UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND STEFANIE HOROWITZ	:	
V.	:	CIV. NO. 3:06CV1287(WWE)
BENNI'S, LLC, d/b/a BENNIGAN'S	:	

RECOMMENDED RULING ON MOTION FOR DEFAULT JUDGMENT

Plaintiff, Equal Employment Opportunity Commission ("EEOC") and Plaintiff-Intervenor Stefanie Horowitz ("Horowitz"), brought this action to recover damages from defendant Benni's, LLC, based on alleged violations of Section 703(a) of Title VII, 42 U.S.C. §2000 e-2(a). The Court entered default judgments against defendant Benni's, LLC, on January 17, 2008 and March 28, 2008.[1] The plaintiff and plaintiff-intervenor seek injunctive relief, compensatory and punitive damages and attorneys' fees.[2]

As a preliminary matter, the Court accepts "as true all of the factual allegations of the complaint, except those relating to damages." Au Bon Pain Corp. v. Artect, Inc., 653 F.2d 61, 65

[1]On October 16, 2007, plaintiff EEOC filed an application for default judgment [Doc. #38] against defendant Benni's, LLC. On February 12, 2008, plaintiff-intervenor Horowitz filed an application for default judgment [Doc. #46]. The Court granted both applications on the basis that a corporate defendant, even an LLC, may not proceed in federal court unless it is represented by counsel. Lattanzio v. COMTA, 481 F.3d 137, 140 (2d Cir. 2007).

[2]Plaintiffs do not seek back pay based on their effective mitigation efforts.

(2d Cir. 1981) (citations omitted). However, conclusions of law are not deemed admitted and may only be found where supported by the evidence. Id. After oral argument and presentation of evidence, and for the reasons that follow, the Court finds that the EEOC and Ms. Horowitz have met their burden, demonstrating that Benni's, LLC has engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. §2000 e-2(a), and awards injunctive relief and damages to plaintiff EEOC on behalf of Michelle Pagano and to plaintiff-intervenor Stefanie Horowitz.

I. FACTS

Stefanie Horowitz worked for Benni's, LLC from July 2003 to August 2003 and then again from November 2003 to July 2004. Horowitz was a full-time employee and split her hours between evenings and weekends. While employed by Benni's, LLC, Horowitz was subject to sexual harassment by various persons, most of whom were managers.

Horowitz testified that she was first harassed in the winter of 2003 during a Christmas party by Aris Konstantinidis, district manager, when he said, "your boyfriend is an apple, you should try a cherry." This comment made the plaintiff very uncomfortable and "grossed out." Plaintiff complained to the General Manager, Sharon Brown, who said that she "was sorry to hear that." The inappropriate conduct by Konstantinidis continued. He would greet plaintiff and other female staff by sweeping their hair with his hand and kissing their necks. Konstantinidis would

refer to the female staff as his "chicks."

Horowitz testified that a training manager, Eli Reed, pinched her buttocks repeatedly on St. Patricks Day while he was training her how to bartend. That day, Horowitz left her shift early because she "felt like trash." In another instance, Tino Popescu followed Horowitz into a storage room where he grabbed her wrists and pulled her back into him and said, "three hours in here with me baby." Ms. Horowitz protested and Mr. Popescu blocked her path as she attempted to return to the bar area. He grabbed her wrist, jerked her toward him and kissed her wrists before letting her go. Ms. Horowitz's wrists hurt for a couple of hours afterwards and she felt very unsafe.

Mike Barndollar, acting general manager, made several comments to Ms. Horowitz about going home with him, giving him oral sex in the green room[3] and rubbing his head between her breasts. Ms. Horowitz testified that she was disgusted by these comments, she would tell him to stop and that she was not going home with him.

Horowitz testified that there was always a manager present when the harassment was occurring and that she repeatedly told her harassers to stop and complained to management several times about specific instances. In addition, the kitchen staff would harass Horowitz and other female staff members by looking them up

[3]The green room refers to a storage area in the back of the restaurant reputed to be the site of previous sexual encounters between employees.

and down, whistling, howling, and make harassing comments in Spanish. Managers would witness this since there was a manager in the kitchen at all times to make sure the kitchen was running properly. Horowitz complained to Sharon Brown once and Susie, a floor manager, once or twice but no action was taken. Next, Horowitz went to the owner of Benni's, Petula Sikiotis, to make a complaint. She told Sikiotis about the storage room incident involving Mr. Popescu and Sikiotis assured Horowitz that something like that would never happen again. Sikiotis took Mr. Popescu off the schedule for a couple of weeks before the Benni's Stamford location was closed for renovation. When the renovations were complete, Horowitz was told that upon the re-opening of the restaurant she would be reporting to Mr. Popescu. Ms. Horowitz refused to do so and quit.

The harassment to which Horowitz was subjected made her feel angry, helpless and very self-conscious about the way she looked; she felt very "uncomfortable in [her] own skin." Horowitz testified that her relationship with her boyfriend suffered. She viewed sex and any touch as dirty and consulted with her OBGYN about the decrease in sex drive she was experiencing.

Ms. Horowitz's mother submitted an affidavit to the Court, detailing the emotional distress she watched Stefanie suffer during her employment at Benni's. Notably, Ms. Horowitz's mother states that she "recall[s] several conversations with Stefanie in which she was upset that she had complained to management at Bennigan's without her complaints being addressed, despite

promises that the situation would be taken care of." (Ex. #7.) She observed that, "Stefanie felt helpless and beaten down by Bennigan's management's failures to address her complaints." Id.

Michelle Pagano also testified at the hearing. Ms. Pagano was employed by Benni's, LLC from June 2003 to February 2004 as a server and was transferred to the Yonkers location for approximately one and a half months for management training.

Ms. Pagano testified that Aris Konstantinidis would tell her that she "should go out on a date with him so he could show her how a real woman is treated." Pagano testified that Aris would grab her waist and pull her close. He would brush her hair back and kiss her neck. Aris would ask Ms. Pagano out at least once a week. Pagano testified that she rejected these advances and asked him to stop. Aris would call Ms. Pagano's cell phone at least once a week for non-work related purposes and would inquire as to how she was spending her time outside of work.

When Ms. Pagano was transferred to Yonkers for management training, she would see Konstantinidis only a few times a week for a short period of time. However, Aris continued to touch her inappropriately when he was in Yonkers. Ms. Pagano would always try and make sure there were other people around when Konstantinidis was there.

Ms. Pagano testified that Mike Barndollar showed her a photograph of his girlfriend and told her that he "paid for her breast augmentation," and asked, "didn't she look pretty?"

Barndollar would ask Ms. Pagano to go back into the office to look over papers which Pagano understood as meaning something sexual by the tone of his voice. Pagano testified that Barndollar would grab her buttocks once or twice a week. He would make comments about her breasts and about what "he would do if he could be alone with her." Ms. Pagano would tell him to stop, slap his hand away, and tell him that he was her manager not her boyfriend. Ms. Pagano testified that she went to Susie, a floor manager, and complained about Barndollar's behavior but it did not stop.

The harassment to which Ms. Pagano was subjected made her feel angry, dirty and discouraged. In addition, the harassment caused Ms. Pagano to experience bad memories of a rape that happened when she was 15 years old. She testified that she "felt as if she was only a sex object or a piece of meat" and that this conduct was somehow her fault. She would discuss these issues with her therapist, who recommended quitting Benni's.

II. DISCUSSION

Upon entry of a default judgment, a defendant is deemed to have admitted all of the well-pleaded allegations raised in the complaint pertaining to liability. See Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir.1992), cert. denied, 506 U.S. 1080, 113 S.Ct. 1049 (1993); Montcalm Publ. Corp. v. Ryan, 807 F.Supp. 975, 977 (S.D.N.Y.1992) (citing United States v. Di Mucci, 879 F.2d 1488, 1497 (7th Cir.1989); Au Bon Pain Corp. v. Artect, Inc., 653 F.2d 61, 65 (2d Cir.1981);

Deshmukh v. Cook, 630 F.Supp. 956, 959 (S.D.N.Y.1986); 6 Moore's Federal Practice ¶ 55.03[2] at 55-16 (2d ed.1988)). However, plaintiff must still prove damages in an evidentiary proceeding at which the defendant has the opportunity the contest the claimed damages. See Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty, Corp., 973 F.2d at 158. In this case, a hearing on the issue of damages was held, and although notice of the hearing was sent to the defendants, the defendants failed to appear or present evidence. Therefore, they have conceded liability on those well-pleaded claims in the complaint, and have not availed themselves of the opportunity to challenge the damages sought by plaintiff. Walia v. Vivek Purmasir & Assoc., Inc., 160 F.Supp.2d 380 (E.D.N.Y. 2000).

In order to establish a prima facie case of sexual harassment under Title VII based on a hostile work environment, plaintiff must prove two essential elements. First, the harassing conduct must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Harris v. Forklift Systems, Inc., 510 U.S. 17, 21, 114 S.Ct. 367 (1993) (quoting Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 67, 106 S.Ct. 2399 (1986)); accord Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir.1997); Perry v. Ethan Allen, Inc., 115 F.3d 143, 149 (2d Cir.1997). Second, plaintiff must also establish that "a specific basis exists for imputing the conduct that created the hostile environment to the employer." Perry v. Ethan Allen, Inc., 115 F.3d at 149.

In order to determine whether an employee was subjected to conduct sufficient to constitute a hostile work environment, the court must consider "all the circumstances," such as the frequency and severity of the conduct, whether it was physically threatening or humiliating, whether the employee suffered psychological harm, and whether it "unreasonably interferes with an employee's work performance." Harris v. Forklift Systems, Inc., 510 U.S. at 23, 114 S.Ct. 367; accord Leopold v. Baccarat, Inc., 174 F.3d 261, 268 (2d Cir.1999). However, "no single factor is required." Harris v. Forklift Systems, Inc., 510 U.S. at 23, 114 S.Ct. 367.

Courts employ both an objective and a subjective test to determine whether a hostile work environment existed. See Leopold v. Baccarat, Inc., 174 F.3d at 268. Accordingly, "[c]onduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment - an environment that a reasonable person would find hostile or abusive - is beyond Title VII's purview." Harris v. Forklift Systems, Inc., 510 U.S. at 21, 114 S.Ct. 367. Moreover, plaintiff must also "subjectively perceive the environment to be abusive" for liability to attach. Id.; accord Schwapp v. Town of Avon, 118 F.3d at 110. Accordingly, when the plaintiff can show that the harassment unreasonably interfered with her work performance or created "an intimidating, hostile, or offensive working environment," plaintiff is entitled to recovery. Tomka v. Seiler Corp., 66

F.3d 1295, 1305 (2d Cir.1995) (citations omitted), rev'd on other grounds Burlington Indus. Inc. v. Ellerth, 524 U.S. 742, 118 S.Ct. 2257 (1998).

Once a plaintiff has established that she was the victim of sexual harassment that altered the conditions of her employment, she must further establish that the harassing conduct should be imputed to her employer and that her employer should be held liable. See Kotcher v. Rosa & Sullivan Appliance Center, Inc., 957 F.2d 59, 63 (2d Cir.1992). To impute liability to an employer in situations where the alleged harasser is a co-worker rather than a person in a supervisory position, the plaintiff must show that the employer "has 'either provided no reasonable avenue for complaint or knew of the harassment but did nothing about it.'" Murray v. New York Univ. Coll. of Dentistry, 57 F.3d 243, 249 (2d Cir.1995). The plaintiff may establish that the employer knew of the harassment by showing either actual or constructive knowledge. See Distasio v. Perkin Elmer Corp., 157 F.3d 55, 63-64 (2d Cir.1998).

In the case of alleged harassment by a supervisor, the Supreme Court recently held that employers are presumptively liable for the actions of supervisors. See Burlington Indus., Inc. v. Ellerth, 118 S.Ct. at 2270; Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275, 2292-93, (1998); see also Quinn v. Green Tree Credit Corp., 159 F.3d 759, 767 (2d Cir.1998). According to the standards set forth in Ellerth and Faragher, an employer is liable for the harassing conduct of its

supervisors unless it can affirmatively prove: "(a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." Id.

Benni's, LLC is liable for the actions of its employees and supervisors. Several of the plaintiff's harassers were managers or held supervisory positions, which raises a presumption that Benni's, LLC is liable. First, Benni's did not appear to raise either affirmative defense available under the supervisor standard and the evidence adduced clearly established that Benni's failed to take any reasonable care to prevent or correct the sexual harassment. Evaluating the facts under the standard applied to non-supervisory harassers, it is clear to the Court that the plaintiffs were not presented with any preventative or corrective opportunities. Although Benni's, LLC had a sexual harassment policy at the time of the incidents, it was not posted or distributed to either Ms. Horowitz or Ms. Pagano.[4] The testimony established that sexual harassment at Benni's, LLC was not isolated to these two plaintiffs and it often occurred in front of management.

[4]Both witnesses testified that they were never given a written sexual harassment policy and it was not posted anywhere in the restaurant. Pagano testified that there was a space for the poster on a bulletin board in the office which had the minimum wage amount, CPR protocol and any promotions at Benni's.

The evidence showed that both Horowitz and Pagano informed supervisors of the frequent harassment. In addition, Benni's received notice of the EEOC claim but failed to show that any reasonable steps were taken to prevent future misconduct. See Murray v. N.Y. Univ. Coll. of Dentistry, 57 F.3d 243, 249 (2d Cir.1995) ("An employer who has notice of a discriminatorily abusive environment in the workplace has a duty to take reasonable steps to eliminate it."). Instead, Benni's management assigned Ms. Horowitz to report directly to one of her harassers and when she refused to do so, she was constructively discharged.

III. Compensatory & Punitive Damages

A. Title VII's Statutory Cap

The sum of the amount of compensatory damages awarded under Title VII for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party-(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000; (B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and (C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or

preceding calendar year, $200,000; and (D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000. 42 U.S.C. § 1981a(b)(3).

Plaintiffs argue that all four Benni's locations owned by Petula Sikiotis and Gianopoulos should be treated as a single entity and the employees of all four locations should count in determining the size of the employer for purposes of applying the statutory cap pursuant to 42 U.S.C. § 1981a(b)(3). Petula Sikiotis and Gianopoulos own Benni's, LLC franchises in Stamford, CT; Yonkers, NY; Danbury, CT; and Trumbull, CT.

Under the single employer theory, "'a wronged employee may impose liability on an entity that, although not his employer of record, exercises sufficient control over employment decisions to bear responsibility for the wrong in question.'" Campbell v. Int'l Brotherhood of Teamsters, 69 F.Supp.2d 380, 385 (E.D.N.Y. 1999)(quoting Murray v. Miner, 876 F.Supp 512, 515 (S.D.N.Y. 1995)). "To determine whether two entities should be treated as a single employer for Title VII purposes, the Second Circuit considers whether the two entities have: (1) interrelated operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control." Cook v. Arrowsmith Shelburne, Inc., 69 F.3d 1235, 1240 (2d Cir.1995). The second factor has been determined to be the most important. Id. Generally, such a collapsing of two separate corporate entities should not be found unless the

interrelatedness of the companies is pervasive. See Coraggio v. Time Inc. Magazine Co., 1995 WL 242047, at *2 (S.D.N.Y. April 26, 1995).

Here, the plaintiffs have shown an overwhelmingly pervasive interrelatedness among the four Benni's locations. Plaintiffs have provided evidence which warrants treating the four locations owned by Sikiotis and Gianopoulos as a single entity. There are three employee lists containing employees from all four locations from 2003 to March 24, 2006.[5] List one totals 718 employees: Yonkers, 129 employees; Danbury, 255 employees; Trumbull, 206 employees; and Stamford, 128 employees. List two totals 549 employees: Yonkers, 127; Danbury, 129; Trumbull, 173; and Stamford, 120. List three contains 668 employees: Yonkers, 135; Danbury, 156; Trumbull, 240; and Stamford, 137. Some employees and managers appear on more than one list, demonstrating that they were working in more than one location that year.[6] Constantin Popescu, Mike Barndollar and Eli Reed are all listed as working in the Danbury, Trumbull and Stamford locations. Aris Konstantinidis is listed as only working in Danbury; however it is clear that he also worked in Stamford and Yonkers because plaintiffs described incidents of harassment there. Sikiotis is

[5]These lists were provided to the plaintiffs by Petula Sikiotis. There was no explanation of the time period for the lists; however it appears by the structure of the documents that each list encompasses a one year time period.

[6] The overlap of employees was considered by the Court in determining the number of distinct employees for the purposes of 42 U.S.C. § 1981a(b)(3).

listed as working in both Yonkers and Stamford. Constantin Gianopoulos is identified as Manager in the State of Connecticut corporate filings for the Danbury, Trumbull and Stamford locations.[7] Moreover, plaintiffs testified that managers were often swapped from location to location and employees were frequently sent to other locations to train. The shuffling of employees among locations demonstrates that this was an integrated enterprise and the four locations were operating with a centralized control of labor relations.

Since each of the three lists contains more than 500 employees and the plaintiffs have proved that all four entities have (1) interrelated operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control, Benni's, LLC is subject to a statutory maximum penalty of $300,000.

B. Compensatory Damages

Plaintiffs seek compensatory damages for emotional distress and mental anguish. Compensatory damages for mental anguish should be awarded in an amount that fairly compensates the victim of discrimination for her injuries. Walia v. Vivek Purmasir & Assoc., Inc., 160 F.Supp.2d 380 (E.D.N.Y. 2000). When awarding such damages, courts "have considered the duration, severity, consequences and physical manifestations of the mental anguish,

[7]Counsel was able to retrieve this information from the State of Connecticut, Secretary of State website; however he was unable to retrieve the corporate information for New York.

as well as any treatment that plaintiff underwent as a result of her anguish." Id. However, it is not a precondition to recovery that plaintiff underwent treatment, psychiatric or otherwise. Id. "Although the determination in each case must turn on the facts peculiar to that case, where the damages are necessarily difficult to quantify[,] a comparison to other cases is appropriate." Portee v. Hastava, 853 F.Supp. 597, 614-15 (E.D.N.Y.1994), aff'd, 104 F.3d 349 (2d Cir.1996).

In evaluating the reasonableness of an award, courts look to see whether it deviates materially from what would be reasonable compensation. See, e.g., Walia, 160 F.Supp.2d 380 (E.D.N.Y. 2000)(Awarding $30,000 in compensatory damages and $70,000 in punitive damages based on defendants conduct in physically assaulting plaintiff and deliberately attempting to destroy her reputation in the community, finding the conduct egregious but only 3 days in duration). Shea v. Icelandair, 925 F.Supp. 1014, 1020-21 (S.D.N.Y.1996). In recent cases, courts have typically awarded plaintiffs complaining of similar injuries amounts ranging from $5,000 to $65,000 as compensatory damages for mental anguish and emotional distress. See Ikram v. Waterbury Bd. of Educ., 1997 WL 597111 *3 (D.Conn. Sept. 9, 1997) ($100,000 compensatory damage award within reasonable range based on Title VII's plaintiff's emotional and mental distress); Anderson v. YARP Restaurant, Inc., 1997 WL 27043 at *8 (S.D.N.Y. 1997)(finding an award of $65,000 appropriate where plaintiff suffered sexual harassment for over six months, and sought

counseling from a therapist who testified that plaintiff suffered from a sense of powerlessness, panic attacks, sleeping problems, and problems maintaining employment) (and cases cited therein); Town of Lumberland v. New York State Div. of Human Rights, 229 A.D.2d 631, 637 (3d Dep't 1996) (reducing $150,000 award for emotional distress and humiliation to $20,000 where plaintiff testified she was "'very, very upset,' 'humiliated,' 'embarrassed to be seen in the town,' she 'couldn't eat,' 'cried' ... 'a mess,'" but did not present any other evidence of the severity and consequences of her condition); Gleason v. Callanan Industr., Inc., 203 A.D.2d 750, 752 (3d Dep't 1994) (finding an award of $54,000 to be supported by the evidence that plaintiff suffered from irritable bowel syndrome, migraines, pains in her sides, insomnia, depression, mental shock, and concerns as a single mother about her ability to support herself and her child); New York State Dep't of Correctional Servs. v. State Div. of Human Rights, 207 A.D.2d 585, 586 (3d Dep't 1994) (reducing $25,000 award of compensatory damages for mental anguish and humiliation to $10,000 where there was an absence of proof apart from plaintiff's testimony that she felt depressed and angry, lost sleep, became involved in arguments with her fiancé, and saw a psychiatrist five or six times in 1985); City of Fulton v. New York State Div. of Human Rights, 221 A.D.2d 971 (4th Dep't 1995) (finding $50,000 in mental anguish damages to be excessive and awarding $10,000 where plaintiff felt "very upset and disappointed," "bad," "lost sleep," and was "mean at home").

C. Punitive Damages

In TXO Production Corp. v. Alliance Resources Corp., the Supreme Court held that the Due Process Clause of the Fourteenth Amendment prohibits a state from imposing "grossly excessive" punishment on a tortfeasor in the form of punitive damages. TXO Production Corp. v. Alliance Resources Corp., 509 U.S. 443, 454, 113 S.Ct. 2711, 2718 (1993). The same principle, embodied in the due process component of the Fifth Amendment, necessarily applies to the award of punitive damages in federal court. In BMW of North America, Inc. v. Gore, the Supreme Court identified three categories of factors that should be considered in assessing the validity of a punitive damage verdict. BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589 (1996). The first is the degree of reprehensibility of the defendant's conduct. Id. at 580, 116 S.Ct. at 1599-1601. Thus, an economic harm may merit a less substantial award than physical or emotional injury. Id. at 576, 116 S.Ct. at 1599. Similarly, "repeated misconduct is more reprehensible than an individual instance of malfeasance." Id. (citation omitted). Thus, a larger exemplary damage award may be imposed upon an employer who has committed multiple violations of Title VII or whose actions are part of an overall pattern of discrimination. See Emmel v. Coca-Cola Bottling Co., 95 F.3d 627, 637 (7th Cir.1996) (upholding adjusted punitive damage award of almost $300,000 on basis of company-wide policy of gender discrimination).

The second consideration identified by the Supreme Court is

the ratio of punitive damages to the damages awarded to compensate the plaintiff for the harm suffered. BMW, 517 U.S. at 580, 116 S.Ct. at 1601-03. The Court endorsed "the principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages." Id., 116 S.Ct. at 1601. However, the proper analysis is not always simply a comparison of punitive damages to the amount of compensatory damages actually awarded by the jury. For example, the court may consider the relationship between exemplary damages and potential future harm from the defendant's conduct as well as harm that has already occurred. Id. at 581, 116 S.Ct. at 1602. Moreover, low awards of compensatory damages may properly support a higher ratio than high compensatory awards if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. Id. at 582, 116 S.Ct. at 1602. In addition, because punitive damages are designed to serve a deterrent function, they must take into account the financial circumstances of the defendant. See TXO, 509 U.S. at 463, 113 S.Ct. at 2723; Luciano, 912 F.Supp. at 672. Thus, punitive damages that in other respects appear to be reasonably related to compensatory damages might be too low to serve as an effective deterrent. Therefore, no rigid ratio can be applied.

Finally, "[c]omparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable

misconduct provides a third indicium of excessiveness." BMW, 517 U.S. at 583, 116 S.Ct. at 1603. This analysis allows the court to gear the punitive damage award to how seriously society as a whole regards the defendant's conduct.

The Court will apply each of these factors to the facts of this case in order to determine the appropriate award of damages.

IV. Monetary Relief

A. Stefanie Horowitz

1. The Court finds that defendant shall pay Ms. Horowitz the amount of $75,000 as compensatory damages and $50,000 as punitive damages. In determining this amount, the Court considered the length of time Ms. Horowitz was subjected to harassment, the reprehensibility of defendant's actions and the impact that defendant's conduct has had on plaintiff's life. Defendant shall not withhold taxes or make any employer contributions for FICA, except that it must issue a 1099 for these payments.

2. Payment shall be made by delivering to Stefanie Horowitz, c/o Stephen Horner, Rucci, Burnham, Carta, Carello & Reilly, LLP, 30 Old Kings Highway South, P. O. Box 1107 Darien, CT 06820, within fourteen (14) days of service of this judgment and decree upon Defendant (hereafter "the effective date"), by United States Postal Service, certified mail receipt, checks in the amount set forth above. The checks shall be made payable to Stefanie Horowitz.

3. Defendant shall send copies of the checks and return

receipts to EEOC c/o Markus L. Penzel, Senior Trial Attorney, EEOC, Boston Area Office, JFK Federal Bldg. Room 475, Boston, MA 02203-0506, simultaneously with Defendant's delivery to Horowitz.

B. Michelle Pagano

1. The Court finds that the defendant shall pay Ms. Pagano the amount of $40,000 and $25,000 as punitive damages. In determining this amount, the Court considered the non-garden variety situation of Ms. Pagano, the impact that this harassment had on Ms. Pagano as a past rape victim. Defendant shall not withhold taxes or make any employer contributions for FICA, except that it must issue a 1099 for these payments.

2. Payment shall be made by delivering the payments to Michelle Pagano, c/o Markus L. Penzel, Senior Trial Attorney, EEOC, Boston Area Office, JFK Federal Bldg. Room 475, Boston, MA 02203-0506, within fourteen (14) days of the effective date upon Defendant, by United States Postal Service, certified mail receipt, checks in the amount set forth above. The checks shall be made payable to Michelle Pagano.

In determining these monetary awards the Court also considers the overwhelming evidence of sexual harassment that pervades the workplace at Benni's, LLC and the fact that management has been deliberately indifferent to this harassment, failed to post or distribute a sexual harassment policy and has

largely ignored this lawsuit.[8] Finally, these awards do not shock the conscience. They are consistent with the serious and repugnant conduct of the defendant in what was repeated and widespread conduct. These awards properly reflect the serverity of this case in relation to the maximum available award for the full range of Title VII cases. Iannone v. Harris, Inc., 941 F.Supp. 403 (S.D.N.Y. 1996).

V. Injunctive Relief

Defendant and its owners, managers, officers, agents, successors, and assigns, are enjoined from discriminating against any individual because of the individual's sex, subjecting employees to differential treatment regarding the terms and conditions of employment on the basis of their sex, or engaging in retaliation against any individual for asserting her or his rights under Title VII and the Civil Rights Act.

VI. Non-Monetary Relief

A. Posting

No later than seven (7) days after the effective date, Defendant shall post at its Stamford, CT, facility a copy of a remedial notice printed on its letterhead and signed by its Chief Executive Officer, attached hereto as Exhibit "A." Said notice shall remain posted for the duration of this Order.

[8] Defendant never appeared with counsel since the September 10, 2007 withdrawl of its attorney. In Attorney Diette's Motion to Withdraw [Doc. #27] she indicates that she twice warned Petula Sikiotis, that default could be entered if it did not have counsel. Defendant also did not appear at the hearing in damages.

B. Anti-discrimination Policy

1. Within 15 days of the effective date, Defendant will implement and maintain the written policies and procedures prohibiting employment discrimination, including sex discrimination, sexual harassment and retaliation, attached as Exhibit B.

2. Defendant will distribute a copy of the written policies and procedures described in Exhibit B to all of its employees within 15 days of the effective date, and shall distribute a copy of the written policies and procedures to all employees hired thereafter within five days of the commencement of their employment.

C. Training

1. Within two months of the effective date, and every year thereafter for the duration of this Order, Defendant will provide all of its managers with no fewer than four hours of training in federal laws prohibiting discrimination in employment, with a special emphasis on sexual harassment. In addition, any new manager hired or promoted during the term of this decree shall receive such training within fifteen days of hire or promotion.

a. The anti-discrimination training will be conducted by an outside organization chosen by Defendant and approved by EEOC. Defendant shall submit its choice to the EEOC, which shall not unreasonably fail to approve it.

b. Defendant will maintain attendance records identifying the name and job title of the attendees at each

session. Within five days of the training, Defendant will forward to EEOC a copy of the attendance records from the training session.

2. Within two months of the effective date, and every year thereafter for the duration of this Order, Defendant will provide all of its non-managerial employees with no fewer than two hours of training in federal laws prohibiting discrimination in employment, with a special emphasis on sexual harassment.

a. The anti-discrimination training will be conducted by an outside organization approved by EEOC. Defendant shall submit its choice to the EEOC, which shall not unreasonably fail to approve it.

b. Defendant will maintain attendance records identifying the name and job title of the attendees at each session. Within five days of the training, Defendant will forward to EEOC a copy of the attendance records from the training session.

D. Monitoring

1. The EEOC has the right to monitor and review compliance with this Order. Accordingly:

a) On or before six months from the effective date, and every six months thereafter, Defendant shall submit written proof via affidavit to the EEOC that they have complied with the above requirements.

b) Nothing in this Order shall be construed to preclude the EEOC from enforcing this Decree in the event that Defendant

fails to perform the promises and representations contained herein.

VII. Attorney's Fees

Last, plaintiff Horowitz seeks an award of attorneys' fees and costs. In support of this request, her attorneys have submitted an affidavit of Attorneys Stephen Horner, Mark Carta, Troy Bailey, Kathryn O'Brien and various paralegals. The request totals $40,224.50 in attorney's fees and $539.35 in costs. In connection with these requests, Horowitz's counsel annexed a summary of the time, together with an itemized list of the costs. (Exhibit #'s 8, 9, 10, and 11.) Horowitz's attorneys also estimated an additional $2,6000.00 in additional fees in connection with the hearing in damages.

Title VII provides that, "[i]n any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee ... as part of costs." 42 U.S.C. § 2000e-5(k). Intervenor-Plaintiff Horowitz is entitled to an award of attorney's fees and costs for the cost of litigating the hostile work environment sexual harassment cause of action. Because of the district court's familiarity with the quality of the representation and the extent of the litigation, the decision whether to award fees and the amount of fees to be awarded are issues generally confined to the sound discretion of the court. Gierlinger v. Gleason, 160 F.3d 858, 876 (2d Cir.1998).

The well-known formula for calculating attorney's fees is

the "lodestar" method described in Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565, 106 S.Ct. 3088 (1986). Under this method, the Court makes an initial calculation of a lodestar amount by multiplying the number of hours reasonably spent on the litigation by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933 (1983); LeBlanc-Sternberg v. Fletcher, 143 F.3d 748, 763-64 (2d Cir.1998); Gierlinger, 160 F.3d at 876; Luciano v. Olsten Corp., 109 F.3d 111 (2d Cir.1997). There is a strong presumption that the lodestar figure represents a reasonable rate. Quaratino v. Tiffany & Co., 166 F.3d 422, 425 (2d Cir.1997).

If the Court finds that certain claimed hours are excessive, redundant, or otherwise unnecessary, the court should exclude those hours from its lodestar calculation. Hensley, 461 U.S. at 434 n. 9, 103 S.Ct. 1933; Luciano, 109 F.3d at 116. Once the initial lodestar calculation is made, the court should then consider whether upward or downward adjustments are warranted by factors such as the extent of success in the litigation and the degree of risk associated with the claim. Hensley, 461 U.S. at 434 n. 9, 103 S.Ct. 1933.

The following factors may also be considered: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the

client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. Hensley, 461 U.S. at 430 n. 3. See also, Simms v. Chaisson, 277 Conn. 319, 332, 890 A.2d 548 (2006) ("Connecticut courts traditionally examine the factors enumerated in Rule 1.5(a) of the Rules of Professional Conduct in calculating a reasonable attorneys fee award"); Shoonmaker v. Lawrence Brunoli, Inc., 265 Conn. 210, 259, 828 A.2d 64 (2003) ("it is well established that a trial court calculating a reasonable attorney's fee makes its determination while considering the factors set forth under rule 1.5(a)"); Rodriguez v. Ancona, 88 Conn.App. 193, 202-03, 868 A.2d 807 (2005); Burrell, v. Yale, CV000159421S, 2005 Conn.Super. LEXIS 1529, at *10 (Conn.Super. May 26, 2005); Sorrentino v. All Services, Inc., 245 Conn. 756, 775 (1998). In determining reasonableness, "[t]he court...[is] not required to consider each of the twelve factors individually, but instead [is] required to consider the full panoply of factors and not base its decision solely on one of the elements." Riggio v. Orkin Exterminating Co., 58 Conn.App. 309, 318, 753 A.2d 423 (2000).

Horowtiz has been represented in this matter by Attorney Stephen Horner as lead counsel. At the time the EEOC and CHRO complaints were filed, Attorney Horner was with the firm, Horner

and Bagnell, LLC. Horowitz signed a contingency fee agreement with Horner & Bagnell dated January 22, 2005. In December 2006, Attorney Horner became of Counsel to Rucci, Burnham, Carta, Carello & Reilly, LLP ("RBCCR") and Ms. Horowitz entered into a new contingency fee agreement with Attorney Horner and RBCCR. During the first agreement, Attorney Horner's blended rate was $384.87 per hour and during the second agreement, RBCCR's representation, his average blended rate is calculated at $396.67 per hour.[9] Stephen Horner's total hours spent on the case is 40.7, totaling $16,144.50 in fees. Attorney Horner has been practicing law for thirty-four years and as the lead attorney representing Ms. Horowitz required his preparation for and attendance at particular proceedings as well as review of discovery and pleadings and conferences with associates and other counsel.

Horowitz requested a fee award for Attorney Mark Carta at an average blended rate calculated at $329.06 per hour.[10] The majority of Attorney Carta's time was spent in a supervisory capacity. He reviewed the motion to intervene, intervenor complaint and advised on strategic and procedural decisions. Attorney Carta also met with Ms. Horowitz to assess her claims.

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[9]During the first agreement Attorney Horner's hourly billing rates increased during his initial representation from $350 to $395. During the second agreement his hourly billing rates increased from $395 to $425.

[10]Mark Carta's hourly billing rates increased during the course of Horowitz's representation from $325 to $330.

Attorney Carta's total hours spent on the case is 10.10 totaling $3,323.50 in fees.

Horowitz requested a fee award for Attorney Troy Bailey at an average blended rate calculated at $213.90 per hour based on his eight years of experience as an employment lawyer.[11] Attorney Bailey worked 47.70 hours on this case, the majority of which was spent working on discovery related tasks, specifically the drafting of responses to defendant's interrogatories and requests for production. He also drafted the motion to intervene. Attorney Bailey's fees total $10,203.00.

The attorney's fees Horowitz has requested for Attorney Kathryn O'Brien is in the amount of $8,415.00 for the 37.40 hours she spent on the case. Kathryn O'Brien's hourly billing rate was $225 per hour. The majority of Attorney O'Brien's time was spent working on the motion for default, researching and preparing for the damages hearing and drafting an outline of Ms. Horowitz's testimony.

Additionally, Horowitz has requested $2,138.00 for 16.30 hours of work done by paralegals.[12]

A review of the information provided by Ms. Horowitz's attorneys reveals that, overall, the time spent on this case was not excessive in relation to the tasks performed. Although this

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[11] Attorney Bailey's hourly rates increased during representation from $200 to $225.

[12] This figure breaks down to $131.17 per hour for the paralegals.

is not a complex case, nor does it involve any novel issues of law, plaintiff's attorney was required to meet with his client to determine the facts pertaining to her claims, to draft a motion to intervene, an intervenor complaint and engage in substantial discovery while the defendant was represented by counsel. After the defendants failed to appear, Plainitiff's counsel promptly moved for a default judgment. Following the issuance of the order granting the default, plaintiff's attorney was required to establish plaintiff's entitlement to an award of damages including preparing for and participating in the hearing held by this Court. The Court also finds that the per hour amounts requested for each of the four attorneys who worked on Ms. Horowitz's case reasonable and commensurate with other attorney's with their degree of experience in Darien, CT. Galazo v. Pieksza, No. 4:01-CV-01589, 2006 WL 141652 (D.Conn. Jan.19, 2006) (in § 1983 case, $350 for partner and $250 for associate were reasonable rates); Shorter v. Hartford Financial Services Group, 3:03CV0149(WIG), 2005 WL 2234507, *10 (D.Conn. May 31, 2005) (awarding $300 per hour for attorney with 13 years experience in employment law); Cabrera v. G.T. Construction, 3:05-CV-812(MRK)(WIG), 2006 WL 1328767, at *1 (D.Conn. May 8, 2006) (finding $300 per hour is a reasonable rate for an attorney with 40 years experience). Additionally, the Court finds the rate of $131.17 per hour for paralegal is reasonable. Defendant's have not opposed this motion for attorney's fees and costs. However, the Court disallows the following costs:

Postage

The court excludes $55.83 in postage costs. All general postage expenses of counsel, Federal Express or other express mail service costs are disallowed pursuant to D. Conn. L. Civ. R. 54(c)(7)(xvi).

Travel and Parking Expenses

The Court excludes $80.00 in travel and parking expense costs. All counsel fees and expenses in arranging for and traveling to a deposition or trial are disallowed pursuant to D. Conn. L. Civ. R. 54(c)(7)(v). All attorneys' fees incurred in attending depositions, conferences or trial, including expenses for investigations are disallowed pursuant to D. Conn. L. Civ. R. 54(c)(7)(ix).

Telephone Calls

The Court excludes $3.98 in telephone call costs. All telephone calls by counsel are disallowed pursuant to D. Conn. L. Civ. R. 54(c)(7)(xvi).

Accordingly, the Court awards intervenor-plaintiff Horowitz $40,624.04 in attorney's fees and costs.[13] The Court also awards attorneys' fees associated with the hearing in damages in the amount of $1,300.00.[14] Pursuant to the lodestar calculation, the total amount awarded for attorney's fees and costs is $41,924.04.

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[13] This number represents the $40,224.50 lodestar calculation for attorney's fees plus $399.54 in costs.

[14] Attorney Stephen Horner at $425 per hour x 2 hours and Attorney Kathryn O'Brien at $225 per hour x 2 hours.

VIII. CONCLUSION

For the reasons stated, plaintiff is awarded compensatory damages in the amount of **$75,000,** punitive damages in the amount **$50,000, injunctive relief** and **non-monetary relief** as ordered above for a period of five years from the date of this Order. Intervenor-Plaintiff is awarded compensatory damages in the amount of **$40,000** and punitive damages in the amount of **$25,000.** Intervenor-plaintiff's oral motion for attorney's fees [Doc. #56] is **GRANTED.** Attorneys' fees are awarded in the amount of **$41,524.50** and costs in the amount of **$399.54.**

Any objections to this recommended ruling must be filed with the Clerk of the Court within ten (10) days of the receipt of this order. Failure to object within ten (10) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Rules 72, 6(a) and 6(e) of the Federal Rules of Civil Procedure; Rule 2 of the Local Rules for United States Magistrates; Small v. Secretary of H.H.S., 892 F.2d 15 (2d Cir. 1989)(per curiam); FDIC v. Hillcrest Assoc., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED at Bridgeport this ___ day of August 2008.

_____
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE

Exhibit A

NOTICE

1. This NOTICE to all employees of Bennigan's Stamford, CT facility is being posted and provided as part of a Judgment against Benni's LLC d/b/a/ Bennigan's in a case brought by the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. Bennigan's will not discriminate against any individual because of the individual's sex, or engage in harassment on the basis of sex toward any employee.

2. Federal law requires that there be no discrimination against any employee or applicant for employment because that person made a complaint of discrimination because of sex, race, national origin, color, age, disability, or religion with respect to hiring, compensation, promotion, discharge, or other terms, conditions or privileges of employment.

3. Bennigan's will comply with such Federal law in all aspects, and it will not take any action against employees because they have exercised their rights under the law by filing charges or cooperated with the U.S. Equal Employment Opportunity Commission or by otherwise opposing employment practices made unlawful under federal law.

4. The Equal Employment Opportunity Commission maintains offices throughout the United States. Its toll-free telephone number is 1-800-669-4000.

5. This NOTICE will remain posted until *5 YEARS FROM DATE OF SIGNATURE.*

SIGNED this _____ day of _____, 2008.

_____

Chief Executive Officer -

DO NOT REMOVE THIS NOTICE UNTIL 5 YEARS FROM DATE OF SIGNATURE

EXHIBIT B

ANTI-HARASSMENT POLICY

1. Zero Tolerance for Harassment, Discrimination, and Retaliation.

It is the policy of Bennis, LLC, to maintain a workplace free from harassment and other forms of discrimination based on race, color, religion, sex, national origin, age, and disability. Accordingly, Bennis, LLC, has zero tolerance for harassment or any other form of unlawful discrimination. In addition, Bennis, LLC will not tolerate retaliation against any employee for reporting matters under this policy or procedure, or for assisting in any inquiry about such a report.

2. Definition of Unlawful Harassment.

Unlawful harassment includes unwelcome intimidation, ridicule, insult, comments, or physical conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, or retaliation where:

(a) an employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the employee; or

(b) the conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, or otherwise create an abusive work environment.

3. RESPONSIBILITIES.

a. Bennis, LLC, through its designee, is responsible for:

(1) Disseminating this policy to all employees on an annual basis and periodically reminding employees of their responsibilities under this Policy.
(2) Developing and providing periodic training for all employees on this Policy and its requirements.
(3) Ensuring that performance plans of all supervisors and managers include a performance measure addressing compliance with this Policy; and ensuring that supervisors and managers are appropriately rated on the measure.

(4) Receiving reports alleging violations of this Policy and, as described below, making or directing further inquiries into such reports, as appropriate and necessary.
5) Maintaining a written record of reports made and actions taken pursuant to this Policy. These records will be maintained in a secure location.
(6) Providing a telephone line to respond to inquiries from its employees about workplace harassment. Callers shall be provided with information about the requirements of this Policy, as well as the existence of, and filing requirements for, other processes that may be available for employees to seek resolution of their disputes. All inquiries on this line will be treated confidentially.

b. All employees are expected to:

(1) Refrain from engaging in hostile or abusive conduct;
(2) Report hostile or abusive conduct by employees or others in the workplace.
(3) Inform the supervisor of the offending employee, or other management employee if subjected to unwelcome hostile or abusive conduct; and
(4) Fully cooperate in any inquiry or investigation.

c. Supervisors and other Management Officials also must:

(1) Ensure a workplace free of illegal harassment;
(2) Act promptly and effectively to stop hostile or abusive conduct of which they are aware;
(3) Notify the owner of reported or observed harassing conduct and of their efforts to correct the conduct;

4. PROCEDURES.

a. Reporting Hostile or Abusive Conduct.

(1) Any employee who has been subjected to unwelcome hostile or abusive conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive, and request that it cease. If the conduct continues, or if the employee is uncomfortable confronting the responsible person(s) about the conduct, s/he should report the matter to:

(a) the supervisor of the employee engaging in the hostile or abusive conduct;
(b) another supervisor or other management official; or

(c) the owner.

(2) Employees who know of hostile or abusive conduct directed at others are encouraged to report the matter to the supervisor of the offending employee, another supervisor or other management official, or to the owner.
(3) Initial contacts will be confidential.

b. Management Response to Harassment Reports.

(1) **Conducting Preliminary Inquiries.** A supervisor or manager who receives a report of, or otherwise becomes aware of, hostile or abusive conduct involving subordinates within her/his chain-of-command must determine:

(a) what conduct is at issue and whether it arguably could be considered hostile or abusive;
(b) who may be involved;
(c) whether any immediate corrective action is required to insulate the alleged victim from further hostile or abusive conduct; and
(d) what action is necessary and appropriate to otherwise address the report.

(2) **Notifying Appropriate Officials of Report.**

(a) A supervisor or manager who becomes aware of allegedly hostile or abusive conduct involving employees outside of his/her supervision must, within one business day, notify the following:

1. The harassing employee's supervisor or, if the conduct implicates the supervisor, the owner; and
2. The victim's supervisor or, if the conduct implicates the supervisor, the owner.

c. Performing An Investigation.

(1) All reports of harassment will be investigated.
(2) The investigation must be conducted swiftly, impartially, and in a manner appropriate to the allegation.

d. Taking Corrective Action.

(1) If it is determined that unwelcome hostile or abusive conduct occurred, corrective action will be necessary, depending on the severity and/or pervasiveness of the offense, the response required in order to end such conduct, the offender's disciplinary/conduct history, and other

surrounding circumstances. Such corrective action may include discipline up to termination.

(2) Appropriate corrective action, disciplinary or otherwise, up to and including removal will be taken against any supervisor or other management official who fails to perform her/his obligations as set forth in this Policy, including any unreasonable failure to report known violations of this policy.

e. Maintaining Confidentiality, Keeping Records, and Monitoring Compliance.

(1) All reports of hostile or abusive conduct and related information will be maintained on a confidential basis to the greatest extent possible. The identity of the employee alleging violations of this Order will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law.

(2) A brief written report must be made to the regarding the final resolution of each allegation of hostile or abusive conduct under this Policy. These reports must identify the individuals implicated, the conduct involved, and the corrective action taken, if any.