

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY :	Case No. 1:CV-05-1896
COMMISSION, :	
Plaintiff :	filed via ECF System
	:
and :	JURY TRIAL DEMANDED
	:
KELLIE PORTMAN :	
Intervenor :	
	:
v. :	
	:
RITE AID CORPORATION, :	
Defendant :	

COMPLAINT OF INTERVENOR KELLIE PORTMAN

Plaintiff, Kellie Portman (“Portman”), by and through her undersigned counsel, Hartman
Hartman Howe & Allerton, P.C., hereby alleges as follows:

I. INTRODUCTION

1. This is an action seeking redress for discrimination based on gender and retaliation, in contravention of Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Pennsylvania Human Relations Act (“PHRA”).

2. Portman, a female citizen of the United States of America, seeks equitable and monetary relief for the Defendant’s unlawful actions, including back pay and benefits, compensation for physical and emotional pain and suffering, reimbursement of medical expenses, costs, attorney’s fees, punitive damages, and all other relief to which she is entitled by Title VII and the PHRA.

II. JURISDICTION AND VENUE

3. Paragraphs 1 and 2 above are incorporated as if set forth at length herein.

4. This Court has jurisdiction over Plaintiff's Title VII claims pursuant to 28 U.S.C. §1331 and 42 U.S.C. §2000e et seq. (§706). This Court has jurisdiction over Portman's state law claims pursuant to 28 U.S.C. §1367 because the claims arising under the PHRA are substantially similar to the claims arising under Title VII and form the same case or controversy.

5. Venue in this district is proper pursuant to 28 U.S.C. §1391(B). The unlawful acts and practices of the Defendant were committed by the Defendant in Cumberland County, Pennsylvania which is within the Middle District of Pennsylvania.

III. PARTIES

6. Paragraphs 1 through 5 above are incorporated as if set forth at length herein.

7. Plaintiff, Portman, is an adult individual residing at 4509 Terrace Place, Harrisburg, Pennsylvania 17110.

8. Defendant, Rite Aid Corporation ("Rite Aid"), is a Delaware corporation registered with the Commonwealth of Pennsylvania. Its principal place of business is located at 30 Hunter Lane, Camp Hill, Pennsylvania 17011. It is an employer within the meaning of the PHRA and did, in fact, employ Portman.

IV. FACTUAL BACKGROUND

9. Paragraphs 1 through 8 above are incorporated as if set forth at length herein.

10. Portman began employment with Rite Aid on or about March 24, 1997 as Associate Counsel in the Real Estate Department.

11. Rite Aid Real Estate Law Vice President Larry Gelman (“Gelman”) supervised Portman.

12. Rite Aid unfairly provided better terms and conditions of employment to its male legal associates, including but not limited to:

a. Specifically, upon information and belief, Jim Comitale (“Comitale”), a male attorney in Rite Aid’s Legal Department who commenced his employment with Rite Aid at the same time as Portman, received an annual salary that exceeded Portman’s salary by approximately \$50,000.00 to \$100,000.00.

b. Gelman refused to allow Portman to handle more complex legal matters and routinely assigned those more complicated matters to male legal associates with less legal experience.

c. Rite Aid’s Real Estate Law Department was, at one time, comprised of fifteen (15) attorneys. After a reduction in force, six (6) attorneys remained, including Portman.

d. Despite the fact that Comitale did not practice Real Estate Law, he was promoted to the position of Assistant Secretary in order to attest to documents prepared by Portman and Eve Exar, a female Real Estate Associate Counsel, who had been employed in the Legal Department since approximately 1986.

13. During the first four and a half years of employment with Rite Aid, Portman had not received one performance review.

14. Prior to 2001 and before initially raising the equality issue, Portman was awarded a raise of \$20,000.00 per year and issued stock options.

15. At all time relevant hereto, Portman satisfactorily performed her job function at Rite Aid.

16. In August 2001, Portman reported to Rite Aid Senior Vice President and then Deputy General Counsel, Robert Sari (“Sari”) that she was being discriminated against by Gelman on the basis of her gender.

17. Specifically, Portman informed Sari that Gelman provided better pay and conditions of employment to male legal associates, including but not limited to Comitale.

18. Gelman overheard the conversation between Sari and Portman and became increasingly hostile to Portman in the workplace.

19. On or about September 6, 2001, Portman accused Gelman directly of discriminating against her on the basis of her gender.

20. Subsequent thereto, Gelman engaged in a pattern of harassment and retaliation against Portman.

21. On or about September 7, 2001, Portman met with Rite Aid Director of Human Resources, Steven A. Chesney (“Chesney”), to discuss her allegations of gender discrimination against Gelman. Chesney assured Portman that he would set up a meeting between her and Gelman to discuss the matter further.

22. On or about September 24, 2001, Portman met with Chesney and Gelman, and rather than discussing her gender discrimination claim, Chesney and Gelman presented Portman with a written notice listing nine (9) reasons why her performance was, allegedly, substandard (“September 2001 Notice”).

23. The September 2001 Notice stated "... without the immediate and ongoing change in your [Portman's] job performance and/or conduct, further disciplinary action will result."

24. The September 2001 Notice further stated that "The company [Rite Aid] may impose whatever form of discipline it believes it is appropriate based upon the associate's conduct and the surrounding circumstances. The company [Rite Aid] reserves the right to use any order of steps in the discipline process, including skipping steps as deemed necessary or moving directly to termination of employment."

25. Portman noted that she was unaware that Rite Aid had such a form of written notice to which Chesney responded that the form of written notice was "new."

26. Portman immediately objected to the disciplinary notice and thereafter, by correspondence dated October 1, 2001, formally requested in writing that the September 2001 Notice be removed from her personnel file as it was issued in retaliation for her raising a claim of gender discrimination ("Portman's October 2001 Response"), however Rite Aid took no action in response thereto.

27. On or about December 11, 2001, Gelman informed Portman that he intended to give her an annual performance review on or around December 23, 2001.

28. Prior thereto, Portman had not received one (1) annual performance review during her employment with Rite Aid.

29. By memorandum to Sari dated December 14, 2001, Portman requested that Gelman be excused from participation in her review as he could not review her performance objectively in light of Portman's claim of gender discrimination and again requested that Rite

Aid cease its discriminatory behavior toward female associates (“December 2001 Memorandum”).

30. On or about January 29, 2002, Gelman, in the presence of Sari and Chesney, gave Portman her first annual performance review, which consisted of a three (3) page single spaced document, detailing Portman’s alleged performance deficiencies (“First Performance Review”).

31. Approximately ninety percent (90%) of the alleged performance deficiencies detailed in the First Performance Review arose subsequent to Portman’s claim of gender discrimination.

32. Contemporaneously with Portman’s receipt of the First Performance Review, Gelman placed Portman on six (6) months probation and Sari denied Portman the three percent (3%) cost of living increase that each Rite Aid legal associate, with the exception of Portman, received.

33. Upon information and belief, no other Rite Aid legal associate received a review at any time relevant hereto.

34. Subsequent thereto, Gelman required Portman to meet with him on a weekly basis to give him a status report on the matters being handled by Portman (collectively, “Weekly Status Meetings”).

35. Consistently, Gelman noted only Portman’s uncompleted matters and ignored her numerous completed matters at the Weekly Status Meetings.

36. By memorandum dated February 13, 2002, Portman objected to the alleged performance deficiencies contained within the First Performance Review as retaliatory and stated

that Rite Aid should not have permitted Gelman to participate in Portman's review based on his inability to approach the matter objectively ("Portman's February 2002 Memorandum").

37. Subsequent thereto, Portman requested reassignment by Sari to report to Sari or any other attorney in the Legal Department, however Sari denied her request.

38. On or about February 25, 2002, Chesney and Sari informed Portman that they intended to commence an investigation into her claim of gender discrimination.

39. On or about April 24, 2002, Sari and Chesney informed Portman that they had excused themselves from the investigation as they were "too close to the situation" and had requested that Rite Aid Vice President of Diversity and Human Relations Associate, Stephanie Naito ("Naito"), review Portman's claim of gender discrimination.

40. According to Sari and Chesney, Naito had concluded that there was no basis for Portman's claim of gender discrimination and Rite Aid considered the matter "closed."

41. Portman never met with Naito regarding her claim nor was a written report detailing Naito's determination presented to Portman at any time relevant hereto.

42. Immediately thereafter, Portman was given an oral negative performance review by Gelman.

43. Subsequent to Naito's determination, Gelman's hostile behavior toward Portman increased; Gelman openly criticized Portman's prioritization of matters without offering any guidance as to his expectations; handled matters without notifying Portman and blamed Portman for failing to complete the matters and openly criticized Portman via email correspondences which he copied to all Rite Aid business partners.

44. In order to complete her work free from Gelman's harassment, Portman often

worked in the office late in the evenings and on the weekends.

45. Portman was forced to constantly defend her work due to Gelman's harassing behavior.

46. Despite the fact that Portman was an "exempt employee" and not required to "clock in" or "clock out", Gelman directed his paralegals to document Portman's arrival time, lunch breaks and departure time.

47. Upon information and belief, no other legal associate's arrival time, lunch breaks or departure times were monitored by Rite Aid or any of its employees.

48. On or about June 9, 2002, Gelman refused to approve Portman's request to take one (1) vacation day despite the fact that Portman was entitled to three (3) weeks of vacation each year.

49. On or about June 18, 2002, Portman again met with Gelman and Sari where Gelman gave Portman another negative performance review and presented a stack of files and documents evidencing Portman's alleged poor performance.

50. At this meeting, Sari threatened to immediately terminate Portman's employment with Rite Aid, told Portman that her gender discrimination claim was "baseless" and indicated that Rite Aid Associate Counsel should not be paid the same because "attorneys are not factory workers."

51. At the meeting Portman disclosed to Gelman and Sari that she had filed a gender discrimination claim with the EEOC.

52. On or about September 12, 2002, Portman printed the documents to support her EEOC claim from a printer in Rite Aid's office and the documents were read by the Office

Manager, Linda Brown.

53. Five (5) days later, Portman was terminated from her position at Rite Aid.

54. Portman sought and is currently under the care of a psychiatrist for depression and takes two (2) different prescription anti-depressant drugs each day due to the discrimination and retaliation she endured at Rite Aid.

55. As a result of the discriminatory behavior of Rite Aid toward Portman based on her gender, Portman has lost wages and benefits, endured emotional pain and suffering and was otherwise damaged.

56. As a result of the retaliatory behavior of Rite Aid toward Portman, Portman has lost wages and benefits, endured emotional pain and suffering and was otherwise damaged.

57. As a result of her termination, Portman has lost wages and benefits, endured emotional pain and suffering and was otherwise damaged.

58. Portman signed a Charge of Discrimination against Defendant on February 20, 2003, and dual filed the charge with the Pennsylvania Human Relations Commission.

59. On or about September 21, 2005, the EEOC filed a Complaint against Defendant.

V. CLAIMS

COUNT I – TITLE VII GENDER DISCRIMINATION

60. Paragraphs 1 through 59 above are incorporated as if set forth at length herein.

61. Portman was discriminated against on the basis of her gender when she was denied equal pay and conditions of employment by Rite Aid.

62. Rite Aid knew or should have known of the discriminatory behavior and actions toward female legal associates, particularly Portman.

63. Rite Aid acted outrageously, with evil motive and/or with reckless disregard to the rights of Portman.

64. As a direct result of Rite Aid's discriminatory behavior and actions against Portman based on her gender, Portman has suffered and continues to suffer harm including, but not limited to, loss of income, loss of other employment benefits, front pay, medical expenses, physical suffering, humiliation, embarrassment and damage to her reputation.

WHEREFORE, Portman prays for compensatory damages, back pay, front pay, punitive damages, attorney's fees, costs, and such other and further relief as permitted by law or equity.

COUNT II – TITLE VII RETALIATION

65. Paragraphs 1 through 64 above are incorporated as if set forth at length herein.

66. Rite Aid discriminated (retaliated) against Portman when they terminated her for opposing practices forbidden by Title VII (gender discrimination).

67. Rite Aid acted outrageously, with evil motive and/or with reckless disregard to the rights of Portman.

68. As a direct result of Rite Aid's discriminatory behavior and actions (retaliation) against Portman, Portman has suffered and continues to suffer harm, including but not limited to, loss of income, loss of other employment benefits, front pay, medical expenses, physical suffering, humiliation, embarrassment and damage to her reputation.

WHEREFORE, Portman prays for compensatory damages, back pay, front pay, punitive damages, attorney's fees, costs, and such other and further relief as permitted by law or equity.

COUNT III – PHRA GENDER DISCRIMINATION

69. Paragraphs 1 through 68 above are incorporated as if set forth at length herein.

70. Portman was discriminated against on the basis of her gender when she was denied equal pay and conditions of employment by Rite Aid.

71. Rite Aid knew or should have known of the discriminatory behavior and actions toward female legal associates, particularly Portman.

72. Rite Aid acted outrageously, with evil motive and/or with reckless disregard to the rights of Portman.

73. As a direct result of Rite Aid's discriminatory behavior and actions against Portman based on her gender, Portman has suffered and continues to suffer harm, including but not limited to, loss of income, loss of other employment benefits, front pay, medical expenses, physical suffering, humiliation, embarrassment and damage to her reputation.

WHEREFORE, Portman prays for compensatory damages, back pay, front pay, punitive damages, attorney's fees, costs, and such other and further relief as permitted by law or equity.

COUNT IV – PHRA RETALIATION

74. Paragraphs 1 through 73 above are incorporated as if set forth at length herein.

75. Rite Aid discriminated (retaliated) against Portman when they terminated her for opposing practices forbidden by the PHRA (gender discrimination).

76. Rite Aid acted outrageously, with evil motive and/or with reckless disregard to the rights of Portman.

77. As a direct result of Rite Aid's discriminatory behavior and actions (retaliation) against Portman, Portman has suffered and continues to suffer harm, including but not limited to,

loss of income, loss of other employment benefits, front pay, medical expenses, physical suffering, humiliation, embarrassment and damage to her reputation.

WHEREFORE, Portman prays for compensatory damages, back pay, front pay, punitive damages, attorney's fees, costs, and such other and further relief as permitted by law or equity.

Respectfully submitted,

s/ Andrew N. Howe

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Counsel for Intervenor, Kellie Portman

Dated: December 2, 2005

JURY TRIAL DEMAND

Portman demands trial by jury as to all issues.

s/ Andrew N. Howe

Andrew N., Howe, Esquire
Hartman, Hartman, Howe & Allerton, P.C.
Counsel for Intervenor, Kellie Portman

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RITE AID CORPORATION, :	
Defendant :	

CERTIFICATE OF SERVICE

I, **Andrew N. Howe, Esquire**, counsel for Intervenor, certify that on December 2, 2005 I filed the *Complaint of Intervenor Kellie Portman* in the above-captioned matter electronically and it is available for viewing and downloading from the ECF system.

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