

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
and	)	
	)	
SABRINA KAPIC,	)	
	)	
Intervenor Plaintiff,	)	
	)	
v.	)	Civil Action No. 4:06-CV-00815-CAS
	)	
SAPPINGTON GARDEN SHOP COMPANY,	)	JURY TRIAL DEMANDED
	)	
and	)	
	)	
N.G. HEIMOS GREENHOUSE COMPANY, INC.)	)	
	)	
SERVE:	)	
John G. Heimos	)	
12345 Eddy & Park Rd.	)	
St. Louis, MO 63127	)	
	)	
Defendants.	)	

AMENDED COMPLAINT OF INTERVENOR PLAINTIFF KAPIC

COMES NOW Intervenor Plaintiff, Sabrina Kapic, by and through her attorneys, and for her Amended Complaint against Defendants Sappington Garden Shop Company and N.G. Heimos Greenhouse Company, Inc. states:

PARTIES

1. Plaintiff Equal Employment Opportunity Commission ("EEOC") is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII of the Civil Rights Act of 1964, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

2. Intervenor Plaintiff Sabrina Kopic (“Kopic”) is a female citizen. At all times relevant herein, Intervenor Plaintiff Kopic resided in the St. Louis City or St. Louis County, State of Missouri.

3. On or about May 23, 2006, Plaintiff EEOC filed Cause No. 06-CV00815-CAS with this Court against Defendant Sappington Garden Shop Company (“Sappington Garden”) and on behalf of Kopic and all female employees adversely affected by Defendant’s unlawful discriminatory practices based on sex or gender.

4. Counsel for Intervenor Plaintiff Kopic filed a Motion to Intervene, setting forth the reasons and basis for Intervenor Plaintiff Kopic to intervene in this action. On or about August 17, 2006, the Motion to Intervene was granted.

5. At all times relevant herein, Defendant Sappington Garden is a Missouri corporation doing business in St. Louis County, State of Missouri, and in the Eastern District of Missouri.

6. At all times relevant herein, Defendant Sappington Garden is an employer within the meaning of 42 U.S.C. § 2000e(b) in that Defendant Sappington Garden employed fifteen (15) or more employees in the current or preceding calendar year and engaged in an industry affecting commerce.

7. At all relevant times herein, Defendant N.G. Heimos Greenhouse Company, Inc. (“N.G. Heimos”) is a Missouri Corporation with its principal place of business or corporate headquarters in St. Louis County, State of Missouri, and in the Eastern District of Missouri.

8. At all relevant times herein, Defendant N.G. Heimos is an employer within the meaning of 42 U.S.C. § 2000(e)(b) in that Defendant N.G. Heimos employed fifteen (15) or more employees in the current or preceding calendar year and engaged in an industry affecting commerce.

#### JURISDICTION AND VENUE

9. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, in that the claims presented herein present a federal question or original jurisdiction under the provisions of 42 U.S.C. § 2000e *et seq.*

10. Venue in this Court is proper pursuant to 28 U.S.C. § 1391, in that Defendants Sappington Garden and N.G. Heimos reside in the Eastern District of Missouri and a substantial part of the events or omissions giving rise to Intervenor Plaintiff Kopic's claims occurred in the Eastern District of Missouri.

COUNT I: FACTS AND CLAIMS OF INTERVENOR PLAINTIFF KAPIC AGAINST  
DEFENDANT SAPPINGTON GARDEN

11. Intervenor Plaintiff Kopic was employed by Defendant Sappington Garden as a cashier from approximately Spring 1999 to January 26, 2004.

12. During Intervenor Plaintiff Kopic's employment with Defendant Sappington Garden, she performed the duties of her job in a satisfactory manner.

13. During Intervenor Plaintiff Kopic's employment with Defendant Sappington Garden, male supervisor Roger Decker ("Decker") subjected Kopic to unwelcome and offensive sexual remarks.

14. During Intervenor Plaintiff Kopic's employment with Defendant Sappington Garden, male supervisor Decker subjected Intervenor Plaintiff Kopic to sexual advances, and to unwelcome, offensive and unwanted touching of her body.

15. The above unwelcome and offensive sexual remarks and conduct included incidents that occurred in the presence of Defendant Sappington Garden's managers.

16. The above unwelcome and offensive sexual remarks and conduct was based on Intervenor Plaintiff Kopic's sex, was intentional, occurred on multiple occasions and on a regular basis, and constituted sexual harassment, in violation of 42 U.S.C. § 2000e *et seq.*

17. The sexual harassment of Intervenor Plaintiff Kopic was sufficiently severe and pervasive to create a hostile work environment for her.

18. The above hostile work environment altered the terms and conditions of Intervenor Plaintiff Kopic's employment.

19. After Intervenor Plaintiff complained about the sexual harassment and hostile work environment to the appropriate management officials, the sexual harassment and hostile work environment continued. Defendant failed to take prompt and effective remedial action to correct and end the sexual harassment and hostile work environment, in violation of 42 U.S.C. § 2000e *et seq.*

20. Intervenor Plaintiff was fired on January 26, 2004 in retaliation for her complaining about the sexual harassment and hostile work environment.

21. Intervenor Plaintiff timely filed charge number 280-2004-03677 with the EEOC, alleging sexual harassment and retaliation by Defendant Sappington Garden.

22. As a result of Defendant Sappington Garden's sexual harassment of Intervenor Plaintiff Kopic and the failure of Defendant to take prompt and effective remedial action, as alleged herein, Kopic suffered lost wages and benefits of employment.

23. As a result of Defendant Sappington Garden's sexual harassment of Intervenor Plaintiff Kopic and the failure of Defendant to take prompt and effective remedial action, as alleged herein, Kopic suffered emotional distress, mental anguish, loss of enjoyment of life, loss or reputation, and humiliation.

24. As a result of Defendant Sappington Garden's sexual harassment of Intervenor Plaintiff Kopic and the failure of Defendant to take prompt and effective remedial action, as alleged herein, Kopic has incurred attorney's fees and costs of litigation.

25. The conduct of Defendant Sappington Garden was with evil motive or intent, or was recklessly indifferent to Intervenor Plaintiff Kaptic's right not to be subjected to sexual harassment and a hostile work environment and/or to be discriminated against because of her sex, and is conduct for which an award of punitive damages is warranted.

COUNT II: FACTS AND CLAIMS OF INTERVENOR PLAINTIFF KAPIC AGAINST  
DEFENDANT N.G. HEIMOS

26. For Count II of its Amended Complaint, Intervenor Plaintiff Kaptic reincorporates each of the facts and allegations under Count I above.

27. Intervenor Plaintiff Kaptic further states that at all relevant times, Defendant N.G. Heimos shared a "Substantial Identity" with Defendant Sappington Garden in that the two companies shared the requisite degree of (a) interrelation of operations; (b) common management; (c) centralized control of labor relations; and (d) common ownership or financial control.

28. As such, Defendant N.G. Heimos shared an "Integrated Enterprise" with Defendant Sappington Garden, and each company should therefore be treated as a "single employer" under Title VII, 42 U.S.C. §§ 2000(e) *et seq.*

WHEREFORE, Intervenor Plaintiff Kaptic prays that this Court, after trial by jury, find in favor of Plaintiff EEOC and Intervenor Plaintiff Kaptic and against Defendants Sappington Garden and N.G. Heimos, and enter judgment in favor of Intervenor Plaintiff Kaptic in an amount to be determined at trial for Intervenor Plaintiff Kaptic's lost wages and benefits of employment, and prejudgment interest thereupon, for back pay and front pay, compensatory damages, including damages for emotional distress, for punitive damages, for attorney's fees and costs of litigation; that this Court order injunctive relief enjoining Defendants Sappington Garden and N.G. Heimos from maintaining a sexually hostile work environment and from further illegal discriminatory conduct, and grant such other relief that is just and proper.

/s/ Russell F. Watters

Russell F. Watters, #4653

Irene J. Marusic, #102941

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**CERTIFICATE OF SERVICE**

I hereby certify that on 9<sup>th</sup> day of November, 2006, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: Barbara A. Seeley, Jan Shelly and Robert G. Johnson, Equal Employment Opportunity Commission, 1222 Spruce Street #8.100, St. Louis, MO 63105; and Chad A. Horner, GALLOP, JOHNSON & NEUMAN, L.C., 101 South Hanley Road, #1700, St. Louis, MO 63105.

/s/ Russell F. Watters

8024237/RFW/IJM/LMM