

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	CIVIL ACTION NO.
Plaintiff,	)	06-0769
	)	
and	)	
	)	
ELYSE PEHEL	)	
Intervenor Plaintiff,	)	
	)	
v.	)	
	)	<b><u>COMPLAINT</u></b> ,
	)	
GREG & DEB’S, INC., d/b/a NORTH PARK	)	
LOUNGE CLUBHOUSE, MARK & GREG’S,	)	
INC., d/b/a NORTH PARK LOUNGE	)	
CLUBHOUSE, DEBORAH MAGGIO	)	
As Executrix of the ESTATE OF GREG	)	
MAGGIO, and MITCHELL L. BREWER	)	
	)	
Defendants.	)	JURY TRIAL
	)	DEMANDED

COMPLAINT

Plaintiff, Elyse Pehel, by and through her attorney Mark D. Schwartz, Esquire, as and for a Complaint against the above-named Defendants, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff invokes jurisdiction of this Court pursuant to 28 U.S.C.

§§ 451, 1331, 1337, 1343 and 1345 and 42 U.S.C. Section 2000e-5(f).

2. Plaintiff requests that this court exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. Section 1367. Plaintiff's state law claims are related to her federal claims and arise from the same nucleus of operative facts.

3. Plaintiff has complied with all jurisdictional prerequisites, including those set forth in 42. U.S.C. Section 2000e-5.

4. Plaintiff, in addition to declaratory and injunctive relief requests money damages, including but not limited to compensatory and punitive monetary damages for the redress of her injuries.

5. The unlawful employment practices alleged in this Complaint were committed within the jurisdiction of the Western District of Pennsylvania.

#### PARTIES

6. Intervenor Plaintiff, Elyse Pehel (hereinafter "Plaintiff ") is a female citizen of the United States of America and currently resides with her parents at 135 Lowery Drive, Valencia, PA 16059.

7. At all relevant times, Defendant Greg & Deb's, Inc. (referred to hereinafter in conjunction with Defendant Mark & Greg's, Inc. as the "Employer"), has continuously been a Pennsylvania corporation,

headquartered in Gibsonia, Pennsylvania and has continuously had at least 15 employees.

8. At all relevant times, Defendant Mark & Greg's, Inc. (referred to hereinafter in conjunction with Defendant Greg & Deb's, Inc. as the "Employer"), has continuously been a Pennsylvania corporation, headquartered in Gibsonia, Pennsylvania and has continuously had at least 15 employees.

9. At all relevant times, each Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h) and the Pennsylvania Human Relations Act, 43 P.S. Section 954.

10. Defendant, Deborah Maggio is the Executrix of the Estate of Greg Maggio (hereinafter referred to as, "Defendant Maggio"), succeeding to the interest of Greg Maggio, who at all relevant times was a management employee and upon information and belief, an owner of Defendant Employer, until he died on or about September 22, 2005.

11. Defendant Mitchell L. Brewer (hereinafter, "Defendant Brewer") was at all relevant times a management employee of Defendant Employer.

ADMINISTRATIVE PROCEDURES

12. Plaintiff timely filed a charge of discrimination against Defendant Employer with the Equal Employment Opportunity Commission (hereinafter "EEOC") on or about November 1, 2005 concerning Defendant Employer's having engaged in unlawful employment practices, on or about August 1, 2005, in violation of 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1).

13. Plaintiff has complied with all administrative and judicial prerequisites for the institution of this Complaint under federal and state law.

14. On March 27, 2006 the EEOC made a Determination that Defendant Employer had engaged in sexual harassment and unlawful employment practices in violation of 703(a)(1) of Title VII, 42 U.S.C. Section 2000e-2(a)(1).

15. On or about June 12, 2006 the EEOC brought an action against Defendant Employer in the United States District Court for the Western District of Pennsylvania at Case Number 06-0769.

FACTUAL BACKGROUND

16. Defendant Employer jointly own and or operate at least one restaurant and family entertainment facility known as the North Park Lounge Clubhouse. One such facility is located in Gibsonia, Pennsylvania which is

where Plaintiff was employed. A second North Park Lounge Clubhouse is located in Cranberry, Robinson Township, Pennsylvania. These two facilities are jointly owned/ and/or managed by the same principals, including Defendant Maggio, who own Mark& Greg's Inc. and Greg & Deb's Inc.

17. The North Park Lounge Clubhouse located in Gibsonia, consists of a restaurant, lounge, game room, basketball court and pool tables. The Clubhouse is a multi-use facility as it houses an adult bar, as well as a separate game room and restaurant for children. It is promoted as being "Perfect for Family Orientated Individuals" and highlights itself as one of the Pittsburgh area's business restaurants serving more than 10,000 people per week. The Clubhouse claims to adhere to all applicable laws, including those pertaining to discrimination and harassment. It attracted Plaintiff as an employee as a result of its advertising itself as a family-oriented business. Its Employee Handbook provides that "Here at the Clubhouse we are an Equal Opportunity Employer. We do not hire on race, religion, or national origin. We also do not permit any form of Sexual Harassment." As part of its enumerated Rules the handbook states that "Sexual harassment will not be tolerated."

18. Plaintiff began her employment in early June, 2005 at the age

of 19, as a hostess for the North Park Lounge Clubhouse located in Gibsonia. At all times during Plaintiff's employment, Greg Maggio was in charge of and ran the North Park Lounge Clubhouse on behalf of Employer.

19. On August 1, 2005, Defendant Employer held a golf outing for patrons at the Pittsburgh North Golf Course in Bakerstown, Pennsylvania, a public golf course. As part of this sexually hostile work environment at which Plaintiff was required to work, she was told by Greg Maggio to work at hole number 16 and sell tickets for a raffle. She was instructed that she had to wear a bathing suit top and short skirt or shorts and a swimming suit top under a t-shirt, which she removed during the course of the day.

20. The hostile work environment complained of consisted of a generally sexually charged atmosphere and, explicitly, of two distinct incidents where Plaintiff was subjected to sexual harassment and unwanted touching by Greg Maggio and Defendant Brewer.

21. Defendant Employer had prior knowledge of problems with respect to Defendant Brewer's behavior in the past; specific problems pertaining to alcohol and sexual harassment. Despite said prior knowledge, Defendant Brewer was encouraged and permitted by Defendant Employer to work at and otherwise participate in the golf outing.

22. On that day, Plaintiff was staffing a hole at the golf outing, as

requested by Greg Maggio, wearing the outfit that she was instructed to wear by Greg Maggio.

23. During the late morning on the day of the golf event, Greg Maggio came up to Plaintiff and, with a black pen, wrote “Tips” on her chest with an arrow pointing down toward her breasts. Plaintiff did not consent to this action.

24. Later that afternoon, Defendant Brewer who was golfing with a group at the outing, arrived at the hole where Plaintiff was working. He requested that Plaintiff remove her top and show her breasts. She refused. Defendant Brewer then attempted to bargain with her, offering her increasing amounts of money to remove her top. When Plaintiff continued to refuse, Defendant Brewer pinned her arms, untied her bathing suit top, and let it fall. She was further restrained by her arms as she attempted to hold up the top. All the while Defendant Brewer said “Its okay, I’m a manager. It doesn’t matter.” Plaintiff protested that it did matter. Defendant Brewer instead said that he did not care and went to attempt to take off Plaintiff’s top.

25. So as to stop Defendant Brewer’s actions, Plaintiff called for help and attracted the attention of Chris Buckley, who was working at the next hole. This resulted in the incident’s discontinuation. With Plaintiff

crying hysterically, Mr. Buckley tried to console and calm her.

26. That evening, Plaintiff reported to work her scheduled evening shift at the restaurant/lounge. Her manager noticed that she was crying and took her aside to talk to her. At that time, Plaintiff revealed what had transpired to two of Defendant's managers. They told her that the conduct was not uncharacteristic for Defendant Brewer and that this was not the first time that this sort of thing happened with him. They reported the events to Greg Maggio. Towards the end of Plaintiff's shift, Defendant Brewer sought to play down the assault and his misbehavior asking if he and Plaintiff "were cool". Plaintiff responded in the negative, returning to her home crying, afraid and unable to sleep.

27. The next morning, Plaintiff reported to work. Greg Maggio spoke with her about the events of the previous day and stated, "You know I was just joking around." He also informed Plaintiff that Defendant Brewer was known to get "out of hand" when he was drinking. Defendant Maggio also told Plaintiff that Defendant Brewer would be banned from the next annual golf outing. Plaintiff's reply was "Is that all?"

28. Two days later, after repeated bouts of crying and inability to sleep as a result of what happened, Plaintiff realized that she could not return to work for Defendant at the North Park Lounge Clubhouse. As a



result of what she sustained at the golf outing and Defendant Employer's lack of remedial action, Plaintiff had no course but to resign, which she did, as a result of discussions with her parents and her mother's subsequent conversation with Greg Maggio.

29. Given its prior knowledge of Defendant Brewer's and Greg Maggio's proclivities, Defendant Employer could have, but failed to prevent the damages sustained by Plaintiff from happening in the first place.

30. Defendant Employer was at all times aware of what happened to Plaintiff, but refused to take any remedial action after Plaintiff complained of the incidents that took place.

31. The aforementioned, unlawful employment practices, were and are intentional and were done with malice or reckless indifference to Plaintiff's rights protected by the laws of the United States, as well as statutory law of the Commonwealth of Pennsylvania. These unlawful acts were committed because of her sex. She was forced to quit because she engaged in the protected activity of reporting the incident to her superiors who did nothing.

32. The effect of the aforementioned practices has been to deprive Plaintiff of equal employment opportunities and otherwise adversely affect her status as an employee, because of her sex.

33. The aforementioned actions of all Defendants have also separately caused Plaintiff to suffer injury and damages in contravention of Pennsylvania common law.

**COUNT I**

**SEXUAL HARASSMENT AND SEXUAL DISCRIMINATION IN  
VIOLATION OF TITLE VII**

**Plaintiff vs. Defendant Employer**

34. Plaintiff realleges paragraphs 1 to 33 and incorporates them by reference as paragraphs 1 to 33 of Count I of this Complaint.

35. Title VII of the Civil Rights Act of 1964, 42 U.S.C., Section 2000 *et seq*, as amended by the Civil Rights Act of 1991 (“Title VII”), makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of gender or sex.

36. Plaintiff Elyse Pehel is female.

37. Defendant Employer is liable for discrimination alleged herein under the doctrine of *respondeat superior*.

38. Sexual harassment that creates an abusive and hostile work environment, such that the conditions of employment are altered, is actionable under Title VII as sexual or gender-based discrimination.

39. With respect to allegations of sexual harassment, Defendant Employer is strictly liable for the acts of its supervisory employees because

the harassers used their actual or apparent authority to further the unlawful conduct, and were otherwise aided in accomplishing the unlawful conduct by the existence of an agency relationship.

40. Defendant Employer is liable for the acts of management and co-workers of Plaintiff because Defendant Employer provided no reasonable avenue of complaint.

41. Defendant Employer is liable for the acts of management and co-workers, including Defendants Maggio and Brewer, because it knew of this harassment but did nothing about it.

42. Defendant Employer is liable for the acts of management and co-workers, including Greg Maggio and Defendant Brewer, because it knew of the proclivities and past practices of personnel involved but did nothing about it.

43. Defendant Employer is liable for the acts alleged herein because the Defendant Employer's founding family members, top echelon, and management established the corporate culture at the Company, which encouraged sexual discrimination and harassment.

44. The hostile work environment was sufficiently severe and pervasive such that it altered the condition of Plaintiff's employment, affected the terms, conditions and privileges thereof in violation of Title VII,

and resulted in Plaintiff's quitting her employment amidst circumstances that certainly can be characterized as constituting constructive discharge from her position.

45. Based upon the foregoing, Defendant Employer has discriminated against Plaintiff on the basis of her sex and has deprived her of her rights in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e *et seq.*

46. As a result of such conduct by Defendant Employer, Plaintiff has suffered damages and is entitled to back pay, front pay, and compensatory damages for, among other things, emotional trauma and the physical consequences thereof suffered by Plaintiff as a consequence of Defendant Employer's illegal conduct.

47. Because Defendant Employer's discriminatory treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's federally-protected rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

**COUNT II**

**SEXUAL HARASSMENT AND SEXUAL DISCRIMINATION IN VIOLATION OF THE PENNSYLVANIA HUMAN RELATIONS ACT**

**Plaintiff vs. Defendant Employer**

48. Plaintiff realleges paragraphs 1 to 47 and incorporates them by reference as paragraphs 1 to 47 of Count II of this Complaint.

49. The Pennsylvania Human Relations Act, 43 P.S. Section 955 *et seq.* makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of gender or sex.

50. Plaintiff Elyse Pehel is female.

51. Defendant Employer is liable for discrimination alleged herein under the doctrine of *respondeat superior*.

52. Sexual harassment that creates an abusive and hostile work environment, such that the conditions of employment are altered, is actionable under the Pennsylvania Human Relations Act, as sexual or gender-based discrimination.

53. With respect to allegations of sexual harassment, Defendant Employer is strictly liable for the acts of its supervisory employees because the harassers used their actual or apparent authority to further the unlawful conduct and were otherwise aided in accomplishing the unlawful conduct by the existence of an agency relationship.

54. Defendant Employer is liable for the acts of management and co-workers of Plaintiff because Defendant Employer provided no reasonable avenue of complaint.

55. Defendant Employer is liable for the acts of management and co-workers, including Greg Maggio and Defendant Brewer, because it knew of this harassment, but did nothing about it.

56. Defendant Employer is liable for the acts of management and co-workers, including Greg Maggio and Defendant Brewer, because it knew of the proclivities and past practices of personnel involved, but did nothing about it.

57. Defendant Employer is liable for the acts alleged herein because the Defendant Employer's founding family members, top echelon, and management established the corporate culture at the Company, which encouraged sexual discrimination and harassment.

58. The hostile work environment was sufficiently severe and pervasive such that it altered the condition of Plaintiff's employment, affected the terms, conditions and privileges thereof in violation of the Pennsylvania Human Relations Act, and resulted in Plaintiff's quitting her employment amidst circumstances that certainly can be characterized as constituting constructive discharge from her position.

59. Based upon the foregoing, Defendant Employer has discriminated against Plaintiff on the basis of her sex and has deprived her of her rights in violation of Pennsylvania Human Relations Act, 43 P.S. Section 955 *et seq.*

60. As a result of such conduct by Defendant Employer, Plaintiff has suffered damages and is entitled to back pay, front pay, and compensatory damages for, among other things, emotional trauma and the physical consequences thereof suffered by Plaintiff as a consequence of Defendant Employer's illegal conduct.

61. Because Defendant Employer's discriminatory treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's federally-protected rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

### **COUNT III**

#### **WRONGFUL SUPERVISION AND RETENTION OF GREGORY MAGGIO IN VIOLATION OF PENNSYLVANIA COMMON LAW**

#### **Plaintiff vs. Defendant Employer**

62. Plaintiff realleges paragraphs 1 through 61 and incorporates them by reference as paragraphs 1 through 61 of Count III of this Complaint.

63. Pennsylvania common law recognizes the tort of wrongful supervision and retention where the employer fails to exercise ordinary care to prevent an intentional harm to a third-party, which is committed by an employee, even acting outside the scope of his employment and is reasonably foreseeable.

64. Given Defendant Employer's knowledge of what happened at these golf outings, as well as the nature and tendencies of its employee and manager, Greg Maggio, Defendant Employer's inaction rises to the intentional tort of wrongful supervision and retention of Defendant Maggio.

65. Because Defendant Employer's treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

#### **COUNT IV**

#### **WRONGFUL SUPERVISION AND RETENTION OF MITCHELL BREWER IN VIOLATION OF PENNSYLVANIA COMMON LAW**

#### **Plaintiff vs. Defendant Employer**

66. Plaintiff realleges paragraphs 1 through 65 and incorporates them by reference as paragraphs 1 through 65 of Count IV of this Complaint.

67. Pennsylvania common law provides for the tort of wrongful



supervision and retention of an employee.

68. Given Defendant Employer's knowledge of what happened at these golf outings, as well as the nature and tendencies of its employee and manager, Mitchell Brewer, Defendant Employer's inaction rises to the intentional tort of wrongful supervision and retention of Mitchell Brewer.

69. Because Defendant Employer's treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

#### **COUNT V**

#### **NEGLIGENT SUPERVISION AND RETENTION OF GREGORY MAGGIO IN VIOLATION OF PENNSYLVANIA COMMON LAW**

#### **Plaintiff vs. Defendant Employer**

70. Plaintiff realleges paragraphs 1 through 69 and incorporates them by reference as paragraphs 1 through 69 of Count V of this Complaint.

71. Pennsylvania common law recognizes the tort of negligent supervision and retention of an employee.

72. Given Defendant Employer's knowledge of what happened at these golf outings, as well as the nature and tendencies of its employee and manager, Greg Maggio, Defendant Employer is liable in negligence for its failure to exercise ordinary care to prevent intentional harm to the Plaintiff

by an employee, even if the employee is acting outside the scope of his employment, as long as what took place was reasonably foreseeable.

73. Because Defendant Employer's treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

### **COUNT VI**

#### **NEGLIGENT SUPERVISION AND RETENTION OF MITCHELL BREWER IN VIOLATION OF PENNSYLVANIA COMMON LAW**

##### **Plaintiff vs. Defendant Employer**

74. Plaintiff realleges paragraphs 1 through 73 and incorporates them by reference as paragraphs 1 through 73 of Count VI of this Complaint.

75. Pennsylvania common law provides for the tort of negligent supervision and retention of an employee.

76. Given Defendant Employer's knowledge of what happened at these golf outings, as well as the nature and tendencies of its employee and manager, Defendant Brewer, Defendant Employer is liable in negligence for its failure to exercise ordinary care to prevent intentional harm to the Plaintiff by an employee, even if the employee is acting outside the scope of

his employment, as long as what took place was reasonably foreseeable .

77. Because Defendant Employer's treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

### **COUNT VII.**

#### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN VIOLATION OF PENNSYLVANIA COMMON LAW**

##### **Plaintiff vs. Defendants Deborah Maggio as Executrix of the Estate of Greg Maggio, Brewer and Employer**

78. Plaintiff realleges paragraphs 1 through 77 and incorporates them by reference as paragraphs 1 through 77 of Count VII of this Complaint.

79. Pennsylvania common law recognizes a cause of action for intentional infliction of emotional distress, which makes unlawful certain extreme and outrageous conduct, including sexual actions alleged herein, that result in severe emotional distress and was intended or committed with a disregard for a substantial probability of causing such distress.

80. By their actions alleged herein Defendant Employer and its managers and employees, Greg Maggio and Defendant Brewer, maliciously embarked on a course of conduct willfully.

81. Defendant Employer directed, encouraged, and participated in the wrongful conduct alleged herein.

82. As a result of the named Defendants' conduct, Plaintiff has become tense, nervous, irritable, depressed and has suffered great mental anguish that has included a great deal of mental and physical suffering and inconvenience.

83. Because Defendants' treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against all Defendants named herein.

### **COUNT VIII**

#### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS IN VIOLATION OF PENNSYLVANIA COMMON LAW**

##### **Plaintiff vs. Defendants Deborah Maggio as Executrix of the Estate of Greg Maggio, Brewer and Employer**

84. Plaintiff realleges paragraphs 1 through 83 and incorporates them by reference as paragraphs 1 through 83 of Count VIII of this Complaint.

85. Pennsylvania common law recognizes a cause of action for negligent infliction of emotional distress, which makes unlawful the failure to exercise due care for the protection of others against unreasonable risk, or

which constitutes an unintentional breach of a legal duty causing damage which is foreseeable and without which the damage would not have occurred. This includes the actions alleged herein, that result in severe emotional distress.

86. By their actions alleged herein, Defendant Employer's and its managers and employees, including Greg Maggio and Defendant Brewer, owed Plaintiff a cognizable duty of care. They failed to exercise that duty and Plaintiff suffered severe emotional distress without any just cause or provocation in violation of State law.

87. As a result of Defendant Employer's conduct and the conduct of Greg Maggio and Defendant Brewer, Plaintiff has become tense, nervous, irritable, depressed and has suffered great mental anguish that has included a great deal of mental and physical suffering and inconvenience.

88. Because Defendant Employer's, Greg Maggio's, and Defendant Brewer's treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against all Defendants named.

**COUNT IX**

**FRAUDULENT MISREPRESENTATION IN VIOLATION OF  
PENNSYLVANIA COMMON LAW**

**Plaintiff vs. Defendant Employer**

89. Plaintiff realleges paragraphs 1 through 88 and incorporates them by reference as paragraphs 1 through 88 of Count IX of this Complaint.

90. Pennsylvania common law recognizes a cause of action for Intentional and fraudulent misrepresentation consisting of the making of a false material representation by one party, where that party knew of its falsity with the intent to deceive and induce the other party to act upon it, all of which results in injury to the other party.

91. The promotional materials authored and distributed by Defendant Employer as well as the Employee Handbook, hereinbefore cited, containing representations as to a family oriented place of business, a commitment to the law, and progressive values, all constituting representations of management to the same effect, were all fraudulent misrepresentations.

92. Plaintiff was ignorant of the falsity of these representations,

relied on them and acted to her detriment. Plaintiff's reliance on Defendant Employer's statements was both reasonable and foreseeable.

93. Plaintiff has suffered specific monetary loss as a result of the false statements which were intentionally made, resulting in damages in an amount to be determined at trial.

94. Because Defendant Employer's treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

**COUNT X**

**NEGLIGENT MISREPRESENTATION IN VIOLATION OF  
PENNSYLVANIA COMMON LAW**

**Plaintiff vs. Defendant Employer**

95. Plaintiff realleges paragraphs 1 through 94 and incorporates them by reference as paragraphs 1 through 94 of Count X of this Complaint.

96. Pennsylvania common law recognizes a cause of action for negligent misrepresentation consisting of the making of a false material representation by one party, made under circumstances in which the misrepresenter ought to have known of its falsity; with the intent to induce the other party to act upon it, all of which results in injury to the other party.

97. The promotional materials authored and distributed by

Defendant Employer as well as the Employee Handbook, hereinbefore cited, containing representations as to a family oriented place of business, a commitment to the law, and progressive values, all constituting representations of management to the same effect, were all fraudulent misrepresentations.

98. Plaintiff was ignorant of the falsity of these representations, relied on them and acted to her detriment. Plaintiff's reliance on Defendant Employer's statement was both reasonable and foreseeable.

99. Plaintiff has suffered specific monetary loss as a result of the false statements which were negligently made, resulting in damage to her in an amount to be determined at trial.

100. Because Defendant Employer's treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendant Employer.

### **COUNT XI**

#### **ASSAULT IN VIOLATION OF PENNSYLVANIA COMMON LAW**

**Plaintiff vs. Defendants Employer, Deborah Maggio as  
Executrix of the Estate of Greg Maggio, Brewer and Employer**

101. Plaintiff realleges paragraphs 1 through 100 and incorporates



them by reference as paragraphs 1 through 100 of Count XI of this Complaint.

102. Pennsylvania common law recognizes a cause of action for assault which consists of the intentional placing of another party in fear of imminent harmful or offensive conduct.

103. Greg Maggio's and Defendant Brewer's actions described hereinbefore caused Plaintiff to suffer physical assault in violation of State law.

104. Given Defendant Employer's knowledge of the nature of prior golf outings held by it as well as the known tendencies and proclivities of Greg Maggio and Defendant Brewer, Defendant Employer could have reasonably anticipated and could have prevented such assaults.

105. As a result of Defendants' conduct, Plaintiff was placed in fear of imminent harmful or offensive conduct.

106. Because Defendants' treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendants.

**COUNT XII**

**BATTERY IN VIOLATION OF PENNSYLVANIA COMMON  
LAW**

**Plaintiff vs. Defendants Employer, Deborah Maggio as Executrix of the  
Estate of Greg Maggio, and Brewer**

107. Plaintiff realleges paragraphs 1 through 106 and incorporates them by reference as paragraphs 1 through 106 of Count XII of this Complaint.

108. Pennsylvania common law recognizes a cause of action for battery which consists of the intentional physical contact upon a party without that party's consent.

109. Greg Maggio's and Defendant Brewer's actions described hereinbefore caused Plaintiff to suffer physical assault in violation of State law.

110. Given Defendant Employer's knowledge of the nature of prior golf outings held by it as well as the known tendencies and proclivities of Greg Maggio and Defendant Brewer, Defendant Employer could have reasonably anticipated and could have prevented such battery.

111. As a result of Defendants' conduct, Plaintiff suffered such offensive physical contact without her consent.

112. Because Defendants' treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendants.

**COUNT XIII**

**FALSE IMPRISONMENT IN VIOLATION OF  
PENNSYLVANIA COMMON LAW**

**Plaintiff vs. Defendant Employer and Brewer**

113. Plaintiff realleges paragraphs 1 through 112 and incorporates them by reference as paragraphs 1 through 112 of Count XIII of this Complaint.

114. Pennsylvania common law recognizes a cause of action for false imprisonment which consists of the unlawful detention of another's person, for any length of time, whereby he or she is deprived of his or her personal liberty.

115. Defendant Brewer's actions described hereinbefore caused Plaintiff to be falsely imprisoned in violation of State law.

116. Given Defendant Employer's knowledge of the nature of prior golf outings held by it, as well as the known tendencies and proclivities of Defendant Brewer, Defendant Employer could have reasonably anticipated and could have prevented such false imprisonment.

117. As a result of Defendants' conduct, Plaintiff suffered such false imprisonment.

118. Because Defendants' treatment of Plaintiff was willful and/or in reckless disregard of Plaintiff's common law rights, Plaintiff is entitled to an award of punitive damages against Defendants.

**COUNT XIV**

**BREACH OF CONTRACT UNDER PENNSYLVANIA  
COMMON LAW**

**Plaintiff vs. Defendant Employer**

119. Plaintiff realleges paragraphs 1 through 118 and incorporates them by reference as paragraphs 1 through 118 of Count XIV of this Complaint.

120. Pennsylvania law recognizes a cause of action for breach of contract wherein a party is induced into employment by virtue of representations of another party.

121. As referenced herein, Defendant Employer's written materials, referencing a family oriented atmosphere and its Employee Handbook contained representations of an atmosphere free of sexual harassment and otherwise compliant with the law, served as an inducement for Plaintiff to enter into Defendant Employer's employ. This inducement by Defendant Employer, together with Plaintiff's reliance, and agreement to work, resulted

in a contract.

122. The failure of Defendant Employer to provide that atmosphere constituted a breach of that agreement.

123. As a result of Defendant Employer's conduct and breach of contract, Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff requests that the Court find in her favor and against Defendant Employer as follows:

(a) Declare that, pursuant to Count I hereof, the acts and conduct of Defendant Employer violated Title VII of the Civil Rights Act of 1964 and 1991 ;

(b) Declare that, pursuant to Counts II hereof, the acts and conduct of Defendant Employer violated the Pennsylvania Human Relations Act;

(c) Declare that, pursuant to Counts III through XIV hereof, that acts and conduct of Defendant Employer violate Plaintiff's rights under the Pennsylvania common law.

(d) Award Plaintiff the value of all compensation and benefits lost as a result of Defendant Employer's unlawful conduct, including, but not limited to back pay, reinstatement or, in lieu of reinstatement, front pay, liquidated damages, punitive damages, special damages, interest, costs and attorneys fees; and

(e) Award Plaintiff such other relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff Elyse Pehel requests a jury trial on all questions of fact raised by her Complaint.

Dated: August 11, 2006

Respectfully Submitted,

/s/ Mark D. Schwartz  
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