

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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|---|---|-------------------------------------|
| GEORGE “CHIP” PENNINGTON, |) | |
| |) | CIVIL NO. 3:04-1133 |
| PLAINTIFF, |) | |
| |) | |
| v. |) | |
| |) | |
| CENDANT CORPORATION, FAIRFIELD RESORTS, INC., JOHN “DAVE” LABELLE, DANNY HIGDON, AND SHARON BARNES |) | JUDGE HAYNES JURY DEMAND |
| |) | |
| DEFENDANTS. |) | THIRD AMENDED COMPLAINT |

Plaintiff George “Chip” Pennington (“Plaintiff” or “Mr. Pennington”), by and through undersigned counsel, files this Complaint against Corporate Defendants Cendant Corporation (“Cendant Corp.”) and Fairfield Resorts, Inc. (“Fairfield”) (both Corporate Defendants will be referred to as “Cendant”) and Individual Defendants John “Dave” Labelle, Danny Higdon, and Sharon Barnes (collectively both the Corporate and Individual Defendants will be referred to as “Defendants”), and states the following:

I. INTRODUCTION

1. This is an action for declaratory judgment, equitable relief and money damages, instituted to secure the protection of and to redress the deprivation of rights secured through Title VII of the Act of Congress commonly known as “The Civil Rights Act of 1964,” 42 U.S.C. §§ 2000(e) et seq., as amended, (“Title VII”), and the Tennessee Human Rights Act, Tenn. Code Ann. §§ 4- 21-101 et seq., and common law claims which provide for relief against unlawful retaliation, intentional or reckless infliction of emotional distress, negligent and/or wanton

supervision, training and retention and negligent and/or wanton hiring. Plaintiff seeks compensatory and punitive damages and requests a jury trial.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(4), and Title VII. This Court also has supplemental jurisdiction over all state law claims alleged in this Complaint under 28 U.S.C. § 1367.

3. Venue is proper in this Court in the Middle District of Tennessee pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. §2000e-5(f). The unlawful employment actions alleged herein were committed by Defendants in the city of Nashville, Tennessee. Fairfield transacts business in the State of Tennessee and the events giving rise to this claim occurred in the State of Tennessee. Plaintiff resides in Tennessee and is working for Fairfield in Tennessee. Most of the records pertaining to Plaintiff's employment are or were maintained in Tennessee.

4. Plaintiff requests a jury trial on all issues.

III. PARTIES

A. George "Chip" Pennington

5. Mr. Pennington brings this action against Defendants under Title VII, the Tennessee Human Rights Act and under the common law to redress Defendants' employment discrimination against him through unlawful retaliation, intentional or reckless infliction of emotional distress, negligent and/or wanton supervision, training and retention and negligent and/or wanton hiring. Mr. Pennington is a person aggrieved under Title VII and was subjected to a hostile work environment and unlawful retaliation by the Defendants. Mr. Pennington seeks equitable and legal remedies, including declaratory relief, back pay, front pay, compensatory, punitive and nominal damages, an award of attorneys' fees, costs and expenses, pre-judgment

and post-judgment interest and other incidental monetary and non-monetary remedies necessary to redress Defendants' unlawful actions against him.

B. Defendants

6. **Defendant Cendant Corp.** is one the world's largest providers of real estate and travel-related consumer and business services. Cendant Corp. is incorporated under the laws of the State of Delaware and its corporate headquarters are located at 9 West 57th Street, New York, New York 10019. Cendant Corp. transacts its business in the State of Tennessee, throughout the United States and other locations throughout the world. Cendant Corp. is an employer under 42 U.S.C. § 2000e(b) and under the Tennessee Human Rights Act.

7. **Defendant Fairfield** is a wholly owned subsidiary of Cendant Corp. Fairfield Resorts is one of the leading resort and vacation product companies in the world, specializing in the development, marketing and sales of innovative vacation ownership and leisure products. Fairfield Resorts transacts business in the State of Tennessee, has multiple facilities throughout the State of Tennessee and its national corporate headquarters are located at 8427 South Park Circle, Orlando, Florida 32819. Fairfield Resorts is an employer under 42 U.S.C. § 2000e(b) and under the Tennessee Human Rights Act.

8. Cendant Corp.'s facility in Nashville, Tennessee, where Plaintiff works is part of Fairfield's "Mid-South" business unit. Fairfield has five additional business units: West, Pacific, Southeast, Mid Atlantic and Northeast.

9. Cendant Corp. manages, oversees, designs policies for and/or makes decisions for Fairfield Resorts. Some of the discriminatory actions described in this Complaint were authorized, ordered and/or executed by Cendant Corp.'s officers, agents, employees and/or representatives.

10. **Defendant John “Dave” LaBelle** (“LaBelle”) has worked for Cendant from approximately 1995 to the present in the capacities of Front-Line Sales Representative, Director of Front-Line Sales and Vice President of Sales and Marketing. LaBelle is sued in his individual capacity.

11. **Defendant Danny Higdon** (“Higdon”) worked for Cendant from at least 1995 until at least 2002 in the capacities of Front-Line Sales Manager, Vice President of Sales and Marketing and National Recruiter/Trainer. Higdon is sued in his individual capacity.

12. **Defendant Sharon Barnes** (“HR Director Barnes”) has worked for Cendant from 1999 in the capacities of Human Resources Representative, Regional Human Resources Manager and Director of Human Resources. HR Director Barnes is sued in her individual capacity.

IV. PROCEDURAL HISTORY

13. Plaintiff has satisfied all administrative prerequisites for filing suit under Title VII. On or about August 10, 2004, Mr. Pennington timely filed a Charge of Discrimination (Charge No. 253-2004-02994) with the United States Equal Employment Opportunity Commission (“EEOC”) alleging retaliation by Defendant.

14. On December 6, 2004, the EEOC issued Mr. Pennington a Notice of Right to Sue against Fairfield. Mr. Pennington timely instituted a law suit, Wilson, et al. v. Fairfield Resorts, Inc., et al., Civil No. 3:04-1133, (“Wilson case”) within 90 days of his receipt of the Notice of Right to Sue.

15. On July 12, 2005, Judge Haynes issued an Order Preliminarily Approving the Proposed Consent Decree (“Order”) in the Wilson case, which severed Mr. Pennington’s claims from the Wilson action.

16. Pursuant to Judge Haynes' Order, Mr. Pennington filed his Second Amended Complaint within thirty (30) days following the date of the Order on August 11, 2005.

V. FACTUAL BACKGROUND

17. Mr. Pennington began working in Cendant's facility in Nashville, Tennessee in approximately June 1996 in the capacity of Sales Representative. During his career, Mr. Pennington worked in the capacities of Sales Manager, Senior Sales Manager, Director of Front-Line Sales, In-House Sales Representative and In-House Sales Manager.

18. Throughout his employment at Cendant's Nashville facility, Mr. Pennington has witnessed gender discrimination against female employees and sexual hostility in the workplace. For example:

- a. Mr. Pennington regularly heard sexually suggestive comments at Cendant's Nashville facility;
- b. Mr. Pennington heard jokes being made during sexual harassment training sessions;
- c. Mr. Pennington heard reports that Cendant employees engaged in sex acts at Cendant's Nashville facility;
- d. Mr. Pennington overheard a male Sales Representative make sexually suggestive comments;
- e. Mr. Pennington heard Pat Doyle ("Doyle"), a male Front-Line Director of Sales, Sales Trainer and Sales Manager, make degrading comments towards women, blacks and Jewish people at sales meetings;
- f. Jennifer Rodriguez, a female employee, complained to Mr. Pennington that Doyle repeatedly asked her out on dates even though she always declined;

g. Mr. Pennington heard Brian Kemp, a male In-House Sales Representative, brag about and showing a sexually explicit videotape at Cendant's Nashville facility; and

h. Mr. Pennington also heard that a male In-House Sales Manager played sexually explicit videos in his office.

19. Mr. Pennington repeatedly complained to his superiors and Human Resources Director Sharon Barnes ("HR Director Barnes") about the sexual harassment, and unfair and discriminatory treatment of Cendant's female employees. Upon information and belief, no remedial action was taken.

20. As a result of Mr. Pennington's opposition to sexual harassment and gender discrimination at Cendant, Mr. Pennington was subjected to retaliation.

21. Specifically, in late 1999, Mr. Pennington complained to Vice President of Sales Danny Higdon ("Higdon") about the inappropriate conduct of Front-Line Director of Sales Pat Doyle. Mr. Pennington told Higdon that Doyle had routinely made offensive comments during sales meetings and, further, that he had observed Doyle harass female employee Jennifer Rodriguez ("Ms. Rodriguez").

22. Further, Mr. Pennington was aware that Doyle repeatedly asked Ms. Rodriguez to go out on dates with him and made sexually inappropriate comments to Ms. Rodriguez when they worked together. Mr. Pennington urged Higdon to reprimand Doyle for his behavior and remove him from his Director position.

23. In response to Mr. Pennington's complaint about Doyle, Higdon claimed that he could not do anything to correct Doyle's conduct.

24. It was not until after Ms. Rodriguez filed a Charge of Discrimination with the EEOC in August 2000 that Higdon took steps to remedy the situation by removing Doyle from his position as Front-Line Director of Sales.

25. Following Mr. Pennington's complaints about Doyle, he began to be subjected to harsh and unfair treatment by Higdon.

26. Specifically, Higdon made false statements about Mr. Pennington's work performance and made unsubstantiated allegations that Mr. Pennington exhibited insubordinate and disrespectful behavior.

27. In 2002, Higdon met with Mr. Pennington and told him that he intended to terminate him. Higdon did not explain why he wanted to fire him. Mr. Pennington strongly objected to Higdon's decision because it was completely unjustified.

28. Eventually, Mr. Pennington spoke with Cendant's Senior Vice President of Operations, Wilson Moore, who told Mr. Pennington that he could remain with Cendant if he worked at a different site.

29. Mr. Pennington proceeded to interview for several positions and later was offered and accepted a Front-Line Sales Manager position at Cendant's Daytona Beach, Florida facility. Mr. Pennington agreed to accept the transfer and a large pay cut to avoid losing his job.

30. By early 2003, Mr. Pennington had been promoted to work as a Senior Sales Manager at Cendant's Daytona facility.

31. In March 2003, Mr. Pennington was recruited to return to Cendant's Nashville facility by Bobby Copeland to work as the Front-Line Director of Sales under Vice President of Sales Dave LaBelle ("LaBelle").

32. Soon after he returned to Nashville, in approximately April 2003, Mr. Pennington noticed that LaBelle routinely hugged female employees in a very aggressive, sexual manner.

33. Several women also complained to Mr. Pennington about LaBelle's hugs.

34. Mr. Pennington also witnessed LaBelle's inappropriate conduct during meetings. Specifically, Mr. Pennington witnessed that during sales meetings LaBelle often made offensive and highly inappropriate statements about female employees.

35. Mr. Pennington reported LaBelle's behavior to HR Director Barnes and told her that he believed LaBelle's conduct was inappropriate and should be stopped.

36. Shortly after complaining to HR Director Barnes about LaBelle's conduct, Mr. Pennington once again began to experience retaliation.

37. In approximately April 2003, LaBelle told Mr. Pennington to promote Mickey Ruggiero ("Ruggiero"), who worked at that time as an In-House Sales Representative, to a Front-Line Sales Manager position.

38. Mr. Pennington told LaBelle that he did not want to promote Ruggiero because he felt it would create additional legal problems for Cendant. Mr. Pennington explained to LaBelle that he had personally witnessed Ruggiero lie to customers in order to make sales. Mr. Pennington was also aware of Ruggiero's questionable work ethics, unmanaged temper and sexually threatening behavior towards Cendant's female employees.

39. Further, Ruggiero threatened Mr. Pennington and told him how to do his job even though Mr. Pennington was Ruggiero's superior.

40. After Mr. Pennington objected to Ruggiero's promotion, LaBelle began retaliating against him by withholding the managerial and decision-making support necessary for

Mr. Pennington to carry out his duties. LaBelle did, however, provide this support to his other Managers.

41. In approximately April 2003, Ruggiero began continually harassing a female employee, Andrea Brichant Wessells (“Ms. Brichant”). Mr. Pennington reported this and subsequent harassment matters to Tim Hurley (“Hurley”), former Director of In-House Sales at Cendant’s Nashville facility, and HR Director Barnes.

42. Ruggiero’s harassment of Ms. Brichant escalated to such a degree that Mr. Pennington reported Ruggiero’s ongoing harassment to Hurley and requested that Hurley keep Ruggiero separated from Ms. Brichant while they were at work.

43. Further, on at least one occasion, Ms. Brichant complained to Mr. Pennington that Ruggiero would stand near her desk and stare at her, tell her that he loved her and try to hug her.

44. However, when Mr. Pennington reported this behavior to LaBelle, LaBelle did not discipline Ruggiero and, instead, instructed Mr. Pennington to issue Ms. Brichant a written disciplinary notice for being “negative” and causing trouble.

45. Mr. Pennington refused to issue Ms. Brichant a disciplinary notice because he had not witnessed her causing any trouble. Mr. Pennington also told LaBelle that Ms. Brichant was no more negative than the male Sales Representatives in her department.

46. LaBelle told Mr. Pennington that he should not trust Ms. Brichant and that he should get rid of her because Ms. Brichant was untrustworthy and caused trouble. Mr. Pennington stated that there was no reason to fire Ms. Brichant and that he had not observed her doing anything wrong.

47. After Mr. Pennington refused to fire Ms. Brichant, LaBelle’s retaliation against Mr. Pennington worsened.

48. Specifically, LaBelle did not assist Mr. Pennington in disciplining Rob Crawford (“Crawford”), a male Marketing Manager, for failing to follow sales procedures.

49. Mr. Pennington contacted HR Director Barnes on multiple occasions regarding LaBelle’s lack of managerial support. HR Director Barnes told him to discuss his concerns directly with LaBelle. Mr. Pennington’s concerns were never addressed.

50. LaBelle, however, continued ignoring Mr. Pennington’s requests for assistance and his work-related suggestions to improve the working conditions at the Cendant Nashville facility.

51. In addition, LaBelle refused to address or even discuss Mr. Pennington’s salary and pay issues, even though HR Director Barnes told Mr. Pennington that LaBelle would handle these matters.

52. Further, in approximately August 2003, Mr. Pennington assisted female Sales Representative, Teresa Faw (“Ms. Faw”), who had become severely ill while at work. Specifically, Ms. Faw asked Mr. Pennington if she could leave for the day. Ms. Faw informed Mr. Pennington that she had been told earlier by Manager Mike Thompson (“Thompson”) that she was not allowed to leave the building because she had arrived late to work that day.

53. Mr. Pennington recognized that Ms. Faw was very ill and unable to perform her duties so he granted her request to leave early. Mr. Pennington was retaliated against as a result of his assistance to Ms. Faw and his refusal to condone Thompson’s unfair and discriminatory treatment of Ms. Faw.

54. Specifically, despite Mr. Pennington telling LaBelle on a previous occasion that he would never want to work as an In-House Sales Representative, LaBelle demoted Mr.

Pennington to an In-House Sales Representative position in approximately January 2004. LaBelle refused to provide Mr. Pennington with any other options.

55. Later, in approximately November 2004, Mr. Pennington applied for an In-House Sales Manager position with Cendant. LaBelle refused to support Mr. Pennington's advancement and did not recommend that he be promoted to the Manager position. Despite LaBelle's lack of support, Mr. Pennington interviewed and was awarded the position.

56. Mr. Pennington has worked as an In-House Sales Manager since approximately December 2004. As a result of his filing this lawsuit on December 22, 2004, Mr. Pennington has continued to experience retaliation, hostility and differential treatment from his superiors, including, but not limited to, Vice President LaBelle.

57. Specifically, Mr. Pennington is continually denied advancement and promotional opportunities. Since filing his lawsuit, Mr. Pennington has not been given the opportunity to fill out an "expandability profile," which would allow Mr. Pennington to express interest in promotions and apply for job openings. Because he has been unable to submit his expandability profile, Mr. Pennington has been denied the opportunity to advance at Cendant.

58. Moreover, LaBelle routinely makes degrading and offensive remarks about Mr. Pennington's job performance. Specifically, at recent Awards dinners, LaBelle has given speeches in which he says that he has never before had qualified employees in the "Director of Sales" position. Mr. Pennington recognizes that LaBelle is referring to him when LaBelle makes these insulting comments during his speeches because he previously worked as In-House Director of Sales under LaBelle before being demoted in January 2004.

59. Further, LaBelle has recently told new employees that the Cendant Nashville facility's weak link is its Sales Managers. Mr. Pennington infers that LaBelle's disrespectful,

degrading comments about Sales Managers are directed at him because he is currently an In-House Sales Manager.

60. Mr. Pennington is also often subjected to more harsh disciplinary standards than other similarly situated Sales Managers. For example, Mr. Pennington was reprimanded for failing to complete his weekly reports and was pressured by his superiors to come in after normal work hours to fill out his reports. However, two other Sales Managers had also not filled out their reports, yet these Managers were neither made to work after normal work hours to complete these reports, nor were they reprimanded. Upon information and belief, one of these Sales Managers had not completed his weekly reports in nearly three weeks.

61. Currently, Mr. Pennington is the only Sales Manager who has not been given his own office telephone to use and has not been issued a telephone extension at which he can be reached. Further, despite the fact that Mr. Pennington has been with Cendant for nearly ten years, he currently shares an office with another Manager.

62. As a result of Mr. Pennington's continued refusal to tolerate, condone or ratify discriminatory and harassing conduct against female employees at Cendant's Nashville facility, Mr. Pennington continues to be retaliated against.

63. Mr. Pennington has suffered emotional distress and emotional injury as a result of the hostile work environment and retaliation that he currently experiences at Cendant.

VI. CAUSES OF ACTION

COUNT I VIOLATION OF TITLE VII, 42 U.S.C. §§ 2000e et seq. RETALIATION (AGAINST CORPORATE DEFENDANTS)

64. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

65. The Corporate Defendants named in this count have retaliated against Mr. Pennington because he insisted upon a work environment free of sexual harassment and gender discrimination and also because he complained about sexual harassment and gender discrimination.

66. Corporate Defendants have retaliated against Mr. Pennington by demoting him to positions in which his monthly income was significantly reduced, by denying him promotions for which he was qualified and by subjecting him to other adverse terms and conditions of employment in violation of Title VII.

67. Such conduct directly and proximately caused Mr. Pennington to suffer loss of wages, loss of earning capacity and loss of other of employment.

68. Such conduct directly and proximately caused Mr. Pennington to suffer severe emotional distress for which he claims compensatory and punitive damages from these Defendants.

69. These Defendants' actions were intentional, willful, malicious, reckless and done with callous disregard for the harm caused to Mr. Pennington.

70. By reason of the retaliation suffered at Cendant, Mr. Pennington is entitled to all legal and equitable remedies available under Title VII.

COUNT II
VIOLATION OF TITLE VII, 42 U.S.C. §§ 2000e et seq.
HOSTILE WORK ENVIRONMENT
(AGAINST CORPORATE DEFENDANTS)

71. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

72. Corporate Defendants have subjected Mr. Pennington to a hostile work environment in violation of Title VII.

73. Corporate Defendants have denied Mr. Pennington his personal right to work in an environment free of sexual harassment and gender discrimination.

74. Corporate Defendants' discriminatory practices have been, and continue to be, sufficiently severe or pervasive to create an environment that is both subjectively and objectively hostile and abusive, and Corporate Defendants tolerated, condoned, ratified, and/or engaged in the hostile work environment, or, in the alternative, knew or should have known of its existence and failed to take remedial action.

75. By reason of the continuous nature of Corporate Defendants' discriminatory conduct, persistent throughout Mr. Pennington's employment, Mr. Pennington is entitled to application of the continuing violations doctrine to all violations herein.

76. Corporate Defendants' conduct in violation of Title VII has injured and damaged Mr. Pennington.

77. Mr. Pennington has suffered and continues to suffer harm, including, but not limited to, a working environment heavily charged with sexual harassment and gender discrimination, resulting largely from the rampant sexual harassment and management's awareness of, participation in, and/or lack of response to the hostile working conditions.

78. By reason of Corporate Defendants' conduct as alleged herein, Mr. Pennington is entitled to all legal and equitable remedies available for violations of Title VII.

COUNT III
NEGLIGENT AND/OR WANTON SUPERVISION, TRAINING AND RETENTION
(AGAINST ALL DEFENDANTS)

79. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

80. This claim arises under the law of the State of Tennessee to redress the negligent and/or wanton supervision, training and retention of male employees and managers by the Defendants named in this count.

81. The Defendants named in this count negligently and/or wantonly failed to adequately supervise, or train their male employees and managers and retained male employees or managers who committed unlawful acts, which directly and proximately caused the hostile work environment and retaliation suffered by Mr. Pennington.

82. These Defendants took insufficient action, if any, to stop the harassing and/or discriminatory conduct of its employees.

83. Such conduct directly and proximately caused Mr. Pennington to suffer great emotional distress for which he claims compensatory and punitive damages from Defendants.

COUNT IV
NEGLIGENT AND/OR WANTON HIRING
(AGAINST ALL DEFENDANTS)

84. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

85. This claim arises under the law of the State of Tennessee to redress the negligent and/or wanton hiring of male employees and managers by Defendants named in this count.

86. Various employees of Corporate Defendants were unfit for particular jobs in which they were employed.

87. Certain applicants hired by the Defendants named in this count posed an unreasonable risk to others.

88. The Defendants named in this count knew or should have known that the historical wrongdoing of these applicants would likely be repetitive.

89. Such conduct proximately and directly caused Mr. Pennington to suffer severe emotional distress for which he claims compensatory and punitive damages from Defendants.

COUNT V
INTENTIONAL OR RECKLESS INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

90. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

91. This claim arises under the laws of the State of Tennessee to redress intentional or reckless infliction of emotional distress violations by the Individual Defendants upon Mr. Pennington and Corporate Defendants' ratification of that conduct.

92. The Individual Defendants intentionally or recklessly inflicted emotional distress upon Mr. Pennington. The Corporate Defendants allowed Mr. Pennington to be subjected to a hostile work environment and retaliation by his supervisors and/or co-workers and thus suffer severe emotional distress.

93. The conduct of Defendants' employees was so extreme and outrageous that it clearly exceeded the bounds of decency, making this behavior intolerable in a civilized society.

94. This intentional or reckless infliction of emotional distress resulted in severe mental injuries to Mr. Pennington.

95. Such conduct directly and proximately caused Mr. Pennington to suffer humiliation, embarrassment, degradation, shock, outrage and serious emotional distress for which he claims compensatory and punitive damages from Defendants.

COUNT VI
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

96. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

97. This claim arises under the laws of the State of Tennessee to redress negligent infliction of emotional distress suffered by Mr. Pennington and Defendants' ratification of that conduct.

98. The Individual Defendants negligently inflicted emotional distress on Mr. Pennington. The Corporate Defendants allowed Mr. Pennington to be subjected to a hostile work environment and retaliation by his supervisors and/or co-workers and thus suffer severe emotional distress.

99. As a proximate and foreseeable result of Defendants' negligence, Mr. Pennington has suffered emotional injury by witnessing other employees of Defendants being discriminated against on the basis of their gender, sexually harassed, subjected to a hostile work environment, retaliated against, and/or suffering other serious injury.

100. The severe emotional injury suffered by Mr. Pennington is supported by expert medical evidence.

101. Defendants knew, or should have known, of its employees' unlawful conduct.

102. Defendants condoned, authorized and/or ratified that conduct.

103. Such conduct directly and proximately caused Mr. Pennington to suffer shock, outrage and serious emotional distress for which he claims compensatory and punitive damages from Defendants.

COUNT VII
RESPONDEAT SUPERIOR
(AGAINST CORPORATE DEFENDANTS)

104. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

105. This claim arises under the law of the State of Tennessee to redress harm suffered by Mr. Pennington and/or the Corporate Defendants' ratification of the conduct causing that harm.

106. Corporate Defendants are liable for their employees' unlawful acts and omissions, including, but not limited to, intentional or reckless infliction of emotional distress and negligent infliction of emotional distress against Mr. Pennington.

107. Defendants' employees' unlawful acts and omissions were carried out in the course and scope of their employment and in furtherance of the Corporate Defendants' business.

108. Corporate Defendants condoned, authorized and/or ratified such conduct.

109. Such conduct directly and proximately caused Mr. Pennington to suffer severe emotional distress for which he claims compensatory and punitive damages from Corporate Defendants.

COUNT VIII

**VIOLATION OF TENNESSEE HUMAN RIGHTS ACT, Tenn. Code Ann. §§ 4- 21-101 et seq.
(AGAINST CORPORATE DEFENDANTS)**

110. Mr. Pennington re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

111. The conduct of Corporate Defendants described in this Second Amended Complaint constitutes unlawful discriminatory practices in violation of the Tennessee Human Rights Act, Tenn. Code Ann. §§ 4- 21-101 et seq.

112. Corporate Defendants are “employers” as defined by the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-102(4).

113. The conduct of Corporate Defendants, as described herein, constitutes “discriminatory practices” as defined by the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-102(3), and is in violation of Sections 401(1) and 401(2) of the Tennessee Human Rights Act.

114. Corporate Defendants’ practice and policy of allowing disparate terms and conditions of employment, including, but not limited to, sexual harassment, gender discrimination, a hostile work environment, retaliation and/or other forms of discrimination constitutes a knowing and intentional pattern of discrimination in violation of the Tennessee Human Rights Act.

115. Corporate Defendants’ violation of the Tennessee Human Rights Act directly and proximately caused Mr. Pennington to suffer loss of employment, loss of income, loss of other employment benefits, as well as humiliation, embarrassment and great emotional distress for which he claims compensatory and punitive damages from Corporate Defendants.

VII. PRAYER FOR RELIEF FOR PLAINTIFF

WHEREFORE, Mr. Pennington prays that this Court:

116. Declare and adjudge that Cendant has violated Plaintiff's rights under Title VII;
117. Declare and adjudge that Cendant has violated Plaintiff's rights under the Tennessee Human Rights Act;
118. Declare and adjudge that Defendants negligently and/or wantonly failed to adequately supervise and train employees, and negligently and/or wantonly retained employees;
119. Declare and adjudge that Defendants negligently and/or wantonly hired employees;
120. Declare and adjudge that Defendants intentionally or recklessly inflicted emotional distress on Plaintiff;
121. Declare and adjudge that Defendants negligently inflicted emotional distress on Plaintiff;
122. Award of compensatory and punitive damages to Plaintiff;
123. Award back pay, front pay, lost benefits, preferential rights to jobs and other damages for lost compensation and job benefits with pre-judgment and post-judgment interest suffered by Plaintiff to be determined at trial;
124. Order Defendants to make Plaintiff whole by providing him appropriate past and future lost earnings and benefits with the pre-judgment and post-judgment interest, and other affirmative relief;
125. Award Plaintiff the costs and expenses of this action, including, but not limited to, reasonable attorneys' fees and expenses;
126. Award Plaintiff any other equitable relief; and

127. Award Plaintiff any such additional and further relief as this Court deems just and proper.

VIII. JURY DEMAND

Plaintiff hereby requests a trial by jury.

Respectfully submitted this 14th day of October, 2005.

/s/ Lisa Goldblatt

Lisa Goldblatt, D.C. Bar No. 456187
David Sanford, D.C. Bar No. 457933
SANFORD, WITTELS & HEISLER, LLP
2121 K St., N.W.
Suite 700
Washington, D.C. 20037
Telephone: (202) 942-9124
Facsimile: (202) 628-8189

Grant E. Morris, D.C. Bar No. 926253
LAW OFFICES OF GRANT MORRIS
2121 K St., N.W.
Suite 700
Washington, D.C. 20037
Telephone: (202) 486-0678
Facsimile: (202) 628-8189

Jerry Gonzalez, TN Bar No. 018379
LAW OFFICES OF JERRY GONZALEZ
Two International Plaza
Suite 705
Nashville, TN 37217
Telephone: (615) 360-6060
Facsimile: (615) 360-3333

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2005, a copy of the foregoing Third Amended Complaint was filed electronically. Notice of filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

David W. Sanford
SANFORD WITTELS & HEISLER, LLP
2121 K Street N.W.
Suite 700
Washington, D.C. 20037

Waverly Crenshaw
WALLER, LANSDEN, DORTCH & DAVIS
Nashville City Center
511 Union Street
Suite 2100
Nashville, TN 37219

Jerry Gonzalez
LAW OFFICES OF JERRY GONZALEZ
Two International Plaza Dr.
Suite 705
Nashville, TN 37217

I hereby certify that on October 14, 2005, a copy of the foregoing Third Amended Complaint was sent via United States Mail correctly addressed to the following:

C. Geoffrey Weirich
Jennifer L. Kirk
PAUL HASTINGS, JANOFSKY & WALKER, LLP
600 Peachtree Street, N.E.
Suite 2400
Atlanta, GA 30308

I hereby certify that on October 14, 2005, a copy of the foregoing Third Amended Complaint was sent via Hand Delivery correctly addressed to the following:

Grant E. Morris
LAW OFFICES OF GRANT E. MORRIS
2121 K Street N.W.
Suite 700
Washington, D.C. 20037

/s/ Lisa Goldblatt
Lisa A. Goldblatt