

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO. 1:05 CV 46-T**

FILED
ASHEVILLE, N. C.

JUL - 8 2005

U.S. DISTRICT COURT
W. DIST. OF N. C.

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

and

**MELANIE COOPER, CRYSTAL
GREEN, CHRISTINA JACKSON,
DANITA POWELL,**

Plaintiff-Intervenors

v.

**SUBWAY OF ASHEVILLE #7, LLC,
AHMAD ENTERPRISES OF NORTH
CAROLINA, INC., SUBWAY OF
CANTON, INC., SUBWAY OF
MERRIMON AVENUE, INC., and
SUWAN SUBWAY, LLC,**

Defendants.

**COMPLAINT IN INTERVENTION
OF INTERVENORS MELANIE COOPER,
CRYSTAL GREEN, CHRISTINA
JACKSON AND DANITA POWELL**

Plaintiff-Intervenors Melanie Cooper, Crystal Green, Christina Jackson, and Danita

Powell allege as follows:

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of sex, female, and to provide appropriate relief to Plaintiff-Intervenors, who were adversely affected by the practices. The Complaint in Intervention adds claims under the common law of North Carolina for negligent hiring, supervision, and retention, and for assault and battery on behalf of all Plaintiff-

Intervenors; intentional or negligent infliction of emotional distress claims on behalf of Melanie Cooper, Christina Jackson, and Danita Powell; and claims for wrongful discharge in violation of public policy on behalf of Melanie Cooper, Crystal Green, and Christina Jackson.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
2. As to Plaintiff-Intervenors’ claims under state law, this Court has supplemental jurisdiction under the provisions of 28 U.S.C. § 1367 and under the principle of pendent jurisdiction.
3. The conduct alleged to be unlawful was committed within the jurisdiction of the United States District Court for the Western District of North Carolina, and venue is therefore proper in this Court.

PARTIES

4. Plaintiff Equal Employment Opportunity Commission (the “EEOC”) is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII 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).
5. Plaintiff-Intervenor Melanie Cooper (“Cooper”) is a female citizen and resident of Buncombe County, North Carolina, and is a “person aggrieved” within the meaning of 42 U.S.C. § 2000e-5(f)(1), who intervenes in this action as a matter of right.

6. Plaintiff-Intervenor Crystal Green (“Green”) is a female citizen and resident of Pinellas County, Florida, and is a “person aggrieved” within the meaning of 42 U.S.C. § 2000e-5(f)(1), who intervenes in this action as a matter of right.
7. Plaintiff-Intervenor Christina Jackson (“Jackson”) is a female citizen and resident of Spartanburg County, South Carolina, and is a “person aggrieved” within the meaning of 42 U.S.C. § 2000e-5(f)(1), who intervenes in this action as a matter of right.
8. Plaintiff-Intervenor Danita Powell (“Powell”) is a female citizen and resident of Buncombe County, North Carolina, and is a “person aggrieved” within the meaning of 42 U.S.C. § 2000e-5(f)(1), who intervenes in this action as a matter of right.
9. On information and belief, at all relevant times, Defendant Subway of Asheville #7, LLC, has continuously been a North Carolina corporation doing business in the State of North Carolina and the County of Buncombe.
10. On information and belief, at all relevant times, Defendant Ahmad Enterprises of North Carolina, Inc., has continuously been a North Carolina corporation doing business in the State of North Carolina and the County of Buncombe.
11. On information and belief, at all relevant times, Defendant Subway of Canton, Inc., has continuously been a North Carolina corporation doing business in the State of North Carolina and the County of Haywood.
12. On information and belief, at all relevant times, Defendant Subway of Merrimon Avenue, Inc., has continuously been a North Carolina corporation doing business in the State of North Carolina and the County of Buncombe.

13. On information and belief, at all relevant times, Defendant Suwan Subway, LLC, has continuously been a North Carolina corporation doing business in the State of North Carolina and the County of McDowell.
14. On information and belief, Defendants have operated as an integrated business enterprise since at least January 1996, and maintain their principal place of business in Asheville, North Carolina.
15. On information and belief, at all relevant times, as an integrated business enterprise Defendants continuously had at least fifteen employees.
16. At all relevant times, Defendants jointly and severally, have continuously been an employer engaged in an industry affecting commerce under Sections 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g), and (h).
17. On information and belief, at all relevant times, Subway of Asheville #7, LLC; Ahmad Enterprises of North Carolina, Inc.; Subway of Canton, Inc.; Subway of Merrimon Avenue, Inc.; and/or Suwan Subway, LLC, were the employer(s) of Plaintiff-Intervenors within the meaning of the common law.
18. On information and belief, at all relevant times, Subway of Asheville #7, LLC; Ahmad Enterprises of North Carolina, Inc.; Subway of Canton, Inc.; Subway of Merrimon Avenue, Inc.; and/or Suwan Subway, LLC acted jointly and in concert, and the acts of one are imputed to the other.
19. On information and belief, at all relevant times, Subway of Asheville #7, LLC; Ahmad Enterprises of North Carolina, Inc.; Subway of Canton, Inc.; Subway of Merrimon Avenue, Inc.; and/or Suwan Subway, LLC formed a joint venture or partnership,

combining their property, effects, labor, or skill in a common business or venture, under an agreement to share the profits and losses in equal or specified proportions, and the acts of one bound the partnership.

20. On information and belief, at all relevant times, Subway of Asheville #7, LLC; Ahmad Enterprises of North Carolina, Inc.; Subway of Canton, Inc.; Subway of Merrimon Avenue, Inc.; and/or Suwan Subway, LLC were partners in employing Plaintiff-Intervenors, and were agents of the partnership and the acts of one bound the partnership.
21. On information and belief, Subway of Asheville #7, LLC; Ahmad Enterprises of North Carolina, Inc.; Subway of Canton, Inc.; Subway of Merrimon Avenue, Inc.; and/or Suwan Subway, LLC created an agency relationship, whereby one corporation was authorized in employing Plaintiff-Intervenors on behalf of another corporation, and the acts of one bound the other.
22. The term “Defendants” in this Complaint shall be construed to include any or all of the Defendants, unless the context clearly refers to a single Defendant to the exclusion of the other.

ADMINISTRATIVE PREREQUISITES

23. More than thirty (30) days prior to the institution of this lawsuit, Plaintiff-Intervenors filed timely charges of discrimination with the EEOC alleging violations of Title VII. All conditions precedent to the institution of this lawsuit have been fulfilled.

FACTS

24. Cooper was employed on or about January 17, 2003, at Defendants’ Subway sandwich shop on Leicester Avenue in Asheville, North Carolina (“the Leicester Subway”).

25. Green was employed on or about December 5, 2002, at the Leicester Subway.
26. Jackson was employed on or about December 31, 2002, at the Leicester Subway.
27. Powell was employed on or about November 20, 2002, at the Leicester Subway.
28. During Plaintiff-Intervenors' employment at the Leicester Subway, they performed all of their job duties satisfactorily and gave their employer no legitimate business reason to terminate their employment.
29. During Plaintiff-Intervenors' employment at the Leicester Subway, a man who went by the name of Joe was employed by Defendants as a manager (hereinafter "Manager") in a supervisory position over Plaintiff-Intervenors, working at the Leicester Subway. Manager was Plaintiff-Intervenors' immediate supervisor and had the authority to hire, fire, and make work assignments.
30. During Plaintiff-Intervenors' employment at the Leicester Subway, Manager engaged in multiple, frequent, and pervasive acts of sexual harassment of Plaintiff-Intervenors on a nearly daily basis. All of the acts of harassment occurred on the premises of the Leicester Subway and during Plaintiff-Intervenors' normal working hours. The following allegations do not purport to be a complete recitation of all of the sexual comments, gestures, and touching in which Manager engaged, but are illustrative of his conduct towards Plaintiff-Intervenors:
 - a. Manager constantly referred to Powell as "baby" and "sweetie" and also called her "my girl," "my best girl," and "my baby girl." Manager regularly told Powell that she was "beautiful," "pretty," and "sweet" and that he cared about her and loved her.

- b. Manager also frequently made sexual comments about Powell's body. On one occasion, Manager told Powell that the Subway shirt that he gave her to wear looked pretty on her "sexy body." On another occasion, Manager gave Powell an apron and told her that he wanted her to wear it because he became jealous when other men looked at her "sexy body." One day after Powell finished cleaning the tables in the dining area, Manager told Powell that he wanted her to clean the tables again so that he could watch her bend over.
- c. Manager repeatedly touched and rubbed Powell's hands, hugged her, rubbed her back, and grabbed her buttocks. Manager also kissed Powell on her mouth, face, and neck on numerous occasions. On one occasion, Manager rubbed Powell's breasts with his hands as he hugged her. On another occasion, Manager placed his hand on Powell's thigh and started rubbing her thigh.
- d. Manager constantly referred to Jackson as "baby" and "honey." Manager regularly told Jackson that he loved her. Manager also attempted to spend time with Jackson outside of work.
- e. Manager frequently hugged Jackson and attempted to hug her. Manager grabbed Jackson's buttocks.
- f. Manager made sexual comments about Green's body. On one occasion, Manager walked into the women's bathroom at the Leicester Subway while Green was changing into her work clothes and told Green, "I came in here to see you undress, and I am looking at you right now." On another occasion, Manager said that Green had nice buttocks and nice breasts.

- g. Manager kissed Green on her face and mouth on numerous occasions. On one occasion, Manager grabbed Green's buttocks. On another occasion, Manager put his hand into Green's shirt and grabbed her breast.
 - h. Manager referred to Cooper as "sweetie" and "honey." Manager frequently touched and held Cooper's hands and hugged her. Manager also kissed Cooper on her face on two separate occasions and asked Cooper to kiss him on other occasions.
 - i. On one occasion, Manager put his hand down Cooper's shirt, touched her breasts, and said, "Isn't this nice." On another occasion, Manager placed his hand on Cooper's thigh. Manager also grabbed Cooper's buttocks on one occasion.
31. Plaintiff-Intervenors did not welcome or invite any of Manager's sexual comments, gestures, and touching, all of which Plaintiff-Intervenors found extremely offensive and emotionally upsetting. By their words and conduct, Plaintiff-Intervenors made known to Manager that his actions were unwelcome and offensive.
32. All of the wrongful and unlawful acts by Manager occurred at Plaintiff-Intervenors' and Manager's place of employment, the Leicester Subway. Manager was at work for Defendants and was acting within the scope of his employment as Defendants' manager and as Plaintiff-Intervenors' supervisor when he committed these acts. Moreover, because Manager committed these acts while serving in a supervisory capacity for Defendants, and as a member of Defendants' management with respect to Plaintiff-Intervenors, having control over the terms and conditions of their employment, he was acting as an alter ego of Defendants, and his acts constituted the acts of Defendants, and

his supervisory authority aided and abetted his ability to commit these acts. Thus, Defendants are vicariously liable for the acts of Manager under the doctrine of *respondeat superior*

33. Some of Plaintiff-Intervenors complained about the sexual harassment and Defendants otherwise knew or reasonably should have known about the sexual harassment of Plaintiff-Intervenors.
34. The continuing sexual harassment by Manager, and the ratification of that conduct by Defendants' officers and managers, made it clear to Plaintiff-Intervenors that Defendants had no intention of taking action to stop the harassment.
35. In fact, Defendants failed to protect Plaintiff-Intervenors and refused to take any action against Manager who was harassing Plaintiff-Intervenors.
36. Plaintiff-Intervenors could no longer tolerate the sexual harassment and felt compelled to resign.
37. Green resigned on or about December 20, 2002. Following her resignation, Manager called Green several times in an attempt to convince her to return to work. Manager left the following message on Green's voice mail: "I think you are mine, and I think you want to come back to work for me. I love you. I like you."
38. Jackson resigned on or about January 23, 2003. Following her resignation, Manager called Cooper several times in an attempt to convince her to return to work.
39. Cooper resigned on or about January 28, 2003. Following her resignation, Manager called Cooper several times in an attempt to convince her to return to work.

40. Green's, Jackson's, and Cooper's resignations were not voluntary but were forced due to the continued sexual harassment and Defendants' failure to take remedial action, which had created an intolerable working situation for them.
41. Upon information and belief, at all relevant times, Defendants did not have any policy against sexual discrimination or harassment in the workplace, and did not have any policy informing victims of sexual discrimination or harassment how to seek relief from it. Plaintiff-Intervenors were never informed of the existence of such a policy.
42. Upon information and belief, during the time period in which the acts alleged herein occurred, Manager had a reputation at the Leicester Subway for engaging in inappropriate, sexually offensive conduct towards female employees. Defendants knew or should have known of Manager's reputation and that he had previously engaged in the sexual harassment of other women. Plaintiff-Intervenors are informed and believe that one or more other female employees had previously complained of improper physical contact, verbal remarks, or other sexually harassing treatment by Manager. Defendants should have reasonably foreseen that Plaintiff-Intervenors would be subjected to harassment by Manager, and Defendants should have taken steps to provide Plaintiff-Intervenors with a work environment that did not include that risk.
43. Upon information and belief, by retaining Manager in a supervisory position after Defendants' actual or constructive knowledge of Manager's reputation, by ignoring Manager's conduct and reports of harassment, by failing to conduct a proper investigation and take action against such conduct, by failing to properly supervise Manager, and by failing to discipline Manager, remove Manager from his supervisory position, or to

otherwise protect Plaintiff-Intervenors and other female employees, Defendants, through its officers and managers, approved, condoned, and ratified the wrongful and unlawful acts of manager, including sexual harassment.

44. By their actions and failure to act, Defendants failed and refused to take reasonable steps to correct the effects of Manager's sexual harassment of Plaintiff-Intervenors.
45. By their actions and failure to act, which were intended to force Plaintiff-Intervenors to resign, Defendants constructively discharged Green, Jackson, and Cooper.
46. As a result of Defendants' actions and failure to act, Plaintiff-Intervenors have suffered damages, including, but not limited to, lost wages, medical expenses, embarrassment, humiliation, mental and emotional distress, inconvenience, damage to their reputation, deterioration of their emotional and physical health, and loss of enjoyment of life.

FIRST CLAIM FOR RELIEF
Violation of Title VII

47. Plaintiff-Intervenors reallege and incorporate by reference paragraphs 1-46 above.
48. From around November 2002 until around February 2003, Defendants engaged in unlawful employment practices at the Leicester Subway, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), as set forth below:
 - a. Defendants subjected Plaintiff-Intervenors to sexual harassment that created a sexually hostile work environment based on their sex, female. The harassment included, but was not limited to, unwelcome sexual comments, gestures, and touching by Manager who had supervisor authority over Plaintiff-Intervenors. Some of the Plaintiff-Intervenors complained about the sexual harassment and

Defendants otherwise knew or reasonably should have known about the sexual harassment.

- b. As a result of the sexual harassment, Cooper, Green, and Jackson were forced to resign. Defendants constructively discharged Cooper, Green, and Jackson.
49. The effect of the practices complained of in paragraph 48 above has been to deprive Plaintiff-Intervenors of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, female.
50. The unlawful employment practices complained of in paragraph 48 above were done with malice or with reckless indifference to the federally protected rights of Plaintiff-Intervenors.
51. The unlawful employment practices complained of in paragraph 48 above were intentional.
52. As a proximate result of Defendants' discrimination against Plaintiff-Intervenors on account of their sex, Plaintiff-Intervenors suffered damages consisting of lost wages and continue to suffer the effects of such discrimination, and are entitled to recover compensatory damages and to recover back pay and other equitable relief, as provided by law.
53. Defendants acted intentionally, willfully, and wantonly, or with reckless disregard of the legal rights of Plaintiff-Intervenors, and accordingly Plaintiff-Intervenors are entitled to recover punitive damages from Defendants in such amounts as may be determined by the trier of fact.

54. Plaintiff-Intervenors are further entitled to recover reasonable attorneys' fees, costs, and expenses of this action and such interest as may be allowed by law.

SECOND CLAIM FOR RELIEF
Wrongful Discharge in Violation of Public Policy
(Cooper, Green, and Jackson v. Defendants)

55. Plaintiff-Intervenors Cooper, Green, and Jackson reallege and incorporate by reference paragraphs 1-54 of this complaint.
56. The public policy of North Carolina, as expressed in North Carolina General Statute § 143-422.2, is "to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of . . . sex . . . by employers which regularly employ 15 or more employees."
57. This stated public policy recognizes that "the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interest of employees, employers, and the public in general." N.C. Gen. Stat. § 143-422.2
58. Defendants' acts in requiring Cooper, Green, and Jackson to work in a hostile environment of sexual harassment, resulting in their constructive discharge, violated the above-stated public policy.
59. Cooper, Green, and Jackson suffered mental and emotional distress, lost wages, and other compensatory damages, in amounts to be determined at trial, as a direct and proximate result of Defendants' wrongful discharge of them in violation of North Carolina public policy.

60. Defendants' conduct, as described herein, was malicious and in willful or wanton disregard of Plaintiff-Intervenors' rights, and accordingly Cooper, Green, and Jackson are entitled to recover punitive damages as provided by N.C. Gen. Stat. § 1D-15(a) in such amounts as may be determined by the trier of fact.

THIRD CLAIM FOR RELIEF
Intentional Infliction of Emotional Distress
(Cooper, Jackson, and Powell v. Defendants)

61. Plaintiff-Intervenors Cooper, Jackson, and Powell reallege and incorporate by reference paragraphs 1-54 of this complaint.
62. During Plaintiff-Intervenors' employment at the Leicester Subway, Manager engaged in conduct designed and calculated to abuse, harass, oppress, and intimidate Plaintiff-Intervenors, as described herein.
63. The sexually offensive conduct of Manager and the conduct of Defendants, as described herein, was extreme, outrageous, and beyond the bounds usually tolerated by a decent society.
64. In addition, Defendants knew or should have known that the conduct of Manager and Defendants would likely result in the infliction of emotional distress upon female employees, including Cooper, Jackson, and Powell.
65. The conduct of Manager and Defendants was intended to cause Cooper, Jackson, and Powell to suffer severe emotional distress, or was carried out in reckless disregard as to whether it would inflict severe emotional distress upon them, or was certain or substantially certain to result in severe emotional distress to them.

66. The conduct of Manager and Defendants did in fact cause Cooper, Jackson, and Powell to suffer severe emotional distress.
67. As alleged above, Manager acted within the course and scope of his responsibilities as Defendants' manager; Manager was aided in accomplishing his acts by his supervisory authority; and Defendants, through its officers and managers, authorized, approved, condoned, and ratified the conduct of Manager and effectively authorized Manager to subject female employees to the intentional infliction of emotional distress. Accordingly, Defendants are liable for all acts of its employees, as well as for their own acts, and for the resulting injury and damages to Plaintiff-Intervenors.
68. As a direct and proximate result of Manager's and Defendants' conduct and of Defendants' condonation and ratification of Manager's conduct, Cooper, Jackson, and Powell suffered extreme emotional distress, mental anguish, humiliation, embarrassment, and pain; have incurred medical expenses for treatment of the distress; have lost income from the loss of her employment; and have sustained other damages, in amounts to be determined at trial.
69. Defendants' conduct, as described herein, was malicious and in willful or wanton disregard of Plaintiff-Intervenors' rights, and accordingly Cooper, Jackson, and Powell are entitled to recover punitive damages as provided by N.C. Gen. Stat. § 1D-15(a) in such amounts as may be determined by the trier of fact.

FOURTH CLAIM FOR RELIEF
Negligent Infliction of Emotional Distress
(Cooper, Jackson, and Powell v. Defendants)

70. Plaintiff-Intervenors Cooper, Jackson, and Powell reallege and incorporate by reference paragraphs 1-54 above.
71. Alternatively, Manager, in engaging in sexually offensive conduct towards Cooper, Jackson, and Powell, acted negligently and/or with reckless disregard as to whether his acts would inflict severe emotional distress upon them. Manager's negligence and/or his reckless acts are imputed to his employer, Defendants.
72. As alleged above, Manager acted within the course and scope of his responsibilities as Defendants' manager; Manager was aided in accomplishing his acts by his supervisory authority; and Defendants, through its officers and managers, authorized, approved, condoned, and ratified the conduct of Manager, and failed to take reasonable action to protect Plaintiff-Intervenors. Accordingly, Defendants are liable for all acts of its employees against Plaintiff-Intervenors.
73. Defendants were negligent and/or grossly negligent in failing to prevent Manager's sexually offensive conduct and in failing to take reasonable measures to protect female employees, including Cooper, Jackson, and Powell from the effects of such conduct once it had occurred.
74. In addition, Defendants knew or should have known that the conduct of Manager and Defendants would likely result in the infliction of emotional distress upon female employees, including Cooper, Jackson, and Powell.

75. As a direct and proximate result of Defendants' negligence, Cooper, Jackson, and Powell suffered extreme emotional distress, mental anguish, humiliation, embarrassment, and pain; have incurred medical expenses for treatment of the distress; have lost income from the loss of their employment; and have sustained other damages, in amounts to be determined at trial.
76. Defendants' conduct, as described herein, was in willful or wanton disregard of Plaintiff-Intervenors' rights, and accordingly Cooper, Jackson, and Powell are entitled to recover punitive damages as provided by N.C. Gen. Stat. § 1D-15(a) in such amounts as may be determined by the trier of fact.

FIFTH CLAIM FOR RELIEF

Assault

77. Plaintiff-Intervenors reallege and incorporate by reference paragraphs 1-54 of this complaint.
78. During Plaintiff-Intervenors' employment at the Leicester Subway, Manager repeatedly assaulted Plaintiff-Intervenors in his persistent sexual harassment of Plaintiff-Intervenors. Manager's conduct, as described herein, placed Plaintiff-Intervenors in reasonable apprehension and fear for continued harassment.
79. As alleged above, Defendants are liable for Manager's assaults on Plaintiff-Intervenors in that Manager committed such assaults in the course and scope of his responsibilities as Defendants' manager; Manager was aided in accomplishing his acts by his supervisory authority; and Defendants, through their officers and managers, authorized, approved,

condoned, and ratified said conduct, and failed to take reasonable action to protect Plaintiff-Intervenors.

80. Accordingly, Defendants are liable for all acts of its employees against Plaintiff-Intervenors.

81. As a direct and proximate result of the unlawful actions of Manager, Plaintiff-Intervenors suffered mental and emotional distress, lost wages, and other compensatory damages, in amounts to be determined at trial.

82. Manager's conduct, as described herein, was malicious and in willful or wanton disregard of Plaintiff-Intervenors' rights, and accordingly Plaintiff-Intervenors are entitled to recover punitive damages as provided by N.C. Gen. Stat. § 1D-15(a) in such amounts as may be determined by the trier of fact.

SIXTH CLAIM FOR RELIEF

Battery

83. Plaintiff-Intervenors reallege and incorporate by reference paragraphs 1-54 of this complaint.

84. During Plaintiff-Intervenors' employment at the Leicester Subway, Manager committed battery upon Plaintiff-Intervenors by repeatedly and willfully touching Plaintiff-Intervenors, without their consent and against their protest, in a rude and offensive manner.

85. As alleged above, Defendants are liable for Manager's battery upon Plaintiff-Intervenors in that Manager committed such battery in the course and scope of his responsibilities as Defendants' manager; Manager was aided in accomplishing his acts by his supervisory

authority; and Defendants, through their officers and managers, authorized, approved, condoned, and ratified said conduct, and failed to take reasonable action to protect Plaintiff-Intervenors.

86. As a direct and proximate result of the unlawful actions of Manager, Plaintiff-Intervenors suffered mental and emotional distress, lost wages, and other compensatory damages, in amounts to be determined at trial.
87. Manager's conduct, as described herein, was malicious and in willful or wanton disregard of Plaintiff-Intervenors' rights, and accordingly Plaintiff-Intervenors are entitled to recover punitive damages as provided by N.C. Gen. Stat. § 1D-15(a) in such amounts as may be determined by the trier of fact.

SEVENTH CLAIM FOR RELIEF

Negligent Hiring

88. Plaintiff-Intervenors reallege and incorporate by reference paragraphs 1-54 of this complaint.
89. Defendants owed a duty of ordinary care to Plaintiff-Intervenors in its hiring of supervisory employees in order to maintain a workplace free from sexual harassment and to protect Plaintiff-Intervenors and Defendants' other female employees from a supervisor's sexually offensive conduct.
90. Upon information and belief, at or prior to hiring Manager, Defendants knew or should have known, had they used ordinary care in the hiring procedure, that Manager had a propensity to subject females to unwelcome and offensive sexual conduct, and that these personal traits rendered him unfit to hold a supervisory position because, in such capacity,

he was required to hire, supervise, and work directly with female subordinates. In light of Manager's reputation, of which Defendants were or should have been aware, Defendants knew or should have known that Manager would sexually harass Plaintiff-Intervenors and other female employees.

91. In the exercise of ordinary care, Defendants should not have hired Manager in a position in which he could harass Plaintiff-Intervenors and other female employees.
92. Defendants breached their duty of reasonable care owed to Plaintiff-Intervenors by hiring Manager in a position in which he could harass them.
93. As a direct and proximate result of Defendants' negligence in their hiring of Manager, Plaintiff-Intervenors suffered mental and emotional distress, lost wages, and other compensatory damages, in amounts to be determined at trial.
94. Defendants' conduct, as described herein, was in willful or wanton disregard of Plaintiff-Intervenors' rights, and accordingly Plaintiff-Intervenors are entitled to recover punitive damages as provided by N.C. Gen. Stat. § 1D-15(a) in such amounts as may be determined by the trier of fact.

EIGHTH CLAIM FOR RELIEF
Negligent Supervision and Retention

95. Plaintiff-Intervenors reallege and incorporate by reference paragraphs 1-54 of this complaint.
96. Defendants owed a duty of ordinary care to Plaintiff-Intervenors to maintain a workplace free from sexual harassment and to protect Plaintiff-Intervenors and Defendants' other female employees from a supervisor's sexually offensive conduct.

97. Defendants knew or should have known, had they used ordinary care, that Manager had a propensity to subject female employees to unwelcome and offensive sexual conduct and that these personal traits rendered him unfit to hold a supervisory position because, in such capacity, he was required to hire, supervise, and work directly with female subordinates. In light of Manager's reputation, of which Defendants were or should have been aware, Defendants knew or should have known that Manager would sexually harass Plaintiff-Intervenors and other female employees.
98. In the exercise of ordinary care, Defendants should have terminated Manager before they hired Plaintiff-Intervenors.
99. In the exercise of ordinary care, Defendants should have terminated Manager when they became aware of his behavior toward Plaintiff-Intervenors and other female employees.
100. By failing to prevent Manager's conduct, by allowing such conduct to persist, by permitting a supervisor with Manager's reputation to work closely with Plaintiff-Intervenors, by failing to adequately supervise Manager, by failing to discipline or to discharge Manager, by not providing Plaintiff-Intervenors a safe place to work away from Manager once they became aware of his conduct, and by constructively discharging Cooper, Green, and Jackson, Defendants breached their duty of reasonable care owed to Plaintiff-Intervenors.
101. As a direct and proximate result of Defendants' negligence in their supervision and retention of Manager, Plaintiff-Intervenors suffered mental and emotional distress, lost wages, and other compensatory damages, in amounts to be determined at trial.

102. Defendants' conduct, as described herein, was in willful or wanton disregard of Plaintiff-Intervenors' rights, and accordingly Cooper, Jackson, and Powell are entitled to recover punitive damages as provided by N.C. Gen. Stat. § 1D-15(a) in such amounts as may be determined by the trier of fact.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenors pray the Court:

1. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concern or participation with them, from sexual harassment or any other employment practice that discriminates on the basis of sex and from retaliating against employees who oppose unlawful discrimination, make a charge of unlawful discrimination, or participate in an investigation of unlawful discrimination;
2. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities for women and which eradicate the effects of its past and present unlawful employment practices;
3. Order Defendants to make Plaintiff-Intervenors whole by providing appropriate back-pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including, but not limited to, reinstatement;
4. For Judgment against Defendants, jointly and severally, for compensatory damages in a sum sufficient to make Plaintiff-Intervenors whole by providing compensation for past and future pecuniary losses resulting from Defendants' unlawful activities described herein, including medical expenses, in amounts to be determined at trial;

5. For Judgment against Defendants, jointly and severally, for compensatory damages in a sum sufficient to make Plaintiff-Intervenors whole by providing compensation for past and future nonpecuniary losses resulting from Defendants' unlawful activities described herein, including, but not limited to, emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, loss of self-esteem, and loss of civil rights, in amounts to be determined at trial;
6. For Judgment against Defendants, jointly and severally, for punitive damages in amounts to be determined at trial as provided by law;
7. For recovery of Plaintiff-Intervenors' costs herein, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
8. For such further relief to which Plaintiff-Intervenors may be entitled in law or in equity.

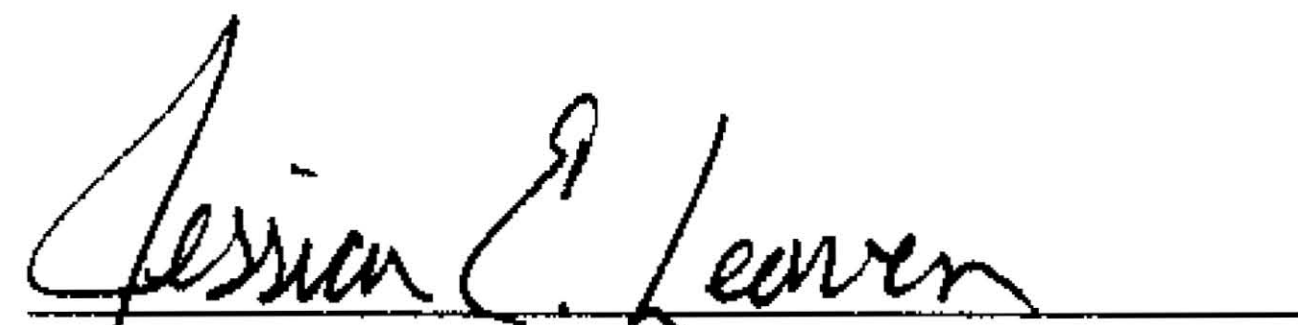
JURY TRIAL DEMAND

Trial by jury is hereby demanded as to all issues so triable.

Respectfully submitted, this the 13th day of May, 2005.

THE ADAMS LAW FIRM

BY:



Jessica E. Leaven

81-B Central Avenue

Asheville, NC 28801

Telephone: (828) 251-1821

State Bar No. 27832

Attorney for Plaintiff-Intervenors

CERTIFICATE OF SERVICE

This is to certify that I have this day served all other parties to this action or their attorney(s) in their attorney's representative capacity with a copy of the foregoing **Complaint in Intervention of Intervenors Melanie Cooper, Crystal Green, Christina Jackson, and Danita Powell** by service by mail (depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service), addressed as follows:

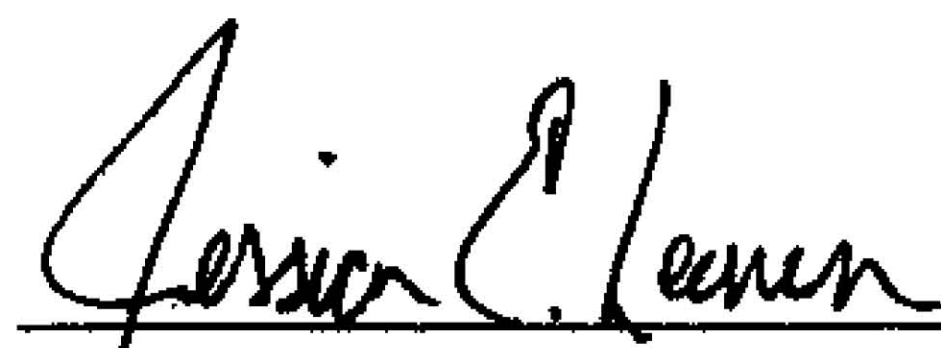
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This the 13th day of May, 2005.

BY:



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CERTIFICATE OF SERVICE

This is to certify that I have this day served all other parties to this action or their attorney(s) in their attorney's representative capacity with a copy of the foregoing **Complaint in Intervention of Intervenors Melanie Cooper, Crystal Green, Christina Jackson, and Danita Powell** by service by mail (depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service), addressed as follows:

Eric S. Dreiband, General Counsel
James L. Lee, Deputy General Counsel
Gwendolyn Young Reams, Associate General Counsel
Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Lynette A. Barnes, Acting Regional Attorney
Kara Gibbon Haden, Senior Trial Attorney
Equal Employment Opportunity Commission
Charlotte District Office
129 West Trade Street, Suite 400
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This the 8th day of June, 2005.

BY:



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