

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION**

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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,  
Plaintiff,

Case No. 1:05-CV-446

Honorable Gordon J. Quist

KISHA CHILDREY; and  
DIANE WILSON, Jointly and Severally,  
Intervening Plaintiffs,

v.

SPECTRUM HEALTH WORTH HOME CARE, INC.,  
Defendant.

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**COMPLAINT IN INTERVENTION AND JURY DEMAND**

NOW COME Intervening Plaintiffs Kisha Childrey and Diane Wilson, by and through their attorneys, DREW, COOPER & ANDING, by Stephen R. Drew, and hereby state as follows:

## JURISDICTION

1. This action arises pursuant to Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981, and 42 U.S.C. § 1988. Jurisdiction is specifically conferred on this Court by the aforementioned statutory provisions. The jurisdiction of the Court is invoked pursuant to 42 U.S.C. § 2000e-5(f), 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. §1343; and 28 U.S.C. §1367 (supplemental jurisdiction). Jurisdiction is further requested pursuant to the Motion to Intervene individually on behalf of Kisha Childrey and Diane Wilson in the currently pending case of Equal Employment Opportunity Commission v. Spectrum Health Worth Home Care, Civil Action No. 1:05-CV-446, pursuant to Federal Rules of Civil Procedure 24(a), 24(b), and 24(c), and § 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended.
2. The unlawful employment practices alleged below were and are being committed within the Western District of the State of Michigan. Venue is proper therein pursuant to 28 U.S.C. § 1391.
3. A copy of the Right to Sue notices are not attached to this Complaint because the EEOC has already filed the initial action and intervention pursuant to Title VII is sought in that regard. Equitable and other relief are also sought under the aforementioned statutory provisions.

## PARTIES

4. Intervening Plaintiff Kisha Childrey, (hereinafter “Intervening Plaintiff Childrey”) is a female citizen of the United States, a resident of the State of

Michigan within the Western District of Michigan, and was at all relevant times an employee of Defendant Spectrum Health Worth Home Care.

5. Intervening Plaintiff Diane Wilson, (hereinafter “Intervening Plaintiff Wilson”) is a female citizen of the United States, a resident of the State of Michigan within the Western District of Michigan, and was at all relevant times an employee of Defendant Spectrum Health Worth Home Care.
6. Defendant Spectrum Health Worth Home Care, (hereinafter “Defendant”), was at all relevant times a duly licensed corporation conducting business within the Western District of the State of Michigan or is otherwise within the jurisdiction of this Court.

#### **STATEMENT OF FACTS, CLAIMS AND VIOLATIONS**

7. Beginning on or about February 7, 2004 and continuing through about March 31, 2004, Intervening Plaintiffs were repeatedly subjected to sexual and racial harassment by Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care, including touching, grabbing, fondling, and other unwelcome verbal and physical conduct and communication of a sexual and racially demeaning nature.
8. The harassment perpetrated by Kyle Briggs against Intervening Plaintiffs specifically included, but is not limited to, the following unwelcome and ongoing sexually and racially offensive statements and/or conduct:
  - (a) “Can I put my vanilla in your chocolate and make a milkshake?”;
  - (b) “Can I spread your legs?”;

- (c) "Have you ever had it in your booty?";
  - (d) "Is the inside of your pu--y pink even though you are black?";
  - (e) "Can you teach me to speak monkey too?";
  - (f) Referring to Intervening Plaintiffs as "ni--ers"; and
  - (g) Otherwise committing acts, making threats, gestures, and comments sexually and racially offensive in nature.
9. The repeated unwelcome sexual and racial conduct reflects a pattern and practice of sexual and racial harassment which culminated in the constructive discharge of Intervening Plaintiff Childrey, as she was unable to return to work after Kyle Briggs, on March 31, 2004, assaulted and raped Intervening Plaintiff Childrey at knife point, including but not limited to Kyle Briggs biting Intervening Plaintiff Childrey's vagina and forcefully penetrating her vagina with his finger and penis.
10. On or about March 20, 2004, Kyle Briggs, forcefully and without consent, ran his hands up and down Intervening Plaintiff Wilson's legs a few times and then grabbed at her vagina making remarks such as, "I know you're afraid of me. You think I'm going to rape you." Kyle Briggs also pulled Intervening Plaintiff Wilson's head down to his groin area while stating to Intervening Plaintiff Wilson, "Ni--er you are going to do it anyway."
11. The aforementioned sexual and racial harassment against Intervening Plaintiffs was unwelcome and unwanted, and the conduct and communication that was directed at Intervening Plaintiffs during their employment at Defendant Spectrum Health Worth Home Care substantially interfered with their

employment and created an intimidating, hostile and offensive work environment for Intervening Plaintiffs.

12. Intervening Plaintiffs' repeated complaints and demands for the harassment to stop were ignored.
13. Intervening Plaintiffs repeatedly reported the aforementioned sexually and racially offensive conduct to Pat Kimball, the Branch Manager, and/or Rachelle, the Care Manager, and/or other management at Defendant Spectrum Health Worth Home Care.
14. It was known by Defendant Spectrum Health Worth Home Care that Kyle Briggs had a propensity for violence, and that he used, misused, and abused alcohol and illegal drugs, which increased his propensity for violence in the work environment where Intervening Plaintiffs were placed by Defendant Spectrum Health Worth Home Care.
15. With said knowledge, Defendant Spectrum Health Worth Home Care, through its agents, employees, managers, and assigns, failed to take prompt, remedial, and effective measures to end the dangerous and hostile work environment and the sexual and racial harassment perpetrated by Kyle Briggs against Intervening Plaintiffs, and Defendant Spectrum Health Worth Home Care failed to prevent it from recurring.
16. Intervening Plaintiffs were subjected to discrimination regarding the terms and conditions of their employment because of their race. Intervening Plaintiffs and other African-American employees of Defendant Spectrum Health Worth Home

Care were disproportionately placed on the more dangerous third shift, while Caucasian employees were often placed on the more favorable first and second shifts. In addition, Caucasian employees of Defendant Spectrum Health Worth Home Care were more likely to be taken off a case upon request if they felt uncomfortable or threatened, while Intervening Plaintiffs' and other African-American employees' requests to be taken off a case were often denied by management of Defendant Spectrum Health Worth Home Care.

17. The unlawful employment practices complained of above were intentional and/or done with malice and/or reckless indifference to the state and federal constitutionally protected rights of Intervening Plaintiffs.
18. Intervening Plaintiffs, as a result of Defendant's aforementioned acts and/or omissions, have undergone considerable mental and emotional distress and hardship, as well as humiliation and/or embarrassment.
19. The aforementioned actions of Defendant Spectrum Health Worth Home Care complained of in the aforementioned paragraphs, have been to deprive Intervening Plaintiff Childrey of wages, loss of income and other employment benefits, including but not limited to prospective retirement benefits, hospitalization and other insurance coverage, holiday and vacation pay, social security insurance, training opportunity and other promotional benefits and other fringe benefits of said employment, thus causing Intervening Plaintiff Childrey to suffer considerable financial distress and hardship.

**COUNT I**  
**SEXUAL HARASSMENT - HOSTILE WORK ENVIRONMENT**  
**TITLE VII - 42 U.S.C. § 2000e et seq.**

20. Intervening Plaintiffs reallege and reaffirm the aforementioned paragraphs with the same force and effect as if set forth herein.
21. Defendant Spectrum Health Worth Home Care, by and through its agents, employees, managers and/or assigns, have deprived Intervening Plaintiffs Kisha Childrey and Diane Wilson of rights secured to them by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and the Civil Rights Act of 1991, 42 U.S.C. § 1981a, to be free from sexual harassment by denying Intervening Plaintiffs those rights, in whole or in part, because of their sex/gender; and subjecting them to a hostile environment which interfered with their employment, failing to take prompt, remedial, and effective measures, and undertaking a tangible employment action against Intervening Plaintiff Childrey by constructively discharging her. By said acts, Defendant Spectrum Health Worth Home Care has violated 42 U.S.C. § 2000e et seq.
22. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiffs have sustained injuries including physical pain and suffering, mental anguish, medical expenses, fright, shock, embarrassment, humiliation, mortification, damage to reputation, disruption of personal life, and loss of enjoyment of the ordinary pleasures of living, and possible loss of earning capacity.

23. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiff Childrey has been deprived of wages, loss of income, earning capacity, and other employment benefits, including but not limited to prospective retirement benefits, hospitalization and other insurance coverage, holiday and vacation pay, social security insurance, training opportunity and other promotional benefits and other fringe benefits of said employment, thus causing Intervening Plaintiff Childrey to suffer considerable financial distress and hardship.

**COUNT II**  
**DISCRIMINATION - HOSTILE WORK ENVIRONMENT**  
**TITLE VII - 42 U.S.C. § 2000e et seq.**

24. Intervening Plaintiffs reallege and reaffirm the aforementioned paragraphs with the same force and effect as if set forth herein.
25. Defendant Spectrum Health Worth Home Care, by and through its agents, employees, managers and/or assigns, have deprived Intervening Plaintiffs Kisha Childrey and Diane Wilson of rights secured to them by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and the Civil Rights Act of 1991, 42 U.S.C. § 1981a, to be free from racial discrimination by denying Intervening Plaintiffs those rights, in whole or in part, because of their race and/or color; and subjecting them to a hostile environment which interfered with their employment, failing to take prompt, remedial, and effective measures, and undertaking a tangible employment action against Intervening Plaintiff



Childrey by constructively discharging her. By said acts, Defendant Spectrum Health Worth Home Care has violated 42 U.S.C. § 2000e et seq.

26. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiffs have sustained injuries including physical pain and suffering, mental anguish, medical expenses, fright, shock, embarrassment, humiliation, mortification, damage to reputation, disruption of personal life, and loss of enjoyment of the ordinary pleasures of living, and possible loss of earning capacity.
27. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiff Childrey has been deprived of wages, loss of income, earning capacity, and other employment benefits, including but not limited to prospective retirement benefits, hospitalization and other insurance coverage, holiday and vacation pay, social security insurance, training opportunity and other promotional benefits and other fringe benefits of said employment, thus causing Intervening Plaintiff Childrey to suffer considerable financial distress and hardship.

**COUNT III**  
**DISCRIMINATION**  
**42 U.S.C. § 1981**

28. Intervening Plaintiffs reallege and reaffirm the aforementioned paragraphs with the same force and effect as if set forth herein.
29. The aforementioned actions, including but not limited to discrimination in the terms and conditions of employment by Defendant Spectrum Health Worth

Home Care occurred in whole or in part on account of Intervening Plaintiffs' race, and on that basis were performed intentionally and in a discriminatory manner as compared to other similarly situated Caucasian employees. By said acts, and by interfering with Intervening Plaintiffs' right to make and enforce contracts, Defendant Spectrum Health Worth Home Care, through its manager, employees, agents and/or assigns, has violated 42 U.S.C. § 1981.

30. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiffs have sustained injuries including physical pain and suffering, mental anguish, medical expenses, fright, shock, embarrassment, humiliation, mortification, damage to reputation, disruption of personal life, and loss of enjoyment of the ordinary pleasures of living, and possible loss of earning capacity.
31. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiff Childrey has been deprived of wages, loss of income, earning capacity, and other employment benefits, including but not limited to prospective retirement benefits, hospitalization and other insurance coverage, holiday and vacation pay, social security insurance, training opportunity and other promotional benefits and other fringe benefits of said employment, thus causing Intervening Plaintiff Childrey to suffer considerable financial distress and hardship.

**STATE LAW CLAIMS - SUPPLEMENTAL JURISDICTION**

**COUNT IV**

**SEXUAL HARASSMENT - HOSTILE WORK ENVIRONMENT**

**ELLIOTT - LARSEN CIVIL RIGHTS ACT**

32. Intervening Plaintiffs reallege and reaffirm the aforementioned paragraphs with the same force and effect as if set forth herein.
33. During the course of their employment with Defendant Spectrum Health Worth Home Care, Intervening Plaintiffs were subjected to unwelcome sexual advances, requests for sexual favors, sexual comments, physical touching, and other conduct of a sexual nature by Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care.
34. The unwelcome sexual advances and conduct of Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care, had the purpose and/or effect of substantially interfering with Intervening Plaintiffs' employment and/or creating an intimidating, hostile and offensive employment environment.
35. Defendant Spectrum Health Worth Home Care had both actual and constructive notice that Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care, was creating a hostile and offensive work environment.
36. Despite having notice of the sexual advances and conduct of Kyle Briggs toward Intervening Plaintiffs, Defendant Spectrum Health Worth Home Care failed to

adequately investigate and take prompt, effective, and appropriate remedial action.

37. Defendant Spectrum Health Worth Home Care, by and through its agents, employees, managers and/or assigns, have deprived Intervening Plaintiffs Kisha Childrey and Diane Wilson of rights secured to them by the Elliott-Larsen Civil Rights Act, to be free from sexual harassment by denying Intervening Plaintiffs those rights, in whole or in part, because of their sex/gender; and subjecting them to a hostile environment which interfered with their employment, failing to take prompt, remedial, and effective measures, and undertaking a tangible employment action against Intervening Plaintiff Childrey by constructively discharging her. By said acts, Defendant Spectrum Health Worth Home Care has violated the Elliott-Larsen Civil Rights Act.
38. Defendant further violated the Elliott-Larsen Civil Rights Act in that:
  - a. Defendant failed to provide Intervening Plaintiffs with employment conditions and relationships where she could safely work free from physical, verbal, and mental sexual harassment and/or discrimination;
  - b. Defendant failed to effectively disseminate and enforce an anti-harassment policy to their employees; and
  - c. Defendant otherwise failed to comply with statutory and/or common law.
39. Such conduct has denied Intervening Plaintiffs equal protection and civil rights guaranteed by the Constitution and laws of the State of Michigan.
40. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiffs have sustained injuries including physical

pain and suffering, mental anguish, medical expenses, fright, shock, embarrassment, humiliation, mortification, damage to reputation, disruption of her personal life, and loss of enjoyment of the ordinary pleasures of living, and possible loss of earning capacity.

41. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiff Childrey has been deprived of wages, loss of income, earning capacity, and other employment benefits, including but not limited to prospective retirement benefits, hospitalization and other insurance coverage, holiday and vacation pay, social security insurance, training opportunity and other promotional benefits and other fringe benefits of said employment, thus causing Intervening Plaintiff Childrey to suffer considerable financial distress and hardship.

**COUNT V**  
**RACIAL HARASSMENT/DISCRIMINATION/HOSTILE WORK ENVIRONMENT**  
**ELLIOTT-LARSEN CIVIL RIGHTS ACT**

42. Intervening Plaintiffs reallege and reaffirm the aforementioned paragraphs with the same force and effect as if set forth herein.
43. During the course of their employment with Defendant Spectrum Health Worth Home Care, Intervening Plaintiffs were subjected to racially derogatory comments and communication by Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care.
44. The racially derogatory comments and communication by Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care, had the

purpose and/or effect of substantially interfering with Intervening Plaintiffs' employment and/or creating an intimidating, hostile and racially offensive employment environment.

45. Defendant Spectrum Health Worth Home Care had both actual and constructive notice that Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care, was creating a hostile and racially offensive work environment.
46. Despite having notice of the racially derogatory comments and communication made by Kyle Briggs toward Intervening Plaintiffs, Defendant Spectrum Health Worth Home Care failed to adequately investigate and take prompt, effective, and appropriate remedial action.
47. The aforementioned acts by Defendant Spectrum Health Worth Home Care, through its employees, agents, managers and/or assigns, constitute discrimination against Intervening Plaintiffs regarding the terms and conditions of their employment on the basis of their race, and on that basis were performed intentionally and in a discriminatory manner as compared to other similarly situated Caucasian employees and subjecting them to a hostile environment based on race which interfered with their employment. By said acts, Defendant has violated Michigan common and/or statutory law, including specifically the Elliott-Larsen Civil Rights Act, M.C.L. 37.2101 et seq.; M.S.A. 3.548(101) et seq.
48. Defendant further violated the Elliott-Larsen Civil Rights Act in that:

- a. Defendant failed to provide Intervening Plaintiffs with employment conditions and relationships where she could safely work free from racial harassment and/or discrimination;
  - b. Defendant failed to effectively disseminate and enforce an anti-harassment policy to their employees; and
  - c. Defendant otherwise failed to comply with statutory and/or common law.
49. Such conduct has denied Intervening Plaintiffs equal protection and civil rights guaranteed by the Constitution and laws of the State of Michigan.
50. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiffs have sustained injuries including physical pain and suffering, mental anguish, medical expenses, fright, shock, embarrassment, humiliation, mortification, damage to reputation, disruption of personal life, and loss of enjoyment of the ordinary pleasures of living, and possible loss of earning capacity.
51. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiff Childrey has been deprived of wages, loss of income, earning capacity, and other employment benefits, including but not limited to prospective retirement benefits, hospitalization and other insurance coverage, holiday and vacation pay, social security insurance, training opportunity and other promotional benefits and other fringe benefits of said employment, thus causing Intervening Plaintiff Childrey to suffer considerable financial distress and hardship.

**COUNT VI**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

52. Intervening Plaintiffs reallege and reaffirm the aforementioned paragraphs with the same force and effect as if set forth herein.
53. The aforementioned actions, acts, and/or omissions of Defendant, including, but not limited to, knowingly and recklessly subjecting Intervening Plaintiffs Kisha Childrey and Diane Wilson to harassment, threats, and ridicule based on sex and race, and numerous other pressures by Kyle Briggs, a male patient under the care of Defendant Spectrum Health Worth Home Care through its employees, agents, managers, and/or assigns, in the face of continuous, deliberate, degrading treatment of Intervening Plaintiffs, constituted malicious and/or intentional actions that Defendant Spectrum Health Worth Home Care knew or should have known would cause Intervening Plaintiffs severe distress and anxiety, humiliation and embarrassment, both emotionally and financially, and constitute a violation of Michigan common and/or statutory law.
54. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiffs have sustained injuries including physical pain and suffering, mental anguish, medical expenses, fright, shock, embarrassment, humiliation, mortification, damage to reputation, disruption of her personal life, and loss of enjoyment of the ordinary pleasures of living, and possible loss of earning capacity.



55. As a direct and/or proximate result of the aforementioned actions and inactions by Defendant, Intervening Plaintiff Childrey has been deprived of wages, loss of income, earning capacity, and other employment benefits, including but not limited to prospective retirement benefits, hospitalization and other insurance coverage, holiday and vacation pay, social security insurance, training opportunity and other promotional benefits and other fringe benefits of said employment, thus causing Intervening Plaintiff Childrey to suffer considerable financial distress and hardship.

#### DAMAGES

56. Intervening Plaintiffs reallege and reaffirm the aforementioned paragraphs with the same force and effect as if set forth herein.

57. As a direct and/or proximate result of the unlawful employment and other practices described above, Intervening Plaintiffs Kisha Childrey and Diane Wilson have suffered the indignity of sexual and racial harassment, physical pain and suffering, mental anguish, outrage, embarrassment, damaged reputation and disruption of their personal and working life, loss of self-esteem, loss of job satisfaction, and loss of enjoyment of the ordinary pleasures of everyday living, and/or other damages known or unknown.

58. As a direct and/or proximate result of the unlawful employment and other practices described above, Intervening Plaintiff Kisha Childrey has been deprived of wages past and prospective, income, earning capacity, and other employment benefits, including but not limited to, prospective retirement

benefits, holiday and vacation pay, educational benefits, training opportunity and other promotional and fringe benefits of said employment, and has additionally been subjected to mental and financial distress and anxiety, including medical expenses, resulting in a physical manifestation and/or aggravation of a physical condition preventing her from working full time, and/or other damages known or unknown.

**WHEREFORE**, Intervening Plaintiffs Kisha Childrey and Diane Wilson seek all appropriate damages arising out of law, equity and fact for each or all of the above causes of action, where applicable, and hereby requests the trier of fact, be it judge or jury, to award to Intervening Plaintiffs all applicable damages, including but not limited to compensatory, exemplary and/or punitive and all other relief arising out of law, equity, and fact also including but not limited to:

- a. Compensatory damages to Intervening Plaintiffs Kisha Childrey and Diane Wilson against Defendant Spectrum Health Worth Home Care in the form of past and future losses, including but not limited to training opportunities, promotional benefits, applicable seniority, raises and/or other conditions of employment, and for mental and emotional distress related to said actions; in the amount of **FIVE MILLION DOLLARS (\$5,000,000.00)**, or other amount as the jury and/or trier of fact deems appropriate, equitable and just under the circumstances;
- b. Exemplary and/or punitive damages to Intervening Plaintiffs Kisha Childrey and Diane Wilson against Defendant Spectrum Health Worth Home Care in the amount of **TEN MILLION DOLLARS (\$10,000,000.00)**, or other amount as the jury and/or trier of fact deems appropriate, equitable and just under the circumstances;
- c. Such other relief as may be applicable according to statutory and common law, including interest, costs and attorney fees.

Respectfully submitted,

DREW, COOPER & ANDING  
Attorneys for Kisha Childrey & Diane Wilson

Dated: July 20, 2005

By: /s/ Stephen R. Drew

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**JURY DEMAND**

Intervening Plaintiffs Kisha Childrey and Diane Wilson demands a jury on all claims set forth above.

Respectfully submitted,

DREW, COOPER & ANDING  
Attorneys for Kisha Childrey & Diane Wilson

Dated: July 20, 2005

By: /s/ Stephen R. Drew

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