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United States District Court, N.D. California.

Archie BAREFIELD Jr.; Leon Francies; Salvador
Monarrez, et al., Plaintiffs,
v.
CHEVRON U.S.A., INC., Defendant.

No. C86-2427 TEH. | Jan. 2, 1997.

Opinion

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THELTON E. HENDERSON, Chief Judge.

I. INTRODUCTION

*1 This action originated in 1986 as a class action brought on behalf of Black and Hispanic workers employed at Chevron U.S.A., Inc. (“Chevron”) oil production facilities in California’s San Joaquin Valley. The complaint alleged that Chevron discriminated against the plaintiff class on the basis of race and national origin with respect to, *inter alia*, training, job-assignments, and promotional opportunities, in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et seq., the Civil Rights Act of 1866, 42 U.S.C. § 1981, and the California Fair Employment and Housing Act (“FEHA”), California Gov’t Code § 12940 et seq.

The parties eventually settled the action, and the Court approved a “Consent Decree in Full Settlement of Lawsuit” (“Decree”) on June 24, 1991. The Decree, which contained no admissions or determinations of liability, *id.* at 3, provided for (i) good faith promotion goals for various job categories to address work force imbalances, *id.* at 7-8, 12, (ii) establishment of a “Lost Pay Settlement Fund,” (ii) *id.* at 26, and (iii) establishment of a “Compensatory Damages Fund” in settlement of claims for emotional distress stemming from alleged loss of promotional opportunities and/or alleged hostile work environment harassment based on race or national origin. *Id.* at 30.

With respect to the Compensatory Damages Fund, the Decree provided that class members could file claims for emotional distress with a Master, who would then hold hearings and determine each claimant’s share of the Fund, if any. The Decree also provided that individual class

members could “opt-out” of the Compensatory Damages Fund and pursue individual claims to recover damages for emotional distress. *Id.* at 6-7. However, pursuant to the Court’s September 9, 1987 Order certifying the class and setting the applicable limitations period, class members could only seek redress for incidents occurring after May 21, 1983. *See* September 9, 1987 Order at 24, n.4.¹

Three of the named plaintiffs, Archie Barefield, Jr. Leon Francies, Jr., and Salvador Monarrez, Jr., subsequently opted-out of the Compensatory Damages Fund and obtained separate counsel. At a status conference held on June 30, 1994, counsel for the opt-out plaintiffs² stated that the opt-out plaintiffs were limiting their individual claims to claims for damages for emotional distress arising out of denial of promotions and training opportunities. *See* June 30, 1994 Order at 2.³

The opt-out plaintiffs proceeded to trial on their individual claims on Tuesday, August 8 - Thursday, August 17, 1995, and Tuesday, April 23, 1996 - Tuesday, May 7, 1996. The parties filed their post-trial briefs on July 12, 1996.

Having carefully weighed the documentary and testimonial evidence admitted at trial, and for the reasons set forth below, the Court finds as follows:

(1) as to plaintiff Barefield, judgment should be entered in part in favor of plaintiff and in part in favor of defendant,

*2 (2) as to plaintiff Francies, judgment should be entered in favor of defendant,

(3) as to plaintiff Monarrez, judgment should be entered in part in favor of plaintiff and in part in favor of defendant.

II. FINDINGS OF FACT

The Court makes the following general findings, followed by specific findings pertinent to each of the three opt-out plaintiffs.

A. GENERAL FINDINGS⁴

1. Chevron’s Northern California Division (“NCD”) for the Western Region has oil production operations located in four areas in the southern San Joaquin Valley: Kern River (Bakersfield), Taft, Cymric, and Coalinga. In addition, Chevron operates a field services maintenance operation, known as “Crafts,” headquartered in the Taft area. Thus, Chevron’s NCD employees generally work

either in oil production operations or in the crafts. Oil production workers operate and maintain the oil wells and other production equipment, lines and structures. Craft workers include mechanics, electricians and welders who perform skilled maintenance work.

2. Oil production and craft workers consist of both “non-exempt” employees (who are covered by a collective bargaining agreement) and “exempt” management employees (who are exempt from the collective bargaining agreement). The line of progression (from lowest to highest) for oil production and craft positions is as follows:

Oil Production⁵

(1) Non-exempt positions

- Trainee
- Oil Field Operator B
- Oil Field Operator A
- Head Operator

(2) Exempt (management)

- Operations Assistant
- Foreman
- Area Foreman
- Area Superintendent

Crafts

(1) Non-exempt positions

African-American and

Hispanic OOBs and OOBs

Trainee

Mechanic B or Electrician B

Mechanic A or Electrician A

Head Mechanic or Head Electrician

(2) Exempt (management)

Operations Assistant

Craft Foreman

Area Foreman

Maintenance Superintendent

3. Higher-level, non-exempt positions (e.g. Head Mechanics or Head Operators) and lower-level exempt management employees (e.g. OA and Foremen positions) are usually filled by promoting employees up through the ranks (although such slots are sometimes filled by professionals for career development purposes). Thus, employees generally qualify for advancement by developing skills through job assignments and on-the-job training. The most senior management positions (the Production and Maintenance Area Superintendents) are filled by professional engineers.

4. Prior to this litigation, Black and Hispanic employees were rarely promoted beyond the lower-level, non-exempt positions. For example, although there were 59 African-American and Hispanic Oil Operator B’s (“OOB’s”) and A’s (“OOAs”) in 1980, there were zero African-American or Hispanic Operator Assistants (“OAs”). The comparable statistics for the years 1982 through 1985 show a similar picture:

African-American and

Hispanic OAs

	African-American and Hispanic OOBs and OOBs	African-American and Hispanic OAs
1981	69	0
1982	71	0

1983	71	0
1984	71	2
1985	79	1

*3 The testimony regarding other management-level employees reflected a similar lack of minorities. As far as could be discerned, every management-level employee who either testified or was referred to during trial was Caucasian except for (a) Willie Fields, an African-American engineer for Gulf Oil who became a Chevron Foreman after Chevron’s merger with Gulf Oil in 1985, and (b) J. Nakashima, an Asian-American who was promoted to Foreman in 1985. *See also* Office of Federal Contract Compliance Program (“OFCCP”) Investigative Report⁶ at FX00049 (discussing Equal Opportunity Report for 1985 which showed that Chevron employed 120 “officials and managers,” none of whom were Black or Hispanic, and 154 “professionals,” 1.9% [3] of whom were Black, and .6% [1] of whom were Hispanic).

5. Until approximately April 1990, promotional opportunities in the production and craft operations were not announced, posted, or otherwise advertised, and there was no formal application process. In the typical case, the employee selected by Chevron management for promotion was simply asked if he wanted the job. Nor were there any written, or otherwise clearly and consistently articulated, minimum educational, training, or other requirements for the positions at issue in this case. Indeed, as described further in the findings below, it is clear that the selection process for promotions was largely subjective. The evidence also indicated that the management-level employees responsible for promotion decisions at issue in this case were Caucasian. Taken together, these factors provided opportunities for discriminatory bias to taint the promotional process.⁷

6. Between November 1985 and May 1986, the OFCCP conducted an investigation into claims of racial discrimination in Chevron’s training and promotion practices in the southern San Joaquin Valley. The principal issues investigated were “procedures followed in identifying persons for promotion, criteria used,

assignments to relief or temporary duties, identification and selection of employees for training, disciplinary procedures with respect to absenteeism, policies on harassment, and racial slurs, and qualifications of employees at time of hire.” OFCCP Report at FX000049. Based on interviews, documents, statistical analyses and review of promotion procedures, the Report concluded that Chevron had discriminated on the basis of race “through disparate treatment in job assignments, training, promotions .. ” *Id.* at FX000060. This conclusion was based on *inter alia*, statistical disparities, Chevron’s reliance on subjective evaluations and recommendations, and the selective assignment of training opportunities. *Id.*⁸

B. ARCHIE BAREFIELD, JR.

1. Archie Barefield, Jr. (“Barefield”), an African-American male, began his employment with Chevron at age 22 in 1967. Throughout his tenure at Chevron, which extended until February 1991, Barefield worked in the area of oil production. His claim of discrimination primarily focuses on Chevron’s failure to promote him to a position of Foreman in June 1985. He also claims he was denied a promotion in 1990.

*4 2. As described in the general findings of fact above, Chevron’s oil production operations are located in four areas: Taft, Bakersfield, Cymric, and Coalinga, each of which is managed by an Area Superintendent. Each Area Superintendent oversees two to four Area Foremen who in turn supervise several Foremen. The Foremen are assisted by Operation Assistants who also serve as Relief Foreman when a Foreman is absent. The Operations Assistant is the lowest-level management position. The non-management (collective bargaining) positions start with the entry-level Roughneck, Roustabout or Trainee position, and then progress to the Oil Operator B, Oil Operator A, and Head Operator positions.

3. Barefield's first position at Chevron was as an entry level Rotary Helper or Roughneck which involved attaching drilling pipe underground. During this process, there were occasions when only one person could work, allowing the rest of the crew to take a break. The Foreman at the time told Barefield and the other African-American employee in the crew to "stay outside, clean up the location, pick up paper, do tumbleweeds and that kind of stuff" while the Caucasian employees were allowed to have a cigarette or cup of coffee in "the dog house." 8/10 Tr. at 160. Barefield also credibly described an incident at a safety meeting in which the subject of the employees' changing room arose. At the time, Barefield and the other African-American employees changed clothes in one corner of the changing room. An employee told the Area Superintendent "there's a leak down there where them colored boys change clothes." *Id.* Barefield recalled that "it was pretty common" then to be referred to as "boy." *Id.*

4. In 1969, Chevron shut down the drilling rigs, and Barefield was shifted into a two-year oil field training program. The program, which consisted of classroom instruction and on-the-job training, provided an introduction to all aspects of oil field operations and was designed to train participants to become Oil Field Operators. After completing the program, Barefield was promoted to Oil Field Operator B ("OOB") in the Taft area.

5. Barefield received his first performance evaluation in 1971. He was rated satisfactory in all areas from "knowledge of work" to "volume" to "personality" with the following remarks: "willing worker & doesn't have to be prodded [sic]", "does a good job when on the job. gives a full days work," "when in doubt he asks. He wants to do a good job," "Doesn't have to have his work checked," "Has a good attitude," "Is dependable on the job when he is here." Barefield Exh. 1.

6. His next evaluation, dated 1973, is similar but gives Barefield lower marks in the areas of "initiative" and "application," noting that Barefield appeared to have lost some interest in the job and experienced some tardiness problems which improved after counseling. Defs' Exh. A at 001. In 1974, Barefield and three other African-American employees complained to a supervisor that they were getting fewer desirable assignments and fewer training opportunities than Caucasian employees. The outcome of this complaint is unclear.

*5 7. Barefield's 1975 evaluation indicates that the problems noted above in his 1973 evaluation had been satisfactorily addressed, and states that Barefield has

started relieving for Oil Operator A's ("OOAs") a good part of his time. By 1977, Barefield was spending more than 60 percent of his time as a relief "AOA" although he was still classified as an OOB.⁹ His 1977 evaluation thus noted that he was being "rated as AOA," and that he worked "primarily in one Foreman area. Did a very credible job." Def's Exh. A at 005. The evaluation gives him a "very good" overall job performance rating and includes comments such as "self starter, anticipates needs and acts promptly," "Mr. Barefield works a full day, is always busy. He learns fast has good judgment and a very good attitude," "[volume] consistently [sic] above average," "very well liked." Def's Exh. A at 004-005. The evaluation also noted that Barefield "is willing to work at anything to increase experience." *Id.* Indeed, it is clear from the record and Barefield's testimony that his aspiration was to become a Foreman and that he was more than willing to undertake additional assignments and training to achieve this goal.

8. After approximately seven years as an OOB, Barefield was promoted to OOA in 1978, a position he retained for the next four years. He continued to receive very good evaluations with favorable comments such as "very thorough - does high quality of work," "diligent," "safe worker," "good disposition," "reliable on all assignments," "Helps younger employees to learn methods of performing duties," "very good overall job performance. Knowledgeable of all phases of S&R work."

9. Around 1978 or 1979, Barefield and another African-American employee, Cornell Bert, met with the Area Superintendent to complain that they were not being given the opportunity to do relief Head Operator ("HO") work when the HO in their unit was on vacation. Instead, Caucasian employees (including Caucasian OOAs brought in from other crews) were being given the HO relief assignments. Barefield was particularly concerned about this issue because doing relief work is one of the primary ways in which employees receive on-the-job training in higher level positions and qualify for promotions. After this discussion, Barefield began to get a significant amount of HO relief work.

10. Barefield's 1981 evaluation again shows consistently strong marks and favorable comments. For example, it states that Barefield "learns quickly, good overall abilities to grasp 'big picture', adjusts well to change, shows good judgment and attitude. Very astute young man, presents himself well." Under the Leadership category the comments are "Handles H.O. Relief assignments well. Demonstrates leadership qualities. Not afraid to make a decision." He is also praised for being "very reliable", having a "very good disposition," being "very thorough,"

showing “excellent application to work,” “show[ing] initiative” and “making sound decisions and try[ing] new ideas.” One of his evaluators states that Barefield should be considered for promotion to HO; the other indicated that he needed additional seasoning before promotion to an Operations Assistant (one step above HO). Def’s Exh. A at 009.

*6 11. In May 1982, Barefield was promoted to a Field Operations Assistant (OA), the lowest-level management (exempt) position. He was the first African-American in Chevron’s NCD ever to be promoted up through the bargaining unit ranks into an exempt position. Since one of the main responsibilities of an OA is to provide Foreman relief, this position is a stepping stone to a Foreman position. Between 1982 and 1985, Barefield spent between 40 and 50 percent of his time as a Relief Foreman in two Foremen areas that were responsible for 653 wells and related facilities, including, among other things, six oil cleaning plants, two portable steam generators, and three contract well crews.

12. The performance evaluations for the exempt OA position rate each employee in 15 categories by placing an “x” on a continuum that goes from left (poor/unacceptable performance) to right (exceptional performance). An “x” at the mid-point of the continuum is considered an average rating. An “x” to the right of the mid-point is considered an above-average rating. Barefield’s first evaluation as an OA (dated October 1982) gives him above-midpoint ratings in 13 of the 15 categories, including Supporting Management Objectives, Commitment to Job, Job Knowledge, Originating and Adapting to New Ideas, Written Communication, Oral Communication, Ability to Work Independently, Working with Others, Planning and Organizing, and Developing Subordinates. He received mid-point marks in two categories: (a) Decisiveness and (b) Problem-solving, with the respective comments that (a) he needs to improve on making out PRO-472’s based on his own decisions, and (b) that he had made some decisions based on hearsay rather than facts.¹⁰

Overall, however, the evaluation is very positive and contains numerous affirmative comments, noting, *inter alia*, that Barefield had done a “very satisfactory job” with respect to specified assignments and that “He has done a good job in keeping cost [sic] on some special well work jobs. Also in the O.A. position he does a good job of contacting service companies for work estimates and organize [sic] jobs such as well surveys, fishing jobs, pump co. for special pumps.” Def’s Exh. A at 010. He was also praised for initiating improvements in production record methods, completing assignments expeditiously, expressing his thoughts well in small

groups discussion, and being very well organized and very dependable. *Id.* at 010-013. It is also clear that Barefield took his role as the first African-American OA seriously. “I tried to set an example not only for myself,” he testified, “but for the company and for other -- for other Black employees.” 8/10 Tr. at 174.

13. Barefield’s evaluation for the following year (dated October 1983) was also very solid. Again, he received marks to the right of the mid-point in 13 of the 15 categories, including Decisiveness and Problem Solving, the two areas he had received mid-point marks in the year before. The two areas he received mid-point marks in this time were Developing Subordinates and Handling Personnel Problems. No explanation or comments accompanied these marks.

*7 Notably, Barefield’s marks on the individual categories are inconsistent with his “Summary Evaluation” rating at the end of the performance appraisal. Although, as indicated above, the ratings in the individual categories were predominately to the right of the mid-point, in some cases substantially so, Barefield’s Summary Evaluation rating is exactly at the mid-point of the continuum.

Like his previous evaluation, Barefield’s 1983 evaluation also contains a number of positive comments such as “productive worker with very little wasted time,” “completes assignments with minimum supervision,” “very dependable,” “Did very good job in reducing gas fuel costs,” and “gets along well with people and very considerate of others.” Def’s Exh. A at 016-17. The evaluation also noted that “Problems that have developed in the oil cleaning plants and the field gas system are usually discussed with Archie. He has been able to reason out some good sound conclusions.” *Id.* at 016. This evaluation also states that Barefield had “improved considerably on developing facts to base conclusions [sic].” *Id.* at 017. The only criticism noted was the following: “He understands new tools and services that are used in the field. Needs to be more curious or interested.” *Id.* at 016.

14. On November 18, 1983, Barefield’s supervisor filled out a Placement Recommendation (form GO-311-1). Section I provides for an “Assessment of Employee Promotability” and allows the supervisor to indicate whether the employee is promotable “now,” “with experience,” or “not at present.” Barefield was marked “promotable now” to the position of Production Foreman.

15. In 1983 and 1984, Barefield took courses in order to improve his knowledge and potential for advancement. In February 1983, Barefield completed Chevron’s

Supervisor Development Program. In June 1984, he completed Chevron's two-month Supervisory Skills and Knowledge Program. In December 1984, Barefield completed a three-day WESTEC course in Oil Field Workover Well Control.

16. The record does not include an evaluation for Barefield for the year October 1983 to October 1984, the last full year directly preceding the promotions at issue. Despite the highly questionable absence of this evaluation -- Chevron produced a complete set of evaluations for the years 1977 through 1985 *except* for the year 1984¹¹ -- its omission was not discussed at trial. We conclude, however, that such evaluation did exist and that it was at least as favorable to Barefield as his previous evaluations. A July 16, 1986 psychiatric evaluation of Barefield by a Dr. Enelow (retained by Chevron) discusses a December 1984 performance review in the section entitled "Review of Records":

A complete review of records will be found in an addendum to this report.... [Barefield] appeared to have rather good performance reviews. *In December 1984*, he was described as having good communication abilities, good tact, and was described as intelligent with quick mind, a fast learner, and aggressive.

*8 Pl's Exh. 124 at 7 (emphasis added); *see also id.*, addendum at 2.¹²

17. Barefield's next evaluation covers the period October 1984 to June 1985, which immediately preceded the 1985 Foreman promotions at issue; it was not, however, filled out until December 19, 1985 -- after Barefield had filed his charge of discrimination and left Chevron on a stress disability. This evaluation is dramatically at odds with all of Barefield's prior evaluations and contains one negative comment after another such as "slow," "does not take responsibility," "needs to improve overall oilfield knowledge," "requires constant supervision," and gives him an overall rating of significantly below average.

The Court finds that this evaluation (which was not reviewed with Barefield because he was out on disability) represents a self-serving, after-the-fact attempt by Chevron to justify its failure to promote Barefield. Having carefully evaluated the testimony of Barefield and Tom Harrison, the then-Area Superintendent who "consulted" on the evaluation, the Court finds it incredible that Barefield's performance suddenly plummeted without apparent reason just months before the promotions at issue in this case. Accordingly, the Court has disregarded the 1985 evaluation as an accurate indicator of Barefield's performance between October 1984 and June 1985. Instead, it supports the Court's strong conviction that, since June of 1985, Chevron has consistently presented a

skewed picture of Barefield's abilities in order to justify its promotion decisions.

18. In the spring of 1985, Chevron merged with Gulf Oil Company and restructured certain of its operations. As a result of this restructuring, and retirements, 23 Foreman positions became open in Bakersfield, Taft, Cymric and Coalinga (plus one Foreman position in Crafts).¹³

19. Chevron did not announce the Foreman openings, solicit applications, or publicize the criteria that would be utilized to make selections. At trial, Area Superintendent Harrison testified that the standard used to make the selections was the "best qualified candidate consistent with business needs." 8/17 Tr. at 18-19. This vague and generic standard created a substantial opportunity for subjective and improperly biased decisionmaking.

20. In February of 1985, Area Superintendents were asked to recommend employees for post-merger positions. In response, Chevron management employees selected a pool of 55 employees to consider for the anticipated Foreman and other openings. This pool included all 12 permanent field OAs (including Barefield) as well as employees holding a variety of other positions. As of this time (1985), Chevron had yet to promote a single African-American through the ranks to the position of Foreman. Rather, the African-American employees remained bottlenecked in the lower-level OOA and OOB positions¹⁴; nor had Chevron otherwise employed any African-American Foreman.

21. Senior managers ranked the pool of 55 employees through a process called the "Rack-Up." Barefield was the only African-American employee included in the Rack-Up. The Rack-Up indicated each employee's service date¹⁵, education, time in present job, summary performance rating, directly and other related experience, ability to learn, and a "Qualification Score" in the area of "Management Skill" and "Job Knowledge." It is clear that, of the above factors, the Qualification Scores were considered critical, and indeed, were largely determinative of whether an employee was promoted. This is consistent with the promotion procedures set out in Def's Exh. N at 4769, which indicate that the Qualification Scores were central to the selection process.

*9 22. The Qualification Score (Q.S.) in each area was derived by ranking each employee on a scale of either 1 to 4 or 1 to 5 (with 4 or 5 being the best) in a variety of categories. While seemingly objective on the surface, it is clear that the scoring process was largely subjective. A group of four (all Caucasian) senior managers, (including Barefield's Area Superintendent, Tom Harrison) met and decided the scores for each person. These scores, which

were confidential and not shared with employees, were not directly tied to any objective criteria¹⁶ but rather turned on the subjective opinions of the managers present at the meeting and any Foremen they consulted beforehand. While there is nothing inherently discriminatory about this approach, it provides substantial opportunity for injecting improper criteria into the scoring process. This clearly occurred in the case of Barefield, whose total Qualification Score of 77 placed him last among all 55 employees in the Rack-Up, along with one other employee who also received a 77. We examine each portion of his score in turn.

(a) Job Knowledge

The job knowledge score is based on a rating of 0 - 4 (with four the best) in seven separate categories, for a possible total of 28 points.¹⁷ Barefield was given the dismal score of 6, less than half the average job knowledge score of 13.9 for the other 11 permanent field OAs in Chevron's Northern California Division. Thus, even under defendant's theory that Barefield was only an "average" OA performer -- since he received "mid-point" OA Summary Evaluations¹⁸ -- he should have received a job knowledge score closer to the vicinity of 13, not 6. Even more importantly, one-quarter (3) of the twelve permanent field OAs promoted¹⁹ had the exact same "average" or "meets expectations" summary rating on their performance evaluations as did Barefield.²⁰ Yet their average job knowledge score was even higher -- 15. Thus, even if we limit our comparison to the other permanent field OAs who received the exact same "meets expectations" rating, Barefield's score is a glaring deviation which defendant did not credibly explain.

The score of 6 is even less defensible when one considers that Barefield had 18 years of experience with Chevron and performance evaluations which consistently gave him good marks in job knowledge. *See e.g.* Def's Exhibit A (1983 evaluation [job knowledge rating significantly to the right of mid-point], 1982 evaluation [same], 79 evaluation [second highest rating in job knowledge category; "good knowledge of S&R type of work"]). Indeed, it is highly unlikely that Chevron would have rated Barefield "promotable now" to the position of Foreman (rather than "promotable with experience") unless Chevron believed that Barefield had at least "good" job knowledge in some areas. Incredibly, however, Barefield was not given a job knowledge Qualification Score of 3 ("Has good knowledge/experience") in *any* of the seven Job Knowledge categories. The majority of his scores were 1's ("Is acquainted/limited knowledge"), rounded out by two zeros ("has no knowledge/ experience) and one 2 ("is

acquainted/adequate knowledge").²¹

(b) Management Skills

***10** This portion of the Qualification Score is based on a rating of 1 - 5 (5 being the best) in 30 categories for a total possible score of 150. Again, Barefield's score was so far below that of the other permanent field OA's that a strong inference of discriminatory scoring arises. Barefield received a score of 71, which was substantially below the average score of 112 for the other 11 permanent field OAs, and even further below the average score of 132 for the three other permanent field OAs who received the same mid-point "meets expectations" Summary Evaluation rating as Barefield.

Moreover, the scores he was given in various categories are contradicted by his performance evaluations. A few examples are as follows: (i) he was scored a 2 (below average) in the category "accepts responsibility" although his 1982 evaluation specifically noted that he "accepts responsibilities well"; (ii) he was scored a 2 (below average) in the categories "originates ideas to improve work methods" and "initiates tasks that need doing" although his 1983 evaluation praised him for developing good solutions to problems, his 1982 evaluation praised him for initiating improvements, and his 1981 and 1977 evaluations gave him the second highest rating in "initiative," the latter noting that he was a "self starter, anticipates needs and acts promptly;" (iii) he was scored a 3 (average) in the category "knows basic methods and skills required by job" although his last two performance evaluations gave him above average marks in job knowledge. Def's Exhibit A.

23. The Court finds that the blatant skewing of Barefield's Qualification Scores renders them useless as a measurement of Barefield's abilities and were given for the purpose of ensuring that he would not be promoted to Foreman. Indeed, it is clear that even before the Qualification Scores were filled out, Barefield's Area Superintendent, Tom Harrison, had no intention of ever promoting Barefield beyond his position of OA, despite the fact that Barefield had been found "promotable now" in 1983. In February 1985, shortly before the scoring process occurred, Harrison wrote a memo in which he stated "we don't believe [Barefield] has the potential to ever be promoted to foreman." 4/23 Tr. at 53. Harrison's denial during trial that he had not "prejudged" Barefield was unconvincing.

24. Chevron emphasizes that another Caucasian employee, T. J. Haney also received a score of 77 although he had positive performance evaluations -- at

least through 1981, the last formal evaluation provided to the Court. Even assuming, however, that any subsequent evaluations were also positive, we do not infer from this, as Chevron urges, that Barefield was fairly scored. Indeed, if anything it highlights the subjectivity of the scoring process since Haney's scores were also strikingly at odds with other documents submitted to the Court. Specifically, a January 1984 memorandum strongly recommended Haney for an OA position to the Steam Generator Foreman, emphasizing that Haney's "initiative and resourcefulness are very impressive and we consider these qualities to be particularly important for the steam generator OA position... ¶ [Haney] has made many innovative changes to the COS local system." Def's Exh. FF; *see also id.* at Haney's 1981 evaluation ("unusually resourceful"). Yet Haney's Qualification Scores for "Initiative" and "Originates Ideas" were both below average "2"s. Def's Exh. N. at 4860. This same 1984 memo also praised Haney for being "highly self-motivated and ... a high volume producer." Def's Exh. FF; *see also id.* at Haney 1981 evaluation ("unusually high output"). Yet his Qualification Score was a below average 2 for "Maintains High Level of Output" and a far-below-average 1 for "Plans/Schedules Work Effectively." Def's Exh. N. at 4861.

*11 While it is possible that Haney's abilities in these areas changed dramatically between January 1984 and the spring of 1985, there is nothing in the record to suggest this and indeed defendant's argument requires the contrary inference. The Court can however, deduce an explanation for Haney's unusually low Management Skills Q.S. The January 1984 memo referred to above states that Haney's "potential might even be greater with computer type work than the field operations." Indeed, at the time of the Rack-Up, Haney was working as a "COS" OA, supervising in the computer/clerical department. Thus, Haney's score may well have been skewed to reflect management's desire not to promote him to a Foreman position in the field. There may also have been concerns about his personality -- he was described in one evaluation as "flippant." Def's Exh. FF.

25. The Qualification Scores may well be accurate for some number of the employees being ranked. However, given all of the above, and the inherently subjective nature of the scoring process, the Court finds that the credibility of the Qualification Scores is seriously undermined. As such, they can not be trusted to reliably measure the abilities of Barefield relative to the other field OAs.²²

26. The final Qualification Scores for all 55 employees were forwarded to division headquarters along with proposed post-merger organizational charts, identifying

suggested employees for each position.

27. In June of 1985, Chevron announced its selections for the 23 new Foreman positions, pulling heavily from the ranks of the 12 permanent field OAs. Of these 12, only Barefield, and one other person, J. Hill, were not promoted.²³ The remaining positions were filled by assorted other employees (including a temporary OA, an HO, an OOA, an engineer, and construction representative), and a handful of former Gulf Oil employees. The specific breakdown by location was as follows:

In Coalinga, there were six Foreman vacancies. All three of the current field OAs were promoted to Foreman positions. In Taft, there were five Foreman vacancies. Both permanent field OAs were promoted to Foreman (one, however was transferred to Cymric). Two Foreman positions were left vacant. In Cymric, there were six Foreman positions available. Two of the three OAs were promoted, and a third Foreman slot was filled by the OA transferred from Taft.

In Bakersfield, where Barefield was located, a total of 8 Foreman positions were open, the most of any location. Of the four permanent field OAs then working at Bakersfield, Barefield was the only one not promoted. Two were promoted to Foreman and one was promoted to a Trainer position. The remaining six Foreman positions were filled by one OOA, one HO, one Temporary OA, one Production Tech, and two Gulf Oil employees.

28. Most of the Foreman positions at issue were for Production Foremen who primarily oversee oil production. However, some of the Foreman positions specialized in subareas. Thus, some of the available positions were for Service and Relief (S&R) Foreman, Steam Foreman (supervising the steam generators) and Water Plant Foreman (supervising the water plants). Barefield's primary experience was in production although he also had some experience in the other areas as well. According to Claude Fiddler, the Division Manager for Chevron's Northern California Division from 1980 - 1986, Barefield's experience qualified him for consideration as either a production foreman or an S&R Foreman: "Mr. Barefield's experience he could have been looked at [as] an S&R, he could have been looked at as a production type person." 8/16 Tr. at 47.

*12 29. Chevron defends its selections for the 1985 Foreman positions on the ground that the field OAs (and employees with positions below OA), who were chosen for promotion were more qualified than Barefield for the particular Foreman position they each filled based on their relative Qualification Scores, experience, education, etc.

See also Pl's Exh. 131 (Chevron's August 13, 1985 letter to DFEH) ("Mr. Barefield's overall skill and performance level was *significantly poorer* than the employees who were selected for the foreman positions") (emphasis added).²⁴

30. For the reasons discussed above, we reject Chevron's contention that the Qualification Scores justify its promotion decisions. However, putting these aside, and having carefully reviewed the evidence and weighed the credibility and demeanor of the witnesses, the Court agrees that certain of the other field OAs selected were better qualified and experienced for a specific Foreman position than was Barefield. For example, J. Millard was better qualified than Barefield for an S&R Foreman position based on his extensive experience in S&R work, his 15 years experience as an S&R Relief Foreman, and his highest possible summary performance rating ("Far exceeds expectations"). The Court also agrees that Barefield was legitimately not considered for the positions in Coalinga, given its distance from Bakersfield.²⁵

It is equally clear, however, that (1) non- African-American field OA's with qualifications comparable to Barefield's were promoted, (2) that factors that were used to justify Barefield's non-promotion were minimized when it came to non- African-American employees, and (3) that non- African-American employees were given training and experience that better positioned them for promotions than was Barefield. Examples of the above are addressed in turn.

31. *Examples of non- African-American field OA's promoted to Foreman in 1985 with qualifications comparable to Barefield*

J. Nakashima (Bakersfield)

Hired in 1977, Nakashima had been a field OA in production for a little over four years as of early 1985. While Barefield had held this position for 3 years, length of time as an OA was clearly not a significant factor. Indeed, some of the OAs promoted had been OAs for far less than 3 years²⁶ and three of the persons promoted had never held an OA position at all.²⁷ Nakashima's summary performance rating is described on the Rack-Up as "Meets to Exceeds Normal Requirements" which the Court concludes is somewhere between "Meets Normal Requirements" and "Typically Exceeds Normal Requirements." While Barefield was given a summary rating of "Meets Normal Requirements," as discussed above, his evaluations clearly supported a summary rating of "Meets to Exceeds Normal Requirements."

Harrison testified that Nakashima was chosen because he had very good analytical skills, was a strong communicator and was willing to make decisions. As discussed above, however, Barefield also received good marks in these areas.²⁸ While, Nakashima received a higher Qualification Score, this factor deserves virtually no weight. Significantly, however, the written comments accompanying his scores state that Nakashima "needs supervision when relieves as foreman because of inexperience." Def's Exh. N. at 4914. Many of the other comments on the Qualification Score form are the same types of comments Barefield had received on his performance evaluations (e.g. works well with others, ability to think out a problem and come up with solution, needs little supervision).

*13 Finally, defendant emphasizes that Nakashima had a B.S. in biology; however, it did not explain how this degree made Nakashima better qualified than Barefield to be an oil production Foreman, particularly given that Barefield had 10 more years of experience in the oil fields than did Nakashima. Given the above, Chevron has not demonstrated that Nakashima was more qualified than Barefield for the position of Production Foreman.

E.W. Brown (Cymric)

Hired in 1963, E.W. Brown had been an OA for 4 years. Like Barefield, he was a high school graduate and had a "Meets Expectations" performance rating. He was promoted to Foreman in Steam although, like Barefield, he had been an OA in production and thus did not have a particularly strong or recent background in steam generators. Chevron contends that Brown was a good problem solver -- but so was Barefield. Barefield's qualifications were clearly comparable to Brown's.

R.G. Dickey (Taft)

R.G. Dickey was hired in 1979 and had been an OA for 3 years and 8 months when he was promoted to Foreman in the area of production. Like Barefield, he had a "Meets Expectations" performance rating. The only distinguishing factor appears to be that R.G. Dickey had a B.S. in engineering. Again, however, defendant did not explain how this degree made R.G. Dickey better qualified than Barefield to be an oil production Foreman, particularly given that Barefield had many additional years of experience in Chevron's oil fields. Nor was a lack of college or engineering background considered a hindrance in the case of Caucasian employees such as E.W. Brown (high school education), D.D. Millard (10th

grade education), W.E. Roberts (high school education), who were promoted to Foreman. We thus find that Dickey was not more qualified than Barefield for a promotion to Foreman.

Local Preference Issue

It is clear that in making its Foreman selections in 1985, Chevron considered, as a legitimate factor, an employee's current work location. Specifically, Chevron had a preference against transferring employees to new locations in order to "minimize the disruption" caused by the Gulf-Chevron merger and concomitant expansion. Farr. 4/23 Tr. at 116. Consistent with this preference, all of the OAs promoted to Foreman remained in their previous location, except for one (W.R. Dickey), who was transferred from Taft to Cymric.

This locality preference may justify a decision not to promote Barefield in place of R.G. Dickey in Taft or in place of E.W. Brown in Cymric; it does not, however, justify Chevron's failure to promote Barefield, who was equally, if not more qualified than Dickey and Brown, to one of the two Foreman *vacancies* that remained in Taft -- one in production and one in S&R -- areas in which Barefield was eminently qualified to be Foreman. The "locality preference," while a valid consideration, was simply one factor, and clearly did not preclude Barefield's transfer, as the relocation of W.R. Dickey from Taft to Cymric demonstrates.²⁹ Moreover, Barefield had previously worked in Taft; thus, Chevron's concern over transferring employees to unfamiliar territory was clearly diminished in this particular instance. Indeed, Chevron failed to provide any credible, legitimate reason why it left two Production and S&R Foreman positions vacant instead of promoting Barefield. Harrison, the only Chevron employee to testify regarding the matter, stated only that he could not recall whether Barefield was even considered for the vacancies in Taft. 4/23 Tr. at 51. Indeed, it is clear that Barefield was not in fact considered for either post because Chevron had already decided not to promote Barefield, as evidenced by his skewed Qualification Scores and Harrison's February 1985 memorandum.

*14 32. *Factors used to justify Barefield's non-promotion*

In comparing Barefield to other OAs, Chevron would often point to Barefield's lack of college degree, lack of experience in a specific area, or his summary "meets expectations" performance rating. However, when other employees had similar factors, they were downplayed or

considered unimportant. This is not to say that some employees may not have had other important or compensating characteristics; however, this pattern created the strong impression that Barefield was being judged by a different standard than non- African-American employees.

For example, Chevron argues that it was justified in denying Barefield a promotion to Foreman because of his mid-point "meet expectations" rating, pointing to Division Manager Claude Fiddler's testimony that employees rated in the mid-range "usually weren't selected" for promotion. 8/16 Tr. at 152. Yet, one-quarter of the permanent field OA's were promoted with exactly this rating. When it came to their selections, this rating was minimized or ignored. This pattern compels this Court to closely examine not what Chevron says it does, but what it *actually* does in its promotions decisions.

Similarly, Chevron argued that Barefield was not as qualified for certain Foreman positions because he lacked extensive experience in a particular area. However, in the case of E.W. Brown, who was promoted to Steam Foreman, his lack of extensive experience with steam generators was deemed insignificant.

Chevron also tended to discount as inconsequential or irrelevant any experience of Barefield's that was not recent. Yet, in seeking to bolster J. Hankin's lack of supervisory experience, Chevron pointed to the fact that Hankins had done some relief Foreman work in 1982 and in 1970.

The above pattern created an impression of shifting standards. If an employee had more experience in an area than Barefield, then substantive job knowledge rather than general supervisory skills became more important. If an employee had no more experience than Barefield, then superior management skills became critical. If an employee had a college degree, then that became important whereas if the employee did not, then some other factor was considered determinative.

33. *Non- African-American employees were afforded opportunities that better positioned them for promotions than was Barefield*

As discussed earlier in these findings, on-the-job experience and training was critical to an employee's ability to advance. During the course of the trial, the Court noted various occasions where Caucasian employees were given recent experience in an area (sometimes by being assigned to the job in a temporary capacity), which then justified their promotion to a position. For example, C. Horsch was considered better

qualified than Barefield for a permanent drilling representative position in 1990 because Horsch had been given training for the job from May to August 1989 and had worked in the job in a temporary capacity from August 1989 to September 1990.

***15** The promotion of R.D. Long to Foreman in 1985 fits within this general pattern. He was promoted to the Water Plant Foreman position in Bakersfield after having worked as an OA for 5 months. Like Barefield, Long worked in production; however, in the six months preceding the 1985 promotions he was promoted to OA and given substantial experience in the water plant. Long's recent experience with the water plant was then a major factor demonstrating that he was better qualified for the position of water plant Foreman than Barefield, whose water plant experience dated back seven years.

Again, this is not to say that many Caucasian employees who were "positioned for promotion" may not have had other important characteristics or qualities that influenced their job assignments; however, the Court was left with the firm impression that African-American and Hispanic employees were not always positioned for promotion with the same consistency as Caucasian employees.

34. Given all of the above, and having reviewed the documentary and testimonial evidence, the Court is satisfied that the preponderance of the evidence demonstrates that Barefield was treated differently because of his race, and that had he been Caucasian, Barefield would have been promoted to Foreman in 1985, either to a position in Bakersfield or to one of the two vacancies in Taft.

In reaching this conclusion, the Court is persuaded by a number of factors, including but not limited to, the blatantly biased scoring of Barefield's abilities during the selection process; Barefield's experience and qualifications relative to several of the other OAs; a discriminatory attitude toward the promotion of African-Americans at the time, which was never expressed, but which is inferred from, among other things, the complete lack of promotion of African-Americans to Foreman positions, the bottleneck of African-Americans in the OOA and OOB positions, the promotion of all but one of the other Caucasian permanent OAs; the racial composition of senior Chevron management; and the demeanor and manner of the witnesses.

Accordingly, the Court further finds that Chevron's contention that Barefield was not promoted because of his qualifications is pretextual. Rather, looking at the record overall, the Court is satisfied that a preponderance of the evidence demonstrates that Chevron intentionally

discriminated against Barefield because of his race in denying him a promotion to Foreman in 1985.

35. On June 14, 1985, Barefield filed a complaint of racial discrimination with the California Department of Fair Employment and Housing. The instant class action complaint against Chevron was subsequently filed in May 1986, naming Barefield as the lead plaintiff.

36. As a result of being passed over for promotion, Barefield suffered substantial emotional distress. He testified that "I suffered a lot of anxiety and a lot of depression, a lot of--it was--it was like a nightmare. 1985 was like a nightmare to me. I just ---it took me a while to believe that that had actually happened to me. After all the years of service, experience, etc. cetera, you know, it was really unbelievable. I just--you know, it devastated me. And it created other problems, sleeplessness. I had quite a few chest pains, neck problems, and it was all related to stress. You know, sometimes my stomach tightened up, tightened in knots and that kind of stuff." 8/8 Tr. at 133.

***16** 37. When Barefield became so preoccupied with his job situation that he had a minor traffic accident, he realized he needed help and began treatment with Dr. R. Shah, a psychiatrist. On Dr. Shah's recommendation, Barefield went on disability leave, effective July 30, 1985, and was prescribed medication for anxiety and depression, including Desyrel and Xanax.

38. Barefield continued to suffer substantial emotional distress. A typical day during this period was a "day of anger, depression, thinking about what has happened to me, knowing that I didn't deserve that I just couldn't function ... I was so preoccupied with what had happened ... I kind of withdrew from the family. I didn't want to share what I was going through with them. As a man, you try to keep things to yourself." 8/10 Tr. at 164. Throughout this period of disability, Barefield continued to receive regular therapy and treatment from Dr. Shah once or twice a week.

39. In 1986, Dr. Enelow, a psychiatrist, and Dr. Herrera, a clinical psychologist, were retained by Chevron to examine Barefield in connection with Barefield's worker's compensation case. At this time, Barefield reported the following problems: depression, anxiety, concentration difficulty, difficulty sleeping, anger, decreased sex drive, constipation, gastrointestinal difficulties and chest pain. Pls' Exh. 125 at 2. Dr. Enelow and Herrera's joint report, issued in July 1986, found that "Mr. Barefield appeared to have developed an adjustment disorder with mixed emotional features of depression, anxiety, and somatization that is now in the process of

resolving.” Pl’s Exh. 124, 7/16/86 Report at 6. They concluded that Barefield presently had no “psychiatric impairment” that precluded his working but that his “anger, disappointment and hurt feelings ... constitute an occupational impairment.” *Id.* at 7-8.

40. According to subsequent medical records, Barefield’s condition subsequently relapsed and by February 1987, his emotional condition had worsened and he was considered temporarily totally disabled. Pl’s Exh. 124, March 22, 1988 Enelow Report at 1. *See also* Pl’s Exh. 123 (Dr. Shah’s April 1987 Report finding that Barefield should remain on temporary disability and continue with therapy and medication). Thereafter, Barefield’s condition gradually improved and by February 1988, he was released to return to work by Dr. Shah. A March 1988 report by Dr. Enelow and Herrera concurred in this conclusion, finding that Barefield had recovered from his Adjustment Disorder with Mixed Emotional Features of Depression, Anxiety and Somatization. They released him to return to work “but not under the same supervisors.” Pl’s Exh. 124, March 22, 1988 Report at 4. Upon request of Chevron’s Medical Department, Dr. Enelow “reviewed” his report and eliminated this constraint on Barefield’s work assignment. He “wish[ed] to point out,” however, “that Mr. Barefield can work provided he is treated in a reasonable manner and encounters reasonable and equitable behavior from supervisors. If he is exposed to unfair, harassing or racist behavior he will probably become disabled once again.” Pl’s Exh. 125 (May 5, 1988 letter at 1).

*17 41. Barefield returned to work at Chevron in the Cymric area as an OA in May 1988.³⁰ In 1990, Chevron went through a reorganization, reducing the number of exempt positions. Barefield was told that the OA position was being eliminated and that he was being reassigned to a position called “Operator Advisor” the duties of which were unclear. It appears that Barefield was subsequently assigned to work as a temporary Drilling Representative. Charlie Horsch, a Caucasian temporary Drilling Representative at the time, testified that the Caucasian employees he knew were given some choice in their post-reorganization assignments. Barefield, however, was not given this opportunity. It may also be the case that Caucasian employees in Barefield’s classification survived the reorganization with more desirable positions than comparable African-American employees; however, the record is not sufficiently developed to draw any firm conclusions. In any event, the record does not demonstrate that Barefield was discriminatorily denied training or a promotion during this period.

42. However, as a result of losing his permanent OA position, and being reassigned to a temporary drilling

representative position, Barefield became increasingly distressed. Instead of advancing toward his dream of becoming a Foreman he was seemingly moving further backward. He suffered from nervousness, anxiety, sleeplessness, and physical symptoms, including chest pains, tight stomach and headaches. He also felt “a lot of anger, a lot of depression.” 8/10 Tr. at 172.

43. In February 1991 he again went on a disability leave upon the recommendation of a Dr. Salzman. He received therapeutic treatment until sometime in 1994. He has not returned to Chevron and has been receiving social security disability benefits since 1993.

44. Dr. Herrera examined Barefield again in July 1995, having been retained by plaintiffs in connection with this case. He concluded that Barefield suffered from an Axis I “Anxiety Disorder NOS³¹ with a mixture of anxiety, depression and tension symptoms,” and that these symptoms were causally related to his failure to be promoted. 8/16 Tr. at 14, 17. He felt, however, that Barefield could likely work for “an employer in a supportive environment ... [however] [a]nger over his career having been interrupted will likely remain for an extended period of time.” Pl’s Exh. 130, Herrera Decl. at 4.

45. Dr. Aaron, Chevron’s retained expert, examined Barefield in September 1994. He disagreed with Herrera’s Axis I diagnosis on the ground that Barefield was not suffering from a psychiatric disorder. He did not, however, testify that Barefield was not suffering any level of emotional distress; thus, the disagreement between the experts appears to be one of a matter of degree, i.e. whether or not the level of Barefield’s anxiety, depression and stress rose to the status of a psychiatric disorder. We also note that Herrera and Aaron evaluated Barefield nine months apart.³² In any event, the Court is satisfied that Barefield has suffered a substantial degree of emotional distress as a result of his discriminatory treatment by Chevron, as found above.

*18 Finally, we agree with Chevron that there may be other factors, besides the denial of the 1985 promotion, that have contributed to Barefield’s emotional distress, and the Court will take these factors into account. It is satisfied, however, that the principal and overriding cause of the emotional distress Barefield has suffered since 1985 is Chevron’s discriminatory failure to promote Barefield to the position of Foreman in 1985.

C. LEON FRANCIES, JR.

1. Leon Francies, Jr. (“Francies”), an African-American

male, began his employment at Chevron in February 1981 as an Electrician Trainee in the Crafts Training Program in the Taft 11-C Camps. During the presentation of his case, Francies introduced compelling evidence of a hostile work environment. He was subjected to repeated incidents of racial harassment ranging from the anonymous posting of a flyer captioned “The Ku Klux Klan Salutes and Thanks All Gang Bangers,”³³ to being taunted with a snake by Caucasian co-workers, to racist and derogatory language.³⁴ As noted earlier, however, counsel for the opt-out plaintiffs waived all claims for hostile work environment. *See* note 3 *supra*.

2. Having reviewed the record with respect to Francies’ remaining claims, the Court finds that Francies falls short of proving, by a preponderance of the evidence, that his failure to obtain the specific promotions and training opportunities at issue was due in whole or part to intentional racial discrimination.

3. As reflected by Francies’ performance evaluations, Francies did not perform well during his first year in the Training Program, and he required significant personalized attention to complete his proficiencies. He was subsequently promoted to Electrician B in the Spring of 1982; however, he received a minimum acceptable/below mid-range evaluation in October 1982, with the comment that “Leon is still going through the process of learning the job.” Francies Exh. 5. During 1983 his performance improved. He completed the Training Program in February 1983, and was promoted to an Electrician A in September 1983. His 1983 evaluation rated him below-average in quality of work and average in all other categories. It was not until 1984, that he received an evaluation in which he was rated average in all categories.³⁵

4. Francies claims he was improperly denied promotions in 1983, 1984, and 1985 to various positions including Head Electrician and Construction Representative.³⁶ Chevron, however, contends that the Caucasian employees selected for the promotions at issue were more qualified than Francies, and in this case, the evidence supports Chevron’s position. As described above, during the period from spring of 1983 to spring of 1985 Francies had only recently completed the Training Program and was just beginning to emerge as a fully satisfactory employee. In contrast, the employees selected for the positions at issue had much more experience. For example, Bill Smith had 30 years of experience with Chevron, and had worked as a mechanic for 20 years and as an electrician for 15 years. Al Horner had 20 years of experience with Chevron, and was the trainer of the Crafts Program that Francies participated in when he was first hired at Chevron. Max Carpenter had 20-plus years with

Chevron, including eight-to-ten years experience as an electrician. He had also worked as a mechanic. Lloyd Moore had 20 years experience as an electrician prior to coming to Chevron and was soon taken out of the Training Program because of his advanced knowledge.

*19 5. Francies repeatedly claims in his Post-Trial brief that he was more qualified than the employees selected for three reasons, none of which has merit. First, he emphasizes that he held a contractor’s license from the State of California while the employees selected for promotion did not. However, his license was in “nob and tube” household wiring, a type of wiring typically used in residences 30-40 years ago. There is no showing that this license provided Francies with any particular expertise that was both relevant to the positions at issue and not possessed by the other employees chosen in his stead. Indeed, the evidence suggests that the license was largely irrelevant. Second, Francies points out that he completed the Crafts Training Program while others did not. He ignores, however, that the Crafts Training Program began in 1980 and thus many older employees did not go through the Program. More importantly, he fails to demonstrate that his completion of the Program provided him with any specific expertise that made him as qualified as (or more qualified than) the other employees selected for the promotions at issue. Indeed, it appears the Training Program was intended to teach employees the fundamentals. Thus mere completion of the Training Program did not automatically elevate Francies’ abilities to the level of more experienced employees. Finally, Francies emphasizes that his Foreman, George Hawkins, stated in December 1983 that Leon was the best line man he had. While it is clear that Francies was skilled at line work, the evidence indicates that he had difficulties beyond this area. Moreover, there is no evidence demonstrating that line work was central to the duties required by the positions at issue or that overall, Francies’ qualifications were comparable to the persons selected for those positions.

6. On August 14, 1985, Francies left work on a stress disability for four months, until December 16, 1985. It is unclear exactly what precipitated his taking leave at this particular point in time, although the Court notes that Francies was criticized for unnecessarily shutting down a number of steam generators for several hours during an electrical repair shortly beforehand. Francies returned to work briefly in December but then went on a stress disability again in January 1986 and did not return until September 1, 1988.

7. Francies’ claims of discriminatory denial of promotions in the years 1986 - 1988³⁷ fail for the same reasons discussed above with respect to the promotions at issue

during 1983-85.

8. Francies' claim of discriminatory denial of training presents a somewhat closer question, particularly for the year 1984. Again, however, the evidence simply does not sustain his claim of intentional discrimination with respect to the specific training opportunities identified in his Pretrial Statement. For example, Francies challenges Chevron's failure to give him Foreman Relief experience in 1983 and 1984. However, the two employees given this assignment (Moore and Carpenter) were more experienced. Francies also contends that he was denied relief assignments as an Electrical Inspector, Environmental OA, and Construction Representative. He appears, however, to base these claims primarily on the fact that there were no formal minimum requirements for these positions. *See* Plaintiffs' Post-Trial brief at 109. He completely fails to demonstrate that he was as qualified as such persons who did receive relief appointments. Finally, he contends that he was discriminatorily denied Cogen/Modicon training in 1983. There was however, no such training in 1983. There was a training in 1981 (shortly after Francies started) and a training in 1984 to which only two employees were sent. Moreover, such training required proficiency on LACTs and AWTs. Although Francies had been given exposure and training on AWTs and LACTs, Francies' Foreman, George Hawkins, testified that Francies had difficulty mastering these systems, a point which Francies did not rebut.

*20 9. The Court has also taken into account the fact that while many aspects of Francies' testimony are credible, particularly his recounting of certain incidents of racial harassment, other testimony and evidence lessened Francies' overall credibility.³⁸

D. SALVADOR MONARREZ

1. Salvador Monarrez ("Monarrez"), a male of Hispanic descent, was first employed by Chevron in May of 1977 as a summer hire. He was placed in the Pump Shop, which was part of the 11-C Craft Shops in Taft. He performed very well, receiving the highest rating available in 5 of 7 categories on his evaluation. His supervisor noted that "He has the ability learn fast... goes ahead on his own and gets to job done [sic] ... He keeps working all the time, very little wasted time." Monarrez, Exh. 1. In the Fall, Monarrez returned to school at Taft Junior College but continued to work part-time at Chevron in the Pump Shop.

2. On March 1, 1978, Monarrez was hired as a full-time Utility Trainee and transferred to the Floor Section of the Taft 11-C Craft Shops, which engaged in heavy duty

repair work. He continued to attend college part-time in the evening because he felt that college would provide him with the analytical and communication skills that Chevron would look for in making promotions. He completed his A.A. degree (in political science and history) at Taft College in 1978. He graduated with a 3.07 grade average, participated as a tutorial assistant in the Taft College Tutorial Program and was listed in the 1978 Talent Roster of the College Board.³⁹

3. At the time Monarrez was transferred to the Floor Section in March 1978, he was the only Mexican-American and only minority employee in that section. From the beginning of his transfer to the Floor Section, Monarrez faced racial animus. The primary work of the Floor Shop is mechanical heavy duty repairs. His supervisor, Jack Rowe, however, required that Monarrez spend 80 - 90 percent of his time in an isolated "steam room" cleaning parts and bringing them to the other employees to work on. Neither Rowe nor the other employees provided Monarrez with any meaningful on-the-job training in the mechanical work performed by the Floor Shop although Caucasian Chevron employees were provided on-the-job training when they were given job assignments requiring new skills. As George Hawkins, a former Foreman in the Crafts section explained, "[a]ll of the training that I received at [the] 11C [Crafts shops] was on-the-job training ... They called it a piggyback system.... and when the company hired a man, they put him with a journeyman--whether it was electrician, a mechanic, a welder, whatever [] their craft was, they put ... the new hire with that man to learn the job." 4/30 Tr. at 417.

4. Rowe also called Monarrez a "dumb wetback" and would yell at him "wetback go do this, wetback go do that" on a number of occasions. Monarrez Tr. 11-755-756; *see also* Tr. 12-890. In short, Monarrez was mostly treated as an outcast and precluded from a fair opportunity to learn the mechanical work of the Floor Shop because of his race.⁴⁰

*21 5. Although Monarrez was criticized in subsequent performance evaluations as having "slow" or "little" mechanical ability, the Court concludes, in light of all of the above, that these evaluations were seriously tainted by racially discriminatory attitudes toward Monarrez and the failure to provide him with good-faith on-the-job training. Notably, Monarrez later satisfactorily completed a training program which included rotations in the Floor Shop. The Court also finds that additional comments on the evaluations, attributed to Monarrez, such as "Admits he has no initiative, but is happy to be working in a lower classification" lack credibility.⁴¹

6. In late May/early June 1978 Monarrez was threatened with termination from the Floor Shop. Realizing that he had no future in the Floor Shop, given the discriminatory attitudes he had encountered, but still hoping to preserve a future at Chevron, Monarrez requested a transfer either back to the Pump Shop or to a position as a “roustabout” in the Bakersfield area where he could continue his education at a four-year college.⁴²

7. Monarrez was transferred back to the Pump Shop where he performed very well. Notably, his supervisor indicated that Monarrez had not been given an adequate opportunity to learn the work in the Floor Shop. On March 1, 1979, Monarrez was promoted from a full-time Utility Trainee to a Mechanic B. This promotion was in line with the normal one-year progression from Utility Trainee to Mechanic B.

8. In Spring of 1980, Monarrez attended a meeting in which employees were informed that in order to obtain a promotion to Mechanic A, they would be required to attend a Crafts Training Program, consisting of classroom instruction and on-the-job training. They were also informed that all employees in every unit would have the opportunity to participate in the Crafts Training Program, including welders, machinists, and pump shop employees.⁴³

9. Notwithstanding the above, Chevron excluded Monarrez and the one other minority employee working in the Pump Shop, Greg Horne (an African-American), from the Crafts Training Program. All eligible Caucasian employees who had not yet obtained a Mechanic A rating were scheduled to participate. When Horne asked his supervisor why he and Monarrez had not been so scheduled, the supervisor, Eric Manders, responded that he “[didn’t] know whether you guys can benefit from that training program,” but said he “would think about it.” He later allowed Monarrez and Horne to begin the Crafts Training Program in July of 1980.

10. After two months in the Crafts Training Program, Monarrez and Horne were abruptly pulled from the Program. Monarrez was told by the Crafts Trainer, Mr. Hawkins, that he had just “got it from up top management that [Monarrez’s] job has nothing pertaining to the Crafts Training Program,” Monarrez Tr. 11-771, and therefore Monarrez should report back to the Pump Shop. Horne and Monarrez were also told that they could only continue in the Crafts Training Program if they took night classes at a junior college. No Caucasian employee was similarly treated.

*22 11. Chevron completely failed to provide any credible legitimate explanation for the failure to schedule

Monarrez and Horne for the Crafts Training Program when it first began or for their removal two months later, given that completion of the Program was a prerequisite for promotion to Mechanic A. The Court further finds that the removal of Monarrez from the Craft Training Program was based on racially discriminatory attitudes regarding the promotion of minority workers at Chevron. The removal also caused Monarrez substantial emotional distress. He felt both depressed and angry, and developed an ulcer four months later.

12. Monarrez returned to work in the Pump Shop which was divided into two crews: insert and tubing. For roughly the next three years (until December 1983), Monarrez was assigned to supervise the insert crew while a Caucasian Mechanic A employee, Bill Rowson, was assigned to supervise the tubing crew. Both Monarrez and Rowson supervised two-to-four contract employees in their respective crews. During this time, Monarrez performed the work of a Mechanic A and was classified as a “relief Mechanic A” although he still held the title of Mechanic B. As a relief Mechanic A, it appears that Monarrez was paid at a Mechanic A rate for 90 days at a time, then briefly made a B again and then paid at a Mechanic A for 90 days. Vacation time was paid at a Mechanic B rate.

13. Monarrez continued to receive very strong performance evaluations. For example, his 1982 evaluation states that he “does the highest quality of work,” that he is “exceptionally industrious,” and “gets along exceptionally well in crew. Is very tactful and courteous...” Monarrez Exh. 5. His 1984 evaluation notes that Monarrez “knows the down hole pump business well,” that he “needs little or no supervision” and “leads 3 and sometimes 4 contract employees while building pumps.” It also states that he has done relief Lead Mechanic work and that “he gets the work out and gets along good with the men.” *Id.* It also states that “the Pump Shop has made several significant changes for the better such as better pump racks for storage, new steam cleaner and better working area. Sal [Monarrez] was very helpful with this.” *Id.* Monarrez was also responsible for filling out relevant paperwork, and helping to train other employees. He also helped develop a curriculum for a portion of the Training Program relating to the Pump Shop.

14. In 1983, a Lead Mechanic position in the Pump Shop opened up when a Mr. Earl Harris retired. Although Monarrez had been doing the work of a Mechanic A, he was told that he could not be considered for the job because he was still a Mechanic B and only Mechanic A employees were eligible. As described above, however, after Spring of 1980, only employees who completed the

Crafts Training Program could be promoted to Mechanic A. Thus, as a result Chevron's discriminatory removal of Monarrez from the Program in 1980, Monarrez was denied the opportunity to even be considered for the Lead Mechanic position vacated by Mr. Harris.

*23 15. Chevron ultimately selected Bill Rowson to fill the Lead Mechanic position on February 1, 1984. Monarrez was as, if not more qualified, than Rowson for the position. They had both worked roughly similar amounts of time in the Pump Shop and in comparable supervisory positions in the Pump Shop doing comparable work.⁴⁴ Neither had completed the Crafts Training Program. Rowson was a high school graduate while Monarrez had completed two years of college.⁴⁵

16. After registering complaints, including writing a letter in October 1983,⁴⁶ Monarrez and Horne were eventually reinstated back into the Crafts Training Program on December 20, 1983 -- over three years after their removal in September 1980. During this time Monarrez was required to complete different rotations in the Floor Shop under the supervision of his former Floor Shop supervisor Jack Rowe. He again faced harassment from Mr. Rowe who delayed his rotations, saying "I'll get to it when I get to it." Monarrez Tr. 11-787.⁴⁷ After completing the Crafts Training Program, Monarrez returned to the Pump Shop in June 1984.

17. Monarrez subsequently obtained his Mechanic A rating on September 30, 1984, five and one-half years after receiving his Mechanic B classification on March 1, 1979.⁴⁸ Had Monarrez been treated in the same manner as Caucasian employees at Chevron he would have (a) started the Crafts Training Program with the other Caucasian employees when the Program began, (b) been permitted to complete the Crafts Training Program on schedule, and (c) received his Mechanic A classification substantially sooner.⁴⁹ It is also more likely than not that he would have been promoted to the Lead Mechanic position in February 1984. Nonetheless, and despite the discrimination he had suffered to date, Monarrez was still determined to make his future at Chevron. He still took "great pride in being a Chevron employee" and wanted "to make a career with [the] Company." Monarrez Exh. 25.

18. In the Fall of 1984, an employee named Rod Napoleon began coming to the Pump Shop during his break period and calling Monarrez a "wetback" in front of other employees. On or about October 11, 1984, Napoleon approached Monarrez who was sitting on an old can and said either "move out of the way, you wetback" or "get out of my chair, wetback." Monarrez Tr. 11-788; Rowson Tr. 10-643. Monarrez responded that he had

already told him to stop calling him wetback before and that he had also used the word nigger and that he didn't appreciate it. Napoleon responded that "If I really wanted to call you something else, I got some worsen names to call you. I could think of other names to call you." Monarrez Tr. 11-788.

19. Monarrez discussed the incident with his supervisor, Bob Bledsoe. However, Monarrez did not believe the issue would be satisfactorily addressed because Bledsoe and Napoleon were close friends. Accordingly, Monarrez sent a written note complaining of "racial discrimination on the job" to then Crafts Superintendent, Dave Farr. Monarrez did not receive a response to this note.

*24 20. Two weeks after complaining about the October 11, 1984 incident with Napoleon, Monarrez was called in by Bledsoe to discuss Monarrez' "excessive absenteeism" and a "Record of Discussion" concerning this matter was placed in his personnel file. Monarrez Exh. 15. Prior to this Record of Discussion, Monarrez had always been given good marks on dependability and there had never been any indication that there was any problem with "excessive absenteeism." See e.g. Monarrez Exh. 4 (1981 evaluation describing Monarrez as "exceptionally dependable; always on job"). Monarrez' supervisor also told Monarrez that he had "one of the best, if not the best," attendance record in the 11C Camp. 5/3 Tr. at 774. Similarly, Bill Rowson, the Lead Mechanic in the Pump Shop, agreed that Monarrez was "one of the most reliable workers" in the Pump Shop in terms of attendance. 5/2 Tr. at 651-652. The timing of this record of discussion suggests a retaliatory motive and reflects a continuing discriminatory attitude toward Monarrez.

21. On June 26, 1985, Monarrez filed a charge of racial discrimination in promotions and training with the California Department of Fair Employment and Housing. On August 16, 1985 Monarrez filed a grievance with his union making the same allegations. On October 18, 1985, a meeting was held with Chevron representatives and a union representative to discuss the charges. Chevron representative George Smith denied receiving any letters or complaints from Monarrez. The meeting did not result in any resolution and Monarrez became extremely disillusioned with Chevron's response.

22. On October 25, 1985, one week after the meeting on his union grievance, Monarrez was directed by his doctor to take a stress disability leave from work.

23. On November 12, 1985, Monarrez' treating psychiatrist, Dr. Shah prepared a psychiatric evaluation. The evaluation recounts Monarrez' experiences at Chevron and describes Monarrez' reported symptoms:

“The patient stated that in the last five to six months he has been feeling very angry, frustrated and anxious and agitated most of the time ... He feels that his morale is low and that he has been treated very badly. He feels nervous and depressed and states that his ulcer pain has been aggravated lately ... He also had very severe anxiety attacks at the time, but he did not know what to do about it.” Def’s Exh. F at 195. Dr. Shah concluded that Monarrez was suffering from severe anxiety based on his job situation. *Id.* at 197. He advised Monarrez to increase the Tagamet for his ulcer to 300 mg t.i.d.prn., prescribed Elavil 50 mg tablet, 3hs and Valium 5 mg t.i.d. prn, and stated that Monarrez would be seen in individual psychotherapy twice a week. He also advised Monarrez to remain away from work. *Id.* at 197-98.

24. On February 10 and 14, 1986, Monarrez was examined by two doctors retained by Chevron, Dr. Enelow (psychiatrist) and Dr. Herrera (clinical psychologist). Monarrez described to Dr. Enelow in very extensive detail his experiences at Chevron. As a result of this examination, Dr. Enelow found Monarrez’ mental status to be as follows:

***25** Monarrez is depressed and a very angry man. He feels that he has suffered considerable discrimination and racism as well as demeaning and humiliating treatment.... When he described some of the incidents that occurred to him, such as his great difficulty in arranging to go to the crafts training course, he became very angry and was visibly upset... He also believes that he cannot work at 11-C camp any more after what he experienced there. He stated that many people are bigots. He now realizes that these people are not going to change

.... His anger has reached a level that he is not certain that he can control it. He is obsessively preoccupied with it. He wakes up from his disturbed sleep fighting with the foreman. His anger grew as he talked of how he was “kicked around.” It was at this point that one could see the full amount of anxiety, anger, and depression that Mr. Monarrez feels. the potential explosiveness became apparent at that point. There was no evidence of cognitive impairment or thought disorder.

Monarrez Exh. 45 at 8. Based on Dr. Herrera’s testing, Dr. Enelow diagnosed Monarrez with an Axis I Adjustment Disorder with Mixed Emotional features of Depression, Anxiety, and Psychological factors affecting physical condition.

Dr. Enelow concluded his report with the following “Summary and Conclusions”:

Salvador Monarrez is a very angry man who has clearly been subjected to racial slurs and discrimination. While the letter of Mr. Shelby makes a credible case for a corporate response to the discrimination complaints and grievances that came to the attention of management, there is adequate data in Mr. Monarrez’s very credible account that the ongoing and daily harassment that he experienced never came to the attention of responsible persons in management. There is nothing about Mr. Monarrez’s account, his presentation of himself, or his psychological test findings that would cast doubt upon his credibility. I am therefore inclined to accept Mr. Monarrez’s statements as being a reliable account.

Be that as it may, it is clear that Mr. Monarrez is suffering considerable psychological and psychophysical symptoms as a result of his experiences.⁵⁰ Most of all, his pride has been hurt. Mr. Monarrez is a hard worker and, of course, an overachiever, who managed through hard work to reach a point where he could have qualified for a Bachelor’s degree had he been given the opportunity to attend college. Instead, he has been treated as though it were an absurd pretension that he should qualify for such training. This is probably the greatest blow of all....

In my opinion, Mr. Monarrez could return to work for the company and function effectively, provided certain changes were made. It is my opinion that he requires psychiatric treatment, which he is receiving [from Dr. Rashmikan Shah]. He also requires treatment for his ulcer and could probably benefit from a consultation from a gastroenterologist. However, most important, he should not be returned to work at Camp 11-C. If given a reasonable opportunity and transferred elsewhere, he should be able to return to work. However, he is permanently disabled from working at Camp 11-C and is in danger of having an explosive outburst of anger and injuring somebody if he is subjected to further harassment of the sort that he has received.

***26** *Id.* at 10-11. In short, Dr. Enelow concluded that Monarrez “was temporarily totally disabled, in need of treatment and permanently disabled from working at Camp 11-C.” Monarrez Exh. 45 (March 22, 1988 letter at 1).

25. Dr. Enelow re-examined Monarrez on February 23, 1987, and “found him to be quite upset and very angry. He continued to be suffering from the same psychiatric disorders and was clinically worse. Psychological testing supported increased anger, increased depression and increased somatic concern.” Monarrez Exh. 45 (March 22, 1988 letter).

26. A status and progress report by Monarrez’ treating

psychiatrist, Dr. Shah, dated April 14, 1987, concluded that “Monarrez remains very disabled and has very severe psychiatric symptoms as well as somatic symptoms. He continues to be very depressed at times and feeling very hopeless. He feels very despondent and dejected. He feels like ‘giving up.’ He strongly feels that he needs to continue ‘fighting on’ and prove himself right.” Monarrez Exh. 43 (April 14, 1987 letter).

27. Dr. Enelow and Dr. Herrera again examined Monarrez in March of 1988. Their joint report, authored by Dr. Enelow concluded as follows:

Salvador Monarrez is less depressed and less somatically concerned, but remains somewhat angry, paranoid and fearful about the future. He wants to return to work. In my opinion he is still temporarily partially disabled, but is capable of working if he is not assigned to Taft, where he encountered overt and blatant racial discrimination.

He is still on medication and still needs to see Dr. Shah, so that his condition is not yet permanent and stationary. However, it would be appropriate for him to return to work at his former duties, if he is not assigned to Taft. I would predict that if he encounters the same type of racial discrimination and unfair or unequal treatment, his symptoms will increase and he will become totally temporarily disabled once again. Therefore, I consider it important the he be assigned to an area where he will not have the difficulties he had in the past. It would be ideal and would also be a vote of confidence in him if he could be assigned to Bakersfield so that he could attend courses at Cal State Bakersfield.⁵¹

28. On March 25, 1988, Dr. Shah released Monarrez to return with no restrictions if he was given a different work location other than Taft. Dr. Shah also noted that Monarrez had expressed a preference for the Bakersfield area so that he could continue with college.

29. On May 13, 1988, Dr. Shah again wrote to Chevron stating that Monarrez could be returned to his job duties. This letter stated that Monarrez would be “willing to return to the Taft area or where there would be an opportunity for placement.” Monarrez Exh. 43 (May 13, 1988 letter). Although Monarrez knew that the doctors had recommended against his returning to the Taft 11-C Shops, he testified that “in my heart I said I’m going to give it another go, I’m going to try it one more time to see what happens.” Tr. 11-850. A subsequent letter of May 20, 1988 from Dr. Shah released Monarrez to work in the Taft area without any restrictions.

*27 30. Chevron returned Monarrez to work on June 1,

1988 to the Taft 11-C Floor Shop.⁵² As a result of being disabled from October 25, 1985 to June 1, 1988, due to racial discrimination he faced at Chevron, Monarrez was prevented from competing for a Lead Mechanic position in the Floor Shop which became open in 1987. That position was filled by Bill Rowson who had no previous experience in heavy duty repair. The evidence did not sufficiently demonstrate, however, that Monarrez was denied, due to racial discrimination, a Foreman position in 1987 (given to Al Horner) or a Head Mechanic position in 1987 (given to Ken Scheer).

31. On Monarrez’ first day back at work in the Floor Shop, his Foreman, Les Dietrich, greeted him with the remark “What are you trying to do, make up?” Monarrez Tr. 11-810. The remark was said in a demeaning tone.

32. As predicted by Dr. Enelow, reassigning Monarrez to the Taft 11-C shops immediately subjected Monarrez to many of the stressors that had led to his initial disability and made his readjustment extremely difficult. It is clear that Monarrez continued to feel resentment and frustration, which he projected at different times to his superiors. At one point he yelled “fuck” in a manner that appeared to be directed toward his Superintendent as he was passing through the Floor Shop. As a result, Monarrez was not seriously considered for additional promotions, including the position of Lead Mechanic in the Floor Section, when it opened up in 1990. This position was given to a Caucasian employee Jack Webb. Employed at Chevron since 1962, Webb previously worked as a head mechanic in Chevron’s Southern California La Habra shops operation which was closing down at the time.⁵³

33. In 1989 a Crafts Foreman and a Crafts Trainer position became available and were filled by Caucasian employees. The evidence is not sufficient to demonstrate that Monarrez was denied these positions due to racial discrimination. Nor did Monarrez submit sufficient evidence from which to evaluate his claims that he was discriminatorily denied training as relief Leadman, relief Head Mechanic and relief Foreman in 1989-90.

34. On October 24, 1990 Monarrez stopped working at Chevron and went out on permanent medical disability. On November 13, 1990, Monarrez was examined by psychiatrist George R. Rowell. he was found to have the following psychiatric symptoms: (1) decreased concentration, (2) decreased memory, (3) insomnia, (4) nightmares, (5) recollections of stress, (6) depression, (7) crying, (8) anxiety, (9) irritability, (10) increased appetite, (11) weight gain, (12) loss of sexual interest, (13) loss of interest in usually pleasurable social activities, and (14) fatigue. Monarrez Exh. 47 (Nov. 13, 1990 evaluation).

35. On December 12, 1992, the Social Security Administration found that Monarrez was completely disabled as of October 24, 1990.

36. Plaintiffs' retained psychiatric expert, Dr. Herrera, examined Monarrez in July 1995. He concluded that Monarrez was "suffering from [an Axis I] Depression NOS with features of anxiety and somatization," Herrera Decl. at ¶ 11, and that these symptoms were causally related to his Chevron's failure to promote him. 8/16 Tr. at 17. Herrera further concluded that Monarrez' tension, anxiety and depression were at a disabling level and that he could not return to work for Chevron due to anger and mistrust. Herrera Decl. at ¶ 14. Dr. Enelow, defendant's retained psychiatric expert, diagnosed Monarrez with the same disorder: an Axis I depression NOS. Aaron Decl. at p. 3.

*28 Defendant contends that other factors, not related to the alleged discriminatory denial of training and promotion, have contributed to Herrera's emotional distress. While we agree with defendant that there may be such other factors, which the Court will take into account, we are satisfied that the principal and overriding cause of Monarrez' emotional distress is the discriminatory denial of training and promotional opportunity at Chevron.

37. To the extent that any of the following Conclusions of Law are deemed to be Findings of Fact, they are incorporated herein by reference.

III. CONCLUSIONS OF LAW

1. To the extent that any of the foregoing Findings of Fact are deemed to be Conclusions of Law, they are incorporated herein by reference.

2. Under the Civil Rights Act of 1866, 42 U.S.C. § 1981, ("§ 1981") and the California Fair Employment and Housing Act ("FEHA"), California Gov't Code § 12940 et seq, it is unlawful for an employer to discriminate against an employee on the basis of race. Specifically, § 1981 prohibits racial discrimination in the "mak[ing] and enforce[ment] of contracts." *Patterson v. McLean Credit Union*, 491 U.S. 164, 176, 109 S.Ct. 2363, 2372 (1989); 42 U.S.C. § 1981.⁵⁴ The FEHA more broadly prohibits job discrimination on the basis of, among other things, race, color, creed, ancestry or national origin. *Heard v. Lockheed Missiles & Space Co*, 44 Cal.App.4th 1735, 52 Cal.Rptr.2d 620, 627 (1996); Calif. Gov't Code § 12940 et seq.

3. Plaintiffs who prevail under either § 1981 or the FEHA

may recover compensatory damages for emotional distress.⁵⁵ *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 460-61, 95 S.Ct. 1716 (1975); *Miller v. Fairchild Industries, Inc.*, 797 F.2d 727 (9th Cir. 1986); *Watson v. Dep't of Rehabilitation*, 212 Cal.App.3d 1271, 1286, 261 Cal.Rptr. 204 (1989).

4. Where, as here, the plaintiffs allege "disparate treatment," the ultimate issue for the district court to decide is "whether the defendant intentionally discriminated against the plaintiff." *Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1491 (9th Cir. 1995). As courts have acknowledged, there is seldom "eyewitness' testimony as to the employer's mental processes" or intent. *U.S. Postal Service Bd. of Governors. v. Aikens*, 460 U.S. 711, 716, 103 S.Ct. 1478, 1482 (1983). Consequently, plaintiffs are seldom able to "produce direct evidence or 'smoking gun' evidence of discrimination." *Heard v. Lockheed Missiles & Space Co*, 44 Cal.App.4th 1735, 52 Cal.Rptr.2d at 627. Courts may therefore rely on direct or circumstantial evidence to determine the question of discriminatory intent. See e.g. *Int'l Brotherhood of Teamsters*, 431 U.S. at 335, n.15, 97 S.Ct. at 1854 ("Proof of discriminatory motive is critical, although it can in some situations be inferred from the mere fact of differences in treatment"); *Sischo-Nownejad v. Merced Community College District*, 934 F.2d 1104, 1110-1111 (9th Cir. 1991); *Carter v. Duncan-Huggins, Ltd.*, 727 F.2d 1225, 1231 (D.C. Cir. 1984) (discriminatory animus may be demonstrated through direct or indirect evidence).⁵⁶

*29 5. To assist factfinders in deciding the issue of discriminatory intent, the Supreme Court has formulated a three-stage inquiry.⁵⁷ First, the plaintiff must establish the minimal requirements of a *prima facie* case of racial discrimination. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 113 S.Ct. 2742, 2747 (1993); *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093 (1981)(establishing *prima facie* case of disparate treatment is not onerous). Proving a *prima facie* case creates a presumption that the defendant unlawfully discriminated against the plaintiff. *Id.*

6. The burden then shifts to the employer to produce evidence of a legitimate, non-discriminatory reason for the adverse employment action. *St. Mary's Honor Center*, 113 S.Ct. at 2747. If the defendant meets this burden, the presumption created by the *prima facie* case falls away and "the trier of fact proceeds to decide the ultimate question: whether plaintiff has proven 'that the defendant intentionally discriminated against [him]' because of his race." *Id.* at 2749. At this point, the plaintiff may seek to prove that the legitimate reason(s) offered by the defendant are false or pretextual. Such a finding,

however, does not automatically compel a verdict for the plaintiff. *Id.* Rather, the plaintiff still bears the ultimate burden of persuading the trier of fact of the employer's discriminatory intent. *Id.* A factfinder's "rejection of the defendant's proffered reasons, will, however, *permit* the trier of fact to infer the ultimate fact of intentional discrimination, and ... '[n]o additional proof of discrimination is *required*.'" *Id.* (emphasis in original) (citation omitted). *See also id.* (disbelief of reasons put forward by the defendant along with *prima facie* showing are sufficient to permit finding of intentional discrimination).

7. In determining the order and burdens of proof for claims under the FEHA, California courts look to analogous federal law. *Heard*, —Cal.App.4th —, 52 Cal.Rptr.2d at 627 (California courts rely on federal decisions to interpret analogous parts of FEHA); *Mixon v. Fair Employment & Housing Comm'n*, 192 Cal.App.3d 1306 1316, 273 Cal.Rptr. 884 (1987). However, where California law is more liberal, California law applies. *See e.g. Watson*, 212 Cal.App.3d at 1290 (applying more lenient standard used by Fair Employment Practices Commission).

8. Courts have recognized that highly subjective employment practices may provide opportunities for discriminatory treatment of employees. *See e.g., Miles v. M.N.C. Corp.*, 750 F.2d 867, 871 (11th Cir. 1985) ("subjective evaluations involving white supervisors provide a ready mechanism for racial discrimination").

Archie Barefield

9. Barefield has made out a *prima facie* case of race discrimination in that (i) he belongs to a racial minority, (ii) he was qualified for the positions at issue,⁵⁸ (iii) he was rejected for the positions, and (iv) the positions were filled by non- African-Americans. Chevron rebutted Barefield's *prima facie* case by offering a legitimate, non-discriminatory reason for the adverse employment actions, namely, that the Caucasian employees selected instead of Barefield were more qualified for the positions at issue. Accordingly, the presumptions fall away and the only remaining question is whether Barefield was intentionally discriminated against on the basis of race.

*30 10. For all of the reasons set forth in the Findings of Fact we conclude that Chevron's proffered explanation is pretextual with respect to the Foreman promotions made in June of 1985. In light of this determination, the Court's factual findings, and the entire record herein, we also

conclude that Barefield has carried his ultimate burden of proving, by a preponderance of the evidence, that he was denied a promotion to the position of Foreman in June of 1985 as a result of intentional racial discrimination.

Indeed, the Court has little doubt that had Barefield been Caucasian, he would have been promoted up through the ranks to Foreman in June of 1985. Instead, after developing a wealth of experience with the Company over 18 years, and proving himself a loyal and amply well-qualified employee for the position of Foreman, he hit a glass ceiling virtually impenetrable to African-Americans.⁵⁹

11. In light of the above, the Court determines that Barefield has prevailed in part on his claim under § 1981 and the FEHA.

12. Barefield has not, however, introduced evidence sufficient to meet his ultimate burden of showing intentional discrimination with respect to his subsequent claims for denial of training and promotions during the period 1988-1990, as identified in his Pretrial Statement. Rather, for the reasons set forth in the Findings of Fact, and considering the entire record herein, Chevron is entitled to judgment on this portion of his claims under § 1981 and the FEHA.

Leon Francies

13. For the reasons set forth in the Findings of Fact, and considering the entire record herein, the Court concludes that Chevron presented legitimate, non-discriminatory reasons for the adverse employment actions at issue with respect to plaintiff Francies. Francies did not, however, for the reasons set forth in the Findings of Fact, meet his burden of showing that such reasons were pretextual or that the denial of the training or promotions identified in his Pretrial Statement were due in whole or part to intentional racial discrimination. Accordingly, Chevron is entitled to judgment on these claims.

Salvador Monarrez

14. Monarrez has made out a *prima facie* case of race discrimination in that he (i) belongs to a racial minority, (ii) was qualified for the positions at issue⁶⁰, (iii) was rejected for these positions, and (iv) the positions were filled by non-Hispanic employees. Chevron rebutted Monarrez' *prima facie* case by offering non-

discriminatory reasons for the adverse employment actions in dispute. Accordingly, the presumptions fall away and the only remaining question is whether Monarrez was intentionally discriminated against on the basis of race. For all of the reasons set forth in the Findings of Fact, we conclude that Chevron's proffered explanations for its failure to promote Monarrez to Mechanic A in a timely fashion, and its failure to promote him to a position of Lead Mechanic, are pretextual. In light of this determination, the Court's factual findings, and the entire record herein, we also conclude that Monarrez has carried his ultimate burden of proving, by a preponderance of the evidence, that Chevron's failure to promote Monarrez to Mechanic A in a timely fashion or to promote him to the position of Lead Mechanic was due to intentional racial discrimination.

*31 Monarrez was an able, dedicated employee who clearly aspired to advance to higher levels within the Chevron company. Chevron responded, however, not by facilitating such advances, as it often did in the case of Caucasian employees -- such as Bill Rowson -- but by imposing racially motivated roadblocks. This Court is firmly convinced that Chevron's course of conduct toward Monarrez, up to and including the failure to timely promote him to the position of Mechanic A and Lead Mechanic, reflects an intent to discriminate on the basis of race.

15. In light of the above, Monarrez has prevailed in part on his claim under the FEHA.

16. Monarrez has not, however, introduced evidence sufficient to meet his ultimate burden of showing intentional discrimination with respect to his subsequent claims for denial of training and promotions, as identified in his Pretrial Statement. Rather, for the reasons set forth in the Findings of Fact, and considering the entire record herein, Chevron is entitled to judgment on this portion of Monarrez' claim under the FEHA.⁶¹

Damages

17. Plaintiffs Monarrez and Barefield may recover damages only for emotional distress caused by the specific conduct that this Court has found to be unlawful under § 1981 and/or the FEHA. Thus, they can not recover for emotional distress suffered as a result of (a) a racially hostile work environment, (b) being denied promotions, positions, or training for which defendants bear no liability under § 1981 and/or the FEHA, or (c) other events not caused by defendant's unlawful

conduct.⁶²

18. Focusing solely on the mental pain and anguish suffered as a result of the unlawful conduct found herein, the Court turns to each prevailing plaintiff. With respect to Barefield, the Court concludes that he suffered extended and severe emotional distress as a result of his discriminatory treatment in 1985. Barefield's goal was to become a Foreman at Chevron. When Chevron's discriminatory conduct stymied this dream, the effect was nothing short of devastating. Barefield suffered substantial, anxiety, depression, and sleeplessness, along with chest pains, and neck and stomach problems. He became withdrawn from his family. He developed a psychiatric adjustment disorder which prevented him from working and required regular psychiatric treatment. He was not released to return to work for roughly 31 months.⁶³ During much of this period, Barefield felt like he was living a nightmare.

19. Determining the appropriate amount of recovery for emotional distress is a difficult and subjective undertaking in any case. It is certainly no easy task to place a dollar figure on the emotional toll caused by a career derailed by discriminatory conduct. Having considered the record herein, and weighed the evidence, including the corroborative psychiatric testimony and records, the Court awards Barefield \$192,000 for his emotional distress caused by the unlawful conduct found herein.⁶⁴

20. With respect to Monarrez, the Court concludes that he also suffered extended and severe emotional distress due to Chevron's discriminatory failure to promote him to Mechanic A and Lead Mechanic. He experienced severe anxiety, along with depression, and feelings of hopelessness and anger. He also suffered disturbed sleep and aggravation of his ulcer. He was diagnosed with a psychiatric adjustment disorder which required regular psychiatric treatment, and was unable to work for roughly 29 months. As he simply but convincingly testified, discrimination "eats you up inside." 5/3/96 Tr. at 848.

*32 21. Having considered the record herein, and weighed the evidence, including the corroborative psychiatric testimony and records, the Court awards Monarrez \$176,000 for his emotional distress caused by the unlawful conduct found herein. In making this award, we have taken into account, among other things, the fact that Monarrez, more than Barefield, was subjected to external factors that contributed to his level of emotional distress (such as a more overtly hostile work environment).

CONCLUSION

In light of the foregoing, and good cause appearing, this Court rules:

(a) in favor of plaintiff Archie Barefield with respect to his claims under § 1981 and the FEHA for discriminatory denial of promotion to Foreman in 1985 in the amount of \$192,000. With respect to his remaining claims, the Court finds in favor defendant.

(b) in favor of defendant with respect to plaintiff Leon Francies.

(c) in favor of Plaintiff Salvador Monarrez with respect to

his claim under the FEHA for discriminatory denial of promotion to Mechanic and Lead Mechanic in the amount of \$176,000. With respect to his remaining claims, the Court finds in favor of defendant.

IT IS FURTHER ORDERED THAT the parties shall meet and confer within 7 days of the date of this Order regarding a proposed form of judgment. The parties shall submit a joint proposed form of judgment within 14 days of the date of this Order.

IT IS SO ORDERED.

Footnotes

¹ We note, however, that evidence of discriminatory conduct prior to this cut-off may constitute “relevant background evidence.” *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558, 97 S.Ct. 1885, 1889 (1977).

² For the sake of convenience, the Court will hereafter use the term “plaintiffs’ counsel” to refer to separate counsel for the opt-out plaintiffs.

³ The effect of this representation was to waive the opt-out plaintiffs’ claims of hostile work environment. After hearing the evidence in this case, the Court (as it stated at the close of trial) finds it astonishing that plaintiffs’ counsel waived these claims as to all three plaintiffs, given some of the forceful and credible evidence of overt racial harassment at Chevron, particularly in the Taft area. Indeed, in over 16 years, this Court has rarely, if ever, been presented with evidence of racial hostility as compelling as that presented in certain portions of this action. The only apparent explanation is plaintiffs’ counsel’s shockingly poor preparation, chronic disorganization, and sloppiness which marked counsel’s performance throughout the pretrial, trial, and post-trial proceedings in these opt-out claims. These factors have also contributed to the delay in the issuance of these findings and conclusions.

⁴ The general findings concerning Chevron’s overall structure and organization are intended to apply only to the time period at issue in this case, and may not reflect current structures or practices.

⁵ Chevron’s NCD Production Department also encompasses some additional sections including Engineering, Design and Construction Engineering, and Environmental, which employ some additional non-exempt and exempt employees.

⁶ Admitted in evidence (along with defendant’s July 10, 1995 memorandum and supporting declaration critiquing report), pursuant to the Court’s August 2, 1995 Order at 1-2.

⁷ The experience of Bill Rowson, a Caucasian Chevron employee who testified in Monarrez’ case, provides an example of this point. Rowson testified that he was moved around to different supervisory positions although he sometimes lacked experience in the specific area he was supervising. With respect to one such move, he acknowledged that one or more minority employees was more qualified than he for the position. Specifically, in 1987, Rowson was asked if he wanted the position of Lead Mechanic in the Floor Section although he had no experience in heavy duty repairs. Rowson believed that other minority employees were more qualified for the position, and testified that he mentioned to his superior that “there were [others] more deserving of it than I was,” 5/2/96 Tr. 10-641. His superior responded that “they just wanted me to give it a shot.” *Id.*

⁸ Chevron contends that the OFCCP report is entitled to no weight. First, it contends that the investigator, Ms. Figueroa had recommended a finding of discrimination in “every” class action discrimination complaint she investigated. *See* Def’s July 10, 1995 Memorandum in Support of Motions in Limine at 2. However, over 15 years, she only investigated 5 class complaints (one of which was initiated by Congress), and her recommendations in each such case were approved by the Regional Director. She also concluded that allegations of race discrimination in one class action she investigated were unfounded, but she transferred offices before the investigative report issued. *See* July 10, 1995 Nelson Decl., Exh. B at 31-33, 37, Exh D. at 39-41, 50.

Chevron also states that Ms. Figueroa did not speak to a “single Chevron supervisor or manager about the promotion or training selections involved.” *See* Def’s July 10, 1995 Memorandum in Support of Motions in Limine at 2. According to deposition excerpts, however, Ms. Figueroa did interview Chevron supervisors, including Foreman Bob Bledsoe, Area Superintendent

Dave Farr, and Foreman George Hawkins. *Id.* Exh. C at 108, 120, 166. She also submitted written questions to Chevron management concerning promotion and training policies.

Finally, Chevron states that it was not afforded an opportunity to address the results of the OFCCP investigation prior to issuance of the final report. However, Chevron has not demonstrated that employers are normally afforded an opportunity to comment on OFCCP reports before they are issued.

In short, the Court is not persuaded that the OFCCP report is entitled to no weight. On the other hand, the Court lacks sufficient information from which to fully assess the depth and thoroughness of the investigation. Accordingly, the Court gives the OFCCP report some weight but does not consider it to be an especially significant or determinative factor.

9 The AOA classification was an administrative, non-exempt position that no longer exists. AOAs handled invoices and other paperwork.

10 When reviewing this evaluation with his supervisor, Barefield made the following handwritten comment: “I contest that statement. I asked [[supervisor] Leonard Clark to be more specific. I also ask him to give me an example; he couldn’t.” Pl’s Exh. 9.

11 While Barefield was employed in non-exempt positions, he received bi-annual evaluations. After he was promoted to an exempt, management position in 1982, Barefield began receiving annual evaluations. As Area Superintendent Tom Harrison testified, the 1035 forms, used to evaluate exempt employees, “are typically filled out at the end of an *annual* period.” 4/23 Tr. at 32 (emphasis added).

12 At trial, Harrison appeared to suggest that the Spring 1985 Qualification Scoring process, discussed *infra*, undertaken in anticipation of the June 1985 promotions, replaced the October 1984 evaluations. 4/23 Tr. at 67. It seems unlikely, however, that a confidential scoring process that was not shared with the employees, and which did not take place until March of the following year, would replace the usual year-end performance evaluation process.

13 Traditionally, Foreman positions were at the “2” or “3” pay level (with “1” being the highest pay level). The new Foreman positions created as a result of the merger were given somewhat fewer responsibilities than the traditional Foreman positions and were rated “4A” positions for purposes of salary. Because OAs are also at a 4A salary level, Chevron contends that the appointments to Foremen did not constitute promotions but merely “lateral reassignments.” Accordingly, Chevron argues that it is entitled to judgment on Barefield’s claim.

This argument is wholly disingenuous. First, there is no apparent authority, and Chevron cites none, that makes an immediate pay increase a legal prerequisite of a promotion. Moreover, Foreman and Area Foreman can both be at a 3 salary level (*see* Def’s Dec. 7, 1994 Pretrial Statement at 6); yet, Area Foremen rank above Foremen. (There is also a considerable pay range within the 4A salary level; thus, not all 4As are paid the same).

More importantly, as Claude Fiddler, then Division Manager, candidly explained, the position of Foreman is the higher ranking position and carries more authority and prestige: “The Foreman would be the person in overall control of a given area of operation ... *The Operations Assistant was assigned to a Foreman* and the Operations Assistant would do some analytic work for the Foreman. He would handle a lot of the paperwork for the Foreman, he may do some cost control ... At times he would relieve the Foreman for a day or two or when the Foreman was sick on vacation or away.” 8/16 Tr. at 140-41 (emphasis added). *See also id.* at 163 (“An OA could *work for* one or more Foreman”) (emphasis added); Def’s Exh. W (chart of positions showing OA as lower ranking position). Indeed, the pecking order was clear: “The Foreman could tell an Operations Assistant I want you to do this and this and this.” 8/16 Tr. at 164. We also note that the memorandum circulated to Area Superintendents in February 1985 stated that the Company would be following its “promotion procedure” in filling the open Foreman positions. Def’s Exh. N. at 4768. Given all of the above, the Court readily concludes that OAs selected for the Foreman position received a promotion.

14 According to statistics provided by Chevron, the number of African-American OOAs and OOBs employed between 1980 and 1985 were as follows: 1980: 8 OOBs, 6 OOAs; 1981: 9 OOBs, 8 OOAs; 1982: 8 OOBs, 10 OOAs; 1983: 8 OOBs, 10 OOAs; 1984: 10 OOBs, 9 OOAs; 1985: 8 OOBs, 12 OOAs. During this period there were zero african-american Head Operators, the next position in progression after OOA.

15 Because the Foreman positions are exempt positions, seniority was not given any weight per se. However, length of service was relevant to determining an employee’s level of experience. For example, Division Manager Claude Fiddler explained that he had pointed out the service date of an employee that had been promoted over Barefield, not because seniority was a factor but simply to point out that the employee “had an awful lot of experience in that specific job over a long number of years, that’s what counted, not when he came to work.” 8/17 Tr. at 37.

16 While the testimony was somewhat inconsistent regarding the role of past performance appraisals in the scoring process, it is clear that such appraisals were not referred to in any consistent or deliberate way, and it appears likely they were not referred to at all, or if so, only sporadically. Harrison, for example, testified that while past performance appraisals were “available” he did not recall if they were used or considered. 4/23 Tr. at 7.

17 Harrison testified that job knowledge scores focused on the employees' previous six to twelve months. The Court finds it difficult to believe, however, that employees with 10 to 20 plus years of experience were evaluated on job knowledge based on their job duties during the last six to twelve months. Indeed, it is clear that Chevron did consider experience that pre-dated the last twelve months when it benefitted Chevron to do so.

18 As noted earlier, however, his mid-point Summary Evaluation rating did not accurately reflect his ratings in individual categories.

19 R.G. Dickey, E.W. Brown, and R.J. Piepkorn.

20 A summary rating at the mid-point of the continuum is referred to as a "meets expectations" rating. A rating to the right of the mid-point is considered a "typically exceeds expectations" rating. *See* Tr. 2-194 ("typically exceeds expectations" rating described as a rating "above the mid-point"). A rating at the far right end of the continuum is referred to as an "Exceptional" or "Far Exceeds Expectations" rating.

21 One of the zeros was in "Co-generation Systems" which Barefield agrees is appropriate. The other zero was in "Steam Generators" even though Barefield had experience working with steam generators in prior years (during the 1970s), had shown other employees how to use the steam generator, and had acted as a Relief Foreman in an area that included steam generators. Moreover, he credibly testified that this experience should not be wholly rejected because it was not recent. Rather, he likened operating a steam generator to learning how to drive a car: "[it is] just like driving a car. Once you learn how to drive a car, you always know how to drive a car.... [O]perating [steam generators] ... [i]t's something you don't forget." Tr. 3-309. Indeed, Chevron felt he had sufficient familiarity with steam plants to assign him on the "suggested post merger" charts to the position of OA for the Steam Foreman.

22 Bias against Barefield in the Rack-up process is also reflected in the "Ability to Learn" category. Virtually every employee selected for promotion to Foreman had a positive comment entered in this category along the lines of "very good," "learns fast," "fast learner." This category, however, was left blank in Barefield's case although he was described in past evaluations as being a fast learner. *See e.g.* Pl's Exh. 124 at 7 (1984 evaluation described Barefield as a "fast learner"); 1981 evaluation ("learns quickly" "astute"); 1977 evaluation ("learns fast").

23 One of the 12 was promoted to a trainer position; the remaining 9 were promoted to Foreman positions. Tom Harrison, the only witness to testify regarding J. Hill, said he could not recall why Hill was not promoted. 4/23 Tr. at 57.
At trial Harrison also mentioned in passing two other white OAs who were not promoted in 1985, M. Lacey, and W.C. Jewell. Neither appear on the pre-merger charts as permanent field OAs assisting Foreman. It appears that W. Jewell held a position in compliance; the specific position held by M. Lacey is unclear. In any event, both are easily distinguishable from Barefield. W.C. Jewell had a *below* average summary evaluation rating (*see* Def's Exh. N at 4761)("Low to Meets Normal Expectations"), and M. Lacey was noted to have "problems working with people." *Id.* Barefield had neither deficiency.

24 Barefield has not challenged the promotion of employees to Foreman that did not hold his same field OA position.

25 Barefield had, however, stated his willingness to relocate to Taft or Cymric.

26 For example, R. Long had been an OA for five months, Hankins had been a temporary OA for 13 months, and W.R. Dickey had been an OA for 8 months.

27 For example, Breadmont was promoted to Foreman from the OOA position, while D. Millard was promoted from the HO position.

28 While Barefield was only rated at mid-point on decision-making in 1982, this mark improved to above mid-point in 1983. His missing 1984 evaluation also described him as "aggressive."

29 Notably, the suggested post-merger charts listed alternate choices for each position, and these alternates included employees from other areas. For example, D.D Richards (in Cymric) was listed as an alternative to R.G. Dickey (in Taft); R.G. Dickey (Taft) was listed as an alternate to G.V. Bender (Bakersfield) and R.D. Long (Bakersfield) was listed as an alternate to W. Fields (Cymric). Thus, Chevron clearly considered a transfer from one location to another to be a viable option.

30 For reasons that are unclear, it does not appear that Barefield was given a performance evaluation at any time after he returned to Chevron in 1988.

31 A diagnosis of depression NOS means that the patient "suffers from an unspecified depression which does not fall under other specific categories of depression set forth in DSM IIR or DSM IV, standard manuals used in the diagnosis of psychiatric illness."

Aaron Decl. at 4.

32 To the extent that Dr. Aaron's and Dr. Herrera's opinions can not be reconciled, we find Dr. Herrera's opinion to be more persuasive. Originally hired by Chevron (in connection with Barefield's Worker's Compensation claim), Herrera has evaluated Barefield four times between 1986 and 1995. Dr. Aaron, in contrast, evaluated Barefield only one time in anticipation of this litigation.

33 The flier stated, among other things, that "The Ku Klux Klan would like to take this time to salute and congratulate all gang bangers for the slaughter of 4000 black people since 1975. You are doing a marvelous job!" Francies Exh. 23.

34 Francies was called "nigger" by other employees. *See also* Francies Exh. 25 at 1109 (notes of April 1985 conversation with Foreman George Hawkins)("He ask me if I had any problems. And I said, concerning what. He said with the Company far as discrimination. I said yes, I do get tired of the guys calling me nigger and using the name nigger around me. [Hawkins] said well were they actually calling me nigger? I said yes. I mention a few of many instances that happen" [sic]). Francies was also subjected to racially derogatory jokes. A few of the many examples include Max Carpenter asking him to get some african-american hair from the barber shop to polish his mag wheels, and Bob Oldham saying, as Francies entered the shop after being on leave, "there goes the neighborhood." In light of the above, as well as the testimony by Max Carpenter, Monarrez and others, *see e.g.* note 40 *supra*, Hawkins' testimony, that the only racial slur he heard in 30 years was a statement by Francies that "the jig is up," is simply not credible.

35 He was rated slightly above average in one category, "Volume of Work."

36 Specifically, Francies contends that (a) in 1983 he should have been promoted to Head Electrician (instead of Bill Smith), Environmental Department Operations Assistant (instead of Al Horner), (b) in 1984 he should have been promoted to Head Electrician (instead of Max Carpenter), and Construction Representative (instead of Bill Smith), and (c) in 1985 he should have been promoted to Construction Representative (instead of Lloyd Moore), Foreman (instead of Lloyd Moore). We note that Bill Smith was not in fact promoted to Head Electrician in 1983 but was only given Head Electrician relief. Further, the 1983 Environmental OA position is erroneously listed in the Pretrial Statement as a 1985 position. Finally, the Pretrial Statement lists a 1985 Construction Representative position filled by Max Carpenter and Lloyd Moore. Lloyd Moore, however, did not receive a permanent Construction Representative position in 1985; rather, he received a temporary Construction Representative assignment which required knowledge of AWTs which Francies had not mastered although he had been given training in this area. Nor does it appear that Max Carpenter received a Construction Representative position in 1985; rather, he obtained this position sometime after November 1986.

37 Specifically, Francies contends that (a) in 1986 he should have been promoted to the position of Construction Representative in 1986 (instead of George Hawkins, his Foreman, or Max Carpenter), (b) in 1987 he should have been promoted to the position of Foreman in 1987 (instead of Al Horner) and (c) in 1988, he should have been promoted to the position of Foreman (instead of Brian O'Neill). We note that in 1988 O'Neill was given the position of Steam Generator Foreman, for which Francies was plainly not qualified. O'Neill was not given the position of Crafts Foreman until 1990.

38 The Court notes, for example, that Francies failed to list on his Chevron employment application five previous (short term) electrical jobs he had held; nor did he list any of these former employers as references. This creates the inference that he omitted this past experience because it was not favorable. Another example concerns his recounting of the "PG&E incident." His testimony conflicted in certain important respects with the more credible recounting by Earl Gayles, a witness called by Francies. Plaintiffs' expert, Dr. Herrera, also concluded that Francies "might potentially be exaggerating the degree of his emotional dysfunction." Herrera (Francies) Decl. at ¶ 9.

39 In 1978, Monarrez gave his supervisor Eric Manders documentation of his college achievements and asked that they be placed in his personnel file. In 1985, he learned that they had not been placed in his file.

40 The prevalence of discriminatory attitudes in the Taft area was underscored by the deposition testimony of Max Carpenter, who worked 20-plus years for Chevron, including as a mechanic in the pump shop and as an electrician. He testified that "everyone" told racial jokes at Chevron, and that he and other employees used the terms "stupid mexicans," "greasers," "wetbacks," "niggers," and "nigger rig" (the latter to refer to a rig that is "half-assed"). Carpenter Depo. at 60-67, 100.

41 Indeed, this supposed comment conflicts not only with Monarrez' credible testimony to the contrary but with his May 22, 1978 letter to management seeking a transfer in which he states that "My ambitions are many" and that he would like to pursue an educational path that would help him advance within Chevron. Monarrez Exh. 41; *see also* Monarrez Exh. 5 (showing above average marks on "initiative" in later evaluations of performance in Pump Shop).

42 Chevron argues that Monarrez' claim that he was discriminated against in the Floor Shop is undercut by his May 22, 1978 letter requesting a transfer to Bakersfield in which stated: "I would like to say that this company has been good to me and therefore I would like to pursue an education career toward the company [sic]." Monarrez Exh. 41. However, taking all of the evidence together, and the context of the statement, we are not persuaded that this statement undermines Monarrez' credible testimony regarding the discrimination he faced. Rather, it simply appears to reflect Monarrez' attempt to put a good face on a difficult situation and obtain a transfer to what he hoped would be a more hospitable location.

43 Prior to institution of the Crafts Training Program, there were no clear guidelines for promotion to Mechanic A. As Greg Horne testified, "it was kind of arbitrary, there was really no set guidelines. It ... just happened for you or it didn't." Tr. 10-716. After institution of the Craft Training Program, completion of the Program became a prerequisite to obtaining a Mechanic A classification.

44 Rowson started as a full-time Utility Trainee in the Pump Shop in October 1977 and became a Mechanic B in 1978. The record is unclear as to exactly when he received his promotion to Mechanic A; however, it was prior to the initiation of the Crafts Training Program in the spring of 1980.

45 Rowson's testimony regarding his pre-Chevron experience was inconsistent. He stated that during the four years between high school and starting with Chevron (1973-1977) he worked for his father's steak house for two years, the County Parks and Recreation Department for one year and then Trico Industries for three years (which totals six years). Rowson then made an unconvincing attempt to backtrack on his testimony regarding the time spent at the steak house and the County. Chevron emphasizes Rowson's experience at Trico where he worked on pumps; however, the record does not persuasively demonstrate that he worked there three years, that this experience was readily transferrable, or that it significantly enhanced Rowson's overall qualifications for the specific position of Lead Mechanic in the Pump Shop at Chevron.

46 In response to these letters, Bob Bledsoe, their Foreman at the time, told Horne that he had gotten the letters and acknowledged that Horne and Monarrez had "gotten a raw deal" and that their return to the training program was "long overdue." Horne Tr. 11-726; *see also* Bledsoe Tr. 10-679 (agreeing that he had said something to the effect that "an injustice had been done in removing [Monarrez and Horne] from [the] Craft Training Program because it delayed their careers").

47 During this time period, Monarrez also wrote to upper management complaining that Mr. Rowe was still practicing his bigotry in the Floor Shop. He gave as an example an incident in which Mr. Rowe called an African-American contractor a baboon and said "look at the baboon with this teeth flexing." Monarrez Exh. 25.

48 The memorandum requesting Monarrez' promotion states "Please promote Sal Monarrez to Mech A -- Mechanic. He has completed the field training program and his work performance is good." Defendant's Exh. C-032.

49 Chevron emphasizes that while a number of Caucasian employees obtained Mechanic A promotions in 1983 and 1984, none of them worked in the Pump Shop and therefore no one was given a Mechanic A promotion over Monarrez. Chevron's Post-Trial Brief at 53. However, as Chevron also notes, Monarrez and Horne were the only two Mechanic B employees in the Pump Shop at the time *Id* at. 52-53; thus, the question is not whether other (non-existent) Caucasian Mechanic Bs in the Pump Shop were obtaining Mechanic A positions ahead of Monarrez and Horne but whether Monarrez was denied promotion to Mechanic A in a timely manner because of his race. The fact that Caucasian Mechanic B employees in other craft sections were allowed to timely enter and complete the Crafts Training Program and subsequently promote to Mechanic A, but Monarrez was not, is strong evidence of discrimination.

50 Monarrez described the following symptoms to Dr. Enelow: (1) sleep disturbance, (2) feelings of deprivation and exploitation, (3) diarrhea when upset, (4) peptic ulcer, current under treatment (on Tagamet 300mg a day), (5) moody and depressed (under treatment with antidepressant), (6) unpleasant dreams of job events from which he awakens with anxiety, and (7) irritability toward family members.

51 There are no four-year colleges located in Taft.

52 The Pump Shop was closed in 1986.

53 For reasons that are unclear, Monarrez was never given a performance evaluation between his return on June 1, 1988 and the time he left on permanent disability on October 24, 1990. This further impeded his ability to advance.

54 In *Patterson*, the Supreme Court limited the types of employment discrimination claims that are actionable under § 1981. While this limitation was statutorily reversed by Congress in the Civil Rights Act of 1991, it applies to cases like the one at bar which arose prior to the 1991 Act. *Odima v. Westin Tucson Hotel*, 53 F.3d 1484, 1494 (9th Cir. 1995). Under *Patterson*, claims that a

promotion was unlawfully denied are only actionable under § 1981 if the promotion involved a “meaningful, qualitative change in the contractual relationship.” *Sitgraves v. Allied Signal, Inc.*, 953 F.2d 570, 573 (9th Cir. 1992). Such a change occurs if, *inter alia*, an employee changes from being a “supervised employee” to being a “supervisor.” *Id.* at 574; *see also Odima*, 53 F.3d at 1494. Chevron does not dispute that Barefield’s claim regarding the 1985 Foreman promotions falls within the purview of § 1981 (since Barefield would have been promoted from a supervised employee (an OA) to a supervisor (a Foreman)). Plaintiffs’ counsel concedes, however, that Monarrez’ promotion claims are not actionable under § 1981. They are, however, actionable under the FEHA.

55 As a result of the Civil Rights Act of 1991 (amending Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (“Title VII”), compensatory damages are also recoverable in claims brought under Title VII. However, this provision does not apply retrospectively to conduct that predates the 1991 Act. *Landgraf v. USI Film Products*, 511 U.S. 244, 114 S.Ct. 1483 (1994). Accordingly, plaintiffs Monarrez and Barefield may not recover emotional distress damages under their Title VII claims.

56 We note that statistical evidence alone can not prove discriminatory animus; however, it may provide relevant circumstantial evidence. *See Int’l Brotherhood of Teamsters*, 431 U.S. at 339, n.20, 97 S.Ct. 1843; *Lynn v. Regents of the Univ. of California*, 656 F.2d 1337, 1343 (9th Cir. 1981), *cert.denied*, 459 U.S. 823 (1982). Findings by the Equal Employment Opportunity Commission (“EEOC”) are also admissible. *Chandler v. Rouddebush*, 425 U.S. 840, 864, n.39, 96 S.Ct. 1949 (1976); *Plummer v. Western Int’l Hotels Co., Inc.*, 656 F.2d 502, 505 (9th Cir. 1981). However, courts should consider the degree of procedural fairness and thoroughness in assessing their weight. *Cf. Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 60, n.21, 94 S.Ct. 1011 (1974).

57 Although first articulated in Title VII cases, this three-stage inquiry applies equally to § 1981 claims. *Patterson*, 491 U.S. at 168, 109 S.Ct. at 2377.

58 As explained in the Findings of Fact, it was not possible for Barefield to formally “apply” for the promotions at issue because Chevron did not use an application process for those promotions.

59 Chevron argues that we should find a lack of intent to discriminate because 14 Caucasian employees with more seniority than Barefield did not advance to Foreman in 1985. This observation misses the point, however, since, as Chevron repeatedly argues, seniority per se was not a factor in filling exempt, management-level positions. Moreover, a number of the employees selected for Foreman in June of 1985 had less seniority than did Barefield.

60 As explained in the Findings of Fact, it was not possible for Monarrez to formally “apply” for the promotions because Chevron did not use an application process for promotions.

61 Chevron is also entitled to judgment on Monarrez’ § 1981 claim. *See note 54 supra*.

62 For example, Monarrez may not recover for emotional distress caused by incidents of racial harassment, disputes arising from personal relationships, and concern over jaundice in his newborn son. Similarly, Barefield may not recover for emotional distress caused by other factors including his wife’s loss of her job in 1994, unrelated medical conditions, or incidents of racial harassment.

63 The Court acknowledges that Barefield (and Monarrez’) stress disability leaves were particularly lengthy. Chevron contends that Barefield (and Monarrez’) treating psychiatrist, Dr. Shah, was essentially incompetent and that his improper treatment methods led to the plaintiffs’ extended disability leaves. First, the Court is not prepared to find Dr. Shah incompetent on the present record. Moreover, even assuming *arguendo* that Dr. Shah did not provide the optimum treatment for Barefield and Monarrez, this would not require a reduction in their award of damages. Chevron essentially argues that plaintiffs should have mitigated their emotional distress damages by terminating their relationship with Dr. Shah and selecting a new psychiatrist who, by providing a different and better treatment, would have prompted an earlier recovery. Notably, it cites no authority for this novel proposition. Perhaps had plaintiffs been put on clear notice that they were being treated improperly, but insisted in continuing with such treatment, the Court would consider this argument. However, this is not such a case.

64 Chevron’s suggestion that the amount of plaintiffs’ recovery should be guided by the emotional distress awards made in the class action claims proceeding is completely meritless. As noted earlier, the Consent Decree created a compensatory damages fund (to contain between \$710,000 and \$750,000). June 24, 1991 Consent Decree at § VII (A). According to defendants, 87 class members sought recovery from this fund in 20 days of hearings, which would have required the Special Master to process 4.3 claims per day. Indeed, the Consent Decree limited the hearing on each compensatory damages claim to two hours, absent extraordinary circumstances or stipulation. *Id.* at § VII(C)(5). The type of documentary evidence that could be submitted was also limited. *Id.* at § VII(C)(6). Thus, not only was the Special Master acting under a monetary cap, but the evidence considered was much more limited than in the case at bar. As such, the Special Master’s awards provide no useful guidance.