

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GRETCHEN COLON,

Plaintiff,

vs.

**YSC(AMERICAS), INC. and
YOUNG SAMUEL CHAMBERS,
LIMITED,**

Defendants.

Civil Action No. _____

**ACTION UNDER
42 U.S.C. § 1981**

JURY TRIAL DEMANDED

COMPLAINT

Gretchen Colon, for her Complaint against Defendants YSC(Americas), Inc., and Young Samuel Chambers (“YSC”), Limited (collectively “Defendants”), shows the following:

PRELIMINARY FACTUAL STATEMENT

1.

Defendants are *de facto* one company founded and led by Dr. Gurnek Bains (“Bains”). Defendants are a firm of “business psychologists” who assess candidates for top-level leadership positions at employers (including by asking candidates in their job interviews to talk about their parents, children, spouses, religion and mental health) and then work jointly with employers to make what Defendants describe as “critical hiring decisions” for employers.

2.

Defendants publicly state that, in their psychological assessment business, they are “engaging in critical hiring decisions for senior leaders” for employers; that they conduct these assessments for “executive selection, promotion and/or development” at employers; and that they prepare assessments that are “used for hiring” at employers.

3.

Among the employers for which Defendants engage in their “executive selection” business is Turner Broadcasting, Inc. (“Turner”). Turner is a well-known worldwide media company with its headquarters in Atlanta, Georgia that, among other things, owns the prominent networks of CNN. Turner is owned by TimeWarner. In the first half of 2017, Turner accounted for over \$6 billion in revenue – 41% of TimeWarner’s revenue. Turner has recently teamed up with Defendants to make joint decisions in filling key leadership positions at Turner.

4.

To “assess” candidates for leadership positions at employers like Turner, Defendants maintain “databases” of individuals who Defendants have assessed. Defendants *segregate their databases by ethnic group* - such as “Latin Americans” and “Sub-Saharan Africans”, *i.e.*, black Africans – and then publicly draw

conclusions about the “predilections” and psychological attributes of those ethnic groups for employers to read, consider and utilize in employment decisions.

5.

Defendants’ founder and leader, Bains, is the author of a book entitled *Cultural DNA* that was published in 2015. Defendants promote and praise *Cultural DNA* on their web site as part of the unique work they do with employers. Bains also promotes Defendants in his book. Turner’s white male President – International, Gerhard Zeiler, read and praised *Cultural DNA* and both referenced and utilized it for Turner and (with Defendants) in making the key leadership position selection at Turner that is the subject of this suit.

6.

Cultural DNA publicly asserts that employers *should consider the ethnic group identity* in making decisions because, according to Bains, each such group has what he describes as a distinct “cultural DNA.”

7.

Bains claims that the “cultural DNA” of a group like Latin Americans is shaped by the group’s purported biological genes. For example, Bains claims that Latin Americans have a “very high level” of a certain gene allele that makes them “likely hardwired” to be more independent-minded, rebellious, and hyperactive. Bains also claims that the “cultural DNA” of Latin Americans is shaped by the

purported long history of the group and the “predilections” of members of the group from long ago – even ancient times. In the case of Latin Americans, Bains writes that they are rooted in a history that includes human sacrifice and “bloodletting.”

8.

In *Cultural DNA*, Bains writes that Latin Americans are “people who like to have their say,” have a leadership “style” that is “far less likely to produce results” and “are difficult to get really close to on an interpersonal level.”

9.

Bains writes that only 2% of Latin Americans in Defendants’ Latin American database have a strength in key leadership skills – and he asserts that this is the lowest percentage of any assessed group in the world.

10.

In teaming with Defendants, Turner has now wholly embraces these views on Latin Americans in assessing Latin American candidates for leadership positions at Turner.

11.

Turner is almost wholly run by white (and non-Latin American) males. Indeed, in 2016, female leaders below the glass ceiling at Turner issued a Report within Turner addressing the lack of advancement of women at Turner.

12.

The Turner Report includes statements that that there is “outright bias” against women at Turner, that Turner’s “leader profiles favor men,” and that the “C-Suite need[s] to evolve.”

13.

It was reported in the Turner Report that Turner’s CEO John Martin recently held a Leadership Summit and all the five speakers who spoke about innovation were men. One female leader stated about this exclusion, “I felt uncomfortable, even physically ill.”

14.

Another female leader stated in the Turner Report that she was the only woman in 95% of her Turner meetings. It was also reported that there is “a requirement to socialize outside of work in order to stay in good graces – smoke cigars, go to strip clubs, or go to play golf. It excludes me from the conversations and relationship building.”

15.

Turner and its 11 of 12 white male Board of Directors ignored the Report.

16.

Instead of addressing the lack of diversity at Turner, in late 2016, *and with the express approval of its Board of Directors (that includes the CEO of TimeWarner)*, Turner/TimeWarner decided to team up with *Cultural DNA* proponents Bains/Defendants to make a joint decision to fill a top leadership President position at Turner with a white non-Latin American male when Turner and Defendants knew that the most qualified candidate was a highly successful Latin American woman – Plaintiff Gretchen Colon (“Colon”). The factual details regarding the joint decision by Defendants and Turner to reject Ms. Colon for the position, and to then terminate her approximately twenty-year career at Turner, are below.

17.

This was not the first time Turner teamed up with Defendants to select a high-level executive at Turner. And each time Turner and Defendants have teamed up, they not surprisingly have selected a white, non-Latin American male for the position.

FACTS RELATING TO THE SELECTION DECISION

18.

Plaintiff Colon is a former employee of Turner who worked for Turner for approximately two decades. By 2016, Colon was employed by Turner as a highly

successful and roundly praised Executive Vice President - Latin America Advertising Sales. In that role, Colon reported to President-Latin America, Juan Carlos Urdaneta (“Urdaneta”) who reported to President-International, Gerhard Zeiler (“Zeiler”)

19.

In September 2016, Turner announced that Urdaneta was leaving Turner and that his position would be filled. The position is based in Atlanta, Georgia at Turner’s headquarters.

20.

The decision-makers on the selection were non-Latin American male Bains (for Defendants) and non-Latin-America male Zeiler (for Turner).

21.

Turner leaders with knowledge of the respective qualifications of Colon and the other candidate for the position, Joel Whitten Richardson III (“Richardson”), uniformly believed that Colon was more qualified for the promotion.

22.

As just one example, no one knew more about Colon and Richardson and the qualifications for the President – Latin American position than Urdaneta, who directly supervised Colon and Richardson and had held the subject President position for 16 years. Urdaneta initially proposed to Zeiler that Colon and

Richardson be co-Presidents. When Zeiler told him that would not happen, Urdaneta told Zeiler that he believed that Colon was more qualified than Richardson for the President position. Zeiler then misled Turner CEO Martin when Martin asked who Urdaneta recommended for the position. Zeiler only told Martin that Urdaneta had proposed that Colon and Richardson be co-Presidents and thus falsely hid from Martin that Urdaneta had then expressed a clear preference for Colon between the two based on her superior qualifications.

23.

Despite being uniformly recognized as the most qualified to hold the position of President - Latin America, Colon would have to break through Turner's ethnic/gender glass ceiling to obtain that position. Turner and Bains/Defendants jointly made sure that would not happen.

24.

Zeiler has no direct reports who are either women or Latin American/Hispanic.

25.

Two of the white males who report to Zeiler (one who is a designated spokesperson for Turner – Oliver Hergessell) stated publicly that the President position sought by Colon was “*not a position for a woman.*”

26.

To ensure that the position of President-Latin American would be awarded to a white male, instead of the most-qualified candidate, Zeiler sought and received approval from the Turner Board of Directors to contract with Bains/Defendants.

27.

Zeiler had a long and close connection to Bains and Defendants and was familiar with their “cultural DNA” views. Indeed, before Zeiler joined Turner, Bains had assessed and recommended Zeiler to become a CEO of a company called ITV. Zeiler had also used Bains/Defendants at a company (RTL Group) that Zeiler led. Turner was also familiar with Bains and, indeed, included an essay written by him on its network, CNN.

28.

In speaking with Colon about the promotion decision at issue, Zeiler showed Colon the *Cultural DNA* book written by Bains in the context of telling her the important role Bains/Defendants would play in the decision. Zeiler praised the book to Colon and spoke about how long he had known and had worked with Bains. Zeiler even provided Colon the written “assessment” of him by Bains where Bains had recommended Zeiler for the CEO position at ITV.

29.

While Colon was not yet familiar with the views in *Cultural DNA* that were readily adopted by Turner, Zeiler made it clear to Colon that she was going to be assessed under the approach, views, and methodology of *Cultural DNA*.

30.

Bains writes in his Introduction to *Cultural DNA*, “The central argument of this book is that, while there is much that is common between humans, there are also subtle but profound differences between the psychological instincts of different cultures.”

31.

By “different cultures,” Bains refers to different ethnic groups. Indeed, he segregates groups by chapter and section in *Cultural DNA*, including a section specifically addressing only “Latin Americans.”

32.

Bains writes that a group’s “cultural DNA” sometimes “springs from biological factors.”

33.

In *Cultural DNA*, Bains asserts that Latin Americans like Colon have a “cultural DNA” that is determined by a combination of their unique genes and what he alleges is their deep-rooted history and historical “predilections.”

34.

In describing the history of Latin Americans that he claims is relevant to the “cultural DNA” of Latin Americans today, Bains refers to human sacrifice, “bloodletting,” “internal rebellion and conflict,” and a “casual disregard of human life” that is “well embedded” in the Latin American “cultural fabric.”

35.

Bains writes that Latin Americans have “a very high level” of a certain biological gene allele in their DNA that causes them to be “likely hardwired” for “independent mindedness.”

36.

In the Introduction to the book, Bains writes that there is “a gene called DRD4” that “has short and long alleles.” He writes, “Individuals with long alleles are more adventurous, novelty seeking, independent minded, rebellious as well as hyperactive.” He cites no authority for this proposition. But he then highlights that “something like 75% of South American Indians possess the long allele version.” He then contrasts this percent to only 30 percent in the United States and only approximately 20% in Europe.

37.

Thus, in addressing Latin Americans, Bains is particularly considering the ethnic group he calls “Indians” in Latin American and effectively asserts that,

because of their genes, Latin Americans are more than twice as likely than other ethnic groups like white Americans and Europeans to be rebellious, independent minded and hyperactive.

38.

Bains has no degree either in history or genetics. His notion of “cultural DNA” in this context is one that he created. In his book, he euphemistically refers to his approach as “somewhat radical.”

39.

In specifically addressing alleged genetic differences between ethnic groups that can cause predilections in behavior, Bains writes that, because “differences observed between cultures reflect such biological factors, it may be wiser to recognize this fact that pretend otherwise.” Again, his audience is largely global corporations like Turner and his message is to take these purportedly genetic ethnic stereotypes into consideration in making business decisions – a message that Turner accepted and that Turner and Defendants applied to Ms. Colon.

40.

In seeking to provide support for his cultural DNA assertions about Latin Americans and other ethnic groups, Bains writes, “Most of the primary data centers around evidence accumulated over 25 years working as CEO for the

psychological consultancy – YSC, which has 20 offices globally covering all the regions covered in this book.”

41.

He states that this “data” is “1700 in-depth reports, approximately 200 from each region which contains strengths and development themes identified for each culture.”

42.

Thus, Defendants publicize that they maintain their assessment ratings of corporate leaders or leadership candidates *segregated by ethnic group and used by Defendants in that context.*

43.

Based on these self-created ratings of Defendants, Bains writes that Defendants “have developed finely tuned instincts” (as opposed to objective data) “for what really makes people” “tick in different parts of the world,” i.e., in different ethnic groups like Latin Americans.

44.

Even more, Bains writes that Defendants ethnically segregated and self-created ratings give Defendants “sound insight into the positive qualities, as well as the issues” (by which he means negative ethnic qualities) that leaders “need to be mindful of” as they lead in a global company (like Turner).

45.

Moreover, Bains admits that Defendants' ratings are ratings by Bains and others at Defendants who subscribe to his "cultural DNA" paradigm. Thus, for example, a non-Latin American male (Bains) who believes that Latin Americans are genetically ethnically disposed to be rebellious and hyperactive subjectively rates Latin Americans on their purported leadership skills and then uses those self-created rankings as claimed support data for his belief that the "cultural DNA" of Latin Americans results in weaker leadership skills because they are Latin American. Both the "data" and the conclusions of ethnic stereotypes (whether positive or negative) are concoctions of Bains/Defendants.

46.

For example, Bains asserts, admittedly based *only* on Defendants' self-created, ethnically-divided ratings, that only 2% of Latin American leaders "had a strength in stepping back and leading through others, the lowest score globally."

47.

Echoing his assertions about Latin Americans having a high percentage of long genetic alleles and thus being far more rebellious, Bains writes that "there is a desire on the part of [Latin American] people to have their say ..."

48.

Bains writes that the Latin American cultural DNA “style” of leadership is “far less likely to produce results that a warmer and more engaging” style would produce.

49.

Bains writes, “Latin Americans are difficult to get really close to on an interpersonal level.” Here, he cites to a joke he claims is told in Brazil.

50.

Again, admittedly based only on Defendants’ ratings of Latin Americans, Bains asserts to employers that “only just over 1 percent of Latin Americans executives were rated strong on forming close bonds.”

51.

Again, admittedly based only on Defendants’ own “data,” Bains writes that “close to 50 percent of Latin American leaders had a development need with respect to self-insight, the highest score globally.”

52.

Bains also writes about what he refers to as the cultural DNA “general emotional expressiveness” of Latin Americans. Here he cites to the purported emotional reactions of Brazilians to the 2014 World Cup of soccer. He writes that these alleged World Cup reactions “reflected the rebellious and independent-

mindset” of Latin Americans – again, a “cultural DNA” aspect that Bains earlier attributes at least in part to the distinct genes of Latin American “Indians.”

53.

Thus, while he attributes his conclusion that Latin Americans are much more rebellious than other ethnic groups in their genetic make-up, he cites no authority for that assertion and he is not a geneticist or even a biologist. And while he attributes the alleged unique level of rebelliousness also to what he asserts is a unique history of Latin America rebelliousness and bloodletting in Latin America, he is also not a historian – as shown by his failure to compare Latin American history with the World Wars and other much greater bloodletting in Europe. Finally, he falls back as support for his theory that Latin Americans are ethnically more rebellious and emotional their alleged emotional behavior at soccer games. He apparently has never been to an SEC football game or a soccer game in England.

54.

In adopting the *Cultural DNA* paradigm for Turner, Zeiler agrees with Bains that Latin Americans are ethnically more emotional and less logical than Europeans and Americans of Western European descent. Indeed, in speaking with Colon, Zeiler compared his view of the “logic” of his Latin American team

disfavorably with the logic of his European team – an ethnic stereotype taken directly from his copy of *Cultural DNA*.

55.

In his interview of Colon, Bains told Colon that Zeiler was Germanic and that Germans excelled at logic as shown by their car engineering. Bains told Colon this in explaining that he was measuring her as to how “compatible” she would be with Zeiler.

56.

At the time of that interview, Colon understandably was confused as to why Bains would be rating her on his view of her compatibility with Zeiler instead of her qualifications for the job. That is because, unlike Zeiler and of course Bains, she had not read *Cultural DNA*.

57.

In *Cultural DNA*, Bains wrote that, when a corporate leader makes a decision like a hiring or promotion decision, there is a “natural inclination to recruit in one’s image.” In other words, he asserts that a white male of European descent like Zeiler has a natural inclination to promote a white male of European descent like Richardson over a Latin Americans woman like Colon because the white male is ethnically and in gender the same as Zeiler. Such a “natural

inclination” is unlawful under United States employment law and at least in large part explains why Turner continues to be run by white males.

58.

Not surprisingly, Bains does not condemn this alleged natural inclination to discriminate on the basis of ethnicity and instead he at best accepts it as a fact of life in employment decisions. Moreover, Bains writes in this very context, “Those who do not fit the culture, but nevertheless make it past these filters, frequently end up being ‘tissue rejected’ unless they adapt.”

59.

Thus, applying this belief and methodology in his interview of Colon, as a Germanic person, Bains believed (and even expressed to Colon) that Zeiler was logic focused and skilled. As established above, Zeiler believed that Latin Americans’ “cultural DNA” makes them more emotional and less logical and analytical. Thus, in sharp contrast to deciding to promote white-male Richardson, to decide to promote Colon to a position reporting to Zeiler would create the significant risk that she would be “tissue rejected” by the Germanic Zeiler unless she “adapts” to his superior logic Germanic cultural DNA. Indeed, during the interview, Bains told Colon that, if she worked for Zeiler, she would have to “adapt” to him. The ethnic bias here could not be clearer.

60.

Bains' views of Latin Americans are in many ways mirrored by his stated views of Sub-Saharan (*i.e.*, black) Africans in *Cultural DNA*. Indeed, with respect to the emotionalism of Latin Americans, he attributes it in part to the cultural DNA of Sub-Saharan (*i.e.*, black) Africans who came to Latin America - and then interbred with the "South American Indians" who were already genetically predisposed to rebelliousness and hyperactivity according to Bains.

61.

A review of the assertions about Latin Americans and Sub-Saharan Africans in *Cultural DNA* shows a significant overlap between their purported "cultural DNA" that is contrasted with the "cultural DNA" of Americans of white Western European descent.

62.

Bains' chapter on black Africans has the revealing subtitle, "Under Nature's Shadow."

63.

Bains writes, "Consultants in our South African office [who according to Defendants' web site are all white] report that African leaders are often at sea when it comes to forming close relationships at a distance or knowing how to navigate relationships to exert influence in a global organizational structure."

64.

Bains writes that “an important dimension” of black Africans is that they “live in the moment.” He writes that this inherent dimension presents challenges for global employers like Turner because it requires more patience from “leaders from the outside,” *i.e.*, non-black leaders.

65.

Bains writes, “People in Africa tend to shy away from direct confrontation in the workplace and holding an individual accountable in a public forum only results in a passive-aggressive response.”

66.

Again, relying only on Defendants’ self-created, ethnically-segregated ratings, Bains asserts that only 9% of African leaders “were seen to have a strength around analytical thinking, the lowest score globally.”

67.

Bains writes that his African “data” also shows that “African leaders tended to have low scores across a range” of positive business leadership attributes.

68.

In essence, according to *Cultural DNA*, Latin Americans and black Africans in large part lack logic and pragmatism and are hardwired by historical and genetic instinct to live in the moment, rely on emotions and passions and have lesser

analytical and reasoning abilities. Thus, because of their “cultural DNA,” Latin Americans like Colon and black Africans are thereby far less likely to be effective business leaders than white Americans of European descent like Richardson.

69.

In sharp contrast to Latin Americans and black Africans in *Cultural DNA*, United States Americans are addressed in a chapter positively subtitled “the Change Makers.” Bains traces them back to the Pilgrims who landed from Europe in the 17th Century, and thus makes it clear that he is referring to white Americans of European descent.

70.

Indeed, in referring to the immigration of Hispanics into America, Bains writes that such immigration has “started a process of changing the cultural DNA of certain southern and western States” [presumably including Georgia where Colon has apparently contributed to this alleged Latin American cultural DNA invasion].

71.

In addressing the “cultural DNA” of white Americans of European descent such as Richardson (who Defendants and Turner selected for the position) Bains writes that American business executives are more positive than executives in other countries. He has written, “American leaders are positive, action oriented,

goal focused and more prepared to embrace disjunctive change than people from just about any other part of the world.”

72.

Bains asserts that, in the 17th century, the Pilgrims left their cultural DNA stamp on successive generations of Americans and ties the Pilgrims to the success of start-up companies in the U.S. There is unsurprisingly no research that he cites for this view. His only stated support of his Pilgrim-start-up connection: “I believe this was deeply embedded in the early phase of settlement of the continent.”

73.

Bains writes, “Like the earliest pioneers, [Americans] are prepared to be bold in turning thought to actions. In our [admittedly self-created rankings] research, over 40% of American executives had a strength in action orientation, the highest score globally.” Indeed, he finds his “finding” here to be so important and central to choosing corporate leaders that he repeats it later in his book.

74.

Cultural DNA is featured prominently on Defendants’ joint web site. Defendants repeat the assertion in *Cultural DNA* that “genes related to adventurousness or rebelliousness are evident in 50% of Latin Americans” but much less in “people from the U.S.” Defendants assert, “Huge variations are also

seen in a number of other ‘psychological genes.’” Again, these are now TimeWarner/Turner’s partners in making key leadership selections.

75.

In essence applying *Cultural DNA* concepts to gender, a recent internal memo at Google on diversity issues stated that “the abilities of men and women differ in part due to biological causes and that these differences may explain why we don’t see equal representation of women in tech and leadership... We need to stop assuming that gender gaps apply sexism.”

76.

Google stated that the memo writer’s views were “contrary to our basic values and our Code of Conduct...” Not so with Defendants and TimeWarner/Turner – analogous types of deterministic views about Latin Americans (and black Africans) are not only not deemed to violate TimeWarner/Turner’s Code of Conduct and basic values *but instead are affirmatively adopted and used by TimeWarner/Turner in making key hiring decisions at TimeWarner/Turner with the direct involvement of Defendants*. Moreover, Turner and Defendants go beyond the Google memo and directly violate the law by asserting that certain jobs are not jobs for women.

77.

Once Defendants/Bains were brought into the decision-making process, Bains performed an “assessment” of Colon that he ultimately turned into both a verbal and written report to Zeiler.

78.

Bains began his “assessment” by meeting with Colon and asking her questions such as what traits she inherited from her parents. He also asked her improper questions about her personal life, including her children. He asked her how her husband would describe her and then asked her if she was religious.

79.

Bains closed his “assessment” of Colon and summed up his views on her candidacy for the position by stating to her as she walked out his door, “You know this job requires extensive travel, how will you be able to do this [job] given that you have two children?” Thus, Bains and Defendants readily agreed with Turner’s spokesman’s published position that this was not a job for a woman.

80.

After asking Colon questions about what traits she had inherited from her parents and engaging in the other actions described above, Bains drew from his *Cultural DNA* views about Latin Americans and not surprisingly rated Colon in a

written report to Turner so negatively in the context of a President position that the report was effectively a decision that Colon should not be placed in the position.

81.

For example, while even Zeiler had told Colon in her interview with her that she was viewed by her team as having great leadership skills, because of Bains' self-created "cultural DNA" views to the contrary about Latin Americans, Bains rated her in writing to Zeiler as not being strong in leadership skills – obviously a death knell for seeking a President position.

82.

In the narrative portion of his written assessment of Colon, Bains drew directly from his assertions about Latin Americans in *Cultural DNA*. For example, in describing Colon, Bains uses the words "passion," "emotionally," "instinctive," "intuition," or "emotions" *eleven* times. He wrote that, while she is "people oriented," she needs to "manage her *innate tendencies*" and she needs "to ensure that her emotions do not cloud her thinking around both business options and people." (emphasis added). He wrote that Colon's "feelings can influence her behaviour and decision making to a large extent." These descriptions essentially come straight from Defendants' views of Latin Americans in *Cultural DNA*.

83.

Similarly, Bains wrote that Colon “needs a strong, pragmatic operator around her” and that her “reasoning ability” was only in the average range. Once again, Bains drew these ethnic stereotypes from *Cultural DNA*.

84.

While Bains had no information of how Colon actually performed at Turner, he repeatedly stated that, because she was so focused on being active at Turner (*i.e.*, that she lived in the moment), she did not take the time to “articulate her vision” for those she led “right through to the ground levels.” Once again, because of their unique genes, Bains believes that Latin Americans are genetically “likely hardwired” for independent-mindedness. And he essentially concludes that, because of their genes and history, Latin Americans are not capable of standing back and leading through others – only 2% have a strength in that area (the lowest in the world). His assessment of Colon simply plugged in those “findings” about Latin Americans.

85.

After preparing his written “assessment” of Colon, and giving her “benchmarking” ratings for the promotion decision at issue here, Bains met with Colon. At that meeting, Bains informed Colon that she was being measured for the

job not against Richardson, other Turner leaders, corporate leaders generally or corporate leaders in her industry.

86.

Instead, Bains told Colon that she was being measured for the job *by use of Defendants' Latin American database*.

87.

Indeed, when Colon asked if Bains was measuring her against Latin Americans who were in her business field, Bains stated that he was not and that most of those in his Latin American database were in banking and related fields.

88.

Thus, Defendants and Turner used Defendants' Latin American database to rate Colon and for only one reason – Colon was also Latin American -- a *per se* violation of 42 U.S.C. § 1981 by Defendants and Turner.

89.

Bains provided his written assessment of Colon to Zeiler and, in addition, spoke to Zeiler about his assessment and views of Colon.

90.

Defendants' and Bains' written and verbal assessments and comments about Colon were considered and relied upon by Turner and Zeiler and making the

decision to select Richardson instead of the uniformly believed more qualified Colon for the President position.

91.

Bains' and Defendants' reports to Turner on Colon were not just a contributory cause but a pivotal cause of the decision to reject Colon for the position. Turner ceded such control over the decision to Bains and Defendants such that the decision was *de facto* made jointly.

92.

Bains admits that, when he rates Latin Americans in leadership, he rates them lower than any other group in the world – indeed, only 2% have such a strength. And the position here was one of President. Thus, Bains effectively admits that, when he rates candidates for leadership, Latin Americans like Colon fare far worse than European/Americans like Richardson. Even more, he writes that this lack of leadership is simply part of the “cultural DNA” of Latin Americans like Colon and the “positive, goal focused” ability to drive change and results is part of the “cultural DNA” of European descendant white Americans like Richardson.

93.

With the stated position that this was not a position for a woman and with *Cultural DNA* as Defendants' and Turner's guide, Colon never really stood a

chance to obtain the position against a white male American of European descent. That is why Turner chose Defendants to make the decision with Turner.

94.

The blatant discrimination here cannot be seriously disputed and is effectively admitted. First, Turner and Bains agreed this was not a job for a woman. Second, this is a startling case where Turner/Defendants embraced ethnicity as the distinction and asserted that it is a valid basis to make an employment decision due to “cultural DNA.” Like the Google memo writer, Turner/Defendants state that it is not really discrimination because Latins simply cannot match up to Americans in leadership because of the badges of their ethnic genes and history. Fortunately, for Latin Americans and others in this country, the law is directly to the contrary.

95.

On February 13, 2017, Turner told Colon not only that she was not promoted but that she could no longer stay at Turner. Colon was summarily fired with an effective last date at Turner of May 31, 2017. She is now unemployed.

96.

Since Urdaneta has left Turner and Richardson was selected over Colon, even Turner - *Latin America* is now run by someone who is not Latin American. As a result, in large meetings, Zeiler has repeatedly stated that Turner - Latin

America will no longer be run like a family (another Cultural DNA stereotype about Latin Americans from *Cultural DNA*).

97.

Not surprisingly with the new team of Turner and the “cultural DNA” proponents of Defendants making key decisions at Turner, other Turner women and Latin Americans leaders have understandably told Colon that they now expect or fear the same discriminatory fate at Turner.

98.

Colon emailed Turner’s US President, David Levy (“Levy”), that she believed she did not get the job because of gender and ethnicity discrimination. Levy responded to the email and never denied the truth of her report. Instead, he violated policy and failed to have her report investigated. He knew her report was true. So he swept her report under the rug so it would not be investigated.

99.

As long ago as 1978, the United States Supreme Court held that it was unlawful for an employer to evaluate an employee by making assumptions that the employee matched a cultural stereotype that is associated with the plaintiff’s protected group. Courts long ago held that the use of such stereotypes is an “anathema” to employment discrimination laws and indeed one of the specific targets of those laws. As one federal court stated, “Eradication of discrimination is

not easy, especially when the discrimination comes not from specific rules or policies that can be repealed, but an individual's deepest attitudes." Defendants and Turner disagree that ethnic stereotypes are wrong, but American employment law will prove them that they are unlawful to use as they were clearly used here.

100.

Defendants were independent contractors in the assessment and joint decision here and had sufficient control over the decisions to be joint employers for purposes of those decisions under federal anti-discrimination employment statutes.

101.

In 2015, Turner required Colon to agree in an Employment Agreement with Turner that she could not claim employment discrimination in federal court against Turner. Instead, she was required to assert any such claim in arbitration. Thus, she has asserted her discrimination claims against Turner in arbitration.

102.

In this lawsuit, Colon alleges that Defendants violated 42 U.S.C. § 1981 because they acted as joint employers in denying her promotion and terminating her from Turner because of her Latin American race/ethnicity.

103.

Colon also alleges that Defendants violated Title VII of the Civil Rights Act of 1964, including sex discrimination, but such claims first require that she file an

EEOC Charge. Colon has filed such an EEOC Charge and will amend this lawsuit to add additional discrimination claims against Defendants when she receives a Right to Sue Letter from the EEOC.

JURISDICTION AND VENUE

104.

This is a civil action over which original, federal question jurisdiction is vested in this Court by virtue of 28 U.S.C. § 1331 and 42 U.S.C. § 1981.

105.

Venue is appropriate in this Court under 28 U.S.C. § 1391(b)(2) and (3).

106.

Colon is a resident of Georgia and resides within the venue of this Court.

107.

Defendant YSC(Americas), Inc. is incorporated in Delaware and can be served with process at Corporate Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

108.

Defendant Young Samuel Chambers (“YSC”) Limited is registered to do business within the United States and can be served with process at Corporation Service Company, 80 State Street, Albany, New York 12207-2543.

109.

YSC Holdings Limited is a holding company for Young Samuel Chambers (“YSC”) Limited. YSC(Americas), Inc. is simply the division used by Young Samuel Chambers (“YSC”) Limited to do business in the Americas – including for Turner in Georgia.

110.

YSC Holdings Limited publishes consolidated financial reports that do not distinguish between revenue or assets of the two Defendants – they are treated as one.

111.

Defendants are subject to general personal jurisdiction as they transact business in Georgia including with Turner.

112.

Defendants are also subject to specific personal jurisdiction because, in committing the unlawful conduct alleged in this Complaint, Defendants knew that Colon was a Georgia resident, was employed by Turner in Georgia and that the position she sought at Turner was based in Georgia. Thus, to the extent that Defendants engaged in intentional tortious/wrongful conduct outside of Georgia, they acceded to personal jurisdiction in Georgia because Defendants knew that their intentional conduct was expressly aimed at Georgia and that it would cause

harm in Georgia to a Georgia resident regarding her Georgia employment with a company headquartered in Georgia.

113.

Defendants have more than sufficient minimum contacts for personal jurisdiction in Georgia including, but not limited to, transacting business in Georgia (including with Turner) and soliciting business within Georgia.

114.

Defendants' violation of 42 U.S.C. § 1981 occurred in Georgia.

115.

Defendants regularly solicit and conduct business in Georgia, engage in a persistent course of conduct in Georgia and derive substantial revenue from goods used and consumed and services rendered in Georgia.

116.

Defendants committed an unlawful injury in violation of Section 1981 in Georgia.

117.

Defendants' unlawful actions towards Ms. Colon arose from their contacts in Georgia, *i.e.*, their contacts with Turner.

118.

Defendants purposefully did acts and consummated transactions in Georgia.

CLAIM

COUNT ONE

(Violations of 42 U.S.C. § 1981)

119.

Colon repeats and incorporates by reference all of the allegations set forth in paragraphs 1 through 118 above as if set forth fully herein.

120.

Under 42 U.S.C. § 1981 it is unlawful for an employer or a joint employer like Defendants to discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment (including promotion decisions and terminations) because of such individual's race/ethnicity/national origin, including because such an individual is of Latin American race/ethnicity/national origin.

121.

Defendants were aware that Colon was of Latin American race/ethnicity/national origin.

122.

Defendants discriminated against Colon in Georgia because of her race/ethnicity/national origin in its decision-making role in denying her the promotion into the President – Latin American role at Turner and in the resulting decision to terminate her employment at Turner because of her Latin American race/ethnicity/national origin.

123.

Defendants' violations of 42 U.S.C. § 1981 have caused Colon to suffer substantial economic damages in back and front pay compensation, benefits, stock options, stock awards, and further benefits and monies.

124.

Defendants' violations of 42 U.S.C. § 1981 have caused Colon to suffer compensatory damages, including, but not limited to emotional distress damages.

125.

Defendants' willful violations of 42 U.S.C. § 1981 with respect to Colon warrant a very substantial award of punitive damages against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Colon respectfully prays:

- A. That a declaratory judgment be issued declaring that the actions of Defendants violated 42 U.S.C. § 1981;

- B. That judgment be entered in favor of Colon and against Defendants awarding Colon all remedies available under 42 U.S.C. § 1981, including but limited to, front pay and benefits, back pay and benefits, compensatory damages, punitive damages, interest, fees, and costs;
- C. That Colon be awarded her costs and attorneys fees for all costs and fees incurred regarding this matter;
- D. That Colon be awarded judgment of compensatory and punitive damages on her claims under federal law;
- E. That Colon be awarded such other and further relief that the Court deems just and equitable; and
- F. That the Court retain jurisdiction over Defendants until such time as it is satisfied that they have fully remedied the practices complained of and are determined to be in full compliance with the law and that all amounts awarded are paid to Colon by Defendants.

MS. COLON DEMANDS A TRIAL BY JURY IN THIS ACTION

This 22nd day of August 2017.

Respectfully submitted,

s/Thomas J. Munger
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