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ROBERT W. ROMANO ◊ ◊
STEVEN H. COHEN ● ◊ ◊
CYNTHIA GILL ● ◊ ◊

April 20, 2004

REPLY TO TEANECK

United State District Court Clerk
M.L. King Jr. Federal Building & U.S. Courthouse
50 Walnut Street, Room 2037
Newark, New Jersey 07101

Re: EEOC and Fitzpatrick v. Ernst and Young, LLP, et al.
Civil Action No.: 03-CV-4277 (WHW)

Dear Sir or Madam:

Please find enclosed the second complaint in intervention filed pursuant to the Order of the Honorable Susan D. Wigenton, U.S.M.J. attached.

Please file same and return a copy of the filed complaint so that same may be served on defendant's Ernst & Young, LLP and Beatrice Fernandez.

Very truly yours,
DAVIS, SAPERSTEIN & SALOMON, P.C.



CYNTHIA GILL (9879)
For the firm

Enclosures

cc: Terence R. Cook, Esq. (via facsimile and overnight mail)
Patrick G. Brady, Esq. (via facsimile and overnight mail)

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
ROOM 2037
NEWARK, NJ 07101
973-645-5903

April 12, 2004

Terrence R. Cook
U.S. Equal Employment Opportunity Commission
Philadelphia District Office
21 South 5th Street
Suite 400
Philadelphia, Pennsylvania 19106

Cynthia Gill
Davis, Sapterstein & Salomon, P.C.
375 Cedar Lane
Teaneck, New Jersey 07666

Patrick G. Brady
Carpenter, Bennett & Morrissey, P.C.
Three Gateway Center
100 Mulberry street
Newark, New Jersey 07102

LETTER ORDER FILED WITH THE CLERK OF THE COURT

RE: **EEOC and Fitzpatrick v. Ernst and Young, LLP, et al.**
Civil Action No. 03-4277 (WHW)

Counsel:

Before the Court is a motion to intervene as a plaintiff in the matter of EEOC v. Ernst & Young, et al. (the "Motion") initiated by Jill Fitzpatrick ("Plaintiff"). Defendants Ernst & Young, Peter Cahill¹ and Beatrice Fernandez have submitted opposition to the Motion (collectively "Defendants"). Plaintiff's initial Proposed Complaint in Intervention was subsequently amended upon the filing of Defendants' opposition. The sole issue remaining for the Court to consider in this matter is whether the Court can assert pendent jurisdiction over Plaintiff's state law claims of

¹Peter Cahill has been removed as a defendant in the Second Proposed Complaint in Intervention. The defendants in the Motion are Ernst & Young and Beatrice Fernandez.

defamation (Count VIII) and invasion of privacy (Count IX) against Defendants. The Court decides this matter based upon the written submissions of the parties pursuant to Fed.R.Civ.P. 78. The Motion is granted.

For a federal court to retain jurisdiction of state law claims under pendent jurisdiction, “the state and federal claims must derive from a common nucleus of operative fact.” United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966). Generally, when “without regard for their federal or state character, a plaintiff’s claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.” Id. The Third Circuit has developed a three-tier test for analyzing issues of pendent jurisdiction in Ambromovage v. United Mine Workers of America, 726 F.2d 972 (3d Cir. 1984). (1) Whether the pendent state claims and the federal claim on which jurisdiction is based derive from a common nucleus of operative facts; (2) whether the exercise of jurisdiction would violate a specific federal policy decision limiting federal jurisdiction; (3) fairness to litigants and judicial economy in the interest of federalism. Id. at 989-91.

Applying the three-tier analysis, the Court finds that it has pendent jurisdiction over Plaintiff’s state law claims. First, the common nucleus of operative fact test has been met. Plaintiff alleges that during her employment she filed a claim of discriminatory conduct, namely sexual harassment, with the Equal Employment Opportunity Commission (“EEOC”) prior to March 2003 against the Defendants. Plaintiff further alleges that subsequently, in November 2003, Defendants took the basic facts of Plaintiff’s case, with inclusions of malicious and false statements regarding her performance, and created a hypothetical situation to be used in their Human Resources training which constituted defamation and invasion of privacy. Defendants contend that Plaintiff did not allege that the defamation and invasion of privacy affected her employment with Defendants, nor

did Plaintiff's state law claims relate to the allegations of sexual harassment. Hence, the Court should not exercise pendent jurisdiction. The Court disagrees. Pendent jurisdiction is proper in this case as there is an express causal connection between the underlying sexual harassment claims and the state law claims. In fact, the state law claims would have never arisen if the sexual harassment claims were not filed with the EEOC. The Court finds that this fact is a sufficient "common nucleus" to satisfy the test.

Second, the Court finds no substantive federal policy that precludes federal jurisdiction over Plaintiff's state claims. Finally, judicial economy and fairness to both parties will not be served if Plaintiff's state claims are brought separately in state court at this juncture. Therefore, pendent jurisdiction will be exercised as to Counts VIII and IX of the Second Proposed Complaint in Intervention. The parties have ten days to appeal this decision.

SO ORDERED.

S/SUSAN D. WIGENTON
UNITED STATES MAGISTRATE JUDGE

Orig: Clerk
cc: Honorable William H. Walls
Parties
File

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Attorneys for Plaintiff: Jill Fitzpatrick

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION and
JILL FITZPATRICK,**

Plaintiffs,

vs.

**ERNST & YOUNG, LLP AND
BEATRICE FERNANDEZ,**

Defendants.

Civil Action No.: 03cv4277 (WHW)

**SECOND
COMPLAINT
IN INTERVENTION**

Plaintiff, Jill Fitzpatrick ("Fitzpatrick"), by way of this Complaint In Intervention against the Defendants, Ernst & Young, LLP, ("Ernst & Young") and Beatrice Fernandez ("Fernandez"), (hereinafter collectively the "Defendants") hereby says:

I. Nature of Action, Jurisdiction, and Venue

1. This is an action seeking equitable and legal relief for (1) sexual harassment; (2) sexual harassment hostile work environment; (3) quid pro quo sexual harassment; (4) retaliation; (5) sexual harassment in violation of Title VII of the Civil Rights Act 42 U.S.C. § 2000 *et. seq.*, ; (6) sexual harassment hostile work environment in violation of Title VII of the Civil Rights Act 42 U.S.C. § 2000 *et. seq.*, ; (7) quid pro quo sexual harassment in

violation of Title VII of the Civil Rights Act 42 U.S.C. § 2000 *et. seq.*, ; (8) defamation; and, (9) invasion of privacy.

2. This court has jurisdiction due to the nature of the action and the amount in controversy. Additionally, Fitzpatrick has satisfied all prerequisites to bringing these claims. Fitzpatrick has the right to intervene in this matter pursuant to 42 U.S.C. § 2000 (e-5) (f)(1).
3. Venue is appropriate in this court since Fitzpatrick was employed in the Township of Lyndhurst, Bergen County, New Jersey; Ernst & Young work in and have an office and do business in the Township of Lyndhurst, Bergen County, New Jersey; and the causes of action accrued in Bergen County, New Jersey.

II. Parties

4. Fitzpatrick was an employee of Ernst & Young and performed administrative duties, technical support services, and managerial duties at Ernst & Young's facility located in the Township of Lyndhurst, Bergen County, New Jersey.
5. Defendants are subject to suit under the New Jersey Law Against Discrimination.
6. During the relevant time period, Beatrice Fernandez was a supervisory and managerial employee of Ernst & Young and performed supervisory duties in Defendant's facility located in the Township of Lyndhurst, Bergen County, New Jersey.
7. Fernandez is a supervisory and managerial employee of Ernst & Young, had supervisory authority over Fitzpatrick, and controlled the work conditions of Fitzpatrick's work environment.
8. At all times referred to in this complaint, employees of the Corporate Defendant, who are referred to herein, were acting within the scope of their employment at the workplace during working hours. Moreover, the Corporate Defendants ratified, embraced and added to their conduct.

III. Factual Allegations

9. Fitzpatrick is a woman and a longtime employee of Ernst and Young.

10. Fitzpatrick commenced his employment as a Senior Knowledge Analyst in Technical Support Services (T.S.S.) and rose through the ranks and was promoted to Deployment Manager in T.S.S. in September 2001.
11. In recognition of Fitzpatrick's performance Ernst & Young granted her salary increases and merit bonuses on a consistent basis.
12. Beatrice Fernandez became a supervisor for Ernst & Young in September 2001. At the outset of her supervision of Fitzpatrick, Ms. Fernandez identified herself as a homosexual.
13. Immediately upon her tenure in the Lyndhurst office, Ms. Fernandez began a campaign of inappropriate conduct of a sexual nature directed toward Fitzpatrick.
14. By way of example, and not limitation, on a repeated basis Ms. Fernandez asked me to join her for social outings such as dinner and drinks.
15. Beatrice also asked Fitzpatrick to accompany her on New Year's Eve.
16. When Fitzpatrick declined her invitations, Fernandez's advances escalated and Fernandez requested that Fitzpatrick and her female companion sleep in her bed while Fitzpatrick watched Fernandez's dogs.
17. This salacious suggestions were made although Fitzpatrick lived less than a mile of Fernandez's home and the care of the dogs did not require Fitzpatrick to stay at Fernandez's home.
18. In early February 2002, Fernandez provided Fitzpatrick with a glowing mid-year review.
19. When Fitzpatrick continued to reject Fernandez's advances, Fernandez engaged in a campaign of retaliatory conduct including acts of verbal abuse occurring in May 2002, followed by acts of baseless discipline, and baseless reports of unsatisfactory performance.
20. On or about August 27, 2002, Fitzpatrick made a report of a hostile work environment caused by Fernandez's conduct, Fitzpatrick specifically told Ms. Carey Elias, of the Human Resources department, of Fernandez's advances, inappropriate comments regarding Fitzpatrick's prior relationship with an Ernst and Young employee, verbal harassment, and baseless discipline. During this meeting, Fitzpatrick specifically stated

that she viewed Fernandez's conduct was sexual in nature and related to Fernandez's sexual interest.

21. Following, Fitzpatrick's complaints to Human Resources, Fernandez's retaliation continued. As a result of Fitzpatrick's complaints to Human Resources, in early September 2002, Fernandez immediately reduced Fitzpatrick's prior mid-year rating of "Highly Proficient" and "Exceptional" in nearly every category to merely "Proficient" in her annual review.
22. Next, Fernandez forbade Fitzpatrick from participating in the committees and newsletters in which she had previously participated with distinguished recognition. Thirdly, Fernandez revoked Fitzpatrick's flexible work schedule.
23. In mid-September 2002, after Fitzpatrick again complained to Human Resources of Fernandez's adverse acts, harassment, and retaliation, Fernandez took further retaliatory steps and placed Fitzpatrick on a performance improvement plan ("PIP") without any basis. The lack of basis for Fernandez's conduct in placing Fitzpatrick on a PIP was admitted on November 12, 2002 by Fernandez's supervisor, Philip Breetveld, who when reviewing the plan prepared by Fernandez exclaimed " I can't believe that these minor items are on a PIP." To add insult to injury the PIP was dated to commence during Fitzpatrick vacation.
24. Most importantly, this illegal PIP was drafted without an end date.
25. It is clear that Fernandez's illegal conduct has wrecked irreparable harm to Fitzpatrick's career and future with the Company.
26. On or about November 12, 2002, Fitzpatrick again complained to Human Resources of Fernandez's retaliation. Subsequently, Fernandez engaged in further baseless discipline.
27. After the PIP began, Fernandez engaged in inappropriate touching, including an incident in which she touched Fitzpatrick's breasts while using my computer. Upon information and belief Fernandez engaged in similar conduct with Nancy Dodd, who reported the incident to HR in March 2003.
28. In early December 2002 after Fitzpatrick was out on documented sick leave due to severe bronchitis, was disciplined for failing to provide "live communication" with the office

although Fitzpatrick followed the Company's policy of leaving a voice mail on a daily basis, on each day of her absence.

29. Not only is the requirement of "live communication" excessive, inconsistent with the Company's employment policies, and only required of Fitzpatrick, but it also is another act of retaliatory conduct resulting from her appropriate complaints of sexual harassment. In fact at no time did Fitzpatrick receive any communication from Human Resources that her daily calls regarding her sick time was inappropriate.
30. On or about December 28, 2002 Fitzpatrick's attorney, wrote to Ernst and Young in regard to Fitzpatrick's claims.
31. After Cynthia Gill, Esq. put the company on notice of her sexual harassment and retaliation claims Fitzpatrick was placed on unpaid leave effective February 28, 2003.
32. After each incident in which Fitzpatrick complained of harassment or retaliation she was subjected to an adverse act stemming from the company's alleged "investigation" of her claims.
33. The unpaid leave violates the Company's policies.
34. On March 4, 2003, Fitzpatrick forwarded a copy of her Complaint filed with the Equal Employment Opportunity Commission to Ernst and Young.
35. On March 5, 2003, Fitzpatrick met with Ernst and Young's employee, Peter Cahill, and related to the Company the incidents of harassment that affected her and other incidents in which Fernandez harassed other women, including one in which she stared at the chest of Nancy Dodd and called Krista Jacobitz a female Ernst and Young employee after business hours or on weekends.
36. Upon information and belief Krista Jacobitz and Nancy Dodd corroborated the information Fitzpatrick provided during the investigation. Ms. Dodd related to HR that Fernandez stared at her breast and Ms. Jacobitz confirmed that Fernandez called her at home.
37. Even at the time of Fitzpatrick's, termination she was highly regarded by others within Ernst and Young and was the leading candidate for a position in the Finance Department. In fact, Fitzpatrick was interviewed for the finance position on March 7, 2003 at 2:00 p.m.

38. On March 7, 2003 Fitzpatrick sent to Ernst and Young documents supporting her sexual harassment hostile work environment claim including the identity of an Ernst and Young witness, that the Company refused to interview who would confirm Fitzpatrick's complaints that Fernandez requested Fitzpatrick to sleep in her bed.
39. On March 10, 2003, Ernst and Young terminated Fitzpatrick's employment because of Fitzpatrick's complaints of sexual harassment.
40. Fernandez is a members at Ernst & Young upper management.
41. Fernandez possessed a discriminatory as well as a retaliatory intent in relation to her conduct that affected Fitzpatrick.
42. Said acts of Fernandez constitute aiding and abetting discrimination.
43. Defendants' conduct constituted malicious, especially egregious, willful and wanton acts in which an award of punitive damages is appropriate.
44. Defendants' adverse conduct continue to this date and is ongoing.
45. On or about September 10, 2003, the Equal Employment Opportunity Commission filed a complaint in U.S. District Court, District of New Jersey. The Complaint against Defendant Ernst and Young alleged that during her employment, Jill Fitzpatrick filed a claim for discriminatory conduct.
46. Subsequently, in November 2003, Ernst and Young in its Human Resources training provided to all employees included a hypothetical that closely matches the facts of Jill Fitzpatrick's case.
47. The hypothetical related to an employee named "Jill" who works in the finance department, the same department that Ms. Fitzpatrick worked, who retains an attorney and files a complaint of discrimination during her employment.
48. The hypothetical contained false and defamatory statements of fact that a reasonable person would believe concerned Jill Fitzpatrick and her work performance.
49. These false and defamatory statements include but are not limited to: "After she filed the lawsuit, Jill felt "untouchable in the workplace. She began goofing off, chatting on the phone, taking two hour lunches, and missing deadlines, thinking that she could not be disciplined because she has a lawyer".

50. Following Ernst and Young's malicious conduct in publicizing the hypothetical, Ms. Fitzpatrick received numerous calls from Ernst and Young employees related to the training materials and stating that the training materials related to Ms. Fitzpatrick.
51. Defendants' conduct caused Ms. Fitzpatrick to suffer emotional distress.
52. Defendants' conduct related to the use of Ms. Fitzpatrick's name and similar facts as a training tool for her former co-workers constitutes defamation and false light invasion of privacy.

Count I

(New Jersey Law Against Discrimination - Sexual Harassment)

53. Fitzpatrick realleges and incorporates herein the above paragraphs.
54. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by sexually harassing Fitzpatrick.
55. Furthermore, upon information and belief, Defendants have engaged in a pattern and practice of such harassment.
56. As a direct and proximate result of the actions of Defendants, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.
57. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count II

(New Jersey LAD - Hostile Work Environment Sexual Harassment)

58. Fitzpatrick realleges and incorporates herein the above paragraphs.
59. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by submitting Fitzpatrick to hostile work environment sexual harassment.
60. Furthermore, upon information and belief, Defendants have engaged in a pattern and practice of such harassment.
61. As a direct and proximate result of the actions of Defendants, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.
62. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count III

(New Jersey LAD - Quid Pro Quo Sexual Harassment)

63. Fitzpatrick realleges and incorporates herein the above paragraphs.

64. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by submitting Fitzpatrick to quid pro quo sexual harassment.
65. Furthermore, upon information and belief, Defendants have engaged in individual and a pattern and practice of such harassment.
66. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by submitting Plaintiff to hostile work environment sexual harassment.
67. Furthermore, upon information and belief, Defendants have engaged in a pattern and practice of such harassment.
68. As a direct and proximate result of the actions of Defendants, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.
69. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count IV

(New Jersey Law Against Discrimination – Retaliation/Reprisal)

70. Fitzpatrick realleges and incorporates herein the above paragraphs.

71. The foregoing facts and circumstances demonstrate that Defendants have violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et. seq.*, by retaliating against Fitzpatrick because Fitzpatrick made complaints that Fitzpatrick was sexually harassed and/or subjected to hostile work environment sexual harassment and/or quid pro quo sexual harassment and or discrimination.
72. As a direct and proximate result of the actions of Defendants, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.
73. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count V

(Title VII of the Civil Rights Act-Sexual Harassment)

74. Fitzpatrick realleges and incorporates herein the above paragraphs.
75. The foregoing facts and circumstances demonstrate that Defendant Ernst and Young has violated the Title VII of the Civil Rights Act 24 U.S.C. § 2000 *et. seq.*, by sexually harassing Fitzpatrick.

76. Furthermore, upon information and belief, Defendant Ernst and Young have engaged in a pattern and practice of such harassment.
77. As a direct and proximate result of the actions of Defendant Ernst and Young, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.
78. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count VI

(Title VII of the Civil Rights Act - Hostile Work Environment Sexual Harassment)

79. Fitzpatrick realleges and incorporates herein the above paragraphs.
80. The foregoing facts and circumstances demonstrate that Defendant Ernst and Young, has violated the Title VII of the Civil Rights Act 42 U.S.C. § 2000 *et. seq.*, by submitting Fitzpatrick to hostile work environment sexual harassment.
81. Furthermore, upon information and belief, Defendant Ernst & Young, has engaged in a pattern and practice of such harassment.

82. As a direct and proximate result of the actions of Defendants, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.
83. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count VII

(Title VII of the Civil Rights Act - Quid Pro Quo Sexual Harassment)

84. Fitzpatrick realleges and incorporates herein the above paragraphs.
85. The foregoing facts and circumstances demonstrate that Defendant Ernst and Young, has violated the Title VII of the Civil Rights Act 42 U.S.C. § 2000 *et. seq.*, by submitting Fitzpatrick to quid pro quo sexual harassment.
86. The foregoing facts and circumstances demonstrate that Defendant Ernst and Young, has violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, by submitting Plaintiff to hostile work environment sexual harassment.
87. Furthermore, upon information and belief, Defendant Ernst and Young, have engaged in a pattern and practice of such harassment.

88. As a direct and proximate result of the actions of Defendant Ernst and Young, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.
89. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count VIII

(Defamation)

90. Plaintiff realleges and incorporates herein the above paragraphs.
91. The actions of Defendants give rise to the common law claim of defamation.
92. As a direct and proximate result of the actions of Defendants, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.

93. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

Count IX

(Invasion of Privacy)

94. Plaintiff realleges and incorporates herein the above paragraphs.

95. The actions of Defendants give rise to the common law claim of invasion of privacy.

96. As a direct and proximate result of the actions of Defendants, Fitzpatrick has suffered mental anguish, physical discomfort, pain and suffering, shame and embarrassment, and/or aggravation of a previously existing mental or emotional condition. Furthermore, Fitzpatrick has suffered lost wages, a diminished ability to earn a living, and a diminished capacity to enjoy Fitzpatrick's life. Moreover, Fitzpatrick has and/or may have to incur expenses for medical, psychiatric, and/or psychological counseling and care. Fitzpatrick's damages have been experienced in the past, and they will continue into the future.

97. Further, Fitzpatrick has been required to retain an attorney to assist Fitzpatrick in asserting Fitzpatrick's claims and protecting Fitzpatrick's rights.

PRAYER FOR RELIEF

WHEREFORE, as to each and every count, Fitzpatrick demands judgment on each and all of these Counts against the Defendants jointly and severally, as follows:

- A. Compensatory damages of not less than \$5,000,000;
- B. Damages for lost wages and benefits, back pay, front pay (or reinstatement);
- C. Damages for humiliation, mental and emotional distress;

- D. Statutory damages, if applicable;
- E. Punitive damages and or liquidated damages where permitted by law;
- F. Attorneys' fees and costs of suit;
- G. Lawful interest - including pre-judgment interest on lost wages;
- H. Lawful interest - including pre-judgment interest on any wages not paid in a timely manner; and
- I. Such other, further and different relief as the Court deems fitting, just and proper.

Fitzpatrick hereby reserves the right to amend this Complaint to supplement or modify the factual obligations and claims contained herein, based upon information received from the Defendants, witnesses, experts, and others in the course of discovery in this matter.

JURY TRIAL DEMAND

Jill Fitzpatrick requests a jury trial on all questions of fact raised by her complaint.

Respectfully submitted,

DAVIS, SAPERSTEIN & SALOMON, P.C.
Attorneys for Plaintiff Jill Fitzpatrick

Dated:

4/19/04

By



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