

04-CV-00866-CMP

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

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IN SEATTLE

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

UNION PACIFIC RAILROAD
COMPANY,

Defendant.

JILL HARP,
Plaintiff in Intervention,

v.

UNION PACIFIC RAILROAD
COMPANY; RAIL TERMINAL
SERVICES; FLETCHER JAMISON,
individually and the marital community
thereof with JANE DOE JAMISON;
ALAN MOENCH, individually and the
marital community thereof with JANE
DOE MOENCH; MARTIN HOWELL,
individually and the marital community
thereof with JANE DOE HOWELL, and
DOES 1-10 inclusive,

Defendants in Intervention.

-) CASE NO.: C04-866 MJP
-)
-) INTERVENOR'S COMPLAINT FOR
-) DAMAGES
-)
-) 1. SEX DISCRIMINATION AND
-) SEXUAL HARASSMENT IN
-) VIOLATION OF TITLE VII OF THE
-) CIVIL RIGHTS ACT OF 1964, 42
-) U.S.C. § 2000(e) ET SEQ.
-)
-) 2. SEX DISCRIMINATION AND
-) SEXUAL HARASSMENT IN
-) VIOLATION OF RCW 49.60
-)
-) 3. RETALIATION IN VIOLATION OF
-) TITLE VII OF THE CIVIL RIGHTS
-) ACT OF 1964, 42 U.S.C. § 2000(e) ET
-) SEQ.
-)
-) 4. RETALIATION IN VIOLATION OF
-) RCW 49.60
-)
-) 5. NEGLIGENT SUPERVISION
-) AND/OR RETENTION
-)
-) 6. MALICIOUS HARASSMENT

INTERVENOR'S COMPLAINT FOR
DAMAGES (C04-886MJP) - 1
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ORIGINAL

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1 7. ASSAULT AND BATTERY

2 8. TORT OF OUTRAGE

3 DEMAND FOR JURY TRIAL

4
5 COMES NOW, Plaintiff in Intervention, JILL HARP, by and through her attorney
6 of record, and alleges the following:

7
8 I. NATURE OF THE CASE

9 1. This case involves sex discrimination, sexual harassment, and retaliation by
10 Defendants, UNION PACIFIC RAILROAD COMPANY (hereinafter "UPRR"), and
11 RAIL TERMINAL SERVICES (hereinafter "RTS") and their agents. Plaintiff in
12 Intervention (hereinafter "Plaintiff") alleges UPRR and RTS engage in a pattern and
13 practice of overt sex discrimination and of ignoring and even condoning sexual
14 harassment.
15

16 2. The nature of Plaintiff's employment requires that she work with both
17 employees of UPRR and those of RTS. RTS is a company that shares employment
18 location and buildings with UPRR. UPRR and RTS employees use the same break room
19 as well. Plaintiff must interact with RTS employees and supervisors on a daily basis
20 and is required to report to RTS supervisors if she will be absent from work.
21 Additionally, RTS assigns Plaintiff her specific job duties for each work shift.
22

23 3. Plaintiff contends that she was gravely mistreated by male co-workers and
24 managers. Plaintiff was (1) crudely and repeatedly touched and fondled in a sexual
25 manner, (2) repeatedly subjected to vulgar and degrading comments, (3) repeatedly
26

1 subjected to vulgar pornographic materials, (4) repeatedly subjected to sexually
2 suggestive comments and acts, and (5) repeatedly subjected to the exposure of male
3 genitalia.
4

5 4. Plaintiff asserts claims under federal and state anti-discrimination and civil
6 rights laws. Plaintiff seeks legal redress for injuries inflicted upon her by the Defendants
7 UPRR, its managerial employees, and DOES 1-10.
8

9 5. Plaintiff believes that as a result of the egregious and repetitive
10 discriminatory acts, a sizeable punitive damage award may be required to punish
11 individual Defendants for past discrimination and deter such behavior in the future.
12

13 II. JURISDICTION AND VENUE

14 6. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 based upon a federal
15 question under the laws of the United States. Specifically, this Court has jurisdiction
16 over Plaintiff's claims under Title VII of the Civil Rights Act of 1964, as amended in
17 1991, 42 U.S.C. § 2000e *et seq.*
18

19 7. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367(a) for state
20 statutory claims under RCW § 49.60.010 *et seq.* and other torts.
21

22 8. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2); and 42 U.S.C. § 2000e-
23 5(f)(3).
24
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1 **B. Named Defendant Corporations**

2 14. Defendant UPRR and DOES 1-5 have at all relevant times been an
3 employer as defined by 42 U.S.C. § 2000c(b), in that they have employed fifteen (15) or
4 more persons in each of twenty (20) or more calendar weeks in the current or
5 preceding year.

6
7 15. Defendants UPRR and DOES 1-5 are employers under R.C.W. 49.60.040, in
8 that they employs eight (8) or more persons.

9
10 16. Defendant RTS is a Delaware Corporation which conducts business in the
11 State of Washington.

12 **C. Named Individual Defendants**

13 17. It is believed and is herein alleged that Defendant FLETCHER JAMISON
14 (herein "Defendant JAMISON") is and has been a citizen of the United States and a
15 resident of the State of Washington at all times material hereto.

16
17 18. Defendant JAMISON at all times material herein acted as an agent for
18 Defendant UPRR in that he is a manager of Defendant UPRR. Defendant JAMISON
19 was at all relevant times a managerial agent of Defendant UPRR.

20
21 19. On information and belief, Defendants JAMISON and JANE DOE
22 JAMISON reside in the State of Washington, which is within this judicial district.

23
24 20. Defendant JAMISON is married to JANE DOE JAMISON and all acts done
25 by him were done on behalf of or in furtherance of the interests of the marital
26 community.

1 21. It is believed and is herein alleged that Defendant ALAN MOENCH
2 (herein "Defendant MOENCH") is and has been a citizen of the United States and a
3 resident of the State of Washington at all times material hereto.
4

5 22. Defendant MOENCH at all times material herein acted as an agent for RTS
6 in that he is an employee of RTS.

7 23. On information and belief, Defendants MOENCH and JANE DOE
8 MOENCH reside in the State of Washington, which is within this judicial district.
9

10 24. Defendant MOENCH is married to JANE DOE MOENCH and all acts done
11 by him were done on behalf of or in furtherance of the interests of the marital
12 community.
13

14 25. It is believed and is herein alleged that Defendant MARTIN HOWELL
15 (herein "Defendant HOWELL") is and has been a citizen of the United States and a
16 resident of the State of Washington at all times material hereto.

17 26. Defendant HOWELL at all times material herein acted as an agent for
18 Defendant UPRR in that he is an employee of Defendant UPRR.
19

20 27. On information and belief, Defendants HOWELL and JANE DOE
21 HOWELL reside in the State of Washington, which is within this judicial district.
22

23 28. Defendant HOWELL is married to JANE DOE HOWELL and all acts done
24 by him were done on behalf of or in furtherance of the interests of the marital
25 community.
26

26 //

1 D. Doe Defendants

2 29. The true names and capacities, whether individual, corporate, associate,
3 governmental or otherwise, of Defendants sued herein as DOES 1-5, inclusive, are
4 currently unknown to Plaintiff, who therefore sue said Defendants by such fictitious
5 names.
6

7 30. The true names and capacities of individual Defendants sued herein as
8 DOES 6-10, inclusive are currently unknown to Plaintiff, who therefore sue said
9 Defendants by such fictitious names.
10

11 31. Plaintiff is informed and believes, and based thereon alleges, that each of
12 the Defendants designated as a DOES 1-10 are legally responsible in some manner for
13 the events, incidents, and happenings described herein, and caused injuries and
14 damages to Plaintiff. Plaintiff will seek leave of court to amend this Complaint to
15 substitute the true names and capacities for the Defendants designated herein as DOES
16 1-10 when the true names have been ascertained or in the alternative dismiss said
17 DOES 1-10 if their identities cannot be ascertained.
18

19 32. Plaintiff is informed and believes, and based thereon alleges, that at all
20 times mentioned herein, Defendants DOES 1-10 allowed, aided, encouraged and
21 incited others, including agents and employees of Defendant UPRR to engage in the
22 acts of discrimination and retaliation alleged herein.
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27

1 33. Plaintiff is informed and believes, and based thereon alleges that at all
2 relevant times the individual DOE Defendants *viz*, Does 6-10, are and have been
3 residents of the United States and the State of Washington.
4

5 34. Defendants UPRR, JAMISON, and DOES 1-10 are hereinafter collectively
6 referred to as "DEFENDANTS." Unless specified otherwise, whenever this Complaint
7 refers to "Defendant" or "Defendants," such allegation shall be deemed to mean the
8 acts of Defendants acting individually, jointly and/or severally as so designated.
9

10 35. Plaintiff is informed and believes, and based thereon alleges, that at all
11 times mentioned herein, each of the Defendants were the agents, servants and
12 employees, co-venturers or co-conspirators of each of the remaining Defendants, and
13 were acting within the course, scope, and purpose of their employment, joint venture
14 or conspiracy, with the consent, knowledge, ratification and authorization of such
15 agency, employment, joint venture or conspiracy.
16

17 **V. GENERAL ALLEGATIONS**

18 Plaintiff alleges the following:

19 36. On or about June 10, 2002, Plaintiff began working for Defendant UPRR as
20 a Tie Down Loader. Her immediate supervisor at that time was Defendant JAMISON,
21 Intermodal Manager.
22

23 37. Plaintiff first complained about the hostile work environment in or about
24 September 2002 to Manager of Intermodel Operations, Art Kielty. She complained
25 about the offensive language used by other male employees.
26

1 38. Plaintiff was also subjected to unwanted touching by other male RTS
2 employee, Defendant MOENCH. He would hug Plaintiff, rub her legs or arms, and
3 grabs her. Plaintiff objected to the egregious behavior and immediately complained to
4 Art Kielty, Defendant JAMISON, and Defendant RTS Supervisors, Donny Ross, and
5 Jeremy Ross. Plaintiff alleges Defendants UPRR, RTS, JAMISON and DOES 1-10 failed
6 to take prompt corrective action.
7

8 39. Defendant RTS Supervisors Jeremy Ross and Donny Ross made jokes about
9 Plaintiff's complaints about Defendant MOENCH and when Plaintiff complained
10 about RTS employees garbage unloading procedures, Defendant RTS Supervisors told
11 Plaintiff that she had better stop complaining or they would "get Alan [Defendant
12 MOENCH] to grope " Plaintiff again.
13

14 40. Plaintiff continued to work in a hostile work environment. She found
15 pornographic materials at the workplace. Male employees constantly used sex-based
16 profanity. Offensive graffiti was plastered all over the workplace. She was subjected
17 to offensive comments from male employees, including but not limited to the
18 following:
19

- 20
- 21 • "I am going to go home and let my dog lick my nuts.";
 - 22 • "I have a huge penis." ;
 - 23 • "Do you want to touch my bald mouse?";
 - 24 • "Look how huge my monster is.";
 - 25 • "Are you on your period? Can I sniff your seat?" ;
 - 26

- 1 • "Was Jill [Harp] driving that truck? Can I sniff the seat?";
- 2 • "I am fucking his [Art Kielty's] wife and her hole is tighter than his sisters";
- 3

4 41. Plaintiff was also referred to as a "Bitch", "Whore", and "Cunt", on
5 multiple occasions. Plaintiff was offended by the egregious sex-based comments and
6 behavior.

7 42. Defendant HOWELL also participated in the sexual banter. In or about
8 September 2003, Defendant HOWELL exposed his genitals to Plaintiff. Defendant
9 HOWELL placed a flashlight down his pants and yelled comments about the size of his
10 penis and genitals. Defendant HOWELL repeatedly thrust his hips into the barrier in a
11 sexual manner. Plaintiff objected to Defendant HOWELL'S offensive behavior and
12 even felt threatened with Defendant HOWELL'S sexually aggressive behavior.
13
14

15 43. Plaintiff complained to Art Kielty and Defendant JAMISON on numerous
16 occasions regarding the hostile work environment. In response to Plaintiff's
17 complaints, Art Kielty told Plaintiff that she worked with males and needed to
18 "toughen up." Art Kielty also told Plaintiff that he was the "ultimate power," and
19 stated, "who are they gonna believe, you or me." Plaintiff alleges Defendants UPRR,
20 JAMISON, and DOES 1-10 failed to take prompt corrective action as she continued to
21 work in a hostile work environment.
22

23 44. After Plaintiff's constant complaints of the hostile work environment,
24 Defendants UPRR, JAMISON, and DOES 1-10 retaliated against Plaintiff.
25

26 45. Since Plaintiff filed her EEOC Charge based on sex discrimination on
27

1 August 5, 2003, Defendants retaliated against Plaintiff by removing her from her
2 permanent position and placing her in a temporary position.

3
4 46. Plaintiff further alleges Defendants retaliated against her by removing her
5 from her permanent position, placing her on temporary jobs, and repeatedly changing
6 her shift, often without prior notice. On one occasion, Plaintiff was removed from her
7 shift so her position on that shift could be given to a male employee returning from
8 suspension for sexual harassment. Plaintiff's union advised her that UPRR could not
9 place her in temporary shifts as they had been doing and Plaintiff's alternative was to
10 go on unpaid FURLO leave and demand a permanent position. On at least two
11 occasions, for a minimum of two weeks each time, Plaintiff was forced to take unpaid
12 FURLO leave until UPRR provided her with a position.

13
14
15 47. Plaintiff further alleges she was under closer scrutiny because of her gender
16 and for filing a EEOC Charge based on sex discrimination against Defendant UPRR.

17 48. As a direct and proximate result of the above mentioned discriminatory
18 acts and omissions, Plaintiff's emotional well-being has been substantially injured.
19 Plaintiff has suffered, and will continue to suffer pain and suffering, extreme mental
20 anguish and emotional distress because of the above-described acts and omissions of
21 Defendants.
22

23 49. Plaintiff has also suffered, and will continue to suffer, loss of earnings, and
24 nonpecuniary losses as a result of the actions and omissions of Defendants.
25

26 //

1 **VI. FIRST CAUSE OF ACTION**
2 **SEX DISCRIMINATION AND/OR HOSTILE WORK ENVIRONMENT**
3 **VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964,**
4 **42 U.S.C. § 2000(e) ET SEQ.**
5 **(AGAINST DEFENDANTS UPRR AND DOES 1-5)**

6 Plaintiff realleges each and every allegation as set forth in the preceding
7 paragraphs with the same force and effect as though fully set forth herein.

8 50. Plaintiff was subjected to severe and pervasive sexual harassment, including
9 but not limited to sex-based comments and unwanted touching.

10 51. Plaintiff repeatedly complained about the harassment to Defendants. Despite
11 Defendants UPRR and DOES 1-5's knowledge of the sexual harassment, Defendants
12 failed to take prompt corrective action.

13 52. The sexual harassment was so severe and pervasive, it adversely impacted
14 Plaintiff's abilities to perform her work.

15 53. As a direct and proximate result of the above mentioned harassment and
16 discriminatory acts and omissions by Defendants UPRR and Does 1-5, Plaintiff's
17 emotional well-being has been substantially injured. Plaintiff has experienced, and
18 continues to suffer, from sleepless nights, anxiety, trauma, headaches, and loss of
19 enjoyment of life, and other emotional and stress-related problems, including distrust
20 around men and loss of personal esteem.

21 54. Plaintiff has suffered, and will continue to suffer pain and suffering, extreme
22 mental anguish and emotional distress because of the above-described acts and omissions
23 of Defendants. Plaintiff has also suffered, and will continue to suffer, loss of earnings,
24
25
26

1 nonpecuniary losses and job opportunities as a result of the actions and omissions of
2 Defendants.

3
4 **VII. SECOND CAUSE OF ACTION**
5 **SEX DISCRIMINATION AND SEXUAL HARASSMENT**
6 **IN VIOLATION OF RCW 49.60**
7 **(AGAINST DEFENDANTS UPRR, JAMISON and DOES 1-10)**

8 Plaintiff realleges each and every allegation herein set forth above in the preceding
9 paragraphs with the same force and effect as though fully set forth herein.

10 55. Plaintiff alleges that a substantial factor in the above-referenced hostile
11 working environment was because of Plaintiff's sex, female.

12 56. In taking the actions alleged herein, the individual Defendants DOES 6-10
13 aided, abetted, encouraged, and incited the above-referenced violations of RCW Chapter
14 49.60 and/or obstructed or attempted to obstruct others from complying with the
15 provisions of Washington's Law Against Discrimination in violation of RCW 49.60.220.

16 57. The above-referenced acts caused injury to Plaintiff.

17 58. The acts of Defendants and DOES 1-10 as described herein violate R.C.W. §
18 49.60 *et seq.* as they violate Plaintiffs' right to be free from sexual harassment and sex
19 discrimination in employment.
20

21
22 **VIII. THIRD CAUSE OF ACTION**
23 **RETALIATION IN VIOLATION OF TITLE VII OF THE**
24 **CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000(e) ET SEQ.**
25 **(Against Defendants UPRR, JAMISON and DOES 1-10)**

26 Plaintiff realleges the preceding paragraphs with the same force and effect, and
27 incorporates the same as though fully set forth herein.

1 59. Plaintiff alleges she engaged in protected activity when she complained about
2 the sexual harassment to Art Kielty and Defendants UPRR, JAMISON and DOES 1-10.

3
4 60. Plaintiff further alleges she engaged in protected activity when she filed her
5 Charge of Discrimination alleging sexual harassment and discrimination with the EEOC.

6 61. As a result of complaining about the sexual harassment and filing an EEOC
7 Charge of Discrimination, Plaintiff experienced adverse employment action. Defendants
8 removed her from a permanent position and placed her in temporary positions.
9 Defendants then repeatedly changed Plaintiff's temporary shifts. In accordance with her
10 union guidelines Plaintiff took unpaid FURLO leave on at least two occasions for a
11 minimum of two weeks at each time.
12

13 62. Plaintiff further alleges she has been placed on closer scrutiny. Since Plaintiff
14 filed her EEOC Charge of Discrimination, Defendant JAMISON has repeatedly followed
15 Plaintiff while she was working and disciplined Plaintiff for activities other male
16 employees were not disciplined for. Additionally, on at least one occasion, she has
17 observed a co-worker taking photographs of her while she was working. Plaintiff is
18 not aware of this co-worker taking photographs of any other employees.
19
20

21 63. Plaintiff alleges that her opposition to the discrimination and/or hostile
22 work environment was a substantial factor in the adverse employment actions
23

24 64. As a direct and proximate result of the retaliation referred to above, Plaintiff
25 has suffered and will continue to suffer damages including, but not limited to, earnings
26 and employment benefits, as well as physical, emotional, and mental distress
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IX. FOURTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF RCW 49.60
(Against Defendant UPRR, JAMISON and DOES 1-10)

Plaintiff realleges the preceding paragraphs with the same force and effect, and incorporates the same as though fully set forth herein.

65. Because of the above-referenced opposition activity, Defendants and their employees subjected Plaintiff to adverse employment actions.

66. Plaintiff alleges that in violation of RCW Chapter 49.60, her opposition activity was a substantial factor in the above-referenced adverse employment action.

67. As a direct and proximate result of the retaliation referred to above, Plaintiff has suffered and will continue to suffer damages including, but not limited to, earnings and employment benefits, as well as physical, emotional, and mental distress.

X. FIFTH CAUSE OF ACTION
NEGLIGENT SUPERVISION and/or RETENTION
(Against Defendants UPRR, RTS, and DOES 1-5)

Plaintiff realleges the preceding paragraphs with the same force and effect, and incorporate the same as though fully set forth herein.

68. As Plaintiff's employer, Defendants UPRR and DOES 1-5 owed and breached duties to Plaintiff including, but not limited to: 1) the duty not to employ or retain employees whom it knows or should know to be unfit or dangerous, 2) the duty to exercise care appropriate to the circumstances in supervising and/or retaining employees, 3) the duty to exercise due diligence to determine whether an employee is or has become unfit or dangerous.

1 69. Because Plaintiff was required to report to and work with Defendant RTS,
2 it's employees and agents while at work, Defendant RTS owed and breached duties to
3 Plaintiff including, but not limited to: 1) the duty not to employ or retain employees
4 whom it knows or should know to be unfit or dangerous, 2) the duty to exercise care
5 appropriate to the circumstances in supervising and/or retaining employees, 3) the
6 duty to exercise due diligence to determine whether an employee is or has become unfit
7 or dangerous.
8

9
10 70. Defendants UPRR, RTS and DOES 1-5 failed to exercise care appropriate to
11 the circumstances in retaining its employees who subjected Plaintiff to sexual
12 harassment.
13

14 71. Defendants UPRR, RTS and DOES 1-5 had actual, constructive and/or
15 imputed notice and knowledge of the unfitness of employees and Defendants DOES 6-
16 10, who have subjected Plaintiff to repeated sexual harassment, including but not
17 limited to, sex-based comments and unwanted touching.
18

19 72. Such notice and knowledge made foreseeable the injuries these employees
20 inflicted upon the Plaintiff.
21

22 73. Despite such notice and knowledge, Defendants UPRR, RTS and DOES 1-5
23 failed to exercise ordinary care to discipline its employees and/or Defendants DOES 6-
24 10.
25

26 74. At all times material herein, Defendants UPRR, RTS and DOES 1-5 had the
27 power, ability, authority, and duty to so intervene, monitor, review, evaluate, control,
28

1 regulate, discipline, restrict, and/or penalize the conduct of themselves, their agents,
2 and employees.

3
4 75. Despite said knowledge, power, and duty, Defendants UPRR, RTS and
5 DOES 1-5 negligently failed to act so as to prevent, supervise, monitor, review, evaluate,
6 control, regulate, discipline, and/or penalize such conduct, acts, and failures to act or to
7 otherwise protect Plaintiff.

8
9 76. Plaintiff is informed and believes, and based thereon alleges, that each of the
10 Defendants UPRR, RTS and DOES 1-5 designated as a DOE is legally responsible in
11 some manner for the events, incidents, and happenings described herein, and caused
12 injury and damage to Plaintiff.

13
14 77. As a direct and proximate result of the failure of Defendants UPRR, RTS and
15 DOES 1-5 to protect Plaintiff and to adequately monitor, review, evaluate, control,
16 regulate, discipline, and/or otherwise penalize the conduct, acts, and failures to act by
17 Defendant themselves, their agents, and employees, as alleged herein, said conduct,
18 acts, and failures to act were perceived by said Defendants, its agents, and employees
19 as, and in fact had the effect of, ratifying, encouraging, condoning, exacerbating,
20 increasing, and/or worsening said conduct, acts, and failures to act, thereby causing
21 reasonably foreseeable injury.
22

23
24 78. Defendants UPRR, RTS and DOES 1-5 are responsible for the acts of their
25 employees alleged herein.

26 79. Defendants UPRR, RTS and DOES 1-5 failure to exercise ordinary care
27

1 breached the above-referenced duties of care, proximately causing the injury and
2 damages to Plaintiff referenced herein.

3
4 80. As a direct and proximate result of Defendants UPRR, RTS and DOES 1-5
5 breach of the duties owed to Plaintiff, Plaintiff suffered substantial emotional injuries in
6 an amount to be proven at trial.

7
8 81. As a further direct and proximate result of Defendants UPRR, RTS and
9 DOES 1-5 actions and omissions, Plaintiff has suffered and will continue to suffer
10 mental anguish and severe emotional distress.

11 82. Therefore, Plaintiff is entitled to general and compensatory damages for her
12 emotional injuries in an amount to be proven at trial.

13
14 **XI. SIXTH CAUSE OF ACTION**
15 **MALICIOUS HARASSMENT**
16 **(Against Defendants HOWELL and DOES 6-10)**

17 Plaintiff realleges the preceding paragraphs with the same force and effect, and
18 incorporate the same as though fully set forth herein.

19 83. Defendants HOWELL, and DOES 6-10 exhibited sexually aggressive
20 behavior towards Plaintiff.

21 84. Defendant HOWELL constantly talked about his penis size and even
22 wanted to sniff Plaintiff's seat when he thought she was menstruating. Defendant also
23 flashed his penis to Plaintiff. Plaintiff was in reasonable fear of her safety, as she was
24 afraid of being raped by Defendant HOWELL.

25 85. Additionally, the above-referenced acts caused injury to Plaintiff, including
26

1 but is not limited to those injuries described herein.

2 **XII. SEVENTH CAUSE OF ACTION**
3 **ASSAULT AND BATTERY**
4 **(Against Defendants MOENCH and DOES 6-10)**

5 Plaintiff realleges the preceding paragraphs with the same force and effect, and
6 incorporate the same as though fully set forth herein.

7 86. Defendant MOENCH knowingly and intentionally touched Plaintiff in a
8 harmful manner, causing serious injury. Defendant MOENCH rubbed Plaintiff's legs
9 and arms. He has groped her two to three times a week from the start of Plaintiff's
10 employment with UPRR through the present. Plaintiff was afraid of Defendant
11 MOENCH'S sexually aggressive behavior.

12 87. Defendant MOENCH knowingly and intentionally placed Plaintiff in
13 reasonable fear of imminent harm.

14 **XIII. EIGHTH CAUSE OF ACTION**
15 **TORT OF OUTRAGE**
16 **(Against Defendants MOENCH, HOWELL, and DOES 6-10)**

17 Plaintiff realleges the preceding paragraphs with the same force and effect, and
18 incorporate the same as though fully set forth herein.

19 88. Plaintiff alleges Defendants MOENCH, HOWELL, and DOES 6 -10 engaged
20 in extreme and outrageous conduct, including but not limited to unwanted touching and
21 egregious sex-based comments.

22 89. Defendant MOENCH groped Plaintiff two to three times a week. He hugged
23 Plaintiff without her permission. He rubbed her legs and arms without her permission.

1 As a result of Defendant MOENCH'S actions, Plaintiff has suffered severe emotional
2 distress.

3 90. Defendant HOWELL made repeated comments about his penis size to
4 Plaintiff and asked Plaintiff to touch his "bald mouse." He asked Plaintiff if she was
5 menstruating and if he could "sniff" her seat. He constantly subjected Plaintiff to his
6 sexually aggressive behavior. As a result of Defendant HOWELL'S actions, Plaintiff has
7 suffered severe emotional distress.
8

9 91. Defendants MOENCH, HOWELL, and DOES 6 - 10 intentionally or recklessly
10 caused Plaintiff to suffer severe emotional distress.
11

12 **XIV. PRAYER FOR RELIEF**

13
14 WHEREFORE, Plaintiff pray that judgment be entered in her favor and against
15 Defendants as specified in all causes of action as follows:

- 16 1. That all Defendants be ordered to pay Plaintiff all actual, compensatory,
17 general and punitive damages according to proof at trial and as allowable
18 by law;
19
20 2. That Plaintiff be awarded her costs of suit including reasonable attorneys'
21 fees;
22
23 3. That Plaintiff be awarded prejudgment interest; and

24 //

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