

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CARLOS APONTE JR, individually and	:	CIVIL ACTION NO.
on behalf of all other similarly situated	:	
individuals	:	
Plaintiff	:	
	:	
V.	:	
	:	
THE COCA-COLA BOTTLING	:	
COMPANY OF NORTHERN NEW	:	
ENGLAND, INC.	:	
Defendants	:	FEBRUARY 22, 2017

INDIVIDUAL AND CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is a class action alleging race discrimination against non-white employees of The Coca Cola Bottling Company of Northern New England, Inc. Defendant has maintained and applied a preference for white employees over non-white employees for management positions. Plaintiff Carlos Aponte and other non-white employees have been passed over for promotion into management roles because of Defendant's stated preference for white employees in those positions. Defendant's president recently admitted that its management ranks are mostly white because its customers are mostly white, and that it has therefore promoted mostly whites into management positions. Defendant's conduct violates The Civil Rights Act of 1866 (42 U.S.C. §1981) and entitles Plaintiff to damages and injunctive relief and entitles the class to injunctive relief, including an order from this court directing Defendant to immediately cease and correct its discriminatory conduct.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1331 since these claims arise under federal law.
3. Venue is proper in this district under 28 U.S.C. §1391 because the acts or omissions giving rise to the claims in this Complaint took place in this district.

III. PARTIES

4. Plaintiff, Carlos Aponte, Jr. ("Aponte"), is a non-white Hispanic individual residing in Windsor, Connecticut. At all times relevant to this Complaint, Aponte was an employee of the Defendant.
5. Defendant, The Coca-Cola Bottling Company of Northern New England, Inc. ("Defendant"), is a Delaware corporation with a principal place of business located at One Executive Park Drive, Bedford New Hampshire. At all times relevant to this Complaint, Defendant was the employer of Aponte and all other similarly situated individuals.
6. Defendant employs over a thousand employees in New England and New York and maintains approximately fifteen locations throughout the Northeast.

IV. FACTS

7. Defendant hired Aponte in September 1996 as a Warehouse Worker.
8. At the time that Aponte was hired, Defendant's General Manager in Middletown, Tim Carey assured him that it was a company that offered opportunities for promotion and growth.
9. Defendant assigned Aponte to its Middletown, Connecticut division.

10. Aponte performed his job well over the years and was given periodic raises in pay.
11. In 2010, Defendant assigned Aponte to its New London, Connecticut division.
12. By 2010, Defendant had promoted Aponte to the position of Bulk – Account Manager. In this position he reported to Mr. Edward Hewitt, a white male who held the position of District Manager.
13. Below Account Manager was the position of Merchandiser. This was an hourly position which required employees primarily to stock product in the stores and set up displays.
14. For calendar year 2010, Defendant rated Aponte's overall work performance as a 4 out of a possible 5 points. Aponte's supervisor, Edward Hewitt, wrote of Aponte's performance: "great work 2010 performed all duties in accordance with CCNNE standards."
15. On Aponte's 2010, evaluation Mr. Hewitt also remarked that Aponte was "constantly searching for growth opportunities."
16. For calendar year 2011, Mr. Hewitt rated Aponte "outstanding" in all eleven factors included on Defendant's annual performance appraisal form.
17. In that part of the form, which asked for "recommendations for professional development" Mr. Hewitt wrote "Management training."
18. For calendar year 2012, Hewitt again rated Aponte as "outstanding" in all eleven factors on his performance appraisal. Once again Hewitt recommended that Aponte receive "management training as it becomes available."
19. For calendar year 2013, Hewitt rated Aponte as "very good" (the second highest possible score) on all eleven factors on his performance appraisal.

20. Under employee comments, Aponte wrote “Looking forward to growing with the company, to be a future mgt. 18 yrs under my belt and lots of experience in the trade with small stores and bulk chain stores.”
21. Hewitt recommended “cross-training all other markets.”
22. After receiving his performance appraisal for 2013, Aponte asked Hewitt why he was rated as “very good” rather than “outstanding” as he had been in previous years. Hewitt responded that if he continued to rate Aponte as outstanding in all categories, then he (Aponte) would soon have his (Hewitt’s) job.
23. For calendar year 2014, Hewitt rated Aponte as “outstanding” in all eleven factors in his performance appraisal. This time Hewitt made no recommendations for professional development on the form.
24. In March 2014, Aponte applied for an open position as District Manager. He was qualified for this position, but did not receive it. Instead Defendant gave the position to a white employee named John Cone who at the time held the position of Salesman. Cone had far less experience than Aponte and was less qualified.
25. In December of 2014, Aponte applied for the open position of Small Stores Sales Manager. This position is similar to the District Manager position. He was qualified for the position, but did not receive the promotion. Instead this position was given to a white employee Tristian Goff. Mr. Goff had less experience in sales and had recently resigned from Defendant and had come back because his other job didn’t work out. Mr. Aponte was more qualified Goff and had been more loyal in that he hadn’t quit his job.

26. The management positions that Aponte applied for in 2014 but did not get would have paid him significantly more than he was being paid, would have included incentive and bonus compensation, would have been an increase in responsibilities and status, and would have provided him with a company car.
27. In addition to Aponte, there have been many other non-white employees of Defendant over the years who have applied for but not received promotions to management positions. Instead, Defendant has systematically promoted white employees into management positions because of a stated preference to put white employees in those positions. These non-white employees include Mr. Rolando Sanchez, Mr. Jose Lugo, Will Cruzand others.
28. On Monday, December 5, 2016, Defendant's President Mark Francoeur traveled to the Waterford, Connecticut location to conduct a "town hall" style meeting with the employees.
29. Mr. Francoeur had been Defendant's president since 2013 and had worked for Defendant in other positions for many years.
30. Prior to this meeting, Defendant advised Aponte and the other employees of the president's upcoming visit and suggested that they come up with questions to ask him during the meeting.
31. During the town hall meeting at 6:30 a.m., a question Aponte had submitted in writing anonymously was read aloud by Mr. Art Ryonne, General Manager. The question asked "Is there a plan to add diversity to upper management? Currently there are no females,

blacks, or Hispanics in any management positions. How do you motivate a 20+ year employee when they are constantly overlooked for management positions.”

32. A second question that Aponte submitted was also read aloud. This question was, “Employee morale is low mainly because of lack of advancement opportunities. Will there be opportunities for job shadowing or a management training program for employee advancement?”
33. Francoeur responded by saying “In corporate, there are a few females and one black person, but the majority of our customers are white, so our company is basically white [run by whites].”
34. Franceour also said that the company was too busy to create a job shadowing program.
35. As Aponte was leaving the meeting, he was approached by a white co-worker, Greg Cunningham, who said “Hey Charlie, now I know why they gave John Cone the promotion over you... It’s a white run company.” This coworker was laughing while he made this remark, indicating that it was apparently a joke to him.
36. This comment made Aponte feel embarrassed and humiliated.
37. After the meeting, Aponte called his supervisor Ed Hewitt. Aponte said that he wasn’t happy about Mr. Franceour’s comment. Hewitt responded “I felt uncomfortable myself.”
38. Later that day at approximately 6:00 p.m., Aponte sent a type-written one page letter to Mr. Francoeur complaining about his answer and to the lack of diversity in management positions.
39. The purpose of Aponte’s letter was to make it clear to the president that his job at Coca-Cola for the past 20 years has not been a joke to him. He indicated that the lack of

advancement opportunities for himself and other minorities has not been a joke and that he was disheartened to find that minorities have no value at Coca-Cola and that it is a joke to their white coworkers.

40. Francoeur responded to Aponte's letter via email and denied that he said that the company had promoted more whites into management positions because their customers were white. He did acknowledge that Defendant's "management could be more diverse..."
41. There were over fifty employees in attendance at this town hall meeting who all heard Mr. Francoeur state that Defendant had a preference for white managers because their customers were mostly white.
42. Mr. Francoeur's public statement is evidence of Defendant's policy of discrimination with regard to its non-white employees.

V. CLASS ALLEGATIONS

43. Aponte sues on behalf of himself and all other members of the class, pursuant to Rule 23 of the Federal Rules of Civil Procedure as hereinafter defined:

All current and former non-white employees of Defendant who have been employed below the level of District Manager, including but not limited to Salesmen, Account Managers, Merchandisers, Warehouse Shift Leader and Warehouse Picker, and other positions, at any time after February 21, 2013 through the date of final judgment in this case, and who have been refused promotions pursuant to Defendant's preference and policy to promote white employees into management positions.

44. Aponte reserves the right to amend said class definition consistent with information obtained through discovery.

45. Class certification for these federal law claims is appropriate under Rule 23(a) and Rule 23(b)(2) because all the requirements of the Rules are met.
46. The class is so numerous that joinder of all members is impracticable. Upon information and belief, there have been over 40 non-white employees during the preceding four years who have been passed over for promotions in favor of white employees on account of Defendant's illegally and racially motivated preference for white employees in management positions.
47. There are questions of law and fact common to the class, including whether they were all denied promotions pursuant to Defendant's unlawful policy of favoring white employees for management positions.
48. Aponte's claims are typical of those of the class members. Aponte's claims encompass the challenged practices and course of conduct of Defendants. Furthermore, Aponte's legal claims are based on the same legal theories as the claims of the putative class members. The legal issues as to the violation of 42 U.S.C. § 1981 by Defendant's conduct apply equally to Aponte and to the class.
49. Aponte will fairly and adequately protect the interests of the class. Aponte's claims are not antagonistic to those of the putative class and he has hired counsel skilled in the prosecution of class actions.
50. Defendant has acted on grounds that apply generally to the class including by employing a racially motivated preference for white employees in management positions, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

COUNT ONE – DISCRIMINATION AGAINST NON-WHITES IN VIOLATION OF THE CIVIL RIGHTS ACT OF 1866 ON ACCOUNT OF RACE ON BEHALF OF PLAINTIFF AND THE CLASS

51. As set out more fully above, by promoting white over non-white employees in to management positions, Defendant has engaged in a pattern and practice of disparate treatment towards its non-white employees, in violation of 42 U.S.C. § 1981, as amended, which prohibits discrimination on account of race in making and enforcing contracts including in the context of promotions.
52. As a direct and proximate cause of Defendant's discriminatory conduct, Plaintiff and the class have suffered and will continue to suffer economic damages including lost earnings and benefits, as well as non-economic damages including emotional distress and humiliation, as well as damage to their careers and reputations.
53. Accordingly, Aponte and all other members of the class are entitled to an injunction against Defendant directing it to cease its discriminatory practices and policies and to correct past illegal discriminatory promotional decisions, and to pay illegally denied raises, as well as an amount to cover their attorneys' fees and costs.

COUNT TWO – ILLEGAL RACE DISCRIMINATION IN FAILING TO PROMOTE PLAINTIFF CARLOS APONTE TO THE POSITION OF DISTRICT MANAGER IN VIOLATION OF THE CIVIL RIGHTS ACT OF 1866.

54. As described above, Defendant has illegally failed and refused to promote Plaintiff Carlos Aponte to the position of District Manager despite his repeated interest in being promoted to management, and his multiple applications for open positions.

55. Defendant's conduct in this regard was motivated by its desire to have white employees in management positions rather than non-white employees, in violation of The Civil Rights Act of 1866, as amended.
56. As a direct and proximate result of Defendant's discriminatory practice as described above, Plaintiff Aponte has suffered economic damages in the form of lost promotions and corresponding raises. He has also suffered non-economic damages including mental anguish and humiliation, and damage to his professional reputation.
57. Accordingly, Defendant is liable to Plaintiff Aponte for economic damages, non-economic damages, attorneys' fees and court costs.

VIII. DEMAND FOR RELIEF

Plaintiffs claim:

- a. An order certifying this case as a class action and appointing Aponte and his lawyers as class representative and class counsel;
- b. Compensatory damages;
- c. Punitive damages;
- d. Interest and costs;
- e. Attorneys' fees; and
- f. Such other and further relief as the Court deems just and equitable.

IX. JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

Plaintiff, CARLOS APONTE, JR.,
individually and on behalf of other similarly
situated individuals

By 
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Attorney for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Carlos Aponte, Jr., individually and on behalf of all other similarly situated individuals

(b) County of Residence of First Listed Plaintiff Hartford

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Richard E. Hayber, The Hayber Law Firm, LLC, 221 Main Street, Suite 502, Hartford, CT 06106 Tel: (860) 522-8888

DEFENDANTS

The Coca-Cola Bottling Company of Northern New England, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §1981

Brief description of cause:
race discrimination

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFF

JUDGE

MAG. JUDGE