

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**FILED**  
ASHEVILLE, N. C.

JUL - 8 2005

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

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

Plaintiff,

vs.

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

Defendants.

**CIVIL ACTION NO. 1:05-CV-46-T**

**COMPLAINT IN INTERVENTION  
OF INTERVENOR JENNIFER GRADY**

Pursuant to Rule 24(a) of the Federal Rules of Civil Procedure and 42 U.S.C. § 2000e-5(f)(1), Intervenor Jennifer Grady alleges and says as follows:

**ACTION**

1. This is an action instituted pursuant to 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 committed by the Defendants, and to provide appropriate relief to Jennifer Grady, who was directly, adversely affected by such practices. The Intervenor is a "person aggrieved" within the meaning of 42 U.S.C. § 2000e-5(f)(1), and intervenes in this action as a matter of right.

**JURISDICTION AND VENUE**

2. 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.

3. The unlawful conduct alleged herein was committed in this district, and venue is therefore proper in this Court.

### **PARTIES**

4. Plaintiff EEOC is an agency of the United States of America charged with administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by § 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

5. 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.

6. 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.

7. 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.

8. 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.

9. At all relevant times, Defendant Subway Subway, LLC has continuously been a North Carolina Corporation doing business in the State of North Carolina and the County of McDowell.

10. 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.

11. At all relevant times, as an integrated business enterprise Defendants continuously had at least fifteen (15) employees.

12. 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).

13. Intervenor is a female citizen of the United States, who resides in 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.

**COUNT ONE**  
**SUBSTANTIVE ALLEGATIONS, SEXUAL HARASSMENT**  
**AND DISCRIMINATION; RETALIATION**

14. More than thirty (30) days prior to the institution of this lawsuit, Intervenor filed a charge with the EEOC alleging violations of Title VII by Defendants. All conditions precedent to the filing of this lawsuit have been timely fulfilled.

15. In or around October, 2002, Defendants subjected Intervenor to sexual harassment, which included but is not necessarily limited to unwanted touching, comments of a sexual nature, offers to support her in return for sexual favors and other unwanted severe and/or pervasive conduct of a sexual nature, and, upon her complaints to Defendants of the unlawful conduct, Defendants retaliated against her. That on or about November 6, 2002, Defendants engaged in unlawful employment practices in violation of Section 704(a) of Title VII, 42 U.S.C.

§ 2000e-3(a), by discharging her in retaliation for engaging in a protected activity, to wit: filing a charge of discrimination against two (2) of the named Defendants in October, 2002.

16. The effect of Defendants' actions, as alleged herein, were to deprive Intervenor of equal employment opportunities and otherwise adversely affected her status as an employee because of her sex, female, and because she engaged in activity protected by Title VII.

17. As a proximate result of Defendants' discriminatory treatment of Intervenor, the Intervenor has been harmed and is entitled to recover her damages from Defendants including but not limited to back wages, front wages, job search expenses and medical expenses, together with interest thereon.

18. The Defendants' discriminatory treatment of Intervenor, as alleged herein, was intentional, willful and wanton, and Defendants engaged in said conduct with malice and requisite indifference to the federally protected rights of the Intervenor to be free from sex discrimination. The Intervenor is therefore entitled to recover punitive damages pursuant to 42 U.S.C. § 1981a(b)(1).

**COUNT TWO**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

19. That the allegations set forth in paragraphs one (1) through eighteen (18) above are hereby realleged and incorporated by reference herein.

20. That the above described acts of Defendants and their supervisory employees were extreme and outrageous and were intentionally and/or recklessly perpetrated against the Intervenor by said Defendants, which resulted in the Intervenor suffering severe mental and emotional distress; that Defendants also did ratify, condone and adopt the conduct of its supervisory employees by failing to stop his misconduct after it was put on actual and constructive notice of said misconduct, and/or by its failure to terminate the employment of the

harassing supervisory employee(s); along with its action in taking, assisting and ratifying retaliatory actions; that such acts constitute intentional infliction of mental and emotional distress.

**COUNT THREE**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

21. That the allegations set forth in paragraphs one (1) through twenty (20) above are hereby realleged and incorporated by reference herein.

22. That Defendants negligently failed to adopt and enforce policies, procedures, or other mechanisms by which individuals who are subjected to sexual harassment by supervisory employees may effectively complain of such conduct; that Defendants knew, or in the exercise of reasonable care, should have known that one or more of their supervisory employees engaged in sexually harassing behavior but turned a blind eye to actual complaints of egregious sexual harassment committed by said employee(s); on information and belief hired employees who were known to have engaged in unlawful sexual harassment of females previously; on information and belief, hired employees without providing them instruction, education or training on the nature and unlawfulness of sexual harassment; and Defendants have taken no effective action to correct, prevent or remedy the effect of sexual harassment.

23. That by virtue of Defendants' negligent failure to adopt, promulgate, publish and enforce policies, procedures or other complaint mechanisms by which individuals who are subjected to sexual harassment by their supervisory employees may complain of such conduct, and by their negligent failure to provide instruction, education and training on the nature and unlawfulness of sexual harassment to supervisory employees, Defendants have caused Intervenor to suffer pecuniary and emotional injuries, some of which are permanent.

24. That notwithstanding Defendants' actual and/or constructive knowledge of the misconduct of their supervisory employees, Defendants willfully and/or negligently failed to intercede on Intervenor's behalf or take any effective action to correct, prevent, or remedy the effect of the misconduct, thereby ratifying, condoning and adopting their supervisory employee's conduct and causing Intervenor to suffer pecuniary and emotional injuries, some of which are permanent.

**COUNT FOUR**  
**NEGLIGENT RETENTION**

25. That the allegations set forth in paragraphs one (1) through twenty-four (24) above are hereby realleged and incorporated by reference herein.

26. That Defendants knew, or in the exercise of reasonable care should have known, of the supervisory employee's prior similar misconduct directed at female employees, which is alleged upon information and belief and/or his reputation for sexual harassment of female employees.

27. That notwithstanding Defendants' actual and/or constructive knowledge of the alleged misconduct, Defendants failed to adequately supervise him or intercede on Intervenor's behalf and negligently retained said supervisory employee as an employee, thereby ratifying, condoning and adopting said supervisory employee's conduct and causing Intervenor to suffer pecuniary and emotional injuries, some of which are permanent.

28. That instead of discharging said supervisory employee for his egregious misconduct, Defendants punished Intervenor and others for reporting the same, thereby ratifying, condoning and adopting said misconduct and causing Intervenor to suffer pecuniary and emotional injuries, some of which are permanent.

**COUNT FIVE**  
**WRONGFUL TERMINATION**

29. That the allegations set forth in paragraphs one (1) through twenty-eight (28) above are hereby realleged and incorporated by reference herein.

30. That by engaging in the actions complained of herein, Defendants violated the common law and public policy of North Carolina as set forth in N.C.G.S. § 143-422.2.

31. That as a consequence of Defendants' misconduct Intervenor has suffered mental and emotional distress; lost wages and benefits of employment.

**COUNT SIX**  
**PUNITIVE DAMAGES**

32. That the allegations set forth in paragraphs one (1) through thirty-one (31) above are hereby realleged and incorporated by reference herein.

33. That Defendants' actions alleged hereinabove were willful, wanton, intentional, and in total disregard of the rights of Intervenor, requiring Defendants to be liable to Intervenor for punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, the Intervenor respectfully requests that the Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in sexual harassment of women, retaliating against employees for engaging in protected activities, and from any other employment practice which discriminates on the basis of sex;

B. Order that the Defendants institute and carry out policies, practices and programs that provide equal employment opportunities for women and which eradicate the effects of their past and present unlawful employment practices;



C. Order Defendants to make the Intervenor whole, by providing appropriate back pay and benefits with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of their unlawful employment practices, including but not limited to reinstatement;

D. Order Defendants to make Intervenor whole by providing compensation for past and future pecuniary losses resulting from the unlawful practices described herein, including job search expenses and medical expenses, in amounts to be determined at trial;

E. Order Defendants to make Intervenor whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of herein, including emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, and loss of self-esteem, in amounts to be determined at trial.

F. Order Defendants to pay Intervenor punitive damages for their intentional, willful, malicious and reckless conduct described herein, in an amount to be determined at trial.

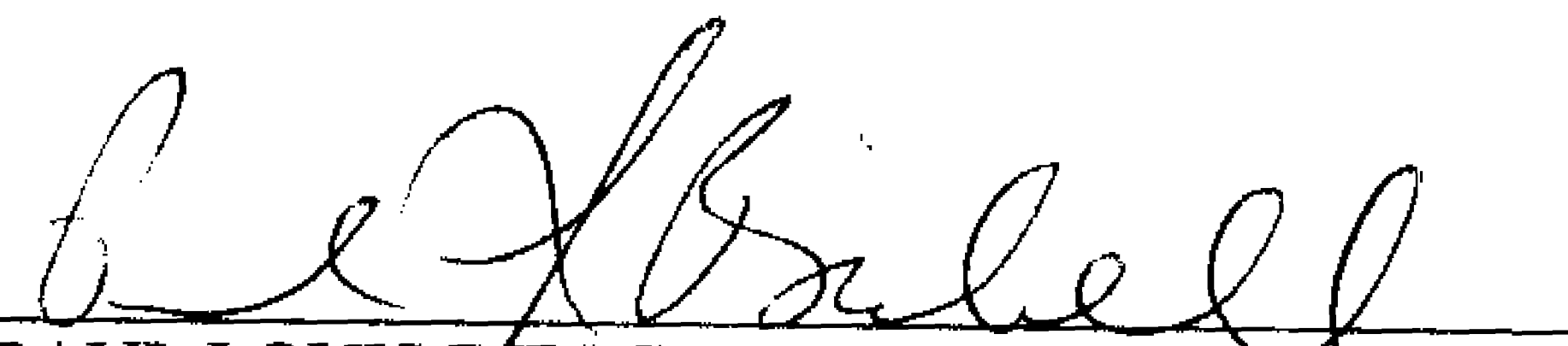
G. Award Intervenor her reasonable attorneys' fees and costs;

H. Grant such further relief as the Court seems just and appropriate.

**JURY DEMAND**

INTERVENOR REQUESTS A JURY TRIAL ON ALL FACT QUESTIONS RAISED IN HER COMPLAINT IN INTERVENTION.

This the 8<sup>th</sup> day of July, 2005.

  
PAUL LOUIS BIDWELL (NC Bar No. 12868)  
Attorney for Intervenor, Jennifer Grady  
29 North Market Street  
Suite 700  
Asheville, NC 28801  
(828) 252-0490

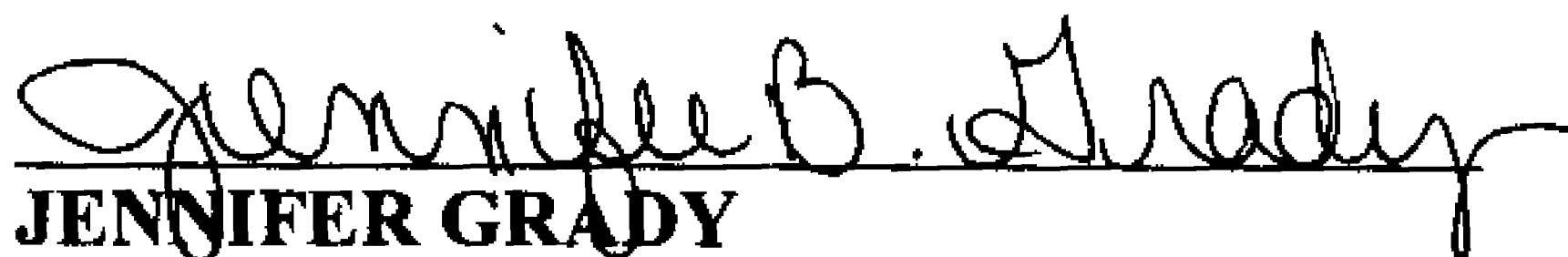


STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

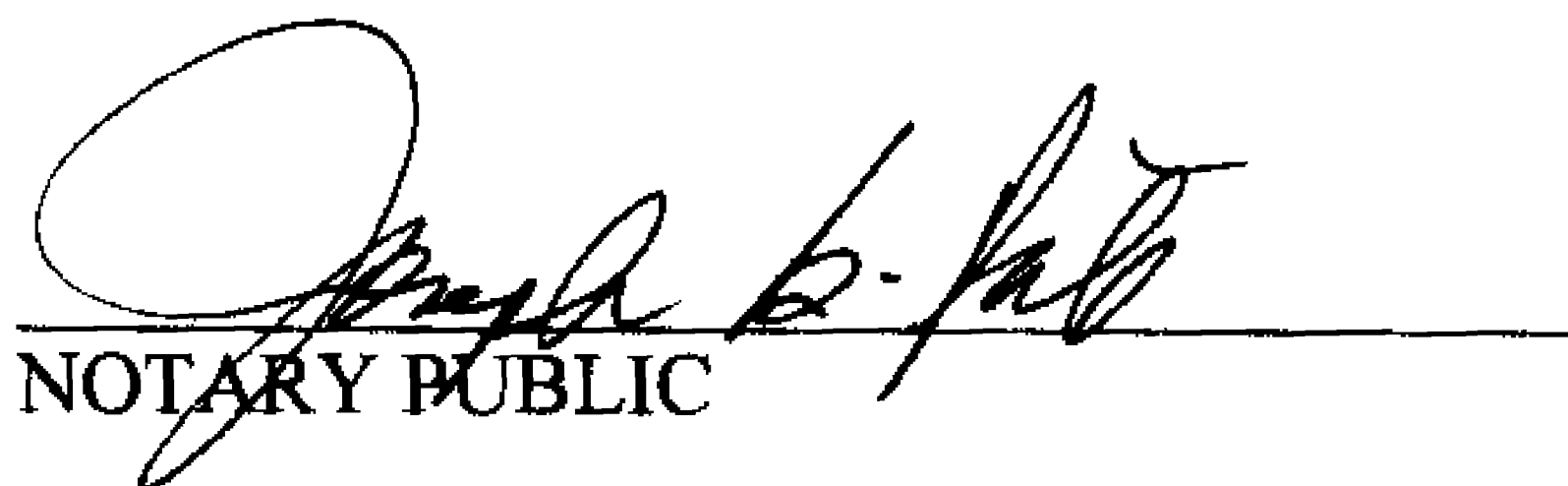
**VERIFICATION**

**JENNIFER GRADY**, being first duly sworn, deposes and says:

That she is the Intervenor in the foregoing action; that as such she has read the foregoing **COMPLAINT IN INTERVENTION OF INTERVENOR JENNIFER GRADY** and knows the contents therein; that the same is true of her own knowledge, except as to those matters and things therein stated upon information and belief, and as to those matters and things, she verily believes them to be true.

  
**JENNIFER GRADY**

Sworn and Subscribed before me this the 15<sup>th</sup> day of May, 2005.

  
NOTARY PUBLIC

My Commission Expires:

5-17-08

**CERTIFICATE OF SERVICE**

I certify that I have served the foregoing document upon the Equal Employment Opportunity Commission and Environmental Air Systems, Inc., by placing true and correct copies of the same in the United States mail, in postage-paid envelopes addressed as follows:

Kara Gibbon Haden  
Senior Trial Attorney  
U.S. Equal Employment  
Opportunity Commission  
Charlotte District Office  
129 West Trade Street  
Suite 400  
Charlotte, NC 28202

Ronald C. True  
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Asheville, NC 28801

John C. Cloninger  
W. Bradford Searson  
Cloninger, Lindsay, Hensley &  
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366 Merrimon Avenue  
Asheville, NC 28801

Jessica E. Leaven  
Attorney-at-Law  
Adams Law Firm  
81-B Central Avenue  
Asheville, NC 28801


in this matter, with a copy of the foregoing **"COMPLAINT IN INTERVENTION OF INTERVENOR JENNIFER GRADY"**.

☒ First Class Mail by depositing in the United States Postal Service, a copy of same in a properly addressed envelope with adequate postage thereon, or

☐ By leaving same at his/her office with a responsible partner or employee.

☐ By Sheriff Civil Process.

**THIS** the 8<sup>th</sup> day of July, 2005.

  
PAUL LOUIS BIDWELL  
Attorney for Intervenor, Jennifer Grady