he was being terminated, Reynolds responded “you’re not a good fit for our culture...sometimes thing just don’t work out.”
144. Reynold’s “not a good fit” excuse for terminating Mitchell was a pretext for race discrimination.
145. Reynold’s “not a good fit” excuse for terminating Mitchell was a pretext for unlawful retaliation because Mitchell had opposed and reported racial discrimination and harassment at HealthCARE Express.
146. Mitchell had never been coached or disciplined for not being a “good fit” prior to his termination; to the contrary, Mitchell had only received praise from Reynolds for his work and conduct.
147. For example, on October 9, 2019, Reynolds sent Mitchell a text message in which he told Mitchell “You take NO shit. I like that.”
148. On another occasion, Reynolds sent Mitchell a text message in which he stated that Mitchell was “killin’ it.”

149. Defendant does not, as a practice, terminate non-African American employees for “not being a good fit” without first coaching them or disciplining them.
150. Upon information and belief, Defendant has retained non-African American employees who engaged in substantially the same or worse behavior than not being “a good fit.”
151. HealthCARE Express Defendants treated Mitchell less favorably than non-African American employees by terminating Mitchell for allegedly not being a “good fit.”
152. When Reynolds referred to Mitchell as not being a “good fit,” Reynolds was referring to the fact that Mitchell was an African American who had opposed and not merely tolerated race discrimination at HealthCARE Express.
153. To be labeled a “good fit” as an African American employee at HealthCARE Express, African American employees must put up with and accept racism and discrimination.
154. Subsequently, on April 19, 2019, Mitchell sent Reynolds an email in which he complained, *inter alia*, about being mistreated and undermined by Reynolds because of Mitchell’s race, and in which he complained about bigotry at HealthCARE Express (“April 2019 Email”).
155. In the April 2019 Email, Mitchell stated that he has emails and text messages that demonstrated that there was racism and/or “bigotry” at HealthCARE Express.
156. In the April 2019 Email, Mitchell also complained about what he believed were unlawful practices and conduct at HealthCARE Express.
157. On April 22, 2019, legal counsel for Defendants responded to Mitchell’s complaints about discrimination and bigotry at Defendants Express by sending him a letter in which Defendants deliberately twisted various provisions in the HealthCARE Express employee handbook to threaten Mitchell with “civil and criminal penalties” (“Retaliatory Letter”).
158. In the Retaliatory Letter, Defendants threatened to report Mitchell to law enforcement if he shared his emails or text messages with any third party or the government.

159. For example, in the Retaliatory Letter, Defendant demanded that Mitchell “immediately cease access” to HealthCARE Express’ emails and databases.”
160. Since his termination in March of 2019, Mitchell did not have access to his HealthCARE Express email account or any HealthCARE Express database.
161. At the time it sent the Retaliatory Letter, Defendant knew Mitchell did not have access to his HealthCARE Express email account or any HealthCARE Express database.
162. Mitchell sent the April 2019 Email from his personal email address.
163. At the time it sent the Retaliatory Letter, Defendants knew that Mitchell had sent the April 2019 Email from his personal email address.
164. Defendants also suggested in the Retaliatory Letter that Mitchell had used HealthCARE Express “resources...to knowingly violate local, state, federal, or international laws and regulations” because he had retained emails and text messages supporting his claims of race discrimination and “bigotry” at HealthCARE Express.
165. Defendants closed the Retaliatory Letter by threatening “immediate litigation” against Mitchell unless he turned over all HealthCARE Express emails and text messages and further
guy“provide a sworn statement that you will not disclose or share any HCE property or information or client/customer/patient information with any third party.”
166. The Retaliatory Letter did not address Mitchell’s complaints of race discrimination or bigotry at HealthCARE Express.
167. Upon information and belief, Defendants have never threatened a non-African American former employee with “civil and criminal penalties” for keeping copies of emails and/or text messages that did not containing customer/client/patient information subsequent to their termination.

168. Upon information and belief, Defendants have never demanded that a non-African American employee provide a sworn statement that they will not disclose or share any HealthCARE Express property or information or client/customer/patient information with any third party.
169. Upon information and belief, Defendants have never threatened to contact law enforcement because a former, non-African American employee complained about being mistreated after they were terminated.
170. Defendants directed their counsel to send the Retaliatory Letter to Mitchell because Mitchell is African American.
171. Defendants directed their counsel to send the Retaliatory Letter to Mitchell because Mitchell complained about race discrimination and bigotry at HealthCARE Express.
172. The Retaliatory Letter was a blatant attempt to intimidate Mitchell; to dissuade Mitchell from pursuing any claims against HealthCARE Express in connection with his allegations of discrimination and bigotry; and to claw back evidence that would support Mitchell's claims against HealthCARE Express.
173. The baseless threats of civil and criminal consequences against Mitchell for sending the April 19, 2019 Email caused Mitchell to suffer from anxiety, sleeplessness, and depression.
174. Subsequently, Mitchell obtained legal counsel.
175. On April 26, 2019, Mitchell's counsel sent Defendants' counsel a letter refuting the threats contained in the Retaliatory Letter and explaining that by terminating Mitchell because of his race and because of his complaints about race discrimination, Defendant had violated the law.
176. On May 28, 2019, legal counsel for Defendant responded to Mitchell's allegations of unlawful discrimination and retaliation by claiming, for the first time, that Mitchell was fired due to poor performance.
177. Mitchell was not told he was being fired for poor performance when he was terminated.

178. Mitchell was never counsel or disciplined for any alleged poor performance during his employment with HealthCARE Express Defendants.
179. Mitchell had only received positive feedback regarding his work performance during his employment with HealthCARE Express Defendants.
180. In asserting that Mitchell had been terminated due to his work performance, Defendants changed their rationale for terminating Mitchell.
181. Upon information and belief, as a practice, HealthCARE Express has used and does use coaching, verbal warnings, written warnings, performance improvement plans, suspensions, and “3 day decision making leave” as tools to address poor performance from its non-African American employees.
182. Upon information and belief, as a practice, HealthCARE Express has used and does use coaching, verbal warnings, written warnings, performance improvement plans, suspensions, and “3 day decision making leave” as tools to address poor performance from employees who have not complained about unlawful discrimination or harassment at HealthCARE Express.
183. To the extent HealthCARE Express Defendants terminated Mitchell for alleged poor performance without any form of discipline, coaching, or notice of any alleged unacceptable performance, HealthCARE Express Defendants treated Mitchell less favorably than non-African American employees.
184. HealthCARE Express Defendants’ purported “poor performance” justification is a newly created pretext for race discrimination.
185. HealthCARE Express Defendants’ purported “poor performance” justification is a newly created pretext for retaliation because Mitchell had opposed racial discrimination and harassment at HealthCARE Express.

COUNT I: HOSTILE WORK ENVIRONMENT BASED ON RACE IN VIOLATION
OF 42 U.S.C. § 2000e-2(a).
(Asserted Against HealthCARE Express Defendants Only).

186. Mitchell re-alleges and incorporates by reference the allegations set forth in paragraphs 1-185, above.
187. During his employment with HealthCARE Express, Mitchell was subjected to daily offensive and harassing conduct by Reynolds and other employees and/or associates or owners of HealthCARE Express Defendants based on his race, African American.
188. The discriminatory statements and conduct HealthCARE Express Defendants repeatedly subjected Mitchell to was unwelcome; detrimentally affected Mitchell; was viewed as subjectively hostile and abusive by Mitchell, would be viewed as objectively hostile and abusive to a reasonable person; and was sufficiently severe and/or pervasive to create a hostile work environment.
189. HealthCARE Express Defendants knew or should have known of the harassing conduct against Mitchell by Reynolds.
190. HealthCARE Express Defendants condoned, tolerated and ratified this harassing conduct.
191. HealthCARE Express Defendants' creation and tolerance of a racially hostile work environment violated of the rights secured to Mitchell by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., as amended by the Civil Rights Act of 1991.
192. As a result of the HealthCARE Express Defendants intentional violation of Mitchell's Title VII rights, Mitchell has suffered severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.

193. In their discriminatory actions as alleged above, HealthCARE Express Defendants have acted with malice or reckless indifference to Mitchell's rights, thereby entitling Mitchell to an award of punitive damages.

194. To remedy the violation of Mitchell's rights secured by Title VII, Mitchell request that the Court award him the relief prayed for below.

COUNT II: UNLAWFUL RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 2000e-2(a), et seq.
(Asserted Against HealthCARE Express Defendants Only).

195. Mitchell re-alleges and incorporates by reference the allegations set forth in paragraphs 1-194, above.

196. HealthCARE Express Defendants subjected Mitchell to different employment rules, practices, and standards because of his race in violation of 42 U.S.C. § 2000e-2(a).

197. HealthCARE Express Defendants terminated Mitchell from his employment without just cause because of his race in violation of 42 U.S.C. § 2000e-2(a).

198. Defendant's discrimination against Mitchell violated of the rights secured to Mitchell by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., as amended by the Civil Rights Act of 1991.

199. By the conduct described above, HealthCARE Express Defendants intentionally violated Mitchell's rights under Title VII.

200. As a result of the violation of Mitchell's Title VII rights, Mitchell is entitled to equitable and injunctive relief, including "rightful place" and "make whole" remedies and equitable monetary relief, to remedy and compensate for the effects of HealthCARE Express Defendants' unlawful actions.

201. As a result of the HealthCARE Express Defendants intentional violation of Mitchell's Title VII rights, Mitchell has suffered severe mental anguish and emotional distress, including, but

not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.

202. In their discriminatory actions as alleged above, HealthCARE Express Defendants have acted with malice or reckless indifference to Mitchell's rights, thereby entitling Mitchell to an award of punitive damages.

203. To remedy the violation of Mitchell's rights secured by Title VII, Mitchell request that the Court award him the relief prayed for below.

COUNT III: RETALIATORY WRONGFUL TERMINATION IN VIOLATION OF 42
U.S.C. § 2000e-3(a).
(Asserted Against HealthCARE Express Defendants Only).

204. Mitchell re-alleges and incorporates by reference the allegations set forth in paragraphs 1-203, above.

205. Mitchell engaged in protected activity when opposed racial harassment and discrimination at HealthCARE Express.

206. As a result of Mitchell's opposing racial harassment and discrimination at HealthCARE Express, Reynolds escalated his harassment and mistreatment of Mitchell.

207. As a result of Mitchell's opposing racial harassment and discrimination at HealthCARE Express, HealthCARE Express Defendants terminated his employment.

208. There was a causal connection between Mitchell's complaints and the materially adverse actions taken against Mitchell by HealthCARE Express Defendants.

209. The retaliation endured by Mitchell would dissuade a reasonable employee from making complaints of discrimination and harassment.

210. HealthCARE Express Defendants retaliated against Mitchell for engaging in protected activity in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

211. Defendant's retaliation against Mitchell violated the rights secured to Mitchell by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., as amended by the Civil Rights Act of 1991.
212. By the retaliatory conduct described above, HealthCARE Express Defendants intentionally violated Mitchell's rights under Title VII.
213. As a result of the violation of Mitchell's Title VII rights, Mitchell is entitled to equitable and injunctive relief, including "rightful place" and "make whole" remedies and equitable monetary relief, to remedy and compensate for the effects of HealthCARE Express Defendants' unlawful actions.
214. As a result of the HealthCARE Express Defendants intentional violation of Mitchell's Title VII rights, Mitchell has suffered severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.
215. In their retaliatory actions as alleged above, HealthCARE Express Defendants have acted with malice or reckless indifference to Mitchell's rights, thereby entitling Mitchell to an award of punitive damages.
216. To remedy the violation of Mitchell's rights secured by Title VII, Mitchell request that the Court award him the relief prayed for below.

**COUNT IV: POST-EMPLOYMENT RETALIATION IN VIOLATION OF 42 U.S.C. §
2000e-3(a).**
(Asserted Against HealthCARE Express Defendants Only).

217. Mitchell re-alleges and incorporates by reference the allegations set forth in paragraphs 1-216, above.
218. Mitchell engaged in protected activity when he sent the April 19, 2019 Email complaining of discrimination and harassment.

219. Pursuant to 42 U.S.C.A § 2000e-3(a), it is an unlawful discriminatory practice “for an employer to discriminate against any of his employees...because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”
220. The term “employees” as used in the anti-retaliation provision of Title VII, § 704(a), includes former employees within its protection.
221. As a result of Mitchell’s opposing racial harassment and discrimination at HealthCARE Express in his April 19, 2019 Email, HealthCARE Express Defendants retaliated against Mitchell by sending him the Retaliatory Letter in which they threatened “immediate litigation”; “civil and criminal penalties”; and to contact law enforcement.
222. There was a causal connection between Mitchell’s protected activity and the materially adverse actions taken against Mitchell by HealthCARE Express Defendants.
223. The retaliation endured by Mitchell would dissuade a reasonable employee from making complaints of discrimination and harassment and was purposefully and knowingly intended to have that effect.
224. HealthCARE Express Defendants retaliated against Mitchell for engaging in protected activity in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).
225. Defendant’s post-employment retaliation against Mitchell violated the rights secured to Mitchell by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq., as amended by the Civil Rights Act of 1991.
226. By the retaliatory conduct described above, HealthCARE Express Defendants intentionally violated Mitchell’s rights under Title VII.

227. As a result of the HealthCARE Express Defendants intentional violation of Mitchell's Title VII rights, Mitchell has suffered severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.
228. In their retaliatory actions as alleged above, HealthCARE Express Defendants have acted with malice or reckless indifference to Mitchell's rights, thereby entitling Mitchell to an award of punitive damages.
229. To remedy the violation of Mitchell's rights secured by Title VII, Mitchell request that the Court award him the relief prayed for below.

COUNT V: RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981.
(Asserted Against All Defendants).

230. Mitchell re-alleges and incorporates by reference the allegations set forth in paragraphs 1-229, above.
231. Defendant's discrimination against Mitchell violated the rights afforded to Mitchell under the Civil Rights Act of 1866, 42 U.S.C. §1981, as amended by the Civil Rights Act of 1991.
232. By the conduct described above, Defendants intentionally deprived Mitchell of the same rights as are enjoyed by Caucasian citizens to the creation, performance, enjoyment, and all benefits and privileges, of his employment relationship with Defendants, in violation of Section 1981.
233. As a result of Defendant's discrimination in violation of Section 1981, Mitchell has been denied employment opportunities providing substantial compensation and benefits, thereby entitling Mitchell to injunctive and equitable monetary relief.
234. Mitchell has suffered severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.

235. In their discriminatory actions as alleged above, Defendants have acted with malice or reckless indifference to the rights of Mitchell, thereby entitling Mitchell to an award of punitive damages.
236. To remedy the violations of the rights of Mitchell secured by Section 1981, Mitchell requests that the Court award him the relief prayed for below.

COUNT VI: RETALIATION IN VIOLATION OF 42 U.S.C. § 1981.
(Asserted Against All Defendants).

237. Mitchell re-alleges and incorporates by reference the allegations set forth in paragraphs 1-236, above.
238. Defendants have violated Section 1981 by subjecting Mitchell to retaliation for his protected complaints and opposition to Reynold's discriminatory comments on the basis of race by, *inter alia*, terminating Plaintiff's employment and by threatening "immediate litigation"; "civil and criminal penalties"; and to contact law enforcement.
239. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of Section 1981, Mitchell has suffered and continues to suffer monetary and/or economic damages, including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.
240. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of Section 1981, Mitchell has suffered and continues to suffer severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.
241. Defendants' unlawful retaliatory conduct constitutes a willful and wanton violation of Section 1981, was outrageous and malicious, was intended to injure Plaintiff, and was done with

conscious disregard of Plaintiff's civil rights, entitling Plaintiff to an award of punitive damages.

242. To remedy the violations of the rights of Mitchell secured by Section 1981, Mitchell requests that the Court award him the relief prayed for below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Samuel Mitchell requests judgment in his favor against all HealthCARE Express Defendants, containing the following relief:

- (a) A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States;
- (b) An injunction and order permanently restraining Defendants from engaging in such unlawful conduct;
- (c) An order directing Defendants to place Mitchell in the position he would have occupied but for Defendants' discriminatory, retaliatory and/or otherwise unlawful treatment of him, as well as to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices and other unlawful conduct are eliminated and do not continue to affect Mitchell;
- (d) An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages, including, but not limited to, the loss of past and future income, wages, compensation, job security and other benefits of employment;
- (e) Awarding against each Defendant compensatory and monetary damages to compensate Mitchell for lost wages, emotional distress, and other consequential damages, in an amount to be proven at trial;
- (f) An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Mitchell for all non-monetary and/or compensatory damages, including, but not limited to, compensation for his severe mental anguish and emotional distress, humiliation, depression, embarrassment, stress and anxiety, loss of self-esteem, self-confidence and personal dignity, and emotional pain and suffering and any other physical or mental injuries;
- (g) An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Mitchell for harm to his professional and personal reputation and loss of career fulfillment;
- (h) An award of damages for any and all other monetary and/or non-monetary losses suffered by Mitchell in an amount to be determined at trial, plus prejudgment interest;

- (i) An award of punitive damages;
- (j) An award of costs that Mitchell has incurred in this action, as well as Mitchell's reasonable attorneys' fees to the fullest extent permitted by law; and
- (k) Awarding such other and further relief that this Court deems necessary and proper.

Respectfully submitted,

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JURY DEMAND

Plaintiff Samuel Mitchell hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981 (a) by the maximum number of jurors permitted.

/s/ Chris P. Wido
Chris P. Wido (0090441)