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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LYNDON JACKSON,

11 Plaintiff,

12 v.

13 THE BOEING COMPANY,

14 Defendant.

CASE NO. C21-654 MJP

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS THE AMENDED
COMPLAINT

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16 This matter comes before the Court on Defendant's Motion to Dismiss Plaintiff's
17 Amended Complaint (Dkt. No. 40) and Plaintiff's Motion to Appoint (Dkt. No. 49). Having
18 considered the Motions, Plaintiff's Opposition (Dkt. No. 46), the Response of Daniel DeLue
19 (Dkt. No. 50) the Reply (Dkt. No. 48), and all supporting materials, the Court GRANTS the
20 Motion to Dismiss and DISMISSES this action WITH PREJUDICE and DENIES the Motion to
21 Appoint.
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BACKGROUND

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2 Plaintiff Lyndon Jackson is Black/African-American and military veteran who alleges
3 that he endured racial discrimination while employed at Boeing from March 2019 through July
4 2020. (See, e.g., Amended Complaint (“AC”) ¶¶ 1, 18-19, 22-24, 36-37, 40-43, 45-50, 54, 56-
5 95.) Jackson alleges that Boeing engaged in a variety of discriminatory conduct, including: (1)
6 failure to hire; (2) failure to train and coach; (3) “[d]enial of instruction and other necessary
7 communication; (4) “[d]enial of necessary tools and software”; (5) failure to promote; (6)
8 termination; (7) unequal terms and conditions of employment; and (8) retaliation. (See *id.*; AC at
9 32.) Jackson pursues the following claims: (1) violations of Title VII for disparate treatment,
10 hostile work environment, and retaliation; (2) violations of the Washington Law Against
11 Discrimination (“WLAD”) for disparate treatment, hostile work environment, and retaliation; (3)
12 violations of 42 U.S.C. § 1983; (4) fraud; and (5) violations of Snohomish County Code
13 2.460.070, which prohibits discrimination. (AC ¶ 95; *id.* at 2-5, 32.)

14 **A. Procedural Background**

15 Prior to filing suit, Jackson filed a charge with the EEOC in January 27, 2021, and
16 received a notice of right to sue letter on February 16, 2021. (AC at 33-34; Dkt. No. 10-1 (EEOC
17 Letter and Complaint).) In the EEOC Charge, Jackson alleged that he was discriminated and
18 retaliated against on account of his race. (Dkt. No. 10-1.) Jackson appended the EEOC filings to
19 his initial Complaint.

20 The Court previously granted Boeing’s motion to dismiss, finding that Jackson had failed
21 to state a claim for relief in his original complaint. (Order on Motion to Dismiss (Dkt. No. 38).)
22 The Court dismissed some claims with prejudice, but granted leave to amend. (*Id.*) Plaintiff filed
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1 his thirty-six page Amended Complaint, which contains more detailed allegations than the initial
2 Complaint. (Dkt. No. 39.)

3 **B. Factual Background**

4 The Court reviews the alleged instances of racial discrimination that Jackson endured
5 while employed at Boeing, as well as other factual allegations bearing on Jackson’s experience
6 as an employee that motivates this lawsuit.

7 **1. Discrimination in Job Placement**

8 Jackson alleges that he confronted discrimination on his very first day at Boeing. He
9 claims that Boeing hired him as Structural Design Engineer, but unilaterally changing his role to
10 that of a Structural Analysis Engineer shortly after he began in March 2019. (AC ¶¶ 11-12, 23.)
11 This resulted in “discriminat[ion] . . . by Defendant Boeing when he was continually forced to
12 perform a Structural Analysis Engineer job for which he was not hired and for which he was not
13 trained.” (*Id.*) And, according to Jackson, his “White counterparts, White males with similar
14 education and experience were given job titles, responsibilities, and classifications which fit their
15 respective[] levels of experience, education, and expertise.” (*Id.* ¶ 23.) Although Jackson was
16 reassigned between two groups, he was never again assigned as a Structural Design Engineer.

17 **2. Failure to Train**

18 Jackson also alleges that Boeing promised to provide him training, but failed to follow
19 through, and that this stymied his ability to meet or exceed work expectations. (*See* AC ¶¶ 9, 23.)
20 Jackson claims that this treatment diverged from the treatment of his White counterparts who
21 were given adequate training. (*See id.*) The Court reviews Jackson’s more specific allegations of
22 inadequate training which center on his experience working under four different “lead engineers”
23 to whom he reported. (*See, e.g.*, AC ¶¶ 17, 22, 35, 51.)

1 Jackson first reported to lead engineer KM (a White male), within the 767 Aft Fuselage
2 Group from March 2019 to June/July 2019. (AC ¶¶ 17, 25.) Jackson alleges that KM provided no
3 training and simply told him to “look at what the last person did.” (Id. ¶ 25.) Jackson alleges that
4 another coworker, AS, actually provided him with insights on how to complete the work. (Id.)

5 In June or July 2019, Jackson joined the 777X Forward Fuselage Group and reported to
6 two lead engineers: PBR (a White male) and KD (an Asian male). (AC ¶¶ 17, 35.) Jackson
7 alleges that he sought training and more information about loads and other engineering issues to
8 “better understand the structural analysis process within the Structures Organization.” (Id. ¶ 35.)
9 But in response, PBR, told him “look at what the last person did.” (Id.) And the other lead
10 engineer, KD, suggested he look at various books that were not supplied by Boeing. (Id.)
11 Jackson alleges that both PBR and KD failed to provide him with any feedback on his work so
12 that he might improve his performance. (Id. ¶ 39.) And after PBR and KD were reassigned,
13 Jackson then alleges he had no lead engineer supervising him for roughly two months, unlike
14 “similarly situated majority-White engineers.” (Id. ¶ 40.)

15 Jackson also alleges that the final lead engineer to whom he reported, BB (a White male)
16 failed to provide adequate training. (See AC ¶¶ 44, 52-56.) According to Jackson, BB told him to
17 make “quality improvements to analysis” beyond his responsibility as a Level 1 engineer and
18 that BB merely told him to “do what I told you’ or something of a similar nature.” (Id. ¶¶ 17,
19 51, 53.) Jackson alleges that “similarly situated majority-White counterparts” were not asked to
20 make these same level of improvements. (Id. ¶ 51.) Jackson also alleges that although BB gave
21 him access to the Electronic Coordination Sheet Library (ECSLib), BB refused to allow him use
22 of the “PATRAN superelement,” an electronic resource Jackson asserts was necessary for him to
23 perform his job well. (Id. ¶ 56.) Jackson alleges that BB feared he might “alter or otherwise
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1 ‘mess up’ the model if he had access,” apparently due to an incident when “some other random
2 engineer made changes to the PATRAN superelement he was not supposed to make.” (Id. ¶ 56.)
3 Jackson alleges that “similarly situated majority-White Structural Analysis Engineer counterparts
4 within the company and in similar positions throughout the aerospace industry are allowed
5 access to PATRAN and/or similar aircraft structural models.” (Id. ¶ 56.) Jackson also alleges
6 that BB held a closed-door meeting with him during which he said, “Plaintiff was just ‘lazy,’ a
7 common stereotype for Blacks/African-Americans.” (Id. ¶ 54.) But after Jackson described his
8 predicament, “BB responded ‘I think I see what is going on here’” which Jackson inferred to
9 mean that BB understood he was suffering from disparate treatment on account of his race. (Id.)
10 Following this private meeting, BB allegedly told everyone at a weekly team meeting that “we
11 need to do a better job of getting Lyndon up to speed” which caused Jackson to think that
12 “things might turnaround.” (Id. ¶ 55.) But according to Jackson, “little continued to be done to
13 correct the previous wrongs and damages to” him. (Id.) Jackson also alleges that “BB would
14 occasionally claim Plaintiff was stupid and berate him in front of his coworkers rather than
15 blame Plaintiff’s shortcomings on the lack of fundamental training and coordination in the
16 Structures organization and the treatment he had been facing.” (Id. ¶ 63.)

17 **3. Discrimination from Managers**

18 Jackson also details alleged discrimination that he experienced from the three White
19 managers to whom he reported. Jackson first reported to DM from March 2019 to June or July
20 2019. (AC ¶ 17.) He then reported to TS until September or October 2019, and then MP until
21 July 2020. (Id.)

22 As to the first manager, Jackson states that DM discussed the change in his initial role as
23 Structural Design Engineer to assure him that “his resume better fit the Structural Analysis
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1 engineer position and he would ‘see how it goes.’” (AC ¶ 12.) Jackson alleges further that “upon
2 noticing issues as [he] was acclimating to Structural Analysis . . . under [lead engineer] KM,
3 manager DM reassigned [Jackson] from the 767 program to the 777X program around June
4 2019.” (AC ¶ 29.) Jackson does not identify any racial animus or retaliatory motive to this move,
5 but states that his “majority-White counterparts were allowed to work in the jobs for which they
6 [were] interviewed, hired, and trained.” (*Id.*) According to Jackson, DM assured him that he
7 would be able to use newer software in the 777X group and benefit from reporting to two lead
8 engineers. (*Id.*) DM then retired in June 2019, and there are no further allegations involving him.
9 (*Id.* ¶ 30.)

10 As to the second manager, Jackson alleges that TS failed to provide any meaningful
11 oversight or assistance. TS initially asked how he was doing, but once Jackson asked for a raise,
12 “TS stopped asking about [Jackson’s] progress and failed to maintain a relationship with a direct
13 report.” (AC ¶ 32.) And at some point TS “made an off-hand comment regarding the tidiness of
14 Plaintiff’s beard.” (*Id.* ¶ 36.) Jackson explains that he had not been able to maintain a beard while
15 in the military, and that “[h]air has been a sensitive subject for Blacks/African-Americans in the
16 workplace.” (*Id.*) TS also provided Jackson with a negative performance rating as part of the late
17 2019 performance management discussion. (*Id.* ¶ 45.) Jackson alleges that TS failed to
18 acknowledge or ask about Jackson’s background and efforts and faulted him in areas where he
19 had simply not been given sufficient training. (*Id.*) TS gave him a “met expectations” rating,
20 which is alleged to be an unfavorable rating. (*Id.*) When Jackson asked TS why, TS wrote in an
21 email that Jackson “‘should learn to ‘make his manager look good’ as a subordinate, indicative
22 of [Boeing’s] internal culture of nepotism and oppression.” (*Id.* ¶ 46.) At some point during TS’s
23 management, Jackson alleges he endured a specific racist moment during a team building
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1 exercise in the 777X group. (Id. ¶ 37.) Jackson was asked his favorite food, which he said was
2 fried chicken. (Id.) A coworker said, “I wish you had not said that,” and “the group laughed,” but
3 remained silent when his Asian coworker said he liked teriyaki chicken. (Id.)

4 Jackson alleges that his final manager, MP, continued to discriminate against him by
5 failing to reassign him and by engaging in tokenism. Jackson alleges that MP refused to transfer
6 Jackson so he could “learn the aircraft certification” and because he “did not know aircraft
7 structure.” (Id. ¶ 49.) (AC ¶¶ 47, 49, 70.) But at the same time, MP denied Jackson access to
8 information and training necessary to learn aircraft certification and structures. (Id.) Jackson
9 alleges that unlike similarly-situated White counterparts, Boeing not only failed to teach him
10 about aircraft structure, but denied him access to the tools needed to gain that experience. (Id. ¶¶
11 49-50.) Jackson alleges that in February 2020, MP asked him to make a Black History Month
12 presentation to the 777X Forward Fuselage group “because he was the only Black employee in
13 the group.” (AC ¶ 58.) Feeling “singled out for being the ‘token Black employee,’ [Jackson]
14 denied the request.” (Id.) Instead, he asked MP to join him at the Boeing Black Employees
15 Association presentation on Black History Month—a request MP rejected. (Id. ¶ 59.) Jackson
16 notes that MP had previously told him he “attends ‘one diversity event a year.’” (Id. ¶ 57.)

17 Jackson also alleges that MP denied his request to participate in PATRAN training in
18 March 2020 on a recommendation from lead engineer BB that use of PATRAN was outside of
19 Jackson’s scope of work. (Id. ¶ 60.) But Jackson alleges BB had previously recommended he
20 participate in such training. (Id.) After the denial, Jackson reached out to MP’s manager (the “L
21 level manager”), but Jackson provides no detail on the results of this request. (Id. ¶ 61.) He does
22 allege that afterward, MP made a remark during a group meeting that “the only people unhappy
23 in the group have no friends.” (Id. ¶ 73.) Jackson alleges that MP made this remark to the
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1 majority-White group in reference to him and “indicative of Defendants’ internal culture of
2 nepotism.” (Id.)

3 **4. Requests to be Reassigned**

4 Jackson alleges that from 2019 to July 2020, he “constantly [but unsuccessfully] applied
5 to other job requisitions within the company” to avoid poor managers and the “racially hostile
6 environment in which he forced to work.” (AC ¶ 67.) He claims he was rebuffed in all of his
7 efforts, even when he pointed out that he had a security clearance that would have satisfied
8 certain open positions. (See id. ¶¶ 68-69.) Jackson does not state whether he applied for any
9 specific job and was denied. The most specific detailed allegation is that he received a
10 reassignment form in June or July 2020 “after 8 months of continually asking his manager MP to
11 be reassigned. . . .” (Id. ¶ 76.) He does not state whether he filled out the form, but he was
12 terminated shortly thereafter.

13 **5. Negative Retention Ratings and Termination**

14 After receiving negative retention ratings in March and May 2020, Jackson was given a
15 Worker Adjustment and Retraining Notification in May 2020 and laid off in July 2020. (AC ¶
16 74.) Jackson alleges that the poor retention rating “was given to [him] in retaliation after
17 contacting his L level manager in March following the denial of PATRAN training.” (Id. ¶ 73.)
18 In his EEOC charge, Jackson alleged that “[t]he reason given for the lay-off is that the company
19 was going through financial issues” and that “[m]any other employees were laid off.” (Dkt. No.
20 10-1 a 4.) But Jackson insists his low retention rating was the product of inadequate training and
21 treatment that differed from White coworkers due to his race and as retaliation for complaining
22 to the L level manager about the PATRAN training denial.

6. General Allegations of Hostile Work Environment

Jackson also provides allegations about the work environment at Boeing, though none of the news reports appear to touch directly on his experience. (AC ¶¶ 78-90.) Jackson discusses a news article about a Black employee who was harassed in South Carolina and Louisiana from 2017 through 2019, and a manager in Everett who found racist symbols on his desk in 2020. (*Id.* ¶¶ 80, 85.) Jackson also relates a news article explaining that Boeing terminated and disciplined many employees who made racially insensitive posts on Boeing’s internal social platform in the wake of George Floyd’s murder. (*Id.* ¶ 84.) But Jackson does not explain how these news events touched on his own day-to-day work experience. Instead, Jackson’s hostile-work-environment-specific allegations are that he was treated as “a token Black engineer” who was “ignored, belittled, and asked to humiliate himself by giving a private Black History Month presentation to the same people who were treating him as ‘less than’ his majority-White counterparts.” (*Id.* ¶¶ 90-91.)

ANALYSIS

A. Legal Standard

There are certain minimum standards that apply to any complaint filed in federal district court. Plaintiff’s complaint must satisfy the standards set out in Rule 8 of the Federal Rules of Civil Procedure. To satisfy Rule 8, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “But where the well-pleaded facts do not permit the court to infer more than the mere possibility of

1 misconduct,” the allegations are inadequate to satisfy Rule 8. Id. at 679. And “[w]here a
2 complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the
3 line between possibility and plausibility of entitlement to relief.” Twombly, 559 U.S. at 557
4 (quotation omitted); see Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004) (“[C]onclusory
5 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.”)
6 But the Ninth Circuit “continues to construe pro se filings liberally when evaluating them under
7 [the] Iqbal” standard. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). This “obligation
8 remains, where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings
9 liberally and to afford the petitioner the benefit of any doubt.” Id. (citation and quotation
10 omitted).

11 **B. Disparate Treatment Discrimination Claims**

12 Boeing asks the Court to dismiss Jackson’s disparate treatment claims on the theory that
13 they: (1) rely on actions that predate April 2020, which the Court has found barred by the statute
14 of limitations; (2) fail to contain the requisite elements to survive dismissal. The Court agrees in
15 part that some of the claims Jackson pursues are barred by the statute of limitations and that the
16 Amended Complaint fails to state a claim for disparate treatment.

17 **1. Untimely Claims**

18 Title VII of the Civil Rights Act requires a plaintiff challenging a discrete adverse
19 employment action to file a charge of discrimination with the EEOC within 300 days of the
20 employment action. See 42 U.S.C. § 2000e-5(e)(1). If the EEOC tells the plaintiff that it will not
21 pursue the charge and gives the plaintiff a right to sue notice, the plaintiff must then file their
22 lawsuit within 90 days of receiving notice. 42 U.S.C. § 2000e-5(f)(1). Jackson timely filed his
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1 lawsuit within 90 days of the Right to Sue letter, but Boeing challenges the timeliness of his
2 underlying claims.

3 To be timely, Jackson's Title VII claims premised on discrete acts of discrimination must
4 have occurred no earlier than April 2, 2020, which is 300 days before January 27, 2021 (the date
5 he filed his EEOC complaint). The previously noted that Jackson's "treatment arising out of the
6 following events are untimely: (1) Jackson's hiring in March 2019; (2) Jackson's reassignment to
7 the 777 Fuselage Group in July 2019; (3) Boeing's apparent refusal to hire Jackson for another
8 job that he applied for in November 2019; (4) Boeing's denial of Jackson's request for temporary
9 rotation assignment; and (5) an adverse performance review from December 2019." (Order at 6.)

10 Jackson's Amended Complaint again identifies alleged acts disparate treatment predating
11 April 2, 2020. Any Title VII claims of disparate treatment stemming from those acts are
12 untimely and barred by the statute of limitations. Those claims remain subject to the Court's
13 prior Order dismissing them with prejudice. (Order at 6-7.)

14 **2. Inadequately Pleaded Claims**

15 Boeing argues that Jackson: (1) has identified only one actionable adverse employment
16 action, and (2) all of his theories of disparate treatment fail to identify similarly situated
17 individuals who were treated more favorably. The Court agrees that dismissal is proper, though
18 not for all of the reasons Boeing advances.

19 To assert a claim of disparate treatment under Title VII and the WLAD, Jackson must
20 satisfy four elements by alleging that: "(1) [he] belongs to a protected class; (2) [he] was
21 qualified for [his] position; (3) [he] was subject to an adverse employment action; and (4)
22 similarly situated individuals outside [his] protected class were treated more favorably." Davis v.
23 Team Elec. Co., 520 F.3d 1080, 1089 (9th Cir. 2008); Washington v. Boeing Co., 105 Wn. App.

1 1, 13 (2000). As to the third element, an adverse employment action means an action that
2 “materially affect[s] the compensation, terms, conditions, or privileges of . . . employment.”
3 Davis, 520 F.3d at 1089 (quotation and citation omitted). And as to the fourth element, Jackson
4 “must identify employees outside [his] race . . . who were similarly situated to [him] in all
5 material respects but who were given preferential treatment; they must have similar jobs and
6 display similar conduct.” Campbell v. Hawaii Dep’t of Educ., 892 F.3d 1005, 1015 (9th Cir.
7 2018) (internal quotation marks and citation omitted).

8 The Court agrees with Boeing that Jackson has failed to adequately allege a disparate
9 treatment claim premised on his failure to receive adequate training, coaching, and reviews.
10 Boeing first argues this claim fails to identify an adverse employment action because the gaps in
11 Jackson’s training and management did not materially affect the terms of his employment. (See
12 Reply at 10.) The Court disagrees. Jackson has alleged that the failure to be trained, coached, and
13 reviewed materially affected his ability to meet the expectations of his employment and that he
14 was given low ratings a result of not being given the guidance necessary to meet expectations.
15 These are sufficiently alleged to be adverse employment actions. See Davis, 520 F.3d at 1089.
16 But the Court agrees that Jackson has not shown that similarly situated individuals outside of the
17 protected class were treated more favorably. The Amended Complaint fails to identify any
18 specific individuals who were treated more favorably and how they were similarly situated. And
19 the Court can find nothing more than bare allegations tracking the prima facie element, which
20 lacks the required specificity to sustain this claim. See Moran v. Selig, 447 F.3d 748, 755 (9th
21 Cir. 2008). This is fatal to Jackson’s claim.

22 The Court also agrees that Jackson’s disparate treatment revolving around alleged
23 refusals to reassign him are inadequately pleaded. First, Jackson fails to identify how his
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1 manager's refusal to reassign him materially affected the terms of his employment. Second,
2 Jackson has not alleged that anyone outside of his protected class was treated more favorably.
3 Jackson's allegations about White people who were reassigned fail to specify who these
4 individuals are and how they were similarly situated. The claim cannot proceed given the
5 absence of these specific allegations.

6 The Court further agrees with Boeing that Jackson's disparate treatment claim related to
7 his termination continues not to identify similarly situated individuals outside the protected class
8 who were treated more favorably. The Amended Complaint fails to identify anyone who was
9 similarly situated and yet not laid off. In his Opposition, Jackson newly identifies three White
10 engineers who were "assigned the job role for which they interviewed and were hired, they were
11 not 'laid off,' and they are still employed with the company." (Opp. at 4.) Although the Court
12 need not consider these new allegations made outside the Amended Complaint, it does so to
13 accommodate the fact that Jackson is appearing pro se and to inform its decision as to whether
14 leave to amend should again be given. See Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir.
15 2005). Even with these three comparators, Jackson has not shown how each of them were
16 similarly situated. Jackson only states that these three engineers were assigned the jobs they
17 interviewed for and were not laid off. But the Court has no way to know whether they were
18 similar "in all material respects but who were given preferential treatment." Campbell, 892 F.3d
19 at 1015 (internal quotation marks and citation omitted). So even if the Court considers this new
20 allegation outside of the Amended Complaint, it does not save Jackson's claims.

21 Despite having been given leave to amend his disparate treatment claims, Jackson has
22 failed to identify sufficient facts to support them. The Court finds that further amendment would
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1 not save these claims. The Court therefore DISMISSES the disparate treatment claims brought
2 under Title VII and the WLAD WITH PREJUDICE.

3 **C. Hostile Work Environment Claims**

4 The Court finds that Jackson has failed to plead actionable hostile work environment
5 claims under Title VII and the WLAD.

6 To plead a hostile work environment claim under Title VII, Jackson “must show: (1) that
7 he was subjected to verbal or physical conduct of a racial or sexual nature; (2) that the conduct
8 was unwelcome; and (3) that the conduct was sufficiently severe or pervasive to alter the
9 conditions of the plaintiff’s employment and create an abusive work environment.” Vasquez v.
10 Cnty. of Los Angeles, 349 F.3d 634, 642 (9th Cir. 2003), as amended (Jan. 2, 2004). “Whether
11 the environment constituted a racially hostile work environment is determined by looking at the
12 totality of the circumstances, including the frequency of the harassing conduct, the severity of the
13 conduct, whether the conduct was physically threatening or humiliating or a mere offensive
14 utterance, and whether it unreasonably interfered with an employee’s work performance.” Ninth
15 Cir. Model Civ. Jury Instr. 10.5 (modified). “In addition, “[t]he working environment must both
16 subjectively and objectively be perceived as abusive.” Vasquez, 349 F.3d at 642 (quoting
17 Brooks v. City of San Mateo, 229 F.3d 917, 923 (9th Cir. 2000) (internal quotation marks and
18 citation omitted)).

19 “To establish a prima facie case for a hostile work environment claim based on race
20 [under the WLAD], the plaintiff-employee must show (1) the harassment was unwelcome, (2)
21 the harassment was because of race, (3) the harassment affected the terms or conditions of
22 employment, and (4) the harassment is imputed to the employer.” Washington, 105 Wn. App. at
23 12–13. “The third element requires that the harassment be ‘sufficiently pervasive so as to alter
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1 the conditions of employment and create an abusive working environment[,] . . . to be
2 determined with regard to the totality of the circumstances.” Antonius v. King Cnty., 153 Wn.2d
3 256, 261 (2004) (quoting Glasgow v. Ga-Pac. Corp., 103 Wn.2d 401, 406–07 (1985)).

4 The Court first finds that Jackson has not adequately pleaded severe or pervasive conduct
5 that satisfies either Title VII or the WLAD. Jackson has alleged instances where he endured
6 racist comments. This includes comments from TS about the tidiness of Jackson’s beard (AC ¶
7 36), a comment from a fellow co-worker about Jackson’s identification of fried chicken as his
8 favorite food (id. ¶ 37), MP’s request for Jackson to give a presentation about Black History
9 Month (id. ¶ 58), BB’s statement that Jackson was “lazy” (id. ¶ 54), and that BB “would
10 occasionally claim Plaintiff was stupid and berate him in front of his coworkers” (id. ¶ 63).

11 These events appear to be isolated and not part of pervasive conduct. The comment about fried
12 chicken and the request to speak about Black History Month were isolated. And as Jackson
13 notes, the comment about his beard was an “off-hand comment.” (Id. ¶ 36). As to BB, Jackson
14 alleges that BB immediately recognized Jackson was not lazy and needed more training (id. ¶¶
15 54-55). And the allegations about BB berating him are vague and do not contain any allegations
16 that concern his race. Considering the totality of the allegations, the Court finds that Jackson has
17 failed to identify a hostile work environment that is objectively abusive. See Ninth Cir. Model
18 Civil Jury Instr. 10-5; Antonius, 153 Wn.2d at 261. Additionally, Jackson has not described these
19 instances as involving conduct that was physically threatening and he has not explained how any
20 of them unreasonably interfered with his work performance. See id. While the Court finds the
21 alleged conduct offensive and insensitive, it does not reach the level required to be considered a
22 hostile work environment. See Vasquez, 349 F.3d at 643 (explaining that the Ninth Circuit has
23 found no “hostile work environment [existed] despite allegations that the employer posted a
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1 racially offensive cartoon, made racially offensive slurs, targeted Latinos when enforcing rules,
2 provided unsafe vehicles to Latinos, did not provide adequate police backup to Latino officers,
3 and kept illegal personnel files on plaintiffs because they were Latino”).

4 The Court notes separately that Jackson’s allegations about other problems with racism at
5 Boeing does not save his claim. (See AC ¶¶ 78-90.) These instances of racism identified by
6 Jackson as occurring at Boeing do not appear to concern him in a specific, personal way. The
7 Court certainly takes note of them. But Jackson has not linked them in any way to his own
8 experience such that it might satisfy his requirements to show a hostile work environment.

9 The Court has given Jackson an opportunity to amend these claims, and despite lengthy
10 amendments, Jackson has not stated a hostile work environment claim under the WLAD or Title
11 VII. The Court DISMISSES these claims WITH PREJUDICE.

12 **D. Retaliation Claims**

13 Boeing seeks dismissal of Jackson’s retaliation claim brought under the WLAD and Title
14 VII. The Court agrees that Jackson has failed to plead sufficient facts to withstand dismissal.

15 To state a claim for retaliation under Title VII, Jackson must allege that: (1) he engaged
16 in activity protected under federal law; (2) Boeing took an adverse employment action against
17 him; and (3) but-for his protected activity, he would not have suffered an adverse action. 42
18 U.S.C. § 2000e-3(a); Univ. of Texas Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 362 (2013) (“[A]
19 plaintiff making a retaliation claim under § 2000e–3(a) must establish that his or her protected
20 activity was a but-for cause of the alleged adverse action by the employer.”); see Ninth Cir. Jury
21 Instr. No. 10.8. And to state a claim for retaliation under the WLAD, Jackson must allege: (1)
22 involvement in a protected activity; (2) Boeing took an adverse employment action against him;

1 and (3) there is a causal link between the protected activity and the adverse action. RCW
2 49.60.210(1); Washington, 19 P.3d at 1048.

3 The Court finds that Jackson has not satisfied the first element of his claim because he
4 has not identified any protected activity in which he engaged. Plaintiff needed to allege facts
5 showing that he “opposed any practice made an unlawful employment practice by” Title VII or
6 the WLAD. See 42 U.S.C. § 2000e-3; Learned v. City of Bellevue, 860 F.2d 928, 932-33 (9th
7 Cir. 1988); RCW 49.60.210(1); Alonso v. Qwest Commc’ns Co., LLC, 178 Wn. App. 734, 754
8 (2013). But Jackson has not. At most, Jackson alleges that he received a negative retention rating
9 from MP as retaliation for having reported MP’s refusal to approve PATRAN training to the L
10 level manager. But Jackson has not alleged that his complaint to the L level manager was an
11 opposition to discrimination. Rather, his report to the L level manager was to complain about the
12 denial of his request for PATRAN training. The Court is unable to find any allegations that the
13 denial of PATRAN training was racially motivated or that the complaint to the L level manager
14 concerned racial discrimination. Having scoured the remainder of the Amended Complaint, the
15 Court is unable to find any other claimed actions that might constitute actionable protected
16 activity that could save this claim. Jackson has therefore failed to satisfy the first element of his
17 retaliation claims, which is alone fatal to the claims.

18 Additionally, Jackson has not adequately linked his report to the L level manager to the
19 low retention rating—the purported adverse action. Jackson’s Amended Complaint is vague as to
20 when he reported to the L level manager. It appears to have occurred at some point in March
21 2020, the same month when he received his first low rating. (AC ¶¶ 61, 73.) But without greater
22 specificity, the Court struggles to find this to be an adequately alleged causal link even if the
23 complaint was construed to be protected activity. And while the low rating in May 2020 might
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1 be causally linked, Jackson has not provided adequate allegations to make that connection. Thus,
2 Jackson has failed to satisfy the causation element of the claims.

3 The Court DISMISSES Jackson's retaliation claims given that he has not adequately
4 alleged his engagement in a protected activity or causation. And given that Jackson has had
5 ample opportunity to amend this claim, the Court finds dismissal is appropriate WITH
6 PREJUDICE.

7 **E. Section 1983 and Snohomish Claims**

8 Boeing has moved to dismiss Jackson's Section 1983 claim and his claims brought under
9 the Snohomish County Code. Jackson has provided no opposition. The Court deems this an
10 admission that the motion has merit on both issues. See Local Civil Rule 7(b)(2). The Court also
11 notes that there are no allegations that Boeing acted under color of state law, which is fatal as to
12 the Section 1983 claim. And Jackson has not identified a private right of action under the
13 Snohomish Code. As such, the Court GRANTS the Motion and dismisses these claims WITH
14 PREJUDICE.

15 **F. Fraud Claim**

16 The Court agrees with Boeing that Jackson has not stated a claim for fraud.

17 To pursue a claim of fraud, Jackson must meet the higher pleading standard of Federal
18 Rule of Civil Procedure 9(b). This requires him to "state with particularity the circumstances
19 constituting fraud or mistake." Fed. R. Civ. P. 9(b). "Averments of fraud must be accompanied
20 by 'the who, what, when, where, and how' of the misconduct charged." Kearns v. Ford Motor
21 Co., 567 F.3d 1120, 1124 (9th Cir. 2009) (quotation omitted). And under Washington law, to
22 state a claim of fraudulent inducement, plaintiff must provide clear, cogent, and convincing
23 evidence that "(1) a representation of existing fact, (2) its materiality, (3) its falsity, (4) the
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1 speaker's knowledge of its falsity, (5) the speaker's intent that it be acted upon by the person to
2 whom it is made, (6) ignorance of its falsity on the part of the person to whom the representation
3 is addressed, (7) the latter's reliance on the truth of the representation, (8) the right to rely upon
4 it, and (9) consequent damage." Elcon Constr., Inc., v. E. Wash. Univ., 174 Wn.2d 157, 166 (
5 2012).

6 Jackson fails to plead his fraud claim with sufficient particularity to survive dismissal. As
7 the Court understands the claim, Jackson alleges he was fraudulently induced to work at Boeing
8 on the premise that he would have training and there would be no rotation work. (See AC ¶ 9.)
9 But Jackson does not state who made these statements, any information about whether the
10 speaker knew the statements to be false, and the intent of the speaker. This is fatal to the claim.
11 See Elcon, 174 Wn.2d at 166. To the extent that Jackson implies that he was fraudulently
12 induced to start at Boeing as a Structural Design Engineer, he has failed to show how that
13 statement was false when it was made. He admits he started work as a Structural Design
14 Engineer, and later was reassigned as a Structural Analysis Engineer. (AC ¶ 11.) Jackson makes
15 no allegations that he was told he would only be a Structural Design Engineer, and he otherwise
16 fails to allege any facts surrounding the who, what, when, where, why or how of this purported
17 fraud. The Court finds the alleged fraud inadequately pleaded. The Court GRANTS Boeing's
18 Motion as to this claim and DISMISSES this claim WITH PREJUDICE.

19 CONCLUSION


20 The Court remains sensitive to the struggles that Jackson identifies in his employment at
21 Boeing. As alleged, Jackson encountered listless managers and ineffective lead engineers, as
22 well as inadequate training and support. Jackson also alleges that he suffered through several
23 racist incidents that were thoughtless and offensive and no doubt contributed to his unhappiness.
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1 But the claims Jackson has chosen to pursue impose specific burdens in order to be allowed to
2 proceed. Although the Court has given Jackson two opportunities to plead his claims, he
3 continues not to provide sufficient allegations to satisfy the requirements. The Court continues to
4 find fatal defects in each of the claims asserted and it finds that they cannot be saved by further
5 amendment. The Court thus GRANTS Boeing's Motion to Dismiss and DISMISSES all of the
6 claims in the Amended Complaint WITH PREJUDICE. This Order terminates this action.

7 The Court also DENIES Jackson's Motion to Appoint given its dismissal of this action
8 with prejudice and its finding that Jackson's claims lack sufficient merit.

9 The clerk is ordered to provide copies of this order to Plaintiff and all counsel.

10 Dated November 9, 2022.

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12 Marsha J. Pechman
13 United States Senior District Judge
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