

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT – JACKSON DIVISION

VOGEL NEWSOME

PLAINTIFF

V.

CIVIL ACTION NO. _____

MITCHELL MCNUTT & SAMS, P.A.,
a Mississippi Corporation;
L.F. "SANDY" SAMS, JR., in his official and
individual capacity; JAMES THOMAS ALLEN,
in his official and individual capacity;
ROBERT T. GORDON, JR., in his official and
individual capacity; MICHAEL T. FARRELL,
in his official and individual capacity;
LADYE MARGARET TOWNSEND, in her official
and individual capacity; and DOES 1-30, in their
official and individual capacities

DEFENDANTS

COMPLAINT¹
JURY TRIAL DEMANDED

Plaintiff, Vogel Newsome ("Plaintiff" and/or "Newsome"), submits this Complaint against the Defendants: Mitchell McNutt & Sams, P.A.; L.F. "Sandy" Sams, Jr.; James Thomas Allen; Robert T. Gordon, Jr.; Michael T. Farrell; Ladye Margaret Townsend and Does 1-30 (hereinafter collectively, partially and/or separately "Defendant(s)") would state the following claims:

PARTIES

1. At all times relevant to this Complaint, Newsome is a citizen of the United States. Newsome at the time of employment with Defendant Mitchell McNutt & Sams, P.A. resided in Jackson, Mississippi 39272, in the Hinds County.

2. Newsome is an African-American/Black female.

¹ NOTE: Boldface, italics and underline in Exhibits and Complaint represents "emphasis" added. Use of Federal Procedural Forms (Lawyers Edition), American Jurisprudence Practice and Procedures, and other resource materials as guide in preparation of Complaint to aid in meeting pleading requirements as required by rules and laws governing said matters. Information redacted on Exhibits where applicable.

3. At all times relevant to this Complaint, Defendant Mitchell McNutt & Sams, P.A. (“MMS,” “named Defendant(s),” and singly addressed as “Defendant(s)²”), is a Mississippi corporation doing business at 105 S. Front Street, Tupelo, Mississippi 38804 in Lee County, Mississippi and having offices that were located at 111 East Capitol Street - Suite 290 in Jackson, Mississippi 39201 (**Hinds** County, Mississippi) and 1080 River Oaks Drive – Suite A280, Flowood, Mississippi 39232 (*Rankin* County). Its registered agent being, Albert G. Delgadillo, 105 S. Front Street, Tupelo, Mississippi 38804. MMS is an employer as defined under the statutes/laws/guidelines of the Fair Labor Standard Act (“FLSA”), Occupational Safety & Health Act (“OSH Act”), Title VII of the Civil Rights Act (“Title VII”) and all other laws governing employment and related issues. At all times relevant to this Complaint, Defendant MMS refers to its agents, representatives, lawyers, and employees³ (i.e. which include named Defendant(s) - each of them, jointly and singly).

4. At all times relevant to this Complaint, Defendant L.F. “Sandy” Sams (“Sams,” “named Defendant(s) and/or singly addressed as “Defendant(s)) served in the capacity of an Attorney, Vice President and Member of the Board at Mitchell McNutt & Sams, P.A. and may be served at his place of employment located at 105 S. Front Street, Tupelo, Mississippi 38804, and is hereby being sued in his official and individual capacity. By engaging in the conduct described in this Complaint, Sams acted under the course and scope of his employment for MMS. By engaging in the discriminatory conduct described in this Complaint, Sams exceeded the authority vested in him as an employee of MMS and committed acts of a personal nature and/or for personal and financial interest/gain.

5. At all times relevant to this Complaint, Defendant James Thomas Allen (“Allen,” “named Defendant(s)” and singly addressed as “Defendant(s)) served in the capacity of Chief Operations Officer, Human Resources and Controller at Mitchell McNutt & Sams, P.A. and may be

² Which is to include named Defendants – i.e. each of them, jointly and singly.

³ Where applicable does not include the Plaintiff/Newsome in that she has been identified.

served at his place of employment located at 105 S. Front Street, Tupelo, Mississippi 38804, and is hereby being sued in his official and individual capacity. By engaging in the conduct described in this Complaint, Allen acted under the course and scope of his employment for MMS. By engaging in the discriminatory conduct described in this Complaint, Allen exceeded the authority vested in him as an employee of MMS and committed acts of a personal nature and/or for personal and financial interest/gain.

6. At all times relevant to this Complaint, Defendant Robert T. Gordon Jr. (“Gordon,” “named Defendant(s)” and/or singly addressed as “Defendant(s)”) served in the capacity of an Attorney and perhaps a Member/Partner/Shareholder at Mitchell McNutt & Sams, P.A. which had offices located at 111 East Capitol Street - Suite 290 in Jackson, Mississippi 39201 (**Hinds** County, Mississippi) and 1080 River Oaks Drive – Suite A280, Flowood, Mississippi 39232 (*Rankin* County) and may be served at his residence located at 13 Sheffield Court, Jackson, Mississippi 39211,⁴ and is hereby being sued in his official and individual capacity. By engaging in the conduct described in this Complaint, Gordon acted under the course and scope of his employment for MMS. By engaging in the discriminatory conduct described in this Complaint, Gordon exceeded the authority vested in him as an employee of MMS and committed acts of a personal nature and/or for personal and financial interest/gain.

7. At all times relevant to this Complaint, Defendant Michael T. Farrell (“Farrell,” “named Defendant(s)” and/or asingly addressed as “Defendant(s)”) served in the capacity of an Attorney and perhaps a Member/Partner/Shareholder at Mitchell McNutt & Sams, P.A. which had offices located at 111 East Capitol Street - Suite 290 in Jackson, Mississippi 39201 (**Hinds** County, Mississippi) and 1080 River Oaks Drive – Suite A280, Flowood, Mississippi 39232 (*Rankin* County) and may be served at his residence located at 818 Pinehurst Place, Jackson, Mississippi 39202,⁵ and is hereby being sued in his official and individual capacity. By engaging in the conduct described in

⁴ As of this present date, Plaintiff does not believe Gordon is presently employed with MMS.

⁵ As of this present date, Plaintiff does not believe Farrell is presently employed with MMS.

this Complaint, Farrell acted under the course and scope of his employment for MMS. By engaging in the discriminatory conduct described in this Complaint, Farrell exceeded the authority vested in him as an employee of MMS and committed acts of a personal nature and/or for personal and financial interest/gain.

8. At all times relevant to this Complaint, Defendant Ladye Margaret Townsend (“Townsend,” “named Defendant(s)” and/or singly addressed as “Defendant(s)”) served in the capacity as a Legal Secretary at Mitchell McNutt & Sams, P.A. which had offices located at 111 East Capitol Street - Suite 290 in Jackson, Mississippi 39201 (**Hinds** County, Mississippi) and 1080 River Oaks Drive – Suite A280, Flowood, Mississippi 39232 (*Rankin* County) and may be served at her residence located at 620 South College Street, Brandon, Mississippi 39042,⁶ and is hereby being sued in her official and individual capacity. By engaging in the conduct described in this Complaint, Townsend acted under the course and scope of her employment for MMS. By engaging in the discriminatory conduct described in this Complaint, Townsend exceeded the authority vested in him as an employee of MMS and committed acts of a personal nature and/or for personal and financial interest/gain.

9. At all times relevant to this Complaint, Defendants Does 1 through 30 (“Does 1-30,” “named Does,” “Doe Defendants” and/or each singly addressed as “Defendant(s)”) served in their respective positions with their employer. Newsome is ignorant of the true names and capacities of Defendants Does 1 through 30, inclusive, and therefore sue these Defendants by such fictitious names. Newsome is informed and believes and thereon alleges that each Doe Defendant so named (and/or to be named) is responsible and/or participated in the conspiracy against Newsome and in some manner is responsible for the injuries and damages suffered by Newsome as set forth. Newsome will amend her Complaint to state the true names and capacities of Defendants Does 1 through 30, inclusive, when they have been identified and/or ascertained. By engaging in the conduct described in this Complaint, Doe Defendants acted under the course and scope of their

⁶ As of this present date, Plaintiff does not believe Townsend is presently employed with MMS.

employment with their respective employer. By engaging in the discriminatory conduct described in this Complaint, Doe Defendants exceeded the authority vested in them as an employee of their respective employer and committed acts of a personal nature and/or for personal and financial interest/gain.

JURISDICTION

10. Jurisdiction is conferred pursuant to 28 USCS 1331 and 1343 (1)(2)(3)(4).

11. Jurisdiction is conferred on this Court by 42 U.S.C. and 3613(a).

12. This is an action seeking "equal rights under the law" pursuant to Title 42 USCA §1981 of the Civil Rights Act. This Court has jurisdiction pursuant to general federal question statute.

13. This action arises under the United States Constitution, particularly under the provisions of the Fourth, Sixth, and Fourteenth Amendments to the Constitution of the United States (Art. IV, U.S. Constitution; Art. VI, U.S. Constitution; Art. XIV, U.S. Constitution), and under federal law, particularly the Civil Rights Act, Titles 42 of the United States Code § 1985 (42 U.S.C.A. § 1985), 42 of the United States Code § 1986 (42 U.S.C.A. § 1986); and 42 USCA § 2000e-3⁷ prohibits discharge in retaliation for making charge under Act.

14. This Court has jurisdiction of this cause under Titles 28 of the United States Code, § 1343 (28 U.S.C.A. § 1343).

15. 29 USCS § 217 confers jurisdiction on district courts. Also, 28 USCS § 1331.

16. This Court has jurisdiction of this cause under Titles 28 of the United States Code 1331, 29 USCA § 215(a)(3) of the Fair Labor Standards Act, 29 USCA §§ 210 et seq. (prohibiting discharge in retaliation for institution of proceedings under Act); 29 USCA § 660(c)(1) of the Occupational Safety and Health Act, 29 USCA §§ 641 et. Seq. (prohibiting discharge in retaliation of exercise of rights under Act).

⁷ *Roberts v. Citicorp Diners Club, Inc.*, 597 F.Supp. 311 (1984)

17. Jurisdiction of the action is conferred on this court by section 16(b) of the Act (29 U.S.C.A. § 216(b)), and by the provisions of 28 U.S.C.A. § 1337, relating to any civil action or proceeding arising under any Act of Congress regulating commerce.

18. Plaintiff brings this action to enjoin Defendants from violating the provisions of the Fair Labor Standards Act ("FLSA") of 1938, 29 USC § 201 et seq.

19. Jurisdiction of this action is conferred on the Court by 29 USC § 217 (Section 17 of the Act) and by 28 USC § 1337.

20. This is an action for a declaratory judgment under 28 USC § 2201 for the purpose of determining an actual controversy between the parties concerning the provisions of the Fair Labor Standards Act, 29 USC § 201 et seq.

21. This controversy involves the proper interpretation and application of the Act, a law of the United States regulating commerce. Therefore, this Court has jurisdiction of this controversy under 28 USC § 1337.

22. This action is brought to recover from Defendant Mitchell McNutt & Sams P.A. unpaid wages, overtime compensation, and additional equal amount as liquidated damages, and reasonable attorney's/legal fees under the provisions of the Fair Labor Standards Act, 29 USC § 201 et seq., a law of the United States regulating interstate commerce.

23. This Court has jurisdiction over this matter under 28 USC §§ 1331, 1337.

24. This Court has jurisdiction pursuant to 28 USC § 1391.

25. This Court has jurisdiction in that this is an action authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), codified as 42 USC § 2000e-(f)(1)(3).

26. This Court has subject matter jurisdiction of this action under 28 USC §§ 1343, 1345.

27. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 USC § 1332.

28. Plaintiff also seeks redress of violations of state law rights via the supplemental jurisdiction of this Court. This Court has subject matter jurisdiction over these related state law claims under 28 USC § 1367

29. There is complete diversity of citizenship between Plaintiff and all Defendants in this matter. As will be more fully explained below, the amount in dispute in this action, exclusive interest and costs, exceeds the sum of \$75,000. Therefore, this court has jurisdiction over this dispute by virtue of 28 USC § 1332.

30. This Court has jurisdiction of the subject matter of this action pursuant to 28 USC § 1331 because the claims asserted in it arise out of the Constitution and laws of the United States. As is more fully shown below, this Complaint asserts claims under:

- a) 42 USC § 1981: Equal Rights Under The Law
- b) 42 USC 2000e-2: Unlawful Employment Practices
- c) 42 USC § 2000e-3: Other Unlawful Employment Practices
- d) 42 USC § 1985: Conspiracy To Interfere With Civil Rights
- e) 42 USC § 1986: Action For Neglect To Prevent
- f) Breach of Agreement/Contract
- g) Defamation and Conspiracy To Defame
- h) Negligent Interference with Employment
- i) Discrimination in Employment
- j) Fair Labor Standards Act
- k) Occupational Safety and Health Act
- l) Sexual Harassment and Hostile Work Environment
- m) Retaliation
- n) Retaliation Under The Whistleblower Act and/or Laws Governing Said Matters
- o) Breach of Express Employment Agreement
- p) Breach of the Covenant Of Good Faith And Fair Dealing
- q) Negligent Infliction of Emotional Distress
- r) Fraud
- s) Negligent Interference with Employment – Malicious Conspiracy to Cause Discharge from Employment
- t) Violation of the Fourteenth Amendment of the U.S. Constitution – Due Process

- u) Violation of the Fourteenth Amendment of the U.S. Constitution – Equal Protection

and, therefore, the action arises under the Constitution and federal laws as set forth herein.

31. Congress gave federal district courts jurisdiction of these types of disputes in 28 USC § 1343.

32. Under applicable federal statutes, federal district courts have original jurisdiction over civil actions properly commenced to seek redress for a conspiracy to interfere with the civil rights of another, for negligence in preventing interference with the civil rights of another, for the deprivation, under color of state law, custom, or usage, of those civil rights guaranteed by federal statutory or constitutional provisions to all persons within the jurisdiction of the United States, and for the violation of any federal statute providing for the protection of civil rights. (Am. Jur. Pleading & Practice Forms – Civil Rights § 4).

33. In order to maintain an action under 42 USCA § 1985, Newsome need not first exhaust administrative or state remedies. Neither does the availability of a state remedy preclude Newsome from seeking relief under the Civil Rights Act, when the Complaint otherwise states a claim. (*Hazzard v. Weinberger*, 382 F.Supp. 225 (1974) affirmed 519 F.2d 1397 (2nd Cir. 1975)) or state court remedies (*Burt v. City of New York*, 156 F.2d 791 (1946)).

VENUE

34. Venue is proper in the Southern District of Mississippi, Jackson, Mississippi as the cause of action occurred or accrued in Hinds County, Mississippi.

35. Since there is no special venue statute for civil rights actions, the general venue statute pursuant to 28 USCS § 1391 controls.⁸

⁸ *Jones v. Bales*, 58 FRD 453 (1972), affirmed 480 F.2d 805 (5th Cir. 1973).

STATUTE OF LIMITATIONS

Newsome believes that the claims and the relief sought through this Complaint have been timely filed as it relates to conspiracies involving violations of federal statutes guaranteeing equal rights and said violations resulting in a wrongful discharge from employment. In support thereof see footnote below:⁹

MATERIAL FACTS

In support of the claims set forth herein and to explain the facts, evidence and legal conclusions set forth in this Complaint, the following material facts are important in deciding the issues raised herein:

24. In or about July/August 2003, Newsome interviewed with MMS/Gordon for the position of Legal Secretary.

25. In or about September 2003, Newsome began temporary/contract employment with MMS as a Legal Secretary at its 1080 River Oaks Drive – Suite A280 Flowood, Mississippi 39232 location.

26. On or about October 6, 2003, Newsome began permanent full-time employment with MMS as a Legal Secretary. Newsome was assigned to Gordon.

27. In or about December 2003, Newsome began inquiring into methods of paying her and/or nonexempt salaried employees' wages and overtime earned. Newsome's submittal of complaint and inquiry was in compliance with MMS Employee Handbook's:

- (i) Welcome new employee!
- (ii) Employee Acknowledgement Form

⁹ *Walton v. Utility Products, Inc.*, 424 F.Supp. 1145 (D.C.Miss. 1976) - (n.2) Under law of Mississippi, general six-year period of limitations rather than three-year period of limitations which applies to action founded on implied contracts and action to recover back pay governs employment discrimination suit charging violation of federal statute guaranteeing equal rights under the law. 42 U.S.C.A. § 1981; Code Miss.1972, §§ 15-1-29, 15-1-49. (n. 4) Under law of Mississippi, employee's claim against employer charging violation of federal statute guaranteeing equal rights, filed within six years of alleged racial discrimination, was not time barred. Code Miss.1972, § 15-1-49; 42 U.S.C.A. § 1981.

Heath v. D. H. Baldwin Co., 447 F.Supp. 495 (N.D.Miss.Greenville.Div.,1977) - General six-year statute of limitations in Mississippi was applicable to suit by laid off employee against employer and union claiming racial discrimination. Code Miss. 1972, § 15-1-49; 42 U.S.C.A. § 1981.

Howard v. Sun Oil Co., 294 F.Supp. 24 (S.D.Miss.,1967) - Ordinarily, suit in tort for damages brought more than six years after commission of tort is barred by Mississippi six-year statute of limitations. Code Miss.1942, § 722.

- (iii) Customer Relations
- (iv) 102 Employee Relations
- (v) 103 Equal Employment Opportunity
- (vi) 104 Business Ethics and Conduct
- (vii) 401 Timekeeping
- (viii) 403 Paydays
- (ix) 409 Administrative Pay Corrections
- (x) 507 Overtime
- (xi) 522 Workplace Violence Prevention
- (xii) 701 Employee Conduct and Work Rules
- (xiii) 718 Problem Resolution
- (xiv) 722 Workplace Etiquette

28. Beginning about December 2003, MMS began efforts of covering up unlawful employment practices brought to its attention by Newsome.

29. As a direct and proximate result of Newsome having submitted complaint(s) to MMS addressing what she believed to be unlawful employment practices, Defendant MMS subjected Newsome to discriminatory practices, retaliation, harassment and a hostile work environment in violation and contradictory of MMS policies:

- (i) Welcome new employee!
- (ii) Customer Relations
- (iii) 102 Employee Relations
- (iv) 103 Equal Employment Opportunity
- (v) 104 Business Ethics and Conduct
- (vi) 401 Timekeeping
- (vii) 403 Paydays
- (viii) 405 Employment Termination
- (ix) 409 Administrative Pay Corrections
- (x) 507 Overtime
- (xi) 522 Workplace Violence Prevention
- (xii) 701 Employee Conduct and Work Rules
- (xiii) 703 Sexual and Other Unlawful Harassment
- (xiv) 705 Personal Appearance
- (xv) 718 Problem Resolution
- (xvi) 722 Workplace Etiquette

as well as other federal and state statutes governing said matters.

30. In or about January 2004, Newsome timely, properly and adequately notified MMS that if it did not correct its unlawful employment practices which violated the Fair Labor Standards Act ("FLSA") and/or governing laws, she would report violations to the appropriate government agency. Despite said notification of unlawful employment violations

under the FLSA and/or governing statutes and laws, MMS continued to conduct business in violation of the FLSA and in a manner prohibited by public policies.

31. On or about February 5, 2004, Newsome to the time to prepare documentation to support her concerns of FLSA violations. See **Exhibit "1"** attached hereto and incorporated by reference. While Allen asserts, "compensation has been calculated accurately," it had not been. Moreover, Newsome was not the only Legal Secretary that questions MMS' practices. However, rather than accept the frivolous answer provided her, Newsome went to an outside source to inquire and it was confirmed that MMS was practicing in violation of FLSA.

32. Prior to Newsome's filing complaint with government agency regarding her concerns as to MMS' unlawful employment violations under the Fair Labor Standards Act, she addressed her concerns with her supervisor (MMS/Gordon), MMS' Chief Operations Officer/Human Resources/Controller (Allen), Farrell (an attorney at MMS whose area of practice was Labor and Employment Law), and Rosonna Murray/Tammy M. Cochnauer/Townsend (co-workers); to no avail. MMS refused to correct the employment violations reported although timely, properly and adequately advised and within the policies/guidelines of MMS's Employee Handbook. Newsome on or about February 6, 2004 sent Allen an email which stated in part the following:

Because of my concerns, I took Bob's (RTG) advice and decided to talk to someone in the legal profession (an attorney) to determine whether or not I am understanding the statute/codes correctly in regards to the FLSA. The attorney confirmed my understanding is correct. Based upon the information I provided, was advised that if indeed MMS is doing this, non-exempt employees would be entitled to the lost wages withheld, etc. and MMS required to comply with the FLSA in regards to wages. This being the case, I can now understand why MMS would want me to think that I was wrong.

I also decided to talk to a person who handles the payroll for the company he/she works for to see if I had an understanding of the FLSA requirements. This person confirmed that I did.

Yet Jim, from the responses to my concerns, you are still telling me that MMS in (sic) paying its NON-Exempt salaried employees in compliance with the FLSA.

Mike (MMF) spoke with us on yesterday to explain how MMS computes the overtime pay for employees. I shared with Mike I believe I understand how overtime is to be computed. Mike presented us with documentation and then discussed overtime pay using "Chinese Overtime" computation. While I am not familiar with that (Chinese Overtime) term, if MMS is going to use that method, then I will have to check into this as well – to see if it is in compliance with the FLSA – to see what type of employees (factory, salaried, non-exempt, etc.) that such computation is to be used on.

*Mike also provided us with phone numbers he had of those who could answer questions for us. As I shared with Mike, *he is talking to us with the interest of MMS in mind, and not as to the concerns of the employee.* . . .*

Therefore, if by Monday, February 9, 2004, I have not been compensated for the lost wages and hours I have advised you that I have concerns about under the FLSA, I will be taking this matter to the Labor Department for review. . .

See **Exhibit "27"** attached hereto and incorporated by reference as if set forth in full herein.

33. In or about February 2004, when MMS failed to comply with payment of Newsome's and/or its nonexempt salaried employees' wages and overtime in compliance with federal and state laws, Newsome submitted a complaint to the United States Department of Labor – Wage and Hour Division ("W&H") in Jackson, Mississippi alleging matters of public policy and of public interest under the Fair Labor Standards Act ("FLSA") and other statutes/laws governing said matters. W&H assigning Case/Charge No. 1387893. Upon conclusion of matter W&H advising Newsome of her right to bring legal action against MMS.

34. As a direct and proximate result of Newsome having reported the unlawful employment violations of MMS, Gordon, Farrell and Townsend provided false and misleading information during a federal investigation for purposes of obtaining an undue and unlawful/illegal advantage. Moreover, for purposes of impeding a federal investigation, obstructing justice and obstructing the administration of justice. Gordon, Farrell and Townsend having personal/individual and business interest in the outcome of any such investigation. Those known to have a "Conflict of Interest" pursuant to MMS Policy No. 108 which states in part:

Employees have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy establishes only the framework within which Mitchell McNutt wishes the firm to operate. The purpose of these guidelines is to provide general direction so that employees can seek further clarification on issues related to the subject of acceptable standards of operation. Contact the Chief Operations Officer for more information or questions about conflicts of interest.

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee or for a relative as a result of Mitchell McNutt's business dealings. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage.

No "presumption of guilt" is created by the mere existence of a relationship with outside firms. However, if employees have any influence on transactions involving purchases, contracts, or leases, it is imperative that they disclose to an officer of Mitchell McNutt as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Personal gain may result not only in cases where an employee or relative has a significant ownership in a firm with which Mitchell McNutt does business, but also when an employee or relative receives any substantial gift, or special consideration as a result of any transaction or business dealings involving Mitchell McNutt.

or the applicable statutes/laws governing "conflict of interest."

35. As a direct and proximate result of Newsome having reported the unlawful employment practices of MMS, Defendant(s) discriminated, retaliated, harassed and subjected Newsome to a hostile working environment.

36. During Newsome's employment with MMS she submitted numerous complaints reporting what she believed was discrimination, retaliation, harassment and a hostile work environment towards her. While Newsome submitted complaints to MMS addressing unlawful employment practices, Defendant(s) did nothing to deter, prevent or protect Newsome from the unlawful employment practices reported.

37. During Newsome's employment with MMS she submitted numerous complaints reporting what she believed was discrimination, retaliation, harassment and a hostile work environment by supervisor(s), manager(s), attorney(s), Chief Operation Officer, and/or co-worker(s) towards her. While Newsome submitted complaints to MMS addressing the unlawful employment practices in accordance with MMS Policies:

- (i) Welcome new employee!
- (ii) Customer Relations
- (iii) 102 Employee Relations
- (iv) 103 Equal Employment Opportunity
- (v) 104 Business Ethics and Conduct
- (vi) 405 Employment Termination
- (vii) 522 Workplace Violence Prevention
- (viii) 701 Employee Conduct and Work Rules
- (ix) 703 Sexual and Other Unlawful Harassment
- (x) 705 Personal Appearance
- (xi) 718 Problem Resolution
- (xii) 722 Workplace Etiquette

MMS and/or Defendant(s) did nothing to deter, prevent or protect Newsome from the unlawful employment practices reported.

38. During Newsome's employment she was concerned about the health, safety and well being of MMS employees who worked at the 111 East Capitol Street – Suite 290 ("Jackson location") location. MMS had its Jackson, Mississippi office designed in retaliation to the complaints Newsome had submitted.

39. MMS designed its Jackson location for purposes of discriminating, retaliating, harassing and subjecting Newsome to a hostile work environment because she complained of unlawful employment practices and engaged in protected activities affecting public policy.

40. Newsome reported what she believed to be health and safety violations to MMS/Allen. Health and safety violations Newsome believed to be in violation of the Occupational Safety and Health Act ("OSH Act"). While Newsome reported the health and

safety violations to MMS/Allen, MMS/Allen did nothing to deter and/or prevent the harm that may result from health and safety violations reported.

41. Newsome timely, properly and adequately notified MMS/Allen that if it did not correct its OSH Act violations, she would report its unlawful employment practices to the Occupational Safety and Health Administration ("OSHA"). Despite said notification of unlawful employment violations under OSHA and/or governing statutes and laws, MMS continued to conduct business in violation of OSH Act and in a manner prohibited by public policies.

42. In retaliation to Newsome having reported health and safety violations under OSH Act, Defendant(s) subjected Newsome to discrimination, retaliation, harassment and a hostile work environment. MMS drastically reducing Newsome's workspace from one of spaciousness to one of strict, restrictive and severe reduction in space/size as well as subjecting Newsome to strict, oppressive supervision and monitoring for purposes of forcing Newsome out of the workplace and depriving her protected rights secured under federal and state laws governing said matters.

43. On or about May 25, 2004, Newsome filed a complaint with OSHA.

44. On or about June 2, 2004, OSHA contacted MMS notifying of the following OSH Act violations reported:

- 1) *Employees are exposed to fumes from paints and wall coverings because of ongoing renovation of building spaces.*
- 2) *Employees are exposed to ergonomic hazards as the work spaces are cramped and confined causing employees to perform work assignments in awkward and twisted positions:*
 - a. *Desk (work surfaces) do not have ample (depth) leg room.*
 - b. *Desk do not have ample floor to work surface height.*
 - c. *Aisle width(s) did not permit employees the freedom(s) of motion to easily maneuver in their workspace(s).*

OSHA providing MMS with a deadline of June 8, 2004, to notify OSHA "that appropriate action has been taken or that no hazard exists and why, an OSHA inspection will be conducted." See **Exhibit "2"** attached hereto and incorporated by reference as if set forth in full herein.

45. On June 7, 2004, the day **PRIOR** to OSHA's deadline provided MMS/Allen, MMS/Allen discriminated and retaliated against Newsome for reporting health and safety violations and subjected her to malicious attacks and acknowledging her reporting of violations to government agencies.

46. Defendant(s)' discrimination, retaliation, harassment and subjecting Newsome to a hostile work environment existed for the majority of Newsome's employment with MMS.

47. During Newsome's employment with MMS, she advised MMS/Allen/Gordon that she wanted to continue to work for MMS and advised of concerns of efforts taken to force her out of the workplace through the use of unlawful employment practices – i.e. *discrimination, retaliation, harassment and subjecting her to a hostile work environment.*

48. Defendant(s) discriminated, retaliated, harassed and subjected Newsome to a hostile work environment as a direct and proximate result of learning of Newsome's engagement in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*).

49. Defendant(s) engaged in conspiracy for purposes of depriving Newsome equal protection of the laws, equal privileges and immunities of the laws and due process of laws. Rights secured and guaranteed under the Constitution. Moreover, MMS did so for purposes of depriving Newsome Civil Rights and/or rights secured and guaranteed under the laws of the United States.

50. During Newsome's employment with MMS, she notified MMS/Allen that it was conducting business in violation of Title VII of the Civil Rights Act. Newsome advised MMS that if it continued with its unlawful employment practices, she would report its violations to the United States Department of Labor – Equal Employment Opportunity Commission. Despite said notification of unlawful employment violations under Title VII and/or governing statutes and laws, MMS continued to conduct business in violation of Title VII and in a manner prohibited by public policies.

51. On or about November 30, 2004, MMS provided Newsome with annual Performance Review pursuant to MMS Policy No. 209 PERFORMANCE EVALUATION which stated in part:

Attorneys, supervisors and employees are strongly encouraged to discuss job performance and goals on an informal, day-to-day basis. Additional formal performance evaluations are conducted to provide both supervisors and employees the opportunity to discuss job tasks, identify and correct weaknesses, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals.

Performance evaluations are scheduled approximately every 12 months, coinciding generally with the anniversary of the employee's original date of hire. Some employees are reviewed at calendar year end.

See **Exhibit "3"** attached hereto and incorporated by reference as if set forth in full herein. Performance Review was prepared by Gordon with discriminatory, retaliatory, harassing and hostile intent towards Newsome. See **Exhibit "29"** – *Performance Review* attached hereto and incorporated by reference as if set forth in full herein. Said Performance Review was prepared with intent to defame and slander Newsome's character and reputation.

52. **PRIOR** to Newsome's November 30, 2004 Performance Review, there was a meeting between MMS' Allen, Gordon and Farrell. Allen being MMS' Chief Operations Officer/Human Resource Representative/Controller. Gordon was an Attorney/Member/Shareholder at MMS and Newsome's supervisor. Farrell was an Attorney/Member/Shareholder at MMS whose area of practice was Labor and Employment Law.

53. On November 30, 2004, MMS/Allen/Gordon wanted Newsome to agree to the Performance Review by providing her signature. Newsome refused. Newsome shared with MMS/Allen/Gordon her belief that Performance Review was prepared with retaliatory purposes and she could not sign it along with other reasons for her refusal. Thus, resulting in

MMS/Allen noting on Newsome's Performance Evaluation "will not sign 11/30/04 J T Allen."

54. The November 30, 2004, MMS Performance Review was prepared and based upon the job duties of a Legal Secretary.

55. During Newsome's employment with MMS, MMS never provided Newsome with the Job Description for Legal Secretary.

56. On November 30, 2004, Newsome requested a copy of the Job Description for Legal Secretary pursuant to 210 Job Description via email which stated in part:

Pursuant to 210 Job Descriptions of the MMS Employee Handbook, please provide me with a copy of the Job Description for a Legal Secretary.

Thanks in advance for your assistance in this request. Any questions, please let me know. . .

See Exhibit "4" - "REQUEST FOR JOB DESCRIPTION - LEGAL SECRETARY" attached hereto and incorporated by reference as if set forth in full herein. Newsome submitting this request to the attention of Allen and cc'ing Gordon. EMPHASIS ADDED because the very next day was when Newsome came under another VICIOUS and LIFE-THREATENING attack by Gordon in violation of MMS policies which resulted in her unlawful termination 3 days later (December 3, 2004).¹⁰

522 WORKPLACE VIOLENCE PREVENTION - Mitchell McNutt is committed to preventing workplace violence and to maintaining a safe work environment. Given the increasing violence in society in general, Mitchell McNutt has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises.

All employees should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, "horseplay," or other conduct that may be dangerous to others. Firearms, weapons, and other dangerous or hazardous devices or substances are prohibited from the premises of Mitchell McNutt without proper authorization.

Conduct that threatens, intimidates, or coerces another employee, a client, or a member of the public at any time,

¹⁰ Crenshaw v. Bozeman Deaconess Hospital.¹⁰ In that case the plaintiff contended that the employer breached the implied covenant by failing to properly investigate the charges brought against her by her coemployees. The argument was that the employer had undertaken to investigate the complaints against her, in accordance with its self-imposed personnel policies, but then it affirmed her discharge on the basis of an incomplete investigation. At the trial, plaintiff's counsel produced and qualified an expert in the field of personnel management with special experience in the area of the employer's operations. The expert testified, in substance, that it was of vital importance generally, and to the individual involved particularly, to conduct an adequate investigation of charges of misconduct against an employee prior to dismissal for poor performance; that the plaintiff would have difficulty finding subsequent employment following a discharge for poor performance; that the defendant failed to properly investigate the charges against the plaintiff; and that, in her opinion, the discharge of the plaintiff had been unjustified. . . . Many of the cases involving a wrongful discharge on a bad faith theory are predicated upon the existence of established personnel practices and procedures for terminating at-will employees, and a corresponding failure to follow the established guidelines or the application of them in an arbitrary and abusive way. While it is unlike that expert witnesses on these issues will ever be regarded as indispensable, they can clearly provide valuable support for a plaintiff in a bad faith wrongful discharge case. 48 Am. Jur. Proof of Facts 2d 232-234. Also see Paragraphs 603 and 604 of this Complaint with supporting Exhibit "7."

including off-duty periods, **will not be tolerated**. *This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law.*

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor/attorney or the Chief Operations Officer. This includes threats by employees, as well as threats by clients, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be specific and detailed as possible.

All suspicious individuals or activities should be reported as soon as possible to a supervisor/attorney. **Do not place yourself in peril**. If you see or hear a commotion or disturbance near your work station, do not try to intercede or see what is happening.

Mitchell McNutt **will promptly and thoroughly investigate all reports of threats of (or actual) violence** and of suspicious individuals or activities. *The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, Mitchell McNutt may suspend employees, either with or without pay, pending investigation.*

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.

Mitchell McNutt encourages employees to bring their disputes or differences with other employees to the attention of their supervisor or the Chief Operations Officer **before the situation escalates into potential violence**. Mitchell McNutt **is eager to assist** in the resolution of employee disputes, and **will not discipline employees for raising concerns**.

that of:

703 Sexual and Other Unlawful Harassment - - *All allegations of sexual harassment will be quickly and discreetly investigated.* To the extent possible, your confidentiality and that of any witnesses and the alleged harasser will be protected against unnecessary disclosure. *When the investigation is completed, you will be informed of the outcome of the investigation.*

Any supervisor, attorney or manager who becomes aware of possible sexual or other unlawful harassment must immediately advise the Chief Operations Officer or any member of management so it can be investigated in a timely and confidential manner. Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary action, up to and including termination of employment.

as well as:

722 WORKPLACE ETIQUETTE - Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware *that their behavior in the workplace may be disruptive or annoying to others.* Many of these day-to-day

issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee's ability to concentrate and be productive. . . .

and many more. See **Exhibit "3"** attached hereto and incorporated by reference as if set forth in full herein. MMS and Defendant(s) were aware of the unlawful employment practices reported by Newsome; however, failed to follow the guidelines set forth in MMS Handbook in the handling/resolution thereof.

57. MMS denied Newsome's request for Job Description for Legal Secretary.

58. On December 1, 2004, in retaliation to Newsome's refusal to sign adverse and retaliatory MMS Performance Review, Gordon subjected Newsome to more SEVERE discriminatory, retaliatory, harassment and hostile work environment.

59. On December 1, 2004, in response to Gordon's vicious and hostile attacks on Newsome, she submitted complaint to MMS/Allen via email entitled, "HARASSMENT INCIDENT - 12/01/04" which stated in part:

On yesterday during my Annual Evaluation with you and Bob (RTG), I expressed concerns that the evaluation that MMS provided was adverse as a result of the Complaints/Issues that I have brought to MMS' attention.

While MMS willingly and knowingly condones the monitoring by RTG (monitoring which I find harassing, strict, oppressive, unnecessary and unlawful), there is no excuse for RTG's continued unlawful behavior.

On today, upon RTG's returning from lunch, he proceeded to harass me and demand that I end my lunch abruptly - with no valid and just cause for so. I advised RTG that I was at lunch and would complete the revisions to the pleading when I finish my 1 hour lunch (which would be shortly). However, this was not acceptable to RTG and this lasted for approximately four (4) minutes. His refusing to leave and demanding that I clock back in and tell him how much time I have remaining.

While MMS sanctions such conduct and behavior by RTG and supports the monitoring (which I gathered from the evaluation) of me, my concerns are further brought when such monitoring is used for the sole purposes of providing false and misleading information to the Court (Judges, etc.) in order to obtain enlargement of time.

While MMS may accept such monitoring by RTG, I do not believe that the Court(s), etc. would smile on the use of such monitoring as a reason for an attorney's inability to meet deadlines on behalf of his client. Thus, it appears to me that such monitoring takes precedent over RTG's legal obligations to his clients. I advised RTG that I believe that his monitoring time would be better used in attending to client matters and meeting the deadlines he have in the various cases rather than harassing me. For instance providing the Court(s) with reasons such as:

- (1) being ill (misleading the Court when I believe he came into the office each day that week – will check my monitoring log on RTG’s surveillance of me) – from such information one may gather that had RTG spent as much time attending to the client’s needs rather than monitoring me, he would have been able to meet his deadline;
- (2) using illness of another secretary to mislead the Court in order to obtain enlargement of time. (Action questioned and noted to RTG that I was present – moreover it was not his secretary that was out and that we do have the typing pool. In this case a Temp was brought in (Britney Emmons). Will check my log on RTG’s monitoring for that week as well as Dictation Job Log as to what he did to see why he was unable to meet deadline – one may gather the priority he gives to his monitoring duties.
- (3) advising Court that he would be out of town – will check my monitoring log, believe he was present that day and also see about how much time was given to his monitoring duties.

I believe is wrong when the real reason for RTG’s inability to meet deadlines for the clients is due to his compulsive/obsessive needs to harass and monitor me.

In light of the above examples, I really don’t believe MMS (or anyone else) can give any credence to the Annual Evaluation prepared by RTG. While I questioned the *skillful* use of RTG’s preparation and motive behind such evaluation/comments made, as I shared, found the information provided by RTG false and misleading. I also gathered it (sic) such an adverse was prepared for the purposes of MMS attempting to find reasons for not giving me a favorably merit increase – since such increase is based on the rating of the Evaluator (so I gathered).

I will obtain copies of such pleadings from PACER – if accessible (not MMS’ account – I have my own), for someone according to Annual Evaluation that has no knowledge of Court System, Court Rules, etc. . .

See **Exhibit “5”** attached hereto and incorporated by reference as if set forth in full herein.

60. On December 3, 2004, in retaliation of Newsome’s December 1, 2004 complaint, MMS/Sams retaliated and terminated Newsome’s employment.

61. In December 2004, Newsome filed for unemployment benefits with the Mississippi Department of Employment Security.

62. In keeping with the conspiracy leveled against Newsome, MMS/Allen provided what it knew and/or should have known was false, misleading and malicious information to

the *Mississippi Department of Employment Security* (“MDES”) for purposes of obstructing and depriving Newsome unemployment compensation to which she was entitled.

63. Newsome appealed the *Mississippi Department of Employment Security* matter as far as the Circuit Court of Hinds County, Mississippi – Case No. 251-05-163CIV, where this matter was assigned to Judge Bobby DeLaughter (“Judge DeLaughter”).

64. While Newsome knew that something was not right about the way this her unemployment claim was being handled, Newsome realized that she would have to be patient. Newsome’s patience paid off. In or about January 2009, Judge DeLaughter was indicted for criminal and/or unlawful/illegal practices (i.e. for instance taking bribe for purposes of influencing the outcome of lawsuit). In or about July 2009, Judge DeLaughter pled “GUILTY.” See **Exhibit “6”** – *Indictment Documents Regarding Judge DeLaughter* attached hereto and incorporated by reference as if set forth in full herein.

65. During the matter before the Mississippi Department of Employment Security, Mitchell McNutt & Sams P.A. representatives, James Allen and Robert Gordon admitted to liability by MMS – i.e. subjecting Newsome to discriminatory practices and hostile work environment. See **Exhibit “7”** – *Excerpt from MDES Transcript* attached hereto and incorporated by reference as if set forth in full herein. Admission Newsome was able to obtain under cross examination and information provided to support the PATTERN-OF-PRACTICE of MMS and Defendant(s) of the overt acts committed in furtherance of MMS’ conspiracy(s) leveled against Newsome. Furthermore, goes to the credibility of MMS and/or Defendants.

66. On or about September 23, 2004, out of concerns of CORRUPTION in the handling of the MMS matter, Newsome contacted the United States Department of Justice to request its intervention in the matter. While justice may have been delayed, with the arrest and/or indictment of Judge DeLaughter, such actions were GOOD NEWS to Newsome’s ears in that in confirmed her beliefs.

67. As a direct and proximate result and in keeping with the conspiracy(s) leveled against Newsome and in furtherance of a **PATTERN-OF-PRACTICE** to deprive Newsome equal rights under the laws, equal protection of the laws, equal privileges and immunities under the law and due process of laws, Newsome was deprived unemployment compensation to which she was legally and lawfully entitled. Newsome being deprived rights secured under the Constitution and laws of the United States.

68. On or about March 29, 2005, Newsome submitted her complaint against MMS to the United States Department of Labor – Equal Employment Opportunity Commission (“EEOC”). EEOC assigning matter Charge/Case No. 131-2005-01442. Upon conclusion of matter, EEOC advised Newsome of her right to bring legal action.

69. Newsome believes that an investigation into MMS unlawful employment practices leveled against Newsome is racially motivated. Moreover, MMS’ termination of Newsome’s employment was for purposes of conspiracy(s) leveled against Newsome. MMS may be expected to come before this Court and attempt to paint Newsome as a “serial litigator” however, MMS will fail in any such argument and/or defense if it attempt to do so.

70. There is record evidence to support that in about a one-year period that judges involved in legal matters involving Newsome that MMS is aware of have been brought up on criminal charges. For instance:

- i) Judge DeLaughter in the MDES matter has been indicted and pled "GUILTY" for corrupt and/or unlawful/illegal practices. Newsome reporting concerns of unlawful/illegal practices in the handling of her matter to the United States Department of Justice in or about September 2004.
- ii) MMS' knowledge of Newsome's engagement in protected activities – i.e. for instance lawsuit involving Entergy Services will also yield that Judge G. Thomas Porteous ("Judge Porteous") has been brought up for IMPEACHMENT for his corrupt and unlawful/illegal practices. See **Exhibit "8"** – *Impeachment Documents Regarding Judge Porteous* attached hereto and incorporated by reference as if set forth in full herein. Newsome reporting Judge Porteous to the United States Department of Justice on or about September 2004.

Sweet news and DELAYED justice reeling in and EXPOSING such corrupt public officials that Newsome's adversaries have relied upon to COVER-UP their criminal/civil wrongs leveled against her. Information which is relevant and will SLAM THE DOOR SHUT on any frivolous efforts by MMS and/or Defendants to paint Newsome as a "serial litigator," crazy, lunatic, etc.

71. Exhaustion of all applicable administrative remedies has been met in accordance with the statutes/laws governing said matters.

72. The record evidence will further support that prior to the filing of this lawsuit Newsome sought in good faith to resolve this matter and mitigate damages – for instance, see the December 11, 2004, letter only submitted to the attention of L.F. Sams Jr. at MMS attached hereto at **Exhibit "9"** and incorporated by reference as if set forth in full herein. To no avail. MMS declining to correct the legal wrongs made known to it for purposes of looking forward to legal action by Newsome it knew and/or should have known would be inevitable.

COUNT I
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW¹¹
AGAINST DEFENDANT(S)

¹¹ 42 USC § 1981: *Equal Rights Under The Law* - (a) **Statement of equal rights** - All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) **"Make and enforce contracts" defined** - For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) **Protection against impairment** - The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

73. Newsome incorporates by reference Paragraphs 1 through 72 and 94 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Court:

74. All persons within the jurisdiction of the United States are entitled to the same right to make and enforce contracts, to sue, to be parties, and to give evidence; they entitled to equal benefit of laws for the security of persons and property, and are subject to the same penalties as white persons. The term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

75. There is no exhaustion of state remedies requirement prior to Newsome bringing of this Complaint in federal court. *Plummer v. Chicago Journeyman Plumbers' Local Union No. 130, U.A.*, 452 F. Supp. 1127 (1978), rev'd on other grounds 657 F.2d 890, 32 Fed. R. Serv. 2d 638 (7th Cir. 1981).

76. The District Court generally exercises jurisdiction in conformity with the laws of the United States; however, in cases where those laws are not adequate to furnish suitable remedies, state common law governs. (42 USCA § 1988).

77. Newsome brings this instant Complaint for her suffering actual injury and damages as a direct and proximate result of the putatively illegal conduct of Defendants. *Hope, Inc. v. DuPage County, Ill.*, 738 F.2d 797 (7th Cir. 1984).

78. Newsome brings this instant Complaint for deprivation of civil rights.

79. Newsome brings this instant Complaint and alleges racial discrimination and/or racially motivated discrimination against her by Defendants.

80. The Defendants engaged in overt acts in furtherance of racial discrimination leveled against Newsome.

81. The Defendants engaged in overt acts in furtherance of conspiracy(s) leveled against Newsome.

82. Defendants' action was motivated by racial considerations as set forth in this Complaint.

83. Defendants' action was motivated by discriminatory intent as set forth in this Complaint.

84. MMS deprived Newsome rights and/or protected rights because of her race.

85. An employee subject to at-will termination under . . . law nevertheless has a "contract" with his employer, as required to maintain a § 1981 racial discrimination action against employer. *Fadeyi v. Planned Parenthood Ass'n of Lubbock, Inc.*, 160 F.3d 1048 (5th Cir. 1998). Employment at-will provided sufficient contractual relationship to support § 1981 claim for employment discrimination. *Stone v. American Federation of Government Employees*, 135 F.Supp.2d 873 (2001). Under . . . law, an at-will employment agreement had all the essential elements of a valid contract, for purposes of civil rights statute guaranteeing

equal rights to make and enforce contracts; the employer offered, either implicitly or explicitly, to pay employee for performance of services, employee accepted that offer by performance, employee's performance of services for employer served as consideration for employer's promise to pay her for her services, and employer's promise to pay employee for work completed served as adequate consideration of her performance of her job. *Skinner v. Martiz, Inc.*, 253 F.3d 337 (2001). Therefore Newsome states the following in support of her claim and the establishment of contract/agreement with MMS:

- i) On or about November 4, 2003, MMS/Allen required that Newsome execute MMS' *Employee Acknowledgment Form* which stated in part:

The employee handbook describes important information about Mitchell McNutt, and I understand that I should consult the Chief Operations Officer regarding any questions not answered in the handbook. **I have entered into my employment relationship with Mitchell McNutt voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Mitchell McNutt or I can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.**

Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the handbook may occur, except to Mitchell McNutt's policy of employment-at-will. All such changes will be communicated in writing or via e-mail, and I understand that revised information may supersede, modify, or eliminate existing policies. **Any revisions to the policies in this handbook must be approved by the firm's Board of Director.**

Furthermore, I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received the handbook, and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.

After this form is signed by all staff employees initially, future changes will be communicated in writing or via e-mail and this acknowledgment will be obtained as a response to the written or e-mail notification. . .

- ii) MMS' Employee Handbook and its requirement that employees adhere to policies contained therein, supports all elements of a contract.
- iii) MMS/Allen offered "*explicitly*" and required Newsome to execute document to support that she would receive a salary as pay for her services as a Legal Secretary.
- iv) Newsome accepted the salary offered by MMS by performance of services as a Legal Secretary.
- v) Newsome's performance of services as a Legal Secretary served as consideration for MMS' promise to pay her for said services.

- vi) MMS in accordance with said agreement, paid Newsome on or about the 15th and 30th of each month – supporting MMS satisfaction with Newsome's work performance [EMPHASIS added].

86. **ELEMENT OF CLAIM:** To state a claim under § 1981, Newsome must plead facts demonstrating that: (a) she is a member of a racial minority; (b) that there was an intent to discriminate on the basis of race by MMS, and (c) that discrimination concerned one or more of the activities enumerated in the statute (i.e. make and enforce contracts, sue and be sued, or give evidence). *White v. Florida Highway Patrol, Div. of Florida Dept. of Highway Safety & Motor Vehicles*, 928 F.Supp. 1153 (1996). *Mian v. Donaldson, Lufkin & Jenrette Securities Corp.*, 7 F.3d 1085, on remand 1994 WL 494902. Therefore Newsome states the following in support of her claim:

- (i) Newsome is a member of a racial minority. Newsome is African-American/Black.
- (ii) The record evidence submitted in this Complaint will support that there was intent to discriminate against Newsome by MMS and Defendants because of her race.
- (iii) That MMS and/or Defendants discriminated against Newsome based on knowledge of her engagement in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*) enumerated in the statute – Newsome notifying MMS and/or Defendant(s) that she would be bringing the applicable actions to address MMS' unlawful employment practices.

87. Prima Facie Case for race discrimination under Title VII and § 1981 requires that Newsome establish that she was qualified for her job as a Legal Secretary and that her job performance was satisfactory. *Cooper v. Paychex, Inc.*, 960 F.Supp. 966, affirmed 163 F.3d 598 (1997). Therefore Newsome states the following in support of her claim:

- (i) The facts, evidence and legal conclusions provided in this instant Complaint will support that Newsome was qualified for her job as a Legal Secretary.
- (ii) Newsome requested that MMS/Allen provide her with Job Description for Legal Secretary which was DENIED! [Emphasis added].
- (iii) Newsome's qualifications and work ethics can be established from evidence presented by former employer(s) which stated in part:

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best **legal secretaries** with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary.

Exhibit "10" – *Letter of Reference* attached hereto and incorporated by reference as if set forth in full herein. Furthermore, record evidence will support Newsome possess the necessary skills to perform duties assigned, which included for instance:

Alphanumeric – 8844 kph / 2% error rate

Typing – 60 wpm / 1% error rate

Word 97 – 100 overall (100 on basic, intermediate & advanced)

Excel 97 – 100 overall (100 on basic, intermediate & advanced)

See **EXHIBIT “11”** – *Test Results of Computer Skills* attached hereto and incorporated by reference as if set forth in full herein.

88. Former employee established prima facie case of race discrimination under race discrimination in contracts statute by showing that she was African-American, was terminated by employer, she had worked for employer for 13 years and consistently received raises, promotions and commendations such that she was qualified to assume another position at the time of her termination and that supervisor who gave her negative evaluation resulting in her termination had also given three other African-American employees negative evaluations such that factfinder might reasonably conclude that race was motivating factor in employer's decision to terminate her. *Thomas v. Exxon, U.S.A.*, (S.D. Tex. 1996) 943 F.Supp. 751, affirmed 122 F.3d 1067. Therefore Newsome states the following in support of her claim:

- (i) Newsome is African-American/Black.
- (ii) MMS/Sams terminated Newsome's employment with MMS.
- (iii) Newsome had worked with MMS for approximately a year and received bonus, taken to appreciation lunch(es) as well as continued to receive payment for her services as a Legal Secretary on or about the 15th and 30th of each month; thus, supporting that Newsome was qualified to continue on a Legal Secretary and MMS had a need for this position. MMS brought in another employee to fulfill the duties of Legal Secretary created by the vacancy due to Newsome's unlawful/illegal termination.
- (iv) On November 30, 2004, MMS/Gordon gave Newsome a negative Performance Review in RETALIATION of Newsome's engagement in protected activities and with intent of obtaining her signature of false and malicious Review for means of terminating her employment with MMS. However, Newsome saw right through such conspiracy(s) leveled against her and refused to sign in that it did not adequately support her work ethics or qualifications.
- (v) Supervisor, Gordon, who drafted and prepared the adverse November 2004 Performance Review is the same attorney who had gone through approximately four Legal Secretaries in less than a one-year period prior to Newsome's employment. Newsome managed to survive over a year under such *brutal, discriminatory, retaliatory, hostile and threatening* conditions prior to her unlawful termination. Moreover, Newsome reported concerns to MMS/Allen/Gordon regarding Gordon's behavior. To no avail.
- (vi) The motivating factor for Newsome's termination was race and knowledge of her engagement in protected activities.

- (vii) Prima facie case is further established by the facts, evidence and legal conclusions set forth in this Complaint.

89. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and depriving her equal rights under the law. The conduct was taken with an improper and evil motive amounting to violations of Newsome's rights secured under the Constitution and laws of the United States.

90. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e. deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States.* See **Exhibit "14"** attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and *managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally*, apparently in retaliation for a story *which offended the chairperson of the board*. The complaint further charged that the *individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . . ; that they published his confidential sources thus destroying his credibility . . . ; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . . , assigning him to more and more degrading tasks Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous*. The court noted that according to the pleadings, *defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . . , blackballed him, thus precluding other employment, . . . thus destroying his credibility . . . , all without just cause or provocation*. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

91. As a direct and proximate result of Defendant(s)' systematic deprivation of equal rights under the law and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to

force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

92. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to deprive her equal rights under the law as set forth in this Complaint.

93. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in deprivation of equal rights under the law and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit deprivation of equal rights under the law.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from unlawful employment practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.

- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of being deprived of equal rights under the law as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$2,500,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$4,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xvi) Interest according to law;
- (xvii) Costs of suit; and
- (xviii) Such other and further relief as the court deems just and proper.

COUNT II¹²

¹² Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to

**42 USC 2000E-2: UNLAWFUL EMPLOYMENT PRACTICES;¹³ AND
42 USC § 2000E-3: OTHER UNLAWFUL EMPLOYMENT PRACTICES;¹⁴ AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)**

Corley v. Jackson Police Dept., 639 F.2d 1296 (5th Cir. Miss. 1981)
– Employer cannot be guilty of retaliation for an employee’s opposition to discrimination unless he is aware of such opposition. Civil Rights Act of 1964, § 704(a), 42 USCA § 2000e-3(a).

Sims v. First Bank, 478 F.Supp.2d 911 (S.D. Miss Jackson 2006) – Supervisor’s conduct could be an unlawful employment activity, for purposes of requirement that employee must have opposed an unlawful employment practice to have retaliation claim, even if alleged conduct did not constitute actionable sexual harassment, as long employee could reasonably have believed that it did. Civil Rights Act of 1964, § 704(a), 42 USCA § 2000e-3(a).

Alack v. Beau Rivage Resorts, Inc., 286 F.Supp.2d 771 (S.D. Miss. S.Div. 2003) – Title VII prohibits retaliation in instances of either protected opposition or protected participation. Civil Rights Act of 1964, § 704, 42 USCA § 2000e-3.

Callahan v. Bancorpsouth Ins. Services of Mississippi, Inc., 244 F.Supp.2d 678 (S.D. Miss. S. Div. 2002) – Title VII prohibition of retaliation protects employees who use informal methods to voice their complaints, as well as those who file formal complaints. Civil Rights Act of 1964, § 704(a), 42 USCA § 2000e-3(a).

94. Newsome incorporates by reference Paragraphs 1 through 93 and 102 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9).

¹³ 42 USC § 2000e-2: **Unlawful Employment Practices - (a) Employer practices** - It shall be an unlawful employment practice for an employer— (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

¹⁴ 42 USC § 2000e-3: **Other Unlawful Employment Practices - (a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings** - It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

95. Newsome in filing complaints with MMS/Allen and federal government agency(s) reporting unlawful employment practices of MMS did so in "good faith" in that she believed and the evidence provided supported unlawful employment practices. Even if Newsome's complaints were unfounded (*in which they were not*), the laws precluded MMS and its employees from retaliating against her. Furthermore, Defendant(s)' knowledge of Newsome's engagement in protected activities against former employer(s) precluded the unlawful employment practices it subjected Newsome to. Defendant(s) was timely, properly and adequately notified by Newsome of MMS' unlawful employment practices. Newsome also advised MMS/Allen that she would be filing Complaint with the applicable government agency reporting unlawful employment practices.

The alleged discriminatory practices against which the employee's charge or opposition is directed need not be found to actually exist in order for the employee's activity in protesting to be protected under 43 USC § 2000e-3(a), if the employee has acted on a reasonable and good faith belief that the employer was engaging in unlawful employment practices. *Even if the employee's complaints are completely unfounded, the Act forbids employer retaliation for making them. . . . The filing of charges is protected even if the charge contains collateral statements which are false and apparently malicious, and this includes charges filed against a previous employer. . . .* 42 USC § 2000e-3(a) also provides "**exceptionally broad**" protection from retaliation against individuals who oppose unlawful employment practices. . . . Activities in opposition to unlawful employment practices that have been held to be protected under 42 USC § 2000e-3(a) include. . . *other prohibited discrimination in employment. . . expressing an intention to file an unfair employment practices charge. . .* Opposition to any unlawful employment practice is protected against retaliatory discharge by 42 USC § 2000e-3(a). . . this is true even if opposition is unintentional and not by design. . . Moreover, it has been held that 42 USC § 2000e-3(a) protects an individual from retaliatory discharge even when the target of his activity in opposition to unlawful employment practices is directed against someone other than the retaliating employer.¹⁵

96. Defendant(s) had actual or imputed knowledge of Newsome's participation in protected activity(s). Based on said knowledge, MMS/Sams terminated Newsome's employment in retaliation to said participation. MMS'/Sams' termination of Newsome's employment coming approximately *two* days **AFTER** Newsome's December 1, 2004, complaint submitted via email entitled "HARASSMENT INCIDENT – 12/01/04." See **Exhibit "5"** attached hereto and incorporated by reference. In retaliation to Newsome's reporting of unlawful employment practices MMS allowed its employee(s) to subject her to strict and oppressive monitoring/supervision – See for instance, **Exhibit "12"** – November and December 2004 Monitoring Logs attached hereto and incorporated by reference as if set forth in full herein. Sams retaliation was racially motivated. Newsome being the only African-American/Black at MMS' Jackson, Mississippi location and named Defendant(s) ***all*** being white.

To establish a violation of 42 USC § 2000e-3(a), *it must be shown that the employer had actual or imputed knowledge that the plaintiff*

¹⁵ 7 Am. Jur. Proof of Facts 2d 34-37.

participated in a protected activity; and, further that based on such knowledge the discharge was in fact retaliatory – that is, motivated by the employee's participation in protected activity with the intent to retaliate against the employee for such participation, and not by unrelated legitimate business reasons. However, while retaliation **must** be the principal reason for the discharge **it need not be the sole reason**; and an employment action based in part on an unlawful consideration is not rendered lawful by the coexistence of a nondiscriminatory reason. **If any element of retaliation or reprisal played any part in the discharge, no matter how remote or slight or tangential, it is in violation of the law.** The trier of fact determines the reasons for the employee's discharge based on reasonable inferences drawn from the totality of facts, the conglomerate of activities, and the entire web of circumstances presented by the evidence. In examining the evidence, *the trier of fact may consider such factors as the timing of the discharge; departures from customary dismissal notice or procedures afforded other employees; harassment, surveillance, or other disparate treatment or special conditions of employment in comparison to similarly situated employees or to prior treatment of the plaintiff immediately following the protected activity and leading up to the discharge; threats or retaliation against other employees for engaging in similar conduct; absence of a reasonable alternative reason for the discharge.* . . .¹⁶

97. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and subjecting her to unlawful employment practices. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

98. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Defendant working with government officials/employees to cover-up/shield/mask an illegal animus – i.e. unlawful employment practices. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States.* See Exhibit "14" attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and **managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory**

¹⁶ 7 Am. Jur. Proof of Facts 2d 38, 39. *Tidwell v. American Oil Co.*, 332 F.Supp. 424. *United States v. Hayes International Corp.*, 7 CCH Employment Practices Decisions ¶ 9164. *eronca Mfg. Co. v. NLRB*, 385 F.2d 724 (9th Cir.).

treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . ., blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

99. As a direct and proximate result of Defendant(s)' systematic and repeated unlawful employment practices, discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed; therefore resulting in the unlawful termination of Newsome's employment with MMS:

Newsome: . . .It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve.

During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, **I take it very personally (CLAIMANT CRYING)**. But this is the kind of conduct that each secretary, I, I don't know, *but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable.* I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

100. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific overt acts to subject her to unlawful employment practices as set forth in this Complaint.

101. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in acts of unlawful employment practices.
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit unlawful employment practices.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.

- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from unlawful employment practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of unlawful employment practices as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 2000/2000e-2/2000e-3.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.

- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$5,000,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$10,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xvi) Interest according to law;
- (xvii) Costs of suit; and
- (xviii) Such other and further relief as the court deems just and proper.

COUNT III¹⁷
42 USC § 1985: CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS¹⁸ AND

¹⁷ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9).

¹⁸ **42 USC § 1985: Conspiracy To Interfere With Civil Rights - (1) Preventing officer from performing duties** - If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror - If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges - If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be

**42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)**

102. Newsome incorporates by reference Paragraphs 1 through 101 and 158 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

103. ¹⁹ A civil conspiracy requires the combination of at least two persons. A party is not responsible for the result of a conspiracy unless he or she actually participates in or aids and abets in some way; mere acquiescence or watching other conspire is not sufficient to impose liability. Each act done in pursuance of the conspiracy by one of several conspirators is, in contemplation of law, an act for which each is jointly and severally liable, and this liability applies to damages accruing prior to the person's joining the conspiracy or thereafter and regardless of whether the person took a prominent or an inconspicuous part in the execution of the conspiracy.²⁰

The damages recoverable are compensatory or exemplary, depending on the nature of the acts committed and the injury resulting. Each conspirator is liable for all damages naturally resulting from the execution of the conspiracy.²¹

104. A civil conspiracy is a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. The conspiratorial agreement need not be in any particular form, and need not extend to all the details of the conspiratorial scheme, so long as its primary purpose is to cause injury to another.

The gist of a civil conspiracy is not the unlawful agreement, but the damage resulting from that agreement or its execution. The cause of action is *not* created by the conspiracy, but by the wrongful acts done by the Defendants to the injury of Newsome.²²

105. A conspiracy may be proved by circumstantial evidence. This is because people who engage in such agreements may not voluntarily proclaim to others their purpose; therefore, a reasonable person/mind may draw on circumstantial evidence to determine whether or not a conspiracy did exist.

It is sufficient if the proven facts convince a reasonable person/mind by a preponderance of evidence that the parties were acting together understandably in order to accomplish a purpose that in itself was unlawful, or by a method that was contrary to law.

A conspiracy may be established by inference from the nature of the acts complained of; the individual and collective interests of the alleged conspirators; the situation and relation of the parties at the time of the commission of the acts; *the motives that produced them*; and **all** of the *surrounding circumstances preceding and attending the culmination of the common plan or design.*²³

done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

¹⁹ Am. Jur. Pleading and Practice Forms, Conspiracy § 1.

²⁰ Am. Jur. 2d, Conspiracy §§ 55,66, 70.

²¹ Am. Jur. 2d, Conspiracy §§ 70, 71.

²² Am. Jur. Pleading and Practice Forms, Conspiracy § 7.

²³ Am. Jur. Pleading and Practice Forms, Conspiracy § 8.

106. The Defendants, and each and every one of them, agreed and/or combined to engage in a civil conspiracy to commit the unlawful acts as described in this Complaint.

107. The Defendants, and each and every one of them, combined to engage in a civil conspiracy of which the principal element was to inflict wrongs against and/or injury on Newsome and the public-at-large as described in this Complaint.

108. The Defendants, and each and every one of them, combined to engage in a civil conspiracy that was furthered by overt acts.

109. The Defendants, each and every one of them, understood, accepted, and/or explicitly and/or implicitly agreed to the general objectives of their scheme to inflict the wrongs and injuries on Newsome as described in this Complaint.

110. The Defendants, each and every one of them, acquired, possessed, and maintained a general knowledge of the conspiracy's objectives to inflict wrongs against and/or injury on Newsome as described in this Complaint.

111. The Defendants, each and every one of them, combined to engage in a scheme which was intended to violate the law and concealed and secreted same.

112. The Defendants, each and every one of them, combined to engage in a scheme which was intended to violate the rights of Newsome.

113. The Defendants, each and every one of them, combined to engage in a scheme which was intended to violate the rights of the public-at-large.

114. The facts, evidence and legal conclusions set forth in this instant Complaint supports that Defendants (which consist of two or more persons): **(a)** engaged in conspiracy(s) against Newsome; **(b)** engaged in conspiracy(s) to deter, intimidate and threaten Newsome from engaging in protected activities (i.e. *making charges, testifying, assisting, or participating in enforcement proceedings*) and performing duties owed as a citizen to report the unlawful employment practices of MMS; **(c)** engaged in conspiracy(s) which resulted in injury/harm to Newsome. *Malley-Duff & Associates, Inc. v. Crown Life Ins. Co.*, 792 F.2d 341 (3rd Cir. 1986) judgment affirmed 483 U.S. 143, 107 S.Ct. 2759, 97 L.Ed.2d 121 (1987); *Chahal v. Paine Webber Inc.*, 725 F.2d 20 (2nd Cir. 1984).

115. Although it is true that a corporation cannot conspire with itself, a conspiracy may be established where *individual* defendants *are named* and those defendants act outside the scope of their employment for personal reasons. *Swann v. City of Dallas*, 922 F.Supp. 1184, affirmed 131 F.3d 140 (1996). The facts, evidence and legal conclusion contained in this instant Complaint will support that Defendants acted outside the scope of their employment for personal reasons and bias towards Newsome; moreover, said conspiracy(s) was inspired and motivated by Defendants' racial bias and discriminating against Newsome being of her race (African-American/Black), her sex (female) and knowledge of her engagement in protected activities – i.e. opposing employment violations that involve discrimination, retaliation and a hostile work environment based on Newsome's race, sex, and making/filing charges as well as participating in the enforcement of legal proceedings.

116. MMS' Policy No. 108 CONFLICTS OF INTEREST of its Employee Handbook stated in part:

Employees have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy establishes only the framework within which Mitchell McNutt wishes the firm to operate. The purpose of these guidelines is to provide general direction so that employees can seek further clarification on issues related to the subject of acceptable standards of operation. Contact the Chief Operations Officer for more information or questions about conflicts of interest.

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee or for a relative as a result of Mitchell McNutt's business dealings. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage.

No "presumption of guilt" is created by the mere existence of a relationship with outside firms. However, if employees have any influence on transactions involving purchases, contracts, or leases, it is imperative that they disclose to an officer of Mitchell McNutt as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Personal gain may result not only in cases where an employee or relative has a significant ownership in a firm with which Mitchell McNutt does business, but also when an employee or relative receives any substantial gift, or special consideration as a result of any transaction or business dealings involving Mitchell McNutt.

Defendant(s) having a personal bias towards Newsome which was racially motivated as well as a personal/financial interest in the outcome of any legal action initiated by Newsome. Defendant(s) with knowledge provided false and/or misleading information for purposes of influencing the outcome of charges/complaints and/or legal actions brought by Newsome which would result in a personal gain for Defendant(s) as a result of MMS' business dealings. Defendant(s) receiving substantial and/or special consideration/restitution as a result of the role played in conspiracy(s) leveled against Newsome.

117. Defendant(s) is liable for the conspiracy(s) leveled against Newsome. Defendant(s) known to have orchestrated and carried out conspiracy(s) leveled against Newsome were all white. Newsome was the only African-American/Black employee in the Jackson, Mississippi office of MMS that was plagued with retaliatory unlawful employment practices/violations because of her race, sex and filing charges/complaints. Newsome being singled out and targeted for contesting and opposing the unlawful employment practices of MMS. While violation of § 1985 cannot be alleged between entity and its employees when employees act within scope of their employment, employees who are motivated by racial bias and not acting out concern for best interests of their employers are liable for violation of § 1985. *Mason v. Twenty-Sixth Judicial District of Kansas, Court Services Div.*, 670 F.Supp. 1528 (1987). Defendant(s) engaging in the conspiracy(s) leveled against Newsome having a personal and financial interest/stake in the outcome of legal actions brought by Newsome. Defendant(s)' role in conspiracy(s) was racially motivated; and he/she was not acting out of concern of the best interest of MMS because said conspiracy(s) was a far departure from the policies and practices set forth in MMS' *Employee Handbook*. Therefore, Defendant(s) participated in conspiracy(s) leveled against Newsome for purposes of influencing the outcome of legal actions reported by Newsome and obstructing the administration of justice.

118. Distinguishing a case in which the challenged conduct was a single act of discrimination by a single business entity, the court in *Rackin v. University of Pennsylvania*, 386 F. Supp. 992 (1974), refused to dismiss a portion of a complaint premised upon violation of 42 USC § 1985(3), where the plaintiff alleged many continuing instances of discrimination and harassing treatment by alleged conspirators.

In an action brought under, *inter alia*, 42 USC § 1985(3) against a university and present, past, and future members of the executive committee of its board of directors, sued both officially and individually, the court, in *Jackson v. University of Pittsburgh*, 405 F. Supp. 607 (1975), **rejected the argument of the defendants, who had contended that they were all agents of the defendant university and that their actions on behalf of or in furtherance of the university could not constitute the actions of two or more persons as the traditional notions of conspiracy law required.** Rather they contended, their actions were those of a single entity. The court citing an unpublished memorandum decision of another judge of the same district, rejecting an identical argument, cited the *Rackin* Case, *supra* as "the better expression of the law in this circuit." Hence, the court denied a motion to dismiss the § 1985(3) portion of complaint.

119. Newsome believes that as a direct and proximate result of the conspiracy(s) leveled against her by Defendant(s), that MMS (*in efforts of doing damage control*) may have shut down its Jackson, Mississippi office with knowledge that Newsome would be bringing a legal lawsuit against it. MMS by closing its Jackson, Mississippi Office eliminating the jobs of Gordon, Farrell and Townsend. MMS closing its Jackson, Mississippi Office shortly **AFTER** Newsome was successful in obtaining **admission of liability** for discriminatory and hostile treatment leveled against her during her employment with MMS at the Mississippi Department of Employment Security hearing held in or about January 2005.

120. When Newsome entered into the ***At-Will Agreement*** with MMS, said agreement did not include Defendant(s) (i.e. for instance, Sams, Gordon, Farrell, Townsend, etc. were not present). MMS provided Allen (Chief Operations Officer/Human Resources/Controller) to handle the employment process of Newsome. Therefore, because the record evidence, facts and legal conclusions support that the discrimination, retaliation, and hostile work environment created by Defendant(s) was racially motivated, the role Defendant(s) played in conspiracy(s) leveled against Newsome was carried out in their individual capacity and beyond scope of authority of MMS – i.e. in violation of the policies enacted and/or to be enforced by MMS.

While MMS may not be considered a separate party from its agents who are acting within the scope of their employment, when agents act outside the scope of their employment, then MMS may be considered a separate party for purpose of conspiracy. *Dixon v. Reconciliation, Inc.* 291 N.W.2d 230 (1980). Furthermore, MMS may be held liable for conspiracy to terminate Newsome's employment, when one conspirator is considered a nonparty to the agreement reached between Newsome and MMS. *Griffith v. Electrolux Corp.*, 454 F. Supp. 29 (1978). Some courts adopting that all parties involved in a common scheme and jointly and severally responsible for the ensuing wrong, including the employer-contracting party. *Id.* *Burns Jackson Miller Summit & Spitzer v. Lindner*, 88 A.D. 2d 50, 451 N.E.2d 459 (1983); and *Solanic v. Republic Steel Corp.*, 142 Ohio St. 567, 53 N.E. 2d 815 (1944).

The facts, evidence and legal conclusion will support that MMS was part of conspiracy(s) against Newsome that resulted in conspiracy(s) of a PATTERN-OF-UNLAWFUL employment practices – discrimination, retaliation, harassment and hostile work environment; moreover, a conspiracy based on Defendant(s)' knowledge of Newsome's engagement in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*) which resulted in conspiring with government agency(s)/employees to see that Newsome was deprived of equal protection of the laws, equal privileges and immunities under the laws and due process of laws. Therefore, conspiring to deprive Newsome rights secured and guaranteed under the Constitution and other laws of the United States. Unlawful/Illegal actions which resulted in government agency(s) conspiring with MMS to try and cover-up/mask/shield the criminal/civil wrongs leveled against Newsome.

121. The facts, evidence and legal conclusion set forth in this instant Complaint supports that Defendants (which consist of two or more persons) conspired for purposes of depriving Newsome either directly or indirectly the equal protection of the laws, equal privileges and immunities under the laws and due process of laws – i.e. rights secured/guaranteed under the Constitution and/or laws of the United States governing said matters. *Griffin v. Breckenridge*, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971).

122. Newsome sets forth the specific facts of conspiracy(s) leveled against her in Paragraphs 33 and Count III of this Complaint. Said facts which are supported by evidence and legal conclusions provided in this instant Complaint. Moreover, conspiracy(s) violated the *At-Will Agreement* established between Newsome and MMS as well as violated the policies set forth in MMS' *Employee Handbook*. The *overt* acts by Defendants were in *furtherance* of conspiracy(s) leveled against Newsome to cover-up MMS': (a) Fair Labor Standards Act violations reported; (b) Occupational Safety and Health Act violations reported; (c) Title VII violations reported; and (d) discrimination, retaliation and hostile work environment leveled against Newsome due Defendants' knowledge of Newsome's engagement in protected activities; and (e) for reasons known to Defendants/Conspirators for their role in conspiracy(s) leveled against Newsome.

123. Newsome sets forth with particularity in Paragraph 30 the *overt* acts by Defendants which relates to the promotion and *furtherance* of conspiracy(s) leveled against her. *Flesch v. Eastern Pennsylvania Psychiatric Institute*, 434 F.Supp. 963 (3rd Cir. 1977); *Weise v. Reisner*, 318 F.Supp. 580 (7th Cir. 1970); and *Stevens v. Rifkin*, 608 F.supp. 710 (9th Cir. 1984). While said conspiracy(s) identify the conduct and Defendants (i.e. to be amended once additional information becomes available); said information is not necessary to sustain a claim under § 1985. *Stevens v. Rifkin*, 608 F.supp. 710 (9th Cir. 1984).

124. As a direct and proximate result of conspiracy leveled against Newsome, each Defendant (conspirator) becomes the agent of the other conspirator (s), and *any act done by one of the combination is regarded under the law as the act of both or all*. In other words, what one does, if there is this combination, *becomes the act of both or all of them, no matter which individual may have done it*. This is true as to *each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions*.²⁴

²⁴ Am. Jur. Pleading and Practice Forms, Conspiracy § 9.

125. Each Defendant (conspirator) is jointly and severally liable for all damages resulting from the conspiracy, and where that conspiracy is proven, any act done by any one of the two or more persons so conspiring, in furtherance of the common design and in accordance with the general plan, becomes the act of all, and each conspirator is responsible for such act.²⁵

It is not necessary, in order to establish the liability of a participant in an unlawful conspiracy, to show that such person was a party to its contrivance at its inception. In other words, a conspiracy may start with a few participants, and then add others as it progresses; if so, the conspirator who becomes a part of the conspiracy at or near the end is just as much responsible for the damage that results as the one who was in it at the beginning. The actual time when any of them might have come into the understanding makes no difference. Therefore, if it is shown that the individual who *came in at a later date knew of the unlawful design and willfully aided in its execution*, such individual is chargeable with the consequences that flowed from the unlawful design.

126. On or between December 2003 and December 2004, Defendants maliciously conspired together in the Cities of Jackson, Flowood and Tupelo of Hinds, Lee and Rankin Counties, in the State of Mississippi, with intent to injure Newsome. Defendants conspiracy(s) leveled against Newsome are set forth in this instant Complaint at Paragraph 30.

127. In furtherance of conspiracy and based upon the facts, evidence and legal conclusions provided in this instant Complaint, Defendants conspired to:

- (a) fulfill role in conspiracy(s) leveled against Newsome;
- (b) for the purpose of depriving, either directly or indirectly, Newsome of the equal protection of the laws or of equal privileges or immunities under the laws, and
- (c) commit act(s) in furtherance of conspiracy leveled against Newsome;
- (d) whereby Newsome was either injured in her person or property and deprived of right(s) or privilege(s) as a citizen of the United States.

128. As a direct and proximate result of conspiracy leveled against Newsome by Defendants, she is entitled to recover damages for injuries sustained. Defendants conspired to deprive Newsome of the equal protection of the laws, equal privileges and immunities under the laws and due process under the laws. Defendants conspired to deprive/deny Newsome rights secured/guaranteed under the Constitution and/or statutes and laws of the United States. Moreover, MMS' termination of Newsome's employment was to deprive her of protected rights.

LIMITATIONS ON THE RIGHT OF DISCHARGE – STATUTES PROVIDING CIVIL REMEDIES: Some statutes dealing with the employer-employee relationship may expressly provide civil remedies. 42 USCS § 1985(3) authorizes an action by the injured party for the recovery of damages sustained as a result of a conspiracy (1) for the purpose of depriving any person of equal protection of the laws, or of equal privileges and immunities under

²⁵ Am. Jur. Pleading and Practice Forms, Conspiracy § 10.

the laws . . . A conspiracy by private persons to accomplish the purposes proscribed by § 1985(3) is actionable, even in the absence of state action. . . . Even without state action, a plaintiff may contend that various of his constitutional rights, . . . have been denied, or that the exercise of such rights was the reason for defendant's termination in his employment within the context of a § 1985(3) action. However, the jury will be faced only with the question of whether defendants conspired to deprive plaintiff of . . . constitutional rights.²⁶ See *Griffin v. Breckenridge*, 408 U.S. 88, 29 L.Ed.2d 338, 91 S.Ct. 1790. 15 Am. Jur. 2d, Civil Rights § 16.

129. Defendants engaged in conspiracy(s) leveled against Newsome that had tendencies to be injurious not only to Newsome but to the *public-at-large* and the *public good*. Newsome's termination of employment with MMS, affected a duty that inures to the benefit of the public at large. Newsome reporting the unlawful employment practices of MMS wherein it *embezzled* monies (i.e. wages earned) owed Newsome and nonexempt salaried employees and MMS conspired to keep this information from going public because of its business interest in the outcome should said information become public knowledge. MMS' termination of Newsome's employment for filing complaint(s) that reported unlawful employment practices was in retaliation for her having performed an important and social duty and exercising protected rights in reporting said behavior. MMS' termination of Newsome's employment was motivated by bad faith, malice and/or retaliation. MMS' termination of Newsome's employment was unlawfully/illegally motivated due to its knowledge of her participation in protected activities and for purposes that it against public policy.

DEFINING "PUBLIC POLICY:" "Public policy" has been characterized as the principle that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. . . . *In order for an employee discharge to be against public policy, the discharge must affect a duty that inures to the benefit of the public at large, rather than a particular employee. . . . the specific circumstances in which public policy will support a cause of action for wrongful termination, stating that a public policy cause of action arises only when the termination is in retaliation for performing an important and socially desirable act, exercising a statutory right, or refusing to commit an unlawful act. The Model Termination Act provides that an employer may not take adverse action in retaliation against an individual for filing a complaint, giving testimony, or otherwise lawfully participating in proceedings under the Act. Courts in some states also look to the employer's motivation for discharging the employee as a part of its determination of whether public policy has been violated. A discharge will violate public policy only when the employer was motivated by bad faith, malice, or retaliation. The termination itself must be motivated by an unlawful reason or purpose that is against public policy.*²⁷

²⁶ 7 Am. Jur. Proof of Facts 2d 28,29, 31.

²⁷ 82 Am. Jur.2d Wrongful Discharge § 57.

Green v. Amerada-Hess Corp., 612 F.2d 212 (5th Cir. 1980)

Kelly v. Mississippi Valley Gas Co., 397 So.2d 874, 32 A.L.R.4th 1214 (Miss. 1981)

130. Defendants conspired to terminate Newsome's employment as a direct and proximate result of her engagement in protected activities, reporting unlawful employment practices, and thus, retaliation for actions which are protected by public policy. Defendants having knowledge that Newsome had brought legal actions against former employer(s) for employment violations. MMS terminated Newsome's employment in retaliation for her filing complaint(s) with federal agency(s) against it as well as its knowledge of Newsome's filing of charges against other employer(s). It was during employment with MMS that Newsome requested wages earned for hours worked that MMS refused to compensate her for as well as MMS retaliating against her the reporting of unsafe/dangerous working conditions. MMS terminated Newsome's employment having learned of her filing charge with the United States Department of Labor – Wage and Hour Division, OSHA and intent to bring Title VII action. MMS terminated Newsome's employment for purposes of interfering with matters of "*public interest*" and would impact the way it pays its nonexempt salaried employees and the unsafe/dangerous conditions under which employees were required to work. Newsome's termination of employment *was motivated by "bad faith, malice and retaliation" which was not in the "best interest of the economic system or the public good;"* therefore, "*constituting a breach of employment contract/agreement*" between Newsome and MMS. MMS' termination of Newsome's employment is prohibited by statute and/or public policy. MMS' termination of Newsome's employment deprived her of equal protection under the laws, equal privileges and immunities under the laws and due process of laws. Rights secured under the Constitution and other governing statutes/laws of the United States.

PUBLIC POLICY: Despite the almost universal acceptance of the employment *at will doctrine*, the common law governing the employment relationship has been undergoing a period of flux corresponding to increasingly rapid and fundamental changes in the legal, social and economic conditions affecting the relations between employer and employee that have taken place since the formulation of the doctrine. *An important judicially created restriction on an employer's otherwise arbitrary right to discharge an employee at will is the view recognizing a civil cause of action for wrongful discharge when such an employee is discharged in retaliation for actions which are protected by public policy. . . .* The "**public policy**" exception to the employment at will doctrine has been applied to afford civil relief to an employee at will discharge under the following circumstances: . . . for having had an attorney, as her authorized representative, *write to her employer regarding the recovery of the difference in wages actually paid and the legal minimum wage payable, under the provision of the minimum wage law* make "**any employer who discharges. . . any employee because the employee has testified or is about to testify, or because the employer believes that the employee will testify in any investigation or proceedings relative to the enforcement**" of the minimum wage law guilty of a misdemeanor, . . . for having filed a complaint under the Fair Labor Standards Act under the provision of that Act making it *unlawful "to discharge. . . any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding. . .* In most cases recognizing a private cause of action on the part of an employee discharged in retaliation for actions which are protected by public policy, the public policy is evidenced by either. . . *a statute designed specifically to protect the rights of the employee*

vis-à-vis employer. Relief has been denied in circumstances not involving an express legislative policy prohibiting the employer's acts. . . On the other hand, *there is also authority recognizing a cause of action for the wrongful discharge of an employee at will in instances in which the employer's motive for the discharge interferes with an important public interest, regardless of the existence of an express statutory prohibition or statement of public policy specifically protecting the right of the employee vis-à-vis employer.* . . . and the public's interest in maintaining a proper balance between the two, the court held that any termination of employment which is motivated by bad faith or malice or based on retaliation is not in the best interest of the economic system or the public good and constitutes a breach of the employment contract. Other courts have apparently indicated that a discharge from employment which is motivated solely by malice on the part of the employer may be actionable under the *prima facie tort doctrine.* . . . Using this approach, the plaintiff must satisfy the burden of showing an exclusive malicious motivation for the discharge, excluding any motive other than a desire on the part of the employer to cause the plaintiff harm. The conduct recognized as tortious must involve specific intent on the part of the employer to harm the plaintiff or to achieve some other proscribed goal. . . . Unless the discharge is prohibited by statute or public policy, the privilege to discharge such an employee is absolute and the presence of ill will or improper motive does not destroy it.²⁸

When an employee is discharged solely for exercising a statutorily conferred right an exception to the general rule must be recognized. *Frampton v. Central Indiana Gas co.*, 297 NE2d 425, 63 ALR3d 973.

131. Newsome alleges that MMS'/Sams termination of her employment was wrongful because it was in violation of the public policy of the State of Mississippi and federal and state laws governing said matters; in that Newsome's termination was in retaliation of engagement in protected activities – i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings.*

132. Newsome alleges that MMS'/Sams termination of her employment was in violation of *public policy* as expressed in State and United States Constitution that prohibits discrimination, retaliation, harassment, and deprivation of protected rights; moreover, prohibits any obstruction of a state or federal investigation.

133. While many states have adopted a "*public policy*" exception to the employment **at-will rule**, under which an employer is liable to an employee for a retaliatory termination that violates the public policy of the state - *Collier v. Pellerin Milnor Corp.*, 463 So. 2d 47 (1985). - generally, there are three categories of protected employee conduct for which public policy exceptions are available: (a) exercising a statutory right or obligation; (b) refusing to engage in illegal activity; and (c) reporting criminal conduct to supervisors or outside agencies – of which Newsome was also protected in that:

²⁸ 7 Am. Jur. Proof of Facts 2d 20-22, 25-28.

- (i) she exercised statutory rights or obligations pursuant to the FLSA, OSHA, Title VII, and laws governing engagement in protected activities;
- (ii) she refused to engage in MMS' cover-up of unlawful/illegal employment practices made known to it; and
- (iii) she reported criminal/civil violations to the attention of her supervisor, attorneys, Chief Operations Officer/Human Resources/Controller and/or co-workers of MMS as well as to outside government agencies (W&H, OSHA, etc.).

Thus, supporting Newsome's being protected under the "public policy exception."

134. Notwithstanding the *at-will* doctrine, according to which an employer may discharge an at-will employee "for good cause, for no cause, or even for cause morally wrong, without being thereby guilty of legal wrong." In cases involving the issue of claimed **retaliation** for an at-will or apparently at-will employee's **public complaints** or *efforts relating to health or safety*, the courts adopted or recognized the view that an at-will employee discharged in violation of public policy has a cause of action against the employer. *Smith v. Atlas Off-Shore Boat Service, Inc.*, 653 F.2d 1057 (5th Cir.) (Miss. 1981); and *Roberson v. Rebstock Drilling Co.*, 749 F.2d 1182 (1985).

135. MMS' termination of Newsome's employment on December 3, 2004, was in retaliation of Newsome having: (a) reported unlawful employment violations under Fair Labor Standards Act; (b) reporting unlawful employment violations under Occupational Safety and Health Act; (c) reporting unlawful employment violations under Title VII; (d) knowledge of Newsome's engagement in protected activities; (e) made public complaints; and (f) unlawful/illegal reasons known to MMS and its conspirators/co-conspirators. MMS' and conspirators/co-conspirators acts which are clearly in violation of public policy.

136. **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

137. Beginning as early as January 2004, and continuing until the termination of Newsome's employment with MMS the above Defendant(s) conspired amongst themselves and others, whose names of all co-conspirators are presently unknown to Newsome (listed in this Complaint as Does 1-30); however, Defendants conspired to associate for the purposes of depriving and interfering with the rights of Newsome secured under the U.S. Constitution, Mississippi Constitution, Civil Rights Act, and other applicable laws governing said matters. Moreover, specifically in depriving Newsome of **equal** employment opportunities, **equal** protection under the laws, **equal** privileges and immunities under the laws, and **due process** under the laws. As part of said conspiracy(s), it was agreed by and between the Defendants, in the conduct of their personal interest and bias towards Newsome, that each would aid in said conspiracy wherein the object pursued was Newsome and depriving her of rights secured under the Constitution, FLSA, OSHA, Title VII, Civil Rights Act, and other applicable laws governing said matters. Thus, in pursuit of these conspirators' purposes, they through willful, malicious and wanton behavior committed *criminal and unlawful acts*. As a further part Defendants' role in the conspiracy(s), each agreed (*whether verbally, explicitly or simply through implied and/or inferred acts*) by and with MMS in the conduct of respective offices

as well as personal interest, that each would aid MMS in its threats, harassment unlawful/illegal practices and/or arrange to cause economic harm/injury to Newsome as a direct and proximate result of her participation in exercising protected rights governed by public policy.

138. In doing the acts alleged, Defendants acted in their official capacities in regards to their interest in securing their jobs with their respective employer(s) and were acting at all times material to this Complaint, within the scope of their respective company and in furtherance of the above described conspiracy and discriminatory and harassing practices.

139. In doing the acts alleged, Defendants acted in their individual capacity for their own personal gain and financial interest – moreover, exercising their independently racially motivated prejudices, bias, hatred and resentment towards Newsome.

140. In committing the acts described above, Defendants impeded, hindered, obstructed or defeated the due course of justice in the government agencies' handling of Newsome's charges, with the intent to injure her and to deny Newsome the right of equal protection of the laws, within the meaning of 42 USC § 1985(2), 42 USC § 1985(3), and 42 USC § 1981.

141. During any such investigations, MMS allowed its employee(s) – Defendant(s) – to engage in unlawful/illegal actions in ways of providing legally protected information regarding Newsome to said agencies for purposes of prejudicing the fact-finder against her. Defendants providing knowledge and/or information regarding Newsome's engagement in protected activities (i.e. *making charges, testifying, assisting, or participating in enforcement proceedings*).

142. Defendants conspired to interfere, in the manner proscribed by the statute, with the civil rights of Newsome; and an *overt* act done in *furtherance* of the object of the conspiracy, whereby Newsome was injured or was deprived of any right or privilege as a citizen of the United States; pursuant to 42 U.S.C.A. § 1985(3).

143. Newsome sues each and/or all Defendant(s) in both their official and individual capacities.

144. Defendant(s) at all times material to this Complaint, were the servant, agent, appointee, and employee of MMS acting in furtherance and within the scope of said relationships and MMS is answerable at law for the acts of its employees under Federal laws/statutes and Mississippi case law/statutes.

145. Doe Defendants at all time material to this Complaint, were the servants, agents, appointees and employees of the respective government agency (i.e. W&H, OSHA, etc.) that Newsome submitted charges/complaints regarding MMS' unlawful employment practices. MMS through its agents, representatives, servants, appointees and employees engaged the role of the respective Doe Defendant(s) to fulfill role in conspiracy(s) leveled against Newsome. Doe Defendant(s) by engaging in conspiracy(s) of MMS were acting beyond the scope of its employer's authority and in *violation* of the statutes/laws under which their employer's enforced. Therefore, Doe Defendants were acting within their individual capacities for personal/financial gain.

146. The acts of Defendant(s) herein alleged were committed either on the instruction of MMS or of one having authority to deter such unlawful/illegal acts, or with the knowledge and consent of MMS, or were thereafter approved and ratified by MMS. By virtue of MMS' position as employer, the acts and conduct of Defendant(s) (i.e. Sams, Allen, Gordon, Farrell and Townsend) alleged represented the official policies and practices condoned by MMS.

147. While Newsome filed a formal Complaint against MMS with the Wage & Hour Division, OSHA, EEOC, and/or the applicable government agency(s), said government agency(s) clearly ignored said charges/claims and failed to perform duties owed Newsome. Government agency(s) in compliance with the conspiracy hatched by MMS, fulfilled its role and commitment to MMS of said conspiracy. Conspiracy(s) which involved the cover-up/masking/shielding of unlawful employment practices of MMS, fulfilled its role and commitment to MMS of said conspiracy. Conspiracy(s) which involved keeping the unlawful/illegal employment practices of MMS *out of public knowledge*. Nevertheless, government agency(s) advised Newsome of her right to bring legal action against MMS. Thus, leaving Newsome with the right to seek legal recourse and allow a jury to determine the issues addressed in this instant Complaint.

148. Newsome believes that there is sufficient evidence in the record of the government agency(s) to support that MMS relied upon its relationships with government agency representatives to protect and shield MMS' unlawful and/or illegal practices. Acts clearly in *violation of public policy* and clearly *information of public interest*; moreover, has an impact on the public-at-large and/or economy.

149. During the course and/or investigation (EMPHASIS ADDED) of Newsome's claims with the W&H, the Director, Billy Jones ("Jones"), retired. Said retirement coming **AFTER** Newsome began making contact with the Washington, D.C. office of the U.S. Department of Labor and advising of unethical and/or unlawful/illegal practices of the W&H in the handling of FLSA complaint.

150. Newsome for years enjoyed her excellent reputation in providing administrative skills to her employers and showing and/or exemplifying her skills, qualifications and professionalism.

151. Newsome had at no time during her employment with MMS committed any act during the course of her employment to warrant her termination.

152. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

153. Defendants' conduct conspiracy(s) arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and conspiring to interfere with her civil rights. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

154. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for

purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness*; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See **Exhibit “14”** attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . ., blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

155. As a direct and proximate result of Defendant(s)' systematic conspiring to interfere with Newsome's civil rights and repeated discrimination, retaliation, harassment and hostile work environment, she endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get

elaborate e-mails, what I found were to be slanderous and defamatory. And *I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked.* Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, *I take it very personally, and I'm offended by it.* [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, *I take it very personally* (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, *but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable.* I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

156. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts of conspiring to interfere with her civil rights as set forth in this Complaint.

157. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from conspiring to interfere with her civil rights and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit conspiracy to interfere with civil rights.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its role in conspiracy to interfere with Newsome's civil rights.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from conspiracy to interfere with her civil rights described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on conspiracy to interfere with her civil rights., in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of being deprived of civil rights under the law as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1985.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in conspiring to interfere with Newsome's civil rights or

practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).

- (xii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$2,500,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$20,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xvi) Interest according to law;
- (xvii) Costs of suit; and
- (xviii) Such other and further relief as the court deems just and proper.

COUNT IV²⁹

42 USC § 1986: ACTION FOR NEGLIGENCE TO PREVENT³⁰ AND

24. ²⁹ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

³⁰ 42 USC § 1986: **Action For Neglect To Prevent** - Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and

**42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)**

ENFORCEMENT OF FEDERAL RIGHTS:

One provision of the Reconstruction-Era Civil Rights Act, forbids conspiracies to interfere with civil rights by:

- (a) preventing a federal officer from performing his or her duties;
- (b) obstructing justice by intimidating a party, witness, or juror, or
- (c) depriving persons of rights or privileges, including the right to equal protection of the laws and the right to vote.

That statute authorizes recovery of damages for violations of civil rights against any one or more of the conspirators. As with other civil rights statutes, 42 USCA § 1985 creates no separate rights but confers remedies for enforcement of rights arising under the Constitution or federal law.

Another Reconstruction-Era Civil Rights Act provisions, § 1986, dealing with actions for neglect or refusal to prevent conspiracies to interfere with civil rights, derives from 42 USCA § 1985 and provides a remedy for persons injured by an individual with authority, to neglect or refuse to prevent the wrongs specified in § 1985.

158. Newsome incorporates by reference Paragraphs 1 through 157 and 170 through 723 of this Complaint as if fully set forth and further state the following claims in support of this Count:

159. Defendant(s) as early as January 2004 had knowledge of the wrong, illegal and unlawful acts complained of herein regarding the handling of Newsome's wages and that of other nonexempt salaried employees as well as the health and safety risks reported. Even upon notification of said injustice, Defendant(s) did nothing to correct the wrongs complained of; instead, made a conscious, willful and deliberate decision to allow such practices to continue.

160. The conspiracy(s) that Defendants engaged in was prohibited by 42 USCA § 1985 in that said conspiracy(s) – (a) prevented and interfered with government officials' handling of complaints filed by Newsome and from said officials performing duties owed to Newsome as well as that of public interest, in their performing of duties owed and the enforcement of statutes/laws which prohibited MMS' unlawful employment violations reported; (b) obstructed the administration of justice and/or obstructed justice; and (c) deprived Newsome *equal* protection of the laws, *equal* privileges and immunities under the laws and *due process* of laws – i.e. rights secured/guaranteed under the Constitution and laws of the United States.

any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

161. The conspiracy(s) that Defendants engaged in was prohibited by 42 USCA § 1985 and supports a “*tacit*” agreement between them to deprive Newsome of protected rights secured under the statutes/laws provided in this instant Complaint.

162. MMS as early as January 2004, had knowledge of the 42 USC § 1981, 42 USCA § 1985, 42 USC § 2000/2000e-2/2000e-3 violations and unlawful/illegal practices of its employees (Defendant(s)) and having the power to prevent or aid in preventing the commission of the same, neglected or refused so to do, in that the wrongful acts committed against Newsome, makes MMS liable to Newsome for the injury/harm sustained, or her legal representatives, for all damages caused by such wrongful act, which MMS by reasonable diligence could have prevented.

163. Defendant(s) as early as January 2004, had knowledge that the 42 USC § 1981, 42 USCA § 1985, 42 USC § 2000/2000e-2/2000e-3 violations and unlawful/illegal practices at MMS and having the power to prevent or aid in preventing the commission of the same – i.e. reporting to the proper authorities, neglected or refused so to do, in that the wrongful acts committed against Newsome, makes each Defendant liable to Newsome for the injury/harm sustained, or her legal representatives, for all damages caused by such wrongful act, which Defendant(s) by reasonable diligence could have prevented.

164. Defendants had knowledge that the 42 USC § 1981, 42 USCA § 1985, 42 USC § 2000/2000e-2/2000e-3 violations and unlawful/illegal practices at MMS and having the power to prevent or aid in preventing the commission of the same, neglected or refused so to do, in that the wrongful acts committed against Newsome, makes each named Defendant liable to Newsome for the injury/harm sustained, or her legal representatives, for all damages caused by such wrongful act, which Defendants by reasonable diligence could have prevented.

165. Defendants’ conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and failing and/or neglecting to prevent unlawful employment practices and/or legal wrongs. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

166. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome’s employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome’s secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e. deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness*; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See **Exhibit “14”** attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of

authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . . blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

167. As a direct and proximate result of Defendant(s)' systematic failure and negligence to prevent unlawful employment practices and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said failure and/or negligence to prevent the unlawful employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve.

During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

168. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to neglect to prevent the unlawful employment practices as set forth in this Complaint.

169. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, for neglecting to prevent the unlawful employment practices and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit harassment, threats, intimidation, discrimination and other means of coercion that would place an employee in fear or retaliation if they act to prevent the unlawful employment practices as that set forth in this Complaint.

- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its neglect to prevent the unlawful employment practices reported.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from negligent acts to prevent the unlawful employment practices described of herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from negligent acts to prevent unlawful employment practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on failure and/or neglect to prevent the unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of being deprived of equal rights under the law as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1986.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from neglecting to prevent in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise

to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.

- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$2,500,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$10,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xvi) Interest according to law;
- (xvii) Costs of suit; and
- (xviii) Such other and further relief as the court deems just and proper.

COUNT V³¹
DEFAMATION AND CONSPIRACY TO DEFAME AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

170. Newsome incorporates by reference Paragraphs 1 through 169 and 191 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

171. At all times mentioned in this Complaint, Newsome was, has been, and now is a good citizen, known to former employers and acquaintances to have behaved and conducted herself in a becoming manner during her employment.

172. On or about February 2004, in the City of Flowood and in furtherance of conspiracy(s) Defendant(s) entered into an agreement to maliciously defame Newsome by spreading false and/or misleading information that Newsome was: "rebellious and insubordinate in job duties assigned her from the start of her employment," "that ever since

³¹ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9).

Newsome was hired, she was looking for a way to get fired to bring a lawsuit. [EMPHASIS ADDED] “Newsome consistently had responded to work-related requests or instructions in a hostile and obstructive manner, refusing to do so until MMS was forced to give her ultimatums before she would comply and that such insubordinate conduct must cease,” and “*having situations where MMS had to continue to make request and instructions specifically, and it comes back with an attitude of hostile, of hostility and insubordination, that MMS/Allen had to make sure Newsome understood what her duties were.*”

173. When MMS contends that Newsome’s employment was terminated for violating its policies, Newsome is allowed to show through facts, evidence and legal conclusions that the proffered reason provided by MMS is **PRETEXT** (i.e. *issue of fact as to whether MMS terminated Newsome’s employment because of violation of its policies or discovery and knowledge of Newsome’s engagement in protected activities – filing of charges against it and/or against former employer(s)*). *Ducote v. J.A. Jones Const. Co.*, 471 So. 2d 704 (1985); *Reed v. Sale Memorial Hospital*, 698 S.W. 2d 1154 (1986); and *Smith v. Atlas Off-Shore Boat Service, Inc.*, 653 F. 2d 1057, 62 A.L.R. Fed. 776 (5th Cir. 1981). The record evidence, facts and legal conclusions provided in this instant Complaint will support that proffered reasons presented by MMS and/or Defendant(s) for Newsome’s termination was pretext to cover-up/shield/mask and illegal animus.

174. In *furtherance* of Defendant(s)’ conspiracy, each committed *overt* acts in soliciting the aid and services of government agencies/officials/employees in the United States Department of Labor, United States Department of Justice and/or other agencies known to them to fulfill the role in conspiracy needed to accomplish goal – i.e. depriving Newsome of protected rights secured under the Constitution and/or laws of the United States.

175. Defendant(s) maliciously intending to cause Newsome unjustly to suffer punishment and to be deprived of her liberty and to oppress and ruin Newsome in the City of Jackson, County of Hinds and State of Mississippi, on or about February 2004, maliciously conspired to provide false information and/or testimony, for purposes of obstructing a federal investigation being conducted by the United States Department of Labor – Wage and Hour Division.

176. Defendant(s) maliciously intending to cause Newsome unjustly to suffer punishment and to be deprived of her liberty and to oppress and ruin Newsome in the City of Jackson, County of Hinds and State of Mississippi, on or about June 2004, maliciously conspired to provide false information and/or testimony, for purposes of obstructing a federal investigation being conducted by the United States Department of Labor – OSHA.

177. Defendant(s) maliciously intending to cause Newsome unjustly to suffer punishment and to be deprived of her liberty and to oppress and ruin Newsome in the City of Jackson, County of Hinds and State of Mississippi, on or about December 2004, maliciously conspired to provide false information and/or testimony, for purposes of obstructing a federal investigation being conducted by the United States Department of Labor – Equal Employment Opportunity Commission (“EEOC”).

178. Defendants maliciously intending to cause Newsome unjustly to suffer punishment and to be deprived of her liberty and to oppress and ruin Newsome in the City of Jackson, County of Hinds and State of Mississippi, in the fulfillment of their role in the conspiracy(s) leveled against Newsome, each pursued by their acts the same object (42 USCA §§ 1985 and 1986 violations) by the same means. *Each Defendant performing one part and the other*

another part, so that upon completion they have obtained the object pursued (42 USCA §§ 1985 and 1986 violations). Regardless whether each Defendant knew of the details or what part each was to perform, the end results being they obtained the object pursued – depriving and/or denying Newsome equal protection of the laws, equal privileges and immunities under the laws, due process of laws, life, liberties and pursuit of happiness, etc. secured/guaranteed under the Constitution and laws of the United States.

179. Defendant(s) provided false and/or misleading statements during federal investigation(s) being conducted by the United States Department of Labor in the City of Jackson, County of Hinds and in the State of Mississippi, wherein Defendant(s) maliciously conspired and agreed to accuse Newsome for instance, without probable cause of being “*rebellious and insubordinate*” from the start of her employment with MMS; as well as, *that ever since Newsome being hired she was looking for ways to be terminated so that she could bring a lawsuit*. As a direct and proximate result of said false and/or misleading statements Defendant(s) deprived and denied Newsome of equal protection of the laws, equal privileges and immunities of the laws and due process of laws. Moreover, deprived and denied Newsome protected rights secured/guaranteed under the Constitution and other governing statutes/laws of the United States. Defendant(s) committing such unlawful/illegal acts knowingly, willingly and maliciously for purposes of accomplishing the object of conspiracy(s) leveled against Newsome. Defendant(s) committing such unlawful/illegal act on behalf of their personal/financial interests as well as for business interests on behalf of their employer MMS.

180. Because of Defendants wrongful and defamatory/slanderous acts, Newsome has suffered great mental anguish, and has been forced to expend an extraordinary amount of financial resources, in defending against conspiracies that have been leveled against her, and has been greatly injured in the sum to be determined by a jury.

181. In committing the acts alleged in this Complaint, Defendants acted with malice toward Newsome, and Newsome is therefore entitled to recover from Defendants punitive damages in the sum to be determined by a jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.

182. As a direct and proximate result of Newsome having exposed conspiracy(s), corruption and unlawful employment acts of Defendant MMS and the role that government official Billy Jones – District Director of the Wage and Hour Division, Jackson Mississippi Office (i.e. *in his individual capacity* and in clear violation of W&H policies and procedures) - played in the overt act in furtherance of conspiracy(s) in the COVER-UP of MMS employment violations, she believes Billy Jones may have been asked to retire by the W&H as efforts taken by the United States Department of Labor to COVER-UP Billy Jones’ role in MMS’ conspiracy leveled against Newsome. See **Exhibit “13”** – *Excerpt of W&H File* attached hereto and incorporated by reference as if set forth in full herein which stated in part:

(Note) *During the course of this investigation, District Director (“DD”) Billy Jones retired from the department.* Regional Administrator McKeon assigned Assistant District Director (“ADD”) Oliver Peebles as Acting DD for the Gulf Coast District. DD Peebles has been advised through all actions of this case, and all of his instructions have been followed.

183. Defendants' conduct arose from hatred and ill-will toward Newsome and a desire to oppress Newsome with the wrongful intention of injuring Newsome. The conduct was taken with an improper and evil motive amounting to malice and in conscious disregard of Newsome's rights and abilities. Because the actions taken against Newsome were carried out in a deliberate, callous and negligent manner in order to injure and damage Newsome, Newsome is entitled to recover punitive damages from Defendants in an amount according to proof and in an amount appropriate to punish and make an example of Defendants.

184. Newsome is informed and believes that, based on information and belief alleges that with each *overt* act in furtherance of conspiracy(s) leveled against her by Defendants,' the object of providing false, misleading and malicious information was for purposes of publishing and posting false, malicious and slanderous information on the INTERNET (See **Exhibit "14"** – Internet Posting Regarding MMS Matter attached hereto and incorporated by reference as if set forth in full herein.) for purposes of destroying and ruining Newsome's character and reputation. Moreover, for purposes of depriving Newsome life, liberties and pursuit of happiness, equal protection of the laws, equal privileges and immunities under the laws and due process of laws – i.e. rights secured/guaranteed under the Constitution and laws of the United States.

185. As a result of Defendants unlawful conduct Newsome has suffered general damages to her reputation and character – i.e. supported by PUBLIC records:

- i) Newsome is a Mississippi State Champion in Track & Field.
- ii) Made Who's Who Among American High School Students.
- iii) Is an All-American in Track & Field.
- iv) Ranked Amongst the United States Best in Track & Field.
- v) Olympic Trial Qualifier and Participant.
- vi) Established Good Work Ethics With Employer(s) – for instance the following commendations being provided:

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary. - - RALPH B. GERMANY, JR.
(ATTORNEY)

This letter is to confirm and recommend Ms. Vogel Newsome to a position of Executive Assistant, Administrative Assistant or greater. While working with Lash Marine, she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring

them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.

She is an asset and will be sorely missed at Lash Marine. - - ROBERT K. LANSDEN (VICE PRESIDENT)

See **Exhibit "10"** – *Letter of References* attached hereto and incorporated by reference as if set forth in full herein.

All to be wiped out through MMS' conspiracy(s) leveled against Newsome to destroy her life, character and reputation and working with co-conspirators to place information on the INTERNET that it knew and/or should have known was obtained through criminal/civil violations. Willful, malicious and wanton acts to deprive Newsome, life, liberties, pursuit of happiness, equal protection of the laws, equal privileges and immunities under the laws and due process of laws secured and guaranteed under the Constitution and laws of the United States.

186. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and conspiring to defame her in her person, character and reputation. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

187. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been **BLACKLISTED** and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness*; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See **Exhibit "14"** attached hereto and incorporated by reference as if set forth in full herein.

188. As a direct and proximate result of Defendant(s)' systematic conspiring to defame Newsome in her person, character and reputation and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including

demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . ., blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell,

McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

189. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific overt acts to conspire to defame Newsome in her person, character and reputation as set forth in this Complaint.

190. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in conspiracy to defame Newsome in her person, character and reputation and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit conspiracy to defame.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its conspiracy to defame.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from conspiracy to defame Newsome in her person, character and reputation practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.

- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the conspiracy to defame complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of conspiracy to defame as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under Civil Rights Act, Constitution and laws of the United States.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in conspiracy to defame and/or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$2,500,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$4,000,000 or such amount as will sufficiently punish

Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;

- (xvi) Interest according to law;
- (xvii) Costs of suit; and
- (xviii) Such other and further relief as the court deems just and proper.

COUNT VI³²
NEGLIGENT INTERFERENCE WITH EMPLOYMENT AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

191. Newsome incorporates by reference Paragraphs 1 through 190 and 213 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

192. MMS is a corporation duly organized and existing under the laws of the State of Mississippi, engaged in the business of selling and/or providing legal services and/or representation, and having its principal office and place of business in the City of Tupelo, County of Lee and State of Mississippi and having offices that were located at 111 East Capitol Street - Suite 290 in Jackson, Mississippi 39201 (**Hinds** County, Mississippi) and 1080 River Oaks Drive – Suite A280, Flowood, Mississippi 39232 (**Rankin** County). Named Defendants at all times material to this action had been or were duly authorized and acting officers, agents, and employees of MMS.

193. Allen at all times material to this Complaint served as Chief Operations Officer as well as the Human Resources/Controller for MMS, and in that capacity during all times mentioned was actively involved in the business affairs of MMS as well as having a personal interest in the outcome of complaints/charges filed by Newsome with MMS and government agency(s).

194. Sams at all times material to this Complaint served as an Attorney and Vice President and Member of the Board at MMS, and in that capacity during all times mentioned was actively involved in the business affairs of MMS as well as having a personal interest in the outcome of complaints/charges filed by Newsome with MMS and government agency(s).

³² Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

195. Other Defendant(s) (Gordon, Farrell and Townsend) at all times material to this Complaint served in the capacity(s) as set forth in Paragraphs 6 through 8 above and in said capacity(s) were actively involved in the business affairs of MMS as well as having a personal interest in the outcome of complaints/charges filed by Newsome with MMS and government agency(s).

196. In or about September 2003, Newsome began contract employment with MMS and obtained permanent employment on or about October 6, 2003, at a salary of approximately \$33,000 annually, during which time she performed the services of a Legal Secretary, wherein she established and acquired the necessary good will with customers, agents, and/or clients of MMS.

197. On or about November 4, 2003, Newsome and MMS entered into an employment agreement, by the terms of which, among other things, Newsome was appointed to the position of Legal Secretary of Mitchell McNutt & Sams P.A. MMS/Allen requiring that Newsome execute EMPLOYEE ACKNOWLEDGEMENT FORM which stated in part:

The employee handbook describes important information about Mitchell McNutt, and I understand that I should consult the Chief Operations Officer regarding any questions not answered in the handbook. I have entered into my employment relationship with Mitchell McNutt voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Mitchell McNutt or I can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.

Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the handbook may occur, except to Mitchell McNutt's policy of employment-at-will. All such changes will be communicated in writing or via e-mail, and I understand that revised information may supersede, modify, or eliminate existing policies. Any revisions to the policies in this handbook must be approved by the firm's Board of Director.

Furthermore, I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received the handbook, and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.

After this form is signed by all staff employees initially, future changes will be communicated in writing or via e-mail and this acknowledgment will be obtained as a response to the written or e-mail notification. . .

See **Exhibit "15"** attached hereto and incorporated by reference as if set forth in full herein.

198. During the course of Newsome's employment with MMS, Newsome performed her various responsibilities in an exemplary fashion, received bonus, and otherwise capably performed each and every condition of employment agreement.

199. On or about December 2003 Newsome submitted complaint to Defendant MMS regarding Fair Labor Standards Act violations and/or concerns regarding not receiving wages earned and/or payment of services rendered as agreed upon.

200. Commencing on or about December 2003, Newsome incurred the enmity of Defendant(s) by discovering that MMS was not paying its nonexempt salaried employees in compliance with the wage and hour laws and/or Fair Labor Standard Act (FLSA). Moreover, was depriving nonexempt salaried employees earned wages for hours worked. Newsome also incurring the enmity of Defendant(s) by her energetic efforts to collect earned wages and overtime pay owed her by MMS.

201. Commencing for a period of about January 2004 to December 2004, named Defendant(s) maliciously, without just cause or excuse, and with the willful and negligent intent to injure Newsome, conspired to bring about Newsome's disgrace, humiliation, and ruin to cause Newsome's discharge from her employment, and to deprive Newsome of her right to any employment as Legal Secretary, by falsely accusing Newsome of being "*rebellious and insubordinate*" in her work, and ultimately causing her discharge from employment, as more fully appears in this instant Complaint/Lawsuit.

202. In furtherance of conspiracy:

(i) Commencing for a period of about December 2003 to December 2004, Defendant(s) on the false pretense and efforts to cover up employment violations, committed overt acts in furtherance of conspiracy(s) to create a discriminatory and hostile work environment to force Newsome out of the work place; built and designed a small cubicle and/or strict/confined work space and subjected Newsome to strict and oppressive supervision and monitoring.

(ii) On or about November 30, 2004, MMS denied Newsome an increase in pay (i.e. annual pay increase) as that given to those similarly situated on the false pretense and fabricated Performance Review drafted and prepared by MMS/Gordon.

(iii) Commencing for a period of about January 2004 to December 2004, named Defendant(s) placed Newsome under strict and oppressive monitoring and supervision with respect to her work, solely from malicious motive for the purpose of humiliating, disgracing, discriminating, retaliating and subjecting Newsome to a hostile work environment; as well as for purposes of forcing her out of the work place.

(iv) On or about December 3, 2004, MMS/Sams terminated Newsome's employment on the false pretense of making false allegations against her supervisor, Gordon. MMS/Sams' termination of Newsome's employment was racially motivated. Moreover, was motivated by knowledge of Newsome's engagement in protected activities - i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings.*

203. Commencing for a period from January 2004 to approximately December 1, 2004, Newsome submitted additional complaints to the attention of MMS regarding employment violations. The majority of Newsome's complaints were submitted to MMS/Allen via email.

204. On or about December 1, 2004 Newsome submitted her Complaint entitled, "HARASSMENT INCIDENT – 12/01/04" via email to the attention of Defendant MMS/Allen. See **Exhibit "5"** attached hereto and incorporated by reference as if set forth in full herein.

205. On or about December 3, 2004, MMS's/Sams, Gordon and Farrell held a meeting in regards to terminating Newsome's employment in the Jackson, Mississippi Office. Upon reaching the agreement that that Newsome's employment with MMS would be terminated, Newsome was asked to join MMS/Sams, Gordon and Farrell in conference room for meeting. MMS/Sams advised Newsome that her employment with MMS was being terminated.

206. **PRIMA FACIE PREREQUISITE:** (a) the record evidence supports the existence of *a relevant public policy*; (b) that Newsome engaged in conduct favored by public policy; (c) that Defendant(s) knew or believed that Newsome was engaged in protected activity – i.e. MMS relied upon advice of its attorney(s) who specialized in employment and labor laws to aid/assist it in decisions reached; thus, supporting unlawful/illegal practices rendered Newsome were willful, malicious and wanton; being done with knowledge that acts were in violation of public policy; (d) that Defendant(s) retaliated against Newsome as a direct and proximate result of her engagement in protected activities and retaliation was a motivating factor behind Newsome's termination of employment with MMS; (e) that Newsome's termination undermines an important public policy; (f) that Newsome's employment with MMS was terminated; (g) that Newsome's termination violated some clear mandate of public policy; (h) that a nexus between Defendant(s) and the decision to terminate Newsome's employment with MMS; (i) that MMS prohibited Newsome from performing a public duty and/or exercising an important job-related right or privilege; (j) that the action directed by Defendant(s) would violate specific statutes set forth in this Complaint and statutes/laws governing said matters relating to *public health, safety or welfare*; and clearly undermine expressed *public policy* relating to Newsome's basic responsibility as a citizen or a right and/or privilege as an employee; and (k) that Newsome's employment with MMS was terminated as a result of her contesting/opposing unlawful employment practices, refusing to comply with MMS and cover-up of employment violations and refusing not to remain silent in reporting of MMS' employment violations; moreover, MMS' knowledge of Newsome's engagement in protected activities.

ELEMENTS OF PUBLIC POLICY EXCEPTION: To prevail, an employee asserting a discharge that undermines public policy must establish five key elements:

- (i) The existence of a relevant public policy;
- (ii) That he or she was engaged in conduct favored by public policy;
- (iii) That the employer knew or believed that the employee was engaged in protected activity;
- (iv) That retaliation was a motivating factor in the dismissal decision, and
- (v) That the discharge would undermine an important public policy.

(a) In some jurisdictions, to state a claim for wrongful discharge due to violation of public policy, an employee must demonstrate:

- (1) that the employee was discharged;
- (2) that the dismissal violated some clear mandate of public policy; and
- (3) that there was a nexus between the defendant and the decision to fire the employee.

(c) A prima facie case of termination in violation of public policy requires a showing that:

- (1) the employer prohibited the employee from performing a public duty or exercising an important job-related right or privilege;
- (2) action directed by the employer would violate a specific statute relating to public health, safety or welfare, or would undermine a clearly expressed public policy relating to the employee's basic responsibility as a citizen or a right or privilege as a worker;
- (3) the employee was terminated as a result of refusing to comply with the employer's order or directive was based on the employee's reasonable belief that the action ordered by the employer was illegal, contrary to a clearly expressed statutory policy relating to the employee's duty as a citizen, or violative of the employee's right or privilege as a worker.³³

207. Since Newsome's termination of employment with MMS, she has had numerous attempts to find comparable employment. Prospective employers have inquired as to the reason(s) for Newsome's separation from employment with MMS. While Newsome has been able to find varied employment from time-to-time since leaving MMS, she continues to date to suffer from the conspiracy(s) leveled against her. Moreover, the malicious acts taken by MMS to engage other conspirators in conspiracy leveled against Newsome to destroy her life.

208. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and negligent interference with her employment. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

209. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of*

³³ 82 Am. Jur.2d Wrongful Discharge § 55. *Owens v. Carpenters' Dist. Council*, 161 F.3d 767 (4th Cir. 1998). *Hayden v. Bruno's Inc.*, 588 So.2d 874 (1991).

happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See **Exhibit "14"** attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . ., blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

210. As a direct and proximate result of Defendant(s)' systematic negligent interference with her employment and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

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211. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts for negligently interfering with her employment as set forth in this Complaint.

212. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

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- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit negligent interference with employment.
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- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from negligent interference with employment described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from negligent interference complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of negligent interference with employment in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under the Civil Rights Act, Constitution and other laws of the United States.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).

- (xii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$1,000,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$5,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xvi) Interest according to law;
- (xvii) Costs of suit; and
- (xviii) Such other and further relief as the court deems just and proper.

COUNT VII³⁴
DISCRIMINATION IN EMPLOYMENT AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

This action arises under the provisions of Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq. and other federal statutes and laws governing said matters. Newsome is seeking

³⁴ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

declaratory relief, injunctive, relief and damages to redress the deprivation of her rights from employment discrimination on the basis of race and sex perpetrated by Defendant(s). In further support thereof:

213. Newsome incorporates by reference Paragraphs 1 through 212 and 261 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

214. MMS is engaged in an industry affecting commerce, within the meaning of the Civil Rights Act of 1964. MMS employs in excess of the statutorily-required number of employees for the required number of calendar weeks required under this statute.

215. At all times, MMS was engaged in commerce or providing services for interstate commerce and was employer within the definition of 29 USC § 203.

216. Defendant MMS is corporation properly recognized and sanctioned by the laws of the States of Mississippi.

217. Newsome was at all material times a joint employee of MMS and an employee within the definition of 29 USC § 203.

218. Defendants MMS and Sams are persons within meaning of 42 USC § 2000e(a) and employers within meaning of 42 USC § 2000e(b).

219. Named Defendants have discriminated against Newsome, who was employed by MMS from approximately October 6, 2003 until December 3, 2004, on her race (African-American/Black) and sex (Female).

220. At all times material to this Complaint, MMS regularly employed five or more persons, bringing MMS within the provisions of FLSA, OSHA, Title VII of the Civil Rights of 1964 prohibiting employers or their agents from discriminating against employees on the basis of race, sex and or engagement in protected activities.

221. This instant Complaint is brought pursuant to the applicable statutes/laws which prohibit discrimination against a person in the terms, conditions, or privileges of employment on the basis of the person's race, sex, and engagement in protected activities.

222. This discrimination in violation of 42 USC § 2000e-2(a) occurred, among other ways, by:

- a) Subjecting Newsome to disparate discipline, including terminating her from employment with MMS; and
- b) Failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Newsome.

223. The Defendant(s) also have discriminated against Newsome in violation of 42 USC § 2000e-3(a) by, among other things:

- a) Subjecting Newsome to disparate discipline, including terminating Newsome from employment with MMS because she filed notified MMS that she will be filing an EEOC Charge.
- b) Retaliating against Newsome because she complained to Chief Operations Officer/Human Resources Representative/Controller, her supervisor, and co-workers about what she believed to be discrimination of employment on the basis of race;
- c) Retaliating against Newsome because she engaged in protected activity – i.e. Defendant(s)' knowledge of Newsome's filing of charges/complaints against it, involvement in legal actions regarding other employer(s) as well as her participation in matters of public policy; and
- d) Failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment of Newsome.

224. Defendant(s) has engaged or intentionally/deliberately engaged in unlawful employment practices and policies in violation of 42 USC § 2000e et seq. The discriminatory practices include, but are not limited to:

- a) Refusing to treat African-Americans/Blacks on an equal basis with Whites.
- b) Terminating African-Americans/Blacks on racial factors and considerations.
- c) Maintaining policies and practices with respect to, but not limited to, wages, job assignments, and other terms and conditions of employment that unlawfully operate to deny equal opportunity to African-Americans/Blacks because of their race.
- d) Wrongfully terminating African-Americans/Blacks from their jobs because of their race.
- e) Refusing to hire females on an equal basis with males.
- f) Terminating females because of their sex or other considerations.
- g) Wrongfully terminating females from their jobs because of their sex.
- h) Maintaining policies and practices with respect to, but not limited to, wages, job assignments and other terms and conditions of employment that unlawfully operate to deny equal opportunity to females because of their sex.
- i) Terminating employee because of their participation in protected activities (i.e. *for making charges, testifying, assisting, or participating in enforcement proceedings*).
- j) Wrongfully terminating employee from job because of the engagement in protected activities that are a matter of public policy.
- k) Maintaining policies and practices with respect to, but not limited to, discriminating and retaliating against employee because of their participation in protected activities and other

terms and conditions of employment that unlawfully operate to deny equal employment opportunity to employee because they have engaged in protected activity(s).

225. The effect of these policies and practices has been to deprive African-American/Black female, Newsome, of equal employment opportunities and otherwise to affect adversely her status as an employee because of her race and sex.

226. The EEOC received a timely charge filed by Newsome alleging she had been discriminated against in employment on the basis of race, sex, retaliation, etc. at MMS and terminated from employment at MMS on the basis of race, sex, retaliation, etc..

227. Within 180 days of the occurrence of the acts of which this Complaint is based, Newsome timely filed charges of discrimination against MMS with the United States Department of Labor – Equal Employment Opportunity Commission.

228. The EEOC did not resolve this claim on a voluntary basis and sent Newsome a Right to Sue Letter. Because of the claims arising in this instant Complaint, Newsome has a right to bring action against Defendant(s) within the six-year statute of limitations for actions involving *employment discrimination suit charging violation of federal statute guaranteeing equal rights under the law*. 42 U.S.C.A. § 1981; Code Miss.1972, §§ 15-1-29, 15-1-49. Under law of Mississippi, employee's claim against **employer charging violation of federal statute guaranteeing equal rights**, filed within **six** years of alleged *racial* discrimination, was **not time barred**. Code Miss.1972, § 15-1-49; 42 U.S.C.A. § 1981.

229. While the EEOC failed to investigate Newsome's charge pursuant to 42 USC § 2000e-5, it advised her of her right to sue MMS.

230. On or about February 11, 2004, Newsome filed a charge with the United States Department of Labor – Wage and Hour Division for what she believed to be violations under the Fair Labor Standards Act (“FLSA”) and unlawful employment practices by MMS.

231. Defendant(s) discriminated and retaliated against Newsome for having engaged in protected activity(s) in that she engaged in acts involving public policy and performed duty to report the unlawful and illegal employment practices of MMS.

232. Defendant(s) in response to Newsome's FLSA charge/complaint filed with W&H, retaliated against Newsome and provided false and misleading information during federal investigation for purposes of impeding and obstructing the administration of justice.

233. Defendant(s) acts were pretext and done for purposes of shielding/masking an illegal animus – i.e. MMS' employment violations prohibited by law.

234. This is an action brought pursuant to the statutes/laws set forth in this Complaint and/or to the applicable statutes/laws governing said matters addressed in this Complaint to correct unlawful employment practices leveled against Newsome because of her race (African-American/Black), sex (Female), engagement in protected activities (participation in legal actions/investigations as a party, litigant and/or witness) and to provide appropriate relief to Newsome, who was adversely effected by such practices. Newsome alleges that during her employment as a Legal Secretary with MMS, she was subjected to discrimination; retaliation and hostile work environment by Defendant(s); who repeatedly allowed the strict

and oppressive supervision, interference and interruption of job performance that were offensive and derogatory to Newsome's race, sex and protected rights. Newsome further alleges that Defendant(s) participated and condoned the discriminatory practices, hostile work environment and retaliatory practices leveled against Newsome. Defendant(s) ignored and condoned said unlawful practices that were reported by Newsome. Defendant(s) failed to take prompt, corrective and remedial action of unlawful employment practices that were reported by Newsome.

RETALIATORY DISMISSALS: Retaliatory firings have been traditionally the ground for invoking the public policy exception to the common-law at-will employment doctrine. In these cases, *the retaliatory act has been held to violate the public interest if the employee has been discharged for performing an act that public policy encourages, or for refusing to engage in conduct that public policy condemns...* The court held that the . . . *overtures, the seeming manipulation of job assignments, the capricious firing, and the apparent connivance of the personnel manager in this course of events all supported the jury's conclusion that the dismissal was maliciously motivated.* . . . In other decisions where an employee's recovery for bad faith wrongful discharge has been upheld, it was relatively clear that the retaliatory dismissal of the employee would constitute a violation of public policy. The public policy issue is rarely given separate treatment, however, where the discharge was independently or alternatively found to constitute a violation of the implied covenant of good faith and fair dealing.³⁵

235. Although Newsome reported the discriminatory, offensive, retaliatory and hostile work environment to MMS' Chief Operating Officer/Human Resource Representative/Controller (Allen), the discrimination, retaliation, offensive, oppressive and hostile treatment against Newsome continued. Allen is white.

236. Although Newsome complained of the discriminatory, offensive, retaliatory and hostile work environment to her supervisor (Gordon), the discrimination, retaliation, offensive, oppressive and hostile treatment towards Newsome continued. Gordon is white.

237. Although Farrell and Townsend were aware of the discriminatory, offensive, retaliatory and hostile work environment and the vicious attacks leveled against Newsome, both did nothing and allowed the unlawful/illegal employment conditions to continue. Farrell and Townsend are white.

238. The conditions of Newsome's employment with MMS were made so intolerable that she repeatedly reported unemployment violations which as a direct and proximate result of her complaints resulted in wrongful termination.

239. On or about December 20, 2004, Newsome filed a complaint with the Equal Employment Opportunity Commission. Upon the completion of the EEOC's handling of matter, it advised Newsome of her right to bring legal action against MMS. All conditions precedent to the institution of this lawsuit has been fulfilled. Moreover, since this instant lawsuit is brought pursuant to 42 U.S.C.A. § 1981 and the applicable statutes laws which provide for instance:

³⁵ 48 Am. Jur. Proof of Facts 2d 224-225

Walton v. Utility Products, Inc., 424 F.Supp. 1145 (D.C.Miss. 1976)
- (n.2) Under law of Mississippi, general six-year period of limitations rather than three-year period of limitations which applies to action founded on implied contracts and action to recover back pay governs employment discrimination suit charging violation of federal statute guaranteeing equal rights under the law. 42 U.S.C.A. § 1981; Code Miss.1972, §§ 15-1-29, 15-1-49. (n. 4) Under law of Mississippi, employee's claim against **employer charging violation of federal statute guaranteeing equal rights, filed within six years of alleged racial discrimination, was not time barred.** Code Miss.1972, § 15-1-49; 42 U.S.C.A. § 1981.

This instant lawsuit has been timely, properly and adequately brought within the statute-of-limitation governing said matters.

240. Newsome was discriminated against in employment opportunities because of her race (African-American/Black), sex (female) and participation and/or engagement in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*).

241. While Newsome reported the discrimination, retaliation and hostile work environment leveled against her to MMS/Allen/Gordon, said behavior was allowed to continue because perpetrators were white male and the need to enslave Newsome and keep her in bondage. Moreover, for purposes of destroying and braking Newsome's will power and depriving her life, liberties and pursuit of happiness.

242. MMS allowed Allen/Gordon to rely upon their sex (male) and race (white) to subject Newsome to racial discrimination, sexual harassment and a hostile work environment. Had Newsome been white and male, MMS may not have condoned such racial discrimination, sexual harassment and hostile work environment to which Newsome was subjected.

243. During Newsome's employment, she was repeatedly subjected to threats, prejudices, discrimination, means of coercion, hostility, resentment, etc. for having contested and opposed the unlawful employment practices of MMS.

244. From approximately January 2004 to December 3, 2004, Defendant(s) engaged in unlawful employment practices in its Jackson, Mississippi office by subjecting Newsome to a discriminatory and hostile work environment based on her race, sex and *for making charges, testifying, assisting, or participating in enforcement proceedings*. These unlawful practices include and are not limited to the following:

(i) When Newsome reported to MMS/Allen/Gordon concerns of discrimination, retaliation, harassment and a hostile work environment, MMS/Allen/Gordon ignored complaints and seeing the impact/affect on Newsome, authorized the escalation of discriminating, harassing, retaliating practices and a hostile work environment. Willful, malicious and wanton acts motivated by racial bias towards Newsome.

(ii) Notifying MMS/Allen of unlawful employment practices in violation of FLSA. To no avail. Resulting in Newsome filing a charge/complaint with the United States Department of Labor – Wage

and Hour Division. Because of Newsome's engagement in said protected activity, she was subjected to discrimination, retaliation, hostile work environment and other unlawful/illegal practices.

(iii) Notifying MMS/Allen of unlawful employment practices in violation of OSH Act. To no avail. Resulting in Newsome filing a charge/complaint with the United States Department of Labor – Occupational Safety & Health Administration. Because of Newsome's engagement in said protected activity, she was subjected to discrimination, retaliation, hostile work environment and other unlawful/illegal practices.

(iv) Notifying MMS/Allen of unlawful employment practices in violation of Title VII. To no avail. Resulting in Newsome advising of her intent to file a charge/complaint with the United States Department of Labor – Equal Employment Opportunity Commission. Because of Newsome's engagement in said protected activity, she was subjected to discrimination, retaliation, hostile work environment and other unlawful/illegal practices.

245. MMS followed a policy and practice of discrimination and retaliation in employment against Newsome on account of her race (African-American/Black), sex (Female) and *for her making charges, testifying, assisting, or participating in enforcement proceedings*. Under such policy and practice, MMS, through its agents, representatives and employees, repeatedly harassed and subjected Newsome to a hostile work environment because she insisted on being given equal opportunity employment for herself and because she filed charges of discrimination against former employer(s) with the Equal Employment Opportunity Commission and/or in Federal Court(s).

246. As a direct and proximate result of MMS' systematic and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. MMS repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

247. Newsome is informed and believes that her engagement in protected activities [i.e. *for making charges, testifying, assisting, or participating in enforcement proceedings*] was a substantial and determining factor in MMS' decision to discriminate, retaliate and subject her to a hostile work environment as well as terminate Newsome's employment.

248. The unlawful employment practices of Defendant(s) complained of in this Complaint were deliberate and intentional.

249. The unlawful employment practices of named Defendant(s) complained of in this Complaint were done with malice or reckless indifference to the protected rights of Newsome.

250. Defendant(s)' conduct as alleged in this Complaint constitutes an unlawful employment practice in violation of the statutes/laws governing employment violations.

251. As a direct, foreseeable, and proximate result of Defendant(s)' discriminatory acts, Newsome has suffered and continues to suffer substantial losses in earnings and job benefits,

and has suffered and continues to suffer humiliation, embarrassment, mental and emotional distress, and discomfort, all to Newsome's damage in an amount to be determined by a jury to deter and sufficiently punish named Defendants for their willful and malicious conduct as well as serve as an example to prevent a repetition of such conduct in the future.

252. Named Defendants committed the acts described in this Complaint oppressively, fraudulently, and maliciously, entitling Newsome to an award of punitive damages against said Defendants in an amount to be determined by a jury based on the evidence.

ELEMENTS OF DAMAGES – IN GENERAL: All employment-related losses for salaried and hourly wage employees are recoverable in a wrongful discharge suit, regardless of whether the action sounds in contract or tort. Thus, the employee may recover back pay, bonuses, and commissions that would have been earned but for the dismissal. The employee's recovery may include damages for loss of fringe benefits. . . . The employee is also entitled to recover the cost of securing other employment, and this cost may include moving expenses. The amount of the award for back pay and loss of fringe benefits during the employee's period of unemployment may be offset by the amount of unemployment insurance, if any, received by the employee during that time. . . . the employee has no duty to seek inferior employment, and the burden of proof of the employee's failure to mitigate damages is on the employer. Moreover, it has been held that the employer may be estopped from raising the issue of the employee's duty to mitigate damages if the employee's dismissal was maliciously motivated. . . . Damages for consequential losses and emotional distress generally are not allowed in a wrongful discharge case if the cause of action sounds entirely in contract. Where the action sounds in tort alone, or in both contract and tort, such compensatory damages are allowed. . . . plaintiff testified that as a result of the firing he suffered emotional distress by way of humiliation and lost confidence and trust. . . . The court held that this evidence supported an award of compensatory damages. . . . Punitive damages are recoverable in an action for bad faith wrongful discharge if the defendant's conduct is sufficiently culpable. . . . The amount of punitive damages or exemplary damages to be awarded is a matter for the discretion of the jury; it depends on the circumstances of the particular case. Punitive damages must bear a reasonable relationship to the actual damages sustained by the plaintiff, though there is no fixed ratio by which punitive and actual damages are properly proportioned. An appellate court generally will not substitute its judgment for that of the trier of fact as to the amount of punitive damages to be awarded. . . . plaintiff was discharged on the ground of poor work performance, after the employer's incomplete and insufficient investigation of the charges that had been brought against plaintiff by coemployees. Plaintiff experienced substantial difficulty finding subsequent employment, and she ultimately had to leave the state. She had lived and worked in a small community where a dismissal for poor work performance would necessarily have an adverse consequence on her reputation and ability to earn a livelihood. One of the charges against her had been fabricated and her personnel file had been altered to support the allegation. An award of punitive damages against her former employer was affirmed on the basis of this evidence. (verdict for \$95,000

*economic damages, \$100,000 compensatory damages for mental distress, and \$1,300,000 punitive damages).*³⁶

253. Under the provisions of the Civil Rights Act of 1964 and the Fair Labor Standards Act of 1938, there is due and owing a sum of money equal to the salary and benefits Newsome would have received had there not been a discriminatory policy and had she been paid for hours and overtime worked.

254. Further, Newsome has been deprived of income in the form of wages and or prospective retirement benefits, Social Security, Unemployment Compensation benefits, and other benefits due to her as an employee solely because of her race or sex, in sum of money to be proven at trial.

255. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and discriminating in employment. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

256. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See Exhibit "14" attached hereto and incorporated by reference as if set forth in full herein.*

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . . ; that they published his confidential sources thus destroying his credibility . . . ; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . . , assigning him to more and more degrading tasks Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous.

³⁶ 48 Am. Jur. Proof of Facts 2d 235-237.

The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . . , blackballed him, thus precluding other employment, . . . thus destroying his credibility . . . , all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

257. As a direct and proximate result of Defendant(s)' systematic discriminating in employment and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to

continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.*

258. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to discriminate in employment as set forth in this Complaint.

259. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

260. All conditions precedent to the filing of this suit has been performed or has occurred.

In order to maintain an action under 42 USCA § 1985, Newsome need not first exhaust administrative or state remedies. Neither does the availability of a state remedy preclude Newsome from seeking relief under the Civil Rights Act, when the Complaint otherwise states a claim. (*Hazzard v. Weinberger*, 382 F.Supp. 225 (1974) affirmed 519 F.2d 1397 (2nd Cir. 1975)) or state court remedies (*Burt v. City of New York*, 156 F.2d 791 (1946)).

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:³⁷

³⁷ **Public Law 102-166 (102d Congress) – An Act:**

To amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

§ 2 Findings:

- (i) Grant a permanent injunction enjoining MMS, its officers, successors, assigns, employees and all persons in active concert or participation with it, from discriminating in employment and from engaging in harassment based on race, sex and engagement in protected activity(s) and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order MMS to institute and carry out policies, practices and programs which effectively prohibit discriminating in employment, racial discrimination and sexual harassment in the workplace and which provide equal employment opportunities for African-Americans/Blacks and which eradicate the effects of MMS' unlawful employment practices.
- (iii) Order MMS to make Newsome whole by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from discriminating in employment described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on discriminating in employment and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.

The Congress finds that – (1) additional remedies under Federal law are *needed to deter unlawful harassment and intentional discrimination in the workplace* . . .

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment . . .

§3 Purposes:

The purposes of this Act are –

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace; . . .

(1) to respond to *recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination*. . .

- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of the discrimination against her as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that MMS' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates in employment against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendants to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) For a sum of money equal to the salary and benefits Newsome would have received had there not been a discriminatory policy and had she been paid wages and overtime earnings.
- (xv) Award compensatory damages to Newsome to fully compensate her for injuries caused by the discriminatory conduct, pursuant to and within the statutory limitations of 42 USC § 1981a.
- (xvi) Take other appropriate nondiscriminatory measures to overcome the effects of the discrimination in employment.
- (xvii) The sum for lost wages in that, as a result of the injuries suffered, Newsome was forced to lose – at the time of this filing – approximately three (3) years and count continues until this legal matter is resolved at a rate to be determined at trial – i.e. to include potential pay increases, etc.
- (xviii) The sum to be determined at trial for loss of future earning capacity, in that as a result of the injuries suffered. Newsome has been determined to have suffered irreparable and permanent damage to her reputation and character as a direct and proximate result of the false and malicious information that has been posted on the INTERNET that has caused

irreparable damage to her future employability in her usual or normal occupation. Moreover, for the discrimination in employment set forth herein.

- (xix) For attorney fees and/or costs of suit;
- (xx) For prejudgment interest on all amount claimed;
- (xxi) For such other and further relief as the court deems proper.

COUNT VIII³⁸
FAIR LABOR STANDARDS ACT AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

Newsome brings this action to enjoin MMS from violating the provisions of the Fair Labor Standards Act of 1938, 29 USC § 201 et seq. and other federal statutes/laws governing said matters and further states:

261. Newsome incorporates by reference Paragraphs 1 through 260 and 359 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

The successful business operation and reputation of Mitchell McNutt is built upon the principles of fair dealing and ethical conduct of our employees. *Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.*

The continued success of Mitchell McNutt is dependent upon our clients' trust and we are dedicated to preserving that trust. Employees owe a duty to Mitchell McNutt, its clients, and shareholders to act in a way that will merit the continued trust and confidence of the public.

Mitchell McNutt makes every attempt to comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

³⁸ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct. If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with your immediate supervisor/attorney and, if necessary, with the Firm President for advice and consultation.

Compliance with this policy of business ethics and conduct is the responsibility of every Mitchell McNutt employee. Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.

See **Exhibit "3"** – *MMS Employee Handbook 104 Business Ethics and Conduct* attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, it allowed Defendant(s) to represent it in an unlawful/illegal manner before government agencies, courts, public entities, etc. Defendant(s) handling of matters before government agency(s) wherein they engaged in an unethical/unlawful/illegal manner, reflected on the way MMS conducted business; moreover, Defendant(s)' willingness to take a far departure from policies of MMS for purposes of advancing their own personal interest in the outcome of charges/complaints filed by Newsome. Furthermore, how far Defendant(s) was willing to go in the handling of business on behalf of MMS to influence the outcome of charges/complaints filed by Newsome.

262. The Fair Labor Standards Act ("FLSA") was *aimed at* the elimination of labor conditions detrimental to the maintenance of a minimum standard of living necessary for the health, efficiency, and general well-being of employees, and the eradication of the burdens on commerce caused by substandard labor conditions. *Fleming v. Warshawsky & Co.*, 123 F. 2d 622, 626.

The section under consideration was designed to obviate fears of economic retaliation which might operate to induce aggrieved employees to accept substandard conditions of employment in violation of the Act. *Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 80 S.Ct. 332 (1960). Insomuch *as Congress* chose to rely on information and complaints of employees seeking to vindicate their rights rather than on detailed federal supervision or inspection of payrolls to secure compliance with the prescribed standards of the Act, it is clear that effective information could be expected only if employees felt free to approach enforcing officials without fear of reprisal or discriminatory discharge. *Id.*

263. MMS employs in excess of the statutorily-required number of employees and is an employer within meaning of the FLSA and is, therefore, governed by the provisions of the FLSA and/or statutes and laws governing said matters.

264. During the period beginning October 6, 2003, and continuously through December 3, 2004, MMS paid to its nonexempt salaried employees' wages at rates less than minimum wage of \$5.15 an hour for their employment in interstate commerce and in the production of goods and services for interstate commerce.

265. By failing to pay its nonexempt salaried employees at rates not less than the required rates during this period, MMS has violated the provisions of Sections 6 and 15(a)(2) of the Act.

266. During the period beginning October 6, 2003, and continuously through December 3, 2004, MMS employed Newsome and other nonexempt salaried employees engaged in interstate commerce for workweeks longer than 40 hours, and failed to compensate Newsome (nonexempt salaried employees) for hours worked between 37½ and 40 hours, and failed to compensate Newsome (nonexempt salaried employees) for their employment in excess of 40 hours in these workweeks at rates not than one and one-half times the regular rates at which Newsome (nonexempt salaried employees) was employed and, in fact, failed to compensate her (nonexempt salaried employees) for these excess hours at any rates greater than the regular rates at which they were employed.

267. By employing Newsome (nonexempt salaried employees) for workweeks in excess of the applicable hours during this period without compensating her (them) for her (their) overtime in such workweeks at rates not less than one and one-half times the regular rates at which she (they) was employed, MMS has violated the provisions of the Act.

268. MMS had continuously violated the provisions of the Act and threatened and intimidated Newsome for reporting its violations to it as well as to federal agency. MMS can be expected to continue to violate the provisions and withhold wages earned and overtime pay earned unless enjoined and restrained by a judgment of this Court.

269. Newsome, a former employee of MMS, brings this action on behalf of herself and other nonexempt salaried employees of MMS that were similarly situated, to recover unpaid minimum wages and/or earned wages, overtime compensation, liquidated damages, attorney's fees, and costs under the provisions of section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C.A. § 216(b)), here referred to as "the Act" or "FLSA."

270. Jurisdiction of the action is conferred on this court by section 16(b) of the Act (29 U.S.C.A. § 216(b)), and by the provisions of 28 U.S.C.A. § 1337, relating to any civil action or proceeding arising under any Act of Congress regulating commerce.

271. At the times mentioned, Defendant L.F. Sams ("Sams") was and may still be a Member, Board Member and Attorney of MMS, and was an employer of Newsome and others similarly situated within the meaning of section 3(d) of the Act (29 U.S.C.A. § 203(d)), in that Sams acted directly in the interests of MMS, in relation to the employees of MMS, including Newsome and others similarly situated. Newsome believes Sams is a resident of Tupelo, Mississippi; however, reserves to right to correct information once it becomes known to her the correct information regarding residency if necessary.

272. At all times mentioned in this Complaint, MMS is a law firm and was engaged in the business of providing legal services in connection with said business.

273. During the period from October 2003 to December 3, 2004, or during portions of that period, MMS employed Newsome and others similarly situated in various occupations in connection with the business of MMS. The period of employment for Newsome and the occupation in which she was employed is set forth at Counts VI, XIII and XIV. During the respective period of her employment as a Legal Secretary, Newsome and others similarly situated were engaged in providing legal assistance to attorneys. While Newsome requested a job description for that of a Legal Secretary to determine what her job duties were, MMS refused and/or declined to provide Newsome with a Job Description. During the respective periods of her employment with MMS, Newsome and others similarly situated were engaged in ordering, unpacking, or receiving materials purchased by MMS from outside the state, or

were engaged in processing, handling, or otherwise producing legal documents, pleadings, exhibits, etc. and produced by MMS, or in closely related processes or occupations directly essential to such production. A substantial portion of the goods thus produced by Newsome and others similarly situated was produced for interstate commerce, in that such goods were in fact shipped or delivered by MMS in interstate commerce, or were produced with the knowledge and intention on the part of MMS that such shipment, delivery, and sale of products/services rendered in interstate commerce would take place. In performing the operations described above, Newsome and others similarly situated were engaged in commerce or in the production of goods/services for commerce within the meaning of sections 3(b), 3(j), 6(a) and 7(a) of the Act (29 U.S.C.A. §§ 203(b), (i), (j), 206(a), 207(a)).

274. During the period from October 2003 to December 3, 2004, MMS employed Newsome and others similarly situated, in commerce or in the production of goods and services for commerce, for many workweeks longer than 40 hours, and failed and refused to compensate Newsome and others similarly situated for such work in excess of 40 hours at rates not less than one and one-half times the regular rates at which they were employed, contrary to the provisions of section 7(a) of the Act (29 U.S.C.A. § 207(a)), and MMS paid certain of Newsome and others similarly situated *less than minimum wage* of approximately \$5.15 an hour from October 2003 to December 3, 2004, contrary to the provisions of section 6(a) of the Act (29 U.S.C.A. § 206(a)) – *i.e. because MMS failed to pay anything for ACTUAL hours worked between 37.5 and 40*. The approximate sums due Newsome for such overtime compensation and wages at the time of her filing of charge with the United States Department of Labor Wage & Hour Division being an amount to be determined at trial. Because MMS continued to pay Newsome and similarly situated employees in violation of the Act, the exact amount that is presently due her and similarly situated has not been determined; however, is to be determined during the course of litigation. In addition, Newsome allege that there is due and owing to other employees of MMS similarly situated, for overtime compensation and minimum wages/ACTUAL earnings, the approximate sum to be determined during the course of litigation.

275. On or about November 4, 2003, Newsome and MMS (i.e. through its representative Allen), agreed that, if Newsome would enter into the employment of MMS as Legal Secretary, it would pay her a salary of approximately \$33,000.00 as a nonexempt employee, and would make payments on the salary on the 15th and 30th of each month. The execution of said agreement was also solidified between Newsome and MMS' representative (Allen).

276. Newsome entered on the performance of the *Employee Acknowledgment Form*, and devoted her time, energy, and best judgment to the interest of MMS. In so doing, Newsome expended numerous hours of work from the time period of approximately October 2003 to December 3, 2004.

277. Newsome continued in the service of MMS and performed all of the conditions of the agreement until December 3, 2004, where her employment with MMS was abruptly terminated by MMS/Sams as a direct and proximate result of Newsome having submitted a complaint on December 1, 2004, as well as numerous complaints with MMS *prior* to December 1, 2004. Moreover, MMS'/Sams' retaliation against Newsome for MMS' failing to pay the salary and wages due her for work/services rendered.

278. During Newsome's employment with MMS she submitted a complaint to the attention of MMS/Allen out of concerns of unlawful employment practices under FLSA. When MMS failed to comply with the statutes/laws governing wages and refused to pay

Newsome in accordance with the FLSA, she proceeded to file a complaint with the United States Department of Labor – Wage and Hour Division (“W&H”).

279. MMS/Allen/Farrell encouraged Newsome to file a complaint with the W&H because of their knowledge that MMS/Farrell having a special relationship with W&H employees. Moreover, that W&H would work with MMS to cover-up FLSA violations.

HOW TO COMPUTE HOURLY RATE AND PAY

280. Pursuant to FLSA, Newsome’s hourly rate of pay from MMS was supposed to be approximately \$15.87. MMS agreed to pay Newsome an Annual Salary of \$33,000.

Annual Salary ÷ 52 ÷ 40.

Therefore, in Newsome’s case, it would have been:

$\$33,000 \div 52 \div 40 = \15.865 (\$15.87 per hour rounded)

§778.113 Salaried Employees – general

(a) *Weekly salary.* If the employee is employed solely on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of \$182.70 and if it is understood that this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is \$182.70 divided by 35 hours, or \$5.22 an hour, and when he works overtime he is entitled to receive \$5.22 for each of the first 40 hours and \$7.83 (one and one-half times \$5.22) for each hour thereafter. If an employee is hired at a salary of \$220.80 for a 40-hour week his regular rate is \$5.52 an hour.

(b) *Salary for periods other than workweek.* Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semimonthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular hourly rate of pay will be calculated as indicated above. The regular rate of an employee who is paid a regular monthly salary of \$1,040, or a regular semimonthly salary of \$520 for 40 hours a week, is thus found to be \$6 per hour. Under regulations of the Administrator, pursuant to the authority given to him in section 7(g)(3) of the Act, the parties may provide that the regular rates shall be determined by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular workday. Of course, the resultant rate in such a case must not be less than the statutory minimum wage.

Pursuant to §778.113(b), hourly rate is to be converted to the workweek equivalent and divided by 40 to determine the hourly rate of pay pursuant to §778.113(a). Therefore in Newsome’s case, it would have been:

$1375 \times 24 \div 52 = 634.615$ (\$634.62 weekly pay rounded)

$634 \div 40 = 15.865$ (\$15.87 per hour rounded)

Nevertheless, MMS only compensated Newsome at \$15.86 per hour.

281. MMS/Allen/Farrell and Billy Jones -District Director of Wage and Hour – (“Jones/W&H”) acknowledged that Newsome was a nonexempt salaried employee.

HOURS WORKED:

282. MMS/Allen/Farrell and Jones/W&H attempted to assert that Newsome had *fluctuating workhours*. Newsome believes that a reasonable person/mind may conclude that MMS determined to cover up its unlawful employment practices would stop at nothing to COVER-UP its criminal/civil wrongs leveled not only against Newsome but those of its nonexempt salaried employees to keep from having to pay said employees the wages earned.

283. Newsome believes that a reasonable person/mind may conclude that MMS relied upon special relationships with Jones/W&H to influence the outcome of any investigation into the complaint filed by Newsome. Newsome gathered from MMS’/Allen’s/Farrell’s and Jones’/W&H’s assertion, that such a conclusion had been *influenced* and drawn from conversations with MMS representatives (i.e. Farrell and/or Allen) because this was information (i.e. *fluctuating workhours*) that MMS had provided Newsome. However, this was not the case. Pursuant to MMS’ Policy “**502 Work Schedules**” of its Employee Handbook, it states in part:

The normal work schedule for all employees is 7.5 hours a day, 5 days a week . . .

See **Exhibit “3”** attached hereto and incorporated by reference as if set forth in full herein. Therefore, supporting facts and evidence that Newsome and other nonexempt salaried employees were not on fluctuating workhours. Supporting PRETEXT and efforts by MMS and co-conspirators to shield and illegal animus.

284. Jones/W&H having access to MMS’ records. If information was not already in W&H’s records, said department could have requested copy of MMS’ *Employee Handbook* and/or policies and procedures.

Newsome was required by MMS to work 8:30 a.m. – 5:00 p.m., Monday thru Friday – this being 7.5 hours a day, 5 days a week.

Therefore, Newsome as well as other nonexempt salaried employees on said schedule **COULD not** be considered working under “*fluctuating work hours.*” MMS and Jones/W&H were aware that although Newsome was only required to work 37.5 hours a week, MMS pursuant to MMS’ policies (*Employee Handbook*) at 401 **Timekeeping**, that Newsome was to be compensated for 40 hours a week. MMS Policy “401 **TIMEKEEPING**” which stated in part:

Every full time staff employee’s compensation is based on a 40 hour workweek. Our policy is that if you work those 2½ hours for any reason that time has already been paid . . .

See **Exhibit “3”** attached hereto and incorporated by reference as if set forth in full herein. Therefore, based on established policies of MMS, it was telling nonexempt salaried employees (i.e. as Newsome) that they have *already been compensated* for 40 hours a week although they are only required to work 37½ hours (40 – 37.5 = 2.5 or 2½). MMS represented to Newsome and other nonexempt employees that they were already being paid

for the 2½ hours (40 hours) although they were only required to work 37½. However, this WAS NOT the case. MMS WAS NOT compensating Newsome (i.e. nonexempt salaried employees) for the 2½ hours or for 40 hours a week when the periods involved 12 or 11 actual workdays. In fact, MMS was paying less than 40 hours each workweek in pay periods consisting of 12 or 11 actual workdays. Furthermore, MMS was not even paying anything (i.e. NOTHING - not even minimum wages) for the 2½ between 37.5 and 40 hours. In so doing, MMS was acting in VIOLATION §§ 778.223, 778.315, 778.317, etc.³⁹

FIXED SALARY FOR FLUCTUATING HOURS:⁴⁰

³⁹CFR 19 § 778.223 **Pay for non-productive hours distinguished** - Under the Act an employee must be compensated for all hours worked. As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, in such activities as waiting for work, remaining "on call", traveling on the employer's business or to and from workplaces, and in meal periods and rest periods are regarded as working time and some are not. The governing principles are discussed in part 785 of this chapter (interpretative bulletin on "hours worked") and part 790 of this chapter (statement of effect of Portal-to-Portal Act of 1947). To the extent that these hours are regarded as working time, payment made as compensation for these hours obviously cannot be characterized as "payments not for hours worked." Such compensation is treated in the same manner as compensation for any other working time and is, of course, included in the regular rate of pay. Where payment is ostensibly made as compensation for such of these hours as are not regarded as working time under the Act, the payment is nevertheless included in the regular rate of pay unless it qualifies for exclusion from the regular rate as one of a type of "payments made for occasional periods when no work is performed due to * * * failure of the employer to provide sufficient work, or other similar cause" as discussed in §778.218 or is excludable on some other basis under section 7(e)(2). For example, an employment contract may provide that employees who are assigned to take calls for specific periods will receive a payment of \$5 for each 8-hour period during which they are "on call" in addition to pay at their regular (or overtime) rate for hours actually spent in making calls. If the employees who are thus on call are not confined to their homes or to any particular place, but may come and go as they please, provided that they leave word where they may be reached, the hours spent "on call" are not considered as hours worked. Although the payment received by such employees for such "on call" time is, therefore, not allocable to any specific hours of work, it is clearly paid as compensation for performing a duty involved in the employee's job and is not of a type excludable under section 7(e)(2). The payment must therefore be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

§ 778.315 **Payment for all hours worked in overtime workweek is required** - In determining the number of hours for which overtime compensation is due, all hours worked (see §778.223) by an employee for an employer in a particular workweek **must** be counted. Overtime compensation, at a rate not less than one and one-half times the regular rate of pay, **must** be paid for each hour worked in the workweek in excess of the applicable maximum hours standard. This extra compensation for the excess hours of overtime work under the Act **cannot** be said to have been paid to an employee **unless all the straight time compensation** due him for the nonovertime hours under his contract (express or implied) or **under any applicable statute has been paid**.

§ 778.317 **Agreements not to pay for certain nonovertime hours** - An agreement not to compensate employees for certain nonovertime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An **agreement**, for example, to pay an employee whose maximum hours standard for the particular workweek is 40 hours, \$5 an hour for the first 35 hours, **nothing for the hours between 35 and 40** and \$7.50 an hour for the hours in excess of 40 **would not meet the overtime requirements of the Act**. Under the principles set forth in §778.315, the employee *would have to be paid \$25 for the 5 hours worked between 35 and 40 before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the Act*. Unless the employee is **first paid \$5 for each nonovertime hour worked**, the \$7.50 per hour payment purportedly for overtime hours **is not in fact an overtime payment**.

⁴⁰ § 778.114 **Fixed salary for fluctuating hours** - (a) An employee employed on a **salary** basis may have hours of work which fluctuate from week to week and the salary may be paid him pursuant to **an understanding** with his employer that *he will receive such fixed amount as straight time pay* for whatever hours he is called upon to work in a workweek, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than

285. The record evidence will support that there is ***NO*** agreement between MMS and Newsome to pay her \$14.32 an hour when pay period consisted of 12 actual workdays and \$15.63 an hour when pay period consisted of 11 actual workdays. Such an agreement would cause Newsome's pay rate to change/*fluctuate* from pay-period-to-pay-period.

286. Newsome believes based on record evidence and on conversation with MMS/Allen/Farrell and Jones/W&H that a conspiracy was reached between MMS and W&H to agree in providing Newsome false and misleading information to COVER-UP the employment violations of MMS. Furthermore, that a reasonable person/mind may conclude on said COVER-UP that there was no agreement between Newsome and MMS to pay her under the "*fluctuating-hours*" method. Moreover, that MMS was engaging in unlawful employment practices and paying its nonexempt salaried employees on a fluctuating-hours method which was clearly prohibited by laws for purposes of pretext – i.e. shielding an illegal animus and the criminal/civil wrongs in the ***EMBEZZLEMENT*** of its employees' wages.

287. Based on conversations Newsome had with MMS/Allen/Farrell and Jones/W&H and concerns they were trying to convince her that her workweeks consisted of "*fluctuating hours*," she decided to research to determine whether or not they were attempting to make such assertions based on their knowledge of some statute or code addressing "fluctuating hours." Sure enough Newsome was able to find CFR Title 29 Part 778.114 that MMS/Allen/Farrell and Jones/W&H were attempting to MASK/SHIELD the unlawful employment practices of MMS under. To support that MMS' nonexempt salaried employees

for working 40 hours or some other fixed weekly work period, such a salary arrangement is permitted by the Act if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the number of hours he works is greatest, and if he receives extra compensation, in addition to such salary, for all overtime hours worked at a rate not less than one-half his regular rate of pay. Since the salary in such a situation is intended to compensate the employee at straight time rates for whatever hours are worked in the workweek, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the workweek into the amount of the salary to obtain the applicable hourly rate for the week. Payment for overtime hours at one-half such rate in addition to the salary satisfies the overtime pay requirement because such hours have already been compensated at the straight time regular rate, under the salary arrangement.

(b) The application of the principles above stated may be illustrated by the case of an employee whose hours of work do not customarily follow a regular schedule but vary from week to week, whose overtime work is never in excess of 50 hours in a workweek, and whose salary of \$250 a week is paid with the understanding that it constitutes his compensation, except for overtime premiums, for whatever hours are worked in the workweek. If during the course of 4 weeks this employee works 40, 44, 50, and 48 hours, his regular hourly rate of pay in each of these weeks is approximately \$6.25, \$5.68, \$5, and \$5.21, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid \$250; for the second week \$261.36 (\$250 plus 4 hours at \$2.84, or 40 hours at \$5.68 plus 4 hours at \$8.52); for the third week \$275 (\$250 plus 10 hours at \$2.50, or 40 hours at \$5 plus 10 hours at \$7.50); for the fourth week approximately \$270.88 (\$250 plus 8 hours at \$2.61 or 40 hours at \$5.21 plus 8 hours at \$7.82).

(c) The "fluctuating workweek" method of overtime payment may not be used unless the salary is sufficiently large to assure that no workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the Act, and unless the employee clearly understands that the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which a full schedule of hours is not worked. Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole. Where all the legal prerequisites for use of the "fluctuating workweek" method of overtime payment are present, the Act, in requiring that "not less than" the prescribed premium of 50 percent for overtime hours worked be paid, does not prohibit paying more. On the other hand, where all the facts indicate that an employee is being paid for his overtime hours at a rate no greater than that which he receives for nonovertime hours, compliance with the Act cannot be rested on any application of the fluctuating workweek overtime formula.

were being paid (without their knowledge) under "FIXED Salary for FLUCTUATING Hours," MMS records must contain the following:

- a) Pursuant to § 778.114 *Fixed salary for fluctuating hours*, that the employee(s) employed by MMS on a salary basis where the hours of the work fluctuate from week to week, that MMS may only pay the nonexempt salaried employees pursuant to an understanding that the accepted salary received is "fixed" and that nonexempt salaried employees knew that they would be receiving a fixed salary as straight time pay for whatever hours the employee is called upon to work in a workweek (EMPHASIS Added – to workweek – MMS during Newsome's employment did not pay on a weekly or biweekly basis where payday's are always on Friday. MMS paid semimonthly – where payday's fell on various days between Monday thru Friday.)

§ 778.114 requires that there be a clear mutual understanding between employer and employee. MMS' records will support that there was never a clear mutual understanding between Newsome and MMS (i.e. between MMS and its nonexempt salaried employees) in regards to paying her a fixed salary for fluctuating hours.

Newsome believes that a reasonable person/mind may conclude that while MMS/Allen/Farrell and Jones/W&H may have asserted that there was a mutual binding agreement (when there was not) that Newsome and/or other nonexempt salaried employees agreed to be paid a fixed salary for fluctuating hours, that there is NO such agreement to establish or sustain such assertion.

Newsome believes that the record evidence will further support that other than Newsome there were other nonexempt salaried employees who questioned MMS' unlawful employment practices; however, may have felt threatened of losing their jobs and/or being retaliated against as MMS did Newsome for questioning it methods. A practical way to determine whether MMS had a mutual binding agreement with its nonexempt salaried employees is in requesting the production of any/all such agreements MMS maintained to support the fixed salary for fluctuating hours that it relied upon to compensate its nonexempt salaried employees. Moreover, that nonexempt salaried employees had an understanding that MMS would be paying them a fixed salary for fluctuating hours and how an agreement (if any) was reached (i.e. via fraud, threats, coercion, intimidation, etc.). Nevertheless, Jones/W&H did not require EVIDENCE from MMS because Jones was determined to fulfill his role in the conspiracy and take a far departure from the provisions of the FLSA.

- b) At the time of Newsome's hire, she requested of MMS/Allen that she be provided with documentation regarding the salary agreed upon when she went to MMS' Tupelo Office for orientation. MMS/Allen refused to provide Newsome with any documentation regarding the salary agreed upon. Newsome now believes that a reasonable person/mind may also conclude that MMS'/Allen's failure to provide her with the information regarding the agreed upon salary may be due to the fact it knew that it was intending to engage in unlawful

employment practices – i.e. *FRAUDULENT practices in regards to compensation.*

- c) At the time of hire, MMS/Allen may advise nonexempt salaried employees (i.e. as it did Newsome) that although they are required to work 37.5 hours a week, it would be compensating nonexempt salaried employees for 40 hours – i.e. when MMS had *no intent* at all to compensate the nonexempt salaried employees for 40 hours at all as promised. Said promises by MMS/Allen being fraudulent, deceptive, misleading and clearly in violation of the laws – i.e. in *breach* of agreement.
- d) At the time of hire, MMS/Allen did not tell Newsome (i.e. most likely not other nonexempt salaried employees) that at the time of hire and/or during employment, that out of 2088 actual work hours a year, it is only going to compensate for 2080 hours a year. MMS knowingly, fraudulently, and deceptively concealed from Newsome (i.e. most likely other nonexempt salaried employees) that in a regular year, there are approximately 2088 hours, but MMS was only going to pay her (i.e. nonexempt salaried employees) for 2080 hours. Based on such facts, MMS knowingly, willingly, deliberately and with malicious intent withheld approximately 8 hours along with other unpaid wages/earnings due Newsome and other nonexempt salaried employees. Moreover, MMS was unlawfully, illegally and fraudulently *stealing and/or embezzling* approximately 8 hours of earned wages/earnings of Newsome and/or nonexempt salaried employees.
- e) When the year is a LEAP year, where there are approximately 2096 actual work hours, MMS only would pay Newsome and/or its nonexempt salaried employees for 2080 hours. Based on such facts, MMS knowingly, willingly, deliberately and with malicious intent would withhold approximately 16 hours along with other unpaid wages/earnings due Newsome and other nonexempt salaried employees. Therefore, unlawfully, illegally and fraudulently *stealing and/or embezzling* approximately 16 hours of earned wages/earnings of Newsome and/or nonexempt salaried employees.
- f) According to MMS/Allen, when questioned about the use of 2080, MMS/Allen stated:

. . . 52 weeks x 40 hours/week = 2080 hours per year. *This is standard recognized.* The other thing to consider is this does not include holidays, sick leave days, other excused leaves of absence . . . and vacation days. *The 2080 is just a standard.*

See **Exhibit “27”** at p. 5, n. 7 attached hereto and incorporated by reference as if set forth in full herein.

This is the *standard* pursuant to what statutes or laws? Clearly this is not a standard under the FLSA. Therefore, a reasonable person/mind may conclude only a standard used by employers, such as MMS, who knowingly, willingly and with malicious intent deprived its nonexempt salaried employees their wages earned. Furthermore, *the FLSA does not require severance pay, sick leave, vacations, or*

holidays; therefore, this was/is MMS' preference and not one that it can rely upon to justify its criminal/civil violations – i.e. unlawful employment practices in the *theft and embezzlement* of employees' wages/earnings.

- g) In the February 5, 2004, email response from MMS/Allen to Newsome, it/he attempts to justify MMS' paying for only 2080 hours a year by advising:

Question: If MMS pays for only 2080 days (sic) in 2004, will the actual pay periods for Ms. Wingate show that MMS is not going to pay her for 16 hours (2 days work)?

MMS Answer: The spreadsheet does show 10, 11, or 12 “work days” in each pay period but there are 10 vacation days a year, 12 sick days a year, and 8 or 9 (depending on when 12/26 falls) holidays each year plus other approved leaves of absence as documented in the MMS Handbook. We do not subtract anything from those days taken. *The salary stays the same each and every pay period.*

Thus, MMS cannot rely upon its criminal/civil violations in the fraudulent and deceptive practices it engaged in the *theft and embezzlement* of wages/salaries earned by Newsome and/or nonexempt salaried employees.

- h) At the time of Newsome's hire, MMS/Allen **did not** tell her (i.e. most likely other unemployment nonexempt salaried employees) that MMS will only pay for 86.67 hours each and every pay period regardless of the actual number of hours worked. The 86.67 hours is derived from:

$2080 (40 \times 52) \text{ hours} \div 24 = 86.666 (86.67 \text{ rounded})$ – This is based on 40 hours a week, *not semimonthly*.

86.67 is the *average number of hours when only compensated for 2080 hours a year.*

- i) MMS at the time of Newsome's employment (i.e. nonexempt salaried employees), MMS *knowingly and deceptively* withheld information from Newsome (i.e. nonexempt salaried employees) that, when there are 12 actual workdays in the pay period and MMS assured Newsome (nonexempt salaried employees) that she would be compensated for 8 hours – for a **total of 96 hours** – that MMS was only going to compensate her (i.e. nonexempt employees) for **86.67**, although Newsome (i.e. nonexempt salaried employee) worked 96 hours or the minimum (90) – 7.5 x 12 - hours required by MMS.

288. According to MMS Policy(s) and §778.113 during Newsome's employment with MMS:

i. In a pay period where there were:

12 days x 8 hours = 96 normal nonovertime hours,
Newsome was entitled to the following:

$15.87 \times 96 = \$1,523.52$ (\$1,524 rounded)

However, MMS only paid Newsome approximately \$1,375 each and every pay period regardless of the normal/**actual** nonovertime hours worked. Resulting in unpaid wages/earnings due Newsome of approximately \$149.

Therefore, during Newsome's employment when pay periods consisted of 96 nonovertime hours, MMS was unlawfully/illegally **stealing and/or embezzling** approximately \$149 (based upon the \$33,000 annual salary) each pay period where there were 12 actual workdays.

See **Exhibit "27"** at p. 5, n. 6 attached hereto and incorporated by reference as if set forth in full herein.

ii. In a pay period where there were:

11 days x 8 hours = 88 normal nonovertime hours,
Newsome was entitled to the following:

$15.87 \times 88 = \$1,396.56$ (\$1,397 rounded)

However, MMS only paid Newsome approximately \$1,375 each and every pay period regardless of the normal/**actual** nonovertime hours worked. Resulting in unpaid wages/earnings due Newsome of approximately \$22.

Therefore, during Newsome's employment when pay periods consisted of 88 nonovertime hours, MMS was unlawfully/illegally **stealing and/or embezzling** approximately \$22 (based upon the \$33,000 annual salary) each pay period where there were 11 actual workdays.

See **Exhibit "27"** at p. 5, n. 6 attached hereto and incorporated by reference as if set forth in full herein.

iii. In a period where there were:

10 days x 8 hours = 80 normal nonovertime hours,
Newsome was entitled to the following:

$15.87 \times 80 = \$1,269.60$ (\$1,270 rounded)

However, MMS only paid Newsome approximately \$1,375 each and every pay period regardless of the normal/**actual** nonovertime hours worked. Resulting in an overpayment of wages/earnings to Newsome of approximately \$105.

Therefore, during Newsome's employment when pay periods consisted of 96 nonovertime hours, MMS was unlawfully/illegally withholding and/or embezzling approximately \$149 (based upon the \$33,000 annual salary) each pay period where there were 12 actual workdays.

See **Exhibit "27"** at p. 5, n. 6 attached hereto and incorporated by reference as if set forth in full herein.

iv. Although there were periods which may show overpayment to Newsome and/or nonexempt salaried employees, from the above computation, Newsome and nonexempt salaried employees *still suffered losses in wages/salaries earned and any difference that MMS may attempt to assert as "balancing out at the end of the year," must also fail for the following reasons:*

a) The method of payment used by MMS **is NOT** in compliance with the FLSA pursuant to

§§778.104,⁴¹ 778.113, 778.223, 778.317, and any other statutes/laws governing said matters. Employees are entitled to full pay for *normal nonovertime workweek each pay period, and said pay IS NOT to be rationed out a little at a time and/or averaged as was done by MMS.* For instance:

\$149 + \$22 = \$171 (approximate wages/earnings loss when pay period consisted of 12 or 11 workdays)

\$171 - \$105 (overage by MMS) = approximately \$66 in wage earnings to Newsome (i.e. nonexempt salaried employees)

Under the unlawful employment practices used by MMS to compensate Newsome (i.e. nonexempt salaried employees) she lost approximately \$263.52 in wages/earnings in 2004. See Spreadsheet provided at **Exhibit "16"** attached hereto and incorporated by reference as if set forth in full herein. Moreover, *under the FLSA if MMS failed to compensate for the 2½ between 37½ and 40 hours, then any allegation that overtime has been paid is VOID/MOOT.*

⁴¹ **§778.104 - Each workweek stands alone** - The Act takes a single workweek as its standard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a weekly basis.

- b) While MMS/Allen and the Jones/W&H tried to get Newsome not to pay attention to the 86.67 hours that MMS represents on payment stubs to Newsome, this information was indeed pertinent and relevant in that it clearly supported the **AVERAGING and FIXED** rate that MMS was paying Newsome (i.e. the method MMS was using to compensate nonexempt salaried employees) without out employee's approval. Further *sustaining the MEETING of the minds* of MMS/Allen and Jones/W&H to engage in criminal/civil wrongs of MMS in its engagement of unlawful employment practices. The 86.67 being pertinent/relevant in that $86.67 \times \$15.86$ (hourly rate paid by MMS) = \$1,375 (rounded). \$1,375 being the total compensation Newsome received **each** and **every** pay period **regardless** of the number of hours **actually** worked. Newsome **was NOT** an exempt employee and neither did she authorize or agree to the Averaging and FIXED salary MMS relied upon in compensating her.
- c) According to MMS'/Allen's February 5, 2004 email, it/he states:

Question: If MMS is only paying approximately 39.4 hours a week (in a work period of 11 days), are there not a loss in hours that should have been paid to the employee based on MMS' policy?

Answer: There may be periods with 10 days and perhaps 12 days. The salary **is always the same each and every pay period.**

Supporting MMS knowledge of the **FIXED salary for FLUCTUATING period** and its knowingly using **fraudulent and deceptive practices** for purposes of **theft/embezzlement** of its nonexempt salaried employees' wages/earnings.

When Newsome questioned Allen - Chief **Operations Officer/Human Resources Representative/Controller** - about MMS' practices, he appeared to become *irritated* and from conversations, left Newsome with the feeling/impression that questioning MMS in on its unlawful employment practices would cost her, her job – i.e. which reporting of unlawful employment practices did indeed result in the December 3, 2004, termination of Newsome's employment.

ENFORCEMENT: *It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or participating in a legal proceeding under the FLSA.*

- d) MMS paid Newsome (i.e. nonexempt salaried employees) on the 15th and 30th (**EMPHASIS ADDED: Not** the last day of the month). The 15th pay check *was supposed to*

cover the 1st thru the 15th. The 30th pay check was supposed to cover the 16th thru the end of the month. If the month had 31 days, supposedly the 31st pay was to be included in the 30th pay check; however, it was not. Therefore, if months had 31 days and the 31st fell on a weekday (Monday thru Friday) Newsome and/or nonexempt salaried employees were not compensated for this day. See Exhibit "27" at pp. 5-6, nos. 8-12 attached hereto and incorporated by reference as if set forth in full herein. Therefore, for instance months having 31 days:

10/03 (Friday)
12/03 (Wednesday)
03/04 (Wednesday)
05/04 (Monday)
08/04 (Tuesday)
12/04 (Friday) for a total of 6 days.

6 days x 7.5 hours x \$15.87 = \$714.15
\$714.15 that MMS was *stealing and/or embezzling* in that it was not compensating for the 31st.

Therefore, based on MMS' policy, the pay period of the 15th should have a "Period **Beg.** Dated of 12/31/03," if the "Period **end:**" on prior paycheck/stub reflects "12/30/03." However, this was not the case. See Exhibit "27" at p. 6, n. 14 attached hereto and incorporated by reference as if set forth in full herein.

MMS Policy No. 403 PAYDAYS:⁴² All employees are paid semimonthly on the 15th and 30th days of the month. Each paycheck will include earnings for all work performed through the end of the payroll period.

For instance, in Newsome's paycheck/stub for the pay period ending in February 2004, it reflected: "Period end: **2/29/04**" (Check/Stub received AFTER Newsome's filing of Charge). If indeed checks issued by MMS where the months have 31 days, then her paycheck/stub should have reflected the said date on it. Nevertheless, each and every 30th paycheck/stub (except February end) Newsome received from MMS prior to bringing Charge, reflected that the "Period end:" date was up until the 30th.

⁴² 403 **PAYDAYS** – All employees are paid semimonthly on the 15th and 30th days of the month. Each paycheck will include earnings for all work performed through the end of the payroll period.

In the event that a regularly scheduled payday falls on a day off such as a weekend or holiday, employees will receive pay on the last day of work before the regularly scheduled payday.

If a regular payday falls during an employee's vacation, the employee may receive his or her earned wages before departing for vacation if a written request is submitted at least one week prior to departing for vacation.

Employees may have pay directly deposited into their bank accounts if they provide written authorization to Mitchell McNutt. Employees will receive an itemized statement of wages when Mitchell McNutt makes direct deposits. Employees are encouraged to take advantage of this convenience.

MMS knowingly and willingly through deceptive and fraudulent practices does NOT reveal or advise nonexempt employees that they are paid a fixed salary for fluctuating period; therefore, it removed from the paycheck/stub the “**Period beg:**” information so that Newsome (nonexempt salaried employees) were not aware that when the month had 31 days and the 31st fell on a workday, that indeed she (nonexempt salaried employees) was not being paid for that day. If indeed MMS was paying its nonexempt salaried employees for the 31st when it fell on a workday (i.e. Monday thru Friday), the paycheck/stub would have reflected same (e.g., Period beg: 12/16/03 and **Period end:** 12/31/03). However, Newsome’s paychecks/stubs she received PRIOR to the filing of complaints/charges did NOT reflect such, and clearly indicated “Period end: 12/30/2003” (i.e. when December has 31 days – which 12/31/03 fell on a Wednesday). All paychecks/stubs except that received in February clearly supported that MMS pay periods ended on the 30th. A reasonable person/mind may conclude that because MMS made the necessary adjustment with date for February, then it very well could have for months with 31 days that fell on a workday (i.e. Monday thru Friday) and paycheck/stubs reflected the required information as required under the FLSA:

Recordkeeping: The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. . . With respect to an employee subject to minimum wage and overtime pay provisions, the following records **must** be kept: . . .

- (2) hour and day when workweek begins;
- (3) **total** hours worked each workday and each workweek;
- (4) **total** daily or weekly **straight-time** earnings;
- (5) **regular hourly pay rate** for any week when overtime is worked;
- (6) **total** overtime pay for the workweek; . . .
- (8) **total** wages paid each pay period; and
- (9) **date** of payment and pay period covered.

Exhibit “17” – Handy Reference Guide to the Fair Labor Standards Act (Revised August 2003) - pp. 9 – 10, attached hereto and incorporated by reference as if set forth in full herein. Guide provided Newsome by the United States Department of Labor (i.e. copy of December 20, 2004 letter also attached to this Exhibit).

- e) Only AFTER Newsome advised Jones/W&H of MMS’ acts to cover up its unlawful employment practices did Jones/W&H contact MMS and share information with it; thus, leading MMS to begin providing information regarding dates on paycheck/stubs ONLY; however, failing to pay in compliance with the FLSA. For instance on the

March 30, 2004, paycheck/stub, MMS reflected the "Period end: 03/31/04." Information supporting the relationship MMS/Farrell acknowledged he had with the W&H employees – i.e. Farrell providing Newsome with contact information with W&H employees for purposes of showing and establishing his strong relationship with said department. Nevertheless, MMS *insisted* on withholding the "**Period beg:**" information so that Newsome (nonexempt salaried employees) could not see what days are actually being compensated for in the paycheck/stub provided.

Newsome believes a reasonable person/mind may conclude MMS' ability to draw its employees/representatives and government officials into conspiracy(s) leveled against Newsome. Moreover, how far MMS was willing to go to cover-up its unlawful employment practices.

AVERAGING HOURS:

289. MMS in compensating Newsome relied upon the averaging of hours each pay period. MMS paid Newsome for only 86.67 hours each and every pay period regardless of how many hours Newsome had actually worked. MMS' averaging of hours covered a period over two weeks when the pay period consisted of 11 and 12 actual workdays. MMS derived at its averaging of hours by taking 2080 hours a year and dividing it by 24 pay periods ($2080 \div 24 = 86.666$). When rounding 86.666 it leaves 86.67. The 2080 used by MMS was 40 hours a week multiplied by 52 weeks in a year.

290. The averaging of hours used by MMS to compensate Newsome, rather than pay Newsome for the actual hours worked was in violation of the FLSA pursuant to CFR 29 § 778.104. See **Exhibit "18"** attached hereto and incorporated by reference.

291. MMS/Allen/Farrell and Jones/W&H having knowledge that MMS relied upon the **AVERAGING** of hours which is **PROHIBITED** by FLSA. Moreover, pursuant to §778.104 – *Each Workweek Stands Alone*. Allen being MMS' **Chief Operations Officer/Human Rights Representative/Controller** and Farrell being an attorney at MMS whose area of specialty being **LABOR** and **EMPLOYMENT** Law. MMS/Allen/Farrell and Jones/W&H having clear knowledge that MMS was **NOT** paying on a biweekly basis wherein the pay period falls on a Friday (or every other Friday).

292. MMS/Allen/Farrell and Jones/W&H having knowledge that MMS having pay periods wherein it compensated its nonexempt salaried employees for days worked which covered hours/period of time exceeding two (2) weeks. Thus, under the FLSA, the averaging of ours that MMS/Allen advised Newsome that MMS relies upon is clearly **PROHIBITED** by statute:

The Act takes a single workweek as its standard and does NOT permit averaging of hours over 2 or more weeks. . . This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, or monthly or other basis.

See Exhibit "18" at § 778.104 – *Each Workweek Stands Alone* attached hereto and incorporated by reference as if set forth in full herein. Newsome believes that the record of the United States Department of Labor – Wage and Hour Division will support that MMS/Allen/Farrell and Jones/W&H had SUFFICIENT and ADEQUATE information and were aware that the AVERAGING used by MMS for its nonexempt salaried employees was clearly PROHIBITED by FLSA; moreover, statutes/laws governing said matters. Nevertheless, made a conscious, willful and deliberate act to *steal and/or embezzle* wages and overtime earned by Newsome and nonexempt salaried employees.

293. The AVERAGING of hours that MMS relied upon to pay Newsome (i.e. nonexempt salaried employees) *was NOT* in compliance with the FLSA and was in *clear VIOLATION* of federal laws. Because MMS had elected to use the semimonthly method and pay on the 15th and 30th (30th when applicable) of the month, any pay period that consisted of 12 or 11 days, the hours *COULD NOT* and *were NOT* to be averaged pursuant to §778.104. Pursuant to §778.113(a)(b) the hourly rate is to be computed and nonexempt salaried employees paid the hourly rate for all normal nonovertime hours.

294. It *would not* be difficult to compute total number of hours per day and for the pay period of MMS through established policies, that it compensated Newsome (i.e. nonexempt salaried employees) for 40 hours a week – that is 8 hours a day (Monday thru Friday – 5 days x 8 hours = 40 hours). Pursuant to MMS Policy No. **502 Work Schedules**, a pay period of 12 actual days would cover two weeks (when workweek comprise of Monday thru Friday) and two days – thus, supporting hours of pay period is over two weeks etc.

295. According to MMS'/Allen's email of February 5, 2004, it/he states:

Question: I am researching the use of "averaging hours."

Is there a statute or rule this is based upon? If so, can you provide me with the information so that I may view it. I found a statute; however, it could be the wrong one. The one I found does not allow for averaging of hours that covers a period of two weeks or more. See attached hereto as (29 C.F.R. 778.104 – *Each Workweek Stands Alone*).

Answer: I will have Mike Farrell give you the information about the FLSA statute *since he practices in that area*.

MMS/Allen/Farrell never provided Newsome with any documentation to support that under the FLSA and/or any applicable statute/law that the "averaging of hours" used by MMS was in compliance with the FLSA. MMS/Allen/Farrell failed to provide Newsome with any information she requested from MMS to support its "averaging of hours" under the FLSA because no such statute/laws existed to support MMS' unlawful/illegal *theft and/or embezzlement* of Newsome's (nonexempt salary employees) wages/earnings and overtime pay.

NONOVERTIME/STRAIGHT/REGULAR RATE OF PAY:

296. MMS/Allen/Farrell/Gordon having knowledge that Newsome had valid concerns that she (i.e. nonexempt salaried employees) *was not receiving earned wages for hours actually* worked or that MMS promised to pay through established policy had been paid.

297. Even if MMS/Allen/Farrell and Jones/W&H wanted to assert that the FLSA only deals with compensation of workers receiving minimum wage only and only overtime issues – such sham/frivolous argument under the FLSA and/or governing statutes/laws would also fail pursuant to CFR 29 §§ 778.315 and 778.317. Moreover, §778.108 which states:

CFR 19 § 778.108 - Payment for all hours worked in overtime workweek is required - The regular rate of pay under the Act cannot be left to a declaration by the parties as to what is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract (*Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446). The Supreme Court has described it as the hourly rate actually paid the employee for the normal, nonovertime workweek for which he is employed an actual fact (*Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419). Section 7(e) of the Act requires inclusion in the regular rate of all remuneration for employment paid to, or on behalf of, the employee except payments specifically excluded by paragraphs (1) through (7) of that subsection. (These seven types of payments, which are set forth in 778.200 and discussed in 778.201 through 778.224, are hereafter referred to as statutory exclusions.) As stated by the Supreme Court in the *Youngerman-Reynolds* case cited above: Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the wage contracts.

298. Overtime is **only** paid for hours worked above 40 hours in a workweek. Therefore, for MMS/Allen/Farrell to conclude that it was compensating Newsome (i.e. nonexempt salaried employees) for overtime pay, then the 40 hours for the normal nonovertime workweek/hours **must** have been met and, therefore, Newsome (nonexempt salaried employees) was to be paid pursuant to §§778.108, 778.223, 778.315, 778.316, 778.317, etc. Moreover, in accordance with the “*Handy Reference Guide of the Fair Labor Standards Act*” provided Newsome by Jones/W&H, said Guide provides in part:

*Covered employees **must be paid for all hours worked in a workweek.*** In general, “hours worked” includes **all** time an employee must be on duty, or on the employer’s premises or at any other prescribed place of work. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

See **Exhibit “17”** at p. 10 – *Hours Worked* attached hereto and incorporated by reference as if set forth in full herein

299. According to the FLSA while an employer may want to establish the hours worked by nonexempt salaried employees, they are still subject to the provisions of the FLSA in compensation of wages for **ACTUAL** hours worked of 40 hours and **time and one-half for overtime is required under the FLSA.** MMS **violated** the FLSA when it **refused** to compensate Newsome as well as other nonexempt salaried employees for the 2½ hours **actually** worked that led to the additional hours beyond 40 hours – OVERTIME – required to be paid.

. . . Other employees work full-time but work 35 or 37½-hour workweeks. In such instances, overtime pay under the

FLSA is not required to be paid to employees until they work in excess of 40 hours in a workweek. (Note, however, that the employee may be entitled to pay at the regular rate for any additional hours up to 40, depending on the employer's established policy.)

See **Exhibit "19"** at p. 19 – *Overtime Provisions* attached hereto and incorporated by reference as if set forth in full herein. According to MMS' established policy pursuant to its **401 Timekeeping** stated:

. . .Every full time staff employee's compensation is based on a 40 hour week. Our standard workweek is a 37½ workweek. *Our policy is that if you work those 2½ hours for any reason that time **has already been paid**.. .*

See **Exhibit "3"** – *MMS Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. MMS did not compensate Newsome (nonexempt salaried employees) for the 2½ hours between 37 ½ and 40 hours which led to the overtime pay sought.

300. MMS did not pay Newsome and/or other nonexempt salaried employees for 40 hours a week as stated under its policy. MMS having knowledge of the FLSA and/or statutes/laws governing said matters – i.e. moreover, MMS having attorney(s) that specialize in LABOR and EMPLOYMENT Law; therefore, it knew that it was acting in violation of the FLSA. MMS nevertheless, made a conscious and willing decision not to comply with the FLSA and conspired and relied upon its special relationship with Jones/W&H to COVER-UP MMS' unlawful employment practices. MMS electing not to abide by the statutes/laws MANDATORY under the FLSA and/or governing statutes/laws regarding the compensation of wages for nonexempt salaried employees.

301. In MMS' pay periods with 12 workdays, there were approximately 96 total nonovertime hours; therefore:

During Newsome's employment with MMS, MMS only compensated nonexempt salaried employees for 86.67 hours.

86.67 average hours per MMS ÷ 12 days = 7.2225 (7.22 rounded – hours per day)

7.22 hours per day x 5 days = 36.1 hours per week paid by MMS.
40 hours – 36.1 = **3.9 hours nonexempt employees are not paid for.**

7.22 (hours a day) x 12 (workdays in pay period) x \$15.87 (hourly rate) = \$1,375 (rounded) – Therefore, \$1,375 semimonthly salary MMS pays Ms. Newsome is for \$572.91 (rather than \$634.62 required pursuant to §778.113) a week, and \$114.58 a day – (572.91 x 2 (weeks)) x (114.58 x 2 (days)) = \$1,374.98 (\$1,375 rounded) – Thus the evidence supports that the semimonthly salary compensation was for only 7.22 hours a day in the pay period and did not compensate for 40 hours a week and/or 8 hours a day, but MMS payment only compensated for 36.1 hours a week and did not compensate for all nonovertime/straight time hours in the pay period.

3.9 hours being total hour(s) a week **owed** Newsome and/or nonexempt salaried employees that MMS pursuant to 401 Timekeeping asserted to have already paid. Such assertion by MMS with knowledge that it had not paid its nonexempt salaried employees for those hours.

For instance, looking at the paycheck/stub for Newsome (See **Exhibit "20"** attached hereto and incorporated by reference as if set forth in full herein) it will reflect "Total Hours" being "97.46." the 97.96 includes the overtime hours MMS asserted Newsome was being compensated for that pay period and **was not** actual "straight time/nonovertime" hours. It is:

86.67 (average hours used by MMS)
+10.67 (see "O/T (included in wages" section on paycheck/stub)
97.46 (how they determine total hours shown on paycheck/stub)

MMS failed to compensate Newsome (i.e. nonexempt salaried employees) in compliance with the FLSA.

302. In MMS' pay periods with 11 workdays, there were approximately 88 total nonovertime hours; therefore:

MMS only compensates nonexempt salaried employees for 86.67 hours.

86.67 average hours per MMS ÷ 11 days = 7.879 (7.88 rounded – hours per day)

7.88 hours per day x 5 days = 39.4 hours per week paid by MMS.
40 hours – 39.4 = **.60 hours nonexempt employees are not paid for.**

7.88 (hours a day) x 11 (workdays in pay period) x \$15.87 (hourly rate) = \$1,376 (rounded) – Therefore, \$1,375 semimonthly salary MMS pays Ms. Newsome is for \$625.21 (rather than \$634.62 required pursuant to §778.113) a week, and \$125.06 a day – (625.21 x 2 (weeks)) x (125.06 x 1 (days)) = \$1,375.62 (\$1,376 rounded) – Thus the evidence supports that the semimonthly salary compensation was for only 7.22 hours a day in the pay period and **did not** compensate for 40 hours a week and/or 8 hours a day, but MMS payment **only** compensated for 39.4 hours a week and **did not** compensate for **all** nonovertime/straight time hours in the pay period.

.60 hours being total hour(s) a week **owed** Newsome and/or nonexempt salaried employees that MMS pursuant to 401 Timekeeping asserted to have already paid. Such assertion by MMS with knowledge that it had not paid its nonexempt salaried employees for those hours.

For instance, looking at the paycheck/stub for Newsome (See **Exhibit "20"** attached hereto and incorporated by reference as if set forth in full herein) it reflects "**Total Hours**" being "97.46." The 97.96 includes the overtime hours MMS asserted Newsome was

being compensated for that pay period and *was not* actual “straight time/nonovertime” hours.

MMS failed to compensate Newsome (i.e. nonexempt salaried employees) in compliance with the FLSA.

303. Pursuant to §778.317, *unless* employee is **first** paid for *each* nonovertime hour worked, the payment that MMS may purport to have paid Newsome or nonexempt salaried employees for overtime hours *IS NOT, in fact, an overtime payment*. Therefore, *as a matter of law*, Newsome (nonexempt salaried employees) are still due **OUTSTANDING** earned wages and overtime pay that MMS has *stolen and/or embezzled*.

304. During Newsome’s employment, MMS used a computer program called TimeClock to track Newsome and/or nonexempt salaried employees’ time. Therefore, there is no excuse for MMS’ failure to compensate for all nonovertime and overtime in the appropriate pay period.

305. While Newsome does not claim to be an expert in the wage and hour laws; however, she believes that from the facts, evidence and statutes/laws provided, it does not take a rocket scientist/mathematician to understand the evidence presented to support MMS’ unlawful employment violations under the FLSA. Moreover, basic and simple math that even a 4th Grader may be able to compute. Leaving a reasonable person/mind to conclude that based upon such facts, evidence and statutes/laws that MMS knew and/or should have known that it was engaging in criminal/civil wrongs *to commit fraud and to embezzle* wages/earnings and overtime pay owed Newsome and other nonexempt salaried employees. Moreover, MMS engaged in a **PATTERN-OF-PRACTICE** even **AFTER** being notified of its employment violations. The following information being pulled from TimeClock and Payment information regarding Newsome to sustain MMS’ employment violations:

Date Note: “W” denotes workweek	<u>Hours</u>	Meet Minimum Hrs. Workday/Week <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
(W) 10/06/03	40.03	Y	364.80	
10/13/03	7.85	Y	126.96	
10/14/03	7.98	Y	126.96	
10/15/03	9.22	Y	126.96	
Overtime:	.03		.71	
		Total:	1,016.39	916.67
			Total Hours Worked:	65.08
			MMS – Hours Compensated For:	57.80
401 Timekeeping – (MMS Policy) – Hours that should have been compensated:				65.25
			DIFFERENCE:	7.45

MMS did not compensate for overtime in this pay period. According to §778.317, *unless* Newsome was **first** paid for *each* nonovertime hour worked, the payment that MMS may purport to have paid Newsome or nonexempt salaried employees for overtime hours *IS NOT, in fact, an overtime payment*. Therefore, as a matter of law, Newsome has NOT been paid for each nonovertime hour; thus, she has not been paid overtime pay which is due her.

MMS *did NOT* compensate for all nonovertime hours actually worked by Newsome. MMS relying on its **AVERAGING** of hours and **FIXED** salary for **FLUCTUATING** hours. MMS *did NOT* compensate for overtime in the pay period required pursuant to §778.106. Newsome experienced that if she did not inquire into being paid overtime, MMS would repeatedly attempt to keep monies from her. Because MMS relied on the semimonthly pay periods, the overtime pay could not be computed (i.e. 15th or 30th of the month falling on a day other than Friday) until the conclusion of the workweek. Nevertheless, MMS did NOT compensate Newsome for all overtime due unless questioned about it and/or MMS paid what was supposed to be overtime pay when it felt like doing so – whichever was convenient for MMS. Now learning that according to §778.106, as a matter of law, Newsome has NOT been paid overtime for the nonovertime hours worked NOR for overtime worked. Monies to which Newsome is presently entitled.

<u>Date Note: "W"</u> <u>denotes workweek</u>	<u>Hours</u>	Meet Minimum Hrs. Workday/Week <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
10/16/03	41.00	Y	126.96	
10/17/03	7.87	Y	126.96	Last day in workweek (40.92 hrs. for week)
(W) 10/24/03	41.00	Y	634.80	
10/27/03	7.40	Y	126.96	
10/28/03	8.40	Y	126.96	
10/29/03	7.82	Y	126.96	
10/30/03	8.97	Y	126.96	
Overtime:	1.92		45.72	
		Total:	1,442.28	1,420.69
		Total Hours Worked:		89.46
		MMS – Hours Compensated For:		88.59
401 Timekeeping -- (MMS Policy) – Hours that should have been compensated:				90.62
		DIFFERENCE:		2.03

NOTE: MMS only compensated for 1.92 overtime hours; however, pursuant to §778.317, any such payment by MMS **CANNOT** be deemed overtime pay.

<u>Date Note: "W"</u> <u>denotes workweek</u>	<u>Hours</u>	Meet Minimum Hrs. Workday/Week <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
10/31/03	8.03	Y	126.96	Last day in workweek (40.62 hrs. for week)
(W) 11/07/03	39.17	Y	634.80	
(W) 11/14/03	38.37	Y	634.80	
Overtime:	.62		14.76	

	Total:	1,411.32	1,389.75
		Total Hours Worked:	85.57
		MMS – Hours Compensated For:	87.29
401 Timekeeping – (MMS Policy) – Hours that should have been compensated:			89.00
		DIFFERENCE:	1.71

NOTE: MMS only compensated for .62 overtime hours; however, pursuant to §778.317, any such payment by MMS CANNOT be deemed overtime pay.

<u>Date Note: "W"</u> <u>denotes workweek</u>	<u>Hours</u>	Meet Minimum Hrs. <u>Workday/Week</u> <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
(W) 11/17/03	45.12	Y	634.80	
(W) 11/24/03	41.20	Y (Holiday)	634.80	
Overtime:	6.32		150.48	
		Total:	1,420.08	1,454.01

		Total Hours Worked:	71.32
		MMS – Hours Compensated For:	89.99
401 Timekeeping – (MMS Policy) – Hours that should have been compensated:			85.12
		DIFFERENCE:	-4.87

NOTE: MMS only compensated for 3.32 overtime hours; however, pursuant to §778.317, any such payment by MMS CANNOT be deemed overtime pay. APPROVED Absence pursuant to MMS 305 Holidays (Thanksgiving and day after).

<u>Date Note: "W"</u> <u>denotes workweek</u>	<u>Hours</u>	Meet Minimum Hrs. <u>Workday/Week</u> <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
(W) 12/01/03	43.83	Y	634.80	
(W) 12/08/03	42.88	Y (Holiday)	634.80	
12/15/03	8.42	Y	126.96	
Overtime:	6.71		159.77	
		Total:	1,556.33	1,508.98

		Total Hours Worked:	95.13
		MMS – Hours Compensated For:	92.30
401 Timekeeping – (MMS Policy) – Hours that should have been compensated:			95.91
		DIFFERENCE:	3.61

NOTE: MMS only compensated for 5.63 overtime hours; however, pursuant to §778.317, any such payment by MMS CANNOT be deemed overtime pay.

<u>Date Note: "W"</u> <u>denotes workweek</u>	<u>Hours</u>	Meet Minimum Hrs. Workday/Week <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
12/16/03	8.00**	? (Jury Duty)	126.96	
12/17/03	8.10***	?	126.96	
12/18/03	8.63	Y	126.96	
12/19/03	7.33	Y	126.96	Last day in workweek (40.48 hrs. for week)
(W) 12/23/03	38.77	Y	634.80	
12/29/03	7.97	Y	126.96	
12/30/03	8.90	Y	126.96	
Overtime:	.38		9.05	
		Total:	1,405.61	1,375.00
		Total Hours Worked:		87.70
		MMS – Hours Compensated For:		86.67
401 Timekeeping – (MMS Policy) – Hours that should have been compensated:				89.15
		DIFFERENCE:		2.48

NOTE: MMS DID NOT compensate for overtime hours.

** Approved Leave – Jury Duty pursuant to MMS Policy No. 311.

*** Forgot to Use TimeClock – Correct time is 8.10 for the day.

<u>Date Note: "W"</u> <u>denotes workweek</u>	<u>Hours</u>	Meet Minimum Hrs. Workday/Week <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
12/31/03	6.57	Y	126.96	
01/01/04	8.00	Holiday	126.96	
01/02/04	9.38	Y	126.96	
01/03/04	5.88	Y	126.96	Last day in workweek (46.70 hrs. for week)
(W) 01/05/04	41.68	Y	634.80	
01/12/04	7.92	Y	126.96	
01/13/04	9.88	Y	126.96	
01/14/04	9.83	Y	126.96	
01/15/04	8.23	Y	126.96	
Overtime:	6.70		159.53	
		Total:	1,834.01	1,631.77
		Total Hours Worked:		99.37
		MMS – Hours Compensated For:		97.46
401 Timekeeping – (MMS Policy) – Hours that should have been compensated:				108.57
		DIFFERENCE:		11.11

NOTE: MMS only compensated for 10.79 overtime hours; however, pursuant to §778.317, any such payment by MMS CANNOT be deemed overtime pay.

Date Note: "W" denotes workweek	Hours	Meet Minimum Hrs. Workday/Week <u>Requirements</u> Y = Yes N = No	Normal Nonovertime <u>Pay Due</u>	<u>MMS Paid</u>
01/16/04	8.62	Y	126.96	
(W) 01/19/04	40.47	Y	634.80	
(W) 01/26/04	40.62	Y	634.80	
Overtime:	4.95		159.53	
		Total:	1,514.42	1,521.35
		Total Hours Worked:		89.71
		MMS – Hours Compensated For:		92.82
401 Timekeeping – (MMS Policy) – Hours that should have been compensated:				89.32
		DIFFERENCE:		-3.50

NOTE: MMS only compensated for 6.15 overtime hours; however, pursuant to §778.317, any such payment by MMS CANNOT be deemed overtime pay.

306. MMS conferred with Mike Farrell ("Farrell"), an attorney at MMS whose area of practice was Labor and Employment law. Farrell spoke with Newsome and two other employees (i.e. Tammy M. Cochnauer and Ladye Margaret Townsend) regarding MMS' method of payment. During this meeting Newsome advised Farrell that he was there in the interest of the firm and had concerns as to the information he provided. Farrell advised that he had personal contact information with employees with the United States Department of Labor's Wage and Hour Division and provided Newsome and the other employees with a copy of information to support such – information such as **DIRECT** telephone numbers, etc. of Wage and Hour Division employees. Farrell **emphasizing** the fact that he had developed a relationship with employees with the Wage and Hour Division – Jackson, Mississippi office. See **Exhibit "21"** - *W&H Employee Contact Information* attached hereto and incorporated by reference as if set forth in full herein.

307. If Newsome **did not** contact MMS regarding concerns of unpaid overtime pay, MMS would not have paid her. MMS had a PATTERN-OF-PRACTICE to cover-up unlawful employment practices; moreover, a reputation of withholding wages/earnings of nonexempt salaried employees.

308. On or about December 19, 2003, Newsome began sharing her concerns regarding possible unpaid overtime. Newsome requesting to be provided information regarding "total hours" in overtime she had been paid since September 30, 2003. Newsome requesting said information via email to Rosonna Taylor ("Rosonna") and cc'ing Jim Allen ("Allen"), Chief Operations Officer/Human Resources/Controller – which states in part:

You were going check (sic) into my concerns about possible unpaid overtime. Please provide me with the "total hours" in overtime I have been paid since September 30, 2003.

Attached for your review is a sample spreadsheet that I have created to help me determine if I am keeping track of this correctly. This is the time computed from Time Clock. Please feel free to review and let me know whether or not I have made a mistake somewhere.

See **Exhibit "22"** – 12/19/03 Email to Rosanna Taylor attached hereto and incorporated by reference as if set forth in full herein. Rosanna was Allen's Assistant.

309. On or about January 12, 2004 (almost one month later), Newsome followed up her December 19, 2003, email to Rosanna and cc'ing again Allen, the Chief Operations Officer, in regards to unpaid overtime. *Newsome requesting to be paid for her unpaid overtime* – stating as follows:

Just a follow-up to my Email of 12/19/03. Attached is what I have in regards to unpaid overtime. I would like to get paid for my overtime. I'm showing 16.56 hours. . . .

See **Exhibit "23"** – 01/12/04 Email to Rosanna attached hereto and incorporated herein by reference as if set forth in full herein.

310. Newsome's December 19, 2003 and January 12, 2004 "OVERTIME" requests were made in good faith and in compliance with CFR 29 §778.106 **Time Of Payment**, which states in part:

29 CFR 778.106 – Time of Payment: There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. *Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after such computation can be made*. Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in 778.303.

Nevertheless, MMS **REPEATEDLY** violated statutes/laws for purposes of cover-up and the **theft and embezzlement** of wages/earnings owed Newsome and/or nonexempt salaried employees.

311. On or about January 24, 2004, Newsome submitted an email to Allen, the Chief Operations Officer, with subject matter entitled, "**CONFIDENTIAL – TIMECLOCK & CALCULATION OF PAY RATE.**" Newsome questioning her hourly pay rate, requesting how MMS determined her hourly pay rate and at what rate of pay had she been paid for each pay period beginning 10/06/03. On or about January 26, 2004, Allen advised Newsome in regards to her January 24, 2004 email, "*I'll visit with you this week when I'm in Jackson. Thanks, Jim*" See **Exhibit "24"** – 01/26/04 Email from Allen to Newsome attached hereto and incorporated by reference as if set forth in full herein.

312. On or about January 27, 2004, Newsome met with Allen to discuss concerns of unpaid wages and/or overtime. During said meeting Allen *advised Newsome that he had gone in and checked Timeclock and reviewed other activities of Newsome to determine whether or not she was reporting overtime for hours that she was still at the office, after hours, but not performing work related tasks; however, concluded that Newsome had clocked out and was not on MMS time nor reporting off-the-clock time as that to be compensated for.* Actions taken by MMS/Allen in beginning the PATTERN-OF-PRACTICE to seek ways to terminate Newsome's employment rather than having other nonexempt salaried employees and the public find out that it has been conducting business in violation of FLSA and engaging in criminal/civil wrongs against its employees.

313. On or about January 28, 2004, Newsome submitted an email to Allen with the subject matter entitled, "*CONCERNS – UNPAID HOURS WORKED. . .*" Newsome addressing concerns of unpaid hours/overtime. Newsome stating in part:

This is per my conversation with you on yesterday and today regarding unpaid hours/overtime. I shared with you on both days my concerns of the *substantial* difference in the hours that MMS has paid me *versus* the hours I have *actually* worked. Believe I used "hidden/lost time" that is not reflected on my paycheck stubs.

You mentioned that the *average per pay period is approximately 86.87.* Therefore, I went back for each pay period and took the 86.67 and added the overtime hours ONLY to the 86.67. *Sure enough,* the computation on the paycheck stub only consisted of the 86.67 plus the actual overtime. *What was absent from ALL of my paychecks were the 2.5 hours which show 40 hours for each week where overtime occurred.*

I express these concerns because (1) I believe I am a non-exempt employee, yet it appears that MMS have *not paid me at all for any of the 2.5 hours* in the weeks where overtime was worked (2) there is an accumulation of approximately *29.90 hours that I have worked and have not been paid at my regular hourly rate;* and (3) the *6.15 in actual overtime* hours that I have *not been paid.*

Based upon my calculations (at the hourly rate you provided), it appears that MMS has not paid me as follows:

\$474.21 (pay for straight time – based upon 29.9 x hour pay rate)
\$146.30 (overtime pay)
TOTAL OWED/DUE: \$620.51

If indeed my figures are correct, I would appreciate your taking the time to correct this error and would like to be paid the entire amount in this paycheck.

Furthermore, *because of this discovery and my concerns, I will discuss this with Bob Gordon. . . .*

See Exhibit "25" – 01/28/04 Email attached hereto and incorporated by reference as if set forth in full herein. Supporting that Newsome's reporting of MMS' employment violations was in compliance with MMS Policy No. 102 EMPLOYEE RELATIONS:

Mitchell McNutt believes that the *work conditions, wages, and benefits* it offers to its employees are competitive with those offered by other employers in this area and in this profession. *If employees have concerns about work conditions or compensation, they are strongly encouraged to voice these concerns openly and directly to their supervisor and/or attorney or the Chief Operations Officer.*

Our experience has shown that when employees deal openly and directly with supervisors, the work environment can be excellent, communications can be clear, and attitudes can be positive. We believe that Mitchell McNutt amply demonstrates its commitment to employees by responding effectively to employee concerns.

See **Exhibit “3”** - *Mitchell McNutt & Sams PA Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. Evidence to sustain that MMS was timely, properly and adequately placed on notice and made aware of its unlawful employment practices as early as December 2003; moreover, violations pursuant to FLSA and other governing statutes/laws.

314. In the same email of January 28, 2004, to Jim Allen, the Chief Operations Officer and/or Human Resources Representative, Newsome advised him that, *“Furthermore, because of this discovery and my concerns, I will discuss this with Bob Gordon.”* See **Exhibit “25”** attached hereto. As Newsome advised, she discussed the matter with Robert T. Gordon, Jr. - a/k/a Bob Gordon - (“Gordon”). Gordon did not seem to be pleased with the fact that Newsome was addressing employment violations under the FLSA by MMS. *Newsome provided Gordon with a manila folder containing copy of information provided Allen. Gordon was reluctant to take it; however took the folder provided by Newsome. Newsome advised Gordon that Allen was already made aware of her concerns. Newsome advising Gordon she was bringing it to his attention so that he would be aware of what was going on. Gordon advised he would pass the information on.*

315. Newsome’s addressing the employment violations regarding MMS’ method of payment was in compliance with **409 ADMINISTRATIVE PAY CORRECTIONS** of the Mitchell McNutt & Sams, P.A. Employee Handbook with an Issue Date: January 1, 2002, which states:

Mitchell McNutt takes all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled payday.

In the unlikely event that there is an error in the amount of pay, the employee should promptly bring the discrepancy to the attention of the Controller so that corrections can be made as quickly as possible.

See **Exhibit “3”** - *MMS Employee Handbook* with an Issue Date: January 1, 2002 - attached hereto and incorporated by reference as if set forth in full herein.

316. MMS’ method of payment for Newsome, who is a nonexempt salaried employee, violated the Fair Labor Standards Act (“FLSA”).

317. MMS did not compensate Newsome for overtime pay as required under the FLSA pursuant to CFR 29 § 778.317. [46 FR 7315, Jan. 23, 1981] See **Exhibit "18"** attached hereto and incorporated by reference. Under the FLSA, the law requires that Newsome first be paid for the **actual** 40 hours worked **before overtime pay can be asserted as being paid**. *Because MMS had failed to pay for the actual 40 hours worked by Newsome in the pay periods consisting of 11 or 12 actual workdays, MMS could not assert that it had paid Newsome for overtime, unless MMS had paid for the actual first 40 hours worked which leads to overtime compensation.*

318. On or about February 5, 2004 and February 6, 2004, because of MMS' refusal to comply with the FLSA and compensate Newsome as required by law, she advised MMS/Allen that she would be bringing its employment violations to the attention of the Department of Labor. See **Exhibits "26"** and **"27"** respectively, attached hereto and incorporated by reference as if set forth in full herein. Reporting of unlawful employment practices is a *protected activity* under the law.

319. On or about February 11, 2004, Newsome filed a Complaint with the United States Department of Labor, Employment Standards Administration, Wage and Hour Division – Jackson, Mississippi Division entitled, *"Mitchell, McNutt & Sams, P.A. Violations Under the Fair Labor Standards Act."* The action taken by Newsome in reporting what she believed to be employment violations under the FLSA, was a *protected activity*. Thus, federal law prohibits discrimination/retaliation for participation in reporting unlawful employment practices.

320. **Immediately** thereafter, MMS/Gordon began to subject Newsome to discriminatory, prejudicial treatment, retaliation and a hostile work environment as a direct and proximate result of Newsome's reporting to MMS its violations under the Fair Labor Standards Act. MMS began seeking and searching for information on Newsome in hopes of finding what it thought would be safe and legal reasons to terminate her employment with it.

321. On or about **February 26, 2004**, Gordon subjected Newsome to a very hostile work environment as a result of her taking approximately a 35 minute lunch. Prior to Newsome's leaving for lunch, Gordon had advised her to bring her lunch back so that she could work through lunch. Newsome asked Gordon whether or not he wanted her to bring him anything back. Gordon advised no. Newsome advised Gordon that she would be riding with Townsend (a co-worker at MMS) and Farrell (an attorney at MMS). Farrell drove. Upon getting to the restaurant and ordering, Farrell and Townsend advised Newsome that they were not going to go right back to the office. Newsome advised both Farrell and Townsend that she thought they were going right back, and that she had advised Gordon of so. *Both Farrell and Townsend advised Newsome that they would explain the situation to Gordon upon return. Both Farrell and Townsend knew of Newsome's concerns; however, assured her that they would explain the situation to Gordon as to what happened. Both Farrell and Townsend being white.* Newsome being the **only** African-American/Black employed in the Jackson, Mississippi office at this time.

322. Pursuant to MMS' policies, **506 REST AND MEAL PERIODS**, Newsome was entitled to a meal period of sixty (60) minutes in length each workday. See **Exhibit "3"** attached hereto and incorporated by reference as if set forth in full herein. Newsome's taking of lunch **did not** violate MMS policy(s). Nor did Newsome's taking of lunch prevent the timely filing of the pleading addressed in this incident. During Newsome's employment, *she was never notified by MMS of any violation of said policy.*

323. On or about February 26, 2004, *immediately* upon Farrell's, Townsend's and Newsome's returning from lunch, *Gordon created and subjected Newsome to a very hostile environment for not immediately returning. Gordon doing so without affording Newsome an opportunity to explain what had occurred.* Both Farrell and Townsend witnessed this incident, but *neither did anything to explain the situation to Gordon as they had advised Newsome at the restaurant they would.* The hostile environment created by Gordon was so obvious and disruptive that it initiated an email from Townsend to Newsome regarding the situation. See **Exhibit "28"** – *Email Regarding 02/26/04 Incident* attached hereto and incorporated by reference as if set forth in full herein.

324. Because of said incident with Farrell and Townsend, Newsome decided not to go out alone to lunch with the two of them again; unless it was a firm lunch. Newsome believes based upon the relationships established at the firm and Farrell's and Townsend's failure to come forth as promised, *she very well may have been deliberately set up* – i.e. *both being willing participants and having role in conspiracy(s) leveled against Newsome.* Therefore, after said incident, Newsome made sure she did not open the door for Farrell and Townsend to set her up for more vicious and hostile attacks. Newsome being the *only* African-American and Farrell, Townsend and Gordon *all* being white. Newsome believes that Farrell's and Townsend's role in conspiracy and their personal interest can be established in the information provided to the W&H during its handling of Newsome's FLSA charge/complaint. See **Paragraph 324** of this Complaint as well as **Exhibit "13"** – *Excerpt from W&H Information* attached hereto and incorporated by reference as if set forth in full herein.

325. Only **AFTER** the filing of Newsome's Complaints⁴³ did Gordon/Defendant MMS attempt to cover up/mask such unlawful actions of Gordon. In an adverse Performance Review signed by Gordon on 11/15/04, in regards to the February 26, 2004, incident Gordon stated:

On an occasion in late February 2004, I had a motion and supporting memorandum I had to complete and get in the mail on a given day. On that day, we were working on it, and near the lunch hour, I told Vogel it would be necessary to shorten her lunch hour in order to be sure we got the motion and memorandum completed, copied and in the mail that day. I told her she could go out and pick-up something and bring it back to the office. She protested. She then went with Mike and Ladye M., saying she was going to get something and bring it back. *She did not return for 45 minutes or more, returning with Mike and Lady M., having eaten lunch.* Her explanation was that she thought they were going to pick something up and bring it back to the office.

See **Exhibit "29,"** p. 13 - Performance Review attached hereto and incorporated herein by reference as if set forth in full herein. - - A false statement provided by MMS/Gordon only **AFTER** the filing of Newsome's Complaints. The November 30, 2004 Performance Review signed/executed by Gordon on November 15, 2004, was the first time Newsome ever received Gordon's feedback on this incident. Gordon's feedback provided in the Performance Review coming approximately *nine (9) months* later.

⁴³ Newsome also have pending Complaints with the Wage and Hour Division and OSHA against MMS.

326. Gordon's *hostile and disruptive* conduct was also observed by the other attorney, Farrell, in the office. Resulting in a February 26, 2004, email to such behavior and confirming that the three, Farrell, Townsend and Newsome were not gone long at all. Said email from Townsend which stated in part:

Townsend: Mike just came by my desk and wanted to know if Bob had ever calmed down – he said we weren't gone that long!

Newsome: Not sure – however, I have to keep going. He was so quick to jump the gun – he didn't wait for an explanation. When a person is like that, I realize it is best just to be silent. I know how he is and would not deliberately do something like that. I thought we were coming right back.

Townsend: I agree.

Newsome: Where were you? Nowhere to be found. Abandoned, wombed, (sic) etc. – I was left to fend for myself. I am now in recovery – attending to my womb(s)(sic) – Smile.

Townsend: He is stomping and rushing around like he was the one expecting a baby!!!

Newsome: Well I guess I meant to say wound(s) not womb(s).

Townsend: LOL – I thought that you meant to spell it like that.

See **Exhibit "28"** attached hereto and incorporated by reference as if set forth in full herein. Yet Gordon in efforts to attempt to justify his unlawful behavior in the November 15, 2004 Performance Review of Newsome, wanted to distort the facts and make it seem as though Newsome was gone for a greater period of time – 45 minutes or more. Even if Gordon's assertion was true, *when it is not*, Newsome did not violate MMS policy(s), nor does it justify Gordon's unlawful/discriminatory treatment of her.

327. On or about February 27, 2004, *to memorialize the event*, Newsome reported the February 26, 2004 incident to Rosonna⁴⁴ by email and cc'ed Allen, which stated in part:

Bob wanted me to work through lunch (wanted me to work through lunch – pick up and bring back). Had incident where Bob got upset with me for going and not coming right back. I went with Mike and Ladye Margaret and thought we were coming right back. When I returned, Bob talked to me and expressed his frustration because I did not come right back. When I left, I thought we were coming right back and did not find out until I got to the place Mike was not coming right back.

Bob made it clear to me that he was frustrated and not pleased with what happened although I had no idea we were not coming right back. Bob did not allow me an opportunity to explain what happened.

FMI (For My Information), could you find out whether or not I did anything wrong in regards to this matter. I know I am entitled to lunch as well as breaks (which are not always taken). I

⁴⁴ Rosonna is Jim's assistant.

came in early because bob requested that I do so. Despite my good intentions of doing so, all went out the window for 35 minutes.
So please check on this for me and get back.

See **Exhibit "30"** attached hereto and incorporated by reference as if set forth in full herein. Newsome was not aware of whether MMS addressed this matter with Gordon because MMS never notified her of such. Neither did MMS take any remedial measures to assure that such hostile actions by Gordon did not happen again. However, at the hearing before the *Mississippi Department of Employment Security*, Newsome was advised that MMS **never** investigated matter; moreover, Gordon *alleged being unaware of complaint(s)* Newsome had submitted to MMS regarding his unlawful behavior.

328. Pursuant to MMS' policies, **506 REST AND MEAL PERIODS**, it addresses what MMS expects regarding rest periods. It states:

Each workday, full-time nonexempt employees are provided with **two (2) rest periods** of **fifteen (15) minutes** in length. To the extent possible, rest periods will be provided in the middle of work periods. Since this time is counted and paid as time worked, employees must not be absent from their work stations beyond the allotted rest period time.

All full-time employees are provided with one meal period of sixty (60) minutes in length each workday. Supervisors will schedule meal periods to accommodate operating requirements. Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time.

Employees are not allowed to shorten their meal period without the approval of their supervisor/attorney and the Chief Operations Officer.

See **Exhibit "3"** attached hereto and incorporated by reference as if set forth in full herein.

329. During Newsome's employment, she was not aware where she ever violated said policy. Neither, during Newsome's employment with MMS, was she ever notified by MMS that she was in violation of MMS policy(s) and/or procedures addressed in its *Employee Handbook*.

330. Because of Gordon's discriminatory, retaliatory and hostile behavior, Newsome placed break reminders on her calendar and sent email to Gordon advising him as an invitee of such remainders. By sending Gordon the email as an invitee, it provided Gordon with an option to place this information on his calendar if he wanted to. Newsome notifying Gordon as she would do when she was going to be out of the office and also to let Gordon know when she will most likely be away from her workstation. In doing so, Newsome's notifying Gordon of absences from her workstation in good-faith effort to avoid further hostile and combative actions invoked by Gordon against her, in that Gordon's actions were in violation of MMS Policy No. **701 Employee Conduct and Work Rules** of MMS' *Employee Handbook* which stated in part:

To ensure orderly operations and provide the best possible work environment, Mitchell McNutt expects employees to follow rules of

conduct that will protect the interests and safety of all employees and the organization.

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment:

- * Working under the influence of alcohol or illegal drugs . . .
- * *Fighting or threatening violence in the workplace*
- * *Boisterous or disruptive activity in the workplace*
- * Insubordination or *other disrespectful conduct*
- * *Violation of safety or health rules . . .*
- * Sexual or *other unlawful or unwelcome harassment . . .*
- * Excessive absenteeism or any absence without notice. . .
- * *Violation of personnel policies*
- * Unsatisfactory performance or conduct

See **Exhibit “3”** attached hereto and incorporated by reference as if set forth in full herein.

331. On or about *Sunday*, March 7, 2004, Gordon sent Newsome an email advising, “*You should cancel or remove all of the break reminders you put on my calendar*” - email which stated in part the following:

Gordon: I received your reminders about morning and afternoon break periods.

The reminders were not necessary. Your placing daily reminders of morning and afternoon breaks on my calendar was particularly uncalled for. *There has not been, and is not, any question about these breaks.*

In our initial interview, I explained, and you agreed, that the nature of the practice of law is such that there will be occasions when it will be necessary to come in before and/or stay beyond the normal office hours of 8:30 a.m. to 5:00 p.m. to meet deadlines or demands. The same is true with regard to morning and afternoon break periods. There will be occasions when the demands of the work will require that break time be changed, or the taking of a break to be adjusted, or a break not taken.

You should cancel or remove all of the break reminders you put on my calendar.

Newsome: I have reminders on my calendar (mail, etc.). I realized that I have not been taking the recommended breaks. While you may feel that it is uncalled for, it has been placed on *my* calendar to remind me. You were provided *with a notification* of this *as an FYI*. While I understand that there are times that special incidences may arise, I believe for my information, I need to keep

track of such times for my information – Project working on and deadline of such. I am certain that such breaks, etc. were created and designed with the interest of the employees in mind. One can be better productive with the proper rest, lunch, etc.

Will reset on my calendar – with you excluded.

See **Exhibit “31”** – 03/07/04 Email From Gordon to Newsome & Response attached hereto and incorporated by reference as if set forth in full herein.

332. On Monday, March 8, 2004, Newsome complied with Gordon’s request and removed the reminders from his calendar. Newsome advising Gordon information was sent to him for informational purposes only. Gordon could have declined the invitation which may have avoided appointments being placed on his calendar.

333. During Newsome’s employment with MMS, Gordon repeatedly abused his supervisory powers and denied Newsome said breaks. Allowing Newsome to take the recommended breaks would not have prevented Gordon from meeting any such deadlines that he may allege. Pleadings would have been timely mailed on the date he desired without depriving Newsome required breaks. During Newsome’s employment, her taking of lunch and breaks did not prevent and/or preclude her from meeting deadlines – prevent pleadings from being timely submitted. The acts by MMS/Gordon which further support the discriminatory and hostile treatment that Newsome endured during her employment with MMS.

334. Pursuant to MMS’ policies, **705 PERSONAL APPEARANCE**, it addresses what MMS expects regarding dress, grooming and personal cleanliness standards. See **Exhibit “3”** attached hereto and incorporated by reference as if set forth in full herein. During Newsome’s employment, she was not aware where she ever violated said policy. Neither, during her employment with MMS, was Newsome ever notified by MMS that she was in violation of said policy.

335. On or about **April 23, 2004**, Newsome was again subjected to a very hostile work environment created by Gordon simply because she wore a *fashion casual cap* with **her skirt, blouse, and panty hose** attire on Friday (casual day). Gordon was made aware of an unforeseen incident that Newsome endured the night before which resulted in Newsome attending to the matter prior to coming in to work. *Gordon nevertheless became very hostile, verbally abusive and demanding and in a very harsh and threatening voice told Newsome to remove the fashion cap immediately. This verbal abuse and hostile treatment lasted for several minutes.* Even when Newsome had returned to her office, Gordon proceeded to rush into her office space and continue to demand the removal of her fashion cap. Newsome advised Gordon that she would check the Employee Handbook to see if her attire was in violation of MMS’ policy(s). Because Newsome knew that her hair was not combed, *she offered to change the fashion cap to a more appropriate cap (prayer).* Newsome did not get a response from Gordon regarding her offer. *The hostile behavior of Gordon left Newsome shaken, threatened and intimidated and it took minutes just for her to be able to perform her typing duties without shaking so bad.* Newsome immediately addressed this issue with Gordon (her attorney) and cc’ing Allen on such. See **Exhibit “32”** – Email Regarding 04/23/04 Incident attached hereto and incorporated by reference as if set forth in full herein.

336. The November 30, 2004 Performance Review signed by Gordon on 11/15/04, was the first time Newsome ever received Gordon's feedback on this incident. Gordon's feedback provided in the *Performance Review* coming approximately nine (9) months later. See Exhibit "29," page 14 attached hereto and incorporated by reference.

337. When Allen (Chief Operations Officer and/or Human Resources Representative) came to the Jackson office the next week, Newsome asked to speak to him. Newsome wanted to discuss concerns regarding Gordon. Newsome advised Allen of Gordon's **hostile** treatment of her and how such **hostile** treatment disrupted the work environment. Newsome also suggested during conversation with Allen, that she would recommend that MMS enroll Gordon in some *Anger Management Classes*. It was during this meeting that Allen took notice to Newsome's advising of Gordon as being *hostile*. Yet MMS did nothing to deter future unlawful behavior/attacks by Gordon against Newsome. Newsome shared concerns of MMS treating her differently than others at the office. Newsome shared how others at the office were allowed to wear whatever they want (which at times she found inappropriate for the office); however, MMS/Gordon said nothing. However, when Newsome wore her casual fashion caps (not baseball), MMS/Gordon objected. Newsome shared how others (i.e. which happen to be **white** employees) were **not** required to carry out their duties in regards to maintenance of the break area, yet she was required to. Newsome expressed concerns of how there was **a high turn-over with Legal Secretaries with Gordon.** That she was approximately the **fifth** legal secretary for Gordon **in less than a year.** Concerns Newsome shared with Allen and advising that it did not appear to her that the problem had been with the Legal Secretaries, but with Gordon and suggesting again that MMS seek some assistance in getting Gordon some help. MMS/Allen ignored such suggestions offered by Newsome. As a direct and proximate result of said notification, MMS allowed Gordon to repeatedly subject Newsome to unlawful practices and continued to place Newsome in the line of fire of Gordon's **THREATENING, HOSTILE and VICIOUS** attacks on her. The documentation and evidence in MMS' possession and that submitted to government agencies, by Newsome, will support that MMS was timely, properly and adequately notified of its unlawful employment practices.

338. Only **AFTER** the filing of Newsome's Complaints did MMS/Gordon attempt to **cover up/mask** such **unlawful** actions of Gordon. In an adverse Performance Review signed by Gordon on 11/15/04, in regards to the April 23, 2004, incident Gordon stated:

In the late Winter or early Spring of 2004, Vogel wore a baseball cap style hat to work on several Fridays. Then, on a Thursday, I told her that such a hat is not appropriate for the office – a law office – even on a casual Friday, and not to wear it to the office. She did not object or protest. However, the next day, a Friday, she wore that hat to the office. I instructed her to take it off, and she refused to do so.

The significance of this is not, as such, the wearing of a baseball style cap or hat to the office. The significance is that Vogel was given an instruction, she defied it, she then was given the same instruction, and she defied it again.

(She did not again wear the hat after this Friday)

See Exhibit "29," p. 14 attached hereto and incorporated by reference as if set forth in full herein.

NOTE: Based upon such statement by Gordon in his November 15, 2004 Performance Review of Newsome, it was apparent, from this incident and others with Gordon, that he did not deal well with the *individuality/ethnicity* of the employees of MMS. Gordon repeatedly misused/abused his supervisory powers to harass, discriminate and/or subject Newsome to discriminatory, hostile and/or unlawful practices. During her employment with MMS, Newsome **had learned that Gordon had a military past.** Gordon's need to be in control of all situations, repeatedly lead to his combative hostile treatment and verbal abuse of Newsome. Thus, from description and perception of the matter, it was clearly obvious to Newsome how distorted Gordon's views were and his inability to adapt to change in the *individuality/ethnicity* of MMS employees. While working with MMS, Newsome observed if Gordon did not get his way, he had temper tantrums which ultimately turned into his creation of a very combative hostile work environment if he did not get what he wanted. If Newsome **did not agree with him on issues and made it known to Gordon, Gordon's distorted views, perceived/projected Newsome as being defiant and/or insubordinate.**

339. MMS/Gordon/Allen repeatedly singled Newsome out and subjected her to discriminatory treatment. Newsome was the only African-American/Black in the Jackson area office – i.e. replacing prior employee (Kathy Taylor) who was an African-American/Black. Other white employees were allowed to wear and dress as casual as they liked without being subjected to *discriminatory* and *hostile* treatment such as that rendered Newsome.

340. When Newsome ceased work on December 3, 2004, there were outstanding salary/wages and overtime pay due her from MMS totaling an amount to be determined during the course of this litigation. Such amount is now wholly due and unpaid despite Newsome's requests to MMS for payment.

341. Newsome was able to obtain the following information from the United States Department of Labor the following **FLSA NARRATIVE REPORT:**

Evidence: Interviews of Supervisor Robert Gordon, Attorney Mike Farrell, and Secretary Ladye Margaret Townsend⁴⁵ revealed that Ms. Newsome had been rebellious and insubordinate in job duties assigned her from the start of her employment.

█████ interview (Exhibit █████) *stated that every since Ms Newsome was hired she been looking for a way to get fired to pursue a lawsuit. . .* After this incident Ms Newsome began working on whether she was paid properly . . . Newsome disagreed with Attorney Farrell and told Cochauer and Townsend she was going to contact Wage Hour. █████ didn't know if Newsome did or not because nothing came of it. █████ further confirmed other events of insubordination. (Exhibit █████).

⁴⁵ All of whom are "White" and having a personal interest and financial interest (either employment and/or business investment related).

Further action:

(Note) *During the course of this investigation, District Director (“DD”) Billy Jones retired from the department.* Regional Administrator McKeon assigned Assistant District Director (“ADD”) Oliver Peebles as Acting DD for the Gulf Coast District. DD Peebles has been advised through all actions of this case, and all of his instructions have been followed.

See **Exhibit “13”** – *Excerpt From W&H Investigation* attached hereto and incorporated by reference as if set forth in full herein. Information pertinent and relevant and goes to the **PATTERN-OF-PRACTICE** established by MMS in the conspiracy(s) that it engaged in and/or initiated during Newsome’s employment to cover-up/mask/shield illegal animus. Moreover, MMS and/or Defendant(s) role in conspiracy and ability to engage government officials/employees in unlawful/illegal practices.

342. *A reasonable mind may conclude that based upon the facts, evidence and legal conclusions provided herein, that the W&H in efforts of doing damage control may have requested Jones to retire based on his willing role in MMS’ conspiracy leveled against Newsome* and that based upon his personal interest and bias towards Newsome allowed MMS to induce him to engage in unlawful/illegal practices clearly prohibited under the FLSA and other statutes/laws governing said matters and conspiracies. Jones when engaging in conspiracy with MMS, acted beyond scope of employment with MMS and was influenced by his bias and prejudice towards Newsome which was racially motivated.

343. MMS violated 42 USC § 2000e-(3)(a) by discharging an Newsome after learning she had filed charges of discrimination against former employer(s). EEOC Decision No. 71-460, 1973, EEOC Decisions ¶ 6715.

344. Defendant(s) relied upon knowledge of Newsome’s engagement in protected activities to advise government agency(s) – i.e. such as the United States Department of Labor – of Newsome’s engagement in protected activities for purposes of prejudicing the fact finder and purposes of obtaining an undue/unlawful/illegal advantage over the handling of complaints filed by Newsome reporting MMS’ unlawful employment practices.

345. Newsome’ at-will employment with MMS was terminated as a direct and proximate result of violation of a principle of public policy – Defendant(s) committed unlawful/illegal practices which have a tendency to be injurious to the public or against the public good. MMS/Sams terminated (which was against public policy) Newsome’s employment which affected her duty that inures the benefit of the public at large. MMS’/Sams termination of Newsome’s employment was a result of retaliation and her performing an important and socially desirable act. Moreover, Defendant(s) retaliating against Newsome for engaging in protected activities (i.e. *for making charges, testifying, assisting, or participating in enforcement proceedings*). MMS’/Sams’ termination of Newsome’s employment was motivated by bad faith, malice and retaliation.

PUBLIC POLICY EXCEPTION: Most courts recognize an exception to the common-law at-will employment doctrine where the termination of the employee is based upon a violation of a principle of public policy. Thus, *where an employee is discharged for*

exercising a right or performing a duty that public policy encourages or requires, the employer may be subject to liability in tort for wrongful discharge. . . . This exception is recognized, at least in principle, in the overwhelming majority of jurisdictions. . . . In most states the employee bears the burden of establishing that *the alleged wrongful discharge contravened a public policy that was clearly mandated and specifically expressed in a constitution, statute, judicial decision, or administrative agency regulation . . . in which the employee was discharged for pursuing an employment-related right that is one of important public interest protected by state or federal constitutions, statutes, or judicial decisions.* . . .⁴⁶

346. To prevail under “*elements of public policy exception*,” Newsome must establish the following:

- (a) the existence of a relevant public policy;
- (b) that Newsome was engaged in conduct favored by public policy;
- (c) that MMS knew or believed that Newsome was engaged in a protected activity;
- (d) that retaliation was a motivating factor in MMS’ termination of Newsome’s employment; and
- (e) that Newsome’s termination would undermine an important public policy.

Indeed, the facts, evidence and legal conclusion set forth in this instant Complaint sustains that the “*elements of public policy exception*” has been met and proven in that:

- (i) there is an existence of relevant public policy pursuant to the FLSA, OSH Act, Title VII of the Civil Rights Act of 1964, and laws governing unemployment compensation; moreover, deprivation of protected rights, deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws pursuant to the Constitution and laws of the United States;
- (ii) that Newsome was engaged in conduct favored by public policy. Moreover, as a citizen of the United States had a duty and obligation to report the employment violations of MMS to proper government authorities in that said violations violated public policies as well as affected and impacted the public-at-large – conduct favored by public policy;
- (iii) that MMS knew or believed that Newsome was engaged in protected activities – i.e. MMS having knowledge that Newsome had made charges of its unlawful employment practices as well as has brought charges, testified and/or participated in other enforcement proceedings;
- (iv) that MMS’ retaliation against Newsome was the motivating factor in its termination of Newsome’s employment – i.e. NEXUS established between Newsome’s engagement in protected activity affecting public policy and MMS’ termination of her employment; and

⁴⁶ 48 Am. Jur. Proof of Facts 2d 192-193.

- (v) that Newsome's termination would undermine an important public policy in that it was done with willful, malicious and wanton intent to discourage her as well as other nonexempt employees of MMS not to report its unlawful employment practices or they would suffer the same fate as Newsome (i.e. termination) for purposes of undermining an important public policy and to prevent government agency(s) and public from being notified of MMS' employment violations. Therefore, MMS engaged in criminal/civil wrongs for purposes of masking/shielding its unlawful and illegal employment practices which clearly undermined public policy.
- (vi) MMS' termination of Newsome's employment was also in violation of public policy in that it was done to make a PUBLIC example of her as to what would happen to employees (such as Newsome) who came against it, that MMS would see that employee(s) were publicly humiliated by allowing false and malicious information to be posted on the INTERNET known to have been received through false, malicious and criminal practices. Moreover, to use Newsome as an example as to how far MMS would go to see that her name and character is defamed and slandered. Violations by MMS were clearly in violation of Newsome's protected rights and clearly in violation of public policy.
- (vii) the record evidence will support how MMS attempted to keep Newsome from submitting complaints (i.e. *requesting that Newsome do not submit complaints while she was at work*) to its attention prior to taking matter to government agencies. MMS' advising Newsome not to file complaints violated specific statute(s) relating to public health, safety, and welfare, or undermined a clearly expressed public policy relating to Newsome's basic responsibility as a citizen or a right or privilege as an employee. Newsome's employment was terminated as a result of her refusing to remain silent and speaking out about MMS' unlawful employment practices. MMS was aware and/or reasonably should have been aware, that Newsome's refusal to comply with its directives not to submit complaints was based on her reasonable belief that the order given by MMS was illegal, unlawful, prohibited and contrary to a clearly expressed statutory policy relating to Newsome's duty as a citizen, or violative of her rights or privilege as an employee. According to MMS policy(s) it encouraged Newsome to file complaints with it. However, when Newsome did so, MMS then retaliated against her and engaged in overt acts in furtherance of conspiracy(s) to preclude her from exercising protected rights.

347. MMS/Sams through its unlawful/illegal termination of Newsome's employment deprived and denied her compensation, benefits and wages to which she was entitled. MMS through its unlawful/illegal termination of Newsome's employment breached the covenant of good faith and fair dealing which violated its own established policies and practices set forth in MMS *Employee Handbook*. MMS was motivated by intent to deprive Newsome of expected compensation, benefits and wages reasonable expected and implied in agreement between MMS and Newsome.

DENIAL OF COMPENSATION OR BENEFITS; WAGES AND COMMISSIONS: Breach of the covenant of good faith and fair dealing may be established by any action which violates, nullifies, or significantly impairs any right or benefit that either party has in the contract, whether expressed or implied.. . . to prevail under the implied covenant of good faith and fair dealing contained in employment contracts, an employee must demonstrate that the employer terminated the employee for the purposes of depriving the employee of money that he or she fairly earned and legitimately expected. The same rules have been applied where the employee's discharge would deprive him of wages earned, or of a share of profits promised in lieu of a fixed salary.. . . Practice Guide: *To succeed, the wrongfully discharged employee must present evidence tending to show that the employer was motivated by an intent to deprive him of expected compensation for services already performed.*⁴⁷

348. As a direct, foreseeable, and proximate result of Defendant(s)' discriminatory acts, Newsome has suffered and continues to suffer substantial losses in earnings and job benefits, and has suffered and continues to suffer humiliation, embarrassment, mental and emotional distress, and discomfort, all to Newsome's damage in an amount to be determined by a jury to deter and sufficiently punish named Defendants for their willful and malicious conduct as well as serve as an example to prevent a petition of such conduct in the future.

349. Under the provisions of the Civil Rights Act of 1964 and the Fair Labor Standards Act of 1938, there is due and owing a sum of money equal to the salary and benefits Newsome would have received had there not been a discriminatory policy and had she been paid for hours and overtime worked.

350. Further, Newsome has been deprived of income in the form of wages, overtime pay and or prospective retirement benefits, Social Security, Unemployment Compensation benefits, and other benefits due to her as an employee solely because of her race or sex, in sum of money to be proven at trial.

351. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and depriving her rights secured under the Fair Labor Standards Act and/or statutes laws governing said matters. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

352. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued –

⁴⁷ 82 Am. Jur.2d Wrongful Discharge § 73.

i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See Exhibit "14" attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a *de facto* pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . ., blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

353. As a direct and proximate result of Defendant(s)' systematic violations under the Fair Labor Standards Act and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance

that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.*

354. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to deprive her wages and overtime pay secured under the FLSA and/or statutes laws governing said matters as forth in this Complaint.

355. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in

such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

356. Newsome also seek liquidated damages on the grounds set forth herein.

357. Under the FLSA, 29 USC § 216(b), Newsome seek double the amounts presently due her as a penalty of and against MMS.

358. By reason of MMS' refusal to pay the unpaid minimum wages and overtime due Newsome, it has been necessary for Newsome to initiate this instant Complaint and incur legal fees to prosecute this cause for herself, and thus, has incurred reasonable legal fees in the sum to be determined during the course of litigation.

WHEREFORE, Newsome, on behalf of herself and other employees of MMS similarly situated, request:

- (i) Newsome request judgment enjoining and restraining MMS, its officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act on its behalf, from violating the provisions of Section 15(a)(2) of the Act, both permanently and during the pendency of this action.
- (ii) Judgment against MMS in the amounts respectively due Newsome and other employees of MMS similarly situated for overtime compensation, minimum wages, and liquidated damages (or interest, as the Court may determine), according to proof.
- (iii) For the sum for unpaid wages to be determined.
- (iv) For the sum of overtime pay to be determined.
- (v) Grant a permanent injunction enjoining Defendant(s), its/his/her officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in discrimination and harassment in compensation of wages and overtime pay based on race, sex and engagement in protected activity(s) and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (vi) Order MMS to institute and carry out policies, practices and programs which effectively prohibit the unlawful withholding, theft and/or embezzlement of employees' wages and overtime pay.
- (vii) Order MMS to make Newsome whole by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (viii) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative

relief necessary to eradicate the effects of its unlawful employment practices.

- (ix) Order MMS to make Newsome whole by providing compensation for past and future pecuniary losses resulting from unlawful employment practices involving the illegal withholding/theft/embezzlement of wages and overtime pay described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (x) Order MMS to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (xi) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (xii) Order Defendants to pay Newsome punitive damages for its malicious and reckless conduct described herein, in amounts to be determined at trial.
- (xiii) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of the withholding/theft/embezzlement of wages and overtime pay as alleged in this Complaint.
- (xiv) That the Court issue a declaratory judgment that MMS' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under Fair Labor Standards Act ("FLSA") of 1938, 29 USC § 201 et seq.
- (xv) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it and at its direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xvi) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties,

pursuit of happiness, equal protection of the laws and other known reasons to Defendants.

- (xvii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendants to file any reports that the Court deems necessary to evaluate compliance.
- (xviii) Order MMS to institute and carry out policies, practices and programs which effectively prohibit Fair Labor Standards Act violations.
- (xix) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her role in unlawful employment practices concealing FLSA violations.
- (xx) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (xxi) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from unlawful employment practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (xxii) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (xxiii) Order MMS to pay Newsome compensatory damages, including lost wages, overtime pay and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (xxiv) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein – i.e. as set forth in Exhibits “13” and “14” of this Complaint, in amounts to be determined at trial.
- (xxv) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of being deprived of equal rights under the law as alleged in this Complaint.
- (xxvi) That the Court issue a declaratory judgment that Defendant(s)’ acts, policies, and practices and procedures complained of above violated

Newsome's rights as secured under 42 USC § 1981, FLSA and other statutes and laws governing said matters.

- (xxvii) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xxviii) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xxix) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xxx) General compensatory damages, if permissible by law, in the amount of \$5,000,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xxxi) Exemplary or Punitive damages, if permissible by law, in the amount of \$25,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xxxii) For the sum for statutory penalty to be determined.
- (xxxiii) For pre- and postjudgment interest as allowed by law.
- (xxxiv) Award to Newsome the costs of this action under the provisions of the Fair Labor Standards Act of 1938, as amended.
- (xxxv) Allowance of Newsome for reasonable attorney's and/or legal fees for the prosecution of this action.
- (xxxvi) Such other and further relief as the Court deems just and proper.

COUNT IX⁴⁸
OCCUPATIONAL SAFETY AND HEALTH ACT AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

359. Newsome incorporates by reference Paragraphs 1 through 358 and 484 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

360. MMS set forth in its *Employee Handbook* the following:

The successful business operation and reputation of Mitchell McNutt is built upon the principles of fair dealing and ethical conduct of our employees. *Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.*

The continued success of Mitchell McNutt is dependent upon our clients' trust and we are dedicated to preserving that trust. Employees owe a duty to Mitchell McNutt, its clients, and shareholders to act in a way that will merit the continued trust and confidence of the public.

Mitchell McNutt makes every attempt to comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct. *If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with your immediate supervisor/attorney and, if necessary, with the Firm President for advice and consultation.*

Compliance with this policy of business ethics and conduct is the responsibility of every Mitchell McNutt employee. *Disregarding or failing to comply* with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.

See Exhibit "3" – MMS *Employee Handbook* at 104 *Business Ethics and Conduct* attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, it allowed Defendant(s) to represent it in an unlawful/illegal manner before government agencies, courts, public entities, etc. Defendant(s) handling of matters before government agency(s) wherein they engaged in an unethical/unlawful/illegal manner, reflected on the way MMS conducted business; moreover, Defendant(s)' willingness to take a far departure from policies of MMS for purposes of advancing their own personal interest in the outcome of charges/complaints filed by Newsome. Furthermore, how far Defendant(s) was willing to go

⁴⁸ Defendant (conspirator) becomes the agent of the other conspirator (s), and *any act done by one of the combination is regarded under the law as the act of both or all.* In other words, what one does, if there is this combination, *becomes the act of both or all of them, no matter which individual may have done it.* This is true as to *each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions.* (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). Also see definition of "TACIT" Agreement defined in this instant Complaint.

in the handling of business on behalf of MMS to influence the outcome of charges/complaints filed by Newsome.

361. OSH Act prohibited discriminatory practices by MMS under the laws for retaliation against Newsome for participation in a statutorily protected activity, filing a charge for unlawful employment practices, participating in an investigation, or opposing discriminatory practices.

362. On or about May 6, 2004, Newsome shared "Concerns Regarding New Office Space – Response Requested" at location for MMS at 111 East Capitol Street – Suite 290, Jackson, Mississippi 39201. See **Exhibit "35"** attached hereto and incorporated by reference as if set forth in full herein.

363. In retaliation to Newsome's sharing her concerns, in May 2004, MMS proceeded to place her in unsafe and unhealthy working conditions.

364. On or about **May 10, 2004**, Newsome submitted "*SAFETY CONCERNS – OSHA & OTHER REQUIREMENTS*" to the attention of MMS/Allen/Gordon. See **Exhibit "36"** attached hereto and incorporated by reference as if set forth in full herein.

365. On or about **May 11, 2004** (i.e. the very NEXT day), in RETALIATION to Newsome's submittal of concerns/complaint of OSHA violations, Gordon requested Newsome to create an "additional tray" at her workstation for him. To memorialize the event surrounding this matter Newsome submitted to MMS'/Gordon's/Allen's attention an Email entitled, "*WORKSPACE – Your Request For Me To Create An Additional Tray At My Workstation.*" Supporting the PETTY request and overt act in furtherance of conspiracy(s) leveled against Newsome. Newsome taking the time to address her concerns, as evidenced in Gordon's email, of retaliation against her for reporting of MMS' unlawful employment practices. See **Exhibit "37"** attached hereto and incorporated by reference as if set forth in full herein.

366. On or about **May 12, 2004**, submitted "TAKING CONCERNS OF CONTINUED WORKPLACE VIOLATIONS (Harassment, Retaliation, etc) TO EEOC" to the attention of MMS/Allen/Gordon/Farrell. Farrell was an attorney at MMS whose area of practice being LABOR and EMPLOYMENT law. See **Exhibit "38"** attached hereto and incorporated by reference as if set forth in full herein. In said email, Newsome addressed the heavy and strict observation by MMS on May 11, 2004 to substantiate such unlawful/illegal discrimination and retaliation by MMS. Providing intervals of such strict and oppressive supervision as follows:

9:54 a.m.
10:20 a.m.
10:30 a.m.
10:42 a.m.
10:44 a.m.
10:46 a.m.
10:48 a.m.
10:51 a.m.
11:01 a.m.
(Break of opening of Restaurant Below)
12:40 p.m.
1:34 p.m.

2:00 p.m.
2:53 p.m.
2:55 p.m.
3:00 p.m.
3:13 p.m.
3:15 p.m.
3:20 p.m.
3:32 p.m.
3:33 p.m.
3:43 p.m.
3:45 p.m.
4:10 p.m.
4:12 p.m.
1:15 p.m.
4:16 p.m.
4:18 p.m.
4:29 p.m.
4:31 p.m.
4:41 p.m.

Newsome providing information from *Francis v. AT&T* – FEP 777 which stated in part:

That “the process of documenting the case against a particular person whom the employer wants to terminate safely and legally can itself be a discriminatory term and condition of employment. In this case it had been found by the court that the employer documented ‘scores of lateness and *petty work-rule violations* against plaintiff because of her filing of charge of discrimination.’ The plaintiff in whom is black. The supervisor who had done the documenting also black. However, the company *did not* document against everyone similarly situated. The court found the very process of *fault finding* had been discriminatory . . .

Newsome sharing concerns that the discriminatory and retaliatory practices leveled against her which included in part:

I believe if there are cases such as *Francis* then, perhaps, there are case law out there to address the unlawful treatment and practices I believe I am being subjected to force me out of the workplace. Or, as in *Francis*, MMS is creating situations and subjecting me to unfair treatment so that is said to be safe and legal. However, I believe to the contrary.

I am available to address these concerns if you desire. However, again, I do intend to bring this matter before the EEOC and believe the *pattern of harassment* and *unfair treatment* is **uncalled** for.

See Exhibit “38.”

367. On or about **May 14, 2004**, MMS/Allen accused Newsome of use of firm computer for personal use stating in part:

You may **not** use the firm computer for personal use to the extent you have been. You need to work on the assignments that you have from your attorney.

Newsome see the acts of MMS/Allen as efforts to cushion and mask MMS' illegal animus, provided the following response which stated in part:

Please be advise (sic) that the accusation regarding the captioned matter is false. You will find that the matters I have brought to MMS's attention are all related to firm matters. Furthermore, as you will see from my most recent response to you. The Complaint that I am preparing to submit to OSHA was not produced on company time. This is a firm matter. Moreover, I have breaks. As in this case, I worked on this document last night and will finish it up perhaps this weekend. NOT AT THE OFFICE. MMS is not the only place with a computer. I have friends and there are public places.

WHAT I DID IN RESPONSE TO YORU MOST RECENT EMAIL – Was simply CUT & PASTE the document. So please be sure your facts are straight before making such accusations.⁴⁹

368. In or about May 2004, MMS began harassing Newsome about her computer monitor. While Newsome contested said harassment in compliance with MMS policies, MMS continued to allow such unlawful employment practices. MMS subjecting Newsome to such discriminatory practices and harassment or purposes of PRETEXT – i.e. to shield/mask and illegal animus. MMS can be expected to assert such unlawful employment practices was done due to Newsome's poor work performance and its need to know why and what she worked on – for instance see testimony provided at MDES Hearing:

Newsome	61	11 - 13	Okay, one of the, in your testimony you had mentioned the monitoring of me. <i>Can you explain to me why the monitoring was necessary as far as the computer monitor?</i>
Allen	61	14 - 15	As I stated earlier we were concerned that the work product was not being turned around in an efficient manner. Like I had mentioned earlier, we have two secretaries to one in other offices, and you were one attorney, and one secretary and the work product was not being turned around that quickly. So we then said there must be some other reason why she's not getting her filing done, and not getting the work product turned around to Mr. Gordon, so that was the reason why that there had to be a reason.
Newsome	62	1 - 3	So the monitoring, as far as monitoring, can you state for the record, what this monitoring entailed you know, how did Mitchell, McNutt & Sams go about his monitoring?

⁴⁹ **718 PROBLEM RESOLUTION** - Mitchell McNutt is committed to providing the best possible working conditions for its employees. Part of this commitment is *encouraging* an **open** and **frank** atmosphere in which any *problem, complaint, suggestion, or question* receives a timely response from Mitchell McNutt supervisors and management.

Allen	62	4 – 5	How did we monitor you, that's why <u>we needed to have your screen pointed the way so that it could be visible.</u>
Newsome	62	6	Yes, how frequent?
Allen	62	7	<u>So that your supervisor could see what was being worked on.</u>
Newsome	62	8	How frequent was this monitoring?
Allen	62	9 – 12	Well it was something that, an attorney <i>is busy in the practice of Law</i> and if he's expecting something to turn around and come out and say can I get this, can I get that, that may result in when can I get it, and if that to you is monitoring, <u>then that might be frequently.</u>
Newsome	62	13 – 14	Okay, so that, did that involve Mr. Gordon constantly coming into my workspace area, while I was performing my job duties?
Allen	62	15	Yes.
Newsome	62	16 – 18	Okay, <u>so Mitchell, McNutt & Sams worked, was made aware that that monitoring, I felt was what I have called strict and oppressive?</u>
Allen	62	19	I don't remember, recall that, that term before.
Newsome	63	1 – 5	Okay, it's probably in one of the e-mails. I'm not for sure, because like I said, I wasn't made, maybe even the December 1, 2004, I mean 2004 e-mail. But in prior e-mails, so you have no knowledge that I never, I never brought it to your attention that I felt that his monitoring was strict and oppressive.
Allen	63	6 – 11	You, you stated in here, and I do believe it is, I believe it's wrong when the real reasons for our inability to meet deadlines <u>for the clients is due to his compulsive obsessive needs to harass and monitor me.</u> We have a work product that needs to get accomplished, and that is the reason, it's not, okay, what is she doing. It's I need to turn this around, because we need to go on to the next matter.

See **Exhibit "7"** attached hereto and incorporated as if set forth in full herein. Information which is of PUBLIC record. Going to PRETEXT, PATTERN-OF-PRACTICE, CREDIBILITY and overt act by MMS in furtherance of conspiracy(s) to obstruct the administration of justice, deprive Newsome equal protection of the laws, equal privileges and immunities under the laws, due process and other rights secured/guaranteed under the Constitution and laws of the United States.

369. MMS' use of such strict and oppressive monitoring by Gordon violated its Policy No. **722 WORKPLACE ETIQUETTE**, which stated in part:

. . . Avoid public accusations or criticisms of other employees. Address such issues privately with those involved or your supervisor.

- * Try to minimize unscheduled interruptions of other employees while they are working.
- * Communicate by e-mail or phone whenever possible, instead of walking unexpectedly into someone's office or workspace.
- * Be conscious of how your voice travels, and try to lower the volume of your voice when talking on the phone or to other in open areas. . .
- * Refrain from using inappropriate language (swearing) that others may overhear. . .
- * Clean up after yourself and do not leave behind waste or discarded papers.

and acknowledged its awareness of how it such unlawful employment practices interfered with Newsome's work. Nevertheless, MMS did nothing to deter or prevent the unlawful actions reported.

370. MMS having the ability to log on and/or have a representative log onto Newsome's computer at any given time and monitor and/or see what she was working on. A less intrusive method available to MMS; however, it elected to engage in discriminatory and retaliatory practices rather than comply with Newsome's requests and opposition to such unlawful practices – for instance see testimony provided at MDES Hearing.

Newsome	68 69	17 – 20 1 - 3	So Mitchell, McNutt <u>encouraged employees to keep an open mind and graciously accept constructive feedback. . . or a request to change behavior that may be affecting other employees ability to concentrate and be productive⁵⁰</u> . . . was Mitchell, McNutt & Sams ever notified by me that I felt that Mr. Gordon's behavior, that excessive monitoring was intruding with my work and disruptive in any nature?
Allen	69	4	Yes
Newsome	69	12 - 16	. . . The monitoring, the <u>constant</u> monitoring, monitoring by Mr. Gordon, <u>coming into my workspace, workstation, interrupting my work</u> , as the COO of Mitchell, McNutt & Sams, would a reasonable person, let me put that, <u>would that affect an employees ability to concentrate and be productive?</u>
Allen	69 70	17 – 19 1 - 2	This, I'm afraid we're getting bogged down here with semantics. Once again, what Bob is trying to do, Mr. Gordon is trying to do is get the work product out, and to you that's excessive monitoring. And I don't after talking with him, <u>talking with the other Board Members</u> , we do not believe that he had excessive monitoring of

⁵⁰ MMS Policy No. 722 WORKPLACE ETIQUETTE - Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee's ability to concentrate and be productive. . .

your, of you.

Newsome	70	3 – 4	Okay, for, for Mr. Mize’s knowledge and for the Commission’s knowledge, <u>Mitchell, McNutt & Sams has an IT Department. is that correct?</u>
Allen	70	5	That’s correct.
Newsome	70	6 – 7	Can they monitor, at any given time, can they log onto an employees computer to monitor what they are working on?
Allen	70	8	As long as you give them the IP address.
Newsome	70	9 – 10	So at any given time, you, <u>any of the Board members</u> , could have an IT person, or whoever, to log on and see what Newsome is working on?
Allen	70	11 – 13	They would call in and say, hey, we’re going to get logged on and help you with a problem. And you, I mean, you did that, you, you worked with the IT Department before.
Newsome	70	14 – 16	<u>I think you understand the questions I’m asking.</u> At any give time, <u>can you, a board member at Mitchell, McNutt Sams, log onto my computer without my knowledge and monitor the work that I’m working on?</u>
Allen	70	17	It’s possible?
Newsome	70	18	Can it be done?
Allen	70	19	It is possible, yes.
Newsome	71	1 – 3	So it is to your knowledge at any given time, if I needed help with a person from IT, they can log on and view anything that’s on my computer, what I’m working on at any given time?
Allen	71	4	They can.
Newsome	71	5 – 9	<u>But it’s Mitchell, McNutt & Sams practice to subject me to Mr. Gordon’s monitoring, frequent monitoring, that is you, as, as you, know it was required, rather than go about it in a more professional manner, not to disrupt my work, to, to require maybe IT or somebody, if, if Mitchell, McNutt & Sams was really concerned about what I was working on?</u>
Allen	71	10 – 14	I think that would have been a red flag , if all of a sudden you’re working and your mouse is going like this, then you, you would have known. That would have probably been disruptive. So, there the IT staff won’t come in there unless they, you’re, they’re with him on asking the IP address and get on and do it.
Newsome	71	15 – 16	The mouse will not move unless they take control of that mouse, or move it around.
Allen	71	17	That’s correct.

Newsome	71	18 – 19	<u><i>If they just log on and just sit there and look, I would have no knowledge of that, is that correct?</i></u>
Allen	72	1 – 2	I believe that's correct ...

See **Exhibit “7”** attached hereto and incorporated as if set forth in full herein. Information which is of PUBLIC record. Going to PRETEXT, PATTERN-OF-PRACTICE, CREDIBILITY and overt act by MMS in furtherance of conspiracy(s) to obstruct the administration of justice, deprive Newsome equal protection of the laws, equal privileges and immunities under the laws, due process and other rights secured/guaranteed under the Constitution and laws of the United States.

371. **PRETEXT:** MMS/Allen/Gordon taking a far departure from policies of MMS set out in 522 *Workplace Violence Prevention*, 703 *Sexual and Other Unlawful Harassment* and 722 *Workplace Etiquette* of MMS Employee Handbook; Allen acknowledged that MMS *having capabilities of checking to see what Newsome is working on through use of IT resources*. Furthermore, record evidence will support how Gordon submitted job request via email for Newsome to handle. See **Exhibit “57”** – *Jobs Submitted via Email* from Gordon attached hereto and incorporated by reference as if set forth in full herein. Therefore, the strict, oppressive, harassing and unlawful employment practices used by MMS/Allen/Gordon are pretext to cover-up/mask/shield an illegal animus.

372. On May 25, 2004, when MMS refused to provide a safe and/or healthy work environment, Newsome reported what she believed to be employment violations to United States Department of Labor, Occupational Safety and Health Administration (“OSHA”) in Jackson, Mississippi.

373. Newsome contested conduct in the workplace of MMS that she believed jeopardized the public health or safety, and was discriminated against, retaliated against, subjected to hostile work environment and her employment with MMS eventually terminated as a direct and proximate result of her reporting employment violations.

374. 29 USC § 660(c) – Discharge or Discrimination Against Employee for Exercise of Rights Under this Chapter; Prohibition; Procedure For Relief: (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

375. 29 USC § 654 – Duties of Employers and Employees: (a) Each employer – (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; (2) shall comply with occupational safety and health standards promulgated under this chapter.

376. On or about June 2, 2004, the Occupational Safety and Health Administration contacted MMS/Allen to notify them of alleged safety and health hazards at its worksite at 111 East Capitol Street, Suite 290 in Jackson, Mississippi. The alleged hazards are set forth on page 1 of OSHA’s June 2, 2004 letter. OSHA’s Clyde P. Payne (Area Director of OSHA) provided MMS/Allen the following information which stated in part:

On June 1, 2004, the Occupational Safety and Health Administration (OSHA) received a notice of safety and health hazards at your worksite at 111 East Capitol Street, Suite 290 Jackson, MS 39201.

We notified you, by telephone, of the alleged hazards on June 2, 2004. The specific nature of the alleged hazards is as follows:

1) *Employees are exposed to fumes from paints and wall coverings because of ongoing renovation of building spaces.*

2) *Employees are exposed to ergonomic hazards as the work spaces are cramped and confined causing employees to perform work assignments in awkward and twisted positions:*

- a. Desk (work surfaces) do not have ample (depth) leg room.
- b. Desk do not have ample floor to work surface height.
- c. Aisle width(s) did not permit employees the freedom(s) of motion to easily maneuver in their workspace(s).

We have not determined whether the hazards, as alleged, exist at your workplace; and we do not intend to conduct an inspection at this time. However, since allegations of violations and/or hazards have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please fax (601/965-4610) or advise me in writing no later than June 8, 2004 of the results of your investigation. You must provide supporting documentation of your findings, including any applicable measurements or monitoring results, and photographs/video which you believe would be helpful, as well as a description of any corrective action you have taken or are in the process of taking.

The complainant involved has been advised of this preliminary response to the complaint of hazards and has been furnished a copy of this letter. Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity.

. . . It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. We encourage employee participation in investigating and responding to any alleged hazard. **If we do not receive a response from you by June 8, 2004 indicating that appropriate action has been taken or that no hazard exists and why, an OSHA inspection will be conducted.** An inspection may include a review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout and related safety and health issues.

MMS' response to Newsome's OSHA Complaint was due on June 8, 2004. See Exhibit "2" attached hereto and incorporated by reference as if set forth in full herein.

377. Only **AFTER** being contacted by OSHA of alleged safety and health hazards, did MMS attempt to place its creation of a *hostile* work environment on Newsome. ***MMS having knowledge that Newsome was the person who submitted a Complaint to OSHA.*** MMS having knowledge because Newsome advised it she would be filing a Complaint. Moreover, ***MMS advised Newsome to file her Complaint(s) with the appropriate agency(s) while it really did not want its unlawful/illegal employment practices exposed.***

378. Out of all the office space allocated at the new office location, MMS only allocated approximately **7 feet x 6 feet** for Legal Secretary Workstation. A great reduction from the approximate 10 feet x 10 feet office space Newsome had at the 1080 River Oaks Drive – Suite A280, Flowood, Mississippi 39232 location. See **Exhibit “55”** at area marked **①** attached hereto and incorporated by reference as if set forth in full herein.. While there were much large workstations allocated for Admin at **②** as well as the Receptionist area at **③** since Newsome was required to answer the phone (i.e. perform receptionist function daily and full-time as one of her job duties). Nevertheless, in RETALIATION for Newsome having reported MMS to W&H for FLSA violations, in the design of its new office location at 111 East Capitol Street - Suite 290 in Jackson, Mississippi 39201, it did so in an *overt act in furtherance* of conspiracy(s) leveled against Newsome. MMS insisting on causing Newsome injury/harm for engaging in protected activities and matters of public policy placed Newsome in unsafe and unhealthy working conditions. MMS placing Newsome in unsafe and unhealthy work conditions for purposes of forcing her out of the workplace.

379. On June 7, 2004, the day **BEFORE** MMS’ response to OSHA is due, Allen - the Chief Operations Officer/Human Resources Representative - sent Newsome an *elaborate* email with a subject matter entitled “RE: Memo” and attached to email a Memorandum which referenced “*Clarifying Work Related Issues*” which stated in part:

You have stated that you have or will file complaints with various federal agencies. You have the right to do so, and the firm has not interfered with, and does not intend to interfere with, your doing so. However, *your filing these complaints is not a business related activity but a personal activity.* You must discontinue working on your complaints in the office and, particularly, during working hours.

Your complaints, then, can and will be resolved through these agencies. In the meantime, the practice of the firm must continue and your work must be done.

You consistently have responded to work-related requests or instructions in a hostile and obstructive manner, refusing to do so until we were forced to give you ultimatums before you would comply. This insubordinate conduct must cease.

You must be respectful, courteous, cooperative, and professional in your dealing with others in the office and the firm, as well as clients and others outside the firm, responsive and productive in your work, and present an attitude that contributes to a positive atmosphere.

See **Exhibit "33"** – 06/07/04 Email/MEMO from Allen to Newsome attached hereto and incorporated by reference as if set forth in full herein.

380. Only **AFTER** the filing of Newsome's Complaint(s) does MMS attempt to mask/shield an illegal animus. MMS/Allen attempting to blame the creation of its *hostile* work environment on Newsome. MMS/Allen in the June 7, 2004 Memorandum to Newsome stated:

You *consistently* have responded to work-related requests or instructions *in a hostile and obstructive manner*, refusing to do so until we were forced to give you ultimatums before you would comply. This insubordinate conduct must cease.

See **Exhibit "33"**– 06/07/04 Email/MEMO From Allen to Newsome attached hereto and incorporated by reference as if set forth in full herein. MMS/Allen aware that such statement was false and it was Defendant(s) that repeatedly responded to complaints filed by Newsome in a discriminatory and hostile manner. Such statement(s) by MMS/Allen which entitles Newsome to discovery as well as presentation to a jury to determine CREDIBILITY of such statement(s) made.

381. MMS/Allen acknowledged that Newsome advised them that she had filed or will be filing complaints with the appropriate agency(s), by stating:

*You have stated that you have or will file complaints with various federal agencies. You have the right to do so, and the firm has not interfered with, and does not intend to interfere with, your doing so. However, your filing these complaints is **not a business related activity but a personal activity**. You must continue working on your complaints in the office and, particularly, during working hours.*

See **Exhibit "33"**– 06/07/04 Email/MEMO From Allen to Newsome attached hereto and incorporated by reference as if set forth in full herein. The statement provided by MMS/Allen is false. The complaints filed by Newsome were business related and involved employment violations as well as matters of public policy. Moreover, Newsome's submittal of complaints was in compliance with MMS' policy 718 **PROBLEM RESOLUTION** which states:

Mitchell McNutt is committed to providing the best possible working conditions for its employees. Part of this commitment is *encouraging* an **open** and **frank** atmosphere in which any *problem, complaint, suggestion, or question* receives a timely response from Mitchell McNutt supervisors and management.

See **Exhibit "3"** attached hereto and incorporated by reference as if set forth in full herein. While MMS asserts in its policy that it is *"committed to providing the best possible working conditions for its employees,"* said statement *is far from the truth;* moreover, MMS **discouraged** Newsome *from being open and frank and moved swiftly to discriminate, retaliate and subject Newsome to unlawful employment practices to silence her, deprive her of equal employment opportunities, equal protection of the laws, equal privileges and immunities of the laws and due process of laws.*

382. Seeing that MMS'/Allen's June 7, 2004 elaborate email to Newsome was in retaliation if its/his knowledge that it was Newsome that reported the unlawful employment violations and to memorialize said knowledge and her sharing concerns that the June 7, 2004, email was in retaliation and violated her protected rights, Newsome provided MMS/Allen with the following rebuttal which was in compliance with the policies of MMS' Employee Handbook:

Am in receipt of this, your most recent email. While it is not clear why it was sent, I find it is very misleading and again just an effort by MMS to preclude me from first bringing valid concerns to MMS attention pursuant 718 – Problem Resolution.

MMS's allowance of your and others to subject me to a hostile, discriminatory and retaliatory environment has also been reported to the appropriate agency(s) – Said conduct is in violation of MMS Policy No. 701 – Employee Conduct and Work Rules.

You attempt to make it seem as though I have been insubordinate – however, I believe the documentation will show that MMS has repeatedly allowed RTG to violate 701 and rather than correct the problem, you attempt to project it on me.

Each and every time the concerns were brought to MMS's attention, MMS did nothing. The concerns were addressed in a timely manner.

During my vacation, I was blessed with a computer, printer/fax.

Let me clarify for a response to your email, that the concerns that I have addressed to MMS's attention and the method of addressing such, were all in compliance (I believe) with MMS policy. If MMS wants to make it appear that it is not firm related or of an interest to MMS, then so be it.

Let me say, that the same directives stating:

You must be respectful, courteous, cooperative, and professional in your dealing with others in the office and the firm, as well as clients and others outside the firm, responsive and productive in your work, and present an attitude that contributes to a positive atmosphere.

That I am requesting the same from MMS and its attorneys, supervisors, managers, employees, etc. MMS is not to single me out and issue such directives and violate them and subject me to unlawful, discriminatory, retaliatory and hostile treatment for the filing of my complaints.

Therefore, I find your most recent email simply an effort by MMS to mask/shield and (sic) an illegal animus. There simply was no need for issuance of this memo. MMS cannot say that I have acted in such a manner. However, MMS can say that if indeed it will try and assert such, that I simply responded to situations CREATED BY MMS – A Hostile/Discriminatory/Retaliatory environment. This is just another effort by MMS to force me out of the workplace, since I advised you I will not be quitting (sic). . . .

See **Exhibit "34"** – *Newsome's Response to 06/07/04 Email/MEMO* attached hereto and incorporated by reference as if set forth in full herein. Supporting that MMS/Allen did nothing (i.e. failed to investigate) in regards to the complaints filed by Newsome which led Newsome to have to report unlawful employment practices to the property government

agency (i.e. OSHA). Newsome further advised MMS/Allen that she would be forwarding his elaborate email on to OSHA:

Your email has been forwarded on to OSHA along with my concerns as to the nature of same. I advised OSHA of my concerns that your elaborate email was distributed the day prior to MMS's deadline (June 8, 2004) to respond to my complaint.

Felt email was discriminatively applied. For instance, when I began submitting my concerns to you/MMS regarding RTG's behavior, MMS did not create or distribute such an elaborate Memorandum as provided with your email today for the way I advised you I was and am being treated.

Moreover, I had addressed how RTG uses the weekend to dictate and then submit. I have recently been tracking such as the attached will indicate – length of dictation. However, on yesterday, RTG dictated a job **well over 1 hour in length**. Mass dictation job and your email of today, leaves me with what I believe to be valid concerns of MMS continued unlawful practices and efforts of justifying its behavior. This job was not sent to the typing pool at all – but submitted to me for typing. While I have already addressed why such behavior is done, MMS is aware of same. From your email of today, gathered you were aware of this as well.

Creation and History of document is noted below as well for my response and record. . . .

See **Exhibit “34”** attached hereto and incorporated by reference as if set forth in full herein.

383. While Defendant(s) repeatedly wanted Newsome to believe she did not know what she was talking about and/or did not understand the laws because she was merely a Legal Secretary, a reasonable person/mind may conclude that MMS' closing of its Jackson, Mississippi Office shortly after hearing before the *Mississippi Department of Employment Security* and her reporting of additional employment violations the appropriate government agency(s) that MMS shut down its Jackson, Mississippi office (only after moving into renovated office about May 2004) because it may have been made aware of its employment violations. Information withheld from Newsome and overt acts in furtherance of conspiracy(s) leveled against her.

384. Pursuant to MMS policy **718 PROBLEM RESOLUTION**, it states in part:

Mitchell McNutt is committed to providing the best possible working conditions for its employees. Part of this commitment is encouraging an open and frank atmosphere in which any problem, complaint, suggestion, or question receives a timely response from Mitchell McNutt supervisors and management.

Mitchell McNutt strives to ensure fair and honest treatment of all employees, Supervisors, attorneys, and employees are expected to treat each other with mutual respect. Employees are encouraged to offer positive and constructive criticism.

If employees disagree with established rules of conduct, policies, or practices, they can express their concern through the problem resolution procedure. No employee will be penalized, formally or informally, for voicing a complaint with Mitchell McNutt in a reasonable, business-like manner, or for using the problem resolution procedure.

If a situation occurs when employees believe that a condition of employment or a decision affecting them is unjust or

inequitable, they are encouraged to make use of the following steps.
The employee may discontinue the procedure at any step.

1. Employee presents problem to immediate supervisor/attorney after incident occurs. If supervisor/attorney is unavailable or employee believes it would be inappropriate to contact that person, employee may present problem to Chief Operations Officer or any other member of management.
2. Supervisor responds to problem during discussion or after consulting with appropriate management, when necessary. Supervisor documents discussion.
3. Employee presents problem to Chief Operations Officer or President if problem is unresolved.
4. Chief Operations Officer or President counsels and advises employee, assists in putting problem in writing, visits with employee's manager(s), if necessary, and directs employee to Mitchell McNutt's Board of Directors for review of problem.
5. Employee presents problem to Board of Directors in writing.
6. The Board of Directors inform employee of decision and forwards copy of written response to the Chief Operations Officer for employee's file. The Board of Directors has full authority to make any adjustment deemed appropriate to resolve the problem.

Not every problem can be resolved to everyone's total satisfaction, but only through understanding and discussion of mutual problems can employees and management develop confidence in each other. This confidence is important to the operation of an efficient and harmonious work environment, and helps to ensure everyone's job security.

However, when Newsome submitted her Complaints to MMS/Sams, MMS *took a far departure not only from its policies and procedures for handling*, but that of federal laws, etc. governing said matters.

385. On June 7, 2004, Newsome notified MMS/Allen of discriminatory practices in submittal of the June 7, 2004 email that had an elaborate Memorandum "*craftily drafted*" attached which stated:

FYI:

Your email has been forwarded on to OSHA along with my concerns as to the nature of same. *I advised OSHA of my concerns that your elaborate email was distributed the prior to prior to MMS's deadline (June 8, 2004) to respond to my complaint.*

Felt email was *discriminatively* applied. For instance, *when I began submitting my concerns to you/MMS regarding RTG's behavior, MMS did not create or distribute such an elaborate Memorandum as provided with your email for the way I advised you I was and am being treated.*

See Exhibit "34" attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, MMS allowed white employees to repeatedly subject Newsome to discriminatory and hostile environment. MMS' had a work environment which was *dominated* by white men/males who served as attorneys and some as supervisors – i.e. in position(s) of power. Newsome's email to MMS/Allen being sufficient to support that MMS was *timely, properly and adequately* notified of its *discriminatory* practices – i.e. employment violations.

386. Newsome believes the record evidence will support that even with the filing of her complaints with MMS and federal agency(s), MMS *failed* to correct and or deter the unlawful employment practices – harassment, discrimination, retaliation and hostile work environment – created by its employees against Newsome. Moreover, that Newsome's termination of employment was a direct and proximate result of her reporting employment violations which is of public policy.

387. The record evidence of MMS will support that neither had Newsome received any Memorandum or findings from MMS regarding the complaints she submitted for the harassment, discrimination, retaliation and hostile work environment she had been *repeatedly* subjected to by white employees at MMS. MMS' failure to provide Newsome with its findings regarding her complaints was in violation of MMS Policy Nos. 522 *Workplace Violence Prevention*:

Mitchell McNutt is committed to preventing workplace violence and to maintaining a safe work environment. Given the increasing violence in society in general, Mitchell McNutt has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises.

All employees should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, "horseplay," or other conduct that may be dangerous to others. Firearms, weapons, and other dangerous or hazardous devices or substances are prohibited from the premises of Mitchell McNutt without proper authorization.

Conduct that threatens, intimidates, or coerces another employee, a client, or a member of the public at any time, including off-duty periods, will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law.

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor/attorney or the Chief Operations Officer. This includes threats by employees, as well as threats by clients, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be specific and detailed as possible.

All suspicious individuals or activities should be reported as soon as possible to a supervisor/attorney. ***Do not place yourself in peril.*** If you see or hear a commotion or disturbance near your work station, do not try to intercede or see what is happening.

Mitchell McNutt ***will promptly and thoroughly investigate all reports of threats of (or actual) violence*** and of suspicious individuals or activities. *The identity of the individual making a report will be protected as much as is practical.* ***In order to maintain workplace safety and the integrity of its investigation,*** Mitchell McNutt *may suspend employees, either with or without pay, pending investigation.*

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.

Mitchell McNutt encourages employees to bring their disputes or differences with other employees to the attention of their supervisor or the Chief Operations Officer before the situation escalates into potential violence. Mitchell McNutt ***is eager to assist*** in the resolution of employee disputes, and ***will not discipline employees for raising concerns.***

703 ***Sexual and Other Unlawful Harassment*** which stated in part:

All allegations of sexual harassment will be quickly and discreetly investigated. To the extent possible, your confidentiality and that of any witnesses and the alleged harasser will be protected against unnecessary disclosure. ***When the investigation is completed, you will be informed of the outcome of the investigation.***

Any supervisor, attorney or manager who becomes aware of possible sexual or other unlawful harassment must immediately advise the Chief Operations Officer or any member of management so it can be investigated in a timely and confidential manner. ***Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary action, up to and including termination of employment.***

as well as other policies provided in MMS' *Employee Handbook*. The record evidence, facts, and legal conclusions will support that Newsome complied with MMS policies and reporting MMS/Gordon's unlawful employment practices. To no avail. See for instance, see emails addressing Gordon's conduct that was ***hostile, brutal, intolerable, unsafe, unhealthy and life-threatening conditions that an ordinary/reasonable person would consider discriminatory and hostile.*** See for instance Exhibits "5, 28, 32," and "45" attached hereto and incorporated by reference as if set forth in full herein. Although Newsome repeatedly reported the employment violations of Gordon, MMS ***repeatedly*** placed Newsome ***back in dangerous and life-threatening situations.***

388. The record evidence of MMS will support Gordon never receive such an elaborate email/reprimand (i.e. as the June 6, 2004 email provided Newsome) for his discriminatory and hostile attacks on Newsome that were reported.

389. The ***escalation*** of the discrimination, harassment, retaliation and creation of a hostile work environment by MMS towards Newsome ***intensified AFTER*** Newsome notified MMS of what she believed were violations under OSHA and concerns as to whether

workstations were ADA compliant – i.e. in which workstations *were not* ADA nor OSH Act compliant.

390. MMS in the design and creation of offices and workspace at its 111 East Capitol Street, Suite 290 Jackson, Mississippi location did so with the willful, malicious and wanton intent to discriminate and retaliate against Newsome for reporting its unlawful employment practices.

391. MMS in discrimination and retaliation towards Newsome for reporting its unlawful employment practices reduced her workspace from approximately **8-10 ft x 8 – 10 ft** (or more)⁵¹ to **7'3" x 6'11"**.⁵² Thus, placing Newsome in a more restrictive, compressed and reduced workspace which subjected Newsome to physical bodily injury/damages.

392. The employees of MMS that made the decision to subject Newsome to the unlawful employment practices were all white and in upper-level management (attorneys, chief operations officer, etc.). Newsome was the only African-American/Black in the Jackson, Mississippi office at the time of her termination. Newsome being hired and filling the position of prior African-American/Black employee (Kathy Taylor).

393. Under OSH Act, it was illegal for MMS and/or Defendant(s) to discriminate against Newsome in any aspect of employment because she exercised rights under said statute through: (1) terminating Newsome's employment, (2) assigning Newsome to unsafe and unhealthy work conditions, (3) denying Newsome overtime or pay increases, (4) disciplining Newsome, (5) denial of benefits to Newsome, (5) intimidation of Newsome, and (6) reassigning work, etc.⁵³

394. Under OSH Act, Newsome was free to participate in safety and health activities, Section 11(c) of said Act prohibited MMS/Sams from terminating or in any manner discriminating against Newsome because she has exercised rights under said Act.

395. Newsome on or about May 25, 2004, filed a complaint with OSHA. Therefore, Newsome was protected under Section 11(c) of said Act from being discriminated against and her employment terminated in retaliation for her reporting of MMS' unlawful employment practices under the Act.

396. It was unlawful for Defendant(s) to retaliate against Newsome because she had reported or notified MMS that she would be reporting its unlawful employment practices – i.e. which is statutorily protected action.

397. It was unlawful for Defendant(s) to retaliate against Newsome because of their *knowledge* of Newsome's participation in *protected* activities – i.e. her participation for filing charge of discrimination, her participating in an investigation, or opposing unlawful employment practices.

⁵¹ Approximate measurements of Newsome's work area at MMS' 1080 River Oaks Drive – Suite A280 Flowood, Mississippi 39232 location.

⁵² Approximate measurements of Newsome's work area at MMS 111 East Capitol Street, Suite 290 in Jackson, Mississippi 39201 location.

⁵³ See The Whistleblower Program - <http://www.osha.gov/dep/oia/whistleblower/index.html>.

398. Only **AFTER** Newsome began reporting the unlawful employment practices to MMS and government agency(s) did MMS then began to seek ways to terminate Newsome's employment with it. Moreover, create false/misleading information regarding Newsome for purposes of covering up/shielding an illegal animus.

399. Only **AFTER** Newsome's filing of complaints with MMS and government agency(s) did MMS/Allen set out to prevent and preclude her from submitting Complaints to its attention. MMS/Allen advised Newsome not to submit her Complaint(s) during work hours. Such efforts which *escalated* **AFTER** Newsome notified MMS of possible OSH Act and American Disability Act ("ADA") violations. See **Exhibit "33"** – 06/07/04 *Email/MEMO* attached hereto and incorporated by reference as if set forth in full herein.

400. Only **AFTER** Newsome's submittal of Complaints did Defendant(s) began to subject her to *strict, oppressive* and *discriminatory* monitoring. MMS/Allen was timely, properly and adequately notified by Newsome of the interference of such unlawful practices with her ability to perform job responsibilities. Yet Defendant(s) did nothing to deter the unlawful behavior, but encouraged the unlawful employment practices.

401. MMS' *IT department had the capability to log onto employees computers at any given time to monitor whatever it was an employee is working on.* Therefore, MMS had the capability to monitor Newsome's activities rather than subject her to the unlawful employment practices by *singling* her out and subjecting **only** Newsome to such *strict, oppressive* and *discriminatory* monitoring by her supervisor. Newsome being the **ONLY** African-American/Black in the Jackson, Mississippi Office and all other employees being white. The decision makers behind such unlawful employment practices were also **ALL** white. See **Exhibit "7"** – *MDES Transcript Excerpt* at pp. 70-72 attached hereto and incorporated by reference as if set forth in full herein.

402. Only **AFTER** Newsome's submittal of Complaints did MMS decide to place Newsome in *unsafe* and *unhealthy* working conditions. Newsome brought the concerns of working in unsafe/unhealthy working conditions to the attention of MMS/Allen. MMS creating and designing office space for purposes of strict and RESTRICTIVE CONFINEMENT in retaliation of Newsome having reported employment violations by MMS. Such restrictive confinement of work space that violated OSH Act requirements. Moreover, resulted in harm/injuries to Newsome.

403. Only **AFTER** Newsome's submittal of Complaints did Defendant(s) began to seek what it thought may be *safe* and *legal* grounds to terminate Newsome's employment with MMS in retaliation of her reporting employment violations.

404. Only **AFTER** Newsome's submittal of Complaints did Defendant(s) began subjecting her to a *discriminatory and hostile* work environment created by its employees.

405. Only **AFTER** Newsome's submittal of Complaints did Defendant(s) began to *single* her out and subject her to *discriminatory, retaliatory* and *hostile* employment practices.

406. Newsome timely, properly and adequately notified MMS/Allen of what she believed to be violations under Occupational Safety & Health Act and possible ADA violations. However, MMS/Allen ignored the safety and health violations reported.

407. Only **AFTER** submittal of Complaints had MMS *singled* Newsome out and *issued directives for her to comply with or be terminated*. For example, (1) Newsome was not allowed to arrange her workstation in a manner comfortable to her as afforded to (similarly situated) other employees of MMS; (2) MMS *accused* Newsome of using computer for personal work, *while it allowed other employees to use their computers for personal work*; (3) MMS accused Newsome of excessive phone usages for personal calls, while it allowed other employees to make and receive excessive amount of personal phone calls. *During Newsome's employment with MMS, she was never provided with any evidence to support such allegation*.

408. Because of Newsome's reporting of unlawful employment practices, MMS decided to place Newsome in an unsafe and unhealthy work environment. MMS in retaliation of Newsome's filing of complaints and notifying of OSH Act violations *placed Newsome in a confined and constricted* work area and subjected her to *strict and oppressive* monitoring. Monitoring which was unlawful and violated MMS' policies, and Newsome's Civil Rights and Constitutional Rights.

409. Only **AFTER** the submittal of Newsome's Complaints to federal government agency(s), did MMS began subjecting Newsome to *strict and oppressive* monitoring and supervision by Gordon and others. **Escalating** such unlawful practices **AFTER** Newsome notified MMS of OSH Act violations. Such conduct by MMS/Gordon being *oppressive, harassing, disruptive*, etc. Yet, under such conditions Newsome was expected by MMS to carry out her everyday duties and/or responsibilities. Newsome *being required to perform duties under such hostile, brutal, intolerable, unsafe, unhealthy and life-threatening conditions that an ordinary/reasonable person would consider discriminatory and hostile*. The very actions of MMS/Gordon violated MMS policy Nos. 522 **Workplace Violence Prevention**:

Mitchell McNutt is *committed to preventing workplace violence and to maintaining a safe work environment*. Given the increasing violence in society in general, Mitchell McNutt has *adopted* the following *guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises*.

All employees should be treated with courtesy and respect at all times. Employees are expected to *refrain from fighting*, "horseplay," or other *conduct that may be dangerous to others*. Firearms, weapons, and other dangerous or hazardous devices or substances are prohibited from the premises of Mitchell McNutt without proper authorization.

Conduct that threatens, intimidates, or coerces another employee, a client, or a member of the public **at any time**, including off-duty periods, **will not be tolerated**. *This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law*.

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor/attorney or **the Chief Operations Officer**. *This includes threats by employees*, as well as threats by clients, vendors, solicitors, or other members of the public. *When reporting a threat of violence, you should be specific and detailed as possible*.

All suspicious individuals or activities should be reported as soon as possible to a supervisor/attorney. **Do not place yourself in peril**. If you see or hear a commotion or disturbance near your work station, do not try to intercede or see what is happening.

Mitchell McNutt will promptly and thoroughly investigate all reports of threats of (or actual) violence and of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, Mitchell McNutt may suspend employees, either with or without pay, pending investigation.

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.

Mitchell McNutt encourages employees to bring their disputes or differences with other employees to the attention of their supervisor or the Chief Operations Officer before the situation escalates into potential violence. Mitchell McNutt is eager to assist in the resolution of employee disputes, and will not discipline employees for raising concerns.

703 SEXUAL AND OTHER UNLAWFUL HARASSMENT, which stated in part:

Mitchell McNutt is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, race, color, national origin, age, religion, disability, or any other legally protected characteristic will not be tolerated.

Sexual harassment is defined as unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature. This definition includes many forms of offensive behavior and includes gender-based harassment of a person of the same sex as the harasser. The following is a partial list of sexual harassment examples: . . .

- * Making or threatening reprisals after a negative response . . .
- * Verbal conduct that includes making or using derogatory comments. . .
- * Physical conduct that includes touching, assaulting, or impeding or blocking movements. . .

If you experience or witness sexual or other unlawful harassment in the workplace, report it immediately to your supervisor. If the supervisor is unavailable or you believe it would be inappropriate to contact that person, you should immediately contact the Chief Operations Officer or any other member of management. You can raise concerns and make reports without fear of reprisal or retaliation.

All allegations of sexual harassment will be quickly and discreetly investigated. To the extent possible, your confidentiality and that of any witnesses and the alleged harasser will be protected against unnecessary disclosure. When the investigation is completed, you will be informed of the outcome of the investigation.

Any supervisor, attorney or manager who becomes aware of possible sexual or other unlawful harassment must immediately advise the Chief Operations Officer or any member of management so it can be investigated in a timely and confidential manner. Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary action, up to and including termination of employment.

See Exhibit "3" attached hereto and incorporated by reference as if set forth in full herein. The record evidence, facts, and legal conclusions will support that Newsome complied with MMS policies and reporting MMS/Gordon's unlawful employment practices. To no avail. See for instance, see emails addressing Gordon's conduct that was hostile, brutal, intolerable, unsafe, unhealthy and life-threatening conditions that an ordinary/reasonable person would consider discriminatory and hostile. See for instance Exhibits "5, 28, 32," and "45" attached hereto and incorporated by reference as if set forth in full herein. Although Newsome repeatedly reported the employment violations of Gordon, MMS repeatedly placed Newsome back in dangerous and life-threatening situations.

410. Actions by MMS/Gordon also violated MMS policy 722 WORKPLACE ETIQUETTE, which stated in part:

Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee's ability to concentrate and be productive.

The following workplace etiquette guidelines are not necessarily intended to be hard and fast work rules with disciplinary consequences. They are simply suggestions for appropriate workplace behavior to help everyone be more conscientious and considerate of co-workers and the work environment. Please contact the Chief Operations Officer if you have comments, concerns, or suggestions regarding these workplace etiquette guidelines. . . .

- * Avoid public accusations or criticisms of other employees. Address such issues privately with those involved or your supervisor.
- * Try to minimize unscheduled interruptions of other employees while they are working.
- * Communicate by e-mail or phone whenever possible, instead of walking unexpectedly into someone's office or workspace.
- * Be conscious of how your voice travels, and try to lower the volume of your voice when talking on the phone or to other in open areas. . .
- * Refrain from using inappropriate language (swearing) that others may overhear. . .
- * Clean up after yourself and do not leave behind waste or discarded papers.

See **Exhibit "3"** – *MMS Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. MMS/Allen was fully aware or should have been aware that the conduct of Defendant(s) was unlawful, violated MMS policies and affected Newsome's ability to concentrate and be productive. Newsome *repeatedly* reported such discriminatory treatment and employment violations to MMS'/Allen attention and how it was affecting/impacting her ability to perform her duties. To no avail. MMS/Allen continued to allow unlawful/illegal treatment to continue.

411. Only **AFTER** the filing of Newsome's complaints did Defendant(s) attempt to mask/shield and assert such unlawful monitoring/harassment/discriminatory treatment as supervision. In fact, in November 15, 2004 Performance Review of Newsome Gordon asserted:

Supervision

Requires high degree of instruction, supervision and monitoring.

Often resists and shows resentment toward instruction of supervision.

See **Exhibit "29,"** page 18 attached hereto and incorporated by reference as if set forth in full herein. MMS/Gordon clearly acknowledging such unlawful practices. Not only that, clearly acknowledging its awareness on the impact it had on Newsome. MMS/Gordon acknowledging that Newsome "**contested/opposed**" unlawful employment practices. Nevertheless, rather than cease such unlawful behavior, MMS continued and/or allowed Defendant(s) to escalate the monitoring and discriminatory/retaliatory practices leveled against Newsome.

412. On November 30, 2004, MMS provided Newsome with an annual Performance Review. See **Exhibit "29"** - *Performance Review* attached hereto and incorporated by reference as if set forth in full herein. Said Review contained false and/or misleading information MMS/Allen/Gordon knew to be false, malicious, misleading and inaccurate. Furthermore, Performance Review lacked evidence to support the malicious accusations made towards Newsome. MMS/Allen *insisted* that Newsome sign. Newsome *refused* to be coerced into signing Performance Review that was false, malicious, defamatory and slanderous to her character and reputation. Newsome advising MMS/Allen/Gordon that the Performance Review contained false and/or misleading information and did not adequately reflect her, nor her skills and qualifications. Newsome advised MMS/Allen/Gordon *that at the time*, she would not be addressing the Performance Review. Newsome advising MMS/Allen/Gordon that she intended to provide response to the Performance Review. Newsome advised MMS/Allen/Gordon that she believed said Review was an adverse one and was created in retaliation to her filing of complaints against MMS.

413. **PRIOR** to Newsome's evaluation, Gordon, Allen and Farrell (*all WHITE males*) *had a private meeting*. Farrell being a lawyer at MMS whose *area of practice was Labor and Employment Law*. Therefore, MMS knew, or should have known, that the adverse Performance Review was in violation of employment laws as well as retaliation for Newsome's filing of complaints, and therefore, in violation of *protected rights* and public policy.

414. MMS/Allen during November 30, 2004 evaluation, *insisted and worked hard on coercing* Newsome to sign the adverse Performance Review over her objections. Newsome advised MMS/Allen/Gordon that she could not and would not sign such a Review. MMS wanted Newsome to sign the Performance Review it knew to be false, misleading, defamatory, slanderous and inaccurate, so that upon signing, MMS would terminate its employment with Newsome. However, Newsome did not fall for this bait and MMS/Allen proceeded to provide comment as *“will not sign 11/30/04 J T Allen.”* See Exhibit “29” attached hereto and incorporated by reference as if set forth in full herein.

415. Newsome believes that given the fact, evidence and legal conclusions set forth herein, that MMS asserted the *plan* of **White** male employees (Allen, Gordon and Farrell) to *inflict undue hardship and oppressive* measures on an African-American/Black employee (Newsome) for purposes of *beating her into submission*.

416. During the November 30, 2004 Performance Review, Newsome advised MMS/Allen/Gordon that she enjoyed her job, enjoyed working at MMS and opposed its unlawful employment practices. Nothing in MMS’ Performance Review would make Newsome doubt her skills and qualifications to perform her duties. Newsome was not insecure in her skills and qualifications. Newsome was qualified, competent and capable of performing her duties as a Legal Secretary. Newsome *repeatedly* voiced her opposition to MMS’ employment violations. A voice which went unheard and resulted in Newsome being stripped and deprived of equal employment opportunity.

417. On December 1, 2004, MMS *disappointed* in the failed efforts to obtain Newsome’s signature November 30, 2004, on the frivolous November 15, 2004 Performance Review prepared by Gordon, had MMS/Gordon **retaliate** and **escalate** the harassment/monitoring of Newsome. Attempting to again (*this being an ongoing practice*) get Newsome upset by creating a hostile work environment and cause a hostile *confrontation* – creating situations in efforts to find ways to come up with what MMS thought may be *safe* and *legal* grounds to terminate Newsome – in MMS’ efforts to justify its termination of employment. On December 1, 2004, Gordon again subjected Newsome to discriminatory, irate, brutal, intolerable, aggressive, hostile, life-threatening behavior; refusing to leave her workstation until she abruptly ended her lunch. There was no justification for MMS’/Gordon’s request or unlawful employment practices. The act by Gordon was in retaliation of MMS’ failed efforts on November 30, 2004, and his failed ongoing efforts to get Newsome to provide it with reasons to terminate her “at-will” employment because it knew that during Newsome’s employment it had violated public policy that needed to be COVERED UP and/or disguised as Newsome committing an employment violation. Newsome *advised* Gordon that he was to cease from harassment and advised him that his time would be better spent attending to MMS’ clients’ needs rather than harassing her. Moreover, Newsome advised Gordon that if he did not spend so much of his time monitoring and/or harassing her, he would be able to meet the needs of MMS’ clients, and would not have a need to falsify pleadings filed in the Court.

418. On December 1, 2004, in compliance with policies and procedures **718 PROBLEM RESOLUTION** and **104 BUSINESS ETHICS AND CONDUCT**, Newsome submitted email to the attention of MMS/Allen, Chief Operations Officer/Human Resources Representative/Controller, with Subject entitled: *HARASSMENT INCIDENT – 12/01/04.* See Exhibit “5” attached hereto and incorporated by reference as if set forth in full herein. Said email addressed the harassment of Newsome by MMS/Gordon as well as the unethical practices of Gordon before the Court(s). In said email Newsome also advised, *“I expressed*

concerns that the evaluation that MMS provided was adverse as a result of the Complaints/Issues that I have brought to MMS' attention." This is information which clearly supported violation of MMS policies.

419. On Friday, December 3, 2004, **as a direct and proximate result** of the December 1, 2004, email to MMS/Allen reporting the unlawful/unethical conduct of Gordon and in retaliation, Newsome's employment with MMS was terminated. MMS/Sams notified Newsome of her employment with MMS being terminated. This termination according to MMS/Sams (Member/Board Member and attorney) was because Newsome addressed unethical practices by MMS/Gordon before the Court(s). MMS/Sams justifying termination of Newsome because she questioned the ethical practices of her supervisor who was an attorney at MMS.

420. There are federal laws, statutes, rules, and code of professional conduct which govern how attorneys are to practice before the Court, and will support that Newsome did nothing wrong to warrant MMS'/Sams termination of employment. In fact, Newsome performed duties that involved a matter of public policy and was for the economic good. Newsome's reporting of violations by MMS/Gordon was a *protected activity*. As a citizen of the United States, it was Newsome's duty to bring to the attention of MMS and the appropriate government agency(s), the unethical conduct of MMS/Gordon. Newsome's reporting of such unethical conduct was also in compliance with MMS policy **104 BUSINESS ETHICS AND CONDUCT** (Effective Date: 1/1/02) of the MMS *Employee Handbook* which stated in part:

The successful business operation and reputation of Mitchell McNutt is built upon the principles of fair dealing and ethical conduct of our employees. *Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.*

The continued success of Mitchell McNutt is dependent upon our clients' trust and we are dedicated to preserving that trust. Employees owe a duty to Mitchell McNutt, its clients, and shareholders to act in a way that will merit the continued trust and confidence of the public.

Mitchell McNutt makes every attempt to comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to **refrain from any illegal, dishonest, or unethical conduct.**

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct. *If a situation arises where it is difficult to determine the proper course of action, the matter **should be discussed openly with your immediate supervisor/attorney and, if necessary, with the Firm President for advice and consultation.***

Compliance with this policy of business ethics and conduct is the responsibility of every Mitchell McNutt employee. **Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.**

See **Exhibit "3"** attached hereto and incorporated by reference as if set forth in full herein.

421. The unethical conduct of MMS/Gordon before the Court(s) involved the signing of Motion(s) represented to the court(s) and others, MMS/Gordon knew to contain false and/or misleading information. Actions by MMS/Gordon which Newsome believe are in violation of FRCP⁵⁴ Rule 11 and any other applicable statutes/laws governing said matters. Moreover, MMS'/Sams' termination of Newsome's employment **was a direct and proximate result** of her reporting the unethical/unlawful actions of MMS/Gordon, clearly violating **protected rights** of Newsome secured under the United States Constitution, Civil Rights Act and other laws governing such matters. MMS'/Sams termination of Newsome's employment further violated MMS own policies and practices:

Clients are among our firm's most valuable assets. Every employee represents Mitchell McNutt to our clients and the public. The way we do our jobs presents an image of our entire organization. Clients judge all of us by how they are treated with each employee contact. Therefore, one of our first business priorities is to assist any client or potential client. Nothing is more important than being courteous, friendly, helpful, and prompt in the attention you give to clients.

Clients who wish to lodge specific comments or complaints should be directed to the Chief Operations Officer for appropriate action. Our personal contact with the public, our manners on the telephone, and the communications we send to customers are a reflection not only of ourselves, but also of professionalism of Mitchell McNutt. Positive client relations not only enhance the public's perception or image of Mitchell McNutt, but also pay off in greater client loyalty and increased profit.

See **Exhibit "3"** - MMS Policy No. 060 of *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein.

422. On Friday, December 3, 2004, in a meeting with MMS/Sams, Gordon and Farrell, MMS/Sams advised Newsome that her employment with MMS was being terminated, she is to clean out her desk, return office keys, parking lot and building access cards, and leave the premises. Newsome did as she was asked.

423. During December 3, 2004 meeting, **after** notifying/advising Newsome that she was being terminated, MMS/Sams asked Newsome if she had anything to say. Newsome replied, "*Not at this time.*" She was then excused from the meeting.

424. MMS/Sams/Gordon monitored Newsome as she cleaned out her desk. During Newsome's effort to clean out her desk she was subjected to more harassment. Newsome asked MMS/Sams to cease from such harassment and allow her to do what she has been asked. Sams advised Newsome that she was not being harassed. However, the actions and constant interruptions with Newsome's efforts to do as she was asked would support otherwise.

425. During Newsome's employment with MMS, employees were **repeatedly** and/or **constantly** allowed to *create* unlawful situations and subject Newsome to discriminatory practices – *wherein Newsome was singled out* – in efforts by MMS to find what they thought

⁵⁴ Abbreviation for "Federal Rules of Civil Procedure."

were *safe* and *legal* grounds for Newsome's termination. Such unlawful employment practices towards Newsome started only after she began reporting and/or bringing the unlawful practices of MMS to its attention. All prior efforts by MMS to force Newsome to quit or obtain what they thought were *safe* and *legal* reasons to justify Newsome's termination before December 3, 2004 failed. Therefore, MMS/Sams used the December 1, 2004 email with subject matter "HARASSMENT INCIDENT – 12/01/04" submitted to MMS/Allen, Chief Operations Officer/Human Resources Representative/Controller, as the reason to justify its unlawful termination of Newsome's employment.

426. The unethical/unlawful practices of Gordon before the court(s) that Newsome addressed in December 1, 2004 email, can be substantiated by evidence.

427. When Newsome went to put a copy of Mitchell McNutt & Sams, P.A.'s *Employee Handbook* in the box she was packing, *Sams asked her to give him her copy of the Employee Handbook*. Employee Handbook which Newsome was required to sign an AGREEMENT to receive – which stated in part:

The employee handbook describes important information about Mitchell McNutt, and I understand that I should consult the Chief Operations Officer regarding any questions not answered in the handbook. I have entered into my employment relationship with Mitchell McNutt voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Mitchell McNutt or I can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.

Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the handbook may occur, except to Mitchell McNutt's policy of employment-at-will. All such changes will be communicated in writing or via e-mail, and I understand that revised information may supersede, modify, or eliminate existing policies. Any revisions to the policies in this handbook must be approved by the firm's Board of Director.

Furthermore, I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received the handbook, and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.

After this form is signed by all staff employees initially, future changes will be communicated in writing or via e-mail and this acknowledgment will be obtained as a response to the written or e-mail notification. . .

See **Exhibit "15"** attached hereto and incorporated by reference as if set forth in full herein. Newsome did not want to do so but Sams was very *persistent* and *belligerent* in obtaining Newsome's copy Employee Handbook. However, Newsome did so advising Sams that she had a copy which is hers at home. Sams harassed and used his power and position (*i.e. Mitchell McNutt & Sams P.A.*) to obtain a Newsome's copy of *Employee Handbook* to which MMS/he was not entitled. Newsome advised Sams that any other documents that were sought would have to be obtained through proper legal channels. Sams advised Newsome to have her attorney and/or anyone to contact him. Newsome advised Sams, that she is aware of what her rights are.

428. MMS/Sams requested the copy of Newsome's Employee Handbook with **knowledge** that Newsome's termination violated MMS' policies and **did not** want Newsome to have any evidence of the policies of MMS. MMS'/Sams' purpose for requesting Newsome's copy of Employee Handbook was for purposes of OBSTRUCTING justice. MMS/Sams purpose for requesting Newsome's copy of Employee Handbook was for business/financial interest of MMS. Sams purpose for requesting Newsome's copy of Employee Handbook was for personal/financial interest – i.e. interest that was racially and discriminatorily motivated.

429. MMS/Sams/Allen/Gordon/Farrell knew or should have known that Newsome's December 1, 2004 email, reporting the unethical and/or unlawful practices of Gordon was in compliance with MMS' policy cited at **104 BUSINESS ETHICS AND CONDUCT** in Mitchell McNutt & Sams, P.A. Employee Handbook with an Issue Date: January 1, 2002. However, MMS/Sams elected to take a far departure from its own policy governing said matters as well as the laws of the United States and terminate the employment of Newsome.

430. Newsome left the premises of MMS without incident and was assisted by Sam Rush, an employee and/or contract worker of MMS. At the time of this filing, Newsome is not sure what exactly Rush's employment status and/or relationship (whether he was considered an employee of MMS) was with MMS. Sam Rush is the brother-in-law of Allen, Chief Operations Officer. Rush received an income from MMS.

431. The actions by MMS/Sams/Allen/Gordon/Farrell infringed upon the **protected rights** of Newsome. Rights secured under the United States Constitution, Civil Rights Act and any/all applicable laws governing said matter.

432. Farrell, was an attorney employed at MMS, area of practice involved **Labor and Employment Law**. Therefore, MMS knew or should have known that the actions taken against Newsome were in violation of rights protected under the law; moreover, acts in violation of public policy.

433. Prior to MMS'/Sams' termination of Newsome, MMS/Sams sought the advice of legal counsel. Therefore, MMS/Sams having full knowledge that the actions being taken against Newsome were unlawful and that MMS/Sams was infringing upon the **protected rights** of Newsome.

434. The actions by Defendant(s) toward Newsome were willful, malicious and wanton. Under the applicable laws governing said violations and/or matters, Newsome is entitled to damages.

435. Pursuant to FRCP Rule 11, MMS/Gordon presented signed Motions requesting enlargement of time on behalf of MMS'/Gordon's client, *Republic Finance, LLC*, which Gordon personally signed himself, and had submitted to the court by HAND DELIVERY – a copy of the Motions (in *Thompson* and *Dubose* actions) along with the original of a proposed Order granting the enlargement of time were delivered to the chambers of Judge Wingate. The original of the Motions were filed with the Clerk's Office. Gordon signing/executing pleadings under the admission as that of his employer, MMS. In Gordon's signing of Motions, said signature constituted and/or certified that to the best of Gordon's knowledge, information and belief, formed after an inquiry that the information contained in the motions were true. Thus, Gordon's actions in signing and submittal were also that of MMS.

However, upon review of the evidence submitted herein, Newsome believes it will be found that MMS/Gordon presented Motions to the court with knowledge that:

- a. The Motions (in the *Thompson* and *Dubose* actions) were presented for improper purposes, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. Yet, Gordon provides statements such as the following:

This enlargement of time is not sought for the purposes of delay, and plaintiff will not be prejudice by Republic's being granted this enlargement of time.

See **Exhibit "40"** – *Thompson Motion* at Paragraph 3, **Exhibit "41"** – *Thompson Court Docket Sheet*, Rec. Doc. No.⁵⁵ 38, page 1 (*Thompson* action), and **Exhibit "42"** – *Dubose Court Docket Sheet*, Rec. Doc. No.41, page 2 (*Dubose* action) attached hereto and incorporated by reference as if set forth in full herein. Documents are of PUBLIC and/or Court records.

- b. MMS/Gordon was put on notice (by Newsome) that statement(s) he provided was false and/or misleading. Yet after reasonable inquiry into Newsome's notation and consideration of the statement(s) being made to the court, MMS/Gordon proceeded to sign the frivolous Motion and submit it to the court, with full knowledge of the false and/or misleading statement(s) contained therein.
- c. The claims asserted in Motions were warranted by frivolous argument for the extension by MMS/Gordon and lacked any factual evidence to support them.

- i. In the *Thompson* action, p. 1 at ¶ 2, MMS/Gordon stated, "*Due to the undersigned counsel's illness and resulting limited time and ability to work several days this week, Republic needs an enlargement of time through and including November 24, 2004, in which to file, submit and serve its Rebuttal Memorandum.*" See **Exhibit "40"** – *Thompson Motion* and **Exhibit "41"** - *Thompson Court Docket Sheet*, Rec. Doc. No. 38 - - attached hereto and incorporated by reference as if set forth in full herein. Documents are of PUBLIC and/or Court records.

PRETEXT: In *Thompson* matter, MMS/Gordon stated, *Due to the undersigned counsel's illness and resulting limited time and ability to work several days this week, Republic needs an enlargement of time through and including November 24, 2004, in which to file, submit and serve its Rebuttal Memorandum*" – EMPHASIS ADDED because this time period encompasses dates provided by MMS/Gordon in *Dubos* matter that "*Counsel for Republic has a longstanding commitment to be out of town November 19 - 21, 2004.*"

⁵⁵ Abbreviation for "Record Document No."

Thompson motion being filed approximately **November 12, 2004**, and thus, supporting that on said date, Gordon *knew that he had made "TRAVEL" reservations* on about **October 18, 2004** (See **Exhibit "51"** attached hereto and incorporated by reference as if set forth in full herein) for dates of November 19 – 21, 2004. Upon close examination of **Exhibit "51"** there is **NO** documentation to support when Gordon *actually CANCELLED the plane ticket*.

- ii. **Gordon did *not* miss a day away from the office the week of November 8, 2004, nor the prior week of November 1, 2004.**
- iii. **MMS/Gordon *spent a great deal of time monitoring and harassing* Newsome rather than attending to the needs of MMS/his clients. Thus, resulting in MMS/his inability to meet Court deadlines. Gordon contributed a great deal of time to his monitoring duties of Newsome, and thus *such monitoring took priority/precedence over client's needs and court deadlines*. In fact, in Performance Review completed by Gordon of Newsome on November 15, 2004, Gordon stated: *Requires high degree of instruction, supervision and monitoring.* (See **Exhibit "29,"** p. 18,⁵⁶ under **Supervision**). *Yet Gordon does not notify the court of how the monitoring of his secretary's (Newsome's) activities was taking away from his ability to meet court deadlines. Said failure to notify the court being due to the fact that Gordon's acts were willful and negligent of the duties owed to clients.***
- iv. **MMS'/Gordon's subjecting Newsome to monitoring resulted in Newsome keeping a record of the frequency of Gordon's/MMS' monitoring. **MMS/Gordon was aware that Newsome was keeping such logs.** Such constant interruptions and distractions to Newsome while she strived to perform her duties. Monitoring logs information, attached hereto will support, that a great deal of time (and the intervals in which they occurred) MMS/Gordon attributed to monitoring Newsome was excessive. However, this was the way MMS/Gordon retaliated against Newsome for reporting violations. Monitoring information Newsome kept on MMS/Gordon, provides dates and times of MMS'/Gordon's harassment and constant interruptions. *Therefore, based upon such evidence it may be difficult for a reasonable person/mind to believe Gordon was too ill to perform his duties on behalf of his clients in a timely manner, yet had a great deal of time to spend harassing (noted as monitoring by MMS/Gordon in November 15, 2004 Performance Review) Newsome.* A copy of Newsome's monitoring (dates and times) for November, 2004, are attached hereto at **Exhibit "12"** and incorporated herein by reference as if set forth in full herein.**

Moreover, said unlawful harassment that MMS/Gordon attempted to mask as monitoring is prohibited by law and

⁵⁶ Newsome numbered document in the top right corner for easy referencing and/or locating information noted.

clearly goes against MMS' policies governing matters. For instance, 703 SEXUAL AND OTHER UNLAWFUL HARASSMENT of the MMS *Employee Handbook* which stated in part:

Mitchell McNutt is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive . . .

If you experience or witness sexual harassment or other unlawful harassment in the workplace, report it immediately . . . *You can raise concerns and make reports without fear of reprisal or retaliation.*⁵⁷

and 522 WORKPLACE VIOLENCE PREVENTION which stated in part:

Mitchell McNutt *is committed to preventing workplace violence and to maintaining a safe work environment.* Given the increasing violence in society in general, Mitchell McNutt has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises.

All employees should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, "horseplay," or other conduct that may be dangerous to others. Firearms, weapons, and other dangerous or hazardous devices or substances are prohibited from the premises of Mitchell McNutt without proper authorization.

Conduct that threatens, intimidates, or coerces another employee, a client, or a member of the public at any time, including off-duty periods, will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law.

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor/attorney or the Chief Operations

⁵⁷ Policy(s) MMS places in its Employee Handbook just for the "window dressing" affect. Based upon Newsome's experience, MMS repeatedly retaliated against her for addressing repeated harassment by Gordon and her reporting of the unlawful practices to MMS.

Officer. This includes threats by employees, as well as threats by clients, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be specific and detailed as possible.

All suspicious individuals or activities should be reported as soon as possible to a supervisor/attorney. **Do not place yourself in peril.** If you see or hear a commotion or disturbance near your work station, do not try to intercede or see what is happening.

Mitchell McNutt **will promptly and thoroughly investigate all reports of threats of (or actual) violence** and of suspicious individuals or activities. *The identity of the individual making a report will be protected as much as is practical.* **In order to maintain workplace safety and the integrity of its investigation,** Mitchell McNutt may suspend employees, either with or without pay, pending investigation.

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.

Mitchell McNutt **encourages employees to bring their disputes or differences with other employees to the attention of their supervisor or the Chief Operations Officer before the situation escalates into potential violence.** Mitchell McNutt **is eager to assist** in the resolution of employee disputes, and **will not discipline employees for raising concerns.**

See Exhibit "3" MMS Employee Handbook attached hereto and incorporated by reference as if set forth in full herein.

- v. MMS is a legal defense firm. Therefore, MMS' attorneys' time is billed to somebody (client or firm). With all the monitoring exhibited in the logs, one may question to whom the monitoring of Newsome was being billed and/or whether Gordon's time information, like the Motions submitted to the court and Newsome's Performance Review, were falsified, whether MMS'/Gordon's clients were actually paying for the time in which he was actually using to monitor Newsome.
- vi. From the monitoring logs kept by Newsome, it may be found that Gordon's *compulsive/obsessive* needs to *monitor* and *harass* Newsome took PRIORITY/ precedence over Republic Finance, LLC's needs, and as a direct and proximate result, resulted in MMS'/ Gordon's inability to meet the Court's deadlines on behalf of MMS'/his client, *Republic Finance, LLC*.

- vii. Newsome also began keeping copies of printout of Dictation Jobs sent to her for transcription. See **Exhibit “44”** – *Dictation Log and Computer Printout* attached hereto and incorporated by reference as if set forth in full herein. Based upon review of this Exhibit, a reasonable person/mind may find that Gordon did not provide Newsome with a great deal of dictation jobs and, also may find, for the month of November, 2004 the following:

Date	Dictation Jobs	Total Time of Jobs⁵⁸
11/01/04	0	
11/02/04	2	9.34
11/03/04	2	1.12
11/04/04	3	3.51
11/05/04	4	15.15
WEEKEND		
11/08/04	6	16.43
11/09/04	4	13.03
11/10/04	1	7.54
11/11/04	0	
11/12/04	2	2.32
WEEKEND		
11/15/04	0*	
11/16/04	7	1:00.43
11/17/04	0	
11/18/04	0	
11/19/04	3	3.44
WEEKEND		
11/22/04	0	
11/23/04	3	6.42
11/24/04	0	
11/25/04	THANKSGIVING	
11/26/04	HOLIDAY	
WEEKEND		
11/29/04	0	
11/30/04	2	19.49

* **This is the date (11/15/04) Performance Review was signed.** See **Exhibit “29”** attached hereto. The Performance Review was given to Newsome on 11/30/04.

Newsome believes it is a good thing that she kept such logs considering the information MMS/Gordon provided in her Performance Review. In fact, when once being questioned by a co-worker about the jobs in the job queue, Newsome stated – **Exhibit “46:”**

The I (sic) save them like that, is for my record. I print info and then delete the oldest. I know you were wondering why

⁵⁸ Decimal point separates the minutes from seconds – Example: 9.34 is 9 minutes, 34 seconds. Colon separates hour from minutes – Example: 1:00.00 is 1 hour, 0 minutes, 0 seconds.

all those jobs are there. *I have a reason for saving them and deleting them later.*

attached hereto and incorporated by reference as if set forth in full herein. Otherwise, MMS/Gordon would have tried and make it appear (based upon information provided in Performance Review), that Gordon did such a voluminous amount of dictation that Newsome could not keep up with the dictation load. See Exhibit "29," p. 8, attached hereto.

- viii. MMS/Gordon repeatedly requested extensions when conditions arose, that he felt suited him and could be used by him as an excuse for his **incompetence** and **inability** to meet his legal obligations to client, Republic.
- ix. In the *Dubose* action before the Court, Gordon submitted, on behalf of Republic, false and/or misleading information he had knowledge of as being false and/or misleading in efforts to gain the granting of enlargement of time. In the *Dubose* action in Republic's Motion presented to the Court on or about November 18, 2004, Gordon states in said pleading:

One of the two secretaries in the two-lawyer office of counsel for Republic was admitted to the hospital last night on an emergency basis, and thus the remaining secretary needs to assist both lawyers at this time.

See Exhibit "43" – Dubose Motion at Page 2, Paragraph 3 and Exhibit "42" Dubose Court Docket Sheet, Rec. Doc. No. 41 respectively, attached hereto and incorporated by reference as if set forth in full herein.

- (a) Newsome questioned such a statement by Gordon and provided so on the mark-up of the draft of Motion – prior to Gordon's signing and submitting. Newsome reminding Gordon that it is **not** his secretary that is in the hospital, and, that **MMS has a typing pool of typists that assist with the typing of pleadings, etc.** by the attorneys. This was about MMS'/Gordon's **third**⁵⁹ request in *Dubose* action and having clear knowledge after a reasonable inquiry to conclude and/or form an opinion that the statement made in the Motion was false and/or misleading. In fact, Newsome shared such concerns with another co-worker of Gordon's taking advantage of the other secretary's absence. Stating, "*Just typed up a pleading for RTG requesting an extension of time in one of his cases. Do you know he is going to use this situation (LMT's) in his pleading? Of course I put a question mark by it and mentioned (in notation) that it is not his secretary that has been admitted. This is*

⁵⁹ First Motion for enlargement of time was filed on 11/5/04, second Motion for enlargement of time was file on 11/12/04, and the third one on 11/18/04. Clearly an abuse by Gordon.

only his 3RD request for extension of time in this case. To me not a valid excuse. I also mentioned that we have the typing pool. From the pleading, he is telling the court there is only one secretary assisting two attorneys – according to others here at MMF (sic) this is not uncommon.

Now he is busy pacing back and forth by my little box. Time that could be better used on something else.” See **Exhibit “47”** – 11/18/04 Email to Yvette Wilson attached thereto and incorporated by reference as if set forth in full herein. Also see monitoring log for that day at **Exhibit “12”** attached hereto and incorporated by reference as if set forth in full herein.

- (b) MMS requested that a Temporary Employee be brought in to assist the other attorney. The Temporary Employee that assisted the attorney was a person by the name of Britney Emmons.
- (c) Gordon’s secretary, Newsome, had many times over and over again, been required to support both attorneys and others in the absence of the other secretary (Townsend). MMS did not seem to be interested in getting Newsome any assistance – however, Newsome had to perform the roles and duties for both positions on many occasions. For example, see **Exhibit “48”** - 08/10/04 Email Exchange with Allen attached hereto wherein Jim Allen, Chief Operations Officer for MMS states in an email to Newsome:

JIM: Thanks for helping out in Ladye Margaret’s absence. She will be able to cover Mike’s work now that she is back....

NEWSOME: Will do. Just wanted to know. Realize when LMT was out, had to do work for RTG, MMF and Nathan. No assistance from the typing pool whatsoever. Now that she is back and it is MMF’s work, just needed to know. I am backlogged and have not been able to get the filing or file cabinet up to speed like I want to. Thought with RTG out, would be able to do so. However, LMT was out (with her absences)(sic) and of course this crashed that. Amply depending on who is viewing, however, not so based on what it is I am trying to get done and accomplished by the time that RTG is out.

For another example see same **Exhibit “48,”** which further stated:

When LMT was out, MMF was not concerned about getting me any help in doing his work. **I was working on RTG's requests and MMF's.** She is now back, so could not figure out why she couldn't do his work. The bottom line, LMT just didn't want to do it and MMF obliged her. RTG sent me a 2 pg. email before he left telling me what he wants done in his absence. *MMF seems to me to be trying to determine my work load and assuming because RTG is out, I have nothing to do.*

- (d) Newsome was the only African-American/Black in the Jackson, Mississippi office. The other secretary was white and was treated much better than Newsome. In fact this secretary had directly contacted the IT Department at MMS, requesting that her work be given to Newsome. Newsome **questioned** such actions because she was not aware that the secretaries had such authority. See **Exhibit "48"** which stated in part:

CO-WORKER: LMT sent me an e-mail cc: Mike and Lowry on it about transferring those jobs to your queue. *I replied to everyone telling them that I had moved them to you. . .*

Also see **Exhibit "49"** – *08/11/04 Email to Yvette* attached hereto and incorporated by reference as if set forth in full herein, of a conversation between Newsome and a co-worker attached hereto which stated in part:

Hey, you want to hear something funny. LMT asked me when I get caught up, she has something. *Need I tell you the number of calls she's taken on her cell phone or made today.* Like I mentioned, **she spends a great deal of time on personal calls and can't get her work done.** Then she mentions needing help.

As I shared with you, I have no resentment. *It doesn't make sense and it isn't right.* **She needs to focus on getting her work done rather than chatting on the cell phone.** She's out too much to be spending the time she is here on that. **I don't mind helping her, but let's get real.**

In fact, Cell phone usage in the office had become disruptive that MMS/Allen submitted an email to all MMS Offices which stated in part:

Noticed the unique cell phone rings in the office? So have others.

Personal cell phone use in the office has been disruptive, especially some of the ring tones. From this point forward while in the office, limit the use of cell phones as much as you can and put your cell phone on vibrate or other quiet mode.

See **Exhibit "50"** – 10/19/04 Email From Allen regarding "**Cell Phone Usage**" attached hereto and incorporated by reference as if set forth in full herein. Email coming approximately two (2) months after Newsome mentioned Townsend's excessive use. Apparently from Allen's email such EXCESSIVE use was also going on in the Tupelo Office. Nevertheless, from November 30, 2004 Performance Review, MMS/Gordon attempted make such false accusations towards Newsome when such practices by Townsend resulted in her having to do Townsend's work because she spent a great deal of time on Cell phone.

PRETEXT: While Gordon made false and misleading information to make it appear that Newsome used the phone excessively for personal use, this information is PRETEXT and efforts taken by Gordon and MMS to cover-up the excessive use by other employees. In fact, according to October 19, 2004 email from Allen, MMS had to address "*Cell Phone Usage.*" See **Exhibit "50"** attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, Gordon and MMS would want you to think it was Newsome doing so – when it was not. *Newsome even contested such practices to co-worker (Yvette Wilson) because this is the way Townsend spent her time when she did come to work* – i.e. due to her HIGH ABSENCES. See **Exhibit "49"** – 08/11/04 Email to Yvette attached hereto and incorporated by reference as if set forth in full herein. Newsome's email contesting such practices coming approximately two (2) months **prior** to

MMS'/Allen's **October 19, 2004** email regarding "Cell Phone Usage."

- (e) The other secretary (Townsend) had a high degree of absences and frequently went to the hospital – on many occasions the test run return negative. MMS' records may reflect that while Townsend, a white female and Legal Secretary, had a HIGH DEGREE of absences, it repeatedly compensated her with bonuses and/or pay increase(s).

Nevertheless, MMS/Gordon provided false information in Performance Review to make it appear that Newsome was incompetent in performing her job duties. Statement clearly contradictory to the facts, evidence and legal conclusions provided in this Complaint as well as Letter of References provided at **Exhibit "10"** of this Complaint.

- x. In the *Dubose* action before the court, MMS/Gordon submitted on behalf of Republic, false and/or misleading information with knowledge of it being false and/or misleading in efforts to gain the granting of enlargement of time. In the *Dubose* action in Republic's Motion presented to the Court on or about November 18, 2004, MMS/Gordon stated in said pleading:

Counsel for Republic has a *longstanding commitment to be out of town November 19-21, 2004.*

See **Exhibit "43"** – *Dubose Motion* at Page 2, Paragraph 4 and **Exhibit "42"** – *Dubose Court Docket Sheet, Rec. Doc. No. 41, p. 2 at ¶ 4* respectively attached hereto and incorporated by reference as if set forth in full herein.

On November 18, 2004, Gordon advised Newsome that she may have gathered from typing the Motion that **he would be out of the office**. However, on the afternoon of November 18, 2004, once Gordon knew the pleading was filed, Gordon advised Newsome that this would not be the case, and that he would not be out of town and expected to be in the office. In fact, the monitoring log will reflect Gordon's presence in the office on November 19, 2004, and the amount of time he contributed to his monitoring duties. See **Exhibit "12"** - *11/04 and 12/04 Monitoring Logs* attached hereto and incorporated by reference as if set forth in full herein.

436. The record evidence will also support that Gordon, with knowledge that he would not be out of town, cancelled any travel reservations made. See **Exhibit "51"** – *11/18/04 Cancellation Documents* attached hereto and incorporated by reference as if set forth in full herein. CANCELLATION coming on the same date that Gordon filed *Dubose Motion* for enlargement of time alleging he would be out of town November 19 – 21, 2004, when he knew he was not going to be out of town.

437. On November 19, 2004, date Gordon advised the Court he would be “out of town,” he used this day and time to go to work and assume his MONITORING duties of Newsome. See **Exhibit “12” – 11/04 and 12/04 Monitoring Logs** attached hereto and incorporated by reference as if set forth in full herein. On said date providing Newsome with only three (3) dictation jobs. See **Exhibit “44”** attached hereto and incorporated by reference as if set forth in full herein.

438. PRETEXT can be established to support, from MMS’ PATTERN-OF-PRACTICE, *total disrespect for the laws and the rights of Newsome*, just how far it is go to cover up the unlawful/illegal practices of MMS/Gordon surrounding Newsome’s exposing the unethical practices of MMS/Gordon. MMS is willing to testify that Gordon was ill and had to miss work – for instance see **Exhibit “7”** at pp. 44 – 45 attached hereto and incorporated by reference as if set forth in full herein which stated in part:

Newsome	44	12 - 13	So it is your testimony that Mr. Gordon was, was out of the office, he didn’t come to the office to work, he was out ill? Is that your testimony?
Allen	44	14 – 16	There was some time when he was out of the office. I don’t, I have records that showed the time he was not out, that he was out. I’m not saying it was the whole week. I’m not exactly sure of right now.
Newsome	44	17	Was it a day?
Allen	44	18	I could look and find out.
Newsome	44	19	Was it a day, was it for a whole day, a whole week, several days?
Allen	44	20	No, it was like a day plus some more time.
Newsome	45	1	Okay.
Allen	45	2 – 3	I have, actually I have the records in my, that I can find from the time sheet.
Newsome	45	4 – 11	I’ll show this, because like I said I wasn’t, I wasn’t aware of what they were going to bring, but I do have a copy of he Pleading in question. Wherein it states that due to the undersigned counsel’s illness and resulting limited time and ability to work several days this week. So he was in the pleading, he said he was unable to work, and it is your testimony he did not come into the office that day, or if he just missed a few hours, or if he missed a whole day, or several days is your testimony that he missed some days?
Allen	45	12 -13	There was some time that he was not in the office, and he was not, he was ill, and he wasn’t one hundred percent, yes.
Newsome	45	14	The question is, did he miss any days from work that week?
Allen	45	15	He did miss some time from work, yes.

439. Supporting how MMS would be willing to provide witnesses for purposes of obstructing justice in providing false testimony surrounding this matter. Moreover, how far Defendants would go to cover-up unlawful employment practices for their own personal interest and/or gain.

440. **PRETEXT:** In Thompson matter, MMS/Gordon stated, *Due to the undersigned counsel's illness and resulting limited time and ability to work several days this week, Republic needs an enlargement of time through and including November 24, 2004, in which to file, submit and serve its Rebuttal Memorandum* – EMPHASIS ADDED because this time period encompasses dates provided by MMS/Gordon in Dubos matter that *"Counsel for Republic has a longstanding commitment to be out of town November 19 - 21, 2004."* Thompson motion being filed approximately **November 12, 2004**, and thus, supporting that on said date, Gordon *knew* that he had made *"TRAVEL"* reservations on about **October 18, 2004** (See **Exhibit "51"** attached hereto and incorporated by reference as if set forth in full herein) for dates of November 19 – 21, 2004. Upon close examination of **Exhibit "51"** there is **NO** documentation to support when Gordon *actually CANCELLED the plane ticket*.

441. The record facts, evidence and legal conclusions will support that while Gordon submitted November 10, 2004 email to Newsome and cc'ing Townsend regarding "Today" which stated in part:

I did not sleep well last night or the night before and have not felt well for the last day or so. I probably will be in later this morning. If anything comes up or you otherwise need some information from me, you can call me here at home or send me an e-mail. I will be using and checking e-mail through Citrix.

See **Exhibit "54"** attached hereto and incorporated herein by reference as if set forth in full herein. A reasonable person/mind, based upon the facts, evidence and legal conclusion may wonder how he sleeps at all with all the evilness, hatred and unrest Gordon has bottled up inside. Nevertheless, Gordon was well enough to come into the office because he was determined to perform as much of his full-time duties in monitoring Newsome. Rather than getting well (if ill), Gordon preferred coming to work and fulfilling role in conspiracy(s) leveled against Newsome. See **Exhibit "12"** – Monitoring Logs attached hereto and incorporated by reference as if set forth in full herein. Gordon alleging not feeling well; however, used what strength he had to continue to engage in unlawful practices.

442. A reasonable person/mind may conclude that MMS' shutting down its Jackson, Mississippi Office was an effort of doing damage control because it knew that this lawsuit was inevitable.

443. The Honorable David Bramlette, III ("Judge Bramlette") – United States District Court Judge, in the Southern District of Mississippi – in *Callahan v. Bancorpsouth Ins. Services of Mississippi, Inc.*, 244 F.Supp.2d 678, n. 1, *aff'd* 61 Fed.Appx. 121 (S.D. Miss. 2002) found that Newsome makes out a *prima facie* case if she establishes: (1) that there was statutorily protected participation; (2) that an adverse employment action occurred; and (3) that there was a causal link between the participation and the adverse employment action. The record evidence will support that:

- (i) Defendant(s)' knowledge of Newsome's engagement statutory protected activity(s);
- (ii) that as a direct and proximate result of Defendant(s)' knowledge of Newsome's engagement in statutory protected

activity(s) that Newsome was subjected to adverse employment action – i.e. discrimination, retaliation, harassment, hostile work environment, etc. and her employment terminated; and

- (iii) causal link has been established between Newsome’s participation in protected activity (see at Paragraph 324 and **Exhibit “13”** of this instant Lawsuit/Complaint) and the adverse employment action – i.e. discrimination, retaliation, harassment, hostile work environment and retaliation – ultimately resulting in MMS’/Sams termination of Newsome’s employment with MMS.

444. Judge Bramlette further finding the law prohibits retaliation in either of two instances: **(1)** where the employee has opposed any unlawful employment practice; or **(2)** where the employee has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. *Id.* The laws’ prohibition of retaliation protects employees who use informal methods to voice their complaints, as well as those who file formal charges. *Id.* The record evidence will support that:

- (i) Newsome verbally and in writing contested/opposed unlawful employment practices of MMS. Newsome submitting complaints to the attention of MMS/Allen/Gordon contesting and opposing unlawful employment practices leveled against her; and

- (ii) That named Defendants having knowledge of Newsome having made, testified, assisted or participated in an investigation proceeding or hearing.

Newsome’s engagement in protected activities and matters of public policy was a direct and proximate result of the retaliation and unlawful/illegal actions of named Defendants.

445. To establish prima facie case of retaliation under **“opposition”** clause . . . , **protecting** employees who oppose unlawful employment practices against retaliation, plaintiff must establish: statutorily protected expression; adverse employment action; and causal link between protected expression and adverse action. *Aldridge v. Tougaloo College*, 847 F.Supp. 480. This instant Lawsuit/Complaint provides evidence that:

- (i) Newsome provided “statutorily protected expression” to MMS/Allen/Gordon of its unlawful employment practices – i.e. for instance statutory provisions under FLSA, OSH Act, Title VII and other governing statutes/laws;

- (ii) Newsome opposed adverse employment action – i.e. discrimination, harassment, hostile work environment and retaliation – leveled by Defendant MMS against her; and

- (iii) There is a causal link between Newsome’s engagement in protected activity(s) – i.e. *for making charges, testifying, assisting, or participating in enforcement proceedings* – and MMS’/Sams’ termination of Newsome’s employment was based upon knowledge of her engagement in protected activity(s).

446. The record evidence in the possession of the federal government agency(s) and MMS will support that Newsome has established *prima facie* case for discrimination, retaliation, pretext and hostile work environment.

447. MMS' November 30, 2004, Performance Review prepared by Gordon on November 15, 2004, consisted of Record Rating as follows:

1. Outstanding
2. Above position requirements
3. Meets position requirements
4. Acceptable relative to position requirements
5. Needs significant improvement
6. Not acceptable

See **Exhibit "29,"** page 1 attached hereto and incorporated by reference as if set forth in full herein.

448. In the Performance Review prepared by Gordon on November 15, 2004, he gave Newsome the following ratings in the 14 items below:

- | | | |
|-----|--------------------------------------------------------------------------------------|-------------|
| 1. | Speed of work production: consider all functions, typing, phone, filing, etc. | 5.00 |
| 2. | Neatness and accuracy: quality of work | 3.50 |
| 3. | Prompt completion of assignments | 4.50 |
| 4. | Promptness & attendance: Is employee on time each day? Is the attendance record good | 3.00 |
| 5. | Accepting responsibility: carrying out instructions | 5.00 |
| 6. | Cooperating with other employees: Does he/she help out? Volunteer for extra work? | 3.50 |
| 7. | Clients: Does he/she make visitors and callers feel comfortable and at ease? | 3.00 |
| 8. | Cooperation with superiors: Does he/she perform assignments willingly? | 6.00 |
| 9. | Housekeeping: Does he/she keep work areas neat? | 3.00 |
| 10. | Telephone: Does he/she answer competently and present a good image? | 2.00 |
| 11. | Knowledge of job: Closeness of supervision, required initiative | 3.50 |
| 12. | Flexibility and adaptability to new situations | 5.00 |
| 13. | Friendliness: Is he/she composed, collected and pleasant? | 4.00 |
| 14. | Appearance and personal habits: Is he/she neat? | 1.00 |

See Exhibit "29," page 1 and 2 attached hereto and incorporated by reference as if set forth in full herein. The average for all 14 items in the Performance Review is **approximately 3.71**. However, Gordon gave Newsome an OVERALL PERFORMANCE RATING of "5." See Exhibit "29" at page 2.

449. In the adverse Performance Review prepared by Gordon on November 15, 2004, in retaliation to the complaints Newsome filed against MMS for unlawful employment practices, Gordon states the following - i.e. the items have been lettered for easy reference and for response purposes:

a. Appearance and Personal Habits

Outstanding, except there were occasions during first half of evaluation period when Friday attire was too casual.

FACT: Newsome's Friday casual attire was not too casual. Neither did Newsome's Friday attire violate MMS' policy **705 PERSONAL APPEARANCE**. MMS/Gordon **repeatedly singled** Newsome out to subject her to hostile, discriminatory and retaliatory treatment for her filing of Complaint(s) addressing MMS' unlawful employment practices. It was only AFTER filing of complaints with MMS and government agency(s), did MMS/Gordon began addressing and harassing Newsome about petty things. White employees were allowed to dress and wear whatever they liked throughout the week. White employees' attire, in Newsome's opinion, was too casual and inappropriate for the office; however Gordon and/or MMS said nothing to them but focused on discriminatory treatment towards Newsome. The attire Newsome wore on the day MMS/Gordon unlawfully subjected her to a hostile work environment, discriminatory and retaliatory practices, consisted of a **shirt, skirt, panty hose, shoes and fashion cap (not baseball cap)**. The action taken by MMS/Gordon was in violation of MMS Policy No. 705 **PERSONAL APPEARANCE** which stated in part:

Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image Mitchell McNutt presents to customers and visitors.

During business hours or when representing Mitchell McNutt, you are expected to present a clean, neat, and tasteful appearance. You should dress and groom yourself according to the requirements of your position and accepted social standards. This is particularly true if your job involves dealing with clients or visitors in person.

Your supervisor/attorney and the Chief Operations Officer are responsible for establishing a reasonable dress code appropriate to the job you perform. If your supervisor/attorney feels your personal appearance is inappropriate, you may be asked to leave the workplace until you are properly dressed or groomed. Under such circumstances, you will not be compensated for the time away from work. Consult your supervisor/attorney or the Chief Operations Officer, if you have questions as to what constitutes appropriate appearance. Where necessary,

reasonable accommodation may be made to a person with a disability.

When Newsome *offered to make the necessary change to another head covering appropriate and of religious preference*, MMS/Gordon clearly ignored her request leaving Newsome to believe the matter had been resolved. See Friday, April 23, 2004 Email from Newsome to Gordon which stated in part:

Per your concerns in regards to my wearing a casual cap, if you feel that this is not appropriate although my dress (shirt and skirt are), I have no problems replacing the current cap with a prayer covering type cap (one that tightly fits down over my hair and is often seen worn by women (sic) church services). Such caps are business-casual if you do not find that the one I am currently wearing is not.

However, as I shared with you, there are times that my hair is not fixed and I am not comfortable with the way I look. So I cover it.

Let me know what you suggest the casual cap (which is not a baseball cap) or the prayer caps.

at **Exhibit "32"** attached hereto and incorporated by reference as if set forth in full herein. [Statement by MMS/Gordon is **pretextual/retaliatory** – done to shield/mask an illegal animus - - **MMS/Gordon stated that Newsome's Appearance and Personal Habits as OUTSTANDING!**]

b. Telephone Practice
Above position requirements

FACT: **PRETEXT:** In the November 15, 2004 Performance Review prepared under "Telephone Practices," MMS/Gordon stated, "***Above position requirement.***" Then CONTRADICTORY of this statement under "Productivity" (of same Performance Review), MMS/Gordon stated, "***Spends excessive amount of time on personal telephone calls.***" Newsome performed duties of Receptionist as well as that of Legal Secretary, her ability to keep MMS'/Gordon's monitoring activities, as well as other logs sustains information pretext and provided to mask/shield and illegal animus – i.e. singling Newsome out and blaming the abusive practices by other employees (such as Townsend (white)) on Newsome. See **Exhibit "50"** attached hereto and incorporated by reference as if set forth in full herein. Moreover, **RETALIATION** because of knowledge of Newsome's engagement in protected activities.

MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Telephone Practice" is "Above position requirements."

Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.

See **Exhibit "4"** – November 30, 2004 email entitled, "REQUEST FOR JOB DESCRIPTION – LEGAL SECRETARY" wherein Newsome requested copy of job description attached hereto and incorporated by reference as if set forth in full herein.

c. Dealings with Clients

Meets position requirements

All contacts with clients have been by telephone

Has had very limited contacts with clients

FACT: MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Dealings with Clients," "Meets position requirements." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. Moreover, it is Gordon's preference that he deals with clients regarding their case rather than secretary. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

d. Dealings with Courts

Acceptable

Not as familiar with court systems, rules, procedures and practices as needs to be as a litigation legal secretary.

Improvement needed.

FACT: MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Dealings with Courts" is "Acceptable." Moreover, whether or not what Gordon asserted he expected of litigation legal secretary are in fact the duties of a legal secretary or a paralegal and/or law clerk may be hard determine since MMS/Allen failed to provide Job Description for Legal Secretary. Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for

MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. Furthermore, Gordon had no evidence to support such an assertion; he had never requested that Newsome perform any task requiring use of court systems, rules, procedures and practices. In fact, for someone Gordon asserts was not familiar with court systems, rules, procedures and practices, Newsome was able to go and retrieve the Docket Sheets provided in Exhibits "41" and "42." Moreover, the December 1, 2004, email resulting in Newsome's termination addresses violations of Federal Rules of Civil Procedure Rule 11 by MMS/Gordon before the Court(s). For Newsome to not be familiar with rules, procedures and practices as MMS/Gordon asserts, Newsome took the time to caution Gordon about the false statement(s) being made in his pleading because she knew that the signing of said pleading(s) with knowledge that the information contained therein was false, clearly violated Rule 11 of the Federal Rules of Civil Procedure. **Against** Newsome's caution of providing false and/or misleading statement(s), Gordon **proceeded to sign** the pleading(s) he knew to contain false and/or misleading information. **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]**

e. Dealings with other Lawyers
Meets position requirements.

FACT: MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Dealings with other Lawyers," "Meets position requirements." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.

f. Dealings with Others/Public
Meets position requirements.

FACT: MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Dealings with Others/Public" "Meets position requirements." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.

g. Computer Knowledge and Skills
Outstanding

FACT: MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Computer Knowledge and Skills" is "Outstanding." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. Newsome's computer knowledge and skills can further be substantiated by test provided her by Employment Agency:

Alphanumeric – 8844 kph / 2% error rate

Typing – 60 wpm / 1% error rate

Word 97 – 100 overall (100 on basic, intermediate & advanced)

Excel 97 – 100 overall (100 on basic, intermediate & advanced)

See **Exhibit "11"** attached hereto and incorporated by reference as if set forth in full herein.

h. Word Processing Skills

- i. Accuracy of transcription of that which dictated
Meets position requirements.

FACT (1): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Word Processing Skills – Accuracy of transcription of that which dictated," "Meets position requirements." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.

- ii. Accuracy of typing
Meets position requirements.

FACT (2): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Word Processing Skills – Accuracy of typing," "Meets position requirements." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal

Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.

iii. Correctness of Handwritten Revisions to transcription

Acceptable

Improvement needed

FACT (3): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Word Processing Skills – Correctness of Handwritten Revisions to transcription," is "Acceptable" and whether "Improvement needed." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]**

iv. Speed

Needs significant improvement

Example, on occasions when have sent dictation to secretarial pool, transcription has been correctly and neatly completed in substantially less time than it takes Vogel (and pool secretaries are not familiar with the matters, my voice or my dictation style)

FACT (4): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Word Processing Skills – Speed," "Needs significant improvement." Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.

MMS' record will support that Newsome was **repeatedly** required to perform her job responsibilities and that of another legal secretary (Townsend) because Townsend had high absences. Newsome being required **repeatedly** without the assistance of the typing pool and over opposition of what she believed were discriminatory practices regarding handling of job assignments. MMS allowing Townsend to request that

Newsome be required to complete work assignments of Townsend *because of Townsend's inability to keep up*. See for instance August 10, 2004, email which stated in part:

Farrell: Have you had time to find the two dictation jobs? Are they lost in cyberspace?

Yvette: I put them straight in Vogel's queue yesterday and didn't contact her about it. The new ones popped up in the middle of her old dictation sitting in her queue. She didn't receive the notification that you would normally get when a new dictation job arrives. I took it straight out of LMT's queue and put it in Vogel's queue. I should have called Vogel and told her to look for them, but I didn't. That is my fault. Sorry about that.

Newsome to Yvette: Thanks. As you know LMT is back. When she was out, I helped MMF . . . The dictation job was for Mike's stuff – done by Nathan. Trying to figure out, why LMT could not do it. Now, if she were still out, I'm sure MMS would have requested that I do it all. I was given instructions by RTG before he left what he wants done in his absence. I had concerns that something would probably come up to keep me from completing RTG's requests. Don't get me wrong, I don't mind helping. But, I just know when LMT was out, MMF didn't think about getting me any help on his work. I actually thought he had sent these jobs to the Typing Pool.

Yvette to Newsome: I will never transfer something without contacting all parties involved. LMT sent me an e-mail cc: Mike and Lowry on it about transferring those jobs to your queue. I replied to everyone telling them that I had moved them to you. Of course, dumb me, I had the assumption that they had coordinated this through you. I will make sure that I always contact the secretary in the future. *This is the first time that something like this has happened and that the secretary didn't know about the new jobs in her queue.* I really think it is my fault that you didn't know about it. I should never assume that everyone has been notified. I should make sure of that personally myself. Sorry about that.

Newsome to Yvette; No problem. MMF came to me, and I kept looking for the jobs and told him they were not there. Of course, I looked in the job que and did not see the new jobs although I saw them there early that morning. When there at the top, that tells me that I have worked on them. . . I save them like that, for my record. I print info and then delete the oldest. I know you were wondering why all those jobs are there. I have a reason for saving them and deleting them later.

When LMT was out, MMF was not concerned about getting me any help in doing his work. I was working on RTG's requests and MMF's. She is now

back, so could not figure out why she couldn't do his work. The bottom line, LMT just didn't want to do it and MMF obliged her.

RTG sent me a 2 pg. email before he left telling me what he wants done in his absence. MMF seems to me to be trying to determine my work load and assuming because RTG is out, I have nothing to do.

at **Exhibit "48"** attached hereto and incorporated by reference as if set forth in full herein. Further supporting MMS' discrimination and retaliation leveled against Newsome because of her race and extending special favors Townsend (similarly situated **employee**) because of her race (white). Townsend was known to have a **HIGH degree of absences** and Newsome was repeatedly required to **perform Townsend's job duties in absences**. MMS' records may reflect that while Townsend, a white female and Legal Secretary, had a **HIGH DEGREE** of absences, it repeatedly compensated her with bonuses and/or pay increase(s). Then when Townsend returned, MMS/Allen/Farrell engaged in the furtherance of discriminatory and retaliatory practices to preclude and/or prevent Newsome from completing tasks assigned her that Newsome had to take the time to "memorialize" concerns of said conduct – for instance see the August 10, 2004, email between Newsome and MMS/Allen which stated in part:

Newsome: Guess I need clarification as to the priority of job request. RTG left instructions for me to work on his work. When LMT was out last week, as you know, I helped MMF with his work. I was able to do his dictation jobs as well as that given by Nathan. Now LMT is back, am I to continue doing work for MMF and put . . . RTG's filing and other job requests on the back burner. Is there a reason why LMT cannot do these jobs? They are related to MMF's cases. I am also using this time to continue to get my files set up and the cabinet the way I like it. However, if it is going to be determined that because RTG is out, that I have nothing to do or catch up on, how am I supposed to meet the requests left by RTG to do while he is out. It seems to me, that MMF is aware that RTG is out, so I have nothing to do or that filing is not important. What he fails to see, is that this is RTG's work and filing that I am working on. While he may not think that the filing is important, it appears from RTG's email, he wants this caught up when he returns.

I need some help and clarification on what it is I'm supposed to be working on – if so, just keep in mind that I will not be able to complete all that I am trying to do with RTG's filing and mine before he returns.

Allen: Thanks for helping out in Ladye Margaret's absence. She will be able to cover Mike's work now that she is back.

Yes, the filing is important and should be completed in a timely manner. And yes, also, there may be some work for Nathan as well. The length of time

that Bob is out should be ample time to complete the filing and assist in word processing or in other areas. . . .

Newsome: Will do. Just wanted to know. Realize when LMT was out, had to do work for RTG, MMF and Nathan. No assistance from the typing pool whatsoever. Now that she is back and it is MMF's work, just needed to know.

I am backlogged and have not been able to get the filing or file cabinet up to speed like I want to. Thought with RTG out, would be able to do so. However, LMT was out (with her absences [sic]) and of course this crashed that. Amply depending on who is viewing, however, not so based on what it is I am trying to get done and accomplished in the time that RTG is out.

See **Exhibit "48"** attached hereto and incorporated by reference as if set forth in full herein. Moreover, it is important to note that Gordon produced no such evidence to support that during Newsome's employment that her *Speed* affected his ability to get pleadings filed on time. Neither during Performance Review did Gordon produce anything to substantiate such a statement. **Gordon acknowledges his limited familiarity with computers.** (See **Exhibit "29"** at p. 6 attached hereto and incorporated by reference as if set forth in full herein), Gordon's **limited knowledge of Word Processing Skills, also renders him unable and/or hardly qualified to determine how long it actually takes one to complete a task.** Gordon compares Newsome to the "secretarial pool;" however, does not take in to consideration that that was basically all the pool does. **Furthermore, the pool's work was not constantly interrupted and/or disrupted due to strict and oppressive monitoring and/or interruptions by Gordon.** Gordon **was fully aware** that typing from the pool **requires a great deal of clean-up by Newsome to prepare for submittal** because the pool **was not familiar (as noted by Gordon) with the matters, Gordon's voice or his dictation style.** However, Newsome was familiar with Gordon's matters, his voice and dictation style. **[Statement by MMS/Gordon is pretextual/ retaliatory – done to shield/mask an illegal animus]**

v. Proofreading

Acceptable

Improvement needed

FACT (5): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Word Processing Skills – Proofreading," is "Acceptable" and "Improvement needed." **Gordon is fully aware that he had a tendency to change his mind constantly and had a compulsive need to check, recheck, recheck, . . . before he provided Newsome with final draft of document. Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004.** However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's request for Job Description. **Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.**

[Statement by MMS/Gordon is pretextual/ retaliatory – done to shield/mask an illegal animus]

i. Files

(1) Filing

Needs significant improvement

Until recently, two or three, or more, weeks of filing would ordinarily accumulate. Vogel then would have to devote large period of time to getting filing up to date.

This required transcription of dictation to be sent to secretarial pool.

Until at least recently, it has taken Vogel an excessive amount of time to do filing

On one occasion, at least, took her substantially an entire week to get accumulated filing done. Should have taken two, perhaps three, days

Some occasions has placed filing loose in folder rather than placing it in proper file with folder

Some instances of misfiling of documents

FACT (1): PRETEXT - Only **AFTER** the filing of Newsome's Complaints against MMS for unlawful employment practices, did Gordon begin spending a great deal of time before work hours, after work hours and weekends to work on his filing endeavors. Because it was MMS'/Gordon's intent to make it appear that Newsome was incompetent and could not keep up with the workload. Gordon **put in extra time beyond working hours to create voluminous filing that he held onto and then when ready presented to Newsome in a stack. AFTER** filing Complaints with federal agency(s), Newsome's overtime had been restricted and/or limited. Therefore, Newsome was left to work within the normal work hours as well as perform her everyday duties and or functions of the job. The other secretary (Townsend), who was white, was allowed to work overtime; nevertheless, unable to keep up with her workload. Because it was MMS'/Gordon's efforts to project Newsome in such a light, he/MMS created situations and failed to allow Newsome to prioritize her work to get the various tasks she had completed. The **compulsive** need to monitor, check, recheck, . . . etc. and **excessive** interruptions contributed heavily on what MMS/Gordon wanted to project Newsome's Performance Review. MMS/Gordon failed to produce any documentation during Performance Review to show that the Filing situation asserted precluded him/MMS

from meeting Court deadlines and/or prevented Newsome from completing tasks assigned.

RETALIATORY DISMISSALS: Retaliatory firings have been traditionally the ground for invoking the public policy exception to the common-law at-will employment doctrine. In these cases, *the retaliatory act has been held to violate the public interest if the employee has been discharged for performing an act that public policy encourages, or for refusing to engage in conduct that public policy condemns*. . . . The court held that the . . . *overtures, the seeming manipulation of job assignments, the capricious firing, and the apparent connivance of the personnel manager in this course of events all supported the jury's conclusion that the dismissal was maliciously motivated*. . . . In other decisions where an employee's recovery for bad faith wrongful discharge has been upheld, it was relatively clear that the retaliatory dismissal of the employee would constitute a violation of public policy. The public policy issue is rarely given separate treatment, however, where the discharge was independently or alternatively found to constitute a violation of the implied covenant of good faith and fair dealing.⁶⁰

- (2) Maintenance of files
Acceptable to needs significant improvement

Folders often remain out of file an excessive period of time upon use of folders being completed and returned for filing.

Needs to give more attention and take more initiative to maintain folders in files in an orderly manner

FACT (2): PRETEXT - MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Filing - Maintenance of files," was "Acceptable to needs significant improvement." *Gordon was fully aware that he had a tendency pull files and keep them for days sometimes weeks.* To track filing efforts, Newsome began noting when she had taken documents to file. If files and/or redropes were missing, Newsome would make a note and return documents to filing bin for a later date. See for instance **Exhibit "52"** attached hereto and incorporated by reference as if set forth in full herein. It appeared to Newsome, MMS/Gordon would wait and then stack several files at a time with knowledge that

⁶⁰ 48 Am. Jur. Proof of Facts 2d 224-225

Newsome's workspace was confined and/or constricted. It was thus apparent that MMS/Gordon was looking for a reaction from Newsome. However, MMS/Gordon was disappointed when Newsome would not embark on such endeavors. Since the filing of complaints by Newsome, MMS/Gordon had gone through great efforts to make it appear that Newsome's filing skills were so bad; however, such efforts had been fruitless. *Gordon would take case files into his office and keep them for days and/or weeks. Gordon doing so and then would use the weekend to pull numerous files just to STACK UP in Newsome's tray. Newsome believing that such practices by Gordon was further efforts by him and MMS in RETALIATION to create false and misleading information against Newsome – i.e. as he did in the November 15, 2004 Performance Evaluation he prepared on Newsome.* Newsome seeing through such unlawful/illegal acts created a system to monitor and log her efforts to complete her filing; however, files were missing due to Gordon holding them in his office *for days and/or weeks.* See **Exhibit "52"** – *Post It Notes* attached hereto and incorporated by reference as if set forth in full herein. *Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004.* However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. *Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.* [Statement by MMS/Gordon is **pretextual/retaliatory – done to shield/mask an illegal animus**]

j. Familiarity with/Knowledge of Matters
Acceptable to needs significant improvement

Has not acquired expected familiarity with or knowledge of matters – parties; lawyers; subject matter.

FACT: MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether "Familiarity with/Knowledge of Matters," is "Acceptable to needs significant improvement." *Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004.* However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. *Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered.* [Statement by MMS/Gordon is **pretextual/retaliatory – done to shield/mask an illegal animus**]

k. Productivity

(1) Needs significant improvement

FACT (1): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether “Productivity” “Needs significant improvement.” This was the *first time in an entire year* of employment with MMS, that Newsome was made aware of such information. Newsome requested, by email to Allen and cc’ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen refused to provide Newsome with a copy of Job Description. MMS/Allen simply ignored Newsome’s request for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis Gordon’s written evaluation was rendered. Moreover MMS/Gordon presented no evidence to support such a conclusion. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

a. Does not exhibit good, necessary work ethic

FACT (2): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether under “Productivity,” that she “Does not exhibit good, necessary work ethic.” This was the *first time in an entire year* of employment with MMS, that MMS/Gordon advised Newsome of such information. Newsome requested, by email to Allen and cc’ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome’s request for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS/Gordon’s written evaluation was rendered. Moreover MMS/Gordon presented no evidence to support such a conclusion. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

b. Does not demonstrate that places sufficient priority on work

FACT (3): MMS **never** provided Newsome with the Job Description for Legal Secretary. This is the *first time in an entire year* of employment with MMS that Newsome was made aware of such information.

Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. Moreover MMS/Gordon presented no evidence to support such a conclusion. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

- c. Normally works at a moderate, regulated pace.

FACT (4): This is the **first** time in an entire year of employment with MMS, that MMS/Gordon advised Newsome of such information. Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. [Statement by MMS/ Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

- d. Resists working at a more productive pace

FACT (5): MMS **never** provided Newsome with the Job Description for Legal Secretary. Thus, it would be difficult for Newsome to determine whether “Productivity” “Needs significant improvement.” This was the **first** time in an entire year of employment with MMS, that MMS/Gordon advised Newsome of such information. Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. Moreover MMS/Gordon presented no evidence to support such a conclusion. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

- e. Spends excessive amount of time on personal telephone calls

FACT (6): This is the *first* time in an entire year of employment with MMS, that MMS/Gordon had made Newsome aware of such information. Only **AFTER** the filing of complaints by Newsome with government agency(s), did Gordon make such a false assertion. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis Gordon's written evaluation was rendered. Moreover MMS/Gordon presented no evidence to support such a conclusion. Newsome was never counseled or written up by MMS/Gordon for excessive amount of time on personal telephone calls. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

- f. During substantial portion of evaluation period, spent excessive amount of time on personal use of computer

FACT (7): This is the *first* time in an entire year of employment with MMS, that MMS/Gordon has made Newsome aware of such information. Only **AFTER** the filing of Complaints by Newsome with agency(s), did MMS/Gordon make such a false assertion. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis Gordon's written evaluation was rendered. Moreover MMS/Gordon presented no evidence to support such a conclusion. Newsome was never counseled or written up by MMS/Gordon for spending an excessive amount of time on personal use of computer. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

- g. Illustrative of foregoing.

Filing accumulating for two –three weeks, perhaps more, as previously described

Taking excessive amount of time to do filing, as previously described

Pool secretaries completing transcription of dictation in substantial less time than Vogel, as previously described

FACT (8): The **adverse/retaliatory** Performance Review prepared by MMS/Gordon was *skillfully* prepared/drafted for the purposes of shielding/masking and illegal animus. The Performance review was

prepared/drafted with *defamatory* and *slandorous* intent. MMS/Gordon produced no documentation to support assertion that pool secretaries completed transcription of dictation in substantial less time than Newsome, nor did MMS/Gordon produce any documentation to support that the job duties of the pool secretaries were the same as Newsome's. Newsome requested, by email to Allen and cc'ing Gordon, a copy of the Job Description for Legal Secretary on November 30, 2004. However, MMS/Allen **refused** to provide Newsome with a copy of Job Description. MMS/Allen **simply ignored** Newsome's **request** for Job Description. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis MMS'/Gordon's written evaluation was rendered. **[Statement by MMS/Gordon is pretextual/ retaliatory – done to shield/mask an illegal animus]**

h. Deficiencies in productivity are both

i. Time it takes to complete a given job or task

FACT (1): MMS/Gordon produced no documentation to support that during Newsome's employment with MMS of her inability to complete given jobs or task in a productive manner. Moreover, MMS/Gordon failed to provide documentation or evidence to support that the time it takes Newsome to complete given job or task has precluded her and/or Gordon from meeting Court deadlines. **[Statement by MMS/Gordon is pretextual/ retaliatory – done to shield/mask an illegal animus]**

ii. Overall volume or quantity of work performed

FACT (2): MMS/Gordon produced no documentation or evidence to support that Gordon did a voluminous amount of work that Newsome could not keep up. In fact, Dictation Logs kept by Newsome will support otherwise (*i.e. to the contrary*). An example of such volume of dictation jobs from MMS/Gordon is shown in **Exhibit "44"** attached hereto and incorporated by reference as if set forth in full herein. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis Gordon's written evaluation was rendered. **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]**

i. Would be able to take on and perform more legal administrative tasks if more productive

As should be.

FACT: MMS/Gordon produced no documentation to support such a statement. Therefore, it was unjust for MMS to insist that Newsome sign a Performance Review wherein she having no documentation to measure and/or determine on what basis Gordon's written evaluation was rendered. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

I. Defiant, Subordinate, Hostile and/or Uncooperative Conduct

1. On an occasion in late February 2004, I had a motion and supporting memorandum I had to complete and get in the mail on a given day. On that day, we were working on it, and near the lunch hour, I told Vogel it would be necessary to shorten her lunch hour in order to be sure we got the motion and memorandum completed, copied and in the mail that day. I told her she could go out and pick-up something and bring it back to the office. She protested. She then went with Mike and Ladye M., saying she was going to get something and bring it back. *She did not return for 45 minutes or more, returning with Mike and Lady M., having eaten lunch.* Her explanation was that she thought they were going to pick something up and bring it back to the office.

FACT: PRETEXT - See Paragraphs 320 through 330 of this Complaint. MMS/Gordon produced no documentation to support such a statement. Said statement by MMS/Gordon is false. Said statement by MMS/Gordon is defamatory and slanderous. Statement by MMS/Gordon provided while MMS/Gordon aware that Gordon's behavior being hostile and discriminatory. Said statement was created only **AFTER** the filing of Newsome's complaints with MMS and federal government agency(s). [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

2. In the late Winter or early Spring of 2004, Vogel wore a baseball cap style hat to work on several Fridays. Then, on a Thursday, I told her that such a hat is not appropriate for the office – a law office – even on a casual Friday, and not to wear it to the office. She did not object or protest. However, the next day, a Friday, she wore that hat to the office. I instructed her to take it off, and she refused to do so.

The significance of this is not, as such, the wearing of a baseball style cap or hat to the office. The significance is that Vogel was given an instruction, she defied it, she then was given the same instruction, and she defied it again.

(She did not again wear the hat after this Friday)

FACT: PRETEXT - See Paragraphs 320 through 330 of this Complaint. MMS/Gordon produced no documentation to support Newsome was in violation of MMS policies. Said statement by MMS/Gordon is false. Gordon giving Newsome "**OUTSTANDING**" rating for Appearance and Personal Habits." Statement by MMS/Gordon is defamatory and slanderous. Said statement was created only **AFTER** the filing of Newsome's complaints with MMS and federal agencies. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

3. In May of 2004, upon the firm relocating to its new offices in Jackson, I instructed Vogel to set-up an In-Tray and an Out-Tray for me to direct or give work to and for her to return or give completed work to me. A procedure for my routing work to her and her routing completed work to me. A procedure or system that had been used at the former office location. She objected and refused to do so on multiple occasions until being told to do so in no uncertain terms.

FACT: See Exhibit "37" – 05/11/04 Email Regarding *Workspace* attached hereto and incorporated by reference. MMS/Gordon produced no documentation to support such a statement. Said statement by MMS/Gordon is false. Said statement was created only **AFTER** the filing of Newsome's complaints with MMS and federal government agency(s). Moreover, the incident that MMS/Gordon addressed here is an example of how he and MMS took *petty* things to create a hostile work environment to trigger a response from Newsome. Just as there were only three trays at prior office (when at Flowood location), the same remained at the Jackson office – only three trays. Newsome provide any additional tray(s) for Gordon and left set-up as at prior location and explained in said email. PRETEXT.

It is important to note that in regards to this matter, Newsome advised MMS/Gordon that the work process she had been using since her employment (at the time 7 months) was the one she was still using. In fact Newsome stated in May 11, 2004 email to Gordon and cc'ing Allen that:

. . . Per our conversation on this morning, wherein you told me to create an additional tray for my work, I advised you that my workstation at this location is extremely much smaller than at the Lakeland location. Moreover, I have very limited workspace. I shared with you my concerns of overcrowding (sic) this space with additional trays (and further hindering the work process - due to lack of space to work with) and that I have designed the station, in which am not through, to assist me in my completion of task and remind me of what I have out there. I am also waiting to find out what else is coming since from my understanding the workspace/station is not complete.

You will recall as I shared with you in our meeting on today, that at the Lakeland location, your Pick-up Tray was on top of the file cabinet (at entrance).

My In-box was at my desk.

The Filing Tray was on the credenza (sic).

...

As I shared with you, the work process I have established for myself has been effective and has aided me in the completion of my tasks. ***I have used this method for approximately 7 months.*** As I shared with you my concerns as to your sudden request "all of a sudden." When this process is one that I have created to aid me in my work and to keep before me what I have to do.

See **Exhibit "37."** However, this request by MMS/Gordon was *petty* and presented to Newsome for the purposes of discrimination, harassment and to create a hostile work environment. As with the previous location, accommodation was the same – in tray, pick-up tray and filing bin. *Even until Newsome's termination, three trays were used for these purposes – i.e. remained as at the previous address.* However, MMS/Gordon in the 11/15/04 Performance Review stated, "*A procedure or system that had been used at the former office location.*" However, from email attached hereto at **Exhibit "37,"** MMS/Gordon was merely looking to create an altercation with Newsome and simply wanted to subject Newsome to additional harassment and a hostile working environment. The statement by MMS/Gordon lacked any evidence to support it. The email of May 11, 2004, adequately describes how Gordon and MMS took *petty* things to discriminate, harass, and subject Newsome to a hostile work environment. **[Statement by MMS/Gordon is pretextual/ retaliatory – done to shield/mask an illegal animus]**

4. In early March of 2004, following the occasion referenced in Item 1, ~~Vogel~~ and following an exchange of e-mails, Vogel placed on my calendar on Outlook reminders of her morning and afternoon breaks. She placed these reminders on every week day for an indefinite or infinite period of time into the future. Thus, my calendar was taken-up with two daily reminders of her breaks, morning and afternoon. I did not request or authorize her to put these reminders on my calendar. (I instructed her to remove them, and she did so.)

FACT: PRETEXT See Paragraphs 320 - 330 of this Complaint. Gordon produced no documentation to support such a statement. Said statement by MMS/Gordon is false. Said statement was created only **AFTER** the filing of Newsome's complaints with MMS and federal government agency(s). Moreover, it is important to note, that Newsome did not place these reminders on Gordon's calendar. Gordon was sent information *as an invitee*. He could have **rejected** and/or **declined**. Newsome did not personally go in and place the

reminders on his calendar. Furthermore, as Newsome's supervisor, the reminders were to notify Gordon when his secretary, Newsome, had scheduled her breaks. In doing so, Newsome violated none of MMS' policies. **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/ mask an illegal animus]**

5. When I give have given Vogel an assignment, for example, a letter or pleading, and have told her that it has to be completed by a certain time, she often responds, "I'll try," "I'll do my best," "if I can," or words to that effect, when there is more than sufficient time to do it. She will say this in such a manner as to indicate that she will do so if suitable to her.

FACT: Another example of MMS'/Gordon's pettiness and abuse of supervisory powers. Newsome found that when breaks – i.e. lunch breaks, etc. - were taken, that if she advised Gordon of something, and it was not completed (despite her good faith efforts and constant interruptions by Gordon) Gordon **would become very hostile**. *When providing Gordon with a time, he would look at his watch to see how long that would be, then he would proceed to constantly interrupt and provide additional tasks in front of previous tasks given to Newsome for purposes of OBSTRUCTING completion of tasks assigned. MMS/Gordon purposely created situations so that he/MMS could gather something to cushion such frivolous Performance Review as that prepared on November 15, 2004. Rather than subject herself to additional unlawful employment practices by MMS/Gordon, Newsome provided Gordon with a reasonable response considering MMS'/his past unlawful employment behavior and/or conduct. MMS/Gordon at times even insisted on controlling and/or correcting Newsome's responses because it did not suit MMS/him. **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]***

6. On occasions I will ask Vogel if we have, or where are located, certain items or supplies in the off office. She will tell me she doesn't know or where she thinks the items is located, but she will not undertake, or offer to undertake, to go and find or get the item and bring it to me. Likewise, on occasions, I will ask if and how a particular function can be performed on the computer, especially with e-mail. She will explain, briefly, a procedure to do it, but she will not offer to do it or show me how to do it, even though she knows I have limited familiarity with computers.

In contrast, there have been times when I have asked Ladye M. about whether we have a particular item or supply in the office and without my further asking, she will get up and go get it for me.

As such, I am not comparing Vogel and Lady M. Rather, the point is that what Lady M. did, as distinct from what Vogel did, is what a cooperative, good legal secretary does so that the lawyer can continue to devote his time and attention to legal matters.

FACT: Said statement was created only **AFTER** the filing of Newsome's complaints with MMS and federal government agency(s). Another *petty* and *frivolous* statement by MMS/Gordon. The monitoring logs kept by Newsome of Gordon's/MMS' unlawful employment practices wherein MMS/he subjected Newsome to *strict* and *oppressive* monitoring that took up a great deal of MMS/Gordon's time according to Performance Review – See **Exhibit "29"** at *Supervision*. During November 30, 2004 Performance Review, MMS/Gordon acknowledged that he made trips to the File Room. In order to get to the files, Gordon had to pass by the supply cabinet and/or drawers. The amount of time MMS/Gordon attributed to the *STALKING*, *monitoring* and *strict/oppressive* supervision of Newsome would have been better spent attending to the needs of MMS's clients. Nevertheless, according to Gordon's/MMS' own admission, a **"high degree"** of MMS'/his time was given to **instruction**, *supervision* and *monitoring* of Newsome. Therefore, a reasonable person/mind may conclude that the time MMS/Gordon spent discriminating and harassing Newsome would have been better spent attending to legal matters and/or getting the supplies he needed when he was in the File Room. Instead, MMS/Gordon spent an **excessive amount of time** *monitoring* and *disrupting* Newsome's work for *petty* things. All in efforts of trying to find something MMS/he believed was *safe* and *legal* to justify her termination since all such efforts by MMS/Gordon to force Newsome into a **physical altercation** and to force her out of the workplace had failed. *MMS/Gordon comparing Newsome with a white employee (Townsend) who had a high degree of absences. Moreover, to include such petty information in Newsome's Performance Review further sustain the discriminatory and prejudicial treatment leveled against Newsome.* A reasonable person/mind may also conclude that Gordon (male) was **abusing** *supervisory powers* and discriminating based on race and sex – i.e. taking his sex and position to abuse his authority in a task he very well could have performed himself because he used so much time monitoring and going in and out of the file room by the supply(s) he requested; nevertheless, *looking to women to provide a service he could have handled but thought was beneath him to perform.* Gordon repeatedly used his sex and position as a means of power, threats, coercion, intimidation and abuse. [Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]

m. Multiple Concurrent Tasks

Has demonstrated greater than expected difficulty prioritizing, managing and completing multiple concurrent tasks.

FACT(1): This was the **first time in an entire year** Newsome had been made aware of such. The excessive unlawful monitoring by MMS/Gordon of Newsome's activities consisted of constant interruptions, harassment, etc. During Newsome's employment MMS/Gordon did not allow her to perform her duties and/or prioritize

her work – MMS/he was constantly there interfering and interrupting the work process. See Exhibit “12” as well as Exhibit “7” at pp. 70 – 72 as an example of MMS’/Gordon’s actions. Said unlawful actions by MMS/Gordon being *unrelenting* and in violation of MMS policies. Said statement was created only **AFTER** the filing of Newsome’s complaints with MMS and federal government agency(s). **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]**

Require greater degree of instruction and supervision

FACT(2): This was the *first time in an entire year* Newsome had been made aware of such. Said statement was created only **AFTER** the filing of Newsome’s complaints with MMS and federal government agency(s). Statement created by MMS/Gordon in *efforts to shield/mask illegal animus* of discriminatory practices by MMS/him leveled against Newsome for her filing of complaints with MMS and federal government agency(s).

Sometimes requests instructions when should not have to do so

FACT(3): This was the *first time in an entire year* Newsome had been made aware of such. Said statement was created only **AFTER** the filing of Newsome’s complaints with MMS and federal agency(s). The *compulsive* and/or *obsessive* need for MMS/Gordon to be in control of everything did not allow Newsome time to perform her tasks *without constant interruptions and distractions* by MMS/Gordon. Gordon’s **compulsive** need to check, recheck, recheck. . . . required that Newsome get clarification because of MMS’/his actions. **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]**

n. Supervision

(1) Requires high degree of instruction, supervision and monitoring

FACT (1): This statement was created only **AFTER** the filing of Complaints with MMS and federal government agency(s). Statement contradicts previous email correspondence received by Newsome from MMS/Allen. MMS/Gordon produced no documentation nor presented any valid reasons to support said statement during November 30, 2004 Performance Review. The November 30, 2004 Performance Review was the *first time* Newsome was ever aware that she required such a high degree of instruction, supervision and monitoring by MMS/Gordon. **[Statement by MMS/Gordon is pretextual/retaliatory – done to shield/mask an illegal animus]**

(2) Often resists and shows resentment toward instruction and supervision

FACT (2): MMS/Gordon produced no evidence to support such a statement. Statement by MMS/Gordon was provided only **AFTER** filing of Newsome's complaints with MMS and federal government agency(s). This is the **first time – in an entire year** - Newsome was made aware of such. MMS'/Gordon's statement was evidence of how MMS/he attempted to shield/mask illegal practices by asserting such unlawful behavior was instructions and supervision. Moreover, how would a reasonable person/mind given all the facts in this case and subjected to the unlawful employment practices as that rendered Newsome by MMS respond? Especially when there is evidence to support that Newsome **repeatedly** reported the unlawful employment practices; **yet, MMS did nothing to deter and/or correct such unlawful practices.** If indeed there was resentment by Newsome, it was resentment of unlawful employment practices – which MMS did nothing to correct. The statement by MMS/Gordon further provide evidence of its/his knowledge that Newsome **CONTESTED** and **OPPOSED** the unlawful employment practices.

450. During the November 30, 2004 Performance Review with MMS/Allen and Gordon, Newsome advised of concerns that the Performance Review was an adverse one due to the fact she has filed complaints against MMS. Gordon advised Newsome that he had no knowledge of any such complaint. However, Newsome advised Gordon that he did. Moreover, record evidence as early as about January 28, 2004, will support Newsome advising MMS/Allen that she would be discussing matter with Gordon. See **Exhibit "25"** attached hereto and incorporated by reference.

451. A reasonable person/mind (knowing the facts) upon review of the November 15, 2004 Performance Review prepared by Gordon on behalf of MMS, may conclude and wonder "why MMS allowed Newsome to remain employed **for an entire year if she was so incompetent**" – based on Performance Review. There was no evidence provided to support the Performance Review, nor was Newsome provided with any such evidence during the Evaluation Review period to warrant her approval by signing the Performance Review. Newsome verbally notified both MMS/Allen (Chief Operations Officer/Human Resources Representative) and Gordon of the false and adverse Performance Review.

452. During the Performance Review of Newsome, she advised MMS/Allen/Gordon of commendable evaluations and reviews from other employers, thus she found the Performance Review to be retaliatory because of the complaints brought against MMS within this evaluation period. An example of such commendations such as:

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary.

Exhibit "10" – *Letter of Reference* attached hereto and incorporated by reference as if set forth in full herein. [Now compare the information in this Exhibit to the November 15, 2004 Performance Review prepared by Gordon – an attorney who in less than a year's time had gone through approximately four (4) Legal Secretaries prior to Newsome's employment. Not only that, the **credibility of Gordon** - an attorney who has been shown to provide false

and/or misleading information in Court documents – support what weight (if any) can be given to his statements and raises questions if statements provided by him can be trusted]:

Pursuant to Rule 608 or Federal Rules of Evidence: The *credibility of a witness* may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (a) the evidence may refer only to character for truthfulness or untruthfulness, and (b) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

453. Newsome has been commended as follows:

... she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.

She is an asset and will be solely missed . . .

Exhibit “10” – *Letter of Reference* attached hereto and incorporated by reference as if set forth in full herein. [Now compare the information in this Exhibit to the November 15, 2004 Performance Review prepared by Gordon – an attorney who in less than a year’s time had gone through approximately four (4) Legal Secretaries prior to Newsome’s employment. Not only that, the credibility of Gordon - an attorney who has been shown to provide false and/or misleading information in Court documents – support what weight (if any) can be given to his statements and raises questions if statements provided by him can be trusted].

454. Prior to Newsome’s coming to MMS, Gordon had at least four legal secretaries to provide him with legal support. Thus, Newsome was Gordon’s *fifth* legal secretary **in a one-year period**. Therefore, a reasonable person/mind given and knowing the facts may conclude that the problem was not Newsome but that of MMS/Gordon. Newsome believes all of the secretaries before her were also female. Evidence to support that MMS had sufficient evidence/information to sustain its knowledge that Gordon was clearly a problem/troubled employee; nevertheless, MMS kept him employed during Newsome’s employment. MMS failing to investigate the complaints Newsome submitted regarding Gordon and MMS employment violations.

455. Newsome believes that the discriminatory, retaliatory and hostile work environment created by MMS was based on both her race and sex. The evidence in the record of MMS and the federal agency(s) will support that Gordon who is a white male was treated more favorably than Newsome an African-American/Black female. Moreover, MMS failed to investigate the allegations of Newsome’s complaints addressing the discrimination, harassment and hostile work environment she complained of being subjected to for the filing or intentions of filing her complaints with the federal agency(s). Instead, **the day prior to MMS’ responses being due to OSHA**, MMS provided Newsome with an email entitled,

“Clarifying Work Related Issues.” See Exhibit “33” attached hereto, while it failed to provide Gordon with such memorandums and/or emails.

456. MMS as early as March 2004 was advised by Newsome that she felt that Gordon’s treatment of her was hostile. Moreover, that she was being treated differently than other employees. The other employees being white. However, MMS elected not to do anything. Neither did MMS provide Gordon with such an *elaborate* Memorandum as it did Newsome prior to its June 7, 2004, email to Newsome.

457. Newsome’s typing speed is between 60 – 70 words per minute. Newsome is proficient on the software applications and scores high (95% - 100%) on test provided by agencies (i.e., Microsoft Word, Microsoft Access, Microsoft Excel, WordPerfect, etc.). Moreover, Newsome’s knowledge of software applications is exhibited and/or exemplified in the correspondence attached hereto at Exhibits “10” and “11” respectively and incorporated by reference as if set forth in full herein.

458. Defendant MMS retaliated against Newsome because she engaged and/or participated in protected activity(s). This Complaint supports a *prima facie* of retaliation by MMS leveled against Newsome because of her participation in protected activity(s). In order to establish a *prima facie* case of **racial and/or sexual harassment**, Newsome must show: (a) she belongs to a protected group; (b) she was subjected to unwelcomed harassment; and (c) the harassment complained of was based on race and/or sex; and (d) the harassment complained of affected a term, condition or privilege of employment; employee is not required to show that the employer knew or should have known of the harassment in question and failed to take prompt remedial action. *Felton v. Polles*, 315 F.3d 470 (5th Cir. 2002). The following supports *Prima Facie Case* for **Racial and/or Sexual Harassment**:

- (i) Newsome is an African-American/Black and therefore, belongs to a protected group;
- (ii) Newsome was subjected to unwelcomed harassment – i.e. harassment that she repeatedly contested and opposed both verbally and in writing;
- (iii) The harassment that Newsome was unlawfully/illegally subjected to was based on her race (African-American/Black) and sex (female) – i.e. Newsome was repeatedly subjected to racial discriminatory and harassing practices by a predominate majority of white males; and
- (iv) The harassment and discrimination Newsome repeatedly contested, opposed and complained about during her employment at MMS, affected a term, condition and privilege of employment. Newsome submitting a complaint on December 1, 2004 entitled, HARASSMENT INCIDENT – 12/01/04” and on December 3, 2004, MMS/Sams moved swiftly to see that Newsome’s employment with MMS was terminated in *retaliation* to her refusal to execute the November 15, 2004 Performance Review and reporting of unlawful employment practices.

459. In order to establish a *prima facie* case of **retaliation**, Newsome must show: (a) she is a member of protected group; (b) that an adverse employment by the employer occurred because of the filing of charge; and (c) there was a *casual* connection between the

participation in the protected activity and the adverse employment decision. The following supports a *Prima Facie Case of Retaliation*:

- (i) Newsome is an African-American/Black and therefore, belongs to a protected group;
- (ii) MMS and Defendant(s) subjected Newsome to discrimination, retaliation and a hostile work environment as a direct and result of her engagement/participation in protected activity(s) – i.e. *for making charges, testifying, assisting, or participating in enforcement proceedings* (see for instance Paragraph 341 and **Exhibit “13”** of this instant Complaint. MMS and Defendant(s) having knowledge of Newsome having filed charge(s);
- (iii) There is a casual connection between Newsome’s participation in the protected activity(s) and the adverse decision of MMS. On December 3, 2004, MMS/Sams terminated Newsome’s employment.

460. In order to establish a *prima facie* case of **pretext**, Newsome must show: **(a)** past prejudice towards Newsome and members of her race and/or sex; **(b)** the articulated reasons given by MMS did not apply when members of other races/sex/gender were involved – this being compelling evidence, to believe, that reasons were indeed pretextually applied to cover-up/mask an illegal animus; **(c)** Newsome has shown that MMS’ reasons are unworthy of belief; and **(d)** Newsome has shown additional evidence in documents of improper motivation by MMS. The following supports a *Prima Facie Case of Pretext*:

- (i) The record evidence supports MMS’ prejudicial treatment towards Newsome who is African-American – i.e. Newsome being the only African-American – as well as prejudicial treatment because of Newsome’s sex (female). MMS repeatedly allowed Gordon to use his sex (male) and position (attorney/supervisor) to harass female Legal Secretaries – i.e. *Newsome being Gordon’s fifth secretary in less a year*;
- (ii) The record evidence supports that MMS any articulated reasons that MMS may present for the discrimination, harassment, retaliation and hostile work environment leveled against Newsome, did not apply when members of the white race and male were involved;
- (iii) The record evidence will support that Defendant MMs lacks credibility and will produce witnesses/employees to perjure, falsify and/or provide misleading testimony/statements during a federal investigation; moreover, will provide pleadings to the court(s) that are false; therefore, Defendant MMS any reasons provided by MMS would be unworthy of belief; and
- (iv) The record evidence will sustain the improper motivation by MMS.

461. In order to establish a *prima facie* case of **hostile work environment**, Newsome must show: **(1)** she is a member of protected group; **(2)** she was subjected to unwelcomed harassment by supervisors and co-workers; **(3)** the harassment mentioned is based on race. Had Newsome been white, she would not have been subjected to overtures; **(4)** the harassment complained of affected a “term condition or privilege of employment;” and **(5)**

Newsome reported to MMS.⁶¹ The following supports a *Prima Facie Case* of **Hostile Work Environment**:

- (i) Newsome is an African-American/Black female and therefore, belongs to a protected group;
- (ii) Newsome was subjected to unwelcomed harassment – i.e. harassment that she repeatedly contested and opposed both verbally and in writing – by supervisor and co-worker(s);
- (iii) The harassment Defendant(s) subjected Newsome to was based on race. White employees similarly situated were not subjected to such harassment. Newsome verbally and in writing expressed concerns that white employees were not subjected to the harassment she was subjected to and endured during her employment. Had Newsome been white, Defendant(s) would not have subjected her to overtures.
- (iv) The harassment, discrimination, retaliation and hostile work environment that Newsome complained of both verbally and in writing affected a term of condition of employment which resulted in MMS'/Sams' termination of her employment, Newsome being deprived and/or denied equal employment opportunities, equal protection of the laws, equal privileges and immunities of the laws and due process of law; and
- (v) Newsome repeatedly contested and opposed MMS' unlawful employment practices both verbally and in writing – i.e. submittal of complaints. Newsome reporting unlawful employment practices to MMS – to no avail. MMS condoned, accepted and encouraged the hostile work environment leveled against Newsome by white employees. In the MMS/Gordon Performance Review given Newsome, Newsome's opposition and contesting of unlawful employment practices is noted.

462. One may ask, if Mitchell, McNutt & Sams, P.A. was treating Newsome so bad, why did she stay. Section 11(c) of the OSH Act clearly prohibits discrimination. Too many people have died for the rights MMS was trying to deprive Newsome of. Newsome was entitled to be employed in a work environment free of discrimination. Newsome was entitled to equal employment opportunity under the law. The termination by MMS was unlawful, was prohibited by law and violated public policy.

463. The Honorable William H. Barbour, Jr. (“Judge Barbour”), United States District Judge – Southern District of Mississippi in *Slay v. Glickman*, 137 F.Supp.2d 743 found:

To prevail on her claim of quid pro quo harassment. . . , employee must show that she has suffered a *tangible* employment action at the hands of her supervisor.

“Tangible employment action,” as required for employee’s claim of quid pro quo harassment . . . , is one that constitutes a significant change in employment status, such as . . . firing, . . . or a decision causing a significant change in benefits; generally, only a

⁶¹ *Prima facie case for hostile work environment was also set forth in Newsome May 25, 2004 complaint Newsome filed with OSHA along with supporting Exhibits.*

supervisor, or other person acting with the authority of the company, can cause this sort of injury. Citing *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998).

Id. at 748. Judge Barbour went on to find that:

To determine whether a . . . claimant's working environment was hostile or abusive, the district court must consider all circumstances of the case, including the frequency of the discriminatory conduct, its severity, whether it was physically threatening or humiliating or a mere offensive utterance, and whether it unreasonably interfered with her work performance.

When determining whether supervisor's acts created a hostile or abusive environment, for purposes of . . . claim for hostile work environment, trial court must find that a reasonable person would find that the complained of conduct would create a work environment that was hostile or abusive.

Id. at 750.

464. During Newsome's employment with MMS, she suffered tangible employment actions of harassment at the will of Defendant(s) and/or those with supervisory/managerial authority (MMS/Sams/Allen/Gordon/Farrell). The tangible employment action of harassment that Newsome suffered resulted in a change of employment status – i.e. wherein she was terminated, suffered from a significant change in benefits and deprived equal employment opportunities, equal protection of the laws, equal privileges and immunities of the laws and due process of laws.

465. The working environment of MMS was discriminatory, hostile and abusive. Furthermore, the *hostile behavior of Gordon leveled against Newsome repeatedly left her shaken, threatened, humiliated, intimidated and fearful of her life, that it would take a great deal of time for Newsome to regroup just for her to be able to perform her typing duties without shaking so bad. MMS' work environment was so hostile, brutal and abusive that Newsome felt that her life was threatened and/or feared for her life and wellbeing. MMS' work environment was so hostile, brutal, abusive and severe that MMS resorted to subjecting Newsome to strict and oppressive supervision and monitoring that was physically threatening, intimidating and offensive that it interfered with Newsome's ability to perform her job. MMS' unlawful/illegal employment practices were so severe that Newsome kept log of occurrences and filed several complaints with MMS. Newsome believes that a reasonable person/mind would conclude that the discrimination, retaliation and hostile work environment complained of, would create a work environment that was hostile and/or abusive.*

466. The Honorable L. T. Senter, Jr.(?) – United States District Judge in the Northern District Court of Mississippi found in *Dunn v. Mendoza*, 980 F.Supp. 197 (N.D. Miss. 1997) that:

To meet prompt remedial action obligation . . . , had to take action which was "reasonably calculated to end the harassment."

Whether employer's response to discriminatory conduct is sufficient will necessarily depend on particular facts of the case – severity and persistence of harassment, and effectiveness of any initial remedial steps.

Id. at 200. The record evidence will support that MMS failed to take PROMPT remedial action which was reasonably calculated by Newsome based upon its policies addressed in Employee Handbook. Employee Handbook that MMS required that Acknowledgment Form be executed by employee(s). The SEVERITY and PERSISTENCY of the discrimination, retaliation and hostile work environment of MMS has been established in the facts, evidence and legal conclusions presented in this instant Complaint. Furthermore, MMS took NO remedial steps to deter or prevent the unlawful/illegal employment practices reported by Newsome.

467. MMS failed to take prompt remedial action to deter and/or prevent the unlawful employment practices, discrimination and hostile work environment reported by Newsome. MMS failed to take action which was reasonably expected and/or calculated to end the harassment. MMS' record will support that while Newsome timely, properly and adequately repeatedly provided it with complaints of unlawful employment practices, it did nothing to deter and/or discourage the unlawful employment practices reported. Moreover, evidence will support that MMS in response to Newsome's complaints subjected her repeatedly to discrimination, retaliation and a hostile work environment.

468. MMS' discrimination, retaliation, harassment and hostile treatment of Newsome were so severe and persistent that Newsome kept a log to document the frequency and severity. Moreover, MMS records will support that it did nothing to deter or prevent the unlawful employment practices brought to its attention by Newsome.

469. In another federal case *Scribner v. Waffle House, Inc.*, 14 F.Supp. 2d 873, it was found that:

An employer is liable. . . for the discriminatory acts of an employee if it knew or should have known of the employee's offensive conduct and failed to take steps to repudiate that conduct and eliminate the hostile environment. *Id.* at 883 citing *Nash v. Electrospace Sys., Inc.*, 9 F.3d 401, 404 (5th Cir. 1993)(citing *Jones v. Flagship*, 793 F.2d at 720)(As this Court noted in *Waltman v. International Paper Co.*, the type and extent of notice necessary to impose liability on an employer . . . are the subject of some uncertainty. 875 F.2d 468, 478 (5th Cir. 1989)(concluding that **three separate complaints to higher management constituted sufficient notice.**)).

Although it felt this was "undoubtedly a close question" in *Farpella-Crosby*, the Fifth Circuit held that plaintiff had met her burden of proving that Horizon Health Care "knew or should have known" that she was being subjected to a hostile work environment – primarily with evidence of Farpella-Crosby's *complaints to two of the company's "human resource directors."*

To prove severe emotional distress, a plaintiff must show that she suffered "more than mere worry, anxiety, vexation, embarrassment, or anger. In making this determination, courts

should consider “[t]he intensity and duration of the distress.” *Scribner* at 932, 933 [*Behringer v. Behringer*, 884 S.W.2d 839, 844]

Also, “the extreme and outrageous character of the defendant’s conduct is in itself important evidence that the distress existed.” A plaintiff need not prove, however, that her emotional distress had physical manifestations. *Villasenor v. Villasenor*, 911 S.W. 2d 411, 417.

Her torment continued almost unbroken during her entire Waffle House employment. . . The harassment of Scribner for this period was abusive and unrelenting. Having observed her demeanor in testifying about the extreme humiliation, disgust, and despair she endured, the court is convinced that she suffered severe emotional distress. *Scribner* at 933.

470. The evidence supports Defendant(s)’ efforts to distort the facts in order to obtain object of goal – mislead and/or obstruct justice. Moreover, at what great lengths – *slandering* and *defamation* of Newsome’s character – Defendant(s) would go to prevent the investigating government agency(s) from finding out about unethical/unlawful practices of MMS. Not only is such *slandering* and *defamation* of Newsome’s character exhibited in the November 15, 2004 Performance Review, but also evidenced in emails between Newsome and MMS’ (i.e. and its employees) records of the Mississippi Department of Employment Security and other government agency(s). MMS and/or Defendant(s) providing responses such as the following:

Ms. Newsome was discharged with cause *for destroying the working relationship with her supervisor, Bob Gordon, by making a false accusation of misconduct on his part*. After investigating the allegation that Ms. Newsome made we determined that her allegation was false and she was discharged. In response to her annual evaluation, Ms. Newsome claimed that Bob Gordon was excessively monitoring her work. As an aside, she mentioned that if he spent less time monitoring her work, he would have more time to do his own work on a timely basis and would not have to give false reasons to the court for needing extensions of time. She made the accusation verbally to Bob Gordon and in writing to Jim Allen. While she may have made the comment as an aside or to deflect from her own performance, it was nevertheless investigated and found to be meritless and false. Such a serious charge against her supervising attorney destroyed any working relationship.

See **Exhibit “53”** – *MMS Statement Provided MDES* attached hereto and incorporated by reference as if set forth in full herein. Thus, supporting a **“PATTERN-OF-PRACTICE”** orchestrated by MMS to obstruct the administration of justice and just how far Defendant MMS will go to deprive Newsome equal protection of the laws, equal privileges and immunities of the laws and due process of laws. MMS produced not documentation yielded from their *alleged* investigation to support that allegations reported by Newsome was false. However, Newsome has produced in this instant Complaint documentation to support that her reporting of unlawful employment practices and unethical practices resulted in her termination; moreover, that MMS did not conduct any investigation(s) into the complaints filed by her – i.e. admission provided in testimony provided. See Paragraph 598 and **Exhibit “7”** at 56 – 59 attached hereto and incorporated by reference as if set forth in full herein.

471. MMS in its response to the Mississippi Department of Employment Security asserted that the filing of Newsome's December 1, 2004, was to "*deflect attention from her own performance.*" MMS during the November 30, 2004 Performance Review with Newsome, produced no documentation to support its Performance Review. However, the record evidence provided in this instant Complaint and in the record of federal agencies, will support that **Newsome followed MMS' policies in reporting the violations of MMS/Gordon – as she did on all other complaints brought to MMS' attention prior to filing with agency(s).** Moreover, the evidence in this instant Complaint supports that MMS'/Gordon's conduct not only violated the federal rules of the Court(s), but MMS' own policies **104 Business Ethics and Conduct, 522 Workplace Violence Prevention, 701 Employee Conduct and Work Rules, 703 Sexual and Other Unlawful Harassment and 722 Workplace Etiquette** are a few. See **Exhibit "3"** attached hereto of this instant Complaint.

Moreover, MMS unlawful termination of Newsome's employment violates its own policies **103 Equal Employment Opportunity, 522 Workplace Violence Prevention, 104 Business Ethics and Conduct, 703 Sexual and Other Unlawful Harassment, and 718 Problem Resolution** are a few. In fact, MMS acknowledged in its policy(s):

Part of this commitment is *encouraging an open and frank atmosphere* in which any problem, complaint, suggestion, or question receives a timely response from Mitchell McNutt supervisors and management. . . . If employees disagree with established rules of conduct, policies, or practices, they can express their concern through the problem resolution procedure. ***No employee will be penalized, formally or informally, for voicing a complaint*** with Mitchell McNutt in a reasonable, business-like manner, or for using the problem resolution procedure.

See **Exhibit "3"** - 718 **Problem Resolution** of *Mitchell McNutt & Sams PA Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, Newsome was penalized for engaging in protected activities that affect public policy. The record evidence, facts, and legal conclusions will support that Newsome complied with MMS policies and reporting MMS/Gordon's unlawful employment practices. To no avail. See for instance, see emails addressing Gordon's conduct that was **hostile, brutal, intolerable, unsafe, unhealthy and life-threatening conditions that an ordinary/reasonable person would consider discriminatory and hostile.** See for instance **Exhibits "5, 28, 32," and "45"** attached hereto and incorporated by reference as if set forth in full herein. Although Newsome repeatedly reported the employment violations of Gordon, MMS **repeatedly** placed Newsome **back in dangerous and life-threatening situations.**

472. Because of Defendant(s)' unlawful employment practices and MMS' unlawful termination of Newsome's employment, she has suffered slandering and defamation of her character, personal humiliation, embarrassment, mental anguish, hardship and suffering, etc. Moreover, because of the willful, malicious and wanton acts of Defendant(s) in providing federal government with false and malicious statements for purposes of obstructing justice, information provided by MMS affected the outcome of federal investigations – i.e. ultimately resulting in false and malicious information being posted on the INTERNET. Thus, warranting (as a matter of law) a rebuttal by Newsome in exposing MMS' PATTERN-OF-

UNLAWFUL PRACTICES and exposing its unlawful employment practices which is of public policy – i.e. and of public interest socially and economically.

473. MMS'/Sams unlawful employment practices and unlawful termination of Newsome's employment was done with *malice*. Said actions by MMS being: (a) willful, deliberated, intentional, without justification or excuse, to commit a wrongful act; (b) in negligence and reckless disregard of the law or of Newsome's legal rights; and (c) ill will; *wickedness of heart*.⁶²

474. Defendant(s) repeatedly engaged in prohibited conduct while knowing or suspecting that said conduct was unlawful; thus, this is relevant support for an argument that strong medicine is required to cure the MMS' and Defendant(s)' disrespect for the law. *Haslip*, 499 U.S., at 5, 111 S.Ct., at 1036, TXO, 509 U.S., at 453, 113 S.Ct. at 2717-2718 (116 S.Ct. at 1601).

475. As a direct, foreseeable, and proximate result of Defendant(s)' discriminatory acts, Newsome has suffered and continues to suffer substantial losses in earnings and job benefits, and has suffered and continues to suffer humiliation, embarrassment, mental and emotional distress, and discomfort, all to Newsome's damage in an amount to be determined by a jury to deter and sufficiently punish named Defendants for their willful and malicious conduct as well as serve as an example to prevent a petition of such conduct in the future.

476. Under the provisions of the Civil Rights Act of 1964 and the Occupational Safety and Health Act, there is due and owing a sum of money equal to the salary and benefits Newsome would have received had there not been a discriminatory policy and employment terminated for refusal to work in unsafe, hazardous, dangerous, threatening and unhealthy work conditions.

477. Further, Newsome has been deprived of income in the form of wages, overtime pay and or prospective retirement benefits, Social Security, Unemployment Compensation benefits, and other benefits due to her as an employee solely because of her race or sex, in sum of money to be proven at trial.

478. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and depriving her rights secured under OSHA and/or statutes laws governing said matters. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

479. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued –

⁶² During Newsome's November 30, 2004 Review, she offered to Gordon and Allen that they take a mirror and look within themselves/their hearts.

i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See Exhibit "14" attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . ., blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

480. As a direct and proximate result of Defendant(s)' systematic violations under OSHA and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . .It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance

that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.

481. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to subject her to unsafe, hazardous, dangerous, threatening and unhealthy work conditions in violation of OSHA and/or statutes laws governing said matters as forth in this Complaint.

482. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in

such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

483. Newsome also seek liquidated damages on the grounds set forth herein.

WHEREFORE, Newsome, on behalf of herself and other employees of MMS similarly situated, request:

- (i) Newsome request judgment enjoining and restraining MMS, its officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act on its behalf, from violating the provisions of Occupational Safety and Health Act, 29 USCA §§ 641 et. Seq., both permanently and during the pendency of this action.
- (ii) Judgment against MMS in the amounts respectively due Newsome and other employees of MMS similarly situated for unsafe, hazardous, dangerous, threatening and unhealthy work conditions, and liquidated damages (or interest, as the Court may determine), according to proof.
- (iii) Grant a permanent injunction enjoining Defendant(s), its/his/her officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in unsafe, hazardous, dangerous, threatening and unhealthy work conditions based on race, sex and engagement in protected activity(s) and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (iv) Order MMS to institute and carry out policies, practices and programs which effectively prohibit submitting employees to unsafe, hazardous, dangerous, threatening and unhealthy work conditions.
- (v) Order MMS to make Newsome whole by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unsafe, hazardous, dangerous, threatening and unhealthy work conditions.
- (vi) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unsafe, hazardous, dangerous, threatening and unhealthy work conditions.
- (vii) Order MMS to make Newsome whole by providing compensation for past and future pecuniary losses resulting from unsafe, hazardous, dangerous, threatening and unhealthy work conditions described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (viii) Order MMS to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unsafe, hazardous, dangerous, threatening and unhealthy work conditions

complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.

- (ix) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (x) Order Defendants to pay Newsome punitive damages for its malicious and reckless conduct described herein, in amounts to be determined at trial.
- (xi) Enter an order enjoining named Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of the unsafe, hazardous, dangerous, threatening and unhealthy work conditions as alleged in this Complaint.
- (xii) That the Court issue a declaratory judgment that MMS' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under Occupational Safety and Health Act, 29 USCA §§ 641 et. Seq. and/or the applicable statutes and laws governing said matters.
- (xiii) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it and at its direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xiv) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xv) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendants to file any reports that the Court deems necessary to evaluate compliance.
- (xvi) Order MMS to institute and carry out policies, practices and programs which effectively prohibit Occupational Safety and Health Act violations.

- (xvii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her role in unlawful employment practices concealing OSHA violations.
- (xviii) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (xix) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from unlawful employment practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (xx) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unsafe, hazardous, dangerous, threatening and unhealthy work conditions complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (xxi) Order MMS to pay Newsome compensatory damages, including lost wages, overtime pay and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (xxii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein – i.e. as set forth in **Exhibits “13,” “14” and “33”** of this Complaint, in amounts to be determined at trial.
- (xxiii) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of being deprived of equal rights under the law as alleged in this Complaint.
- (xxiv) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under OSHA and other statutes and laws governing said matters.
- (xxv) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xxvi) Order MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension,

Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.

- (xxvii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xxviii) General compensatory damages, if permissible by law, in the amount of \$5,000,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xxix) Exemplary or Punitive damages, if permissible by law, in the amount of \$25,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xxx) For the sum for statutory penalty to be determined.
- (xxxi) For pre- and postjudgment interest as allowed by law.
- (xxxii) Award to Newsome the costs of this action under the provisions of the Fair Labor Standards Act of 1938, as amended.
- (xxxiii) Allowance of Newsome for reasonable attorney's and/or legal fees for the prosecution of this action.
- (xxxiv) Such other and further relief as the Court deems just and proper.

COUNT X⁶³
SEXUAL HARASSMENT AND HOSTILE WORK ENVIRONMENT AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
Against Defendant(s)

⁶³ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

484. Newsome incorporates by reference Paragraphs 1 through 483 and 526 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

485. In or about September 2003, Newsome was assigned by MMS, its agents, servants, or employees to a supervisor, on Gordon.

486. Defendant Gordon is a white male.

487. Following the assignment of Gordon as a supervisor of Newsome, he commenced an immediate and continual course of conduct, in which he harassed Newsome.

488. Newsome began working with MMS as a Legal Secretary. Individual Defendant Gordon was an attorney at MMS and Newsome's supervisor. At all times relevant to this suit, Newsome was acting in the scope of her employment with MMS.

489. Prior to Newsome's employment other female Legal Secretaries assigned to Gordon were required to submit to his sexual dominance, threats, intimidation and hostile treatment.

490. The sexual and unlawful harassment by Gordon was repeated and was designed to compel Newsome to submit to his sexual dominance, threats, intimidation and hostile treatment, thus rendering Newsome's submission to the sexual dominance of Gordon a term or condition of employment.

491. The sexual and unlawful harassment by Gordon substantially affected Newsome's employment and caused MMS' termination of her employment rather than submit to the continual sexual and unlawful harassment.

492. Following the commencement by Gordon of the numerous acts of sexual and unlawful harassment, Newsome made numerous complaints to MMS, its agents, servants, or employees.

493. Despite the complaints made by Newsome to MMS, its agents, servants, or employees, MMS failed and refused to terminate the course of conduct of Gordon, thus condoning the illegal acts and transforming the acceptance of the sexual and unlawful harassment of Newsome's supervisor into a condition of Newsome's continued employment.

494. The conduct of Gordon, constituting sexual and unlawful harassment, abuse, pattern-of-practice, and discrimination, was further ratified and condoned by MMS in that Gordon, prior to Newsome's employment, was allowed to sexually and unlawfully harass other female employees of MMS and compelled their submission to his sexual dominance, threats, intimidation and hostile treatment:

- a) This conduct by Gordon was in fact known to MMS, its agents, servants, or employees, and
- b) MMS failed and refused to terminate Gordon, thus rendering Gordon's conduct a policy of MMS that submission to sexual and unlawful harassment is a condition of employment.

495. Defendant(s) holding supervisory, managerial and/or attorney position(s) were all white and male.

496. Prior to Newsome's employment with MMS, Gordon had *approximately four Legal Secretaries* assigned to him in approximately a one-year period. These Legal Secretaries were female.

497. During Newsome's employment with MMS/Allen/Gordon/Farrell continuously and consistently subjected Newsome to sexual harassment, discrimination, hostile work environment and unwelcomed harassment. Allen/Gordon/Farrell created a hostile working environment for Newsome because of her race (African-American) and sex (Female).

498. Allen/Gordon/Farrell **repeatedly** used his **sex and position** as a means of *power, threats, coercion, intimidation and abuse* of Newsome. Allen/Gordon/Farrell doing so with the authorization, approval and support of MMS.

499. MMS/Allen/Gordon/Farrell **repeatedly** *misused/abused his supervisory/managerial/attorney positions to condone and/or allow the unlawful/illegal practices, harassment, discrimination, retaliation, and hostile treatment of Newsome.* Allen/Gordon/Farrell doing so with the authorization, approval and support of MMS.

500. MMS/Allen/Gordon/Farrell **repeatedly** *misused/abused his supervisory/managerial/attorney positions to condone and/or allow the unlawful/illegal practices, harassment, discrimination, retaliation, and hostile treatment of Newsome.* Allen/Gordon/Farrell doing so for his own personal/financial interest.

501. The work environment became so severe with such harassment and hostile treatment by Defendant(s), that Newsome was forced to take the necessary steps and submit complaints to MMS/Allen regarding employment violations. Newsome submitted complaints for her own protection and in the interest of public policy. Even with diligent efforts by Newsome, her employment with MMS was terminated as a direct and proximate result of reporting Defendant(s)' unlawful violations and/or employment violations.

502. Newsome made Defendant(s) aware that she did not approve of the unlawful employment practices, but Defendant(s) (with the approval of MMS) continued to act in the same manner and aided and abetted in the escalation of attacks on Newsome. Facts, evidence and legal conclusions to support the conduct which created the hostile work environment are as set forth in this instant Complaint at:

- (i) **Count 1** - 42 USC § 1981: Equal Rights Under The Law
- (ii) **Count 2** - 42 USC 2000e-2: Unlawful Employment Practices and 42 USC § 2000e-3: Other Unlawful Employment Practices
- (iii) **Count 3** - 42 USC § 1985: Conspiracy To Interfere With Civil Rights
- (iv) **Count 4** - 42 USC § 1986: Action For Neglect To Prevent
- (v) **Count 5** - Defamation and Conspiracy To Defame
- (vi) **Count 6** - Negligent Interference with Employment
- (vii) **Count 7** - Discrimination in Employment

- (viii) **Count 8** - Fair Labor Standards Act
- (ix) **Count 9** - Occupational Safety and Health Act
- (x) **Count 10** - Sexual Harassment and Hostile Work Environment
- (xi) **Count 11** - Retaliation
- (xii) **Count 12** - Retaliation Under The Whistleblower Act and/or Laws Governing Said Matters
- (xiii) **Count 13** - Breach of Express Employment Agreement
- (xiv) **Count 14** - Breach of the Covenant Of Good Faith And Fair Dealing
- (xv) **Count 15** - Negligent Infliction of Emotional Distress
- (xvi) **Count 16** - Fraud
- (xvii) **Count 17** - Negligent Interference with Employment – Malicious Conspiracy to Cause Discharge from Employment
- (xviii) **Count 18** – Violation of the Fourteenth Amendment of the U.S. Constitution – Due Process
- (xix) **Count 19** - Violation of the Fourteenth Amendment of the U.S. Constitution – Equal Protection

503. The facts previously set out give rise to a cause of action for discrimination as set forth in this Complaint and/or the applicable statutes/laws governing said matters. Pursuant to Title VII of the Civil Rights Act it is unlawful for an employer to discriminate against an employee on the basis of gender/sex or otherwise create a hostile work environment for women.

504. Defendant(s) discriminated against Newsome by creating and allowing a hostile work environment because of Newsome's sex. Defendant(s) knew or reasonably should have known of the supervisor(s)/attorney(s)/Chief Operation Officer's/Human Resources Representative's/Controller's conduct towards Newsome.

505. Newsome has been injured because of this discrimination for which she seeks relief.

506. The facts previously set out give rise to a cause of action for negligent infliction of emotional distress because individual Defendant(s)' conduct was extreme and outrageous as those terms are understood and defined by the laws of the State of Mississippi and/or governing laws of the United States. Defendant(s)' conduct toward Newsome was intentional and/or reckless. Defendant(s)' conduct in allowing this hostile environment and harassment to exist was negligent, deliberate and/or reckless. Defendant(s)' conduct proximately caused Newsome to suffer emotional distress, resulted in the loss and termination of her employment as well as other injuries/harm to which she sustained.

507. The facts set out herein give rise to a cause of action for Negligent Hiring and Negligent Supervision because MMS was negligent in the hiring and supervision of supervisor(s)/attorney(s)/co-worker(s)/Chief Operations Officer/Human Resources

Representative/Controller that played active roles in the unlawful employment practices leveled against Newsome. MMS' negligence proximately caused Newsome's injuries and damages.

508. The facts set out previously give rise to a cause of action for negligence per se because Defendant(s) allowed this hostile work environment to exist. Defendant(s)' conduct was so palpably contrary to the dictates of common prudence that it can be stated without hesitation or doubt that no careful company or employee would have allowed such conduct to occur. Newsome has been thus, harmed and injured by this conduct.

509. Newsome was informed and believed on the basis of such information contained herein, that her life was threatened. The evidence contained in this Complaint will support that Defendant(s) was committed to a series of acts, more fully set forth in this Complaint, which had seriously alarmed, annoyed, or harassed Newsome or caused Newsome to believe that she was under threat of her life or seriously bodily injury, which acts had occurred or would have probably occurred at MMS' place of work located in Jackson, Mississippi. *[description of the details of harassment and any injuries]*

510. MMS having an employment policy prohibiting harassment of its employees on the basis of "race, color, religion, sex, national origin, age, disability or any other characteristic protected by law," a copy of which policy from MMS' *Employee Handbook* is attached as **Exhibit "3"** and incorporated by reference as if set forth in full herein.

511. For instance, on learning of Gordon's conduct towards Newsome, MMS/Allen held a meeting with Newsome in or about April 2004. During said meeting Newsome shared concerns of Gordon's *hostile* behavior. MMS/Allen provided Newsome with no assurance and/or feedback that Gordon would cease from such *hostile, threatening, intimidating*, etc. behavior. According to the November 30, 2004 meeting discussing Newsome's Performance Review, Gordon acknowledged that he was not aware that Newsome had submitted complaints regarding him; therefore supporting MMS failed to comply with its own policies – i.e. for instance 522 Workplace Violence Prevention and 703 Sexual and Other Unlawful Harassment. Newsome believes a reasonable mind may conclude that said failure by MMS to adhere to its policies governing said matters, may be taken that it condoned and approved of the unlawful/illegal conduct of Gordon.

512. Notwithstanding the meeting specified in the preceding paragraph, Gordon's conduct towards Newsome continued and escalated, as stated herein of this instant Complaint. Based upon this continuing conduct and Newsome's reporting of unlawful employment practices, her employment with MMS was terminated on December 3, 2004 - i.e. AFTER her December 1, 2004 complaint entitled, "HARASSMENT INCIDENT – 12/01/04." December 1, 2004 complaint was in compliance with 522 Workplace Violence Prevention:

Mitchell McNutt *is committed to preventing workplace violence and to maintaining a safe work environment.* Given the increasing violence in society in general, Mitchell McNutt has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises.

All employees should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, "horseplay," or other conduct that may be dangerous to others. Firearms, weapons, and other dangerous or hazardous devices or substances are prohibited from the premises of Mitchell McNutt without proper authorization.

Conduct that threatens, intimidates, or coerces another employee, a client, or a member of the public at any time, including off-duty periods, will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law.

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor/attorney or the Chief Operations Officer. This includes threats by employees, as well as threats by clients, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be specific and detailed as possible.

All suspicious individuals or activities should be reported as soon as possible to a supervisor/attorney. Do not place yourself in peril. If you see or hear a commotion or disturbance near your work station, do not try to intercede or see what is happening.

Mitchell McNutt will promptly and thoroughly investigate all reports of threats of (or actual) violence and of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, Mitchell McNutt may suspend employees, either with or without pay, pending investigation.

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.

Mitchell McNutt encourages employees to bring their disputes or differences with other employees to the attention of their supervisor or the Chief Operations Officer before the situation escalates into potential violence. Mitchell McNutt is eager to assist in the resolution of employee disputes, and will not discipline employees for raising concerns.

The record evidence, facts, and legal conclusions will support that Newsome complied with MMS policies and reporting MMS/Gordon's unlawful employment practices. To no avail. See for instance, see emails addressing Gordon's conduct that was hostile, brutal, intolerable, unsafe, unhealthy and life-threatening conditions that an ordinary/reasonable person would consider discriminatory and hostile. See for instance Exhibits "5, 28, 32," and "45" attached hereto and incorporated by reference as if set forth in full herein. Although Newsome repeatedly reported the employment violations of Gordon, MMS repeatedly placed Newsome back in dangerous and life-threatening situations.

513. To protect her interests and rights and that of MMS, on December 1, 2004 (as with numerous prior complaints) Newsome reported the conduct of Gordon to the Chief Operations Officer/Human Resources Representative/Controller of MMS.

514. In retaliation of Newsome's opposition and contesting Gordon's sexual and unlawful harassment, and in retaliation for reporting sexual and unlawful harassment, MMS/Sams terminated Newsome's employment with MMS on December 3, 2004.

515. This retaliatory termination constituted an unlawful act of employment discrimination in violation of 42 USC § 2000e et seq. for which Newsome demands a remedy.

516. Defendant(s)' conduct had been directed specifically against Newsome, and said conduct was not knowingly protected, not willfully protected, not constitutionally protected, and without legitimate purpose.

517. Newsome has suffered and sustains injuries/damages because of the actions of Defendant(s). Defendant(s)' conduct proximately caused Newsome to suffer severe emotional distress, mental anguish, indignation, wounded pride, shame, and despair. In addition to these injuries, Defendant(s)' conduct has proximately caused Newsome to suffer pecuniary losses and lost employment opportunities.

518. The conduct of Defendant(s)' described in this Complaint was willful and malicious so as to entitle Newsome to recover exemplary damages to punish Defendant(s) and to deter such conduct in the future. This instant Complaint supports and Newsome will further show that, as a result of Defendant(s)' conduct, Newsome has suffered loss of time and expenses, loss of employment, including reasonable costs incurred investigating and prosecuting this action. Accordingly, Newsome asks that exemplary damages be awarded against Defendants in an amount greatly exceeding the minimum jurisdictional limits of this court.

519. MMS, its agents, servants, employees, Defendant(s), by their conduct alleged in this Complaint, deliberately, intentionally, willfully, and without justification deprived Newsome of rights, privileges and immunities secured by the Constitution and laws of the United States, particularly the right to be free from sexual discrimination and unlawful harassment.

520. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and subjecting her to sexual harassment and a hostile work environment. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

521. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued -

i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See **Exhibit "14"** attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . . ; that they published his confidential sources thus destroying his credibility . . . ; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . . , assigning him to more and more degrading tasks Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . . , blackballed him, thus precluding other employment, . . . thus destroying his credibility . . . , all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

522. As a direct and proximate result of Defendant(s)' systematic sexual harassment and hostile treatment and repeated discrimination, retaliation, and harassment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they

would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

523. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to subject her to sexual harassment and a hostile work environment as set forth in this Complaint.

524. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

525. Newsome demands that she be made whole for all losses she has sustained as a result of her unlawful termination and unlawful employment practices of MMS.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in sexual harassment and the creation of a hostile work environment and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit sexual harassment and a hostile work environment.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of sexual harassment and a hostile work environment.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from sexual harassment and a hostile work environment described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the sexual harassment and a hostile work environment complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of sexual harassment and a hostile work environment as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981, Title VII of the Civil Rights Act and other statutes and laws governing said matters.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates

against Newsome on the basis of race, sex or engagement in protected activity(s).

- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$3,000,000 or according to the facts, evidence and legal conclusions submitted as proof.
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$20,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.
- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.
- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof;
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled.

COUNT III⁶⁴

⁶⁴ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction.

**RETALIATION AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)**

526. Newsome incorporates by reference Paragraphs 1 through 525 and 589 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

527. From about October 6, 2003 to December 3, 2004, Newsome was employed by MMS. Newsome's employment with MMS was governed and within the provisions/scope of FLSA, OSH Act, Title VII, Civil Rights Act, and/or other statutes/laws governing said matters.

528. Newsome began working with MMS in September, 2003 as a contract/temporary employee. MMS pleased with Newsome's work performance offered Newsome a permanent employment opportunity. The Performance Review dated November 15, 2004, at **Exhibit "29"** was the first and only Performance Review Newsome was given during her employment with MMS. MMS/Gordon produced such a frivolous Performance Review to keep from giving Newsome a favorable merit increase; moreover, for purposes of depriving her equal protection under the laws, equal privileges and immunities under the laws and due process under the laws.

529. In or about December 2003, Newsome began expressing concerns of MMS' compensation for overtime pay pursuant to its Policy No. 507 **OVERTIME** which stated in part:

When operating requirements or other needs cannot be met during regular working hours, employees may be scheduled to work overtime hours. When possible, advance notification of these mandatory assignments will be provided. All overtime work must receive the supervisor's/attorney's prior authorization. Overtime assignments will be distributed as equitably as practical to all employees qualified to perform the required work.

Overtime compensation is paid to all nonexempt employees in accordance with federal and state wage and hour restrictions. Overtime pay is based on actual hours worked. Time off on sick leave, vacation leave, or any leave of absence will not be considered hours worked for purposes of performing overtime calculations.

Failure to work scheduled overtime worked without prior authorization from the supervisor may result in disciplinary action, up to and including possible termination of employment.

See **Exhibit "3"** - *MMS Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein.

and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. *One person performing one part and the other another part, so that upon completion they have obtained the object pursued.* Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. **Agreement is implied or inferred from actions or statements.**

530. Newsome then in January 2004, inquired whether or not MMS was paying her (a non-exempt salaried employee) in compliance with the Fair Labor Standards Act (“FLSA”). Newsome requesting to be paid in compliance with the FLSA. Newsome’s request was made in good faith. Furthermore in compliance with 507 OVERTIME of MMS’ Policy and 201 EMPLOYMENT CATEGORIES which stated in part:

It is the intent of Mitchell McNutt to clarify the definitions of employment classifications so that employees understand their employment status and benefit eligibility. These classifications do not guarantee employment for any specified period of time. Accordingly, the right to terminate the employment relationship at will at any time is retained by both the employee and Mitchell McNutt.

Each employee is designated as either **NONEXEMPT** or **EXEMPT** from federal and state wage and hour laws. NONEXEMPT employees are entitled to overtime pay under the specific provisions of federal and state laws. **EXEMPT** employees are excluded from specific provisions of federal and state wage and hour laws. An employee’s **EXEMPT** or **NONEXEMPT** classification may be changed only upon written notification by Mitchell McNutt management.

In addition to the above categories, each employee will belong to one other employment category:

REGULAR FULL-TIME employees are those who are not in a temporary status and who are regularly scheduled to work Mitchell McNutt’s full-time schedule. Generally, they are eligible for Mitchell McNutt’s benefit package, subject to the terms, conditions, and limitations of each benefit program. . . .

See **Exhibit “3”** – MMS *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein.

531. On or about January 28, 2004, Newsome submitted to MMS’/Allen’s attention an email entitled “CONCERNS – UNPAID HOURS WORKED (Please See Spreadsheet IMANAGE DOC. No. 518945”) which stated in part:⁶⁵

This is per my conversation with you on yesterday and today regarding unpaid hours/overtime. I shared with you on both days my concerns of the *substantial difference* in the hours that MMS has paid me *versus* the hours I have **actually worked**. Believe I used “hidden/lost time” that is not reflected on my paycheck stubs.

You mentioned that the *average per pay period is approximately 86.87*. Therefore, I went back for each pay period and took the 86.67 and added the overtime hours **ONLY** to the 86.67. *Sure enough*, the computation on the paycheck stub only consisted of the 86.67 plus the actual overtime. What was **absent** from **ALL** of my

⁶⁵ See **Exhibit “25”** attached hereto and incorporated by reference as if set forth in full herein.

paychecks were the 2.5 hours which show 40 hours for each week where overtime occurred.

I express these concerns because (1) I believe I am a non-exempt employee, yet it appears that MMS have not paid me at all for any of the 2.5 hours in the weeks where overtime was worked (2) there is an accumulation of approximately 29.90 hours that I have worked and have not been paid at my regular hourly rate; and (3) the 6.15 in actual overtime hours that I have not been paid.

Based upon my calculations (at the hourly rate you provided), it appears that MMS has not paid me as follows:

\$474.21 (pay for straight time – based upon 29.9 x hour pay rate)
\$146.30 (overtime pay)
TOTAL OWED/DUE: \$620.51

If indeed my figures are correct, I would appreciate your taking the time to correct this error and would like to be paid the entire amount in this paycheck.

Newsome's requests were in compliance with MMS' Policy No. 409 ADMINISTRATIVE PAY CORRECTIONS which stated in part:

Mitchell McNutt takes all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled payday.

In the unlikely event that there is an error in the amount of pay, the employee should promptly bring the discrepancy to the attention of the Controller so that correction can be made as quickly as possible.

See **Exhibit "3"** - MMS *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, MMS refused to pay Newsome for wages earned and overtime earnings in accordance with the FLSA and/or federal and state laws governing said matters.

532. **Immediately AFTER** Newsome began inquiring about MMS' method of paying non-exempt salaried employees, MMS began to provide Newsome with information it knew to be *false* and *misleading* and refusing to pay her and other nonexempt salaried employees in compliance with the FLSA and/or laws governing said matters. MMS began seeking and searching for grounds and reasons to terminate Newsome's employment rather than comply with the laws and compensate her and other nonexempt employees under the FLSA.

533. In February, 2004, Newsome reported MMS' FLSA violations to the United States Department of Labor – Wage and Hour Division ("WHD"), Jackson, Mississippi office. From Newsome's observation and the W&H's handling of this matter, it appeared to Newsome that MMS' attorneys had special relationships with agents/employees of the W&H. Furthermore, Farrell confirmed with Newsome, Townsend and Tammy Cochnauer his special relationship with W&H and information containing W&H employees' direct phone numbers. See **Exhibit "21"** attached hereto and incorporated by reference as if set forth in full herein. Therefore, Newsome concluded that agent(s) with W&H in Jackson, Mississippi would have

a difficult time remaining impartial and deciding this matter in a just, fair and impartial manner. Moreover, that MMS would use its special relationships with W&H to cover-up its unlawful employment practices. Therefore, Newsome proceeded to the Washington, D.C. office for assistance in this matter. From record evidence, it appears that Jones (former District Director at W&H) may have been requested to retire by the W&H as a direct and proximate result of his engagement and role in conspiracy(s) to cover-up the FLSA violations of MMS.

534. As a direct and proximate result of Newsome's filing of Complaint(s) with MMS and agency(s) for FLSA violations, MMS discriminated, retaliated against Newsome and subjected her to a hostile work environment.

535. On or about February 11, 2004, Newsome filed a Complaint with the United States Department of Labor, Employment Standards Administration, Wage and Hour Division – Jackson, Mississippi Division entitled, “*Mitchell, McNutt & Sams, P.A. Violations Under the Fair Labor Standards Act.*”

536. Immediately thereafter, Defendant(s) began to subject Newsome to discriminatory, prejudicial treatment, and a hostile work environment as a direct and proximate result of her reporting to MMS its violations under the Fair Labor Standards Act. MMS *immediately* began seeking and searching for information on Newsome in hopes of finding what it thought would be safe and legal reasons to cover-up/shield an illegal animus and terminate Newsome's employment with MMS.

537. On or about February 26, 2004, Gordon subjected Newsome to a very hostile work environment as a result of her taking approximately a 35 minute lunch – i.e. under MMS Policy, Newsome was entitled to 60 (1 hour) lunch break. Prior to Newsome's leaving, Gordon had advised her to bring her lunch back that she was going to have to work through lunch. Newsome asked Gordon whether or not he wanted her to bring him anything back. Gordon advised no. Newsome advised Gordon that she would be riding with Townsend, a co-worker at MMS, and Farrell, an attorney at MMS. Farrell drove. Upon getting to the restaurant and ordering Farrell and Townsend advised Newsome that they were not going right back to the office. Newsome advised both Farrell and Townsend that she thought they were getting their lunch and going right back, and had advised Gordon of so. Both Farrell and Townsend advised Newsome that they would explain the situation to Gordon upon return. Both Farrell and Townsend knew of Newsome's concerns; however, assured her that they would explain to Gordon what happened. See **Exhibit “28”** – 02/26/04 Email attached hereto of email to Rosonna Murray (cc'ing Allen) regarding entry of time for 35 minute lunch taken.

538. Pursuant to MMS' policies, **506 REST AND MEAL PERIODS**, Newsome was entitled to a meal period of **sixty (60) minutes** in length each workday. See **Exhibit “3”** – MMS *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. Newsome's taking of lunch did not violate MMS policy(s). Nor did Newsome's taking of lunch prevent the timely filing of the pleading addressed in this incident.

539. On or about February 26, 2004, immediately upon Farrell's, Townsend' and Newsome's returning from lunch, Gordon created and subjected Newsome to a very hostile environment for not immediately returning from lunch. Gordon doing so without affording Newsome an opportunity to explain what had occurred. Both Farrell and Townsend witnessed this incident, but neither did anything to explain the situation to Gordon as they

had advised Newsome at the restaurant they would. The hostile work environment created by Gordon was so obvious and disruptive that it initiated an email from Townsend to Newsome regarding the situation. See **Exhibit “28”** – 02/26/04 *Email* attached hereto and incorporated by reference as if set forth in full herein.

540. Since the preceding incident with Farrell and Townsend, Newsome did not go to lunch with the two of them again; unless it was a firm lunch. Newsome believes based upon the relationships (i.e. between Farrell, Townsend and Gordon) established at the firm and Farrell’s and Townsend’s *failure* to come forth as promised, Newsome very well may have been deliberately set up. Therefore, after said incident, Newsome made sure she did not open the door for Farrell and Townsend to do that again to her. Newsome being a member of protected group (*African-American/Black*) and Gordon/Farrell/Townsend *being white*. Moreover, Gordon/Farrell/Townsend *having knowledge* of Newsome’s engagement/participation in protected activity(s).

541. Only AFTER the filing of Newsome’s Complaints⁶⁶ did Defendant(s) attempt to cover up/mask such unlawful actions of Gordon. For instance, in an adverse Performance Review signed by Gordon on November 15, 2004, in regards to the February 26, 2004, incident Gordon states:

On an occasion in late February 2004, I had a motion and supporting memorandum I had to complete and get in the mail on a given day. On that day, we were working on it, and near the lunch hour, I told Vogel it would be necessary to shorten her lunch hour in order to be sure we got the motion and memorandum completed, copied and in the mail that day. I told her she could go out and pick-up something and bring it back to the office. She protested. She then went with Mike and Ladye M., saying she was going to get something and bring it back. *She did not return for 45 minutes or more, returning with Mike and Lady M., having eaten lunch.* Her explanation was that she thought they were going to pick something up and bring it back to the office.

(italics/boldface added for emphasis) See **Exhibit “29”**, p. 13 attached hereto and incorporated by reference as if set forth in full herein. See also Paragraph 341 above and **Exhibit “13” [W&H testimony by Townsend Gordon & Farrell]** attached hereto and incorporated by reference as if set forth in full herein. A false statement provided by MMS/Gordon only AFTER the filing of Newsome’s Complaints. The November 30, 2004 Performance Review signed by Gordon on November 15, 2004, was the first time Newsome ever received Gordon’s feedback on this incident. *Feedback coming approximately nine (9) months later.* Gordon having established himself as one with credibility issues – i.e. an attorney who is also willing to falsify pleadings filed in a federal court for purposes of promoting his own personal and/or business agenda, delays, misleading, obstructing justice, increasing costs for financial gain, etc.

Pursuant to Rule 608 or Federal Rules of Evidence: The *credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation*, but subject to these limitations: (a) the evidence may refer only to character for truthfulness or untruthfulness, and (b)

⁶⁶ Plaintiff also having filed a Complaint with OSHA against MMS.

evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

542. Pursuant to MMS' policies, **705 PERSONAL APPEARANCE**, it addresses what MMS expected regarding dress, grooming and personal cleanliness standards. See **Exhibit "3"** attached hereto and incorporated by reference as if set forth in full herein. During Newsome's employment, she is not aware where she ever violated said policy. Neither did MMS advise Newsome during her employment that on February 26, 2004, she violated said policy.

543. On or about April 23, 2004, Newsome was again subjected to a very hostile work environment created by MMS/Gordon simply because she wore a *fashion casual cap* with her *skirt, blouse, and panty hose* attire on Friday (*casual* day). MMS/Gordon was made aware of an unforeseen incident that Newsome endured the night before which resulted in Newsome attending to the matter prior to coming in. Nevertheless, *Gordon becoming very hostile and demanding in a very harsh, abusive, intimidating and threatening voice that Newsome remove the fashion cap immediately. This hostile treatment lasted for several minutes. Even when Newsome had returned to her office, Gordon proceeded to rush/storm into her office space and continue to demand the removal of her fashion cap. Newsome advised Gordon that she would check the Employee Handbook to see if her attire was in violation of MMS' policy(s). Because Newsome knew that her hair was not combed, she offered to change the fashion cap to a more appropriate cap (prayer). Newsome did not get a response from Gordon regarding her offer. The hostile behavior of Gordon left Newsome shaken, threatened and intimidated and it took minutes just for her to be able to perform her typing duties without shaking so bad.* Newsome immediately addressing this issue with Gordon (her attorney) and cc'ing Allen on such. See **Exhibit "32"** – 04/23/04 Email attached hereto and incorporated by reference as if set forth in full herein.

544. The November 30, 2004 Performance Review signed by Gordon on November 15, 2004, was the first time Newsome ever received Gordon's feedback on this incident. *Feedback coming approximately nine (9) months later.* Gordon having established himself as one with credibility issues – i.e. an attorney who is also willing to falsify pleadings filed in a federal court for purposes of promoting his own personal and/or business agenda, delays, misleading, obstructing justice, increasing costs for financial gain, etc.

545. When MMS/Allen (Chief Operations Officer/Human Resources Representative/Controller) came to the Jackson office the next week, Newsome asked to speak to him. Newsome wanted to discuss concerns regarding Gordon. *Newsome advised MMS/Allen of Gordon's hostile treatment of her and how such hostile treatment disrupted the work environment.* *Newsome also suggested during conversation with MMS/Allen, that she would recommend that MMS enroll Gordon in some Anger Management Classes.* It was during this meeting that Allen took notice to Newsome's advising of Gordon as being hostile. *Newsome shared concerns of MMS treating her differently than others at the office.* *Newsome shared how others at the office were allowed to wear whatever they wanted (which at times she found inappropriate for the office); however, MMS/Gordon said nothing. However, when Newsome wore her casual fashion caps (not baseball), MMS/Gordon objected. Newsome shared how others were not required to carry out their duties in regards to maintenance of the break area, yet she was required to do so.* Newsome expressed concerns of how there is a *high turn-over with Legal Secretaries with Gordon.* That she is approximately the *fifth* legal secretary for Gordon in *less than a year.* Concerns Newsome

shared with Allen and advising that it does not appear to her the problem had been with the Legal Secretaries, but with Gordon and suggesting again that MMS seek some assistance in getting Gordon some help. MMS/Allen ignored such suggestions offered by Newsome. As a direct and proximate result of said notification, MMS retaliated and allowed Gordon to repeatedly subject Newsome to unlawful practices. The documentation and evidence in MMS' possession and/or that submitted to government agency(s), by Newsome, will support that MMS was timely, properly and adequately notified of its unlawful practices.

546. At the MDES Hearing in support of PRETEXT and efforts by MMS/Allen to mask/shield and illegal animus, MMS provided an exhibit regarding this incident wherein Allen made notation on Newsome's April 23, 2004 which stated in part:

I spoke w/ Vogel to inform her that a baseball cap is not appropriate & is unprofessional for our law & she can not wear it. The handbook section 705 Personal Appearance "states your supervisor and I are responsible for a reasonable dress code & can request that you not wear the cap. The policy won't say & I will not give a list of items you can or can not wear but if an item of clothing or appearance is not appropriate & does not convey a proper professional business image we will request not wearing it. She understood & said she would not wear a cap anymore.

See **Exhibit "39"** attached hereto and incorporated by reference as if set forth in full herein. Information which is of PUBLIC record. Going to PRETEXT, PATTERN-OF-PRACTICE, **CREDIBILITY** and overt act by MMS in furtherance of conspiracy(s) to obstruct the administration of justice, deprive Newsome equal protection of the laws, equal privileges and immunities under the laws, due process and other rights secured/guaranteed under the Constitution and laws of the United States. Moreover, supporting how far MMS and Allen (Chief Operations Officer/Human Resources Representative/Controller) would go to **COMPROMISE** documents. MMS/Allen knowingly provided compromised document for purpose of providing false information to government official during investigation. MMS/Allen cannot produce any evidence to support that it/he advised Newsome as stated. Moreover, "written" comment is a far departure from the way Allen would respond to Newsome via email – see for instance **Exhibits "1, 24, 26 33, 34, and 45"** of this Complaint to support MMS'/Allen's responses to Newsome's emails. However, with this incident he merely wrote a comment on April 23, 2004 Email of Newsome prior to MDES hearing to make it appear that Newsome violated some policy of MMS (when she did not). MMS/Allen failed to provide Newsome's email where she offered to change her cap to another head covering with stated in part:

Per your concerns in regards to my wearing a casual cap, if you feel that this is not appropriate although my dress (shirt and skirt are), I have no problems replacing the current cap with a prayer covering type cap (one that tightly fits down over my hair and is often seen worn by women (sic) church services). Such caps are business-casual if you do not find that the one I am currently wearing is not.

However, as I shared with you, there are times that my hair is not fixed and I am not comfortable with the way I look. So I cover it.

Let me know what you suggest the casual cap (which is not a baseball cap) or the prayer caps.

See **Exhibit "32"** – 04/23/04 Email to Gordon and cc'ing Allen. The record evidence will support that had Allen spoken to Newsome regarding cap incident (when he did not). As with other emails directed to him, she would have memorialized same with her feedback and/or comments – see for instance **Exhibits "26, 27, 34, and 45"** of this Complaint. MMS' actions can be challenged under the United States Constitution (see EEOC Decisions No. 71-2444 (1971) CCH EEOC Decisions ¶ 6240) wherein Newsome's choice of head covering as well African-American hairstyle as a result of her culture (African-American/Black) as to make the attacks leveled against Newsome by MMS/Gordon as acts of suppression, aggression and oppression a matter of racial prejudice; furthermore, an abridgment of First Amendment Rights.

547. While Newsome offered to change her head covering in accordance with MMS Policy 705 **Personal Appearance**, Gordon nor MMS/Allen ever responded and allowed Newsome to complete the workday in her attire (i.e. *fashion casual cap* with **her skirt, blouse, and panty hose**). The **TAMPERING with physical evidence** by MMS/Allen is a *criminal/civil violation*.

Mississippi Code § 97-9-125. **TAMPERING With Physical EVIDENCE:**

(1) A person commits the crime of ***tampering with physical evidence*** if, believing that an official proceeding is pending or may be instituted, and acting without legal right or authority, he:

- a. ***Intentionally destroys***, mutilates, ***conceals, removes or alters physical evidence with intent to impair its use, verity or availability in the pending or prospective official proceeding***;
- b. Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding; or
- c. ***Intentionally prevents the production of physical evidence by an act of force, intimidation or deception against any person.***

(2) **TAMPERING with physical EVIDENCE** is a Class 2 felony.⁶⁷

⁶⁷ **Mississippi Code § 97-9-129. Sentencing.**

(1) A person who has been convicted of any Class 1 felony under this article shall be sentenced to imprisonment for a term of not more than five (5) years or fined not more than Five Thousand Dollars (\$5,000.00), or both.

An overt act by MMS/Allen in furtherance of conspiracy(s) leveled against Newsome and done to cover-up criminal/civil offenses. Thus, a matter of effecting public policy.

548. Only AFTER the filing of Newsome's Complaints⁶⁸ did Defendant(s) attempt to cover up/mask such unlawful actions of Gordon. For instance, in an adverse Performance Review signed by Gordon on November 15, 2004, in regards to the April 23, 2004, incident Gordon stated:

In the late Winter or early Spring of 2004, Vogel wore a baseball cap style hat to work on several Fridays. Then, on a Thursday, I told her that such a hat is not appropriate for the office – a law office – even on a casual Friday, and not to wear it to the office. She did not object or protest. However, the next day, a Friday, she wore that hat to the office. I instructed her to take it off, and she refused to do so.

The significance of this is not, as such, the wearing of a baseball style cap or hat to the office. The significance is that Vogel was given an instruction, she defied it, she then was given the same instruction, and she defied it again.

(She did not again wear the hat after this Friday)

See **Exhibit "29,"** p. 14 attached hereto and incorporated by reference as if set forth in full herein.

NOTE: Based upon such statement by Gordon in his November 15, 2004 Performance Review of Newsome, it was apparent, that from referenced incident and others with Gordon, that he did not deal well with the individuality/ethnicity of the employees of MMS. Gordon repeatedly misused/abused his supervisory powers to harass, discriminate and/or subject Newsome to hostile and/or unlawful practices. During her employment with MMS, Newsome had learned that Gordon had a military past. Gordon's need to be in control of all situations, repeatedly lead to his combative hostile treatment of Newsome. Thus, from description and perception of the matter, it was clearly obvious to Newsome how distorted Gordon's views were and his inability to adapt to change in the individuality/ethnicity of other employees. While working with MMS, *Newsome observed if Gordon did not get his way, he had temper tantrums which ultimately turned into his creation of a very combative hostile work environment if he did not get what he wanted. If Newsome did not agree with him on*

(2) A person who has been convicted of any Class 2 felony under this article shall be sentenced to imprisonment for a term of not more than two (2) years or fined not more than Three Thousand Dollars (\$3,000.00), or both.

(3) A person who has been convicted of any misdemeanor under this article shall be sentenced to confinement in the county jail for a term of not more than one (1) year or fined not more than One Thousand Dollars (\$1,000.00), or both.

⁶⁸ Newsome also has a pending Complaint with OSHA against MMS.

issues and made it known to Gordon,⁶⁹ Gordon's **distorted** views, perceived Newsome as being defiant and/or insubordinate.

549. Although Title VII does not specifically address itself to an employer's dress or grooming policy, it has not been disputed that such policies are terms and conditions of employment within the meaning of Title VII, and hence *cannot be utilized by an employer as an indirect or nonexplicit means of circumventing the discriminations proscribed by Title VII* (i.e. for instance see EEOC Decision No. 71-1529 (1971) CCH EEOC Decisions ¶ 6231).

550. MMS/Gordon's attack on Newsome was also a direct and proximate result of its/his inability and unwillingness to deal with the individuality/ethnicity of its African-American employee. MMS' actions can be challenged under the United States Constitution (see EEOC Decisions No. 71-2444 (1971) CCH EEOC Decisions ¶ 6240) wherein Newsome's choice of head covering as well African-American hairstyle as a result of her culture (African-American/Black) as to make the attacks leveled against Newsome by MMS/Gordon as acts of suppression, aggression and oppression a matter of racial prejudice; furthermore, an abridgment of First Amendment Rights. Thus, Newsome's dressing practices (i.e. as it did not violate MMS policies) and MMS's/Gordon's attack on her is therefore, subject to legal actions that attack was racially motivated and act of racial discrimination – i.e. white employees similarly situated being allowed to dress however they wanted without any retaliatory or discriminatory actions by MMS/Gordon. The hostile and discriminatory action by MMS/Gordon was clearly in violation of the Civil Rights Act (42 USCS § 1981) and was executed on the basis of Newsome's race. Newsome having offered to change her head covering; however, MMS/Gordon never responded to her good-faith request. Thus, a reasonable person/mind may conclude having similar endings of that of Title VII.

551. MMS/Gordon failing to advise Newsome of how her casual business attire affected the operation of MMS business and the loss it sustained as a direct and proximate result of the choice of clothing worn by Newsome to work. Moreover, MMS/Gordon failed to respond to Newsome's email wherein she offered to make change in head covering. See Friday, April 23, 2004 Email from Newsome to Gordon which stated in part:

Per your concerns in regards to my wearing a casual cap, if you feel that this is not appropriate although my dress (shirt and skirt are), I have no problems replacing the current cap with a prayer covering type cap (one that tightly fits down over my hair and is often seen worn by women (sic) church services). Such caps are business-casual if you do not find that the one I am currently wearing is not.

However, as I shared with you, there are times that my hair is not fixed and I am not comfortable with the way I look. So I cover it.

Let me know what you suggest the casual cap (which is not a baseball cap) or the prayer caps.

⁶⁹ MMS' policy 718 **PROBLEM RESOLUTION** which states: Mitchell McNutt is committed to providing the best possible working conditions for its employees. Part of this commitment is *encouraging an open and frank* atmosphere in which any *problem, complaint*, suggestion, or question receives a timely response from Mitchell McNutt supervisors and management.

552. Pursuant to MMS' policies, 718 **PROBLEM RESOLUTION**, Newsome brought her complaints to MMS as required by firm policy. See Exhibit "3" attached hereto and incorporated by reference as if set forth in full herein. However, only AFTER the filing of Newsome's Complaints with the various agency(s) within the United States Department of Labor, did Defendant(s) began seeking ways to preclude and/or prevent her from voicing and/or filing her complaints with it. Defendant(s) began taking extreme measures to prevent Newsome from submitting her complaints to it. MMS although it encourages employees to bring complaints to its attention when it stated in *Employee Handbook*:

If employees disagree with established rules of conduct, policies, or practices, *they can express their concern through the problem resolution procedure. No employee will be penalized, formally or informally, for voicing a complaint with Mitchell McNutt in a reasonable, business-like manner, or for using the problem resolution procedure. . . .*

See Exhibit "3," 718 **Problem Resolution** attached hereto and incorporated by reference as if set forth in full herein.

VIOLATION OF EMPLOYEE HANDBOOK RULES: Employee handbooks or manuals are frequently used as a basis for *implied-in-fact contract rules*. An employee handbook may give rise to an *implied-in-law contractual obligation*. Thus, although there is some authority to the contrary, it has been recognized that the fair dealing portion of the covenant gives the employee the benefit of the rules and regulations promulgated for his protection, as in an employee handbook. While the procedures for discharge in an employee handbook do not necessarily create a contract right in the employee, the employee's dismissal without following the procedures outlined in the handbook may be evidence of bad faith by the employer.⁷⁰

however, when Newsome brought her complaints to the attention of MMS, MMS took a far departure from the Problem Resolution policy and subjected Newsome to retaliation, discrimination and/or unlawful practices. Said unlawful practices were rendered Newsome by MMS in efforts of trying to force her out of the workplace.

553. MMS failed to make proper investigation(s) into the complaints submitted by Newsome addressing Defendant(s)' violations. In the handling of Newsome's complaints MMS committed numerous violations of its own policies. Thus, supporting the negligence of MMS and/or Defendant(s).

The court noted that in the present case an expert on personnel management had testified that the . . . administrator had failed to make a proper investigation before affirming the plaintiff's discharge. In this case expert testimony also revealed that the employer had committed thirteen different violations of its firing policies. The court therefore found the precedent of *Crenshaw* compelling and held that the negligence theory had been proper.

⁷⁰ 82 Am. Jur.2d Wrongful Discharge § 72. *Gates v. Life of Montana Ins. Co.*, 638 P.2d 1063 (1982).

554. MMS/Sams aware of the willful, malicious and wanton acts leveled against Newsome on December 3, 2004, demanded that Newsome turn over her *Employee Handbook*. MMS/Sams making said demand for purposes of **obstructing justice** and efforts of destroying incriminating evidence it/he knew were **detrimental** to MMS in that it would expose matters which are of public policy and of public interest.

555. Efforts were taken by MMS to prevent/preclude Newsome from submitting any additional complaints resulted in MMS denying her access to any other computer in the office and limiting use only to the computer at her desk. Newsome being the **only** employee at the Jackson, Mississippi office subjected to such limited access. **MMS did not want Newsome to submit her complaints during working hours at MMS.** Therefore, Newsome was not sure when her complaints were to be submitted if not while she was at MMS. Nor was Newsome sure how MMS was to get her complaints if it did not want her to submit them during working hours. **MMS falsely accused Newsome of using a great deal of time (working hours) to submitting her complaints.** MMS had nothing to support such assertion. MMS had no evidence to support that submittal of complaints by Newsome prevented her from performing her duties. Such discriminatory and retaliatory practices/actions by MMS had **only** occurred **AFTER** the filing of Newsome's complaints. As a matter of law, Newsome is required to submit complaint(s) to employer prior to bringing legal action before the appropriate government tribunal for redress and/or restitution.

556. Also **AFTER** the submittal of Newsome's complaints to federal government agency(s), did Defendant(s) began subjecting Newsome to strict and oppressive monitoring and supervision by Gordon and others. Such conduct by Defendant(s) being **oppressive, harassing, hostile, brutal, disruptive, threatening, intimidating, humiliating, etc.** Yet, under such unlawful and egregious conditions Newsome was expected by MMS to carry out her everyday duties and/or responsibilities under such unlawful conditions. The very actions of MMS/Gordon violates policy **703 SEXUAL AND OTHER UNLAWFUL HARASSMENT**, which states:

Mitchell McNutt is committed to providing a work environment that is free from *all* forms of discrimination and conduct that can be **harassing, coercive, or disruptive**, including sexual harassment. . .

and 522 **WORKPLACE VIOLENCE PREVENTION** which stated in part:

Mitchell McNutt *is committed to preventing workplace violence and to maintaining a safe work environment.* Given the increasing violence in society in general, Mitchell McNutt has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises.

All employees should be treated with courtesy and respect at all times. Employees are expected to **refrain from fighting, "horseplay," or other conduct that may be dangerous to others.** Firearms, weapons, and other dangerous or hazardous devices or

⁷¹ 48 Am. Jur. Proof of Facts 2d 216-217.

substances are prohibited from the premises of Mitchell McNutt without proper authorization.

Conduct that threatens, intimidates, or coerces another employee, a client, or a member of the public at any time, including off-duty periods, will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law.

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor/attorney or the Chief Operations Officer. This includes threats by employees, as well as threats by clients, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be specific and detailed as possible.

All suspicious individuals or activities should be reported as soon as possible to a supervisor/attorney. Do not place yourself in peril. If you see or hear a commotion or disturbance near your work station, do not try to intercede or see what is happening.

Mitchell McNutt will promptly and thoroughly investigate all reports of threats of (or actual) violence and of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, Mitchell McNutt may suspend employees, either with or without pay, pending investigation.

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.

Mitchell McNutt encourages employees to bring their disputes or differences with other employees to the attention of their supervisor or the Chief Operations Officer before the situation escalates into potential violence. Mitchell McNutt is eager to assist in the resolution of employee disputes, and will not discipline employees for raising concerns.

The record evidence, facts, and legal conclusions will support that Newsome complied with MMS policies and reporting MMS/Gordon's unlawful employment practices. To no avail. See for instance, see emails addressing Gordon's conduct that was hostile, brutal, intolerable, unsafe, unhealthy and life-threatening conditions that an ordinary/reasonable person would consider discriminatory and hostile. See for instance Exhibits "5, 28, 32," and "45" attached hereto and incorporated by reference as if set forth in full herein. Although Newsome repeatedly reported the employment violations of Gordon, MMS repeatedly placed Newsome back in dangerous and life-threatening situations.

557. Actions by Defendant(s) also violated 722 WORKPLACE ETIQUETTE, which states:

Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or

her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee's ability to concentrate and be productive.

Defendant(s) was fully aware or should have been aware that the conduct of discrimination, retaliation, hostile work environment and vicious attacks, etc. on Newsome violated MMS policies and affected Newsome's ability to concentrate and be productive (i.e. perform her job duties). Newsome repeatedly reported such discriminatory treatment to MMS' attention. To no avail. MMS **continued** to allow Defendant(s) to subject Newsome to such unlawful treatment – i.e. discriminatory, prejudicial and hostile, etc.

558. Only **AFTER** the filing of Newsome's complaints did Defendant(s) attempt to mask/assert such unlawful monitoring/harassment/discriminatory treatment as supervision. For instance, in fact, in November 15, 2004 Performance Review of Newsome Gordon asserted:

Supervision

Requires high degree of instruction, supervision and monitoring.

Often resists and shows resentment toward instruction of supervision.

MMS/Gordon clearly acknowledged such unlawful practices. Not only that, clearly acknowledged its awareness on the impact it had on Newsome. Rather than cease such unlawful behavior, MMS continued and/or escalated the monitoring and discriminatory practices. Also see **Paragraph 341** and **Exhibit "13"** [W&H referencing Testimony of Townsend, Farrell and Gordon] attached hereto and incorporated by reference as if set forth in full herein.

559. MMS/Allen during the November 30, 2004 meeting regarding Performance Review, insisted that Newsome sign the adverse Performance Review. Newsome advised MMS/Allen/Gordon that she could not sign such a Review. MMS wanted Newsome to sign the Performance Review it knew to be false and inaccurate, so that upon signing, MMS would terminate its employment with Newsome.

560. During the November 30, 2004 Performance Review, Newsome advised MMS/Allen/Gordon that she enjoyed her job and enjoyed working at MMS. Nothing in the Review would make Newsome doubt her skills and qualifications. Newsome was **not** insecure in her skills and qualifications. Therefore, the efforts by MMS/Allen/Gordon proved to be fruitless. Newsome being confident that she was indeed *competent and capable of performing her duties as a Legal Secretary.* See **Exhibits "10"** and **"11"** – **Letter of References** and **Computer Skills** respectively supporting Newsome's work ethics and qualifications, attached hereto and incorporated by reference as if set forth in full herein.

561. On December 1, 2004, disappointed in the failed efforts to obtain Newsome's signature on November 30, 2004, of the frivolous November 15, 2004 Performance Review prepared by Gordon, MMS/Gordon retaliated and escalated the harassment/monitoring of Newsome. Attempting to again (i.e. was a well-established ongoing practice) get Newsome

upset by creating a hostile work environment – MMS creating situations in efforts to find unlawful/illegal ways it wanted to mask/cover-up as safe and legal grounds to terminate Newsome’s employment – in MMS’ efforts to justify termination. On December 1, 2004, Gordon again subjected Newsome to hostile and harassing treatment and refused to leave her workstation until Newsome abruptly ended her lunch. There was **no** justification for MMS’/Gordon’s request and said actions were in violation of 722 **Workplace Etiquette**⁷² and other policies of MMS. The act by Gordon was in retaliation of MMS’/Gordon’s failed efforts on November 30, 2004, and MMS’ failed ongoing efforts to get Newsome terminated. Newsome advised Gordon that he is to cease such harassment and advised him that his time would be better spent attending to MMS’ clients’ needs rather than harassing her. Moreover, Newsome advised Gordon that if he did not spend so much of his time monitoring and/or harassing her, he would be able to meet the needs of MMS’ clients and would not have a need to falsify pleadings to the Court.⁷³ MMS/Gordon being fully aware that vicious and brutal attack on Newsome was in retaliation to failed efforts to force her out of the workplace as well as MMS’/Gordon’s knowledge of Newsome’s engagement in protected activities.⁷⁴

⁷² **722 WORKPLACE ETIQUETTE**, which stated in part: Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee’s ability to concentrate and be productive. . . .

Please contact the Chief Operations Officer if you have comments, concerns, or suggestions regarding these workplace etiquette guidelines. . . .

- * Avoid public accusations or criticisms of other employees. Address such issues privately with those involved or your supervisor.
- * Try to minimize unscheduled interruptions of other employees while they are working.
- * Communicate by e-mail or phone whenever possible, instead of walking unexpectedly into someone’s office or workspace.
- * Be conscious of how your voice travels, and try to lower the volume of your voice when talking on the phone or to other in open areas. . . .
- * Refrain from using inappropriate language (swearing) that others may overhear. . . .
- * Clean up after yourself and do not leave behind waste or discarded papers.

⁷³ MMS’ policy **718 PROBLEM RESOLUTION** which states: Mitchell McNutt is committed to providing the best possible working conditions for its employees. Part of this commitment is encouraging an open and frank atmosphere in which any problem, complaint, suggestion, or question receives a timely response from Mitchell McNutt supervisors and management.

⁷⁴ MMS’ policy **722 WORKPLACE ETIQUETTE** - Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee’s ability to concentrate and be productive.

MMS’ policy **703 SEXUAL AND OTHER UNLAWFUL HARASSMENT** - Mitchell McNutt is committed to providing a work environment that is free from all forms of discrimination and conduct that can be harassing, coercive, or disruptive, including sexual harassment. . .

562. On December 1, 2004, in compliance with policies and procedures **718 PROBLEM RESOLUTION** and **104 BUSINESS ETHICS AND CONDUCT**, Newsome submitted email to the attention of MMS' Allen, Chief Operations Officer, with Subject entitled: ***HARASSMENT INCIDENT – 12/01/04***. See **Exhibit "S"** attached hereto and incorporated by reference as if set forth in full herein. In the December 1, 2004 complaint, Newsome addressed the harassment she sustained by Gordon as well as the unethical practices of Gordon before the court(s). In said email Newsome also advises, "***I expressed concerns that the evaluation that MMS provided was adverse as a result of the Complaints/Issues that I have brought to MMS' attention.***" Clearly supporting violation of MMS policies.

563. On Friday, December 3, 2004, as a direct and proximate result of the December 1, 2004, email to MMS/Allen, Newsome's employment with Mitchell, McNutt & Sams, P.A. was terminated. MMS/Sams notified Newsome that her employment with MMS was being terminated. This termination according to Sams (a Member, Board Member and attorney at MMS) ***was because Newsome addressed unethical practices by Gordon before the court(s).*** MMS/Sams justifying the termination of Newsome because she questioned the ethical practices of her supervisor who is an attorney at MMS. Newsome's reporting of MMS's/Gordon's unethical practices was in compliance with MMS' policy **104 BUSINESS ETHICS AND CONDUCT** which stated:

The successful business operation and reputation of Mitchell McNutt is built upon the principles of fair dealing and ethical conduct of our employees. *Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.*

The continued success of Mitchell McNutt is dependent upon our clients' trust and we are dedicated to preserving that trust. Employees owe a duty to Mitchell McNutt, its clients, and shareholders to act in a way that will merit the continued trust and confidence of the public.

Mitchell McNutt makes every attempt to comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to **refrain from any illegal, dishonest, or unethical conduct.**

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct. **If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with your immediate supervisor/attorney and, if necessary, with the Firm President for advice and consultation.**

Compliance with this policy of business ethics and conduct is the responsibility of every Mitchell McNutt employee. **Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.**

as well as other policies MMS had set forth in the *Employee Handbook* - i.e. for instance see 522 *Workplace Violence Prevention and 703 Sexual and Other Unlawful Harassment* - and other federal/state laws governing said matters.

564. There are federal laws, statutes, rules, and code of professional conduct which govern how attorneys are to practice before the court(s), and will support that Newsome did nothing wrong to warrant MMS' termination of employment. Newsome's reporting of violations by MMS/Gordon is a *protected activity* and one of *public policy*. As a citizen of the United States, it was Newsome's duty to bring to the attention of MMS and the appropriate government agency(s), the unethical conduct of Gordon. Newsome's reporting of such unethical conduct is also in compliance with MMS' Policy **104 BUSINESS ETHICS AND CONDUCT** as well as other policies of MMS set forth in its *Employee Handbook*.

565. MMS/Sams handling of Newsome's termination was not only a far departure from MMS' policies and practices - i.e. 405 **EMPLOYMENT TERMINATION**⁷⁵ - but a far departure from the statutes/laws of the United States that govern said matters.

EMPLOYMENT TERMINATION POLICIES: *No particular form for an employee booklet or personnel pamphlet is required before the implied covenant may be invoked to condition the termination of an at-will employee upon a showing of good cause. All that is required is that the booklet describe what conduct constitutes ground for dismissal and what activities of employees warrant disciplinary action short of discharge. Where this requirement is met, the court will hold the employer to something approximating a due process standard in determining whether the employer acted in good faith. . . . Thus, the issue was whether the employee had received the required warning provided by the booklet. . . . The court held that a covenant of good faith was implied in the employee's employment contract, and that there was a triable issue of fact as to whether the employer had afforded the employee the process required by the employee booklet. . . . plaintiff was hired. . . After he had been presented with a poor performance evaluation, he was told to proceed with a formal response and be available for a meeting with a personnel representative the next day. Later, as he was preparing his formal response, his supervisor told him that he could not do it on company time. He then ceased writing, and the supervisor left*

⁷⁵ 405 **EMPLOYMENT TERMINATION** - Termination of employment is an inevitable part of personnel activity within any organization, and many of the reasons for termination are routine. Below are examples of some of the most common circumstances under which employment is terminated:

- * Resignation - voluntary employment termination initiated by an employee.
- * Discharge - involuntary employment termination initiated by the organization.
- * Retirement - voluntary employment termination initiated by the employee meeting age, length of service, and any other criteria for retirement from the firm.

Mitchell McNutt will generally schedule exit interviews at the time of employment termination. The exit interview will afford an opportunity to discuss such issues as employee benefits, conversion privileges, repayment of outstanding debts to Mitchell McNutt, or return to Mitchell McNutt-owned property. Suggestions, complaints, and questions can also be voiced.

Since employment with Mitchell McNutt is based on mutual consent, both the employee and Mitchell McNutt have the right to terminate employment at will, with or without cause, at any time. Employees will receive their final pay in accordance with applicable state law. . . .

without making any comment about insubordination. Later, plaintiff was summoned to the office of the supervisor's superior and fired for "insubordination." The director of human resources conducted an exit interview but, according to the complaint, did not give plaintiff an opportunity to be heard and "inferred" that his termination had been justified because plaintiff did not seem to be popular with superiors. The court held that the employee's complaint stated a cause of action for wrongful discharge in violation of the covenant of good faith and fair dealing. . . . The information upon which the employee relies as an objective manifestation of the employer's implied promise of job security in exchange for good performance may be entirely informal. A formal printed booklet that is routinely distributed to new workers is **not** always required, and **neither is a statement outlining the employer's termination procedures.** . . . The court also held that an employee booklet with termination policies **was not** essential to invoke the implied covenant. . . . Where the employee pamphlet or the employer's personnel policies prescribe a procedure for terminating at-will employees and imply that employees will be dismissed only for cause, the employer has an affirmative duty to carry out its function in good faith and to deal fairly in determining to discharge an employee for poor performance. **The employer's good faith may be evidenced by the fact that the employer performed all of the investigation, hearing and evaluative processes strictly in accordance with the provisions of its policies or the employee booklet and allowed the employee ample opportunity to tell his or her story.** . . . On the other hand, **where the evidence shows that the process was incomplete and negligently conducted, and included the deliberate alteration of the employee's personnel file** in order to document charges against the employee, such evidence may not only result in a finding of bad faith on the employer's part **but also lead to the imposition of punitive damages for oppression and malice.** . . . An expert witness testified on plaintiff's behalf that the investigation of the charges against her had been incomplete and that, in the expert's opinion, the dismissal had been unjustified. **On the employer's appeal, the court affirmed a judgment awarding plaintiff contract damages, compensatory damages and punitive damages.**⁷⁶

566. The unethical conduct of MMS/Gordon before the court(s) involve the signing of Motion(s) represented to the court(s) and others, MMS/Gordon knew or should have known contained false and/or misleading information. Actions by MMS/Gordon which Newsome believed were in violation of FRCP⁷⁷ Rule 11 and any other applicable statutes/laws governing said matters. Moreover, MMS/Sams termination of Newsome's employment as a direct and proximate result of her reporting the unethical/unlawful actions of MMS/Gordon clearly violated **protected rights** of Newsome secured under the United States Constitution, Civil Rights Act and other laws governing such matters. Moreover, Employee Handbook policies of MMS.

567. On Friday, December 3, 2004, in a meeting with MMS/Sams/Farrell/Gordon, MMS/Sams advised Newsome that her employment was being terminated; she is to clean out

⁷⁶ 48 Am. Jur. Proof of Facts 2d 218-222.

⁷⁷ Abbreviation for "Federal Rules of Civil Procedure."

her desk, return office keys, parking lot and building access cards, and leave the premises. Newsome did as she was requested.

568. NOTE Newsome hereby incorporates Paragraphs 422 through 442 of this Complaint in further support of the retaliation and claims set forth under this Count.

569. During the December 3, 2004 meeting, **AFTER** notifying/advising Newsome that she was being terminated, MMS/Sams asked Newsome if she had anything to say. Newsome replied, "Not at this time." She was then excused from the meeting.

570. NOTE Newsome hereby incorporates Paragraphs 368, 370, 401, 438, 598, 603, 604, 605, and 608 of this Complaint in further support of PRETEXT, retaliation and claims set forth in this Complaint.

571. MMS/Sams aware of the unethical conduct of Gordon yet elected to uphold such unethical practices. *Rather than notify the Court of the wrongs and/or unethical conduct of MMS/Gordon before it, MMS/Sams made a willful, deliberate and conscious decision to reward MMS/Gordon – i.e. reward being the termination of Newsome's employment - for such unlawful practices. MMS rewarding Gordon with what MMS/Gordon had been seeking for almost a year – the termination of Newsome through the use of unlawful employment practices as discrimination, retaliation, harassment and hostile work environment.* Unable to find anything to justify the termination of Newsome, MMS/Sams elected to use Newsome's addressing of unethical practices of Gordon before the court(s), in her December 1, 2004 email, as a reason to terminate her. Then when MMS was brought before the Mississippi Department of Employment Security, MMS sent its representatives Allen and Gordon to further falsify and embellish the reasons for Newsome's termination in that it provided in its statement to MDES that "Ms. Newsome was discharged with cause for destroying the working relationship of her supervisor, Bob Gordon, by making a false accusation of misconduct on his part." See Exhibit "53" – MMS Statement Provided MDES attached hereto and incorporated by reference as if set forth in full herein. Thus, establishing inconsistencies are PRETEXT to cover-up illegal animus and overt acts in furtherance of obstructing the administration of justice and/or obstructing justice.

572. Since Newsome's bringing complaints of unlawful practices to MMS' attention and government agency(s) attention, MMS for approximately a year tried to dig up or find petty reasons to terminate Newsome and had created a very **discriminatory, retaliatory, harassing, hostile, brutal, intolerable, unsafe, unhealthy and life-threatening** environment in which it had allowed Defendant(s) to use against Newsome in its efforts to terminate her employment or to force her out of the workplace. When all such efforts failed, MMS/Sams clung to the December 1, 2004, email entitled "HARASSMENT INCIDENT – 12/01/04," thinking that said email from Newsome addressing the unethical and unlawful practices of Gordon would justify her termination. Reporting of unlawful actions being practiced before the court is a protected activity and *one of public policy – i.e. having social and economic impact.* Thus, Newsome was not to be terminated based upon bringing information to the attention of MMS. In fact, the termination of Newsome for the reporting of unlawful practices – **which is a protected activity** – clearly violated Newsome's Constitutional and Civil Rights. Said termination of Newsome also violated **103 EQUAL EMPLOYMENT OPPORTUNITY** of MMS *Employee Handbook* which states:

. . . Mitchell McNutt does not discriminate in employment opportunities or practices on the basis of *race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law.* . . .

Any employee with *questions* or *concerns* about *any type of discrimination* in the workplace *are encouraged to bring these issues to the attention of their immediate supervisor/attorney or the Chief Operations Officer.* *Employees can raise concerns and make reports without fear of reprisal.* Anyone found to be engaging *in any type of unlawful discrimination will be subject to disciplinary action,* up to and including termination of employment.

See **Exhibit "3"** – MMS *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, MMS/Sams with knowledge that MMS/Sams was violating Newsome's Constitutional and Civil Rights elected to take a *far departure* from the law and its own policies and procedures. Actions by were willful, malicious and wanton.

573. The Exhibits attached to this instant Complaint further supports Defendant(s)' ability to distort the facts in order to obtain goal – mislead and/or obstruct justice. Moreover, at what great lengths – slandering and defamation of Newsome's character – Defendant(s) would go to prevent government agency/employees from finding out about the unethical/unlawful practices of MMS.

574. In the November 15, 2004 Performance Review of Newsome, MMS/Gordon stated:

Not as familiar with court systems, rules, procedures and practices as needs to be as a litigation legal secretary.

See **Exhibit "29,"** p. 6 attached hereto and incorporated by reference as if set forth in full herein. Nevertheless, MMS/Gordon does not provide any documents or evidence to support such a statement by it/him. However, with this instant Complaint, the evidence attached hereto at **Exhibits "10"** and **"11"** clearly supports that Newsome is familiar with court system(s) and/or has the ability, if shown, to learn. However, no such opportunity during the evaluation period was ever presented to Newsome. Moreover, the record evidence further supports Newsome's familiarity with the rules of the court. In fact, Newsome cautioned Gordon about the falsity of the statement(s) being made in the pleading being presented to the court. Thus, further supporting the motive behind the November 15, 2004 Performance Review prepared by Gordon was illegally motivated. Moreover, CREDIBILITY of Gordon and/or MMS' witness(es).

575. Newsome is an African-American/Black female, holds a B.S. Degree from Florida A & M University and had well over 15 years in the administrative-support capacity at the time of MMS' termination of her employment. Newsome typed and prepared this instant Complaint.

576. At the time of MMS' termination of Newsome's employment, Newsome was the only African-American/Black at MMS' Jackson, Mississippi office. During her employment with MMS, Newsome was treated differently than those similarly situated and/or not of her race. Although MMS wants to assert via its *Employee Handbook* that it is an equal employment opportunity employer, it was not. During Newsome's employment at MMS, she had been *repeatedly* discriminated against by Defendant(s) and subjected to retaliatory, prejudicial and hostile treatment. Said employment violations were not only in violation of

Newsome's Constitutional and Civil Rights, but also **103 EQUAL EMPLOYMENT OPPORTUNITY** of the MMS Employee Handbook which also stated:

Any employee with questions or concerns about *any type of discrimination* in the workplace *are encouraged to bring these issues* to the attention of *their immediate supervisor/attorney or the Chief Operations Officer*. **Employees can raise concerns and make reports *without fear of reprisal***. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

See **Exhibit "3"** - MMS *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein.

577. Upon Newsome's employment with MMS, she was *never* given a Job Description for a Legal Secretary detailing what her job duties/responsibilities were.

578. On December 1, 2004, pursuant MMS' Policy 210 **JOB DESCRIPTION** which stated:

Mitchell McNutt makes every effort to create and maintain accurate job descriptions for all positions within the organization. Each description includes a job information section, a job summary section (giving a general overview of the job's purpose), an essential duties and responsibilities section, a supervisory responsibilities section, a qualifications section (including education and/or experience, language skills, mathematical skills, reasoning ability, and any certification required), a physical demands section, and a work environment section.

Mitchell McNutt maintains job descriptions to aid in orienting new employees to their jobs, identifying the requirements of each position, establishing hiring criteria, setting standards for employee performance evaluations, and establishing a basis for making reasonable accommodations for individuals with disabilities.

Employees should remember that job descriptions do not necessarily cover every task or duty that might be assigned, and that additional responsibilities may be assigned as necessary. Contact the Chief Operations Officer if you have a questions or concerns about your job description.

See **Exhibit "3"** - MMS *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein, Newsome requested a copy of the Job Description for Legal Secretary. See **Exhibit "4"** - November 30, 2004 email entitled "REQUEST FOR JOB DESCRIPTION - LEGAL SECRETARY" attached hereto and incorporated by reference as if set forth in full herein. On November 30, 2004, MMS/Allen/Gordon provided Newsome with a Performance Review; however, failed to provide her with a copy of the Job Description it relied upon (if any) to base its Performance Review. Nevertheless, MMS/Allen/Gordon expected Newsome to accept and sign said Review without knowing the evidence/documentation relied upon to render it.

579. During the Performance Review of Newsome, she advised MMS/Allen/Gordon of commendable feedback and reviews from other employers, thus she found the Performance Review to be retaliatory because of her complaints brought against MMS and that retaliation was evidenced in Performance Review provided. An example of such commendations such as:

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary.

Exhibit "10" attached hereto and incorporated by reference as if set forth in full herein. [*Now compare the information in this Exhibit to the November 15, 2004 Performance Review prepared by MMS/Gordon – an attorney who in less than a year's time had gone through approximately four (4) Legal Secretaries prior to Newsome's employment. Not only that, credibility of Gordon - an attorney who has been shown to provide false and/or misleading information in court documents – is very doubtful – i.e. a person willing to LIE to the court for purposes of personal/financial gain].*

Also, Newsome has been commended as follows:

. . . she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.

She is an asset and will be solely missed . . .

Exhibit "10" attached hereto and incorporated by reference as if set forth in full herein. [*Now compare the information in this Exhibit to the November 15, 2004 Performance Review prepared by MMS/Gordon – an attorney who in less than a year's time had gone through approximately four (4) Legal Secretaries prior to Newsome's employment. Not only that, credibility of Gordon - an attorney who has been shown to provide false and/or misleading information in court documents – is very doubtful – i.e. a person willing to LIE to the court for purposes of personal/financial gain].*

580. Prior to Newsome's coming to MMS, Gordon had at least *four* legal secretaries to provide him with legal support. Newsome was Gordon's *fifth* legal secretary in approximately a one-year period.

581. Newsome's typing speed is approximately between 60 – 70 words per minute. Newsome is proficient on the software applications and scores high (95% - 100%) on test provided by agencies (i.e., Microsoft Word, Microsoft Excel, etc.). **Exhibit "11"** attached hereto and incorporated by reference as if set forth in full herein. Moreover, Newsome's

knowledge of software applications is exhibited and/or exemplified in the correspondence attached hereto at **Exhibit 10**.

582. Only **AFTER** Newsome's reporting of MMS' unlawful employment practices and only **AFTER** Newsome's filing of her complaints with MMS and various federal agencies, did MMS begin to assert and project Newsome as hostile, insubordinate, etc. However, through MMS' failed efforts to generate a hostile reaction from Newsome – hoping Newsome would become hostile so that she could be terminated – Defendant(s) became even more upset because Newsome did not allow herself to be drawn in or to stoop/sink to the level that Defendant(s) were trying to take her to get an unfavorable reaction from her.

583. A reasonable person/mind may ask, if Mitchell, McNutt & Sams, P.A. was treating Newsome so bad, why did she stay? Under Title VII the law clearly prohibits discrimination. Too many people have died and/or suffered for the rights Defendant(s) were trying to deprive Newsome of. Newsome is entitled to be employed in a work environment free of discrimination. The termination by MMS was unlawful/illegal and Newsome, as a matter of law, had the right to remain employed and not be forced to give up/abandon her job. Moreover, the laws are clear how difficult it is for African-Americans/Blacks to gain employment and discriminatory practices to which they are subjected; nevertheless, said citizens have a right to work in an employment environment free of discrimination, prejudices, hostile treatment, etc.

Newsome further alleges that the acts of Defendants and each of them as alleged in this Complaint were carried and intentionally, oppressively, maliciously and abusively for the purpose of vexing, annoying and harassing Newsome and in retaliation for his refusal to violate the laws of the States of Mississippi and laws of the United States; moreover, Newsome's refusal to remain silent and not report the unlawful employment violations of MMS.

584. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and retaliating against her by subjecting her to a *discriminatory, retaliatory, harassing, hostile, brutal, intolerable, unsafe, unhealthy and life-threatening* environment. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

585. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes retaliation and character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States. See Exhibit "14"* attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . . ; that they published his confidential sources thus destroying his credibility . . . ; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . . , blackballed him, thus precluding other employment, . . . thus destroying his credibility . . . , all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

586. As a direct and proximate result of Defendant(s)' systematic retaliatory practices and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was

commending me on my professionalism and my conduct. So when I receive an evaluation, *I take it very personally, and I'm offended by it.* [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, *I take it very personally (CLAIMANT CRYING).* But this is the kind of conduct that each secretary, I, I don't know, *but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable.* I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, *during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination.* It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.*

587. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to retaliate and subject her to *discriminatory, retaliatory, harassing, hostile, brutal, intolerable, unsafe, unhealthy and life-threatening* environment as set forth in this Complaint.

588. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in retaliatory practices and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit retaliation.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from retaliatory practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the retaliatory practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of retaliatory practices as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981, Title VII of the Civil Rights Act and other statutes and laws governing said matters.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).

- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$5,00,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$25,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;
- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.
- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof;
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled.

COUNT IV⁷⁸
RETALIATION UNDER THE WHISTLEBLOWER ACT AND/OR LAWS GOVERNING SAID MATTERS AND
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

In support of the claims set forth herein and to explain the facts, evidence and legal conclusions set forth in this Complaint, the following facts are important in deciding whether Newsome is protected by the laws governed by the Whistleblower Act while engaged in protected policy and/or rights protected under the laws. In support thereof, Newsome states the following:

589. Newsome incorporates by reference Paragraphs 1 through 588 and 615 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

590. "Whistleblowing" occurs when an employee reports illegal or improper conduct to superiors or to outside authorities and is discharged in retaliation for doing so. . . . Whistleblower provisions are intended to promote a working environment in which employees are relatively free from the debilitating threat of employment reprisals for publicly asserting company violations of statutes. . . . Laws protecting whistleblowers are meant to encourage employees to report illegal practices without fear of reprisal by their employers.⁷⁹

591. The evidence, facts, arguments, and legal conclusions presented by Newsome in this Complaint will support that she was protected under the *Whistleblower Act* in that: (a) she reported what she in good faith believed were illegal and improper conduct of MMS and Defendant(s) to MMS as well as outside government (federal) authorities. As a direct and proximate result of Newsome's reporting of illegal/unlawful and/or improper conduct by Defendant(s), her employment with MMS was terminated approximately two days after the submittal of her December 1, 2004 *Harassment* complaint – one of several complaints submitted by Newsome during the course of her employment.

592. **FEDERAL STATUTES:** Under the *anti-retaliation* or *whistleblower* provisions of federal statutes, Newsome must make a three-part prima facie showing that:

- a. The employee engaged in a protected activity, such as filing a complaint or reporting information to the government;

⁷⁸ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

⁷⁹ 82 Am.Jur.2d Wrongful Discharge § 117.

- b. The employer subjected the employee to some materially adverse employment action; and
- c. A causal connection existed between the protected activity and the adverse action. To establish a causal link between the protected expression and the adverse employment action, the employee need only establish that the protected activity and the adverse action are not wholly unrelated.⁸⁰

Therefore, states the following claims:

- (i) Newsome engaged in protected activities when she submitted complaints regarding FLSA violations, OSHA Act violations, and complained of Title VII violations to MMS and later filed complaints with the W&H and OSHA during her employment with MMS;
- (ii) MMS and Defendant(s) subjected Newsome to some materially adverse employment action – i.e. discrimination, retaliation and hostile work environment; moreover, submitted a FORMAL rebuke through June 7, 2004 elaborate “Memo” entitled “*Clarifying Work Related Issues*” one day PRIOR to the June 8, 2004, deadline issued by OSHA to respond to Newsome’s complaint filed with it.
- (iii) Newsome believes that a reasonable person/mind may conclude that there is a causal connection between the elaborate June 7, 2004 “Memo” of MMS/Allen and the June 8, 2004, deadline issued by OSHA to respond to the OSH Act violations reported. The June 7, 2004, elaborate “Memo” submitted by MMS/Allen clearly acknowledge Newsome’s engagement in protected activity(s); therefore sustaining and/or solidifying the causal link between the protected expression exercised by Newsome and MMS/Allen’s adverse/retaliatory “MEMO” submitted. Furthermore, that there is a causal connection between the retaliatory and hostile work/harassing environment that Defendant(s) subjected Newsome to upon learning of her reporting of unlawful employment practices by MMS.

593. Newsome was engaged in a protected activity at the time of MMS’ termination of her employment. Protected activity(s) which involved public policy.

594. **ELEMENTS OF CAUSE OF ACTION:** Newsome must show that she reasonably believed Defendant(s)’ conduct was violating a law or regulation. While there need not be an actual violation of law in order to support a claim under a whistleblower statute, the conduct reported by Newsome must at least implicate a violation of a real federal or state law. Newsome must report the violation in good faith.⁸¹ Therefore, Newsome believes that the facts, evidence and legal conclusion set forth in this instant Complaint will sustain *elements*

⁸⁰ 82 Am.Jur.2d Wrongful Discharge § 118.

⁸¹ 82 Am.Jur.2d Wrongful Discharge § 121.

of cause of action has been met. Moreover: (i) Newsome reasonably believed that Defendant MMS' conduct violated the statutes/laws (federal and/or state) provided in this instant Complaint. (ii) Newsome submitted timely and properly submitted good-faith complaints to the attention of MMS prior to filing with government agency(s) – i.e. W&H and OSHA.

595. The laws are clear regarding prohibition against the termination of Newsome's employment in retaliation for reporting unlawful conduct of the Defendant MMS. *Palmateer v. International Harvester Co.*, 421 N.E.2d 876; *Watassek v. Michigan, Dept. of Mental Health*, 372 N.W.2d 617 (1985). Nevertheless, MMS/Sams in the termination of Newsome's employment placed MMS and Defendant(s) above the law and engaged in unlawful conduct clearly prohibited by federal and state statutes/laws.

596. Newsome's reporting of MMS' unlawful conduct was known by Defendant(s) – i.e. Newsome's co-workers.

597. **Factors that may also result in a forced resignation.** For example, evidence that the employer caused or permitted working conditions to become so intolerable that a reasonable person would feel compelled to resign may establish a constructive discharge. *Hinthorn v. Roland's of Bloomington*, 503 N.E.2d 1128. *Pollard v. High's of Baltimore, Inc.*, 281 F.3d 462. *Nixon v. Waste Management, Inc.*, 156 Fed. Appx. 784, 2005 FED App. 0924N (6th 2005). – **“humiliation, inconvenience and decreased pay”** associated with position to which plaintiff was reassigned allegedly effected a constructive discharge. *Jim Walter Resources, Inc. v. Riles*, 920 So.2d 1093 (Ala. Civ. App. 2004) – in order for an employee to establish a claim of constructive discharge, he or she “must present substantial evidence that his or her ‘employer deliberately [made] [the] employee’s working conditions so intolerable that the employee [was] forced into an involuntary resignation. Therefore, Newsome believes that the facts, evidence and legal conclusions set forth in this instant complaint with support:

- (a) That while Defendant(s) caused or permitted working conditions at MMS to become so intolerable that a reasonable person would feel compelled to resign; Newsome advised MMS/Allen/Gordon of her desire to continue to work at MMS and requested that the unlawful employment reported cease. To no avail.
- (b) Performance Review was submitted for purposes of depriving Newsome annual pay raise, defamation, slandering, humiliating, degrading, discrimination, harassment, supporting the hostile work environment created, and other reasons known to Defendant(s) to force Newsome out of the workplace. Newsome repeatedly reported violations and advised of her entitlement to work in a nondiscriminatory environment as well as equal employment opportunity.
- (c) Facts, evidence and legal conclusions will support that MMS allowed Gordon to create such a hostile work environment, that prior to Newsome's employment there were at least four Legal Secretaries that were victimized in an approximate one-year period and left the employment of MMS. Most likely as a direct and proximate result of unlawful employment practices condoned by MMS.

MMS caused or permitted working conditions to become so intolerable that a reasonable person would feel compelled to resign – thus, establishing grounds for a constructive discharge. Newsome repeatedly made known to MMS/Allen/Gordon of knowledge of their efforts to force her out of the workplace by subjecting her to discrimination, retaliation, harassment and a hostile work environment. During Newsome’s employment with MMS, she was repeatedly subjected to discrimination, retaliation, humiliation, inconvenience, withholding of wages/earnings, unsafe and unhealthy work conditions, hostile work environment, threats, etc. Newsome believes that the supporting Exhibits provided with this instant Complaint sustains “substantial evidence that MMS deliberately made her working conditions so intolerable from the strict, oppressive, discriminatory, retaliatory supervision and monitoring as well as subjecting her to abuse, threats, harassment and hostile work environment that she submitted NUMEROUS complaints to MMS/Allen’s attention as well as verbally contested/opposed employment violations. To no avail. MMS welcomed and encouraged the unlawful employment practices reported. Defendant(s) welcomed and encouraged the unlawful employment practices reported.

598. MMS and Defendant(s) allowed working conditions to become intolerable, hostile, discriminatory, threatening, etc. that a reasonable person would feel compelled to resign/quit. MMS and Defendant(s) allowed such conditions for purposes of forcing Newsome to resign/quit; however, when such efforts failed, MMS/Sams unlawfully terminated Newsome’s employment in retaliation for the reporting of unlawful/ illegal actions and in retaliation of same. See **Exhibit “7” - Transcript from MDES Hearing** (Transcript Only, Exhibits referenced are in the possession of MMS and the Unemployment Commission)– attached hereto and incorporated by reference as if set forth in full herein. Which states (excerpt taken):

Newsome	56	2-4	Okay, so my December 1, 2004 e-mail in regards to harassment incident, was not out of the ordinary. I have submitted complaints in the past in regards to Mr. Gordon’s behavior, is that correct?
Allen	56	5	You have.
Newsome	56	6-8	<i>At any time during my employment, did I mention to you that I felt that Mr. Gordon’s treatment, or his behavior, and conduct in regards to me was hostile?</i>
Allen	56	9	You did.
Newsome	56	10	Okay, was this before your June 7 th Memorandum or after?
Allen	56	11	I don’t recall. ⁸²
Newsome	56	16-18	<i>And the complaint that I submitted to OSHA, OSHA contacted the firm, you were to respond, if I’m not mistaken, by June 8, 2004. Is that correct?</i>
Allen	56	19-20	I don’t know the exact date. We did respond within the time limits they asked us to.

⁸² PRETEXT – His memory was so good with dates, etc. when Ardelean was coaching him; however, now unable to recall dates and time.

Newsome	57	1-4	Okay, the date of that Memorandum . . . was June 7, 2004, the response, if I'm not mistaken, because like I said, I wasn't aware this was coming up, was due on June 8, 2004. <i>That e-mail or that Memorandum came out the day prior. Did that have anything to do?</i>
Allen	57	5-6	Absolutely not, that's why I stated in here, you could do all you wanted about, with, with agencies. ⁸³
Newsome	57	7-10	But also in regards to the complaints that I had submitted to the firm, <i>have I ever submitted any complaints of harassment, discrimination, or anything to the attention of Mitchell, McNutt & Sams in regards to Bob Gordon?</i>
Allen	57	11	Discrimination, harassment, yes, you've used that word several times.
Newsome	57	12-14	Okay, and did <i>I ever mention to you that I felt that I was discriminated or either in the handling of my complaints being discriminative in any nature?</i>
Allen	57	15-16	You asked me to follow through with going to the Board, is that what you're referring to?
Newsome	57	17-20	No, <i>I'm asking did you ever receive any e-mail correspondence from me in regards to complaints I submitted to the firm, that I felt I was being subjected to certain treatment?</i>
Allen	57	20	Discriminatory.
Newsome	58	1	<i>Discriminative treatment?</i>
Allen	58	2	You're, I believe you sent me one like that, yes.
Newsome	58	3-5	Okay, <i>so you were, so Mitchell, McNutt & Sams was made aware prior to November 30th on several occasions that I had filed complaints in regards to Mr. Gordon's behavior?</i>
Allen	58	6	Yes.
Newsome	58	7-9	<i>Did Mitchell, McNutt & Sams at any time prior to November 30, 2004 submit in writing to me, written responses to my complaints in regards to Mr. Gordon's behavior?</i>
Allen	58	10-12	Let's see, we, we talked about it at the Board, and talked to Mr. Gordon about it, and I'm trying to think if, what happened from that point forward. <u>I don't recall if we sent anything to you, if I did.</u>
Newsome	58	13-15	Okay, so I can, it, <i>it is your testimony that I submitted several complaints, but the firm never responded to me in writing in</i>

⁸³ PRETEXT – Credibility, malicious, willful and wanton memorandum brief. Claims he was not aware that Memorandum was created day before OSHA deadline to respond to complaint; however, he coincidentally mentions my filing complaints with agencies in Memorandum.

regards to my complaints on Mr. Gordon's behavior.

Allen	58	16	<i>I responded back to you.</i>
Newsome	58	17	<i>In regards to Mr. Gordon's behavior?</i>
Allen	58		Uh hum.
Newsome	58	17-18	<i>Do you have any documentation?</i> ⁸⁴
Allen	58	19-20	<i>Oh, I tried, I may have some e-mails that we had through correspondence commenting back on.</i>
Newsome	59	1-3	<i>Okay, did Mr. Gordon ever receive an elaborate e-mail or Memorandum such as. . . that you forwarded to me in regards to the complaints I submitted in regards to him?</i>
Allen	59	4	<i>Did he receive one?</i>
Newsome	59	5-9	<i>Did Mr. Gordon, I submitted a complaint in regards to harassment or discrimination like I said, I don't have them all, but I submitted my complaints to the firm in regards to Mitchell, McNutt & Sams conduct and behavior as well as Mr. Gordon, did you ever follow up with an e-mail or memorandum as you June 7, 2004?</i>
Allen	59	10	To Mr. Gordon?
Newsome	59	11	To Mr. Gordon?
Allen	59	12	No.
Newsome	59	13-14	<i>So Mitchell, McNutt & Sams did nothing to deter or discourage Mr. Gordon's behavior?</i>
Allen	59	15-16	I don't know if there was, there was some discussions with, that, that we had.
Another example:			
Newsome	144	19-20	Yes, just a moment. It was the incident that I went out to lunch with Attorney Mike Farrell and Ladye Margaret?
Gordon	146	7-13	<i>She was gone for, what to me was an inordinate of the time to get something to pick up, to pick something up to bring it back. My recollection is that she was gone approximately forty-five minutes or so, and then she returned and at that time I criticized her for having gone and eaten out when I had told her that she needed to work through the lunch hour, and if she was going to get something to eat, go get it, and bring it back.</i>
Newsome	146	14-15	<i>So you said it was about forty-five minutes. For the record, can you</i>

⁸⁴ PRETEXT – They were turning over exhibits regarding the Plaintiff and their evidence of unlawfully and/or illegally padding her personnel file; however, produced not one document to support their handling of discrimination and harassment complaints against Gordon.

explain your conduct when I did return, your behavior?

Newsome	147	1-2	<i>So would you say your behavior, for instance stomping around and slamming the door is acceptable?</i>
Gordon	147	3-4	I don't know that I stomped around and slammed the door, but I, yes, I was very upset.
Newsome	147	5	<i>Okay, would you say you were hostile?</i>
Gordon	147	6	Yes.
Newsome	147	8-9	<i>Were you aware that your behavior was noticed by other employees at Mitchell, McNutt & Sams?</i>
Gordon	147	10	Yes.
Newsome	147	11	<i>Are you aware that I reported that behavior to Mr. Allen?</i>
Gordon	147	12	Sitting here right now, I don't, I do not recall being aware of that.
Newsome	148	1-2	You, were you aware that when I went to lunch, that I was not driving, that I did go with Mr. Farrell and Ladye Margaret?
Gordon	148	3-4	You told me that when you returned, you did not tell me that before you were going.
Newsome	148	5-6	Prior to leaving. <i>Were you aware that the lunch break was only about probably thirty-five minutes?</i>
Gordon	148	7	It occurred, it appeared to me it was around forty-five minutes.
Newsome	148	16-17	<i>Did that thirty-five minutes, or if you say forty-five minutes, did that preclude or prevent you from getting that Pleading filed in time?</i>
Gordon	148	18-20	We got the Pleading filed on that day, but while you were out, a revision or revisions to that Pleading were sitting at your desk and not being done.
Newsome	149	14-16	<i>And are you aware that your conduct affected the work of another attorney, who was wondering whether or not you had calmed down that day after that particular incident?</i>
Gordon	149	17	No.
Newsome	150	2	<i>So Mr. Gordon, you would say your conduct was hostile?</i>
Gordon	150	3	That's what I, yes, I said that.
Newsome	150	4-5	<i>Did Mitchell, McNutt & Sams ever notify you of your conduct of being you know, you being a hostile employee?</i>
Gordon	150	6	No.
Newsome	150	13-14	<i>Are you aware that I have, that I submitted complaints in regards to your conduct to Mitchell, McNutt & Sams?</i>

599. When the employer contends that the employee was discharged for violating a work rule or company policy, the employee may be able to establish a discriminatory or retaliatory motive by proving that the proffered reason was a pretext. *Gonzalez-Centeno v. North Cent. Kansas Regional Juvenile Detention Facility*, 101 P.3d 1170. 22 I.E.R. Cas. (BNA) 35 (2004) – issue of fact as to whether employer terminated employee because of employee’s violation of policy for reporting work absences, or was pretextual due to employer’s discovery that employee had previously filed . . . claim against another employer precluded summary judgment. Therefore:

On December 3, 2004, MMS/Sams advised Newsome that her employment was being terminated as a direct and proximate result of the allegations she made towards Gordon (her supervisor and an attorney at MMS) in her December 1, 2004 email entitled, “*HARASSMENT INCIDENT – 12/01/04.*” However, the proffered reasons provided by MMS/Sams for Newsome’s termination of employment is discriminatory and in retaliation because of its/his knowledge of Newsome’s engagement in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*) as well as her having reported MMS’ employment violations to government agencies. Therefore, based upon the facts, evidence and legal conclusions presented in this instant Complaint, it will sustain that MMS’ proffered reasons for Newsome’s unlawful/illegal termination of employment is PRETEXT to cover-up an illegal animus – i.e. *for instance*, as evidenced at **Paragraphs 341, 368, 370, 401, 438, 598, 603, 604, 605, and 608** and **Exhibits “13 and 7.”** Furthermore, the December 1, 2004 Harassment complaint submitted by Newsome was in compliance with MMS’ policies and was a duty owed by Newsome according to MMS policies as well as that provided by public policy.

600. Pretext may also be shown when the proffered reason was not a sufficient ground for discharge. *Ducote v. J.A. Jones Const. Co.*, 471 So.2d 704 (1985). MMS/Sams had no sufficient ground to sustain proffered reasons for terminating Newsome’s employment. Pretext which can be sustained:

- (i) Record evidence will support that Newsome’s December 1, 2004, Harassment complaint was in compliance with MMS policies.
- (ii) Due to lack of credibility of Defendant(s) and evidence to support willingness to provide false and/or misleading information for purposes of obstructing an administration of justice – i.e. *overt* acts in *furtherance* of role in conspiracy(s) leveled against Newsome.
- (iii) Due to the inconsistencies provided for reasons for termination of Newsome’s employment as well as violation to MMS policies.
- (iv) Defendant MMS willingness to provide false testimony and/or misleading information during a federal investigation – i.e. REHEARSED false/perjured testimony or information provided; as well as PATTERN-OF-PRACTICE of just how far Defendant(s) will go to deprive.

601. Newsome must prove that the defendant had a discriminatory or retaliatory motive for discharge: *Smith v. Atlas Off-Shore Boat Service, Inc.*, 653 F.2d 1057, 65 ALR Fed 776 (5th Cir. 1981). The record evidence will sustain that Defendant MMS had a discriminatory or retaliatory motive for terminating Newsome's employment and its knowledge of Newsome's engagement in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*) – See **Paragraphs 341, 368, 370, 401, 438, 598, 603, 604, 605, and 608** and **Exhibits "13 and 7"** of this Complaint attached hereto and incorporated by reference. Further supporting the overt acts of named Defendants in furtherance of fulfilling role in conspiracy(s) leveled against Newsome.

602. Newsome believes that the facts, evidence and legal conclusions provided in this instant Complaint will sustain any proffered reasons presented by MMS for Newsome's unlawful discharge/termination is pretext and was provided to shield/hide its unlawful/illegal practices as well as its discriminatory and retaliatory practices rendered Newsome. It is important to note that Newsome was the only African-American/Black in the Jackson, Mississippi office, Defendant(s) is white and those making the decision to terminate Newsome's employment and engage in the *pattern-of-discriminatory practices* were also white.

603. Pretext can be shown through Defendant(s) testimony presented in **Paragraphs 341, 368, 370, 401, 438, 598, 603, 604, 605, and 608** and **Exhibits "13 and 7"** sustaining a PATTERN-OF-PRACTICE and Defendant(s)' willingness to continue to provide perjured, false and/or misleading information for purposes of PRETEXT as well as OBSTRUCTING JUSTICE to deprive Newsome equal protection of the laws, equal privileges and immunities and due process of laws secured/guaranteed under the Constitution and other laws of the United States. For instance, from the following testimony, Newsome believes that a reasonable person/mind may conclude that the proffered reason provided by MMS for her discharge is pretext, said reason (as a matter of law and the evidence) is not sufficient ground to support its discharge and/or termination of employment:

Ardelean	39	1-3	I'd like to hand you what appears to be a memo from you to Ms. Newsome dated June 7, 2004, and ask if you, if you can identify this memo, which I would like to make an exhibit. ⁸⁵
Allen	39	4	Yes, this is my memo to Ms. Newsome.
Ardelean	39	5	What was the purpose of the memo?
Allen	39	6-	The purpose of this memo is that, as you can see the history of, <i>of having situations where we have to continue to make request and instructions specifically, and it comes back in sort of a hostile, and with a, with an attitude of, of hostile, of hostility and insubordination, that I had to make sure she understood what her duties were. And she had made a claim that, oh, we're retaliating, is her word, we're harassing her. And so I wanted to make is very clear that she could file all those complaints with the various Federal Agencies all that she wanted, that's no problem. I, I have you know, that's, that's any person's right. However, you must be courteous, respectful, cooperative, because she also answered the phone, and would answer it by the speakerphone. And so you</i>

⁸⁵ PRETEXT - Memorandum provided the day before the OSHA deadline to respond to charges.

know, that was another issue that I had asked her to make sure she answered the phone and she, she understood and she did it from that point forward. But I had to make sure she was crystal clear in, in what she had to be doing, and that she needed to be responsive, and productive in her work, and present an attitude that is more contributing to a positive atmosphere rather than being hostile.

Newsome	56	6-8	<i>At any time during my employment, did I mention to you that I felt that Mr. Gordon's treatment, or his behavior, and conduct in regards to me was hostile?</i>
Allen	56	9	You did.
Newsome	56	10	Okay, was this before your June 7 th Memorandum or after?
Allen	56	11	I don't recall. ⁸⁶
Newsome	56	16-18	And the complaint that I submitted to OSHA, OSHA contacted the firm, you were to respond, if I'm not mistaken, by June 8, 2004. Is that correct?
Allen	56	19-20	I don't know the exact date. We did respond within the time limits they asked us to.
Newsome	57	1-4	<i>Okay, the date of that Memorandum . . . was June 7, 2004, the response, if I'm not mistaken, because like I said, I wasn't aware this was coming up, was due on June 8, 2004. That e-mail or that Memorandum came out the day prior. Did that have anything to do?</i>

EXPERT WITNESSES: . . . The leading case is *Crenshaw v. Bozeman Deaconess Hospital*.⁸⁷ In that case the plaintiff contended that the employer breached the implied covenant by failing to properly investigate the charges brought against her by her coemployees. The argument was that the employer had undertaken to investigate the complaints against her, in accordance with its self-imposed personnel policies, but then it affirmed her discharge on the basis of an incomplete investigation. At the trial, plaintiff's counsel produced and qualified an expert in the field of personnel management with special experience in the area of the employer's operations. The expert testified, in substance, that it was of vital importance generally, and to the individual involved particularly, to conduct an adequate investigation of charges of misconduct against an employee prior to dismissal for poor performance; that the plaintiff would have difficulty finding subsequent employment following a discharge for poor performance; that the defendant failed to properly investigate the charges against the plaintiff; and that, in her opinion, the discharge of the plaintiff had been unjustified. . . . The applicable evidence rule permitted expert opinion testimony whenever specialized knowledge would assist the trier of fact to understand the evidence or determine a fact in issue.

⁸⁶ PRETEXT – His memory was so good with dates, etc. when Ardelean was coaching him; however, now unable to recall dates and time.

⁸⁷ 693 P2d 487, 118 BNA LRRM 2076, 104 CCH LC ¶ 55590.

The court felt that the spirit of this rule should be applied to recognize the “new legion of experts” in the “complex domain of labor relations.” Furthermore, the common knowledge of laymen did not extend to an employer’s disciplinary guidelines, nor did it include the ability to evaluate the propriety of such guidelines. The expert’s perspective assisted the jury to understand the evidence and ultimately the breach of the implied covenant of good faith and fair dealing question at issue. . . . *Many of the cases involving a wrongful discharge on a bad faith theory are predicated upon the existence of established personnel practices and procedures for terminating at-will employees, and a corresponding failure to follow the established guidelines or the application of them in an arbitrary and abusive way.* While it is unlike that expert witnesses on these issues will ever be regarded as indispensable, they can clearly provide valuable support for a plaintiff in a bad faith wrongful discharge case.⁸⁸

Allen	14	8 - 18	<i>. . . And he was ill, and couldn't and, and was out, and even had to cancel a trip, because he was ill over you know, a weekend and a couple of other days. So Ms. Newsome said he was monitoring her excessively, and so if he wouldn't have been monitoring so much, he would have been able to take care of his clients needs, but in actuality, he was ill. Now I have the time records. We keep all track of the time, because we charge out our hour, our time on an hourly basis. And, and so I have the record in there to show that he was not in one day. He sent her an e-mail from home to say, I was ill, that that, the bottom word was ill. So she knew he was, he was ill. So the Pleading itself was an extension of time to answer what was at hand for this particular client.</i>
Gordon	129	17	Did I miss the entirety of many days.
Newsome	129	18	<i>Yes.</i>
Gordon	129 130	19-20 1	No, I did not miss the entirety of any days, as I have testified earlier, on Wednesday I came in at approximately 10:30, and left at approximately 3:30 to 4:30.. .
Newsome	131	12-15	<i>. . . do you recall during the draft, the write up of this Petition, when I submitted the revisions back to you, that I marked up questioning the statements that you were making, in other words being inaccurate.</i>
Gordon	131	16	No.
Newsome	131	17	<i>You are not aware of that?</i>
Gordon	131	18	No.
Newsome	131	19-20	<i>Okay, so I never marked up on your, your handout, that, that your secretary is not the one in the hospital, and that we have typing pool?</i>

⁸⁸ 48 Am. Jur. Proof of Facts 2d 232-234.

Gordon	132	1	I don't recall that, no.
Newsome	132	14-17	<i>And you don't recall me submitting information to you, marking up on your draft, that the statement that you were making was inaccurate. That I was there working, it was not your secretary in the hospital that was sick, and that we have the typing pool, that's your testimony?</i>
Gordon	132	18-19	. . . I'm not saying you didn't, I'm saying I don't recall.
Newsome	134	15-19	<i>Also in that Pleading to the Court Mr. Gordon, you mentioned that you were going to be out of town November 19th to 21st. Do you recall having a conversation with me the day of the filing of this petition, advising me that you were, are indeed going to be in the office, and you are not going to be out of town?</i>
Gordon	135	1	<i>I told you at 5:00 before you left, . . .</i>
Newsome	135	6-7	<i>. . .securing the knowledge the Pleading had been filed, you did make it known to me that you were not going to be out of town?</i>
Gordon	135	8-10	<i>. . . I made it known to you that I may not be out of town. I may end up canceling that that trip.</i>
Newsome	135	11-12	And you were, you were in the office on November 19th, is that correct?
Gordon	135	13	Yes, Friday the 19th, yes.

604. MMS failed to follow its own policies in procedures as it relates to investigation of complaints filed, neither can it produce any evidence to rebut that presented by Newsome that the allegations made in her December 1, 2004 complaint were false. Moreover, there is testimony presented by MMS' employees to support that Newsome's claims were true. See **Exhibits "7"** at pp. 44 – 45, "**12, 40, 42, 45, and 51,**" attached hereto and incorporated by reference.

Newsome	55	19-20	<i>Okay, were my complaints in compliance with Mitchell, McNutt & Sams employee handbook policies?</i>
Allen	56	1	Yes.
Newsome	56	2-4	<i>Okay, so my December 1, 2004 e-mail in regards to harassment incident, was not out of the ordinary. I have submitted complaints in the past in regards to Mr. Gordon's behavior, is that correct?</i>
Allen	56	5	You have.
Allen	57	5-6	<i>Absolutely not, that's why I stated in here, you could do all you wanted about, with, with agencies.⁸⁹</i>

⁸⁹ PRETEXT – Credibility, malicious, willful and wanton memorandum brief. Claims he was not aware that Memorandum was created day before OSHA deadline to respond to complaint; however, he coincidentally mentions my filing complaints with agencies in Memorandum.

Newsome	57	7-10	But also in regards to the complaints that I had submitted to the firm, <i>have I ever submitted any complaints of harassment, discrimination, or anything to the attention of Mitchell, McNutt & Sams in regards to Bob Gordon?</i>
Allen	57	11	Discrimination, harassment, yes, you've used that word several times.
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Newsome	58	1	Discriminative treatment?
Allen	58	2	You're, I believe you sent me one like that, yes.
Newsome	58	3-5	Okay, so you were, so Mitchell, McNutt & Sams was made aware prior to November 30 th on several occasions that I had filed complaints in regards to Mr. Gordon's behavior?
Allen	58	6	Yes.
Newsome	58	7-9	Did Mitchell, McNutt & Sams at any time prior to November 30, 2004 submit in writing to me, written responses to my complaints in regards to Mr. Gordon's behavior?
Allen	58	10-12	Let's see, we, we talked about it at the Board, and talked to Mr. Gordon about it, and I'm trying to think if, what happened from that point forward. I don't recall if we sent anything to you, if I did.
Newsome	58	13-15	Okay, so I can, it, it is your testimony that I submitted several complaints, but the firm never responded to me in writing in regards to my complaints on Mr. Gordon's behavior.
Allen	58	16	I responded back to you.
Newsome	58	17	In regards to Mr. Gordon's behavior?
Allen	58		Uh hum.
Newsome	58	17-18	Do you have any documentation? ⁹⁰

⁹⁰ PRETEXT – They were turning over exhibits regarding the Plaintiff and their evidence of unlawfully and/or illegally padding her personnel file; however, produced not one document to support their handling of discrimination and harassment complaints against Gordon.

Allent	58	19-20	Oh, I tried, I may have some e-mails that we had through correspondence commenting back on.
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did not extend to an employer's disciplinary guidelines, nor did it include the ability to evaluate the propriety of such guidelines. The expert's perspective assisted the jury to understand the evidence and ultimately the breach of the implied covenant of good faith and fair dealing question at issue. . . . *Many of the cases involving a wrongful discharge on a bad faith theory are predicated upon the existence of established personnel practices and procedures for terminating at-will employees, and a corresponding failure to follow the established guidelines or the application of them in an arbitrary and abusive way.* While it is unlike that expert witnesses on these issues will ever be regarded as indispensable, they can clearly provide valuable support for a plaintiff in a bad faith wrongful discharge case.⁹²

605. In fact, in the copying of MMS' *Employee Handbook*, MMS' counsel (Paula Graves Ardelean) at the hearing before the *Mississippi Department of Employment Security*, aware of the unlawful/illegal actions of MMS and its employees attempted to withhold sections of MMS' *Employee Handbook* that she knew and/or should have known were pertinent and relevant to the matter before said agency:

Newsome: Are you familiar, we were talking about your conduct earlier, are you familiar with the Policy 703 of Mitchell, McNutt & Sams Policy, 703?

Gordon: That page is missing.

Ardelean: It's not in the version I have, there may be a page missing. Let's see.

Gordon: Do you have the revised version?

Newsome: That's an, now that's an important one, 703.

Referee: What does that one refer to?

Newsome: Sexual and Other Unlawful Harassment.

Ardelean: Did I copy that on another page? Is it in the version you have, Mr. Mize?

Referee: No, ma'am. It's 701, the next is 705, Personal Appearance. Now this may be part of it, indicates verbal conduct that includes, making or using derogatory comments, then verbal sexual advances, and then verbal abuse of a sexual nature.

_____: Yes, that is the.

Referee: It looks like the completion of it, but the beginning of 703 is not on, in the copy that I have.

Ardelean: Ms. Newsome looks like has a complete copy of it.

Newsome: No, I'm forwarding something that I'm working on that I submitted to someone, so I took that portion, for an exhibit.

Gordon: Am I familiar with this, I mean I have not read section 703 before.

Newsome: Okay, because for the record, under 703, Sexual and Other Unlawful Harassment, in the Mitchell, McNutt & Sams Employee Handbook, it says all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, so for the record, I, I want that in there, because from the testimony, his conduct and behavior for relevancy.

Referee: What's your question in regards to that?

⁹² 48 Am. Jur. Proof of Facts 2d 232-234.

Newsome: I just wanted to know, was he aware of, of that, of that policy.

Referee: He says he has not read it, okay.

See **Exhibit "7"** at pp. 176 – 177 of Excerpt of *Mississippi Department of Employment Security* Hearing attached hereto and incorporated by reference as if set forth in full herein – i.e. *going to establish a PATTERN-OF-PRACTICE* in MMS' practices of obstructing justice and/or the obstructing the administration of justice before government entities (i.e. agencies, courts, etc.). Moreover, PRETEXT supporting at what lengths MMS and its counsel will go to cover-up an illegal animus. See for instance **Paragraphs 341, 368, 370, 401, 438, 598, 603, 604, 605, and 608** and **Exhibits "13 and 7"** attached hereto and incorporated by reference. Evidence to support and sustain what this Court may expect from MMS and Defendant(s) in the prosecution of this instant Complaint.

606. MMS' counsel Ardelean preparing the exhibits presented at MDES hearing and COMPROMISING MMS' Employee Handbook and removing portions of said Handbook she knew and/or should have known was incriminating for purposes of obstructing and impeding a government investigation. Moreover, for purposes of providing false and misleading testimony and information to obstruct the administration of justice, tampering with evidence, and depriving Newsome equal protection of the laws, equal privileges and immunities under the laws and due process of laws.

607. In compromising and/or tampering with evidence for purposes of deception and covering up criminal/civil wrongs of Defendant(s), Ardelean violated the **Mississippi Rules of Professional Conduct** – Rule 1.2 which states in part:

RULE 1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, a lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify. . .

(d) A lawyer **shall not** counsel a client to engage, or assist a client, in conduct that a lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

[Amended effective November 3, 2005]

Comment

Criminal, Fraudulent and Prohibited Transactions. *A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.* There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper, but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required. . . .

Code Comparison

. . . With regard to paragraph (d), DR 7-102(A)(7) *provides that a lawyer shall not "counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."* DR 7-102(A)(6) *provides that a lawyer shall not "participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false."* DR 7-106 provides that "A lawyer shall not . . . advise his client to disregard a standing rule of a tribunal . . . but he may take appropriate steps in good faith to test the validity of such rule or ruling." EC 7-5 states that "A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor."

With regard to Rule 1.2(e), DR 2-110(C)(1)(c) provides that a lawyer may withdraw from representation if a client "insists" that the lawyer engage in "conduct that is illegal or that is prohibited under the Disciplinary Rules." DR 9-101(C) provides that "a lawyer shall not state or imply that he is able to influence improperly . . . any tribunal, legislative body or public official." . . .

608. Allen, MMS' Chief Operations Officer/Human Resources Representative/Controller during the MDES Hearing confirmed that falsifying information in pleadings filed with court (i.e. as Gordon did) was in violation of MMS Policy No. 104 ***Business Ethics and Conduct***.⁹³

⁹³ The successful business operation and reputation of Mitchell McNutt is built upon the principles of fair dealing and ethical conduct of our employees. *Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.*

The continued success of Mitchell McNutt is dependent upon our clients' trust and we are dedicated to preserving that trust. Employees owe a duty to Mitchell McNutt, its clients, and shareholders to act in a way that will merit the continued trust and confidence of the public.

Newsome: . . . the information that Mr. Gordon provided to the Court being false, would be a violation of 104, Business Ethics and Conduct of Mitchell, McNutt & Sams?
(Pg. 60 [1 - 3])

Allen: Let me refresh my memory as to what 104 is exactly. Did you want to see what we're referring to?

Referee: I made a notation, *I'll check it.*

Allen: Okay. Okay, this complies with what Mr. Gordon did. There is, I, I, see no conflict.

Newsome: So if he provided knowingly or provided, or it was brought to his attention that the information he has provided to the Court was false, and he signed those Pleadings with knowledge after it was brought to his attention that it was false, is it in violation of 104 Business Ethics and Conduct?

Allen: If, if he were not sick?

Newsome: If he were not sick?

Allen: **If he were not sick.**

Newsome: And . . . information that he provided in his Pleadings to the Court were false?

Allen: That may, it may be, if he was not sick, but we have the record showing that it is.

Newsome: Okay, and for the record I would like to read. Mitchell, McNutt of 104 Business Ethics and Conduct.

Referee: I, you won't need to read that.

Newsome: Okay, alright.

Referee: I mean it's part of the record, so.

Newsome: Okay.

Referee: And I have made a notation for myself to review it.

Newsome: Okay.

BACKGROUND: Whispers between Employer Representative and Employer Attorney, INAUDIBLE.

See Exhibit "7" at pp. 60 – 61 attached hereto and incorporated by reference as if set forth in full here. Whispering, because MMS/Allen/Counsel knew that they had just provided Newsome with evidence to sustain PRETEXT, proffered reasons provided to MDES was for purposes of obstructing justice, providing false information during investigation, depriving Newsome of protected rights, equal protection of the laws, equal privileges and immunities under the laws and due process of laws secured and guaranteed under the Constitution and/or laws of the United States. Moreover, sustaining overt act in furtherance of conspiracy(s) leveled against Newsome.

609. MMS' representatives (Ardelean, Allen and Gordon) came into the MDES Hearing with REHEARSED testimony that they could not prepare for what Newsome would ask under cross

Mitchell McNutt makes every attempt to comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct. If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with your immediate supervisor/attorney and, if necessary, with the Firm President for advice and consultation.

Compliance with this policy of business ethics and conduct is the responsibility of every Mitchell McNutt employee. Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.

examination. Newsome using hearing as deposition to obtain pertinent testimony for memorializing and preserving facts, evidence and testimony provided to support legal action that she advised Sams of would be filed.

610. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and retaliating against her by subjecting her to a *discriminatory, retaliatory, harassing, hostile, brutal, intolerable, unsafe, unhealthy and life-threatening* environment as a direct and proximate result of her reporting employment violations. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

611. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes retaliation and punishment for reporting unlawful employment practices and character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States.* See **Exhibit "14"** attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and *managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally*, apparently in retaliation for a story *which offended the chairperson of the board*. The complaint further charged that the *individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . . ; that they published his confidential sources thus destroying his credibility . . . ; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . . , assigning him to more and more degrading tasks Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous.* The court noted that according to the pleadings, *defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . . , blackballed him, thus precluding other employment, . . . thus destroying his credibility . . . , all without just cause or provocation.* The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

612. As a direct and proximate result of Defendant(s)' systematic retaliatory practices and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the

first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.*

613. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to retaliate under Whistle Blower Act and subject her to *discriminatory, retaliatory, harassing, hostile, brutal, intolerable, unsafe, unhealthy and life-threatening* environment for reporting unlawful employment practices as set forth in this Complaint.

614. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in retaliation under Whistleblower Act and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit retaliation under Whistleblower Act.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her retaliation under Whistleblower Act.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from retaliatory practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the

retaliation under Whistleblower Act complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.

- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of retaliation under Whistleblower Act alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981, Title VII of the Civil Rights Act, OSHA and other statutes and laws governing said matters.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$5,00,000 or according to the facts, evidence and legal conclusions submitted as proof;
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$25,000,000 or such amount as will sufficiently punish

Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future;

- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.
- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof;
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled.

COUNT VIII⁹⁴

BREACH OF EXPRESS EMPLOYMENT AGREEMENT 42 USC § 1981: EQUAL RIGHTS UNDER THE LAW AGAINST DEFENDANT(S)

34 POF 2d 284 – 285:

§ 5 - Employer Personnel Policy; Representation of Continued Employment:

Some cases have given the employer's personnel policy statements and procedures the force of contractual obligations, and an employer's expressed policies or established practices may be determinative of the terms and conditions of the employment contract with regard to termination (26 Stan L. Rev 335, 356-357). Furthermore, such statements of policy may give rise to contractual rights in employees without evidence that the parties mutually agreed that the policy statements would in fact create contractual rights in the employee. It has been held that no preemployment negotiations need take place and that the parties' minds need not meet on the subject; nor does it matter that the employee knows nothing of the particulars of the employer's policies at the time of his employment, or that the employer may change them unilaterally. It is enough that the employer chooses, presumably in its own interest, to establish such policies, and ultimately make them known to its employees. *Toussaint v. Blue Cross & Blue Shield*, 292 NW2d 880 (1980).

⁹⁴ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). TACIT AGREEMENT - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

The policy of an employer giving rise to contractual rights may be expressed in a variety of ways. It may be *stated in a handbook* or manual, or other writing, or it may take the form of an oral statement. In some situations a firm's policy on which an employee's legitimate expectations as to job security may be based may even be implied by its past practices and treatment of other similarly situated employees. An employer's conduct and other pertinent circumstances may establish an unwritten "common law" providing the equivalent of a written policy. The only requirement is that the policy in question whether written or unwritten, be known to the employees at large. It need not specifically refer to the particular employee seeking enforcement of the policy, or to his specific job description, nor does it matter that the employee did not learn of its existence until after his hiring. *Toussaint v. Blue Cross & Blue Shield*, 292 NW2d 880 (1980).

615. Newsome incorporates by reference Paragraphs 1 through 614 and 633 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

616. On the date of Newsome's wrongful termination of employment as a Legal Secretary with MMS, Newsome was being paid approximately \$33,000 annually.

617. During the period that Newsome began employment as a Legal Secretary and until the termination on December 3, 2004, Newsome faithfully and diligently performed all duties as a Legal Secretary and complied with all employment conditions in every respect.

618. The wrongful actions complained of in this Complaint resulted in Newsome's wrongful termination.

In carrying out her duties as Legal Secretary, Newsome discovered that on or about February 2004 and at *numerous* times thereafter, Gordon, in his position as attorney and Newsome's supervisor, had, on behalf of MMS and in his own/individual interest, engaged in the following unlawful activities: discrimination, retaliation, harassment and hostile work environment. Newsome further alleges that such acts constitute violation of MMS Policies **522**, **703** and **722** as well as other policies (See **Exhibit "7"** attached hereto and incorporated by reference) and federal and state statutes/laws governing said matters.

619. At all times Newsome was and now is ready, willing and able to perform; however, the intolerable conditions, malicious acts, evilness, discrimination, retaliation, hostile work environment, brutal and threatening behavior that MMS allows its employees to engage in would not be in Newsome's best interest and wellbeing nor that of the public and that such unlawful/illegal practices are a violation of public policy. Newsome endured deplorable, intolerable and unacceptable behavior from co-workers during her employment with MMS, which has made and still make it now impossible for her to return to perform the functions as a Legal Secretary or any other position MMS may consider. The record evidence will further support that Newsome has sustained irreparable injury/harm as a direct and proximate result of Defendants willful, malicious and wanton acts.

620. At the time of Newsome's termination, Newsome was 42 years old and had a reasonable anticipation of being employed as a Legal Secretary with MMS until age 65 and then would be entitled to retirement benefits.

621. The wrongful requirements and limitations placed on Newsome by MMS and Defendant(s) were without cause and in breach of the rights due under the At-Will Agreement and Employee Acknowledgment Form between Newsome and MMS.

622. Newsome entered into an employment agreement with MMS as previously alleged as an *at-will employee* and for which MMS agreed to pay Newsome compensation. During the entire course of Newsome's employment with MMS, there existed an express employment agreement between Newsome and MMS, which at the time of Newsome's discharge, included, but was not limited to, the following terms and conditions:

- (i) Newsome employment would be continuous through at-will.
- (ii) Newsome would not be discharged except for cause.
- (iii) MMS would not terminate Newsome's employment in violation of federal or state law.
- (iv) Would not deprive her of equal employment opportunity based on her race, sex or engagement in protected activity.
- (v) Would not tolerate Workplace Violence, Harassment and Discrimination.
- (vi) As set forth in MMS' Employee Handbook.

623. During the course of Newsome's employment, she was repeatedly commended by superiors that she was doing a satisfactory job. As a result of the above representations, Newsome reasonably relied on the promise of job security. Such statements and acts communicated to Newsome the idea that she had performed her job satisfactorily and that her job was secure. Newsome in good faith relied upon these representations and believed them to be true.

624. Newsome's reliance on, belief in and acceptance in good faith of all the assurances, promises and representations implied from conduct prior to Newsome's reporting of employment violations as set forth in this Complaint led Newsome throughout her employment with MMS to reasonably believe that her employment with MMS was secure and that her employment agreement would be governed by the policies and procedures presented in MMS' *Employee Handbook* that she was required to execute an *Employee Acknowledgment Form* regarding. In addition to performing her regular duties as an employee of MMS, Newsome, as further consideration, refrained from seeking any other employment.

Thereafter, Newsome entered into the performance of her employment At-Will Agreement and, at all times mentioned in this Complaint, performed all of the terms and conditions of the At-Will Agreement and MMS Employee Handbook on Newsome's part to be performed in a competent and professional manner.

625. Newsome undertook and continued employment and duly performed all of the conditions she believed were required of a Legal Secretary. Newsome was at all times ready, willing and able to perform under the conditions of the employment agreement reached when she executed *Employee Acknowledgment Form*.

In Newsome's position as a Legal Secretary, she was under the immediate supervision of MMS/Gordon and direction of MMS. Gordon had held the position of attorney with MMS immediately before Newsome assumed the duties of that position.

626. Between February 2004 and December 3, 2004, Newsome reported discoveries of unlawful employment practices – i.e. *discrimination, retaliation, harassment, unsafe and unhealthy work conditions and hostile work environment, etc.* to the attention of MMS/Allen and requested that said unlawful employment leveled against her cease. To no avail. Between said dates, Newsome requested that MMS/Allen/Gordon cease from such unlawful employment practices. To no avail. MMS/Allen/Gordon seeing the adverse impact and affect such unlawful employment practices were having on Newsome, MMS/Allen/Sams encouraged the escalation of the discrimination, harassment, retaliation and hostile work environment leveled against Newsome. MMS/Allen/Sams failed to deter and/or prevent the unlawful employment violations leveled against Newsome and reported by her.

MMS/Sams failed to carry out responsibilities under the terms of the *Employee Handbook* by wrongfully, and without cause, terminating Newsome's employment on or about December 3, 2004, despite Newsome's satisfactory or better job performance. Newsome's termination violated MMS policies as well as public policy.

627. MMS was Newsome's employer and possessed the authority to order and control the performance of work. Newsome was employed for an indefinite period of time as an at-will employee. While Newsome was an at-will employee, MMS was governed by the statutory restrictions (federal and state) on its right to terminate and/or discharge Newsome. MMS having set forth its knowledge of same by stating in its *Employee Acknowledgment Form* the following which stated in part:

The employee handbook describes important information about Mitchell McNutt, and I understand that I should consult the Chief Operations Officer regarding any questions not answered in the handbook. **I have entered into my employment relationship with Mitchell McNutt voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Mitchell McNutt or I can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.**

At no time during Newsome's employment did MMS and/or Defendant(s) advise Newsome as to MMS policies (if any) that she was in violation of; because she had *not* violated any in the reporting of unlawful employment practices. Thus, a reasonable person/mind may conclude from said Handbook/Acknowledgment Form what was intended and/or implied regarding MMS' termination/discharge policies and practices. Newsome believes that the record evidence and/or an investigation into employment violations will support that termination and/or discharge of Newsome was prohibited by statute; moreover, tort action is permissible against MMS and other Defendants/Conspirators for role which induced the breach of employment agreement between Newsome and MMS.

The employer-employee relationship is contractual in nature; it may be created by express. . . oral contract or by implication of circumstances, but essentially consists of the right of one person to order and control another in the performance of work by the latter. . . The law also recognizes a term of employment which is terminable

at will where there is an indefinite hiring – that is, where no period of service is specified. Under the well-established common-law rule still adhered to . . . in an employment for an indefinite term the employee may be discharged at any time for any or no reason, regardless of motive, without the employer incurring liability, unless there is a . . . statutory restriction on the right of discharge. . . . All the circumstances of the employment relationship will be examined to determine what the parties intended with respect to the duration of employment. Factors that may be considered include the policy of the employer, nature of the job, . . . In such a case, or where discharge is prohibited by statute, there is also a line of authority holding that a tort action will lie against the employer for conspiring with third parties to induce the breach.⁹⁵

628. As a direct and proximate result of MMS' breach of the employment agreement, Newsome has suffered and continues to suffer, substantial losses in earnings, bonuses, deferred compensation, and other employment benefits, which she would have received had defendants not breached the agreement, plus expenses incurred in obtaining substitute employment, all to Newsome's damage in the amount according to proof.

629. In terminating Newsome's employment with MMS/Sams (Attorney, Vice President and Member of the Board) with full knowledge of Newsome's At-Will Agreement and its advantages, unlawfully conspired with other Defendants (Allen, Gordon and Farrell) to deprive Newsome of the benefits of her employment relationship with MMS which was induced thereby to terminate Newsome from her position as Legal Secretary. Such termination was in retaliation for Newsome's reporting unlawful employment violations, matters affecting public policy, and MMS' knowledge of Newsome's engagement in protected activities. In carrying out their conspiracy to have Newsome's employment with MMS terminated, Sams (Attorney, Vice President and Member of the Board), Allen (Chief Operations Officer/Human Resources Representative/Controller), Gordon (attorney and Newsome's supervisor), and Farrell (attorney – area of specialty Labor and EMPLOYMENT law) were not only acting on behalf of MMS, but each of these Defendants were acting on his own/personal behalf and interest with individual advantage and benefit in that their positions with MMS were secured and they would continue to benefit personally and financially from the continuing violations of the laws of the State of Mississippi and laws of the United States by reason of the fact that the business of MMS was thereby increased resulting in additional commissions, bonuses, benefits, and that known to each of them for the role played in cover-up of criminal and civil wrongs Newsome reported.

Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and breaching of express employment agreement. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

630. As a direct and proximate result of Defendant(s)' systematic violation of express employment agreement and repeated discrimination, retaliation, harassment and hostile work

⁹⁵ 7 Am. Jur. Proof of Facts 2d 12-14.

environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed

the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.*

631. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to breach the express employment agreement as set forth in this Complaint.

632. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, which breached an express employment agreement and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit the breaching of an express employment agreement.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from unlawful breach of express employment agreement described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful breach of express employment agreement complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be

expected based on unlawful employment practices and conditions, in amounts to be determined at trial.

- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of breach of express employment agreement as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981 and other statutes and laws governing said matters.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$1,000,000 or according to the facts, evidence and legal conclusions submitted as proof.
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$5,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.
- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.

- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof.
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled.

COUNT VI⁹⁶
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

633. Newsome incorporates by reference Paragraphs 1 through 632 and 653 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

634. The *At-Will Employment Agreement* between Newsome and MMS contained and implied covenant of good faith and fair dealing, by which MMS and its employee(s), and each of them, promised to give full cooperation to Newsome in her performance under the agreement, and to refrain from doing any act that would prevent or impede Newsome from performing all of the conditions of the agreement to be performed by her, and to refrain from any act that would prevent or impede Newsome's enjoyment of *the fruits of the At-Will Employment Agreement*. The covenant of good faith and fair dealing required Defendant MMS to fairly, honestly, and reasonably perform the terms and conditions of the employment agreement.

Newsome further alleges that there was implied in the At-Will Agreement reached with MMS that, *as a matter of federal and state law*, and implied covenant of good faith and fair dealing that neither MMS nor Newsome would do anything to injure the other in obtaining the fruits and benefits of At-Will Agreement.

635. There was no just cause for MMS'/Sams' terminating Newsome's employment. Defendant(s) must prove (i.e. by evidence and not by "mere words alone") that just cause

⁹⁶ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

existed for terminating Newsome's employment. MMS/Sams on December 3, 2004, advised Newsome that the reason for her termination was a direct and proximate result of the accusations made against Gordon; however, Defendant(s) when brought before the *Mississippi Department of Employment Security*, asserted that reason for Newsome's termination was for "insubordination." Nevertheless, Defendant MMS will not be able to provide any evidence to support any such claims because proffered reasons are PRETEXT. MMS had no just cause to terminate Newsome's employment.

LIMITATIONS ON THE RIGHT OF DISCHARGE – REQUIREMENT OF JUST CAUSE: . . . the term "just cause" is uniformly construed to require that the employer conform to a reasonable and fair standard. Employer rules or instructions must be reasonable and lawful, known to the employee, and pertain to duties material to the employee's employment; violation of a rule or order under circumstances making compliance unreasonable does not constitute just cause for a discharge. . . . In . . . civil actions for damages for an alleged wrongful discharge, the burden rests with the employer to allege and prove that just cause existed for the dismissal. . . . If the facts are undisputed, or susceptible of only one interpretation, the question of sufficient cause for a discharge from employment is one of law for the court. However, where the evidence is conflicting as to the existence of the ground alleged to justify a discharge, or is susceptible of more than one interpretation, the question is for the trier of fact. In the case of a discharge for disobedience, the reasonableness of the employer's rule or order alleged as grounds for the discharge, or whether an admitted disobedience was sufficiently material to business of the employer so as to warrant dismissal, are also questions for the trier of fact. The sufficiency of proof is a matter depending on the circumstances of the particular case.⁹⁷

636. The covenant of good faith and fair dealing inheres in every contract/agreement and, in particular, *is implied* in the terms of Newsome's *At-Will Employment Agreement* with MMS by reason of, but not limited to, Newsome's satisfactory and/or outstanding performance for MMS – i.e. MMS providing employees with annual Performance Reviews, and MMS' policies of dealing in good faith with its employees. These facts, among others, precluded MMS'/Sams' termination of Newsome's employment without good cause. See Employee Acknowledgment Form at **Exhibit "15"** attached here to and is incorporated by reference as if set forth in full herein, which stated in part:

The employee handbook describes important information about Mitchell McNutt, and I understand that I should consult the Chief Operations Officer regarding any questions not answered in the handbook. **I have entered into my employment relationship with Mitchell McNutt voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Mitchell McNutt or I can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.**

637. MMS/Sams terminated Newsome's employment without cause. MMS'/Sams' termination of Newsome's employment was with discriminatory and retaliatory intent.

⁹⁷ 7 Am. Jur. Proof of Facts 2d 14, 15.

MMS'/Sams' unlawful termination of Newsome's employment was willful, malicious and wanton. MMS/Sams terminated Newsome's employment with intentional abuse and with intent to cause her emotional distress. MMS's/Sams' termination of Newsome's employment was done with knowledge it was in violation of public policy and a breach of an implied covenant of good faith and fair dealing.

AT-WILL EMPLOYMENT DOCTRINE: At common law, in the absence of an employment contract or a definite term, employees and employers were free to terminate their relationship with or without cause at any time. The parties were engaged in an employment relationship said to be terminable "at-will" by either party. *This notion became known popularly as the "at-will doctrine."* . . . Today the employer's unbridled freedom to fire an employee without cause and without incurring civil liability no longer exists. . . . Later, courts began to find that self-imposed termination policies and practices of employers contained implied promises not to discharge at-will employees except for good cause. If a discharge occurred under circumstances showing **intentional abuse**, the courts often permitted an additional recovery under a separate tort theory, such as intentional infliction of emotional distress. . . . modern courts have fashioned a separate, independent cause of action sounding in tort for wrongful discharge. This tort continues judicial adherence to the traditional at-will doctrine of employment but recognizes two exceptions: firings in violation of a fundamental principle of public policy, and dismissals in breach of an implied covenant of good faith and fair dealing. . . . because a firing in violation of a public policy interest necessarily implies a violation of the covenant of good faith and fair dealing.⁹⁸

MMS Policy No. 101 **NATURE OF EMPLOYMENT:** Employment with Mitchell McNutt is voluntarily entered into, and the employee is free to resign at will at any time, with or without cause. Similarly, Mitchell McNutt may terminate the employment relationship at will at any time, with or without notice or cause, so long as there is no violation of applicable federal or state law. . . . See **Exhibit "3 - MMS Employee Handbook** attached hereto and incorporated by reference as if set forth in full herein.

638. **WHAT CONSTITUTES EVIDENCE OF BAD FAITH – GENERALLY:** . . . the existence of an employee booklet or self-imposed policies for terminations have given rise to the application of the implied covenant and limited the common-law employment rule by restricting the employer's right to discharge employees without cause. In these cases, the implied covenant is breached when the discharge is without good cause or when the employer fails to follow the prescribed procedures for terminating employees. The implied covenant may also be violated by conduct that falls into other categories, such as **retaliatory firings** . . .⁹⁹

At the time and during the course of Newsome's employment MMS had an *Employee Handbook* in which it had implemented on or about January 1, 2002, and required employees to abide by. In said Handbook and pursuant to *Employee Acknowledgment Form*, MMS had policies in place **PROHIBITING** the unlawful employment practices Newsome

⁹⁸ 48 Am. Jur. Proof of Facts 2d 191-192.

⁹⁹ 48 Am. Jur. Proof of Facts 2d 217-218.

reported as well as procedures to be followed in the handling of complaints filed. MMS failed to conduct investigations into Newsome's complaints submitted to its attention and provide her with the outcome of same. Therefore, MMS failed to comply with its own policies and procedures that were in place to protect Newsome; moreover, address matters of public policy which was clearly ignored and/or violated – See MMS Policy 703 **Sexual and Other Unlawful Harassment** attached hereto at **Exhibit “3”** which stated in part:

All allegations of . . . harassment will be quickly and discreetly investigated. To the extent possible, your confidentiality and that of any witnesses and the alleged harasser will be protected against unnecessary disclosure. When the investigation is completed, you will be informed of the outcome of the investigation.

Any supervisor, attorney or manager who becomes aware of possible sexual or other unlawful harassment must immediately advise the Chief Operations Officer or any member of management so it can be investigated in a timely and confidential manner. Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary action, up to and including termination of employment.

Furthermore, giving rise to the application of the implied covenant and limited the common-law employment rule by restricting MMS' rights to terminate Newsome's employment *without cause*. Therefore, MMS/Sams **breached the implied covenant** when it **terminated Newsome's employment without good cause and failed to follow the prescribed procedures in its Employee Handbook** for handling December 1, 2004 and prior complaints submitted by Newsome as well as in terminating Newsome's employment. MMS breached the implied covenant because its termination of Newsome's employment was in retaliation of its knowledge of her having engaged in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*)

639. MMS's/Sams' termination of Newsome's employment was in violation of public policy. The record evidence, facts and legal conclusions set forth in this instant Complaint will also support that the conduct of MMS and Defendant(s) violated and undermined the public policy set forth under the FLSA, OSH Act, Title VII, Whistleblower Act and other statutes/laws governing employment matters which resulted in the breach of MMS' policies as well as breach of covenant/agreement between Newsome and MMS. The record evidence will support that Newsome verbally and in writing repeated opposed and contested the unlawful employment practices of MMS and Defendant(s). As a direct and proximate result of the breach of the agreement reached between Newsome and MMS, on December 3, 2004, MMS/Sams terminated Newsome's employment with MMS without just cause and, in so doing, violated public policy as well as federal and state statutes governing said matters. MMS'/Sams' termination of Newsome's employment with MMS was motivated by bad faith, racially motivated, done with malice and in retaliation of its knowledge of her engagement in protected activities that were matters of public policy. MMS'/Sams' unlawful termination of Newsome's employment resulted in her being deprived employment benefits that she earned and reasonably expected.

RELATION OF PUBLIC POLICY TO COVENANT: In determining whether the covenant of good faith and fair dealing has been breached, many courts will also examine public policy. Conduct of the employer which violates or undermines the public policy set

forth in a statute will be deemed a breach of the covenant. In some jurisdictions, a cause of action for wrongful discharge in contract for violation of the implied covenant of good faith and fair dealing is coterminous with, and extends no further than, a cause of action for wrongful discharge in tort. *The case that first enunciated the covenant involved an employee fired because she refused to yield to her supervisor's . . . overtures; public policy was the basis for creating the implied covenant that prevents such abusive dismissals, the court holding that a termination by the employer of a contract of employment at-will which is motivated by bad faith and malice or based on retaliation is not in the best interest of the public good and constitutes a breach of the employment contract.* Thus, a dismissal which contravenes public policy constitutes not only an independent retaliatory tort, but also a breach of the implied covenant between the parties. While some courts have held that a discharged at-will employee may maintain a claim for breach of an implied covenant of good faith and fair dealing whenever the termination violates an established public policy, most of the courts recognizing breach of the implied covenant claims in the employment at-will context have done so where dismissal deprived an at-will employee of an employment benefit that was earned or reasonably expected.¹⁰⁰

640. The facts, evidence and legal conclusion provided in this instant Complaint supports that there is a breach of implied covenant of good faith and fair dealing in that:

- (i) MMS'/Sams' termination of Newsome's employment was motivated reasons that clearly are PROHIBITED and contrary to public policy.
- (ii) Based upon the *Employee Acknowledgment Form* MMS required to be executed and the policies provided in MMS' Employee Handbook, Newsome had an expectation of job security or fair treatment.
- (iii) Based upon the Employee Acknowledgment Form, MMS implied that termination would not be without just cause – i.e. termination would not violate federal or state law/public policy.
- (iv) Based upon the Employee Acknowledgment Form MMS required Newsome to execute, she was led to believe that special, fiduciary relationship existed between them; however, Defendant(s) was allowed to compromise agreement between Newsome and MMS.
- (v) There was actual bad faith on the party of MMS as well as Defendant(s) and that said acts were done with negligence, malice and disregard of Newsome's rights.
- (vi) MMS and Defendant(s) engaged in fraudulent, deceitful and misrepresentation on the part of MMS and in their own personal interest which resulted in the breach and comprise of agreement.
- (vii) MMS'/Sams' termination of Newsome's employment was arbitrary.

¹⁰⁰ 82 Am. Jur.2d Wrongful Discharge § 68.

SPECIFIC CIRCUMSTANCES CONSTITUTING BREACH:
Breach of an implied covenant of good faith and fair dealing occurs where:

(i) Termination is motivated by a reason contrary to public policy.

(ii) There is an expectation of job security or fair treatment.

(iii) There is an absence of an express representation that employment is terminable at will.

(iv) A special, fiduciary relationship exists between the parties.

(v) There is actual bad faith on the part of the employer, not merely the absence of good cause for discharge.

(vi) There is fraud, deceit, or misrepresentation on the part of the employer.

(vii) The discharge is arbitrary.¹⁰¹

641. As a result of the employment relationship that existed between Newsome and MMS, the expressed and implied promises made in connection with that relationship, and the acts, conduct, and communications resulting through implied promises provided through *Employee Acknowledgment Form* and *MMS Employee Handbook*, MMS promised to act in good faith toward and deal fairly with Newsome which required among other things that:

- (a) Each party in the relationship must act with good faith toward the other concerning all matters related to the employment;
- (b) Each party in the relationship must act with fairness toward the other concerning all matters related to the employment;
- (c) Neither party would take any action to unfairly prevent the other from obtaining the benefits of the employment relationship;
- (d) MMS would similarly treat employees who are similarly situated;
- (e) MMS would comply with its own representations, rules, policies, and procedures in dealing with Newsome;
- (f) MMS would not terminate Newsome's employment without fair and honest cause, regulated by good faith on MMS' part;
- (g) MMS would not terminate Newsome's employment in an unlawful/illegal manner; and
- (h) MMS would give Newsome's interests as much consideration as it gave its own interests.

642. MMS' termination of Newsome's employment was wrongful, in bad faith, and unfair, and therefore a violation of MMS' legal duties. Newsome further alleges that MMS breached the covenant of good faith and fair dealing when it:

¹⁰¹ 82 Am. Jur.2d Wrongful Discharge § 71.

- (a) Repeatedly refused to abide by its own policies when dealing with Newsome;
- (b) Repeatedly denied the existence of the duties owed Newsome under the At-Will Agreement;
- (c) Unfairly prevented Newsome from obtaining the benefits of her employment relationship with MMS;
- (d) Treated similarly situated employees differently by imposing different responsibilities on similarly situated employees, and by tolerating poor performance and high absences by other similarly situated employees
- (e) Terminated Newsome's employment for expressing legitimate concerns about unlawful employment practices in violation of Title VII of the Civil Rights Act, FLSA, OSH Act, engagement in protected activities, and other reasons known to MMS in violations of public policy;
- (f) Terminated Newsome's employment for false reasons and in a manner that was inconsistent with MMS' stated policies and practices.

643. Newsome was employed with MMS under an At-Will Agreement that was implied, partly oral, and provided in writing through policies in MMS' Employee Handbook. The terms of said Agreement relied upon by Newsome included but were not limited to good faith and fair dealing regarding:

- (i) Welcome new employee!
- (ii) Customer Relations
- (iii) Employee Relations
- (iv) Equal Employment Opportunity
- (v) Business Ethics and Conduct
- (vi) Timekeeping
- (vii) Paydays
- (viii) Employment Termination
- (ix) Administrative Pay Corrections
- (x) Overtime
- (xi) Employee Conduct and Work Rules
- (xii) Workplace Violence Prevention
- (xiii) Sexual and Other Unlawful Harassment
- (xiv) Personal Appearance
- (xv) Problem Resolution
- (xvi) Workplace Etiquette

See **Exhibit "3"** – MMS *Employee Handbook* attached hereto and incorporated by reference as if set forth in full herein. Moreover:

- (a) Written MMS' policies which implied equal employment opportunity as well as *employees will be treated fairly and not fear reprisal for making complaints.*
- (b) Newsome relying upon the At-Will Agreement for so long as she performed her job in a satisfactory manner, and that termination could be *"with or without cause, at any time, so long as there is no violation of applicable federal or state law."*
- (c) MMS breached At-Will Agreement with Newsome by the following actions, including but not limited to:
 - i. Failing to comply with the terms of the Employee Acknowledgment Form as well as policies of MMS Employee Handbook and procedures set forth therein.
 - ii. Discriminating against Newsome on the basis of race, sex and knowledge of her engagement in protected activities. Moreover, failing to deter and prevent discrimination, retaliation, harassment and hostile work environment leveled against Newsome.
 - iii. Refusing to give Newsome an opportunity to succeed at her job.
 - iv. Refusing to compensate Newsome and nonexempt salaried employees in compliance with the FLSA and other federal and state statutes/laws governing said matters.
 - v. Falsely, maliciously and in bad faith blaming Newsome for the creation of the hostile work environment during her employment with knowledge that it allowed employee/attorney to treat Legal Secretaries in a very demeaning and derogatory manner which resulted in at least four assigned to Gordon leaving MMS within an approximate one-year period with no reprimand of Gordon.
 - vi. Failing to treat Newsome in accordance with MMS' stated policies;

644. MMS' breach of the covenant of good faith and fair dealing was a substantial factor in causing damage and injury to Newsome. As a direct and proximate result of result of MMS' unlawful conduct alleged in this Complaint, Newsome has lost substantial employment benefits with MMS, including loss of reputation, lost wages, and other employee fringe benefits in an amount to be determined and proven at the trial in this matter.

645. Defendant MMS'/Sams' termination of Newsome's employment was wrongful, in bad faith, arbitrary, and unfair, and therefore in breach of the covenant that:

- (i) Newsome was terminated without just or legitimate cause;
- (ii) Newsome was terminated in violation of MMS' policies to deal consistently and fairly with its employees; and

(iii) Newsome was terminated in violation of Defendant MMS' policy to be an equal employment opportunity employer.

646. As a direct, foreseeable, and proximate result of MMS' breach, Newsome suffered, and continues to suffer, substantial losses in earnings and other employment benefits, all to her damage in an amount in excess of the minimum jurisdiction of this Court, the precise amount of which will be proven at trial.

647. As a direct, foreseeable, and proximate result of MMS' breach of At-Will Agreement, Newsome has suffered and continues to suffer substantial losses in earnings, bonuses, and job benefits, and expenses incurred in the search for comparable employment in an amount not less than that to be determined at the trial on this matter.

648. As a direct and proximate result of MMS' breach of the covenant of good faith and fair dealing, Newsome has suffered and continues to suffer, substantial losses in earnings, bonuses, deferred compensation, and other employment benefits, which she would have received had defendants not breached the agreement, plus expenses incurred in obtaining substitute employment, all to Newsome's damage in the amount according to proof.

649. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and breaching the covenant of good faith and fair dealing. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

650. As a direct and proximate result of Defendant(s)' systematic breach of the covenant of good faith and fair dealing and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So

when I receive an evaluation, *I take it very personally, and I'm offended by it.* [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, *I take it very personally* (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, *but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable.* I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, *during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination.* It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.*

651. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to breach the covenant of good faith and fair dealing as set forth in this Complaint.

652. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active

- concert or participation with it/him/her, which breached the covenant of good faith and fair dealing and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit beaching the covenant of good faith and fair dealing.
 - (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
 - (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
 - (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from breach of the covenant of good faith and fair dealing described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
 - (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful breach of the covenant of good faith and fair complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
 - (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
 - (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
 - (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result the breach of covenant of good faith and fair dealing alleged in this Complaint.
 - (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981 and other statutes and laws governing said matters.
 - (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).

- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.
- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$2,000,000 or according to the facts, evidence and legal conclusions submitted as proof.
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$10,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.
- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.
- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof.
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled.

COUNT VII¹⁰²
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

653. Newsome incorporates by reference Paragraphs 1 through 652 and 677 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

654. Causes of action for negligent infliction of emotional distress are subject to *six-year statute of limitation* where causes of actions do not charge intentional torts.

655. On or about December 3, 2004, MMS/Sams terminated Newsome's employment. Name Defendant(s) were present and/or aware that Newsome's employment would be terminated. Such action was done negligently and in violation of the agreement obligations owed by Defendant(s) (as employees of MMS), and each of them, to Newsome according to MMS policies.

656. On December 3, 2004, in furtherance of conspiracy leveled against Newsome, MMS terminated Newsome's employment. Said termination was done negligently and in violation of the At-Will Agreement and MMS policies owed by MMS, and each of named Defendants, to Newsome.

657. MMS and other Defendants acting on their own and through agents and employees, engaged in the acts previously described deliberately and intentionally in order to cause Newsome severe emotional distress; alternatively Newsome alleges that such conduct was done in reckless disregard of the probability of such conduct causing her severe emotional distress.

658. The above-described conduct did, in fact, cause Newsome to suffer extreme and severe emotional distress. As a proximate result of such conduct, Newsome suffered embarrassment, anxiety, humiliation, and emotional distress, and will continue to suffer emotional distress in an amount in excess of the minimum jurisdiction of this court, the precise amount of which will be proven at the time of trial.

659. The record evidence, facts and legal conclusion will support that Defendants: (a) knowingly, deliberately and willingly acted with negligence and total disregard as to the rights of Newsome (b) deliberately, knowingly and willingly acted with negligence and total disregard as to the injury/harm rendered Newsome; (c) deliberately, knowingly and willingly

¹⁰² Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). TACIT AGREEMENT - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

acted insufficiently and without just cause in the role played in conspiracy to terminate Newsome's employment.

PRIMA FACIE TORT: A prima facie tort is the *negligent and deliberate infliction of harm without an excuse or justification that is legally recognizable* as such. . . The elements of a malicious discharge claim premised on a prima facie tort are:

- (i) Negligent and deliberate violation of lawful act by the defendant.
- (ii) Negligent in causing injury to the plaintiff.
- (iii) Insufficiency or absence of justification for the defendant act.

660. When MMS and named Defendants engaged in the above-described conduct, particularly in the repeated discriminatory, retaliatory, harassing and creation of hostile work environment, designed to force Newsome out of the workplace and to force her to change her mind regarding unlawful employment practices and reporting of unlawful employment practices, named Defendants did so deliberately and intentionally in order to cause Newsome severe emotional distress.

661. MMS' confirmation and ratification of the conduct of named Defendants was done with knowledge that Newsome's distress would increase, and was done with wanton and reckless disregard of the consequences to Newsome.

662. The conduct of named Defendants was outrageous and beyond the scope of their authority. That said conduct constituted negligence and deliberate infliction of emotional distress against Newsome.

663. MMS' confirmation, condoning, encouraging and ratification of the conduct of named Defendants and/or Defendants was done with knowledge that Newsome's distress would increase, and was done with wanton and reckless disregard of the consequences to Newsome.

664. The conduct of Defendant(s) was outrageous and beyond the scope and a far departure from MMS' policies. That conduct constituted negligence and deliberate infliction of emotional distress against Newsome.

665. MMS, and Defendants acting on their own and/or through agents and employees, engaged in the acts previously described deliberately and negligently in order to cause Newsome severe emotional distress, alternatively, Newsome alleges that such conduct was done in reckless disregard of the probability of such conduct causing her severe emotional distress.

666. The above-described conduct did, in fact, cause Newsome to suffer extreme and severe emotional distress. As a proximate result of such conduct, Newsome suffered embarrassment, anxiety, humiliation, and emotional distress, and will continue to suffer emotional distress in an amount in excess of the minimum jurisdiction of this court, the precise amount of which will be proven at the time of trial.

Newsome:

. . .It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct. Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal*

privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.

667. Defendants committed the acts alleged maliciously, fraudulently, and oppressively, with the deliberate and willful negligence as to injuries/harm Newsome would sustain, and acted with an improper and evil motive amounting to malice, and in conscious disregard of Newsome's rights. Because the acts taken towards Newsome were carried out by supervisors/managers/attorneys acting in a despicable, deliberate, cold, callous, and negligent manner in order to injure and damage Newsome, Newsome is entitled to recover punitive damages from Defendants in an amount according to proof.

668. As a direct and proximate result of the acts of Defendants, Newsome has become upset, distressed, frustrated, and aggravated, all to Newsome's damage in an amount to be proven at the time of trial.

669. As a further, direct, proximate, and foreseeable result of Defendants' conduct, Newsome has suffered shame, despair, humiliation, embarrassment, anxiety, and emotional distress resulting in damages in an amount in excess of the minimum jurisdiction of this court, the precise amount of which will be proven at the time of trial. These damages will include lost wages, salary, benefits, and certain other incidental and consequential damages and losses.

670. As a direct and proximate result of the acts of MMS and named Defendants, Newsome has become upset, distressed, and aggravated, all to Newsome's damage in an amount to be proven at the time of trial.

671. Defendant(s) committed the acts alleged maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Newsome, and acted with an improper and evil motive amounting to malice, and in conscious disregard of Newsome's rights. Because the acts taken towards Newsome were carried out by managerial/supervisory employees and/or employees acting in a despicable, deliberate, cold, callous, and intentional manner in order to injure and damage Newsome, Newsome is entitled to recover punitive damages from Defendants in an amount according to proof.

672. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and negligently inflicting emotional distress. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally, apparently in retaliation for a story which offended

the chairperson of the board. The complaint further charged that the individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . .; that they published his confidential sources thus destroying his credibility . . .; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . ., assigning him to more and more degrading tasks . . . Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous. The court noted that according to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . ., blackballed him, thus precluding other employment, . . . thus destroying his credibility . . ., all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

673. As a direct and proximate result of Defendant(s)' systematic negligent infliction of emotional distress and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

674. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to negligently inflict emotional distress as set forth in this Complaint.

675. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in negligently inflicting emotional distress and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit negligently inflicting emotional distress.

- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from negligent infliction of emotional distress described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the negligent infliction of emotional distress complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of negligent infliction of emotional distress as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981 and other statutes laws governing said matters.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced

during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.

- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$2,000,000 or according to the facts, evidence and legal conclusions submitted as proof.
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$15,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.
- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.
- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof.
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled

COUNT VIII¹⁰³
FRAUD AGAINST AND
AND 42 USC § 1981: EQUAL RIGHTS UNDER THE LAW
AGAINST DEFENDANT(S)

676. Newsome incorporates by reference Paragraphs 1 through 676 and 696 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

677. On and prior to October 6, 2003, in Flowood, Mississippi, MMS orally and in writing willfully, maliciously, falsely, and fraudulently represented to Newsome that if she accepted employment with MMS at that time and became employed by MMS, and as long as Newsome would substantially comply with all of the directions of MMS, except where that performance would be unlawful, MMS would continue to employ Newsome, and pay to Newsome fair and adequate wages agreed upon and certain other “fringe benefits” up to and including the time of her retirement from that employment.

678. MMS further, orally and in writing, represented to Newsome that if MMS believed that she had failed or was failing to substantially comply with all of MMS’ lawful directions, or that Newsome was in danger of her employment being terminated, Newsome would receive prior notice or warning that Newsome was in danger of her employment being terminated or that this action was contemplated by MMS.

679. At the time these willful, malicious, false and fraudulent representations were made by MMS to Newsome, MMS knew that the representations were false and MMS did not intend to continue to employ Newsome as long as she would substantially comply with all of the lawful directions of MMS, or give Newsome prior notice or warning that Newsome was in danger of being terminated, but instead, willfully and maliciously made those representations in order to induce Newsome to become employed by them for a limited period of time only, regardless of whether Newsome substantially complied with all of MMS’ lawful directions. These misrepresentations were made pursuant to a design and scheme by MMS.

680. At the time MMS made these representations to Newsome, she was ignorant of their falsity, but believed them to be true.

681. In reliance on these representations by MMS, Newsome became employed by MMS on or about October 6, 2003, under the terms and condition of At-Will Agreement mentioned in this Complaint and was assigned to and did work for MMS. At all times from date of Newsome’s employment, up to and including December 3, 2004, Newsome fulfilled

¹⁰³ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

all the terms of her employment and substantially complied with all of MMS' lawful directions.

682. On December 3, 2004, without just cause and in violation of state and federal laws, MMS/Sams terminated Newsome's employment without giving her prior notice or warning that Newsome was failing, or had failed, to substantially comply with the lawful directions of MMS, or that Newsome was in danger of her employment being terminated or that termination was contemplated by MMS. Newsome did not discover or become aware that the representations by MMS were false and untrue until December 3, 2004.

683. During Newsome's employment with MMS she repeatedly relied upon the policies of MMS' Handbook to guide her as implied from the Employee Acknowledgment Form MMS/Allen required that she execute.

684. During Newsome's employment with MMS she felt at liberty to report complaints and employment violations without fear of reprisal as secured and/or guaranteed in MMS' Employee Handbook.

685. By the above-described acts, MMS, individually and through its officers, partners, agents, and employees acting within the scope of their employment, falsely and fraudulently with intent to deceive and defraud Newsome, represented to Newsome that her status with MMS was not in jeopardy as a result of her having reported employment violations in compliance with the *Employee Handbook*, and that Newsome could "***raise concerns and make reports without fear of reprisal or retaliation.***" MMS further fraudulently represented to Newsome, both expressly and impliedly, that she would not be discharged without just cause.

686. These representations were false and MMS knew and/or should have known them to be false and its intentions not to be bound by such representations. In truth and in fact, Newsome's employment was terminated even through her work performance was satisfactory or better, and even after Newsome advised that she wanted to continue her employment with MMS.

687. Newsome was unaware of MMS' intention not to be bound by its Employee Handbook representations and justifiably believed and relied on it, and continued to work for MMS, refrained from seeking more secure employment opportunities and did nothing to alter her working relationship with MMS and/or its employees.

688. Newsome was not certain of the fraud and deceit practiced on her until she was terminated on December 3, 2004. Newsome could not with reasonable diligence have discovered the fraud and deceit prior to December 3, 2004 termination. While she had concerns and submitted complaints to Defendant MMS'/Allen's attention, she was repeatedly misled by Defendant MMS' false representations and concealment of employment violations; moreover, by statements that she could "***raise concerns and make reports without fear of reprisal or retaliation***" provided in MMS' *Employee Handbook* as well as "*You have stated that you have or will file complaints with various federal agencies. You have the right to do so, and the firm has not interfered with, and does not intend to interfere with, your doing so.*" Therefore, Newsome had been given no indication before December 3, 2004 termination, that she was a candidate for termination *for engaging in protected activities*.

689. As a proximate result of MMS' termination of Newsome's employment and of the willful, malicious, false, and fraudulent misrepresentations made by MMS to Newsome, Newsome reputation has been damaged, false and malicious regarding Newsome's employment has been placed on the INTERNET, it has become difficult, if not impossible, for Newsome to obtain employment with other employers in a position comparable to Newsome's position with a different employer. As a result Newsome has been damaged in the sum to be determined at trial.

690. If Newsome had not been terminated from her employment with MMS on December 3, 2004, and if Newsome had remained employed by MMS to the age of 65, Newsome would have earned not less than the appropriate sum (i.e. which does not include annual pay raises/increases) in wages and fringe benefits to be determined at trial. Thus, as a proximate result of the willful, malicious, false and fraudulent misrepresentations made by MMS to Newsome, she has been deprived of the sum in and amount to be determined at trial.

691. The conduct of MMS described in this Complaint was oppressive, fraudulent, and malicious, thus entitling Newsome to an award of punitive damages in an amount appropriate to punish and make an example of MMS.

692. As a proximate result of the representations of Defendant MMS to Newsome, Newsome has suffered, and continues to suffer, substantial losses incurred in seeking and performing substitute employment, and losses and earnings, bonuses, deferred compensation, stock options, and other employment benefits, and Newsome has suffered and continues to suffer, embarrassment, humiliation, and anguish all to her damage in an amount according to proof.

693. Defendant MMS committed to the above acts maliciously, fraudulently, oppressively, and despicably, with the wrongful intention of injuring Newsome, from an improper and evil motive amounting to malice, and in conscious disregard of Defendants right, and each of them, in the amount to be determined according to proof.

694. Newsome's employment with MMS was terminated in retaliation for her participation in legally protected conduct. Defendant(s) knew of Newsome's engagement and/or participation in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*).

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in fraudulent practices and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit fraudulent practices.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to

be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.

- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its fraudulent practices.
- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from fraudulent practices described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the fraudulent practices complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of fraudulent practices as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981 and other statutes laws governing said matters.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties,

pursuit of happiness, equal protection of the laws and other known reasons to Defendants.

- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$1,000,000 or according to the facts, evidence and legal conclusions submitted as proof.
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$10,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.
- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.
- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof.
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled

COUNT IXVII¹⁰⁴
NEGLIGENT INTERFERENCE WITH EMPLOYMENT –
MALICIOUS CONSPIRACY TO CAUSE DISCHARGE FROM EMPLOYMENT
AND 42 USC § 1981: EQUAL RIGHTS UNDER THE LAW¹⁰⁵
AGAINST DEFENDANT(S)

¹⁰⁴ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

¹⁰⁵ Am. Jur. Pleading and Practice Forms – Torts § 9.

695. Newsome incorporates by reference Paragraphs 1 through 695 and 718 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

696. In support to Newsome's claims of intentional interference with employment – malicious conspiracy to cause discharge from employment, she relies upon the following arguments and the evidence and legal conclusions and/or laws which sustains such claims set forth herein.

697. **MALICIOUS ACTS:**¹⁰⁶ The terms “malice” and “malicious” are defined not only as relating to the intentional commission of a wrongful act, but also as *involving wickedness, depravity and evil intent.*

698. Defendant engaged in conspiracy(s) leveled against Newsome with wickedness, depravity and evil intent. Furthermore, with deliberate, negligent and malicious intent to deprive Newsome of protected rights and equal protection of the laws in violation of public policy.

699. **WILLFUL, WANTON, AND RECKLESS ACTS:**¹⁰⁷ Tort liability may be based on willful, wanton, or reckless acts. *A willful act is one done intentionally, or on purpose, and not accidentally. Willfulness implies intentional wrongdoing. . . Willfulness is sufficiently established where there is a knowledge that the act will probably result in an injury to another, and an utter disregard of the consequences.. . A finding of willful misconduct will be sustained where it is clear from the facts that the defendant, whatever his state of mind, has proceeded in disregard of a high degree of danger, whether known to him or apparent to a reasonable person in his position.. . Wanton act is a wrongful act done on purpose or in malicious disregard of the rights of others.* A tort having some of the characteristics of both negligence and willfulness occurs when a person with no intent to cause harm intentionally *performs an act so unreasonable and dangerous that he knows, or should know, it is highly probable that harm will result from it.*

700. In doing the matters set out in this Complaint, the Defendants acted with full knowledge of conspiracy, knowledge of falsity of the representation made, maliciously and without reasonable and probable cause with intent to deprive Newsome of life, liberties, pursuit of happiness, equal protection of the laws, equal privileges and immunities under the laws, due process of laws and rights secured/guaranteed under the Constitution and laws of the United States.

701. The record evidence, facts and legal conclusions contained in this Complaint to support MMS with knowledge initiated conspiracy(s) with co-conspirators (other Defendants) for purposes of cause Newsome injury/harm. Said conspiracy(s) initiated by MMS with co-conspirators (other Defendants) was willful, wanton and in reckless disregard as to Newsome's rights. Moreover, MMS and co-conspirators/Defendants conspired for purposes of depriving Newsome life, liberties, pursuit of happiness, equal protection of the

¹⁰⁶ 74 Am. Jur. 2d Torts § 17. *Voss v. American Mut. Liability Ins. Co.*, 341 S.W.2d 270 (1960); *Buckeye Union Ins. Co. v. New England Ins. Co.*, 720 N.E.2d 495 (1999).

¹⁰⁷ 74 Am. Jur. 2d Torts § 18. *Bessemer Coal, Iron & Land Co. v. Doak*, 44 So. 627; *Parker v. Pennsylvania Co.*, 34 N.E. 504.

laws, equal privileges and immunities under the laws, due process of laws secured and guaranteed under the Constitution and laws of the United States.

702. Commencing on or about January 2004, MMS maliciously, without just cause or excuse, and with the negligence, deliberate and willful intent to injure Newsome, conspired to bring about Newsome's disgrace, humiliation, and ruin, to cause her discharge from MMS' employment as a Legal Secretary, by falsely accusing Newsome of "*destroying the work working relationship with her supervisor, Bob Gordon. . .*," (See **Exhibit "53"** attached hereto and incorporated by reference); and ultimately causing her discharge from the employment, as more fully appears below.

703. On November 30, 2004, MMS on the false pretense that Newsome's work "*Needs significant improvement,*" (See **Exhibit "29"**) refused to give Newsome an annual pay raise/increase as that given to whites and/or those similarly situated.

704. After the November 30, 2004 *Performance Evaluation* given to Newsome, MMS allowed its employee(s) to escalate the discriminatory treatment and harassment of Newsome. Moreover, continue their *strict* and *oppressive* monitoring of Newsome with respect to her work, for purposes of maliciousness, ill will, humiliating, degrading and disgracing Newsome.

705. On December 1, 2004, Newsome submitted another complaint (of several submitted during the course of her employment) via e-mail, entitled, "HARASSMENT INCIDENT – 12/01/04."

MALICIOUS DISCHARGE: Some courts recognize tortious discharge claims only when the *termination of an employee is in retaliation for performing an important and socially desirable act, exercising a statutory right, or refusing to commit an unlawful act.*

¹⁰⁸

706. On December 3, 2004, MMS/Sams discharged Newsome on the false pretense that she had serious allegations regarding false accusations against Gordon, her supervisor and attorney at MMS.

707. In committing the acts set forth above, MMS was without legitimate cause or justification, but was animated by malice, envy, hatred, prejudices, jealousy, bias, and other reasons known to it towards Newsome with the willful intent to injure Newsome in her person and her livelihood.

708. As a result of these malicious and wrongful acts, which continued for a period of approximately one year during Newsome's employment and ultimately resulted in her termination, Newsome was able (however, with opposition from Defendants) to procure employment; however, was deprived of unemployment benefits between jobs due the conspiracy(s) initiated by MMS and co-conspirators to cause Newsome further injury/harm as a direct and proximate result of her participation in protected activities.

¹⁰⁸ 82 Am. Jur.2d Wrongful Discharge § 83. *Graham v. Contract Transp., Inc.*, 220 F.3d 910 (8th Cir. 2000).

709. MMS' conspiracy(s) with co-conspirators were done to deprive Newsome equal protection under the laws, equal privileges and immunities under the laws and due process under the laws, life, liberties and the pursuit of happiness – i.e. rights secured and guaranteed under the Constitution and laws of the United States.

710. Defendants acts were deliberate, willful, malicious, wanton and in reckless disregard as to the rights of Newsome.

711. Defendants' conduct arose from racial bias, maliciousness, hatred, envy, jealousy, prejudices, discrimination and ill-will toward Newsome and a desire to oppress her with the wrongful intention of injuring Newsome and negligently interfering with her employment. The conduct was taken with an improper and evil motive amounting to violations of Newsome rights secured under the Constitution and laws of the United States.

712. The evidence in this Complaint will support how MMS when contacted to provide responses to charges filed by Newsome against MMS with various agencies, relied upon their knowledge of Newsome's engagement in protected activities (i.e. *discrimination for making charges, testifying, assisting, or participating in enforcement proceedings*) to prejudice the fact-finder. Such acts alone were overt acts in furtherance of the conspiracy set forth in this Complaint and are prohibited by the Constitution and laws of the United States governing said matters.

713. As a direct and proximate result of these malicious and wrongful acts, as well as in furtherance of conspiracy(s) leveled against Newsome, which continues to date, Newsome has been BLACKLISTED and false and misleading information regarding Newsome's employment with MMS has been posted on the INTERNET by government agency(s) for purposes of character assassination, credibility, and violating rights of Newsome's secured/guaranteed under the Constitution. Government agency(s) fulfilling role in conspiracy initiated by MMS and requiring fulfillment of role to obtain the object pursued – *i.e deprivation of rights; obstruction of justice; deprivation of life, liberties and pursuit of happiness; deprivation of equal protection of the laws, equal privileges and immunities under the laws and due process of laws which are secured/guaranteed under the Constitution or laws of the United States.* See **Exhibit "14"** attached hereto and incorporated by reference as if set forth in full herein.

In another case (*Lagies v. Copley*, 110 Cal App 3d 958, 16 Cal Rptr 368), the plaintiff, . . . alleged that officials and *managerial employees of his corporate employer abused their positions of authority over him by conduct including demotions, discriminatory treatment, denial of long-accepted avenues of advancement, and defamation of his reputation to his coworkers, . . . and to the public generally*, apparently in retaliation for a story *which offended the chairperson of the board*. The complaint further charged that the *individual defendants conspired to get plaintiff to quit, tarnish his reputation, and blackball him by preventing his being hired . . . ; that they published his confidential sources thus destroying his credibility . . . ; that they virtually isolated plaintiff in his place of employment rendering him a de facto pariah, . . . , assigning him to more and more degrading tasks Reversing a dismissal of the complaint, the court held the plaintiff alleged facts and circumstances which reasonably could lead trier of fact to conclude that defendants' conduct was extreme and outrageous*. The court noted that according

to the pleadings, defendants intentionally humiliated plaintiff, . . . singled him out for denial of merit raises, . . . , blackballed him, thus precluding other employment, . . . thus destroying his credibility . . . , all without just cause or provocation. The court concluded that the pleadings charged more than insult and more than mere direction of job activities.

714. As a direct and proximate result of Defendant(s)' systematic negligence in interference with employment and repeated discrimination, retaliation, harassment and hostile work environment, Newsome endured mental suffering, emotional suffering and damages/injuries from approximately January 2004 to December 3, 2004, which continues to affect her to date. Defendant(s) repeatedly subjected Newsome to said unlawful/illegal employment practices to force her out of the workplace; which ultimately resulted in MMS/Sams terminating Newsome's employment on about December 3, 2004, when said efforts to force her out of the workplace failed.

Newsome: . . . It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of

the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . .

See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to *support motive, PRETEXT, PATTERN-OF-PRACTICE, discriminatory practices, retaliation, obstructing the administration of justice, object of conspiracy, deprivation of equal rights under the law, equal protection of the laws, equal privileges and immunities and due process of laws secured and guaranteed under the Constitution and laws of the United States.*

715. Newsome is now suffering and will continue to suffer irreparable injury from Defendant(s)' policies, practices, custom, usages, and the specific *overt* acts to negligently interfere with her employment as set forth in this Complaint.

716. In committing these acts, Defendants acted with malice toward Newsome, and Newsome is entitled to recover punitive damages in the sum to be determined by jury or in such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a petition of such conduct in the future.

WHEREFORE, Newsome requests judgment against Defendant(s) and each of them, jointly and singly, as follows to correct the wrongs and/or injustices complained of herein:

- (i) Grant a permanent injunction enjoining Defendant(s), its officers, successors, assigns, attorneys, employees and all persons in active concert or participation with it/him/her, from engaging in negligently interfering with employment and from any other employment practice which discriminates on the basis of race, sex and participation in protected activity(s).
- (ii) Order Defendant(s) to institute and carry out policies, practices and programs which effectively prohibit negligently interfering with employment.
- (iii) Order Defendant(s) to make Newsome whole by providing appropriate monetary relief with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its/his/her unlawful practices.
- (iv) Order MMS to make Newsome whole by providing appropriate front pay in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

- (v) Order Defendant(s) to make Newsome whole by providing compensation for past and future pecuniary losses resulting from negligent interference with employment described herein, including any other out-of-pocket losses incurred, in amounts to be determined at trial.
- (vi) Order Defendant(s) to make Newsome whole by providing compensation for past and future nonpecuniary losses resulting from the negligent infliction of emotional distress complained of herein, including emotional pain, suffering, anxiety, loss of enjoyment of life, humiliation, and other conditions that may reasonably be expected based on unlawful employment practices and conditions, in amounts to be determined at trial.
- (vii) Order MMS to pay Newsome compensatory damages, including lost wages and benefits, and emotional distress damages for conduct described herein, in amounts to be determined at trial.
- (viii) Order Defendant(s) to pay Newsome punitive damages for its/his/her malicious and reckless conduct described herein, in amounts to be determined at trial.
- (ix) Enter an order enjoining Defendant(s) from failing or refusing to provide remedial relief sufficient to make whole Plaintiff (Newsome), for the individual loss she has suffered as a result of negligent interference with employment distress as alleged in this Complaint.
- (x) That the Court issue a declaratory judgment that Defendant(s)' acts, policies, and practices and procedures complained of above violated Newsome's rights as secured under 42 USC § 1981 and other statutes laws governing said matters.
- (xi) Grant Newsome a permanent injunction enjoining Defendant(s) and all those acting in concert with it/him/her and at its/his/her direction from engaging in any employment policy or practice that discriminates against Newsome on the basis of race, sex or engagement in protected activity(s).
- (xii) Order named MMS to make Newsome whole as she was adversely affected by the policies and practices described above by providing appropriate back pay and reimbursement for lost wages/pension, Social Security, Unemployment Compensation, experience, training opportunities, and other benefits in an amount to be shown at trial, and other affirmative relief. Based upon the facts, evidence and legal conclusions set forth in this Complaint, Newsome does not believe it would be healthy or wise to request reinstatement because record evidence supports that after her termination said offer was presented to MMS and declined; moreover, additional information that has surfaced during

Newsome's investigation into conspiracy(s) leveled against her. Conspiracies to deprive her life, liberties, pursuit of happiness, equal protection of the laws and other known reasons to Defendants.

- (xiii) Retain jurisdiction over this action to assure full compliance with the orders of this Court and with applicable law and require Defendant(s) to file any reports that the Court deems necessary to evaluate compliance.
- (xiv) General compensatory damages, if permissible by law, in the amount of \$6,000,000 or according to the facts, evidence and legal conclusions submitted as proof.
- (xv) Exemplary or Punitive damages, if permissible by law, in the amount of \$25,000,000 or such amount as will sufficiently punish Defendants for their willful and malicious conduct and as will serve as an example to prevent a repetition of such conduct in the future.
- (xvi) Back pay from the date of Newsome's termination on December 3, 2004.
- (xvii) All additional out-of-pocket expenses and all other appropriate elements of damages to which Newsome is entitled.
- (xviii) Actual damages according to proof.
- (xix) Mental anguish damages according to proof.
- (xx) Pre-judgment and post-judgment interest at the legal rate.
- (xxi) Reasonable attorney's fees and costs of court.
- (xxii) Such other further relief, both general and special, at law and in equity, to which Newsome is justly entitled

COUNT XVIII¹⁰⁹

VIOLATION OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION – DUE PROCESS
AND 42 USC § 1981: EQUAL RIGHTS UNDER THE LAW

717. Newsome incorporates by reference Paragraphs 1 through 717 and 720 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

718. Under Mississippi law, Newsome has a personal and/or liberty interest in agreement that was reached with MMS at the time of her employment to perform services as a Legal Secretary. Defendant(s) denied Newsome due process of law when it/he/she:

- a) Terminated Newsome's employment with MMS.
- b) Failed to follow MMS policies in the handling of complaints submitted by Newsome.
- c) Failed to prevent unlawful employment practices reported or known to exist.
- d) Failing to follow federal and state laws in employment.
- e) Deprived Newsome due process of laws secured under Constitution and other laws of the United States.
- f) Deprived Newsome equal rights under the laws.
- g) Subjected Newsome to unlawful employment practices.
- h) Engaging in conspiracy(s) leveled against Newsome.
- i) Discriminating in employment.
- j) Retaliating in employment.
- k) Obstructing federal investigations and/or investigations.
- l) Committing fraudulent practices.
- m) Committing negligent acts.
- n) Committed criminal/civil acts in violation of the laws of the United States.
- o) Violating matters of public policy.
- p) Violating the covenant of good faith and fair dealing.

All in which were done without adequate justification and without providing Newsome adequate notice and a meaningful opportunity to be heard. Violating the covenant

WHEREFORE, Newsome respectfully prays:

- (i) That this Court enter a declaratory judgment that Defendants and each of them have violated Federal law and

¹⁰⁹ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

denied Newsome's right to pursue her occupation and her right to due process and equal protection of the laws as alleged herein.

- (ii) That this Court enter a permanent injunction prohibiting Defendants and each of them from violating matters of public policy, engaging in conspiracies and unlawful practices obstructing the administration of justice, engaging in a pattern-of-practice for purposes of discrimination, retaliation, racial bias and other unlawful reasons known to Defendant(s) for its/his/her actions.
- (iii) That this Court award Newsome compensatory damages according to proof.
- (iv) That this Court award Newsome punitive damages according to proof for the intentional, deliberate, wrongful, and illegal violations of her constitutional and statutory rights by Defendants.
- (v) That this Court award Newsome's attorney's/legal fees pursuant to 42 USC § 1988, and all costs of suit incurred herein; and
- (vi) For such other and further relief as this Court may deem just and proper.

COUNT XIIX¹¹⁰

VIOLATION OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION – EQUAL PROTECTION AND 42 USC § 1981: EQUAL RIGHTS UNDER THE LAW

719. Newsome incorporates by reference Paragraphs 1 through 719 and 723 through 728 of this Complaint as if fully set forth and further state the following claims in support of this Count:

720. MMS did not provide Newsome with the same or even similar employment opportunities as other Legal Secretaries. Based upon the record evidence, facts, and legal conclusions provided in this Complaint for the true reasons for Defendants actions, the exclusion from Newsome by Defendants is arbitrary and capricious, i.e. without a rational basis, rationally related to a legitimate state interest, and therefore a denial of equal protection of the law.

¹¹⁰ Defendant (conspirator) becomes the agent of the other conspirator (s), and any act done by one of the combination is regarded under the law as the act of both or all. In other words, what one does, if there is this combination, becomes the act of both or all of them, no matter which individual may have done it. This is true as to each member of the conspiracy, even those whose involvement was limited to a minor role in the unlawful transaction, and it makes no difference whether or not such individual shared in the profits of the actions. (Am. Jur. Pleading and Practice Forms, Conspiracy § 9). **TACIT AGREEMENT** - Occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.

721. The reasons stated by the Defendants, to justify their decision(s) and/or role in action(s) to terminate Newsome's employment alleging "*Ms. Newsome was discharged for destroying the working relationship with her supervisor, Bob Gordon, by making a false accusation of misconduct on his part. After investigating the allegation that Ms. Newsome made we determined that her allegation was false and she was discharged. . .*" Newsome is a pretext for their true motive to discriminate unlawfully.

WHEREFORE, Newsome respectfully prays:

- (i) That this Court enter a declaratory judgment that Defendants and each of them have violated Federal law and denied Newsome's right to pursue her occupation and her right equal protection of the law and equal privileges and immunities under the laws;
- (ii) That this Court enter a permanent injunction prohibiting Defendants and each of them from violating matters of public policy, engaging in conspiracies and unlawful practices obstructing the administration of justice, engaging in a pattern-of-practice for purposes of discrimination, retaliation, racial bias and other unlawful reasons known to Defendant(s) for its/his/her actions to deprive Newsome equal protection of the law.
- (iii) That this Court award Newsome compensatory damages according to proof.
- (iv) That this Court award Newsome punitive damages according to proof for the intentional, deliberate, wrongful, and illegal violations of her constitutional and statutory rights by Defendants.
- (v) That this Court award Newsome's attorney's/legal fees pursuant to 42 USC § 1988, and all costs of suit incurred herein; and
- (vi) For such other and further relief as this Court may deem just and proper.

STATEMENT OF NEWSOME'S INJURIES AND DAMAGES

722. Because of Defendants' unlawful/illegal and employment violations, Newsome incurred, loss of employment, economic losses and damages, including but not limited to expenses for moving and relocation, storage of goods, out-of-pocket costs, increased rent, loss of possessions

and other compensatory damages stemming from her unwarranted and unlawful/illegal termination of employment.

723. Newsome has also suffered non-economic injuries, such as embarrassment, humiliation, anxiety, loss of self-esteem, deprivation of civil rights, constitutional rights, equal protection of laws, due process of laws, and other emotional pain and suffering.

724. The acts, conduct and/or omissions of the Defendants toward Newsome were intentional, malicious, and in wanton or reckless disregard of the rights and feelings of Newsome, entitling her to the additional award of punitive and/or exemplary damages.¹¹¹

JURY DEMAND

725. Pursuant to Rule 38 of the Federal Rules of Civil Procedure and/or applicable laws governing said matters, Newsome hereby demands a jury trial on all issues triable by right to a jury.

¹¹¹ Newsome: ... It was Mr. Gordon's testimony that I was at least maybe about, well we concluded about maybe the third or fourth secretary in less than a years time, and I did express those concerns to Mr. Allen in the conference after the cap incident. Because like I said, his behavior to me was unacceptable, and I offered or suggested to Allen that they get Mr. Gordon some help, some anger management courses. But this behavior apparently is acceptable and condoned by Mitchell, McNutt & Sams, whereas I get elaborate e-mails, what I found were to be slanderous and defamatory. And I take that very personal because of the life that I strive to live and lead. I know people for instance that would, like I shared in my evaluation on the 30th, they would say that's not her, that I've worked. Since I've been away from there, I've had attorneys come to me, if you need a reference or anything, we'll be glad to give you one. In a letter to, from my understanding given to the firm prior to my coming on board, that the Agency Sent, the attorney was commending me on my professionalism and my conduct. So when I receive an evaluation, I take it very personally, and I'm offended by it. [NEWSOME EMOTIONAL (CRYING)]. They state that I was given ways to improve. During the evaluation, I'm not aware of any written documentation to support the statement that they, they made. I didn't see them present anything in regards to the evaluation, during this hearing. Now Mr. Allen presented the evaluation to show that they gave me ways to improve. That was Mr. Gordon's opinion, or evaluation of me, and like I said, I take it very personally (CLAIMANT CRYING). But this is the kind of conduct that each secretary, I, I don't know, but if they had to work for Bob and endure the things that I went through, I would just say I'm much stronger than they are. The way Bob treats people is unacceptable. I don't recall working for an attorney that was just as, I mean, I, I just don't, he's the first. And I, during my employment, I expressed my concerns in regards to his conduct, Mitchell, McNutt & Sams just refused to correct it. They decided to continue to escalate the harassment in efforts to force me to quit. It is my right as a citizen of the United States and of the civil Rights Act to be free to work in an employment, for an employer without fear of discrimination and harassment. There have been people who have died for these rights, and that's why I refused to leave. Nothing Mr. Gordon or anyone could do can make me question my skills and qualifications. I take great pride in the work that I do, and I'm VERY UPSET that my reporting of a complaint on December 1st was a result of my termination. It was not the first complaint, but the evidence will show that I followed the same procedures that I followed on all the other incidences that happen in regards to Bob . . . [See Exhibit "7" at pp. 437 – 438 attached hereto and incorporated by reference as if set forth in full herein. Goes to PRETEXT and PATTERN-OF-PRACTICE of unlawful employment practices by Defendant(s) to deprive Newsome equal rights under the law, equal protection of the laws, equal privileges and immunities under the laws, due process of laws as secured and guaranteed under the Constitution and laws of the United States].

726. Plaintiff demands a trial by jury of all issues triable by jury under Rule 38 of the Federal Rules of Civil Procedure and 42 USC § 1981.

727. Plaintiff hereby demands a jury trial pursuant to the Seventh Amendment of the United States Constitution and other laws of the United States.

PRAYER AND RELIEF SOUGHT

WHEREFORE, Newsome requests judgment against Defendants for *claims* and is entitled to the following relief and judgment.

728. Newsome incorporates the Relief sought in Count I through Count XIX of this Complaint as if set forth in full herein.
729. Newsome seeks Declaratory Relief that the acts of the Defendant(s) to deny and intimidate persons based upon their race, sex, and/or knowledge of engagement in protected activity(s) from contracting and obtaining equal employment opportunity is a violation of the law and shall be immediately enjoined from further and similar actions.
730. Newsome seeks punitive damages based upon Defendants' intentional, willful, malicious and wanton acts herein referenced.
731. Newsome therefore seeks/requests Actual damages.
732. **Compensatory Damages** is defined as: "damages sufficient to amount to indemnify the injured person for the loss suffered." See *Black's Law Dictionary*, Eighth Edition.
733. Newsome therefore seeks/requests Compensatory damages.
734. Newsome therefore seeks/requests Discretionary damages if permissible by law.
735. Newsome therefore seeks/requests Foreseeable damages if permissible by law.
736. Newsome request special damages and reasonable attorney fees and cost associated with the litigation of this matter.
737. Newsome therefore seeks/requests Punitive damages.
738. Interest on the damages according to law.
739. Prejudgment interest.
740. Judgment of and against the Defendant(s) in an amount demanded by Newsome and/or to be determined by the Court to correct the wrongs rendered Newsome which include; however, is not limited to the following demands of and against the following Defendant(s) in it/his/her ***individual capacity***:
 - a) Mitchell McNutt & Sams, P.A. (law firm):

- i. For punitive or exemplary damages in the sum of **\$75,000,000** or half of MMS' net worth, or amount to be determined at trial.
- ii. For compensatory damages in the sum of **\$5,000,000** or an amount to be determined at trial.
- iii. For discretionary damages in the sum of **\$3,000,000** or an amount to be determined at trial.
- iv. For general damages in the sum of **\$2,500,000** or an amount to be determined at trial.
- v. For special damages in the sum of **\$3,000,000** or an amount to be determined at trial.
- vi. For liquidated damages in the sum of **\$1,500,000** or an amount to be determined at trial.
- vii. For consequential damages in the sum of **\$10,000,000** or an amount to be determined at trial.
- viii. For foreseeable damages in the sum of **\$10,000,000** or an amount to be determined at trial.
- ix. For actual damages in an amount to be determined at trial.
- x. For attorney/legal fees.
- xi. Costs of litigation.
- xii. Any and all other relief this Court deems just and proper under the facts, evidence and legal conclusions provided herein and/or at the trial of this matter.

b) L.F. Sams, Jr. (an attorney at MMS):

- i. For punitive or exemplary damages in the sum of **\$5,000,000** or half of Sams' net worth, or amount to be determined at trial.
- ii. For compensatory damages in the sum of **\$2,500,000** or an amount to be determined at trial.
- iii. For discretionary damages in the sum of **\$1,000,000** or an amount to be determined at trial.
- iv. For general damages in the sum of **\$1,000,000** or an amount to be determined at trial.
- v. For special damages in the sum of **\$3,000,000** or an amount to be determined at trial.
- vi. For liquidated damages in the sum of **\$1,500,000** or an amount to be determined at trial.
- vii. For consequential damages in the sum of **\$5,000,000** or an amount to be determined at trial.
- viii. For foreseeable damages in the sum of **\$10,000,000** or an amount to be determined at trial.
- ix. For actual damages in an amount to be determined at trial.

- x. For attorney/legal fees.
- xi. Costs of litigation.
- xii. Any and all other relief this Court deems just and proper under the facts, evidence and legal conclusions provided herein and/or at the trial of this matter.

c) James Thomas Allen (Chief Operations Officer/Human Resources Representative/Controller at MMS):

- i. For punitive or exemplary damages in the sum of **\$1,000,000** or half of Allen's net worth, or amount to be determined at trial.
- ii. For compensatory damages in the sum of **\$250,000** or an amount to be determined at trial.
- iii. For discretionary damages in the sum of **\$750,000** or an amount to be determined at trial.
- iv. For general damages in the sum of **\$75,000** or an amount to be determined at trial.
- v. For special damages in the sum of **\$100,000** or an amount to be determined at trial.
- vi. For liquidated damages in the sum of **\$800,000** or an amount to be determined at trial.
- vii. For consequential damages in the sum of **\$1,000,000** or an amount to be determined at trial.
- viii. For foreseeable damages in the sum of **\$3,000,000** or an amount to be determined at trial.
- ix. For actual damages in an amount to be determined at trial.
- x. For attorney/legal fees.
- xi. Costs of litigation.
- xii. Any and all other relief this Court deems just and proper under the facts, evidence and legal conclusions provided herein and/or at the trial of this matter.

d) Robert T. Gordon, Jr.(was attorney at MMS):

- i. For punitive or exemplary damages in the sum of **\$10,000,000** or half of Gordon's net worth, or amount to be determined at trial.
- ii. For compensatory damages in the sum of **\$5,000,000** or an amount to be determined at trial.
- iii. For discretionary damages in the sum of **\$2,000,000** or an amount to be determined at trial.
- iv. For general damages in the sum of **\$3,500,000** or an amount to be determined at trial.

- v. For special damages in the sum of **\$5,000,000** or an amount to be determined at trial.
- vi. For liquidated damages in the sum of **\$3,500,000** or an amount to be determined at trial.
- vii. For consequential damages in the sum of **\$8,000,000** or an amount to be determined at trial.
- viii. For foreseeable damages in the sum of **\$8,000,000** or an amount to be determined at trial.
- ix. For actual damages in an amount to be determined at trial.
- x. For attorney/legal fees.
- xi. Costs of litigation.
- xii. Any and all other relief this Court deems just and proper under the facts, evidence and legal conclusions provided herein and/or at the trial of this matter.

e) Michael T. Farrell (was attorney at MMS – area of practice Labor and Employment Law):

- i. For punitive or exemplary damages in the sum of **\$15,000,000** or half of Farrell's net worth, or amount to be determined at trial.
- ii. For compensatory damages in the sum of **\$7,000,000** or an amount to be determined at trial.
- iii. For discretionary damages in the sum of **\$4,000,000** or an amount to be determined at trial.
- iv. For general damages in the sum of **\$5,500,000** or an amount to be determined at trial.
- v. For special damages in the sum of **\$8,000,000** or an amount to be determined at trial.
- vi. For liquidated damages in the sum of **\$5,500,000** or an amount to be determined at trial.
- vii. For consequential damages in the sum of **\$9,000,000** or an amount to be determined at trial.
- viii. For foreseeable damages in the sum of **\$10,000,000** or an amount to be determined at trial.
- ix. For actual damages in an amount to be determined at trial.
- x. For attorney/legal fees.
- xi. Costs of litigation.
- xii. Any and all other relief this Court deems just and proper under the facts, evidence and legal conclusions provided herein and/or at the trial of this matter.

- f) Ladye Margaret Townsend (was Legal Secretary at MMS):
- i. For punitive or exemplary damages in the sum of **\$500,000** or half of Townsend's net worth, or amount to be determined at trial.
 - ii. For compensatory damages in the sum of **\$250,000** or an amount to be determined at trial.
 - iii. For general damages in the sum of **\$250,000** or an amount to be determined at trial.
 - iv. For special damages in the sum of **\$175,000** or an amount to be determined at trial.
 - v. For liquidated damages in the sum of **\$75,000** or an amount to be determined at trial.
 - vi. For consequential damages in the sum of **\$250,000** or an amount to be determined at trial.
 - vii. For foreseeable damages in the sum of **\$750,000** or an amount to be determined at trial.
 - viii. For actual damages in an amount to be determined at trial.
 - ix. For attorney/legal fees.
 - x. Costs of litigation.
 - xi. Any and all other relief this Court deems just and proper under the facts, evidence and legal conclusions provided herein and/or at the trial of this matter.

- g) Doe Defendant(s):
- i. For punitive or exemplary damages in the sum of **\$5,000,000** or half of Doe's net worth, or amount to be determined at trial.
 - ii. For compensatory damages in the sum of **\$2,000,000** or an amount to be determined at trial.
 - iii. For general damages in the sum of **\$1,500,000** or an amount to be determined at trial.
 - iv. For special damages in the sum of **\$1,000,000** or an amount to be determined at trial.
 - v. For liquidated damages in the sum of **\$1,500,000** or an amount to be determined at trial.
 - vi. For consequential damages in the sum of **\$1,000,000** or an amount to be determined at trial.
 - vii. For foreseeable damages in the sum of **\$3,000,000** or an amount to be determined at trial.
 - viii. For actual damages in an amount to be determined at trial.
 - ix. For attorney/legal fees.

- x. Costs of litigation.
 - xi. Any and all other relief this Court deems just and proper under the facts, evidence and legal conclusions provided herein and/or at the trial of this matter.
741. Such further relief as the Court deems necessary to deter future unlawful practices by the Defendants.
742. Grant affirmative relief as may be necessary to remedy Defendants' past discriminatory practices and decisions and to insure Defendants do not discriminate on the basis of race, sex and/or knowledge of individual's participation in protected activity in the future.
743. Award actual and compensatory damages to compensate Newsome for economic losses and damages, and non-economic injuries, such as emotional distress, loss of civil rights, loss of constitutional rights, humiliation and embarrassment caused by the discrimination of Defendants, in an amount to be proven at trial.
744. Grant Newsome an award of punitive and/or exemplary damages as a result of Defendants' deliberate, intentional, overt, willful and flagrant race-based, sex-based discrimination, and knowledge of Newsome's engagement in protected activities – i.e. matters of public policy - in an amount that reflects the dual purposes of punishment and deterrence; Grant Newsome an award of punitive and/or exemplary damages as a result of Defendants' deliberate, intentional, overt, willful and flagrant race-based, sex-based discrimination, and knowledge of Newsome's engagement in protected activities – i.e. matters of public policy - in an amount that reflects the dual purposes of punishment and deterrence.
745. Grant Newsome an award of punitive and/or exemplary damages as a result of Defendants' deliberate, intentional, overt, willful and flagrant disregard of Newsome's right to engage in protected activity(s), in an amount that reflects the dual purposes of punishment and deterrence; Grant Newsome an award of punitive and/or exemplary damages as a result of Defendants' deliberate, intentional, overt, willful and flagrant race-based, sex-based discrimination, and knowledge of Newsome's engagement in protected activities – i.e. matters of public policy - in an amount that reflects the dual purposes of punishment and deterrence.
746. Grant Newsome an award of attorney's fees, costs and pre-judgment and post-judgment interest incurred in bringing this action.
747. Grant such other and additional relief that the Court finds just and appropriate under the circumstances.

- 748. Cost of litigation.
- 749. Cost incurred; empanelling a JURY.
- 750. **JURY DEMAND ON ISSUES SO TRIABLE.**

Respectfully submitted this 2nd day of December, 2010.

By: 
Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
Phone: (601) 885-9536 or (513) 680-2922

MAILING ADDRESS: *Post Office Box 14731
Cincinnati, Ohio 45250*

Vogel Newsome

From: Jim Allen
Sent: Thursday, February 05, 2004 4:29 PM
To: Vogel Newsome
Cc: Mike Farrell
Subject: RE: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)
Sensitivity: Confidential

Vogel,

I'm sorry you feel that I have not been responsive to your questions. I have been busy due to the many hats I wear (I was in our Memphis office yesterday). I am not treating you any differently than any other employee, and the way I have explained the procedure to you is the way the firm has prepared payroll for years. Actually there have been some enhancements since I've taken it over. I respect your thoughts and believed that when I completed discussion with you when I was in Jackson this would conclude the issue since you informed me it would.

See answers below in bold.

-----Original Message-----

From: Vogel Newsome
Sent: Monday, February 02, 2004 4:16 PM
To: Jim Allen
Subject: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)
Importance: High
Sensitivity: Confidential

Jim,

I have a few questions that need answers in regards to my concerns of possible workdays that I have not been paid. You have been paid a salary and any overtime due since you have been with the firm. I believe that there is a possibility that I may not have received the correct amount of pay for the past pay periods. As I shared with you in our conversation of 1/28/04, at times it is difficult for me to convey what it is that I am trying to say. Therefore, I hope putting it in writing will help clarify my concerns and help you get a better understanding of my concerns. I am still pursuing such concerns to you, pursuant to 409 Administrative Pay Corrections of the MMS Employee Handbook.

If you can answer these questions, that would be great. However, if you cannot, but know someone that can, please provide me with name, phone number, etc. I am asking these questions, with no intentions of becoming a nuisance in my quest for knowledge, to make sure that I have a full understanding of how Mitchell, McNutt & Sams, P.A.(MMS) pay non-exempt employees - In responding, please number your responses for the appropriate question(s):

1) Pursuant to 401 Timekeeping in the Employee Handbook of MMS, although we work 37.5 hour days, does MMS pay for 40 hours? As it says in the fifth paragraph of

2/10/2004

EXHIBIT

1

section 401 MM&S compensates "based on a 40 hour week."

2) MMS for each pay period is using Average Hours for the pay period rather than the actual work hours (i.e., for 11 workdays, total hours would be 88 - MMS pays only 86.67) the employee has worked for that pay period. If MMS is paying only for 86.67 hours, does this not compute to approximately 7.88 (when rounded) hours a day rather than 8 hours? The 86.67 "average" on the pay stub does not change the amount of salary each pay period. The salary does not change regardless of how many days are in the pay period. Employees are hired for an annual salary that is broken down into 24 pay periods. The OT is paid when an employee works in excess of 40 hours in each work week - Sunday to Saturday.

3) I am researching the use of "averaging hours." Is there a statute or rule this based upon? If so, can you provide me with the information so that I may view it. I found a statute; however, it could be the wrong one. The one I found does not allow for averaging of hours that covers a period of two weeks or more. See attached hereto as (29 C.F.R. 778.104 - Each Workweek Stands Alone) I will have Mike Farrell give you the information about the FLSA statute since he practices in that area.

The policy in 401 of the MMS Handbook states "additional pay will not be made until the actual work hours exceed 40 hours per week at the pay rate of 1 1/2 times the straight time rate."

4) If my figure is correct, does this not compute to approximately 39.4 hours a week that MMS is paying rather than the 40 hours it states it is paying in the Employee Handbook? We have always calculated based on a 40 hour work week, as stated in the handbook.

5) Would the employee be entitled to receive compensation for 40 hours as expected based upon MMS' policy? Employees are paid based on a 40 hour week. We require a minimum of 37.5 hours of work in that week.

6) If MMS is only paying approximately 39.4 hours a week (in a work period of 11 days), are there not a loss in hours that should have been paid to the employee based on MMS' policy? There may be pay periods with 10 days and perhaps 12 days. The salary is always the same each and every pay period.

7) MMS is only paying non-exempt employees for 2080 days a year rather than 2088 days? That is hours not days : 52 weeks X 40 hours/ week = 2080 hours per year. This is the standard recognized. The other thing to consider is this does not include holidays, sick leave days, other excused leaves of absence (jury duty you had, etc.) and vacation days. The 2080 is just a standard.

8) I mentioned concerns to you in our conversation of 1/27/04 in regards to "lost hours." Can you tell me whether or not my 1/15/04, paycheck is for the pay period of 12/31/04 through 1/15/04? The January 15, 2004 paycheck was for the days 1/1/04 - 1/15/04. The two pay periods each month are the first of the month thru the 15th, and the 16th thru the end of the month.

Any OT was calculated on the weeks of 12/28 /03 - 1/3/04 and 1/4/04 - 1/10/04. OT is

2/10/2004

paid for work in excess of 40 hours in each respective week. No OT was paid for the week of 1/11/04 - 1/17/04 since the week has not been completed as of the end of the pay period, 1/15. If there is any OT for that week it will be paid the following pay period.

9) I attach for your review a sample spreadsheet for Cindy Wingate (just a name a random). This document is IManage Doc. #519021 (PASSCODE is "cindy" - in lowercase). The dates, etc. reflected in the spreadsheet are similar to mine since being with MMS. The only thing I have changed is the salary info for Ms. Wingate. If my research is correct, is Ms. Wingate entitled to unpaid wages of \$153.06? No, she is paid her salary of \$20,000 per year divided by 24 pay periods which equals \$833.33 per pay period.

10) Because MMS only pays for 2080 days a year, will Ms. Wingate's, in 2004, paycheck reflect payments for 3/31/04, 5/31/04 and 8/31/04? MM&S has two payrolls each month - on the 1st thru 15th and the 16th thru the end of the month. The check arrives on the 30th of each month, except for February, but compensation is included for the 31st for those months that have 31 days in that month.

11) If MMS pays for only 2080 days in 2004, will the actual pay periods for Ms. Wingate show that MMS is not going to pay her for 16 hours (2 days work)? The spreadsheet does show 10, 11 or 12 "work days" in each pay period but there are 10 vacation days a year, 12 sick days a year, and 8 or 9 (depending on when 12/26 falls) holidays each year plus other approved leaves of absence as documented in the MMS Handbook. We do not subtract anything for those days taken. The salary stays the same each and every pay period.

12) For the 2004 pay period, will MMS pay period from 12/31/04 thru 12/30/04 using the 2080 method used by MMS, show that MMS paid her for (a) 12/31/03 in the 12/31/04 thru 1/15/04 pay period; (b) for 3/31/04 in the 3/31/04 thru 4/15/04 pay period; (c) for 5/31/04 in the 5/31/04 thru 6/15/04 pay period; and (d) for 8/31/04 in the 8/31/04 thru 9/15/04? See answer in 10 above.

13) Because MMS only provides employees with "Period End" information on its paychecks, for pay periods ending on the 15th for the month, does this include the 31st if the prior month had 31 days and the 31st fell on a workday? MMS has the second payroll of the month from the 16th to the end of the month. That payroll is made on the 30th but includes the 31st, if there is a month that has 31 days.

14) Why does MMS not provide employees with the "Period Begin" information on its paycheck/stubs?

Good question. I will ask our payroll provider to see if that information can be put on the pay stub.

Again, I am simply trying to get an understanding as to how MMS computes wages for non-exempt employees.

I have been thorough in answering the questions. I hope this gives you a full "understanding."

If my research on information is correct and my spreadsheet calculation prepared at IManage Doc. No. 518945 for myself is correct (I provided you with the password for this document in my 1/24/04 email to you), I would appreciate MMS submitting a check for this amount or the corrected amount based upon the information it provided. However, if MMS is aware that my computation is incorrect and I am due more than the calculation provided (or less), please provide me with the data information used to compute the information.

Vogel, your compensation has been calculated accurately, just as everyone else's has been.

Thanks you for your time and consideration in this matter. You're welcome.

Sincerely,

Vogel Newsome

Mitchell, McNutt & Sams, P.A.

Post Office Box 3647

Jackson, Mississippi 39207

Phone: 601/932-4311

Facsimile: 601/932-4228

CONFIDENTIALITY NOTICE

This communication may be PRIVILEGED, WORK PRODUCT and/or CONFIDENTIAL. If so and you have received it in error, you are strictly and absolutely prohibited from disclosing, disseminating, producing, using or relying on it and its contents, and you are to immediately notify the undersigned by reply e-mail (including this communication with your reply) and then delete this communication and your reply from your system.

2/10/2004

U. S. DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
JACKSON AREA OFFICE
3780 I-55 NORTH, SUITE 210
JACKSON, MISSISSIPPI 39211-6365



Telephone: 601/965-4606 Fax No: 601/965-4610

REPLY TO THE ATTENTION OF: AREA DIRECTOR

June 2, 2004

VIA FAX NO HARD COPY TO FOLLOW

Mr. James Allen
Mitchell, McNutt & Sams P.A.
P. O. Box 3647
Jackson, MS 39207

Complaint No. 204187074

Dear Mr. Allen:

On June 1, 2004, the Occupational Safety and Health Administration (OSHA) received a notice of safety and health hazards at your worksite at 111 East Capitol Street, Suite 290 Jackson, MS 39201.

We notified you, by telephone, of the alleged hazards on June 2, 2004. The specific nature of the alleged hazards is as follows:

- 1) Employees are exposed to fumes from paints and wall coverings because of ongoing renovation of building spaces.
- 2) Employees are exposed to ergonomic hazards as the work spaces are cramped and confined causing employees to perform work assignments in awkward and twisted positions:
 - a. Desks (work surfaces) do not have ample (depth) leg room.
 - b. Desks do not have ample floor to work surface height.
 - c. Aisle width(s) did not permit employees the freedom(s) of motion to easily maneuver in their workspace(s).

We have not determined whether the hazards, as alleged, exist at your workplace; and we do not intend to conduct an inspection at this time. However, since allegations of violations and/or hazards have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please fax (601/965-4610) or advise me in writing no later than June 8, 2004 of the results of your investigation. You must provide supporting documentation of your findings, including any applicable measurements or monitoring results, and photographs/video which you believe would be helpful, as well as a description of any corrective action you have taken or are in the process of taking.

EXHIBIT

2

The complainant involved has been advised of this preliminary response to the complaint of hazards and has been furnished a copy of this letter. Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity.

This letter is not a citation or a notification of proposed penalty which, according to the OSH Act, may be issued only after an inspection or investigation of the workplace. It is our goal to assure that hazards are promptly identified and eliminated. Please take immediate corrective action where needed. We encourage employee participation in investigating and responding to any alleged hazard. **If we do not receive a response from you by June 8, 2004 indicating that appropriate action has been taken or that no hazard exists and why, an OSHA inspection will be conducted.** An inspection may include a review of the following: injury and illness records, hazard communication, personal protective equipment, emergency action or response, bloodborne pathogens, confined space entry, lockout and related safety and health issues.

Please note, however, that OSHA selects for inspection some cases where we have received letters in which employees have indicated satisfactory corrective action. This is to ensure that employers actually taken the action asserted in their letters.

The State of Mississippi offers OSHA consultation services, without charge, to assist in resolving all occupational safety and health issues. The variety of services available or the scheduling of those services may be limited by the consultation project's requirement to give priority to small businesses in high hazard industries and by its backlog. However, you may be able to obtain similar services from your insurance carrier or private consultant in a more timely fashion. To discuss or request the services, call or write Mississippi consultation project at the following address:

Mississippi State University Center for Safety and Health
106 Crosspark Drive, Suite C
Pearl, MS 39208
601/939-2047 phone 601/939-6742 fax

You are requested to post a copy of this letter where it will be readily accessible for review by all of your employees and return a copy of the signed Certificate of Posting (Attachment A) to this office. Also, you are requested to provide a copy of this letter and your response to it to a representative of any recognized employee union or safety committee if these are at your facility. Failure to do this may result in an on-site inspection. The complainant has been furnished a copy of this letter and will be advised of your response. Section 11(c) of the OSH Act provides protection for employees against discrimination because of their involvement in protected safety and health related activity.

If you have any questions concerning this matter, please contact the Area Office at the address in the letterhead. Your personal support and interest in the safety and health of your employees is appreciated.

Sincerely,

for Eugene F. Stewart
Clyde P. Payne
Area Director

CPP/es

Attachment A

**CERTIFICATE OF POSTING
OSHA NOTIFICATION OF ALLEGED HAZARD(S)**



Company: Mitchell, McNutt & Sams P.A. Complaint
Nr: 204187074

Date of Posting: _____

Date Copy Given to
an Employee Representative: _____

On behalf of the employer, I certify that a copy of the complaint letter received from the Occupational Safety and Health Administration (OSHA) has been posted in a conspicuous place, where all affected employees will have notice, or near such location where the alleged violation(s) occurred, and such notice has been given to each authorized representative of affected employees, if any. This notice was or will be posted for a minimum of ten(10) working days or until any hazardous conditions found are corrected.

Signature

Date

Title



OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
JACKSON AREA OFFICE
3780 I-55 NORTH, SUITE 210
JACKSON, MISSISSIPPI 39211-6323
601/965-4606
FAX 601/965-4610

FACSIMILE TRANSMITTAL	
TO	Mitchell, McNutt & Sams P.A.
ATTENTION	Jim Allen
FROM	Eugene Stewart
DATE & TIME	June 2, 2004
FAX NUMBER	662-842-8450
NO. OF PAGES	5

**IF THE PACKAGE RECEIVED IS INCOMPLETE OR ILLEGIBLE,
PLEASE CONTACT THE ABOVE SENDER IMMEDIATELY**

Mitchell McNutt & Sams, P.A.

Employee Handbook

Issue Date: January 1, 2002

EXHIBIT

3

Welcome new employee!

On behalf of your colleagues, I welcome you to Mitchell McNutt & Sams, P.A., and wish you every success here.

We believe that each employee contributes directly to Mitchell McNutt's growth and success, and we hope you will take pride in being a member of our team.

This handbook was developed to describe some of the expectations of our employees and to outline the policies, programs, and benefits available to eligible employees. Employees should familiarize themselves with the contents of the employee handbook as soon as possible, for it will answer many questions about employment with Mitchell McNutt.

We hope that your experience here will be challenging, enjoyable, and rewarding. Again, welcome!

Sincerely,

Jim Allen
Chief Operations Officer

Table of Contents

Policy	Effective Date:	Revision Date:
INTRODUCTION		
010 Title Page	1/1/02	
020 Employee Welcome Message	1/1/02	
040 Introductory Statement	1/1/02	
051 Employee Acknowledgement Form	1/1/02	
060 Customer Relations	1/1/02	
EMPLOYMENT		
101 Nature of Employment	1/1/02	
102 Employee Relations	1/1/02	
103 Equal Employment Opportunity	1/1/02	
104 Business Ethics and Conduct	1/1/02	
105 Hiring of Relatives	1/1/02	
107 Immigration Law Compliance	1/1/02	
108 Conflicts of Interest	1/1/02	
110 Outside Employment	1/1/02	
112 Non-Disclosure	1/1/02	
114 Disability Accommodation	1/1/02	
EMPLOYMENT STATUS & RECORDS		
201 Employment Categories	1/1/02	
202 Access to Personnel Files	1/1/02	
203 Employment Reference Checks	1/1/02	
204 Personnel Data Changes	1/1/02	
208 Employment Applications	1/1/02	
209 Performance Evaluation	1/1/02	
210 Job Descriptions	1/1/02	
212 Salary Administration	1/1/02	
EMPLOYEE BENEFIT PROGRAMS		
301 Employee Benefits	1/1/02	
303 Vacation Benefits	1/1/02	
304 Child Care Benefits	1/1/02	
305 Holidays	1/1/02	
306 Workers' Compensation Insurance	1/1/02	
307 Sick Leave Benefits	5/1/02	
308 Time Off to Vote	1/1/02	
309 Bereavement Leave	1/1/02	
311 Jury Duty	1/1/02	
312 Witness Duty	1/1/02	
314 CLE Approval	1/1/02	
316 Health Insurance/Cafeteria Plan	1/1/02	
320 401(k) Profit Sharing Plan	1/1/02	
TIMEKEEPING/PAYROLL		
401 Timekeeping	1/1/02	

403	Paydays	1/1/02
405	Employment Termination	1/1/02
408	Pay Advances	1/1/02
409	Administrative Pay Corrections	1/1/02
410	Pay Deductions and Setoffs	1/1/02

WORK CONDITIONS & HOURS

502	Work Schedules	1/1/02
504	Use of Phone and Mail Systems	1/1/02
505	Smoking	1/1/02
506	Rest and Meal Periods	1/1/02
507	Overtime	1/1/02
510	Emergency Closings	1/1/02
512	Business Travel Expenses	1/1/02
514	Visitors in the Workplace	1/1/02
516	Computer and E-mail Usage	5/21/03
517	Internet Usage	1/1/02
522	Workplace Violence Prevention	1/1/02

LEAVES OF ABSENCE

603	Personal Leave	5/1/02
604	Marriage Leave	1/1/02
605	Military Leave	1/1/02
607	Pregnancy-Related Absences	1/1/02

EMPLOYEE CONDUCT & DISCIPLINARY ACTION

701	Employee Conduct and Work Rules	1/1/02
702	Drug and Alcohol Use	1/1/02
703	Sexual and Other Unlawful Harassment	1/1/02
705	Personal Appearance	1/1/02
706	Return of Property	1/1/02
708	Resignation	1/1/02
710	Security Inspections	1/1/02
712	Solicitation	1/1/02
718	Problem Resolution	1/1/02
720	Shredding Policy	1/1/02
722	Workplace Etiquette	1/1/02

MISCELLANEOUS

800	Life-Threatening Illnesses in the Workplace	1/1/02
804	Billing Office Runners' Time	1/1/02

INTRODUCTORY STATEMENT

This handbook is designed to acquaint you with Mitchell McNutt and to provide you with information about working conditions, employee benefits, and some of the policies affecting your employment. You should read, understand, and comply with all provisions of the handbook. It describes many of your responsibilities as an employee and outlines the programs developed by Mitchell McNutt to benefit employees. One of our objectives is to provide a work environment that is conducive to both personal and professional growth.

This handbook is not a contract of employment, nor is it intended to create any property interest in continued employment with the firm. In this regard, the firm retains exclusive discretion to exercise the customary functions of management including, but not limited to, the sole discretion to discipline and dismiss employees; to determine the size and composition of the workforce; to establish, change and abolish policies, procedures, rules and regulations; and to further assign duties to employees in accordance with the needs and requirements as determined by the firm leadership.

No employee handbook can anticipate every circumstance or question about policy. As Mitchell McNutt continues to grow, the need may arise and Mitchell McNutt reserves the right to revise, supplement, or rescind any policies or portion of the handbook from time to time as it deems appropriate, in its sole and absolute discretion. **The only exception to any changes is our employment-at-will policy permitting you or Mitchell McNutt to end our relationship for any reason at any time.** Employees will, of course, be notified of such changes to the handbook as they occur.

This handbook will be maintained on the computer and will be available to all as a read only document.

EMPLOYEE ACKNOWLEDGEMENT FORM

The employee handbook describes important information about Mitchell McNutt, and I understand that I should consult the Chief Operations Officer regarding any questions not answered in the handbook. I have entered into my employment relationship with Mitchell McNutt voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Mitchell McNutt or I can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.

Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the handbook may occur, except to Mitchell McNutt's policy of employment-at-will. All such changes will be communicated in writing or via e-mail, and I understand that revised information may supersede, modify, or eliminate existing policies. Any revisions to the policies in this handbook must be approved by the firm's Board of Directors.

Furthermore, I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received the handbook, and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.

After this form is signed by all staff employees initially, future changes will be communicated in writing or via e-mail and this acknowledgement will be obtained as a response to the written or e-mail notification.

EMPLOYEE'S NAME (printed): _____

EMPLOYEE'S SIGNATURE: _____

DATE: _____

Clients are among our firm's most valuable assets. Every employee represents Mitchell McNutt to our clients and the public. The way we do our jobs presents an image of our entire organization. Clients judge all of us by how they are treated with each employee contact. Therefore, one of our first business priorities is to assist any client or potential client. Nothing is more important than being courteous, friendly, helpful, and prompt in the attention you give to clients.

Clients who wish to lodge specific comments or complaints should be directed to the Chief Operations Officer for appropriate action. Our personal contact with the public, our manners on the telephone, and the communications we send to customers are a reflection not only of ourselves, but also of the professionalism of Mitchell McNutt. Positive client relations not only enhance the public's perception or image of Mitchell McNutt, but also pay off in greater client loyalty and increased profit.

101 Nature of Employment

Effective Date: 1/1/02

Employment with Mitchell McNutt is voluntarily entered into, and the employee is free to resign at will at any time, with or without cause. Similarly, Mitchell McNutt may terminate the employment relationship at will at any time, with or without notice or cause, so long as there is no violation of applicable federal or state law.

Policies set forth in this handbook are not intended to create a contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between Mitchell McNutt and any of its employees. The provisions of the handbook have been developed at the discretion of management and, except for its policy of employment-at-will, may be amended or cancelled at any time, at Mitchell McNutt's sole discretion.

These provisions supersede all existing policies and practices and may not be amended or added to without the express written approval of the Board of Directors of Mitchell McNutt.

102 Employee Relations

Effective Date: 1/1/02

Mitchell McNutt believes that the work conditions, wages, and benefits it offers to its employees are competitive with those offered by other employers in this area and in this profession. If employees have concerns about work conditions or compensation, they are strongly encouraged to voice these concerns openly and directly to their supervisor and/or attorney or the Chief Operations Officer.

Our experience has shown that when employees deal openly and directly with supervisors, the work environment can be excellent, communications can be clear, and attitudes can be positive. We believe that Mitchell McNutt amply demonstrates its commitment to employees by responding effectively to employee concerns.

103 Equal Employment Opportunity

Effective Date: 1/1/02

In order to provide equal employment and advancement opportunities to all individuals, employment decisions at Mitchell McNutt will be based on merit, qualifications, and abilities. Mitchell McNutt does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law.

Mitchell McNutt will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training.

Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of their immediate supervisor/attorney or the Chief

Operations Officer. Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

104 Business Ethics and Conduct

Effective Date: 1/1/02

The successful business operation and reputation of Mitchell McNutt is built upon the principles of fair dealing and ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.

The continued success of Mitchell McNutt is dependent upon our clients' trust and we are dedicated to preserving that trust. Employees owe a duty to Mitchell McNutt, its clients, and shareholders to act in a way that will merit the continued trust and confidence of the public.

Mitchell McNutt makes every attempt to comply with all applicable laws and regulations and expects its directors, officers, and employees to conduct business in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct. If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with your immediate supervisor/attorney and, if necessary, with the Firm President for advice and consultation.

Compliance with this policy of business ethics and conduct is the responsibility of every Mitchell McNutt employee. Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.

105 Hiring of Relatives

Effective Date: 1/1/02

The employment of relatives in the same area of an organization may cause serious conflicts and problems with favoritism and employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment can be carried over into day-to-day working relationships.

Although Mitchell McNutt has no prohibition against employing relatives of current employees, we are committed to monitoring situations in which relatives work in the same area. In case of actual or potential problems, Mitchell McNutt will take action. This can include reassignment or, if necessary, termination of employment for one or both of the individuals involved. Employees in a close personal relationship should refrain from public workplace displays of affection or excessive personal conversation.

For purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage. This policy applies to all employees without regard to the gender or sexual orientation of the individuals involved.

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Although Mitchell McNutt has no prohibition against employing relatives of current employees, we are committed to monitoring situations in which relatives work in the same area. In case of actual or potential problems, Mitchell McNutt will take action. This can include reassignment or, if necessary, termination of employment for one or both of the individuals involved. Employees in a close personal relationship should refrain from public workplace displays of affection or excessive personal conversation.

For purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage. This policy applies to all employees without regard to the gender or sexual orientation of the individuals involved.

107 Immigration Law Compliance

Effective Date: 1/1/02

Mitchell McNutt is committed to employing only United States citizens and aliens who are authorized to work in the United States and does not unlawfully discriminate on the basis of citizenship or national origin.

In compliance with the Immigration Reform and Control Act of 1986, each new employee, as a condition of employment, must complete the Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility. Former employees who are rehired must also complete the form if they have not completed an I-9 with Mitchell McNutt within the past three years, or if their previous I-9 is no longer retained or valid.

Employees with questions or seeking more information on immigration law issues are encouraged to contact the Chief Operations Officer. Employees may raise questions or complaints about immigration law compliance without fear of reprisal.

108 Conflicts of Interest

Effective Date: 1/1/02

Employees have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. This policy establishes only the framework within which Mitchell McNutt wishes the firm to operate. The purpose of these guidelines is to provide general direction so that employees can seek further clarification on issues related to the subject of acceptable standards of operation. Contact the Chief Operations Officer for more information or questions about conflicts of interest.

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee or for a relative as a result of Mitchell McNutt's business dealings. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage.

No "presumption of guilt" is created by the mere existence of a relationship with outside firms. However, if employees have any influence on transactions involving purchases, contracts, or leases, it is imperative that they disclose to an officer of Mitchell McNutt as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Personal gain may result not only in cases where an employee or relative has a significant ownership in a firm with which Mitchell McNutt does business, but also when an employee or relative receives any substantial gift, or special consideration as a result of any transaction or business dealings involving Mitchell McNutt.

110 Outside Employment

Effective Date: 1/1/02

With the exception of employment with another law firm, an employee may hold a job with another organization as long as he or she satisfactorily performs his or her job responsibilities with Mitchell McNutt. All employees will be judged by the same performance standards and will be subject to Mitchell McNutt's scheduling demands, regardless of any existing outside work requirements.

If Mitchell McNutt determines that an employee's outside work interferes with performance or the ability to meet the requirements of Mitchell McNutt as they are modified from time to time, the employee may be asked to terminate the outside employment if he or she wishes to remain with Mitchell McNutt.

Outside employment will present a conflict of interest if it has an adverse impact on Mitchell McNutt.

112 Non-Disclosure

Effective Date: 1/1/02

The protection of confidential business information and trade secrets is vital to the interests and the success of Mitchell McNutt. All information which concerns firm business and/or involves client data is considered confidential.

All employees may be required to sign a non-disclosure agreement as a condition of employment. Employees who improperly use or disclose trade secrets or confidential business information will be subject to disciplinary action, up to and including termination of employment and legal action, even if they do not actually benefit from the disclosed information.

114 Disability Accommodation

Effective Date: 1/1/02

Mitchell McNutt is committed to complying fully with the Americans with Disabilities Act (ADA) and ensuring equal opportunity in employment for qualified persons with disabilities. All employment practices and activities are conducted on a non-discriminatory basis.

Hiring procedures have been reviewed and provide persons with disabilities meaningful employment opportunities. Upon request, job applications are available in alternative, accessible formats, as is assistance in completing the application. Pre-employment inquiries are made only regarding an applicant's ability to perform the duties of the position.

Post-offer medical examinations are required only for those positions in which there is a bona fide job-related physical requirement. They are given to all persons entering the position only after conditional job offers. Medical records will be kept separate and confidential.

Reasonable accommodation is available to all disabled employees where their disability affects the performance of job functions. All employment decisions are based on the merits of the situation in accordance with defined criteria, not the disability of the individual.

Qualified individuals with disabilities are entitled to equal pay and other forms of compensation (or changes in compensation) as well as in job assignments, classifications, organizational structures, position descriptions, lines of progression, and seniority lists. Leave of all types will be available to all employees on an equal basis.

Mitchell McNutt is also committed not to discriminate against any qualified employees or applicants because they are related to or associated with a person with a disability.

This policy is neither exhaustive nor exclusive. Mitchell McNutt is committed to taking all other actions necessary to ensure equal employment opportunity for persons with disabilities in accordance with the ADA and all other applicable federal and state laws.

201 Employment Categories

Effective Date: 1/1/02

It is the intent of Mitchell McNutt to clarify the definitions of employment classifications so that employees understand their employment status and benefit eligibility. These classifications do not guarantee employment for any specified period of time. Accordingly, the right to terminate the employment relationship at will at any time is retained by both the employee and Mitchell McNutt.

Each employee is designated as either NONEXEMPT or EXEMPT from federal and state wage and hour laws. NONEXEMPT employees are entitled to overtime pay under the specific provisions of federal and state laws. EXEMPT employees are excluded from specific provisions of federal and state wage and hour laws. An employee's EXEMPT or NONEXEMPT classification may be changed only upon written notification by Mitchell McNutt management.

In addition to the above categories, each employee will belong to one other employment category:

REGULAR FULL-TIME employees are those who are not in a temporary status and who are regularly scheduled to work Mitchell McNutt's full-time schedule. Generally, they are eligible for Mitchell McNutt's benefit package, subject to the terms, conditions, and limitations of each benefit program.

REGULAR PART-TIME employees are those who are not assigned to a temporary status and who are regularly scheduled to work less than the full-time work schedule, but at least 30 hours per week. Regular part-time employees are eligible for some benefits sponsored by Mitchell McNutt, subject to the terms, conditions, and limitations of each benefit program.

PART-TIME employees are those who are not assigned to a temporary or introductory status and who are regularly scheduled to work less than 30 hours per week. While they do receive all legally mandated benefits (such as Social Security and workers' compensation insurance), they are eligible for 401(k) and pension if over 1000 hours annually and ineligible for all other Mitchell McNutt benefit programs.

TEMPORARY employees are those who are hired as interim replacements, to temporarily supplement the work force, or to assist in the completion of a specific project. Employment assignments in this category are of a limited duration. Employment beyond any initially stated period does not in any way imply a change in employment status. Temporary employees retain that status unless and until notified of a change. While temporary employees receive all legally mandated benefits (such as workers' compensation insurance and Social Security), they are ineligible for all of Mitchell McNutt's other benefit programs.

202 Access to Personnel Files

Effective Date: 1/1/02

Mitchell McNutt maintains a personnel file on each employee. Health/medical information is maintained separately. The personnel file includes such information as the employee's job application, resume, records of training, documentation of performance appraisals and salary increases, and other employment records.

Personnel files are the property of Mitchell McNutt, and access to the information they contain is restricted. Generally, only shareholders and management personnel of Mitchell McNutt who have a legitimate reason to review information in a file are allowed to do so.

Employees who wish to review their own file should contact the Chief Operations Officer. With reasonable advance notice, employees may review their own personnel files in Mitchell McNutt's offices and in the presence of an individual appointed by Mitchell McNutt to maintain the files.

203 Employment Reference Checks

Effective Date: 1/1/02

The Chief Operations Officer will respond to all reference check inquiries from other employers. Responses to such inquiries will confirm only dates of employment, wage rates, and position(s) held. No employment data will be released without a written authorization and release signed by the individual who is the subject of the inquiry.

204 Personnel Data Changes

Effective Date: 1/1/02

It is the responsibility of each employee to promptly notify Mitchell McNutt of any changes in personnel data. Personal mailing addresses, telephone numbers, number and names of dependents, individuals to be contacted in the event of an emergency, educational accomplishments, and other such status reports should be accurate and current at all times. If any personnel data has changed, notify the Chief Operations Officer.

208 Employment Applications

Effective Date: 1/1/02

Mitchell McNutt relies upon the accuracy of information contained in the employment application, as well as the accuracy of other data presented throughout the hiring process and employment. Any misrepresentations, falsifications, or material omissions in any of this information or data may result in the exclusion of the individual from further consideration for employment or, if the person has been hired, termination of employment.

209 Performance Evaluation

Effective Date: 1/1/02

Attorneys, supervisors and employees are strongly encouraged to discuss job performance and goals on an informal, day-to-day basis. Additional formal performance evaluations are conducted to provide both supervisors and employees the opportunity to discuss job tasks, identify and correct weaknesses, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals.

Performance evaluations are scheduled approximately every 12 months, coinciding generally with the anniversary of the employee's original date of hire. Some employees are reviewed at calendar year end.

210 Job Descriptions

Effective Date: 1/1/02

Mitchell McNutt makes every effort to create and maintain accurate job descriptions for all positions within the organization. Each description includes a job information section, a job summary section (giving a general overview of the job's purpose), an essential duties and responsibilities section, a supervisory responsibilities section, a qualifications section (including education and/or experience, language skills, mathematical skills, reasoning ability, and any certification required), a physical demands section, and a work environment section.

Mitchell McNutt maintains job descriptions to aid in orienting new employees to their jobs, identifying the requirements of each position, establishing hiring criteria, setting standards for employee performance evaluations, and establishing a basis for making reasonable accommodations for individuals with disabilities.

Employees should remember that job descriptions do not necessarily cover every task or duty that might be assigned, and that additional responsibilities may be assigned as necessary. Contact the Chief Operations Officer if you have any questions or concerns about your job description.

212 Salary Administration

Effective Date: 1/1/02

The salary administration program at Mitchell McNutt was created to achieve consistent pay practices, comply with federal and state laws, mirror our commitment to Equal Employment Opportunity, and offer competitive salaries within our labor market. Because recruiting and retaining talented employees is critical to our success, Mitchell McNutt is committed to paying its employees equitable wages that reflect the requirements and responsibilities of their positions and are comparable to the pay received by similarly situated employees in other organizations in the area.

Compensation for every position is determined by several factors, including job analysis and evaluation, the essential duties and responsibilities of the job, and salary survey data on pay practices of other employers. Mitchell McNutt periodically reviews its salary administration program and restructures it as necessary. Merit-based pay adjustments may be awarded in conjunction with superior employee

performance documented by the performance evaluation process.

Employees should bring their pay-related questions or concerns to the attention of their immediate supervisors/attorneys, who are responsible for the fair administration of departmental pay practices. The Chief Operations Officer is also available to answer specific questions about the salary administration program.

301 Employee Benefits

Effective Date: 1/1/02

Eligible employees at Mitchell McNutt are provided a wide range of benefits. A number of the programs (such as Social Security, workers' compensation, state disability, and unemployment insurance) cover all employees in the manner prescribed by law.

Benefits eligibility is dependent upon a variety of factors, including employee classification. Your supervisor can identify the programs for which you are eligible. Details of many of these programs can be found elsewhere in the employee handbook.

The following benefit programs are available to eligible employees:

- * Retirement Plan
- * Personal Days
- * 401(k) Profit Sharing Plan
- * Money Purchase Pension Plan
- * Auto Mileage
- * Benefit Conversion at Termination
- * Bereavement Leave
- * Cafeteria Plan and Dependent Care Plan
- * Dental and Vision Insurance
- * Drug or Alcohol Rehabilitation Program
- * Employee Assistance Program
- * Family Leave
- * Health Insurance
- * Holidays
- * Jury Duty Leave
- * Life Insurance
- * Long-Term Disability
- * Major Medical Insurance
- * Malpractice Insurance
- * Medical Leave
- * Military Leave
- * Sick Leave Benefits
- * Travel Allowances
- * Vacation Benefits
- * Voting Time Off
- * Wellness Program
- * Witness Duty Leave

Some benefit programs require contributions from the employee.

More detailed information on benefits can be found in other sections of the employee handbook.

303 Vacation Benefits

Effective Date: 1/1/02

Vacation time off with pay is available to eligible employees to provide opportunities for rest, relaxation, and personal pursuits. Employees in the following employment classification(s) are eligible to earn and use vacation time as described in this policy:

- * Regular full-time employees
- * Regular part-time employees

The amount of paid vacation time employees receive each year increases with the length of their employment as shown in the following schedule:

* Upon initial eligibility the employee accumulates 10 vacation days each year, accrued monthly at the rate of 0.833 days.

* After 6 years of eligible service the employee is entitled to 15 vacation days each year, accrued monthly at the rate of 1.250 days.

The length of eligible service is calculated on the basis of a "benefit year." This is the 12-month period that begins when the employee starts to earn vacation time. An employee's benefit year may be extended for any significant leave of absence except military leave of absence. Military leave has no effect on this calculation. (See individual leave of absence policies for more information.)

Once employees enter an eligible employment classification, they begin to accrue paid vacation time according to the schedule. However, before vacation time can be used by a new employee, a waiting period of 180 calendar days must be completed. After that time, employees can request use of accrued vacation time including that accrued during the waiting period.

If the employee is dismissed or resigns during this 180 day period no vacation amount will be due or will be paid. To take vacation, employees should request advance approval from their supervisors. Requests will be reviewed based on a number of factors, including business needs and staffing requirements.

Vacation time off is paid at the employee's base pay rate at the time of vacation. It does not include overtime or any special forms of compensation such as incentives, commissions, bonuses, or shift differentials.

As stated above, employees are encouraged to use available paid vacation time for rest, relaxation, and personal pursuits. In the event that available vacation is not used by the end of the benefit year, employees will forfeit the unused time.

Upon termination of employment, employees will be paid for unused vacation time accrued during that vacation year that has been earned through the last day of work. However, if Mitchell McNutt, in its sole discretion, terminates employment for cause, forfeiture of unused vacation time may result.

304 Child Care Benefits

Effective Date: 1/1/02

The firm has established a plan known as "Dependent Care Assistance Plan" that is designed to reimburse the eligible employees for some or all of their work-related dependent care expenses incurred during the calendar year, up to the annual amount described in the plan. Those eligible to participate in the plan are employees of the firm who are at least 21 years old, work at least 25 hours per week, and have completed 12 months of service. Eligible work-related dependent care expenses include 1) payment for household services; 2) after school and summer day camp fees; 3) charges for baby sifter; and 4) fees for day care centers, but only if they provide care for more than six individuals, charging a fee of their services, and comply with all applicable state or local laws or ordinances.

An "eligible dependent" is an individual in your family who is under age 13, and for whom you claim as a dependent on your federal income tax return; any other dependent who is mentally or physically unable of caring for himself or herself; or your spouse who is physically or mentally incapacitated.

Please review the list of eligible dependent care expenses included with the Claims Instructions for assistance in determining what is an "eligible expense". You are also encouraged to consult your personal tax advisor or IRS Publication 17 "Your Federal Income Tax" for further guidance as to what is or is not a eligible expense if you have any doubts.

305 Holidays

Effective Date: 1/1/02

Mitchell McNutt will grant holiday time off to all employees on the holidays listed below:

- * New Year's Day (January 1)
- * Memorial Day (last Monday in May)
- * Independence Day (July 4)
- * Labor Day (first Monday in September)
- * Thanksgiving (fourth Thursday in November) and the day after
- * Christmas Eve (December 24)
- * Christmas (December 25)
- * Day after Christmas (December 26, if a work day)

Mitchell McNutt will grant paid holiday time off to all eligible employees immediately upon assignment to an eligible employment classification. Holiday pay will be calculated based on the employee's straight-time pay rate (as of the date of the holiday) times the number of hours the employee would otherwise have worked on that day. Eligible employee classification(s):

- * Regular full-time employees
- * Regular part-time employees

A recognized holiday that falls on a Saturday will be observed on the preceding Friday. A recognized holiday that falls on a Sunday will be observed on the following Monday.

If a recognized holiday falls during an eligible employee's paid absence (such as vacation or sick leave), holiday pay will be provided instead of the paid time off benefit that would otherwise have applied.

If eligible nonexempt employees work on a recognized holiday, they will receive holiday pay plus wages at one and one-half times their straight-time rate for the hours worked on the holiday.

Paid time off for holidays will not be counted as hours worked for the purposes of determining overtime.

306 Workers' Compensation Insurance

Effective Date: 1/1/02

Mitchell McNutt provides a comprehensive workers' compensation insurance program at no cost to employees. This program covers any injury or illness sustained in the course of employment that requires medical, surgical, or hospital treatment. Subject to applicable legal requirements, workers' compensation insurance provides benefits after a short waiting period or, if the employee is hospitalized, immediately.

Employees who sustain work-related injuries or illnesses should inform their supervisor /attorney immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage as quickly as possible.

Neither Mitchell McNutt nor the insurance carrier will be liable for the payment of workers' compensation benefits for injuries that occur during an employee's voluntary participation in any off-duty recreational, social, or athletic activity sponsored by Mitchell McNutt.

307 Sick Leave Benefits

Effective Date: 5/1/02

Mitchell McNutt provides paid sick leave benefits to all eligible employees for periods of temporary absence due to illnesses or injuries. Eligible employee classification(s):

- * Regular full-time employees
- * Regular part-time employees

Eligible employees will accrue sick leave benefits at the rate of 12 days per year (1 day for every full month of service). Sick leave benefits are calculated on the basis of a "benefit year," the 12-month period that begins when the employee starts to earn sick leave benefits.

New employees can request use of paid sick leave after completing a waiting period of 30 calendar days from the date they become employed. An eligible employee may use sick leave benefits for an absence due to his or her own illness or injury, or that of the employee's child, employee's spouse, or that of the employee's parent needing attention by the employee.

Employees who are unable to report to work due to illness or injury should notify the Chief Operations Officer and their direct supervisor/attorney before the scheduled start of their workday if possible. The Chief Operations Officer and direct supervisor/attorney must also be contacted on each additional day of absence. If an employee is absent for six or more consecutive days due to illness or injury, a physician's statement must be provided verifying the disability and its beginning and expected ending dates. Such verification may be requested for other sick leave absences as well and may be required as a condition to receiving sick leave benefits. Before returning to work from a sick leave absence of 6 calendar days or more, an employee must provide a physician's verification that he or she may safely return to work.

Sick leave benefits will be calculated based on the employee's base pay rate at the time of absence and will not include any special forms of compensation, such as incentives, commissions, bonuses, or shift differentials. Sick leave must be taken in increments of at least one-half day.

As an additional condition of eligibility for sick leave benefits, an employee on an extended absence must apply for any other available compensation and benefits, such as workers' compensation. Sick leave benefits will be used to supplement any payments that an employee is eligible to receive from workers compensation or Mitchell McNutt-provided disability insurance programs. The combination of any such disability payments and sick leave benefits cannot exceed the employee's normal weekly earnings.

Unused sick leave benefits will be allowed to accumulate until the employee has accrued a total of 40 calendar days worth of sick leave benefits. If the employee's benefits reach this maximum, further accrual of sick leave benefits will be suspended until the employee has reduced the balance below the limit.

Sick leave benefits are intended solely to provide income protection in the event of illness or injury, and may not be used for any other absence. Unused sick leave benefits will not be paid to employees while they are employed or upon termination of employment.

308 Time Off to Vote

Effective Date: 1/1/02

Mitchell McNutt encourages employees to fulfill their civic responsibilities by participating in elections. Generally, employees are able to find time to vote either before or after their regular work schedule. If employees are unable to vote in an election during their nonworking hours, Mitchell McNutt will grant up to one (1) hour of paid time off to vote.

Employees should request time off to vote from their supervisor at least two (2) working days prior to the election day. Advance notice is required so that the necessary time off can be scheduled at the beginning or end of the work shift, whichever provides the least disruption to the normal work schedule.

309 Bereavement Leave

Effective Date: 1/1/02

Employees who wish to take time off due to the death of an immediate family member should notify their supervisor/attorney immediately.

Up to three (3) days per year of paid bereavement leave will be provided to eligible employees in the following classification(s):

- * Regular full-time employees
- * Regular part-time employees

Bereavement pay is calculated based on the base pay rate at the time of absence and will not include any special forms of compensation, such as incentives, commissions, bonuses, or shift differentials.

Bereavement leave will normally be granted unless there are unusual business needs or staffing requirements. Employees may, with their supervisors'/attorneys' approval, use any available paid leave for

additional time off as necessary.

Mitchell McNutt defines "immediate family" as the employee's spouse, parent, child, sibling; the employee's spouse's parent, child, or sibling.

311 Jury Duty

Effective Date: 1/1/02

Mitchell McNutt encourages employees to fulfill their civic responsibilities by serving jury duty when required. Employees in an eligible classification may request up to 2 weeks of paid jury duty leave over any 1 year period.

Jury duty pay will be calculated on the employee's base pay rate times the number of hours the employee would otherwise have worked on the day of absence. Employee classifications that qualify for paid jury duty leave are:

- * Regular full-time employees
- * Regular part-time employees

If employees are required to serve jury duty beyond the period of paid jury duty leave, they may use any available paid time off (for example, vacation benefits) or may request an unpaid jury duty leave of absence.

Employees must show the jury duty summons to their supervisor as soon as possible so that the supervisor may make arrangements to accommodate their absence. Of course, employees are expected to report for work whenever the court schedule permits.

Either Mitchell McNutt or the employee may request an excuse from jury duty if, in Mitchell McNutt's judgment, the employee's absence would create serious operational difficulties.

Mitchell McNutt will continue to provide health insurance benefits for the full term of the jury duty absence.

Vacation, sick leave, and holiday benefits will continue to accrue during unpaid jury duty leave.

312 Witness Duty

Effective Date: 1/1/02

Mitchell McNutt encourages employees to appear in court for witness duty when subpoenaed to do so.

If employees have been subpoenaed or otherwise requested to testify as witnesses by Mitchell McNutt, they will receive paid time off for the entire period of witness duty.

Employees will be granted a maximum of 16 hours of paid time off to appear in court as a witness at the request of a party other than Mitchell McNutt. Employees will be paid at their base rate and are free to use any remaining paid leave benefits (such as vacation leave) to receive compensation for any period of witness duty absence that would otherwise be unpaid.

The subpoena should be shown to the employee's supervisor immediately after it is received so that operating requirements can be adjusted, where necessary, to accommodate the employee's absence. The employee is expected to report for work whenever the court schedule permits.

314 CLE Approval

Effective Date: 1/1/02

Associates and paralegals are encouraged to discuss their continuing legal education (CLE) needs and desires with their attorney/mentors for input on content and/or alternative programs which might be available.

316 Health Insurance/Cafeteria Plan

Effective Date: 1/1/02

Mitchell McNutt's health insurance plan provides employees and their dependents access to medical and dental insurance benefits. Employees in the following employment classifications are eligible to participate in the health insurance plan:

- * Regular full-time employees
- * Regular part-time employees

Eligible employees may participate in the health insurance plan subject to all terms and conditions of the agreement between Mitchell McNutt and the insurance carrier.

A change in employment classification that would result in loss of eligibility to participate in the health insurance plan may qualify an employee for benefits continuation under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Details of the health insurance plan are described in the Summary Plan Description (SPD). An SPD and information on cost of coverage will be provided in advance of enrollment to eligible employees. Contact the Controller for more information about health insurance benefits.

Mitchell McNutt maintains a "cafeteria plan" which permits eligible employees to pay for medical insurance premiums and for health-related expenses not paid by insurance with a portion of pay before Federal income or social security taxes are withheld.

Annually, each employee may elect to reduce his/her salary to pay for health insurance coverage offered by the firm and /or to be paid into a Health Care Choice Account. This account will reimburse the employee for qualified medical expenses not covered by insurance up to the amount available in the Health Care Choice Account.

There are limits on the amount of salary reduction which can be elected and forfeiture of excess amounts contributed to the Plan. Each employee will receive a Summary Plan Description and will be able to obtain more information from the Plan Administrator so that informed decisions may be made.

320 401(k) Profit Sharing Plan

Effective Date: 1/1/02

Mitchell McNutt has established a 401(k) profit sharing plan to provide employees the potential for future financial security for retirement.

To be eligible to join the 401(k) profit sharing plan, you must complete 12 months of service and be 21 years of age or older. After meeting eligibility requirements, an employee may become a participant as of the earlier of the first day of the seventh month of the plan year or the first day of the plan year coinciding with or next following the day on which he/she met the requirements. Eligible employees may participate in the 401(k) plan subject to all terms and conditions of the plan.

The 401(k) profit sharing plan allows you to elect how much salary you want to contribute and direct the investment of your plan account, so you can tailor your own retirement package to meet your individual needs. Mitchell McNutt also contributes an additional matching amount up to 4% to each employee's 401(k) contribution.

Because your contribution to a 401(k) plan is automatically deducted from your pay before federal and state tax withholdings are calculated, you save tax dollars now by having your current taxable amount reduced. While the amounts deducted generally will be taxed when they are finally distributed, favorable tax rules typically apply to 401(k) distributions.

Complete details of the 401(k) profit sharing plan are described in the Summary Plan Description provided to eligible employees. Contact the Controller for more information about the 401(k) plan.

401 Timekeeping

Effective Date: 1/1/02

Accurately recording time worked is the responsibility of every nonexempt employee. Federal and state laws require Mitchell McNutt to keep an accurate record of time worked in order to calculate employee pay and benefits. Time worked is all the time actually spent on the job performing assigned duties.

Nonexempt employees should accurately record the time they begin and end their work, as well as the beginning and ending time of each meal period. They should also record the beginning and ending time of any split shift or departure from work for personal reasons. Overtime work must always be approved before it is performed.

Altering, falsifying, tampering with time records, or recording time on another employee's time record may result in disciplinary action, up to and including termination of employment.

Nonexempt employees should not report to work prior to their scheduled starting time nor stay after their scheduled stop time without express, prior authorization from their supervisor/attorney.

Every full time staff employee's compensation is based on a 40 hour week. Our standard workweek is a 37 ½ hour workweek. Our policy is that if you work those additional 2 ½ hours for any reason that time has already been paid. Additional pay of any amount will not be made until the actual work hours exceed 40 hours per week at which time the pay rate will be at 1 ½ times the straight time rate.

Each employee is expected to learn how to operate the electronic sign in/sign out system of attendance recording and the absence request system and comply with the policies and procedures announced from time to time.

Failure to comply with the policies and procedures relating to these systems honestly and ethically, including "buddy punching" may result in disciplinary action, up to and including possible termination of employment.

403 Paydays

Effective Date: 1/1/02

All employees are paid semimonthly on the 15th and 30th days of the month. Each paycheck will include earnings for all work performed through the end of the payroll period.

In the event that a regularly scheduled payday falls on a day off such as a weekend or holiday, employees will receive pay on the last day of work before the regularly scheduled payday.

If a regular payday falls during an employee's vacation, the employee may receive his or her earned wages before departing for vacation if a written request is submitted at least one week prior to departing for vacation.

Employees may have pay directly deposited into their bank accounts if they provide written authorization to Mitchell McNutt. Employees will receive an itemized statement of wages when Mitchell McNutt makes direct deposits. Employees are encouraged to take advantage of this convenience.

405 Employment Termination

Effective Date: 1/1/02

Termination of employment is an inevitable part of personnel activity within any organization, and many of the reasons for termination are routine. Below are examples of some of the most common circumstances under which employment is terminated:

- * Resignation - voluntary employment termination initiated by an employee.
- * Discharge - involuntary employment termination initiated by the organization.
- * Retirement - voluntary employment termination initiated by the employee meeting age, length of service, and any other criteria for retirement from the firm.

Mitchell McNutt will generally schedule exit interviews at the time of employment termination. The exit interview will afford an opportunity to discuss such issues as employee benefits, conversion privileges, repayment of outstanding debts to Mitchell McNutt, or return of Mitchell McNutt-owned property. Suggestions, complaints, and questions can also be voiced.

Since employment with Mitchell McNutt is based on mutual consent, both the employee and Mitchell McNutt have the right to terminate employment at will, with or without cause, at any time. Employees will receive their final pay in accordance with applicable state law.

Employee benefits will be affected by employment termination in the following manner: All accrued,

vested benefits that are due and payable at termination will be paid. Some benefits may be continued at the employee's expense if the employee so chooses. The employee will be notified in writing of the benefits that may be continued and of the terms, conditions, and limitations of such continuance.

408 Pay Advances

Effective Date: 1/1/02

In the event of a personal emergency, employees may submit a written request for a pay advance to their supervisor/attorney, indicating the nature of the emergency involved. The supervisor/attorney will evaluate the request and determine whether a pay advance can be granted.

409 Administrative Pay Corrections

Effective Date: 1/1/02

Mitchell McNutt takes all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled payday.

In the unlikely event that there is an error in the amount of pay, the employee should promptly bring the discrepancy to the attention of the Controller so that corrections can be made as quickly as possible.

410 Pay Deductions and Setoffs

Effective Date: 1/1/02

The law requires that Mitchell McNutt make certain deductions from every employee's compensation. Among these are applicable federal, state, and local income taxes. Mitchell McNutt also must deduct Social Security taxes on each employee's earnings up to a specified limit that is called the Social Security "wage base." Mitchell McNutt matches the amount of Social Security taxes paid by each employee.

Mitchell McNutt offers programs and benefits beyond those required by law. Eligible employees may voluntarily authorize deductions from their pay checks to cover the costs of participation in these programs.

If you have questions concerning why deductions were made from your pay check or how they were calculated, the Controller can assist in having your questions answered.

502 Work Schedules

Effective Date: 1/1/02

The normal work schedule for all employees is 7.5 hours a day, 5 days a week. Supervisors/attorneys will advise employees of the times their schedules will normally begin and end. Staffing needs and operational demands may necessitate variations in starting and ending times, as well as variations in the total hours that may be scheduled each day and week.

Working at home is inappropriate except for rare situations and only if approved in writing by the Chief Operations Officer.

504 Use of Phone and Mail Systems

Effective Date: 1/1/02

Employees may be required to reimburse Mitchell McNutt for any charges resulting from their personal use of the telephone.

To ensure effective telephone communications, employees should always use the approved greeting and speak in a courteous and professional manner. Please confirm information received from the caller, and hang up only after the caller has done so.

Personal use of the firm's postage meter is discouraged; however, if an employee has a large mailing i.e., invitations, arrangements can be made ahead of time through the firm's controller. Employees will be required to reimburse Mitchell McNutt for any charges resulting from their use of the postage meter.

505 Smoking

Effective Date: 1/1/02

In keeping with Mitchell McNutt's intent to provide a safe and healthful work environment, smoking is prohibited throughout the workplace.

This policy applies equally to all employees, attorneys, and visitors.

506 Rest and Meal Periods

Effective Date: 1/1/02

Each workday, full-time nonexempt employees are provided with two (2) rest periods of fifteen (15) minutes in length. To the extent possible, rest periods will be provided in the middle of work periods. Since this time is counted and paid as time worked, employees must not be absent from their work stations beyond the allotted rest period time.

All full-time employees are provided with one meal period of sixty (60) minutes in length each workday. Supervisors will schedule meal periods to accommodate operating requirements. Employees will be relieved of all active responsibilities and restrictions during meal periods and will not be compensated for that time.

Employees are not allowed to shorten their meal period without the approval of their supervisor/attorney and the Chief Operations Officer.

507 Overtime

Effective Date: 1/1/02

When operating requirements or other needs cannot be met during regular working hours, employees may be scheduled to work overtime hours. When possible, advance notification of these mandatory assignments will be provided. All overtime work must receive the supervisor's/attorney's prior authorization. Overtime assignments will be distributed as equitably as practical to all employees qualified to perform the required work.

Overtime compensation is paid to all nonexempt employees in accordance with federal and state wage and hour restrictions. Overtime pay is based on actual hours worked. Time off on sick leave, vacation leave, or any leave of absence will not be considered hours worked for purposes of performing overtime calculations.

Failure to work scheduled overtime or overtime worked without prior authorization from the supervisor may result in disciplinary action, up to and including possible termination of employment.

510 Emergency Closings

Effective Date: 1/1/02

At times, emergencies such as severe weather, fires, power failures, or earthquakes, can disrupt company operations. In extreme cases, these circumstances may require the closing of a firm office. In the event that such an emergency occurs during nonworking hours, local radio and/or television stations will be asked to broadcast notification of the closing.

When operations are officially closed due to emergency conditions, the time off from scheduled work will be paid. Employees in essential operations may be asked to work on a day when operations are officially closed. In these circumstances, employees who work will receive regular pay.

512 Business Travel Expenses

Effective Date: 1/1/02

Mitchell McNutt will reimburse employees for reasonable business travel expenses incurred while on assignments away from the normal work location. All business travel must be approved in advance by the immediate supervisor/attorney.

Employees whose travel plans have been approved are responsible for making their own travel arrangements.

When approved, the actual costs of travel, meals, lodging, and other expenses directly related to accomplishing business travel objectives will be reimbursed by Mitchell McNutt. Employees are expected to limit expenses to reasonable amounts.

Employees who are involved in an accident while traveling on business must promptly report the incident to their immediate supervisor/attorney.

Cash advances to cover reasonable anticipated expenses may be made to employees, after travel has been approved. Employees should submit a written request to their supervisor/attorney when travel advances are needed.

When travel is completed, employees should submit completed travel expense reports within 5 days. Reports should be accompanied by receipts for all individual expenses.

Employees should contact their supervisor/attorney or the Controller for guidance and assistance on procedures related to travel arrangements, travel advances, expense reports, reimbursement for specific expenses, or any other business travel issues.

Abuse of this business travel expenses policy, including falsifying expense reports to reflect costs not incurred by the employee, can be grounds for disciplinary action, up to and including termination of employment.

514 Visitors in the Workplace

Effective Date: 1/1/02

To provide for the safety and security of employees and the facilities at Mitchell McNutt, only authorized visitors are allowed in the workplace. Restricting unauthorized visitors helps maintain safety standards, protects against theft, ensures security of equipment, protects confidential information, safeguards employee welfare, and avoids potential distractions and disturbances.

All visitors should enter Mitchell McNutt at the main entrance. Authorized visitors will receive directions or be escorted to their destination. Employees are responsible for the conduct and safety of their visitors.

If an unauthorized individual is observed on Mitchell McNutt's premises, employees should immediately notify their supervisor/attorney or the Chief Operations Officer or, if necessary, direct the individual to the main entrance.

Entrances to a Mitchell McNutt office should remain securely closed during working hours and locked during non-working hours. Exterior doors should never be propped or left open.

516 Computer and E-mail Usage

Effective Date: 5/21/03

Computers, computer files, the e-mail system, and software furnished to employees are Mitchell McNutt property intended for business use. Employees should not use a password, access a file, or retrieve any stored communication without authorization. To ensure compliance with this policy, computer and e-mail usage may be monitored.

Mitchell McNutt strives to maintain a workplace free of harassment and sensitive to the diversity of its employees. Therefore, Mitchell McNutt prohibits the use of computers and the e-mail system in ways that are disruptive, offensive to others, or harmful to morale.

For example, the display or transmission of sexually explicit images, messages, and cartoons is not allowed. Other such misuse includes, but is not limited to, ethnic slurs, racial comments, off-color jokes, or anything that may be construed as harassment or showing disrespect for others.

E-mail may not be used to solicit others for commercial ventures, religious or political causes, outside

organizations, or other non-business matters.

Mitchell McNutt purchases and licenses the use of various computer software for business purposes and does not own the copyright to this software or its related documentation. Unless authorized by the software developer, Mitchell McNutt does not have the right to reproduce such software for use on more than one computer.

Employees may only use software on local area networks or on multiple machines according to the software license agreement. Mitchell McNutt prohibits the illegal duplication of software and its related documentation.

Downloading or use of unauthorized software may allow security breaches to the firm's computer systems and networks and introduce viruses to the system. Therefore, employees may not install non-firm owned software on the firm's computer systems without the permission of the Information Systems Department. This includes, but is not limited to the following: personal software, software that is considered freeware or shareware or any other software for which the firm does not own the necessary licenses.

Employees should notify their immediate supervisor/attorney, the MIS Manager or any member of management upon learning of violations of this policy. Employees who violate this policy will be subject to disciplinary action, up to and including termination of employment.

517 Internet Usage

Effective Date: 1/1/02

Internet access to global electronic information resources on the World Wide Web is provided by Mitchell McNutt to assist employees in obtaining work-related data and technology. The following guidelines have been established to help ensure responsible and productive Internet usage. While Internet usage is intended for job-related activities, incidental and occasional brief personal use is permitted within reasonable limits.

All Internet data that is composed, transmitted, or received via our computer communications systems is considered to be part of the official records of Mitchell McNutt and, as such, is subject to disclosure to law enforcement or other third parties. Consequently, employees should always ensure that the business information contained in Internet e-mail messages and other transmissions is accurate, appropriate, ethical, and lawful.

The equipment, services, and technology provided to access the Internet remain at all times the property of Mitchell McNutt. As such, Mitchell McNutt reserves the right to monitor Internet traffic, and retrieve and read any data composed, sent, or received through our online connections and stored in our computer systems.

Data that is composed, transmitted, accessed, or received via the Internet must not contain content that could be considered discriminatory, offensive, obscene, threatening, harassing, intimidating, or disruptive to any employee or other person. Examples of unacceptable content may include, but are not limited to, sexual comments or images, racial slurs, gender-specific comments, or any other comments or images that could reasonably offend someone on the basis of race, age, sex, religious or political beliefs, national origin, disability, sexual orientation, or any other characteristic protected by law.

The unauthorized use, installation, copying, or distribution of copyrighted, trademarked, or patented material on the Internet is expressly prohibited. As a general rule, if an employee did not create material, does not own the rights to it, or has not gotten authorization for its use, it should not be put on the Internet. Employees are also responsible for ensuring that the person sending any material over the Internet has the appropriate distribution rights.

Abuse of the Internet access provided by Mitchell McNutt in violation of law or Mitchell McNutt policies will result in disciplinary action, up to and including termination of employment. Employees may also be held personally liable for any violations of this policy. The following behaviors are examples of previously stated or additional actions and activities that are prohibited and can result in disciplinary action:

- * Sending or posting discriminatory, harassing, or threatening messages or images
- * Using the organization's time and resources for personal gain
- * Stealing, using, or disclosing someone else's code or password without authorization
- * Copying, pirating, or downloading software and electronic files without permission
- * Sending or posting confidential material, trade secrets, or proprietary information outside of the organization
- * Violating copyright law
- * Failing to observe licensing agreements
- * Engaging in unauthorized transactions that may incur a cost to the organization or initiate unwanted Internet services and transmissions
- * Sending or posting messages or material that could damage the organization's image or reputation
- * Participating in the viewing or exchange of pornography or obscene materials
- * Sending or posting messages that defame or slander other individuals
- * Attempting to break into the computer system of another organization or person
- * Refusing to cooperate with a security investigation
- * Sending or posting chain letters, solicitations, or advertisements not related to business purposes or activities
- * Using the Internet for political causes or activities, religious activities, or any sort of gambling
- * Jeopardizing the security of the organization's electronic communications systems
- * Sending or posting messages that disparage another organization's products or services
- * Passing off personal views as representing those of the organization
- * Sending anonymous e-mail messages
- * Engaging in any other illegal activities

522 Workplace Violence Prevention

Effective Date: 1/1/02

Mitchell McNutt is committed to preventing workplace violence and to maintaining a safe work environment. Given the increasing violence in society in general, Mitchell McNutt has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours or on its premises.

All employees should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, "horseplay," or other conduct that may be dangerous to others. Firearms, weapons, and other dangerous or hazardous devices or substances are prohibited from the premises of Mitchell McNutt without proper authorization.

Conduct that threatens, intimidates, or coerces another employee, a client, or a member of the public at any time, including off-duty periods, will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's sex, race, age, or any characteristic protected by federal, state, or local law.

All threats of (or actual) violence, both direct and indirect, should be reported as soon as possible to your immediate supervisor/attorney or the Chief Operations Officer. This includes threats by employees, as well as threats by clients, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be as specific and detailed as possible.

All suspicious individuals or activities should also be reported as soon as possible to a supervisor/attorney. Do not place yourself in peril. If you see or hear a commotion or disturbance near your work station, do not try to intercede or see what is happening.

Mitchell McNutt will promptly and thoroughly investigate all reports of threats of (or actual) violence and of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, Mitchell McNutt may suspend employees, either with or without pay, pending investigation.

Anyone determined to be responsible for threats of (or actual) violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action up to and including termination of employment.

Mitchell McNutt encourages employees to bring their disputes or differences with other employees to the attention of their supervisors or the Chief Operations Officer before the situation escalates into potential violence. Mitchell McNutt is eager to assist in the resolution of employee disputes, and will not discipline employees for raising such concerns.

603 Personal Leave

Effective Date: 5/1/02

Mitchell McNutt provides leaves of absence without pay to eligible employees who wish to take time off from work duties to fulfill personal obligations. Employees in the following employment classification(s) are eligible to request personal leave as described in this policy:

- * Regular full-time employees
- * Regular part-time employees

Eligible employees may request personal leave only after having completed 180 calendar days of service. As soon as eligible employees become aware of the need for a personal leave of absence, they should request a leave from their supervisor/attorney.

Personal leave may be granted for a period of up to 10 calendar days every one (1) year. If this initial period of absence proves insufficient, consideration will be given to a written request for a single extension of no more than 10 calendar days. With the supervisor's/attorney's approval, an employee may take any available vacation leave, with pay, as part of the approved period of leave.

Requests for personal leave will be evaluated based on a number of factors, including anticipated work load requirements and staffing considerations during the proposed period of absence.

Subject to the terms, conditions, and limitations of the applicable plans, Mitchell McNutt will continue to provide health insurance benefits for the full period of the approved personal leave.

Vacation, sick leave, and holiday benefits, will continue to accrue during the approved personal leave period.

When a personal leave ends, every reasonable effort will be made to return the employee to the same position, if it is available, or to a similar available position for which the employee is qualified. However, Mitchell McNutt cannot guarantee reinstatement in all cases.

If an employee fails to report to work promptly at the expiration of the approved leave period, Mitchell McNutt will assume the employee has resigned.

604 Marriage Leave

Effective Date: 1/1/02

Full-time regular employees may take two (2) days leave with pay on the occasion of his or her marriage. In addition, vacation time may be scheduled to coincide with the wedding.

605 Military Leave

Effective Date: 1/1/02

A military leave of absence will be granted to employees who are absent from work because of service in the U.S. uniformed services in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA). Advance notice of military service is required, unless military necessity prevents such notice or it is otherwise impossible or unreasonable.

Employees will continue to receive full pay while on leave for two-week training assignments and shorter absences. The portion of any military leaves of absence in excess of two weeks will be unpaid. However, employees may use any available paid time off for the absence.

Continuation of health insurance benefits is available as required by USERRA based on the length of the leave and subject to the terms, conditions and limitations of the applicable plans for which the employee is otherwise eligible.

Vacation, sick leave, and holiday benefits will continue to accrue during a military leave of absence.

Employees on military leave for up to 30 days are required to return to work for the first regularly scheduled shift after the end of service, allowing reasonable travel time. Employees on longer military leave must apply for reinstatement in accordance with USERRA and all applicable state laws.

Employees returning from military leave will be placed in the position they would have attained had they remained continuously employed or a comparable one depending on the length of military service in accordance with USERRA. They will be treated as though they were continuously employed for purposes of determining benefits based on length of service.

Contact the Chief Operations Officer for more information or questions about military leave.

607 Pregnancy-Related Absences

Effective Date: 1/1/02

Mitchell McNutt will not discriminate against any employee who requests an excused absence for medical disabilities associated with pregnancy. Such leave requests will be evaluated according to the medical leave policy provisions outlined in this handbook and all applicable federal and state laws.

Requests for time off associated with pregnancy and/or childbirth, such as bonding and child care, not related to medical disabilities for those conditions, will be considered in the same manner as other requests for unpaid family or personal leave.

701 Employee Conduct and Work Rules

Effective Date: 1/1/02

To ensure orderly operations and provide the best possible work environment, Mitchell McNutt expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization.

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment:

- * Theft or inappropriate removal or possession of property
- * Falsification of timekeeping records
- * Working under the influence of alcohol or illegal drugs
- * Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace, while on duty, or while operating employer-owned vehicles or equipment
- * Fighting or threatening violence in the workplace
- * Boisterous or disruptive activity in the workplace
- * Negligence or improper conduct leading to damage of employer-owned or client-owned property
- * Insubordination or other disrespectful conduct
- * Violation of safety or health rules
- * Smoking in prohibited areas
- * Sexual or other unlawful or unwelcome harassment
- * Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace
- * Excessive absenteeism or any absence without notice
- * Unauthorized absence from work station during the workday
- * Unauthorized use of telephones, mail system, or other employer-owned equipment
- * Unauthorized disclosure of business "secrets" or confidential information
- * Violation of personnel policies
- * Unsatisfactory performance or conduct

Employment with Mitchell McNutt is at the mutual consent of Mitchell McNutt and the employee, and either party may terminate that relationship at

any time, with or without cause, and with or without advance notice.

702 Drug and Alcohol Use

Effective Date: 1/1/02

It is Mitchell McNutt's desire to provide a drug-free, healthful, and safe workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner.

While on Mitchell McNutt premises and while conducting business-related activities off Mitchell McNutt premises, no employee may use, possess, distribute, sell, or be under the influence of alcohol or illegal drugs. The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace.

Violations of this policy may lead to disciplinary action, up to and including immediate termination of employment, and/or required participation in a substance abuse rehabilitation or treatment program. Such violations may also have legal consequences.

Employees with drug or alcohol problems that have not resulted in, and are not the immediate subject of, disciplinary action may request approval to take unpaid time off to participate in a rehabilitation or treatment program. Leave may be granted if the employee agrees to abstain from use of the problem substance; abides by all Mitchell McNutt policies, rules, and prohibitions relating to conduct in the workplace; and if granting the leave will not cause Mitchell McNutt any undue hardship.

Employees with questions on this policy or issues related to drug or alcohol use in the workplace should raise their concerns with their supervisor or the Chief Operations Officer without fear of reprisal.

703 Sexual and Other Unlawful Harassment

Effective Date: 1/1/02

Mitchell McNutt is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, race, color, national origin, age, religion, disability, or any other legally protected characteristic will not be tolerated.

Sexual harassment is defined as unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature. This definition includes many forms of offensive behavior and includes gender-based harassment of a person of the same sex as the harasser. The following is a partial list of sexual harassment examples:

- * Unwanted sexual advances.
- * Offering employment benefits in exchange for sexual favors.
- * Making or threatening reprisals after a negative response to sexual advances.
- * Visual conduct that includes leering, making sexual gestures, or displaying of sexually suggestive objects or pictures, cartoons or posters.

Effective Date: 1/1/02

Employees are responsible for all Mitchell McNutt property, materials, or written information issued to them or in their possession or control. Employees must return all Mitchell McNutt property immediately upon request or upon termination of employment. Where permitted by applicable laws, Mitchell McNutt may withhold from the employee's check or final paycheck the cost of any items that are not returned when required. Mitchell McNutt may also take all action deemed appropriate to recover or protect its property.

708 Resignation

Effective Date: 1/1/02

Resignation is a voluntary act initiated by the employee to terminate employment with Mitchell McNutt. Although advance notice is not required, Mitchell McNutt requests at least two (2) weeks' written resignation notice from all employees.

Prior to an employee's departure, an exit interview will be scheduled to discuss the reasons for resignation and the effect of the resignation on benefits.

710 Security Inspections

Effective Date: 1/1/02

Mitchell McNutt wishes to maintain a work environment that is free of illegal drugs, alcohol, firearms, explosives, or other improper materials. To this end, Mitchell McNutt prohibits the possession, transfer, sale, or use of such materials on its premises. Mitchell McNutt requires the cooperation of all employees in administering this policy.

Desks, lockers, and other storage devices may be provided for the convenience of employees but remain the sole property of Mitchell McNutt. Accordingly, they, as well as any articles found within them, can be inspected by any agent or representative of Mitchell McNutt at any time, either with or without prior notice.

712 Solicitation

Effective Date: 1/1/02

In an effort to ensure a productive and harmonious work environment, persons not employed by Mitchell McNutt may not solicit or distribute literature in the workplace at any time for any purpose.

Mitchell McNutt recognizes that employees may have interests in events and organizations outside the workplace. However, employees may not solicit or distribute literature concerning these activities during working time. (Working time does not include lunch periods, work breaks, or any other periods in which employees are not on duty.)

718 Problem Resolution

Effective Date: 1/1/02

Mitchell McNutt is committed to providing the best possible working conditions for its employees. Part of this commitment is encouraging an open and frank atmosphere in which any problem, complaint, suggestion, or question receives a timely response from Mitchell McNutt supervisors and management.

Mitchell McNutt strives to ensure fair and honest treatment of all employees. Supervisors, attorneys, and employees are expected to treat each other with mutual respect. Employees are encouraged to offer positive and constructive criticism.

If employees disagree with established rules of conduct, policies, or practices, they can express their concern through the problem resolution procedure. No employee will be penalized, formally or informally, for voicing a complaint with Mitchell McNutt in a reasonable, business-like manner, or for using the problem resolution procedure.

If a situation occurs when employees believe that a condition of employment or a decision affecting them is unjust or inequitable, they are encouraged to make use of the following steps. The employee may discontinue the procedure at any step.

1. Employee presents problem to immediate supervisor/attorney after incident occurs. If supervisor/attorney is unavailable or employee believes it would be inappropriate to contact that person, employee may present problem to Chief Operations Officer or any other member of management.
2. Supervisor responds to problem during discussion or after consulting with appropriate management, when necessary. Supervisor documents discussion.
3. Employee presents problem to Chief Operations Officer or President if problem is unresolved.
4. Chief Operations Officer or President counsels and advises employee, assists in putting problem in writing, visits with employee's manager(s), if necessary, and directs employee to Mitchell McNutt's Board of Directors for review of problem.
5. Employee presents problem to Board of Directors in writing.
6. The Board of Directors inform employee of decision and forwards copy of written response to the Chief Operations Officer for employee's file. The Board of Directors has full authority to make any adjustment deemed appropriate to resolve the problem.

Not every problem can be resolved to everyone's total satisfaction, but only through understanding and discussion of mutual problems can employees and management develop confidence in each other. This confidence is important to the operation of an efficient and harmonious work environment, and helps to ensure everyone's job security.

720 Shredding Policy

Effective Date: 1/1/02

Due to the sensitivity of many firm documents, all employees are encouraged to shred any document which may be confidential or sensitive to any case or individual represented by the firm rather than

disposing of such documents in any waste receptacle.

722 Workplace Etiquette

Effective Date: 1/1/02

Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee's ability to concentrate and be productive.

The following workplace etiquette guidelines are not necessarily intended to be hard and fast work rules with disciplinary consequences. They are simply suggestions for appropriate workplace behavior to help everyone be more conscientious and considerate of co-workers and the work environment. Please contact the Chief Operations Officer if you have comments, concerns, or suggestions regarding these workplace etiquette guidelines.

- * Return copy machine and printer settings to their default settings after changing them.
- * Replace paper in the copy machine and printer paper trays when they are empty.
- * Retrieve print jobs in a timely manner and be sure to collect all your pages.
- * Be prompt when using the manual feed on the printer.
- * Keep the area around the copy machine and printers orderly and picked up.
- * Be careful not to take or discard others' print jobs or faxes when collecting your own.
- * Avoid public accusations or criticisms of other employees. Address such issues privately with those involved or your supervisor.
- * Try to minimize unscheduled interruptions of other employees while they are working.
- * Communicate by e-mail or phone whenever possible, instead of walking unexpectedly into someone's office or workspace.
- * Be conscious of how your voice travels, and try to lower the volume of your voice when talking on the phone or to others in open areas.
- * Keep socializing to a minimum, and try to conduct conversations in areas where the noise will not be distracting to others.
- * Minimize talking between workspaces or over cubicle walls. Instead, conduct conversations with others in their workspace.
- * Try not to block walkways while carrying on conversations.
- * Refrain from using inappropriate language (swearing) that others may overhear.
- * Avoid discussions of your personal life/issues in public conversations that can be easily overheard.
- * Monitor the volume when listening to music, voice mail, or a speakerphone that others can hear.
- * Clean up after yourself and do not leave behind waste or discarded papers.

800 Life-Threatening Illnesses in the Workplace

Effective Date: 1/1/02

Employees with life-threatening illnesses, such as cancer, heart disease, and AIDS, often wish to continue their normal pursuits, including work, to the extent allowed by their condition. Mitchell McNutt supports

disposing of such documents in any waste receptacle.

722 Workplace Etiquette

Effective Date: 1/1/02

Mitchell McNutt strives to maintain a positive work environment where employees treat each other with respect and courtesy. Sometimes issues arise when employees are unaware that their behavior in the workplace may be disruptive or annoying to others. Many of these day-to-day issues can be addressed by politely talking with a co-worker to bring the perceived problem to his or her attention. In most cases, common sense will dictate an appropriate resolution. Mitchell McNutt encourages all employees to keep an open mind and graciously accept constructive feedback or a request to change behavior that may be affecting another employee's ability to concentrate and be productive.

The following workplace etiquette guidelines are not necessarily intended to be hard and fast work rules with disciplinary consequences. They are simply suggestions for appropriate workplace behavior to help everyone be more conscientious and considerate of co-workers and the work environment. Please contact the Chief Operations Officer if you have comments, concerns, or suggestions regarding these workplace etiquette guidelines.

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- * Avoid public accusations or criticisms of other employees. Address such issues privately with those involved or your supervisor.
- * Try to minimize unscheduled interruptions of other employees while they are working.
- * Communicate by e-mail or phone whenever possible, instead of walking unexpectedly into someone's office or workspace.
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- * Clean up after yourself and do not leave behind waste or discarded papers.

800 Life-Threatening Illnesses in the Workplace

Effective Date: 1/1/02

Employees with life-threatening illnesses, such as cancer, heart disease, and AIDS, often wish to continue their normal pursuits, including work, to the extent allowed by their condition. Mitchell McNutt supports

these endeavors as long as employees are able to meet acceptable performance standards. As in the case of other disabilities, Mitchell McNutt will make reasonable accommodations in accordance with all legal requirements, to allow qualified employees with life-threatening illnesses to perform the essential functions of their jobs.

Medical information on individual employees is treated confidentially. Mitchell McNutt will take reasonable precautions to protect such information from inappropriate disclosure. Managers and other employees have a responsibility to respect and maintain the confidentiality of employee medical information. Anyone inappropriately disclosing such information is subject to disciplinary action, up to and including termination of employment.

Employees with questions or concerns about life-threatening illnesses are encouraged to contact the Chief Operations Officer for information and referral to appropriate services and resources.

804 Billing Office Runners' Time

Effective Date: 1/1/02

Runners will turn in time sheets for any out-of-town trips which can be billed to a file. A standard rate will be used for these trips.

Index

(Policy number shown in brackets)

401(K) PROFIT SHARING PLAN [320]
ACCESS TO PERSONNEL FILES [202]
ACTIVE MILITARY DUTY
 see Military Leave [605]
ADA
 see Disability Accommodation [114]
ADMINISTRATIVE PAY CORRECTIONS [409]
ALCOHOL ABUSE
 see Drug and Alcohol Use [702]
APPLICATIONS FOR EMPLOYMENT
 see Employment Applications [208]
BEHAVIOR GUIDELINES
 see Workplace Etiquette [722]
BENEFITS CONTINUATION (COBRA) [313]
BEREAVEMENT LEAVE [309]
BILLING OFFICE RUNNERS' TIME [804]
BRIBES
 see Conflicts of Interest [108]
BUSINESS ETHICS AND CONDUCT [104]
BUSINESS TRAVEL EXPENSES [512]
CHILD CARE BENEFITS [304]
CLE APPROVAL [314]
CO-WORKER COURTESY
 see Workplace Etiquette [722]
COMPANY PROPERTY
 see Return of Property [706]
COMPUTER AND E-MAIL USAGE [516]
CONFLICTS OF INTEREST [108]
CONSERVATION
 see Recycling [802]
CONTINUATION OF BENEFITS
 see Benefits Continuation (COBRA) [313]
COURT APPEARANCE
 see Jury Duty [311]
COURTESY
 see Workplace Etiquette [722]
CREDIT REPORTS
 see Employment Applications [208]
CUSTOMER RELATIONS [060]
DESK INSPECTIONS
 see Security Inspections [710]
DISABILITY ACCOMMODATION [114]
DISCHARGE OF EMPLOYEE
 see Employment Termination [405]
DISCRIMINATION
 see Sexual and Other Unlawful Harassment [703]

DRUG AND ALCOHOL USE [702]
ELECTIONS
 see Time Off to Vote [308]
ELECTRONIC COMMUNICATIONS
 see Internet Usage [517]
EMERGENCY CLOSINGS [510]
EMPLOYEE ACKNOWLEDGEMENT FORM [051]
EMPLOYEE BENEFITS [301]
EMPLOYEE CONDUCT AND WORK RULES [701]
EMPLOYEE INFORMATION
 see Personnel Data Changes [204]
EMPLOYEE RELATIONS [102]
EMPLOYEE WELCOME MESSAGE [020]
EMPLOYMENT APPLICATIONS [208]
EMPLOYMENT CATEGORIES [201]
EMPLOYMENT REFERENCE CHECKS [203]
EMPLOYMENT TERMINATION [405]
EMPLOYMENT-AT-WILL
 see Employment Termination [405]
ENVIRONMENTAL AWARENESS
 see Recycling [802]
EQUAL EMPLOYMENT OPPORTUNITY [103]
ETIQUETTE
 see Workplace Etiquette [722]
FAIR CREDIT REPORTING ACT
 see Employment Applications [208]
HARASSMENT
 see Sexual and Other Unlawful Harassment [703]
HEALTH INSURANCE/CAFETERIA PLAN [316]
HIRING OF RELATIVES [105]
HOLIDAYS [305]
IMMIGRATION LAW COMPLIANCE [107]
INSPECTIONS, WORK AREA
 see Security Inspections [710]
INTERNET USAGE [517]
INTRODUCTORY STATEMENT [040]
INVOLUNTARY TERMINATION
 see Employment Termination [405]
IRCA
 see Immigration Law Compliance [107]
JOB APPLICATIONS
 see Employment Applications [208]
JOB DESCRIPTIONS [210]
JOB REFERENCES
 see Employment Reference Checks [203]
JURY DUTY [311]
KICKBACKS
 see Conflicts of Interest [108]
LAYOFF
 see Employment Termination [405]
LIFE-THREATENING ILLNESSES IN THE WORKPLACE [800]

LOCKER INSPECTIONS
 see Security Inspections [710]
MARRIAGE LEAVE [604]
MATERNITY LEAVE
 see Pregnancy-Related Absences [607]
MILITARY LEAVE [605]
NATURE OF EMPLOYMENT [101]
NETIQUETTE
 see Internet Usage [517]
NON-DISCLOSURE [112]
OFFICE ETIQUETTE
 see Workplace Etiquette [722]
ORGANIZATION DESCRIPTION [030]
OUTSIDE EMPLOYMENT [110]
OVERTIME [507]
PAY ADVANCES [408]
PAY CHECK ERRORS
 see Administrative Pay Corrections [409]
PAY CORRECTIONS
 see Administrative Pay Corrections [409]
PAY DEDUCTIONS AND SETOFFS [410]
PAYDAYS [403]
PERFORMANCE EVALUATION [209]
PERSONAL APPEARANCE [705]
PERSONAL LEAVE [603]
PERSONNEL DATA CHANGES [204]
PREGNANCY-RELATED ABSENCES [607]
PREGNANCY
 see Pregnancy-Related Absences [607]
PROBLEM RESOLUTION [718]
PROPERTY
 see Return of Property [706]
REFERENCE CHECKS
 see Employment Reference Checks [203]
RESERVE DUTY
 see Military Leave [605]
RESIGNATION [708]
RESIGNATION
 see Employment Termination [405]
REST AND MEAL PERIODS [506]
RETIREMENT
 see Employment Termination [405]
RETURN OF PROPERTY [706]
SALARY ADMINISTRATION [212]
SECURITY INSPECTIONS [710]
SEXUAL AND OTHER UNLAWFUL HARASSMENT [703]
SHREDDING POLICY [720]
SICK LEAVE BENEFITS [307]
SMOKING [505]
SOLICITATION [712]
SOURCE REDUCTION

- see Recycling [802]
- TERMINATION OF EMPLOYMENT
 - see Employment Termination [405]
- TIME OFF TO VOTE [308]
- TIMEKEEPING [401]
- TITLE PAGE [010]
- USE OF PHONE AND MAIL SYSTEMS [504]
- USERRA
 - see Military Leave [605]
- VACATION BENEFITS [303]
- VIRUS PROTECTION
 - see Internet Usage [517]
- VISITORS IN THE WORKPLACE [514]
- VOLUNTARY TERMINATION
 - see Employment Termination [405]
- WASTE MANAGEMENT
 - see Recycling [802]
- WEB SITE
 - see Internet Usage [517]
- WITNESS DUTY [312]
- WORK AREA INSPECTIONS
 - see Security Inspections [710]
- WORK SCHEDULES [502]
- WORKERS' COMPENSATION INSURANCE [306]
- WORKPLACE ETIQUETTE [722]
- WORKPLACE VIOLENCE PREVENTION [522]
- WORLD WIDE WEB
 - see Internet Usage [517]

Vogel Newsome

From: Vogel Newsome
Sent: Tuesday, November 30, 2004 3:34 PM
To: Jim Allen
Cc: Bob Gordon
Subject: REQUEST FOR JOB DESCRIPTION - LEGAL SECRETARY
Importance: High

Tracking:

Recipient	Delivery	Read
Jim Allen	Delivered: 11/30/2004 3:34 PM	
Bob Gordon	Delivered: 11/30/2004 3:34 PM	Read: 11/30/2004 3:35 PM

Jim,

Pursuant to 210 Job Descriptions of the MMS Employee Handbook, please provide me with a copy of the Job Description for a Legal Secretary.

Thanks in advance for your assistance in this request. Any questions, please let me know.

Thanks.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
111 E. Capitol Street, Suite 290
P. O. Box 3647
Jackson, MS 39207-3647
(601) 948-8508
(601) 948-8537

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11/30/2004

EXHIBIT

4

Vogel Newsome

From: System Administrator
To: Bob Gordon; Jim Allen
Sent: Tuesday, November 30, 2004 3:34 PM
Subject: Delivered: REQUEST FOR JOB DESCRIPTION - LEGAL SECRETARY

Your message

To: Jim Allen
Cc: Bob Gordon
Subject: REQUEST FOR JOB DESCRIPTION - LEGAL SECRETARY
Sent: 11/30/2004 3:34 PM

was delivered to the following recipient(s):

Bob Gordon on 11/30/2004 3:34 PM
Jim Allen on 11/30/2004 3:34 PM

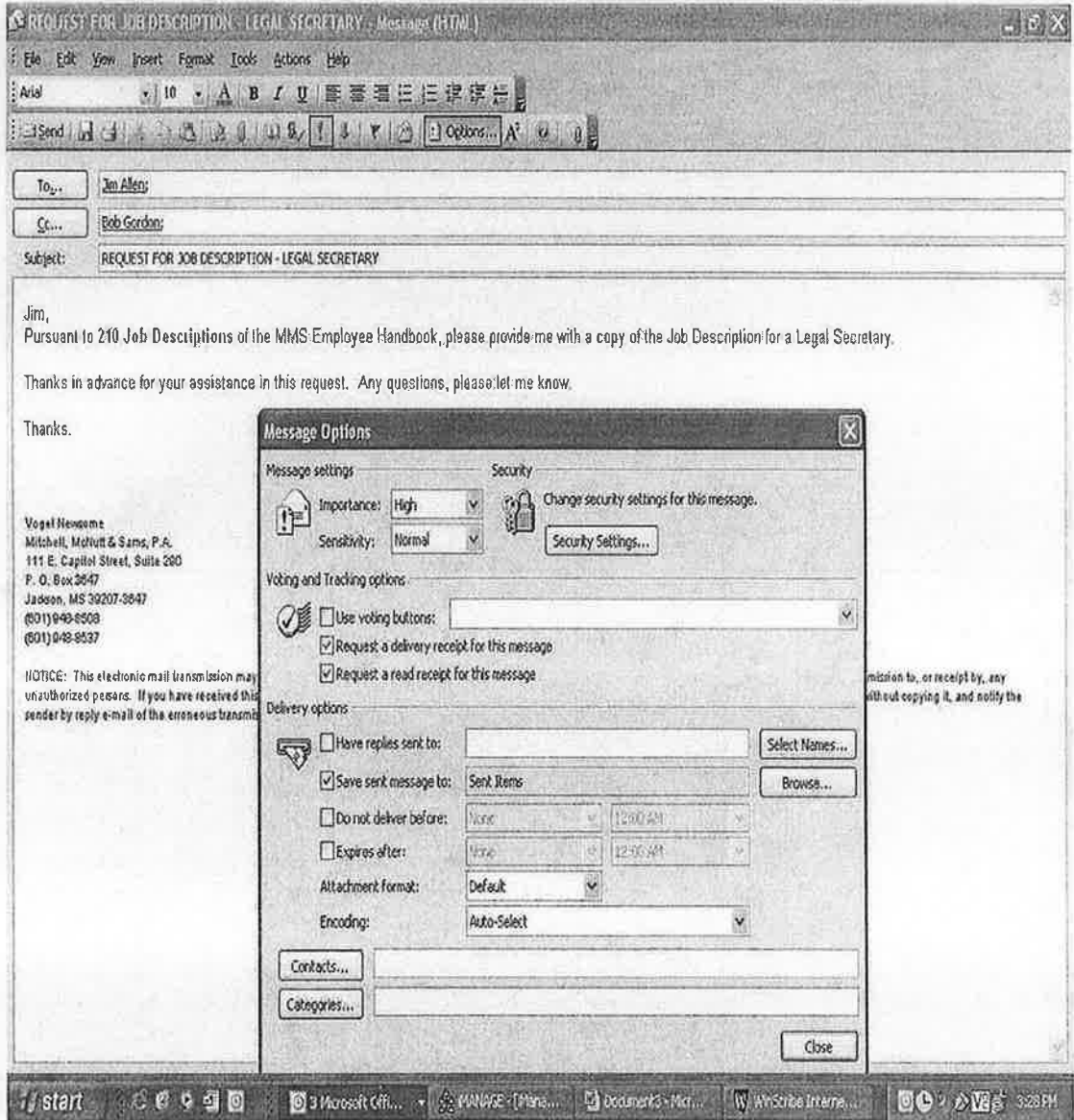
Vogel Newsome

From: Bob Gordon
To: Vogel Newsome
Sent: Tuesday, November 30, 2004 3:35 PM
Subject: Read: REQUEST FOR JOB DESCRIPTION - LEGAL SECRETARY

Your message

To: Jim Allen
Cc: Bob Gordon
Subject: REQUEST FOR JOB DESCRIPTION - LEGAL SECRETARY
Sent: 11/30/2004 3:34 PM

was read on 11/30/2004 3:35 PM.



Vogel Newsome

From: Vogel Newsome
Sent: Wednesday, December 01, 2004 5:31 PM
To: Jim Allen
Subject: HARASSMENT INCIDENT - 12/01/04
Importance: High
Sensitivity: Confidential

Tracking:	Recipient	Delivery
	Jim Allen	Delivered: 12/1/2004 5:31 PM

Jim,

On yesterday during my Annual Evaluation with you and Bob (RTG), I expressed concerns that the evaluation that MMS provided was adverse as a result of the Complaints/Issues that I have brought to MMS' attention.

While MMS willingly and knowingly condones the monitoring by RTG (monitoring which I find harassing, strict, oppressive, unnecessary and unlawful), there is no excuse for RTG's continued unlawful behavior.

On today, upon RTG's returning from lunch, he proceeded to harass me and demand that I end my lunch abruptly – with no valid and just cause for so. I advised RTG that I was at lunch and would complete the revisions to the pleading when I finish my 1 hour lunch (which would be shortly). However, this was not acceptable to RTG and this lasted for approximately four (4) minutes. His refusing to leave and demanding that I clock back in and tell him how much time I have remaining.

While MMS sanctions such conduct and behavior by RTG and supports the monitoring (which I gathered from the evaluation) of me, my concerns are further brought when such monitoring is used for the sole purposes of providing false and misleading information to the Court (Judges, etc.) in order to obtain enlargement of time.

While MMS may accept such monitoring by RTG, I do not believe that the Court(s), etc. would smile on the use of such monitoring as a reason for an attorney's inability to meet deadlines on behalf of his client. Thus, it appears to me that such monitoring takes precedent over RTG's legal obligations to his clients. I advised RTG that I believe that his monitoring time would be better used in attending to client matters and meeting the deadlines he have in the various cases rather than harassing me. For instance providing the Court(s) with reasons such as:

- (1) being ill (misleading the Court when I believe he came into the office each day that week – will check my monitoring log on RTG's surveillance of me) – from such information one may gather that had RTG spent as much time attending to the client's needs rather than monitoring me, he would have been able to meet his deadline;
- (2) using illness of another secretary to mislead the Court in order to obtain enlargement of time. (Action questioned and noted to RTG that I was present – moreover it was not his secretary that was out and that we do have the typing pool. In this case a Temp was brought in (Britney Emmons). Will check my log on RTG's monitoring for that week as well as Dictation Job Log as to what he did to see why he was unable to meet deadline – one may gather the priority he gives to his monitoring duties.

12/1/2004

EXHIBIT 5

- (3) advising Court that he would be out of town – will check my monitoring log, believe he was present that day and also see about how much time was given to his monitoring duties.

I believe is wrong when the real reasons for RTG's inability to meet deadlines for the clients is due to his compulsive/obsessive needs to harass and monitor me.

In light of the above examples, I really don't believe MMS (or anyone else) can give any credence to the Annual Evaluation prepared by RTG. While I questioned the *skillful* use of RTG's preparation and the motive behind such evaluation/comments made, as I shared, found the information provided by RTG false and misleading. I also gathered it such an adverse evaluation was prepared for the purposes of MMS attempting to find reasons for not giving me a favorably merit increase – since such increase is based on the rating of the Evaluator (so I gathered).

I will obtain copies of such pleadings from PACER – if accessible (not MMS' account – I have my own), for someone according to Annual Evaluation that has no knowledge of Court System, Court Rules, etc.

While there may be fuss about the time in which I sending this email, MMS says that we are already compensating me for 8 hours (which will be at 5:30).

Thank you for your time.

Vogel Newsome
Mitchell, McNitt & Sama, P.A.
111 E. Capitol Street, Suite 290
P. O. Box 3847
Jackson, MS 39207-3847
(601) 948-8508
(601) 948-8537

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12/1/2004

Vogel Newsome

From: System Administrator
To: Jim Allen
Sent: Wednesday, December 01, 2004 5:31 PM
Subject: Delivered: HARASSMENT INCIDENT - 12/01/04

Your message

To: Jim Allen
Subject: HARASSMENT INCIDENT - 12/01/04
Sent: 12/1/2004 5:31 PM

was delivered to the following recipient(s):

Jim Allen on 12/1/2004 5:31 PM

FILED

JAN 06 2009

DAVID CREWS, CLERK
By D. Adams
Deputy

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO. 3:09CR002.

18 U.S.C. § 2

RICHARD F. "DICKIE" SCRUGGS and
BOBBY B. DELAUGHTER

18 U.S.C. § 371

18 U.S.C. § 666

18 U.S.C. §§ 1341 & 1346

18 U.S.C. § 1512

INDICTMENT

The Grand Jury charges that:

At all times relevant and material to this Indictment:

1. Defendant RICHARD F. "DICKIE" SCRUGGS was an attorney licensed to practice in the State of Mississippi and a member of a private law firm, Richard F. Scruggs, P.A., known as "The Scruggs Law Firm."

2. BOBBY B. DELAUGHTER was a public officer and a duly elected official serving the State of Mississippi in the capacity of Circuit Court Judge for Hinds County, Mississippi, part of the Seventh Circuit Court District, a subdivision of the judicial branch of the State of Mississippi.

3. Under the Constitution and laws of the State of Mississippi and pursuant to the Code of Judicial Conduct and under his oath, BOBBY B. DELAUGHTER owed a duty of fair and honest services to the people of the State of Mississippi.

4. BOBBY B. DELAUGHTER was the presiding judge assigned to the case of Wilson v. Scruggs, Cause No. 251-94-582, pending for a decade in the Circuit Court of Hinds County, Mississippi, a case in which Wilson sued Scruggs, his former associate, for millions of dollars in

EXHIBIT

6

legal fees resulting from asbestos litigation.

5. During the summer, 2005, RICHARD F. "DICKIE" SCRUGGS asked Joseph C. Langston and the Langston Law Firm (not named as defendants herein) to take over the lead as chief counsel in the Wilson case.

Count One

6. From on or about July, 2005 until on or about October, 2007, in the Northern District of Mississippi and elsewhere, RICHARD F. "DICKIE" SCRUGGS, defendant, Joseph C. Langston, Timothy R. Balducci, Steven A. Patterson and Ed Peters, not named as defendants herein, and Circuit Judge BOBBY B. DELAUGHTER, defendant, did knowingly and willfully conspire with each other and with others to the grand jury known and unknown to corruptly give, offer and agree to give, and in the case of Circuit Judge BOBBY B. DELAUGHTER to accept and to agree to accept for himself and others, anything of value with the intent that Circuit Judge BOBBY B. DELAUGHTER, as an agent of a state and local government, would be corruptly influenced and rewarded in connection with his handling of the Wilson case, then the business of such government and judicial agency involving a thing of value of \$5,000 or more, when such government and judicial agency received in a one-year period benefits in excess of \$10,000 under a federal program, in violation of Section 666 of Title 18 of the United States Code.

7. It was part of the conspiracy that Ed Peters would be used secretly and corruptly to influence his very close friend BOBBY B. DELAUGHTER and that BOBBY B. DELAUGHTER's aspirations to become a federal judge would also be exploited in order to secretly and corruptly obtain rulings from the court that while not plainly unlawful, would ultimately minimize Scruggs' financial liability and preclude his exposure to excessive damages.

8. It was further part of the conspiracy that Ed Peters, an attorney, would not officially enter an appearance as counsel of record in the case of Wilson v. Scruggs, so that his involvement on behalf of Scruggs would be unknown to the Wilson legal team.

OVERT ACTS

9. During and in furtherance of the conspiracy and to promote and accomplish its objectives, the co-conspirators committed one or more of the following overt acts:

a. On or about July, 2005, at New Albany, Mississippi, in the Northern District of Mississippi, RICHARD F. "DICKIE" SCRUGGS asked Joseph C. Langston and the Langston Law Firm to take the lead in the case of Wilson v. Scruggs, Cause No. 251-94-582, pending in the Circuit Court of Hinds County, Mississippi, in the Southern District of Mississippi.

b. On or about August 2005, Joseph C. Langston, Timothy R. Balducci and Steven A. Patterson flew from the Northern District of Mississippi to the Southern District of Mississippi and paid Ed Peters \$50,000 cash in order to procure his assistance in corruptly influencing his very close friend Circuit Judge BOBBY B. DELAUGHTER, in connection with the Wilson case.

c. On or about January 19, 2006, Joseph C. Langston and Timothy R. Balducci, lawyers with the Langston Law Firm in Booneville, Mississippi, in the Northern District of Mississippi, entered appearances as attorneys of record for RICHARD F. "DICKIE" SCRUGGS in the case of Wilson v. Scruggs, Cause No. 251-94-582, pending in the Circuit Court of Hinds County, Mississippi, in the Southern District of Mississippi.

d. On or about January 24, 2006, Judge BOBBY B. DELAUGHTER accepted a secret, ex parte communication from the Scruggs legal team, essentially reversing his earlier

ruling and accepting, almost verbatim, a scheduling order favorable to Scruggs.

e. On or about February 27, 2006, Judge BOBBY B. DELAUGHTER secretly provided the Scruggs legal team with an ex parte advance copy of a court order in the Wilson case by electronically mailing the same to Ed Peters.

f. On or about August 2005 until on or about August 2006, Ed Peters had a number of improper ex parte meetings with Judge Delaughter designed and intended to secretly influence the judge to shade his rulings in favor of Scruggs.

g. On or about August 2005 until on or about August 2006, Judge BOBBY B. DELAUGHTER secretly and corruptly communicated with the Scruggs legal team through Ed Peters, affording them a unique and valuable opportunity to foresee and attempt to influence his rulings.

h. On or about March 29, 2006, in order to exploit Judge Delaughter's aspirations to become a federal judge, RICHARD F. "DICKIE" SCRUGGS caused his brother-in-law, then a United States Senator from Mississippi, to offer Judge Delaughter consideration for appointment to a federal judgeship then open in the Southern District of Mississippi.

i. From on or about October, 2006, until on or about October, 2007, Joseph C. Langston wired approximately \$950,000 from his law office in Booneville, Mississippi, in the Northern District of Mississippi, to Ed Peters for his role in corruptly influencing Circuit Judge BOBBY B. DELAUGHTER.

All in violation of Title 18, United States Code, Section 371.

Count Two

10. The allegations contained in paragraphs 1-5 preceding Count One of this Indictment

are realleged and incorporated herein as though wholly set forth herein.

11. From on or about July, 2005, until on or about October, 2007, in the Northern District of Mississippi and elsewhere, RICHARD F. "DICKIE" SCRUGGS, defendant, Joseph C. Langston, Timothy R. Balducci, Steven A. Patterson, and Edward Peters, none of whom are named as defendants herein, and BOBBY B. DELAUGHTER, defendant, aided and abetted by each other, devised and executed and intended to devise and execute a scheme and artifice to defraud the plaintiff in the Hinds County Circuit Court case of Wilson v. Scruggs, Cause No. 251-94-582, thereby depriving the plaintiff and the citizens of the State of Mississippi of their intangible right to the honest services of Circuit Judge BOBBY B. DELAUGHTER, who as circuit court judge had a duty to perform impartially, without affording either side an unfair advantage or secret access to the court.

THE PURPOSE OF THE SCHEME

12. The purpose of the scheme was to ensure that Scruggs enjoyed an unlawful advantage, in secret and unknown to the plaintiffs. RICHARD F. "DICKIE" SCRUGGS and his legal team consisting of Joseph C. Langston, Timothy R. Balducci and non-lawyer Steven A. Patterson devised a scheme and artifice to secretly and corruptly influence Hinds County Circuit Judge BOBBY B. DELAUGHTER by exploiting two vulnerabilities: first, his close association with former district attorney Ed Peters and, second, his known ambition to become a federal judge. Langston, Balducci and Patterson paid Ed Peters \$50,000 cash and Langston later paid Peters an additional \$950,000, all for the purpose of using Ed Peters to influence BOBBY B. DELAUGHTER. Additionally, RICHARD F. "DICKIE" SCRUGGS prevailed upon his brother-in-law, then a United States Senator from Mississippi, to offer Judge Delaughter consideration

for a federal district judgeship then open in the Southern District of Mississippi. All of this occurred as the Wilson v. Scruggs case gained intensity and proceeded to a final resolution in Judge Delaughter's court. In return, Judge Delaughter afforded the Scruggs legal team secret access to the court by way of Ed Peters, forwarding them advance copies of his rulings and proposed orders on issues before the court and on one occasion accepting from the Scruggs legal team a scheduling order favorable to Scruggs, which the court then adopted, almost verbatim.

USE OF THE MAIL

13. On or about January 19, 2006, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud in the Northern District of Mississippi and elsewhere, defendant RICHARD F. "DICKIE" SCRUGGS, aided and abetted by other non-defendants named but not charged herein, and Circuit Judge BOBBY B. DELAUGHTER, defendant, knowingly caused to be deposited in a post office or other authorized depository for mail matter in the Northern District of Mississippi to be delivered by the Postal Service according to the directions thereon, Joseph C. Langston's and Timothy R. Balducci's Entry of Appearance for filing in the Hinds County Circuit Court case of Wilson v. Scruggs, Cause No. 251-94-582.

All in violation of 18 U.S.C. §§ 2, 1341 and 1346.

Count Three

14. The allegations contained in paragraphs 1-5 and in paragraphs 10-12 of this indictment are realleged and incorporated herein as though wholly set forth herein.

15. On or about February 27, 2006, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud in the Northern District of Mississippi and

elsewhere, defendant RICHARD F. "DICKIE" SCRUGGS, aided and abetted by other non-defendants named but not charged herein, and Circuit Judge BOBBY B. DELAUGHTER, defendant, knowingly caused to be deposited in a post office or other authorized depository for mail matter to be delivered by the Postal Service in the Northern District of Mississippi according to the directions thereon, Circuit Judge BOBBY B. DELAUGHTER's "Memorandum Opinion and Order Adopting in Part and Rejecting in Part Special Master's Report and Recommendation of January 9, 2006" in the Hinds County Circuit Court case of Wilson v. Scruggs, Cause No. 251-94-582.

All in violation of 18 U.S.C. §§ 2, 1341 and 1346.

Count Four

16. The allegations contained in paragraphs 1-5 and in paragraphs 10-12 of this indictment are realleged and incorporated herein as though wholly set forth herein.

17. On or about July 7, 2006, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud in the Northern District of Mississippi and elsewhere, defendant RICHARD F. "DICKIE" SCRUGGS, aided and abetted by other non-defendants named but not charged herein, and Circuit Judge BOBBY B. DELAUGHTER, defendant, knowingly caused to be deposited in a post office or other authorized depository for mail matter to be delivered by the Postal Service in the Northern District of Mississippi according to the directions thereon, Circuit Judge BOBBY B. DELAUGHTER's "Order Quantifying Moneys Due Plaintiffs from Defendants" in the Hinds County Circuit Court case of Wilson v. Scruggs, Cause No. 251-94-582.

All in violation of 18 U.S.C. §§ 2, 1341 and 1346.

Count Five

18. On or about December 10, 2007, in the Northern District of Mississippi and elsewhere, BOBBY B. DELAUGHTER, defendant, did corruptly attempt to obstruct, influence and impede an official proceeding, that is, while being interviewed by FBI agents in connection with an official federal corruption investigation and grand jury proceeding, he stated that he "never spoke to Ed Peters regarding . . ." substantive issues related to the case of Wilson v. Scruggs, at a time when said case was pending in his court, when in truth and fact he had corruptly discussed with Ed Peters substantive issues in the Wilson v. Scruggs case on numerous occasions and knew Peters was secretly acting on behalf of Scruggs' lawyers in an attempt to gain favorable rulings for Scruggs, at a time when Peters was not counsel of record, all in violation of Title 18, United States Code, Section 1512(c)(2).

A TRUE BILL

/s/ SIGNATURE REDACTED
FOREPERSON


UNITED STATES ATTORNEY

CUT & PASTED AS OF 11/8/09 FROM:

http://www2.wjtv.com/jtv/news/state_regional/article/hinds_co._judge_delaughter_pleads_guilty_to_federal_charge/16411/

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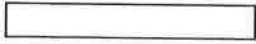
Published: July 30, 2009

Updated: July 30, 2009

Hinds County Circuit Judge Bobby DeLaughter has pleaded guilty in court to a federal charge against him in Aberdeen. The government has dropped the other 4 counts against him. The government has recommended an 18 month sentence, however the charge carries a maximum sentence of 20 years. The judge won't sentence him until a presenting report is completed in about 5 weeks. Also this morning DeLaughter handed in his resignation from the court to Gov. Haley Barbour this morning.

The charge DeLaughter pleaded guilty to was for lying to an FBI agent who was investigating a judicial corruption case involving former prominent lawyer Richard "Dickie" Scruggs.

An indictment accused DeLaughter of attempting to obstruct, influence and impede an official proceeding while being interviewed. Prosecutors accused DeLaughter of ruling in favor of Scruggs, a once powerful Mississippi lawyer who is now in prison, in hopes that Scruggs would use his connections to help DeLaughter get appointed to a federal judgeship.



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THURSDAY, JULY 30, 2009

Mississippi Judge Bobby DeLaughter Admits He Lied to FBI

Mississippi judge Bobby DeLaughter pleads guilty to lying to FBI agent

Miss. — Mississippi judge Bobby DeLaughter pleaded guilty to an obstruction of justice charge after lying to an FBI agent during an investigation into corruption.

In return for DeLaughter admitting guilt, conspiracy and mail fraud charges were dropped by prosecutors.

Previously, DeLaughter had been accused of giving an unfair advantage to former attorney Richard Richard "Dickie" Scruggs; who won millions from asbestos lawsuits.

(Scruggs, father and son, are in prison.)

Prosecutors recommended an 18-month prison sentence for DeLaughter.

To make a report on other judges, see USAJudges.com or, KillerJudges.com

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IN THE CIRCUIT COURT OF HINDS COUNTY
MISSISSIPPI
FIRST JUDICIAL DISTRICT

VOGEL D NEWSOME

PLAINTIFF

VS.

NO. 251-2005-163CIV

MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY AND
MITCHELL MCNUTT & SAMS

DEFENDANTS

TRANSCRIPT OF RECORD

EXHIBIT

7

1 Q Okay. All of our hearings are de novo, they are new and fresh. I
2 don't, I really don't even read the record prior to the hearing, so that it is
3 fresh for me. What was the Pleading about that he filed that she said was
4 false?

5 A The specific details of the Pleading, I'll have to let Mr. Gordon go
6 into. He was just asking, the part that I received to substantiate though what
7 she was referring to, was an extension of time for one of his clients that he
8 was working on. And he was ill, and couldn't and, and was out, and even
9 had to cancel a trip, because he was ill over you know, a week end and a
10 couple of other days. So Ms. Newsome said he was monitoring her
11 excessively, and so if he wouldn't have been monitoring so much, he would
12 have been able to take care of his clients needs, but in actuality, he was ill.
13 Now I have the time records. We keep all track of the time, because we
14 charge out our hour, our time on an hourly basis. And, and so I have the
15 record in there to show that he was not in one day. He sent her an e-mail
16 from home to say, I was ill, that that, the bottom word was ill. So she knew
17 he was, he was ill. So the Pleading itself was an extension of time to answer
18 what was at hand for this particular client.

19 Q Okay.

20 A Like I said, ^{you can go into} if you need more detail ^{with} from him.

1 Q I'd like to hand you what appears to be a memo from you to Ms.

2 Newsome dated June 7, 2004, and ask if you, if you can identify this memo,

3 which I would like to make an exhibit.

4 A Yes, this is my memo to Ms. Newsome.

5 Q What was the purpose of the memo?

6 A The purpose of this memo is that, as you can see the history here of,

7 of having situations where we have to continue to make request and

8 instructions specifically, and it comes back in sort of a hostile, and with a,

9 with an attitude of, of hostile, of hostility and insubordination, that I had to

10 make sure she understood what her duties were. And she had made a claim

11 that, oh, we're retaliating, is her word, we're harassing her. And so I wanted

12 to make is very clear that she could file all those complaints with the various

13 Federal Agencies all that she wanted, that's no problem. I, I have you know,

14 that's, that's any person's right. However, you must be courteous,

15 respectful, cooperative, because she also answered the phone, and would

16 answer it by the speakerphone. And so you know, that was another issue

17 that I had asked her to make sure she answered the phone, and she, she

18 understood and she did it from that point forward. But I had to make sure

19 she was crystal clear in, in what she had to be doing, and that she needed to

1 A No, I'm sorry.

2 **Ardelean:** That's all I have.

3 **Referee:** Okay. Ms. Newsome, do you have any questions that you would
4 like to ask Mr. Allen?

5 **Newsome:** I do.

6 **Referee:** Okay.

7 **Newsome:** I can call him Jim?

8 **Referee:** I don't have an objection to anything as long as it's proper.

9 Interrogation of Employer Representative by Claimant

10 Q Okay, because Jim?

11 A Yes.

12 Q So it is your testimony that Mr. Gordon was, was out of the office, he
13 didn't come to the office to work, he was out ill? Is that your testimony?

14 A There was some time when he was out of the office. I don't, I have
15 records that showed the time he was not out, that he was out. I'm not saying
16 it was the whole week. I'm not exactly sure of right now.

17 Q Was it a day?

18 A I could look and find out.

19 Q Was it a day, was it for a whole day, a whole week, several days?

20 A No, it was like a day plus some more time.

1 Q Okay.

2 A I have, actually I have the records in my, that I can find from the time
3 sheet.

4 Q I'll show this, because like I said I wasn't, I wasn't aware of what they
5 were going to bring, but I do have a copy of the Pleading in question.

6 ^{wherein} Herein it states that due to the undersigned counsel's illness and resulting
7 limited time and ~~in~~ inability to work several days this week. So he was in the
8 pleading, he said he was unable to work, and it is your testimony he did not
9 come into the office that day, or if he just missed a few hours, or if he
10 missed a whole day, or several days is your testimony that he missed some
11 days?

12 A There was some time that he was not in the office, and he was not, he
13 was ill, and he wasn't one hundred percent, yes.

14 Q The question is, did he miss any days from work that week?

15 A He did miss some time from work, yes.

16 Q Okay, let you see that.

17 **Referee:** I'm going to let you look at that, Ms. Ardelean, and see if you
18 have any objection. No objection?

19 **Ardelean:** No, sir.

1 Q Okay, but there was an, I did make a suggestion to make a change,
2 trying to you know, trying to work through the situation?

3 A You offered, yes, my impression of what that is may be different ^{than} that
4 yours.

5 Q Okay. You mentioned in your testimony in regards to, and you
6 provided an e-mail in regards to my being hostile. So it's your testimony
7 that I was an hostile employee?

8 A The situation I'm referring to there is, the, the circumstance, the
9 several, the situation is that when I said hostile in my memo, it's like we
10 have to be very direct with you and, and specifically, and no other legal
11 secretary, paralegal staff assistant do I have to be this direct with, that it's
12 like, any ^{time} like there is a question or, or a directive given it's, they, they come
13 back and we have a sharp response in some manner. That's what I meant by
14 hostile.

15 Q Now I've, you and I, we have spoken. Have I ever submitted any,
16 prior to the, let me clarify that, prior to my November 30th evaluation, had I
17 submitted any complaints to the firm?

18 A Yes.

19 Q Okay, were my complaints in compliance with Mitchell, McNutt &
20 Sams employee handbook policies?

1 A Yes.

2 Q Okay, so my December 1, 2004 e-mail in regards to harassment
3 incident, was not^{of} of the ordinary. I have submitted complaints in the past in
4 regards to Mr. Gordon's behavior, is that correct?

5 A You have.

6 Q At any time during my employment, did I mention to you that I felt
7 that Mr. Gordon's treatment, or his behavior, and conduct in regards to me
8 was hostile?

9 A You did.

10 Q Okay, was this before your June 7th Memorandum or after?

11 A I don't recall.

12 Q "Employer Exhibit #9," the one I objected to, the June 7, 2004
13 Memorandum, you state that in that Memorandum, just paraphrasing
14 because I don't have a copy of it before me, in regards to filing complaints
15 with agencies, you mentioned also in your testimony something about
16 OSHA. And the complaint that I submitted to OSHA, OSHA contacted the
17 firm, you were to respond, if I'm not mistaken, by June 8, 2004. Is that
18 correct?

19 A I don't know the exact date. We did respond within the time limits
20 that they asked us to.

1 Q Okay, the date of that Memorandum in "Employer Exhibit #9" was
2 June 7, 2004, the response, if I'm not mistaken, because like I said, I wasn't
3 aware this was coming up, was due on June 8, 2004. That e-mail or that
4 Memorandum came out the day prior. Did that have anything to do?

5 A Absolutely not, that's why I stated in here, you could do all you
6 wanted about, with, with agencies.

7 Q But also in regards to the complaints that I had submitted to the firm,
8 have I ever submitted any complaints of harassment, discrimination, or
9 anything to the attention of Mitchell, McNutt & Sams in regards to Bob
10 Gordon?

11 A Discrimination, harassment, yes, you've used that word several times.

12 Q Okay, and did I ever mention to you that I felt that I was discriminated
13 or either in the handling of my complaints being discriminative in any
14 nature?

15 A You asked me to follow through with going to the Board, is that what
16 you're referring to?

17 Q No, I'm asking, did you ever receive any e-mail correspondence from
18 me in regards to complaints I submitted to the firm, that I felt I was being
19 subjected to certain treatment?

20 A Discriminatory.

1 Q Discriminative treatment?

2 A You're, I believe you sent me one like that, yes.

3 Q Okay, so you were, so Mitchell, McNutt & Sams was made aware
4 prior to November 30th on several occasions that I had filed complaints in
5 regards to Mr. Gordon's behavior?

6 A Yes.

7 Q Did Mitchell, McNutt & Sams at any time prior to November 30,
8 2004 submit in writing to me, written responses to my complaints in regards
9 to Mr. Gordon's behavior?

10 A Let's see, we, we talked about it at the Board, and talked to Mr.
11 Gordon about it, and I'm trying to think if, what happened from that point
12 forward. I don't recall if we sent anything to you, if I did.

13 Q Okay, so I can, it, it is your testimony that I submitted several
14 complaints, but the firm never responded to me in writing in regards to my
15 complaints on Mr. Gordon's behavior.

16 A I responded back to you.

Allen Unhwas

17 Q In regards to Mr. Gordon's behavior? Do you have any
18 documentation?

19 A Oh, I tried, I may have some e-mails that we had through
20 correspondence [?]commenting back on.

- 1 Q Okay, did Mr. Gordon ever receive an elaborate e-mail or
2 Memorandum such as "Employer Exhibit #9" that you forwarded to me in
3 regards to the complaints I submitted in regards to him?
- 4 A Did he receive one?
- 5 Q Did Mr. Gordon, I submitted a complaint in regards to harassment or
6 discrimination like I said, I don't have them all, but when I submitted my
7 complaints to the firm in regards to Mitchell, McNutt & Sams conduct and
8 behavior as well as Mr. Gordon, did you all ever follow up with an e-mail or
9 memorandum as your June 7, 2004?
- 10 A To Mr. Gordon?
- 11 Q To Mr. Gordon?
- 12 A No.
- 13 Q So Mitchell, McNutt & Sams did nothing to deter or discourage Mr.
14 Gordon's behavior?
- 15 A I don't know if there was, there was some discussions with, that, that
16 we had.
- 17 Q May I have ^{hold} "Employer Exhibit #5?" I would like to look at, looking at
18 104 Business Ethics and Conduct. According to the information provided to
19 the Unemployment Commission in regard to the false you know, my
20 accusation of accusing Bob of false information, if indeed that information is

1 true, and the information that Mr. Gordon provided to the Court being false,
2 would that be a violation if 104, Business Ethics and Conduct of Mitchell,
3 McNutt & Sams?

4 A Let me refresh my memory as to what 104 is exactly. Did you want to
5 see what we're referring to?

6 Referee: I made a notation, I'll check it.

7 A Okay. Okay, this complies with what Mr. Gordon did. There is, I, I
8 see no conflict.

9 Q So if he provided, ^{knowingly} or provided, or it was brought to his
10 attention that the information he has provided to the Court was false, and he
11 signed those Pleadings with knowledge after it was brought to his attention
12 that it was false, is it in violation of 104 Business Ethics and Conduct?

13 A If, if he were not sick?

14 Q If he were not sick?

15 A If he were not sick.

16 Q And the information that he provided in his Pleadings to the Court
17 were false?

18 A That may, it may be, if he was not sick, but we have the record
19 showing that it is.

1 Q Okay, and for the record I would like to read. Mitchell, McNutt of
2 104 Business Ethics and Conduct.

3 **Referee:** I, you won't need to read that.

4 Q Okay, alright.

5 **Referee:** I mean it's part of the record, so.

6 Q Okay.

7 **Referee:** And I have made a notation for myself to review it.

8 Q Okay.

9 **Background:** Whispers between Employer Representative and Employer
10 Attorney, **INAUDIBLE.**

11 Q Okay, one of the, in your testimony you had mentioned the
12 monitoring of me. Can you explain to me why the monitoring was
13 necessary as far as the computer monitor?

14 A As I stated earlier we were concerned that the work product was not
15 being turned around in an efficient manner. Like I had mentioned earlier,
16 we have two secretaries to one in other offices, and you were one attorney,
17 and one secretary and the work product was not being turned around that
18 quickly. So we then said there must be some other reason why she's not
19 getting her filing done, and not getting the work product turned around to
20 Mr. Gordon, so that was the reason why that there had to be a reason.

1 Q So the monitoring, as far as monitoring, can you state for the record,
2 what this monitoring entailed you know, how did Mitchell, McNutt & Sams
3 go about his monitoring?

4 A How did we monitor you, that's why we needed to have your screen
5 pointed the way so that it could be visible.

6 Q Yes, how frequent?

7 A So that your supervisor could see what was being worked on.

8 Q How frequent was this monitoring?

9 A Well it was something that, an attorney is busy in the practice of Law
10 and if he's expecting something to turn around and come out and say can I
11 get this, can I get that, that may result in when can I get it, and if that to you
12 is monitoring, then that might be frequently.

13 Q Okay, so that, did that involve Mr. Gordon constantly coming into my
14 workspace area, while I was performing my job duties?

15 A Yes.

16 Q Okay, so Mitchell, McNutt & Sams worked, was made aware that that
17 monitoring, I felt that monitoring was what I may have called strict and
18 oppressive?

19 A I don't remember, recall that, that term before.

1 Q Okay, it's probably in one of the e-mails. I'm not for sure, because
2 like I said, I wasn't made, maybe even the December 1, 2004, I mean 2004
3 e-mail. But in prior e-mails, so you have no knowledge that I never, I never
4 brought it to your attention that I felt that his monitoring was strict and
5 oppressive?

6 A You, you stated in here, and I do believe it is, I believe it's wrong
7 when the real reasons for our inability to meet deadlines for the clients is due
8 to his compulsive obsessive needs to harass and monitor me. We have a
9 work product that needs to get accomplished, and that is the reason, it's not,
10 okay, what is she doing. It's I need to turn this around, because we need to
11 go on to the next matter.

12 Q Okay, in regards to, I'm going to go back and, because I found what I
13 was looking for, and 718 of the Employee Handbook, Problem Resolution.
14 Whenever there was a problem or concerns that I had, did I submit a
15 complaint in regards to my concerns?

16 **Ardelean:** Object to the form, it calls for Mr. Allen to speculate as to
17 whether or not Ms. Newsome filed a complaint every time she had one.

18 Q Okay, I'll rephrase, I'll, I'll.

19 **Referee:** Let him answer, just rephrase the question, please.

1 Referee: Any other questions, Ms. Newsome?

2 Q Yes, okay, yes, I do. Under section 722 Workplace Etiquette, it talks

3 about how employees are to treat each other, and also Mitchell, McNutt, it

4 welcomes feedback from it's employees in an open and frank atmosphere, is

5 that correct?

6 A Yes.

7 Q So my openness and frankness was considered hostile?

8 A As many times, yes, as many times.

9 Q As ~~INAUDIBLE~~. *insubordinate*

10 A As many times as it was returned in a way of attitude and

11 insubordinate fashion, and what I mean by that is an attitude with a, all

12 consistently, you know. Once I'd talked to someone about a situation when

13 I have other problem resolutions, and believe me, there's a lot of them, that

14 people come to me and say what about this, what about that. But not, not as

15 many as we've had from you and then they were more, that's why I said, we

16 had to give you an ultimatum before you would finally comply.

17 Q So Mitchell, McNutt encouraged employees to keep an open mind and

18 graciously accept constructive feedback as a, or a request to change behavior

19 that may be affecting other employees ability to concentrate and be

20 productive. So if, I bring that out because in Mitchell, McNutt & Sams

1 records, was Mitchell, McNutt & Sams ever notified by me that I felt that
2 Mr. Gordon's behavior, that excessive monitoring was intruding with my
3 work and disruptive in any nature?

4 A Yes.

5 Q Okay, so Mitchell, McNutt & Sams was made aware that I?

6 A Yes.

7 Q Okay, and so therefore according to 722 Workplace Etiquette,
8 constant monitoring, and constant interruption with the work that I was
9 doing, is acceptable by Mitchell, McNutt & Sams?

10 **Ardelean:** Object to the form?

11 **Referee:** Okay, can you rephrase that?

12 Q Yes. The monitoring, the constant monitoring, monitoring by Mr.
13 Gordon, coming into my workspace, workstation, interrupting my work, as
14 the COO of Mitchell, McNutt & Sams, would a reasonable person, let me
15 put that, would that affect an employees ability to concentrate and be
16 productive?

17 A This, I'm afraid we're getting bogged down here with semantics.

18 Once again, what Bob is trying to do, Mr. Gordon is trying to do is get the
19 work product out, and to you that's, that's excessive monitoring. And I

1 don't, after talking with him, talking with the other Board members, we do
2 not believe that he had excessive monitoring of your, of you.

3 Q Okay, for, for Mr. Mize's knowledge and for the Commission's
4 knowledge, Mitchell, McNutt & Sams has an IT Department, is that correct?

5 A That's correct.

6 Q Can they monitor, at any given time, can they log onto an employees
7 computer to monitor what they are working on?

8 A As long as you give them the IP address.

9 Q So at any given time, you, any of the Board members, could have an
10 IT person, or whoever, to log on and see what Ms. Newsome is working on?

11 A They would call in and say, hey, we're going to get logged on and
12 help you with a problem. And you, I mean, you did that, you, you worked
13 with the IT Department before.

14 Q I think you understand the questions I'm asking. At any give time,
15 can you, a board member at Mitchell, McNutt & Sams, log onto my
16 computer without my knowledge and monitor the work that I'm working on?

17 A It's possible?

18 Q Can it be done?

19 A It is possible, yes.

1 Q So it is to your knowledge at any given time, if I needed help with a
2 person from IT, they can log on and view anything that's on my computer,
3 what I'm working on at any given time?

4 A They can.

5 Q But it's Mitchell, McNutt & Sams practice to subject me to Mr.
6 Gordon's monitoring, frequent monitoring, that is you, as, as you,
7 know it was required, rather than go about it in a more professional manner,
8 not to disrupt my work, to, to require maybe IT or somebody, if, if Mitchell,
9 McNutt & Sams was really concerned about what I was working on?

10 A I think that would have been a red flag, if all of a sudden you're
11 working and your mouse is going like this, then you, you would have
12 known. That would have probably been disruptive. So, there the IT staff
13 won't come in there unless they, you're, they're with him on asking the IP
14 address and get on and do it.

15 Q The mouse will not move unless they take control of that mouse, or
16 move it around.

17 A That's correct.

18 Q If they just log on and just sit there and look, I would have no
19 knowledge of that, is that correct?

1 A I believe that's correct. I'll have to check with Lawry for sure, that's
2 our IT Department.

3 Q Prior to November 30, 2004, an evaluation that you all gave, gave me,
4 Ms. Newsome, was there a prior evaluation before the November 2004?

5 A No.

6 Q After.

7 A Not, not formal for you, no.

8 Q Okay, is it your testimony that you all provided a way, provided ways
9 for me to improve my work? Is that your testimony?

10 A What do you mean?

11 Q My, I, did Mitchell, McNutt & Sams, after the November 30, 2004,
12 provide me the documentation, anything to require, or ways to improve?

13 A It was discussed in your evaluation. That's why I included it in that
14 memo that we talked about, and I gave you ways to improve. Let's see, she
15 needed to assist the attorney in taking care of administrative activities to
16 allow the attorney to be more efficient with his time. Bob explained at
17 length this model that the firm utilizes to enhance productivity, in which I
18 support #2. Bob noted that the typing pool has a quicker turn-around than
19 she has. I explained that many secretaries in the firm have two attorneys
20 assigned and her typing should have a quicker turn-around since she is

1 elected, she did not want to do that, because she was moving to, she was
2 planning to move to Texas. And my understanding is that she did move to
3 Texas, but then moved back to Jackson after a short period of time.

4 **Referee:** Okay.

5 **Newsome:** Okay, I'm going to, okay, because I don't, like I said, have
6 everything that I need that I, for my records, information that I doubt that
7 there were about four prior to my coming aboard. But I want to stick to the,
8 I think it's "Employer Exhibit #1." Ms. Newsome was discharged you know,
9 Mitchell, McNutt's reasons for discharging me, and I want Mr. Gordon for
10 the record, under oath, to you know, just to clarify that, because I submitted
11 a Pleading where he advised the Court, ability to work several days, you
12 know. So that means several days, not, not one, not a few hours, but several
13 days. It's your testimony that you missed, did you miss any days the week
14 of the middle, of this, of the Pleading, the Thompson Pleading?

15 **Referee:** Oh, I'm sorry, I'm giving you the wrong.

16 **Q** On November 12th, did you miss any days from the office?

17 **A** Did I miss the entirety of many days.

18 **Q** Yes.

19 **A** No, I did not miss the entirety of any days, as I have testified earlier,
20 on Wednesday I came in at approximately 10:30, and left at approximately

1 3:30 to 4:30. And also during the period of time I was in the office, I was
2 not productive because I was not feeling well. And then on Friday oh, on
3 Thursday excuse me, I came in at 9:00, and my recollection is that I left at
4 5:00, maybe 4:30, maybe 5:30. Normally, I mean it varies. Normally I
5 come in to the office 7:30 to 8:00. Normally I leave 5:45, 6:00, 6:15. And
6 so you know, I think what it says is you know, I, I had the time that I've
7 testified to earlier that I was not able to work on Wednesday, the time on
8 Thursday, I was not able to work, and as well on Monday and Tuesday I did
9 not feel well, and was affected by that, but it, I did not feel that was
10 significant enough time to, to put down a time entry.

11 Q Okay. Just for the record, he did say, because we're talking about
12 making false statements, that's what they're citing. And according to the
13 document, he did advise the court for several days. He was not able to work,
14 because like I said.

15 A My ability to work was limited.

16 Q Explain to me.

17 A Talking limited time, limited time and ability to work is what the
18 Pleading states.

19 Q Several days?

20 A Several days, that's what.

1 Q Several days, okay, I just want to, because like I said, I wasn't
2 prepared, but because of the complaints that I submitted to the firm, I was
3 keeping monitoring logs as to, so I'd know when Mr. Gordon was there, and
4 when he wasn't basically, if I was you know, paying attention, whatever.
5 And I can give this as an exhibit, but I mean as part of something else that
6 I'm working with, but even on the 10th, you came in like you said, around
7 about 10:30, whatever, but days prior you basically worked full days. The
8 week prior to that, the November 10th Pleading, did you miss any days?

9 A I really don't recall whether I did or not.

10 Q Okay, in their response to the Commission, you only addressed the
11 one. I want to also address the, because I made other statements in regards
12 to, let's say for instance, we'll just say Dubose, that during, do you recall
13 during the draft, the write up of this Petition, when I submitted the revisions
14 back to you, that I marked up questioning the statements that you were
15 making, in other words being inaccurate

16 A No.

17 Q You are not aware of that?

18 A No.

19 Q Okay, so I never marked up on your, your handout, that, that your
20 secretary is not the one in the hospital, and that we have a typing pool?

1 A I don't recall that, no.

2 Q Okay.

3 A But I think it needs to be understood, the typing pool is secretaries in
4 the Columbus Office, they work, they, they, it's not simply a typing pool,
5 and in fact, it is not a typing pool. It is secretaries, primarily, one or two
6 secretaries in the Columbus Office, who work each for one or two other
7 lawyers, and they are referred to as the "Pool" for the Jackson Office to
8 catch overflow work or something of that nature. But, and it needs to be
9 understood, it's not a true typing pool.

10 Q Okay, but the typing pool, if the secretary is back logged, or if a
11 secretary is out, and there's one secretary working and need some assistance,
12 the typing pool can help with those jobs, is that correct?

13 A They can help or assist, but they cannot necessarily complete the jobs.

14 Q And you don't recall me submitting information to you, marking up
15 on your draft, that the statement that you were making was inaccurate. That
16 I was there working, it was not your secretary in the hospital that was sick,
17 and that we have the typing pool, that's your testimony?

18 A I do not recall you marking that, I'm not saying you didn't, I'm saying
19 I don't recall.

1 Q I do have an e-mail that I, but like I said, I wasn't prepared for it, that
2 I have attached as an exhibit, something else that I was working on that I
3 sent to another co-worker in regards to the markup that I made on that, about
4 the inaccurate statement that he made in the Pleading. So I ^{did} didn't bring it to
5 ~~Ms.~~ ^{Mr.} Gordon's attention prior to the submittal to the Court. And I would like
6 to submit that, but like I said, it is part of something else that I'm working
7 with.

8 **Referee:** Do you have it with you?

9 Q I have it with me, but it's, like I said, it's a part of another exhibit to
10 something else I'm working on.

11 **Referee:** Or you can submit it or you cannot submit it.

12 Q I want to submit it, but the see the thing is, I'm going to have to either
13 use a tab, and like I said, I'd rather be like when the copy of that particular
14 document is made to, because this is, this is what's at, I guess, was in
15 question, the statements that he's made resulting in my termination. And so
16 I have that information in an e-mail that I submitted to a co-worker that I
17 made mention to Mr. Gordon about the statement that he made.

18 **Referee:** I'll be glad to accept your e-mail, and I'll make a copy of it and
19 give you back the original.

20 Q Okay.

1 **Ardelean:** Can we see a copy of that now as well.

2 Q Just a minute.

3 **Referee:** Alright just let her find it, before you can submit it.

4 **Ardelean:** Yes, I'll let her find it first.

5 Q Okay I do need this back, but I don't mind if you'd like to make a
6 copy, make another copy. I'll reassemble my exhibit later, but I'll let you
7 look at it.

8 **Referee:** Any objection, Ms. Ardelean?

9 **Ardelean:** I object to the relevancy.

10 Q Hey, it's to rebut pretext, they said that's the reason, false in
11 formation. He just you know, said that.

12 **Referee:** Okay, I'm going to mark this as "Claimant Exhibit #3," and it is
13 objected to on relevance. And I am going to note your objection. Next
14 question, Ms. Newsome.

15 Q Okay, let me see. Also in that Pleading to the Court Mr. Gordon, you
16 mentioned that you were going to be out of town November 19th to 21st. Do
17 you recall having a conversation with me the day of the filing of this
18 petition, advising me that you were, are indeed going to be in the office, and
19 you are not going to be out of town?

1 A I told you at 5:00 before you left, that I had plans to be out of town
2 that Friday, as well as that week-end, but I'm not sure, I'm not sure whether
3 I'm going to do it or not. I say I may, I may stay, I may cancel those plans
4 and stay, because of the work I had, but I had not made a decision yet.

5 Q Okay, but after I guess, I would say securing the knowledge the
6 Pleading had been filed, you did make it known to me that you were not
7 going to be out of town?

8 A No, I did not make it known to you I would be out of town. I made it
9 known to you that I may not be out of town. I may end up canceling that
10 that trip.

11 Q And you were, you were in the office on November 19th, is that
12 correct?

13 A Yes, Friday the 19th, yes.

14 Q And like I said, what I'm giving you, I may need them back after you
15 make a copy of them. I would like to submit, like I said, I kept records of
16 Mr. Gordon's monitoring. The time frequency interrupting me while
17 passing by my workstation for my record, in regards to concerns of you
18 know, complaints in the monitoring with special emphasis also on
19 November 10, 2004. The day that he said you know, prior to the e-mail,
20 because in his e-mail that he submitted saying you know, be ill or sick to

1 **Referee:** For the record I'm going to call this "Claimant Exhibit #5." It is
2 objected to on relevancy and authenticity. Now this is signed by a Jane
3 Hedglin?

4 Q Yes.

5 **Referee:** She works for Staffers?

6 Q That's correct. It's one of the agencies I'm registered with.

7 **Referee:** I'll make a copy of that, and give that back to you as well.

8 Q Okay.

9 **Referee:** Any other questions for?

10 Q Yes, I do, because the, like I said, at, at question here is that I
11 submitted in the e-mail to deflect from my own Performance Evaluation.

12 And it's basically to establish the accuracy, and the reason why I would not
13 sign. During my employment, although it didn't come up, Mr. Gordon, I
14 mean there was an incident in regards to your asking me to come, to
15 interrupt my lunch and return to work on a pleading that you needed to get
16 that day. Is that correct?

17 A Which incident, what, can you be more specific as to when you're
18 referring to?

19 Q Yes, just a moment. It was the incident that I went out to lunch with
20 Attorney Mike Farrell and Ladye Margaret?

1 A Yes.

2 Q Can you recall that, would you for the record, explain what happened
3 in regards to that?

4 A Sure. That was a late February of 2003?

5 **Allen:** 2004.

6 A 2004, late February 2004, it was a day that I had a Pleading due, a
7 Motion, and a Memorandum, Response Memorandum to the Court, that
8 needed to get in the mail or Fed Ex that day. I was leaving town that
9 evening after work for the week-end, this was on a Thursday. Shortly before
10 lunch I told Vogel that it would be necessary for her to work through her
11 lunch hour in order to be sure, to make sure they got all the revisions, maybe
12 we was still in the process of making revisions to the pleading of Pleadings,
13 to be sure we got all the revisions made. And so in time, not only those that
14 were then pending, but in subsequent revisions to be made, and the copies
15 made, and then to the mail, to the Court and to the other lawyers. She
16 objected, I told her that is was not necessary, and she made reference to
17 needing to get something to eat. She felt like she needed to get something to
18 eat, and I told her that, if you need to get something to eat, that's fine. I said
19 you know, if you can't, if you can't wait until later in the day at a more
20 convenient time, or you can get something to eat. I'm not saying don't get

1 anything to eat, but if you're going to get something to eat, go get it, and
2 bring it back, and eat it at your desk when you have time. So that we can
3 continue working on that Pleading. She objected. I told her it's just going to
4 be necessary to do, because we've got to be sure we get our Pleading out
5 that day. And she then told me that she's leaving going with Mike Farrell
6 and Ladye Margaret Townsend to get something to eat, and would be
7 bringing it back, and I said that's fine. She was gone for, what to me was an
8 inordinate of the time to get something to pick up, to pick something up to
9 bring it back. My recollection is that she was gone approximately forty-five
10 minutes or so, and then she returned and at that time I criticized her for
11 having gone and eaten out when I had told her that she needed to work
12 through the lunch hour, and if she was going to get something to eat, go get
13 it, and bring it back.

14 Q So you said it was about forty-five minutes. For the record, can you
15 explain your conduct when I did return, your behavior?

16 A Because you had acted in a defiant and insubordinate manner, and
17 going out, in my, in my judgment, in going out to get lunch, and eating out
18 when I told you you needed you needed to work through the lunch hour, and
19 or just needed to go out and get the lunch and bring it back and eat at your
20 desk so we could complete work.

1 Q So would you say your behavior, for instance stomping around and
2 slamming the door is acceptable?
3 A I don't know that I stomped around and slammed the door, but I, yes,
4 I was very upset.
5 Q Okay, would you say you were hostile?
6 A Yes.
7 Q Okay, for the record, let me find which exhibit it is, just a minute, I
8 would like to enter, because, let me ask this question. Were you aware that
9 your behavior was noticed by other employees at Mitchell, McNutt & Sams?
10 A Yes.
11 Q Are you aware that I reported that behavior to Mr. Allen?
12 A Sitting here right now, I don't, I do not recall being aware of that.
13 Q Okay.
14 A I, I may.
15 Q So Mr. Allen, did I make you aware of that submitted your conduct,
16 that incident rather, that incident to his attention?
17 A He may have, I just don't recall it right now. And if you did it by way
18 of an e-mail, he may have forwarded a copy of the e-mail to me. I just, just
19 don't recall.

1 Q You, were you aware that when I went to lunch, that I was not
2 driving, that I did go with Mr. Farrell and Ladye Margaret?

3 A You told me that when you returned, you did not tell me that before
4 you were going.

5 Q Prior to leaving. Were you aware that the lunch break was only about,
6 probably thirty-five minutes?

7 A It occurred, it appeared to me it was around forty-five minutes.

8 Q Okay, even if it were forty-five minutes, was I in violation of any of
9 the policies in regards to meals, breaks, lunch, of Mitchell, McNutt & Sams?

10 A In my judgment, yes, because even though you do have an hour lunch
11 break, that hours lunch, had taken that hour lunch is always subject to the
12 needs of the work that, that, this is in the office, and the need to get the work
13 out in a timely and proper manner , and so that on occasions when that does
14 arise, yes, that lunch hour is subject to, to being taken early, or deferred, late
15 shortened, or even missed all together.

16 Q Did that thirty-five minutes, or if you say forty-five minutes, did that
17 preclude or prevent you from getting that Pleading filed in time?

18 A We got the Pleading filed on that day, but while you were out, a
19 revision or revisions to that Pleading were sitting at your desk and not being
20 done.

1 Q But I am entitled to a break, right?

2 A Subject to the demands of the workplace, yes.

3 Q At this time, I would like to, I do need a copy of this back to show that
4 it was only thirty-five minute lunch, and we will look at your evaluation
5 saying it was forty-five minutes.

6 Allen: That's my assistant.

7 Ardelean: Okay.

8 Referee: Any objection, Ms. Ardelean?

9 Ardelean: Relevancy.

10 Referee: This will be "~~Claimant~~ Exhibit #6." ^{for the claimant} It is an e-mail from Ms.

11 Newsome to Rosonna Murray, and a copy to Jim Allen, TIMECLOCK, it is
12 objected to in regards to relevance, and that is "~~Claimant~~ Exhibit #6." Any
13 other questions, Ms. Newsome?

14 Q Yes, I do. And are you aware that your conduct affected the work of
15 another attorney, who was wondering whether or not you had calmed down
16 that day after that particular incident?

17 A No.

18 Q At this time, I would like to enter this in regards to the e-mail that was
19 sent in regards to Mr. Gordon's behavior that day.

20 Referee: Any objection to that, Ms. Ardelean?

1 **Ardelean:** I have an objection on relevancy.

2 Q So Mr. Gordon, you would say your conduct was hostile?

3 A That's what I, yes, I said that.

4 Q Did Mitchell, McNutt & Sams ever notify you of your conduct of
5 being you know, you being hostile towards an employee?

6 A No.

7 Q Were you aware that there were complaints submitted in regards to
8 your conduct to Mitchell, McNutt & Sams?

9 **Ardelean:** Could you get to the point because I'm not sure what complaints
10 you're referring to?

11 Q I, I'm asking, are you aware?

12 A By whom or, and of what?

13 Q Are you aware that I have, that I submitted complaints in regards to
14 your conduct to Mitchell, McNutt & Sams?

15 A You have submitted complaints or e-mails alleging harassment.

16 **Referee:** Let me enter this document. This will be "Claimant Exhibit #7."
17 It is objected to on relevance. It is a series of e-mails from Ms. Townsend to
18 Ms. Vogel and back. Okay, that is "Claimant Exhibit #7" that's objected to
19 regarding relevancy.

20 Q Okay, in regards, and this was about February 2004, for the record?

1 Q Okay. Let me go up here, in regards to the Pleadings that you
2 submitted to the Court, are you familiar with Federal Rules, and Civil
3 Procedure Rule, I think 11?

4 A Yes.

5 Q And that is the signing of Motions, and Pleadings, etceteras, right?

6 A Yes.

7 Q So when you sign those Pleadings, you're telling the Court that the
8 information contained in there is true, on an accurate basically, right

9 A Correct, and it was.

10 Q Are you familiar, we were talking about your conduct earlier, are you
11 familiar with the Policy 703 of Mitchell, McNutt & Sams Policy, 703?

12 A That page is missing.

13 **Ardelean:** It's not in the version I have, ^{maybe} is there a page missing? Let's see.

14 A Do you have the revised version?

15 Q That's an, now that's an important one, 703.

16 **Referee:** What does that one refer to?

17 Q Sexual and Other Unlawful Harassment.

18 **Ardelean:** Did I copy that on another page? Is it in the version you have,

19 Mr. Mize?

1 **Referee:** No, ma'am. It's 701, the next is 705, Personal Appearance. Now
2 this may be part of it, it indicates verbal conduct that includes, making or
3 using derogatory comments, then verbal sexual advances, and then verbal
4 abuse of a sexual nature.

5 A Yes, that is the.

6 **Referee:** It looks like the completion of it, but the beginning of 703 is not
7 on, in the copy that I have.

8 **Ardelean:** Ms. Newsome, looks like has a complete copy of it.

9 Q No, I'm forwarding something that I'm working on that I submitted to
10 someone, so I took that portion, for an exhibit.

11 A Am I familiar with this, I mean I have not read section 703 before.

12 Q Okay, because for the record, under 703, Sexual and Other Unlawful
13 Harassment, in the Mitchell, McNutt & Sams Employee Handbook, it says
14 all forms of ^{discrimination and} conduct that can be considered harassing, coercive, or
15 disruptive, so for the record, I, I want that in there, because from the
16 testimony, his conduct and behavior for relevancy.

17 **Referee:** What's your question in regards to that?

18 Q I just wanted to know, was he aware of, of that, of that policy.

19 **Referee:** He says he has not read it, okay.

1 McNutt & Sams in regards to the relationship. It was Mr. Gordon's
2 testimony that I was at least maybe about, well we concluded about maybe
3 the third or fourth secretary in less than a years time, and I did express those
4 concerns to Mr. Allen in the conference after the cap incident. Because like I
5 said, his behavior to me was unacceptable, and I offered or suggested to
6 Allen that they get Mr.Gordon some help, some anger management courses.
7 But this behavior apparently is acceptable and condoned by Mitchell,
8 McNutt & Sams, whereas I get elaborate e-mails, what I found were to be
9 slanderous and defamatory. And I take that very personal because of the life
10 that I strive to live and lead. I know people for instance that would, like I
11 shared in my evaluation on the 30th, they would say that's not her, that I've
12 worked. Since I've been away from there, I've had attorneys come to me, if
13 you need a reference or anything, we'll be glad to give you one. In a letter
14 to, from my understanding given to the firm prior to my coming on board,
15 that the Agency sent, the attorney was commending me on my
16 professionalism and my conduct. So when I receive an evaluation, I take it
17 ^{personally} very personal, and I'm offended by it. ^{IT'S NEWSOME EMOTIONAL (CRYING)} They state that I was given ways to
18 improve. During the evaluation, I'm not aware of any written
19 documentation to support the statement that they, they made. I didn't see
20 them present anything in regards to the evaluation, during this hearing. Now

1 Mr. Allen presented the evaluation, but unless I'm overlooking something,
2 there's nothing in that evaluation to show that they gave me ways to
3 improve. That was Mr. Gordon's opinion, or evaluation of me, and like I
4 said, I take it very personally (claimant crying). But this is the kind of
5 conduct that each secretary, I, I don't know, but if they had to work for Bob
6 and endure the things that I went through, I would just say I'm much
7 stronger than they are. The way Bob treats people is unacceptable. I don't
8 recall working for an attorney that was just as, I mean, I, I just don't, he's
9 the first. And I, during my employment, I expressed my concerns in regards
10 to his conduct, Mitchell, McNutt & Sams just refused to correct it. They
11 decided to continue to escalate the harassment in efforts to force me to quit.
12 It is my right as a citizen of the United States and of the Civil Rights Act to
13 be free to work in an employment, for an employer without ^{free} fear of
14 discrimination and harassment. ^{There been who have died} They have people to handle these rights, and
15 that's why I refused to leave. Nothing Mr. Gordon or anyone could do can
16 make me question my skills and qualifications. I take great pride in the
17 work that I do, and I'm very upset that my reporting of a complaint on
18 December 1st was a result of my termination. It was not the first complaint,
19 but the evidence will show that I followed the same procedures that I
20 followed on all the other incidences that happen in regards to Bob. For



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House votes to impeach federal judge from Louisiana

STORY HIGHLIGHTS

- Judge G. Thomas Porteous Jr. was impeached by U.S. House of Representatives
- Porteous is from U.S. District Court for the Eastern District of Louisiana
- Rep. Adam Schiff: Porteous "participated in a pattern of corrupt conduct for years"

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Washington (CNN) -- The House of Representatives voted unanimously Thursday to impeach Judge G. Thomas Porteous Jr. of U.S. District Court for the Eastern District of Louisiana, making him the nation's 15th federal judge ever impeached.

"Our investigation found that Judge Porteous participated in a pattern of corrupt conduct for years," said U.S. Rep. Adam Schiff, D-California, chairman of the House Judiciary Committee Task Force on Judicial Impeachment.

"Litigants have the right to expect a judge hearing their case will be fair and impartial, and avoid even the appearance of impropriety. Regrettably, no one can have that expectation in Judge Porteous' courtroom."

After the impeachment vote, Schiff and Rep. Bob Goodlatte, R-Virginia, were named the lead impeachment managers for the Senate trial, which will decide whether to remove Porteous from the bench.

"Today's vote marks only the second time in over 20 years that this has occurred," Goodlatte said in a House news release. "However, when evidence emerges that an individual is abusing his judicial office for his own advantage, the integrity of the entire judicial system becomes compromised."

In a statement, Porteous' lawyer Richard W. Westling said the Justice Department had decided not to prosecute because it did not have credible evidence.

"Unfortunately, the House has decided to disregard the Justice Department's decision and to move forward with impeachment. As a result, we will now turn to the Senate to seek a full and fair hearing of all of the evidence."

In a telephone interview, Westling said he did not know when the Senate trial would be held. "There are no clear rules that dictate timing," he said.

Last year, the Task Force on Judicial Impeachment held evidentiary hearings that led to unanimous approval of the four articles of impeachment, citing evidence that Porteous "intentionally made material false statements and representations under penalty of perjury, engaged in a corrupt kickback scheme, solicited and accepted unlawful gifts, and intentionally misled the Senate during his confirmation proceedings," the House release said.

Porteous was appointed to the federal bench in 1994.

In 2007, after an FBI and federal grand jury investigation, the Justice Department alleged "pervasive misconduct" by Porteous and evidence "that Judge Porteous may have violated federal and state criminal laws, controlling canons of judicial conduct, rules of professional responsibility, and conducted himself in a manner antithetical to the constitutional standard of good behavior required of all federal judges."

**EXHIBIT
8**

The complaint said the department opted not to seek criminal charges for reasons that included issues of statute of limitations and other factors. But Westling said the statute of limitations was not applicable.

An Impeachment Task Force held four hearings late last year that focused on allegations of misconduct by Porteous, including:

- Involvement in a corrupt kickback scheme
- Failure to recuse himself from a case he was involved in
- Allegations that Porteous made false and misleading statements, including concealing debts and gambling losses
- Allegations that Porteous asked for and accepted "numerous things of value, including meals, trips, home and car repairs, for his personal use and benefit" while taking official actions on behalf of his benefactors
- Allegations that Porteous lied about his past to the U.S. Senate and to the FBI about his nomination to the federal bench "in order to conceal corrupt relationships," Schiff said in his floor statement as prepared for delivery

Porteous was invited to testify, but he declined to do so, Schiff said. "His long-standing pattern of corrupt activity, so utterly lacking in honesty and integrity, demonstrates his unfitness to serve as a United States District Court judge," he said.

Porteous, 63, has not worked as a judge since he was suspended with pay in the fall of 2008, Westling said.

The last federal judge impeachment occurred last year, when Judge Samuel B. Kent of the U.S. District Court for the Southern District of Texas resigned after being impeached on charges of sexual assault, obstructing and impeding an official proceeding, and making false and misleading statements, according to the Web site of the Federal Judicial Center.

The Senate, sitting as a court of impeachment, dismissed the articles.

Before then, Judge Walter L. Nixon of U.S. District Court for the Southern District of Mississippi was impeached in 1989 on charges of perjury before a federal grand jury. The Senate convicted him and removed him from office that year.

Find this article at:

<http://www.cnn.com/2010/POLITICS/03/11/louisiana.judge.impeached/index.html?iref=allsearch>

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Senate Begins Impeachment Trial of Federal Judge

Published September 13, 2010 | Associated Press

WASHINGTON -- A federal judge from Louisiana is corrupt and unfit to serve on the bench, House members said Monday as they began a rare congressional impeachment trial by laying out their case against the jurist.

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Playing the role of prosecutors, Reps. Adam Schiff, D-Calif., and Bob Goodlatte, R-Va., used their opening statements to a Senate impeachment panel to outline what they called a decades-long pattern of unethical behavior by New Orleans-area U.S. District Judge G. Thomas Porteous.

They said that included taking cash, expensive meals and gifts from lawyers and a bail bondsman, lying to Congress and filing for bankruptcy under a false name.

"It is the unanimous view of the House of Representatives that his conduct is not only wrong but so violative of the public trust that he cannot be allowed to remain on the bench without making a mockery of the court system," Schiff said.

Porteous' attorney, Jonathan Turley, denied some allegations but acknowledged others such as accepting meals, which he said is perfectly legal. He said the judge's behavior, while perhaps reflecting poor judgment, doesn't meet the high crimes and misdemeanors standard set in the Constitution for impeachment.

"Judge Porteous has never been indicted, let alone convicted, of any crime," Turley said. "What the Congress has impeached this judge for is an appearance of impropriety."

Turley also said much of the conduct in question occurred when Porteous was a state judge and that Congress would be breaking from precedent by convicting him for behavior that occurred before he joined the federal bench.

The Senate trial is the first since the 1999 case against former President Bill Clinton, Porteous, who was appointed by Clinton in 1994, would be just the eighth judge to be impeached and convicted by Congress.

The House voted unanimously in March to impeach Porteous. A two-thirds vote is needed in the Senate to convict him.

Senators hearing the case appear ready to resolve it quickly, scheduling a series of all-day hearings this week and next.

Porteous' behavior was uncovered in a five-year FBI investigation in Jefferson Parish dubbed "Operation Winkled Robe." Although the sting netted convictions against more than a dozen others, Porteous was never charged with a crime. He was, however, suspended from the bench.

Turley said Porteous, 63, plans to retire next year regardless of what happens.

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The Washington Post

Senate opens impeachment trial against judge

By BEN EVANS

The Associated Press

Monday, September 13, 2010; 5:16 PM

WASHINGTON -- A federal judge from Louisiana is corrupt and unfit to serve on the bench, House members said Monday as they began a rare congressional impeachment trial by laying out their case against the jurist.

Playing the role of prosecutors, Reps. Adam Schiff, D-Calif., and Bob Goodlatte, R-Va., used their opening statements to a Senate impeachment panel to outline what they called a decades-long pattern of unethical behavior by New Orleans-area U.S. District Judge G. Thomas Porteous. They said that included taking cash, expensive meals and other gifts from lawyers and a bail bondsman, lying to Congress and filing for bankruptcy under a false name.

"It is the unanimous view of the House of Representatives that his conduct is not only wrong but so violative of the public trust that he cannot be allowed to remain on the bench without making a mockery of the court system," Schiff said.

Porteous' attorney, Jonathan Turley, denied some allegations but acknowledged others such as accepting meals, which he said is perfectly legal. He said the judge's behavior, while perhaps reflecting poor judgment at times, doesn't meet the high crimes and misdemeanors standard set in the

Constitution for impeachment.

"Judge Porteous has never been indicted, let alone convicted, of any crime," Turley said. "What the Congress has impeached this judge for is an appearance of impropriety."

Turley also said much of the conduct in question occurred when Porteous was a state judge and that Congress would be breaking from precedent by convicting him for behavior that occurred before he joined the federal bench.

The Senate trial is the first since the 1999 case against former President Bill Clinton. Porteous, who was appointed by Clinton in 1994, would be just the eighth judge to be impeached and convicted by Congress, and the first in more than 20 years.

The House voted unanimously in March to

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The Washington Post

Senate opens impeachment trial against judge

bring charges. A two-thirds vote is needed in the Senate to convict him.

The Senate panel hearing the case, chaired by Sen. Claire McCaskill, D-Mo., appears ready to resolve it quickly, scheduling a series of all-day hearings this week and next.

House investigators who spent months investigating say Porteous was struggling with drinking and gambling and had racked up more than \$150,000 in credit card debt by 2000, mostly for cash advances spent in casinos.

Most of Monday's testimony involved a close relationship that Porteous maintained with two attorneys who once worked with the judge, Robert Creely and Jacob Amato.

As they did earlier before House investigators, the two acknowledged giving Porteous thousands of dollars in cash going back to the 1980s, including about \$2,000 stuffed in an envelope in 1999, just before Porteous decided a major civil case in their client's favor. They also acknowledged taking him on trips such as one to Las Vegas for a bachelor party for the judge's son, at which Creely said he helped pay for an expensive meal, a hotel room and dancing at a strip club.

Creely and Amato, however, said they never received favorable treatment from Porteous and that they gave him money only because he was a longtime friend who needed help.

Porteous' behavior was uncovered in a five-year FBI investigation in Jefferson Parish dubbed "Operation Wrinkled Robe." Although the sting netted convictions against more than a dozen others, Porteous was never charged with a crime. He was, however, suspended from the bench, and the Judicial Conference of the United States recommended that Congress consider impeachment.

Turley said Porteous, 63, plans to retire next year regardless of what happens.

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Impeachments of Federal Judges

John Pickering, U.S. District Court for the District of New Hampshire.

Impeached by the U.S. House of Representatives on March 2, 1803, on charges of mental instability and intoxication on the bench; Convicted by the U.S. Senate and removed from office on March 12, 1804.

Samuel Chase, Associate Justice, Supreme Court of the United States.

Impeached by the U.S. House of Representatives on March 12, 1804, on charges of arbitrary and oppressive conduct of trials; Acquitted by the U.S. Senate on March 1, 1805.

James H. Peck, U.S. District Court for the District of Missouri.

Impeached by the U.S. House of Representatives on April 24, 1830, on charges of abuse of the contempt power; Acquitted by the U.S. Senate on January 31, 1831.

West H. Humphreys, U.S. District Court for the Middle, Eastern, and Western Districts of Tennessee.

Impeached by the U.S. House of Representatives, May 6, 1862, on charges of refusing to hold court and waging war against the U.S. government; Convicted by the U.S. Senate and removed from office, June 26, 1862.

Mark W. Delahay, U.S. District Court for the District of Kansas.

Impeached by the U.S. House of Representatives, February 28, 1873, on charges of intoxication on the bench; Resigned from office, December 12, 1873, before opening of trial in the U.S. Senate.

Charles Swaine, U.S. District Court for the Northern District of Florida.

Impeached by the U.S. House of Representatives, December 13, 1904, on charges of abuse of contempt power and other misuses of office; Acquitted by the U.S. Senate February 27, 1905.

Robert W. Archbald, U.S. Commerce Court.

Impeached by the U.S. House of Representatives, July 11, 1912, on charges of improper business relationship with litigants; Convicted by the U.S. Senate and removed from office, January 13, 1913.

George W. English, U.S. District Court for the Eastern District of Illinois.

Impeached by the U.S. House of Representatives, April 1, 1926, on charges of abuse of power; resigned office November 4, 1926; Senate Court of Impeachment adjourned to December 13, 1926, when, on request of the House manager, impeachment proceedings were dismissed.

Harold Louderback, U.S. District Court for the Northern District of California.

Impeached by the U.S. House of Representatives, February 24, 1933, on charges of favoritism in the appointment of bankruptcy receivers; Acquitted by the U.S. Senate on May 24, 1933.

Halsted L. Ritter, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, March 2, 1936, on charges of favoritism in the appointment of bankruptcy receivers and practicing law while sitting as a judge; Convicted by the U.S. Senate and removed from office, April 17, 1936.

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Harry E. Claiborne, U.S. District Court for the District of Nevada.

Impeached by the U.S. House of Representatives, July 22, 1986, on charges of income tax evasion and of remaining on the bench following criminal conviction; Convicted by the U.S. Senate and removed from office, October 9, 1986.

Alcee L. Hastings, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, August 3, 1988, on charges of perjury and conspiring to solicit a bribe; Convicted by the U.S. Senate and removed from office, October 20, 1989.

Walter L. Nixon, U.S. District Court for the Southern District of Mississippi.

Impeached by the U.S. House of Representatives, May 10, 1989, on charges of perjury before a federal grand jury; Convicted by the U.S. Senate and removed from office, November 3, 1989.

Samuel B. Kent, U.S. District Court for the Southern District of Texas.

Impeached by the U.S. House of Representatives, June 19, 2009, on charges of sexual assault, obstructing and impeding an official proceeding, and making false and misleading statements; Resigned from office, June 30, 2009. On July 20, 2009, the U.S. House of Representatives agreed to a resolution not to pursue further the articles of impeachment, and on July 22, 2009, the Senate, sitting as a court of impeachment, dismissed the articles.

G. Thomas Porteous, Jr., U.S. District Court for the Eastern District of Louisiana.

Impeached by the U.S. House of Representatives, March 11, 2010, on charges of accepting bribes and making false statements under penalty of perjury.

Articles of Impeachment Against United States District Court Judge G. Thomas Porteous, Jr.

From Wikisource

Impeaching G. Thomas Porteous, Jr., judge of the United States District Court for the Eastern District of Louisiana, for high crimes and misdemeanors.

United States House Committee on the Judiciary

Introduced by Representative John Conyers, Jr. on January 21, 2010.

RESOLUTION

Resolved, That G. Thomas Porteous, Jr., a judge of the United States District Court for the Eastern District of Louisiana, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against G. Thomas Porteous, Jr., a judge in the United States District Court for the Eastern District of Louisiana, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

Contents

- 1 Article I
- 2 Article II
- 3 Article III
- 4 Article IV

Article I

G. Thomas Porteous, Jr., while a Federal judge of the United States District Court for the Eastern District of Louisiana, engaged in a pattern of conduct that is incompatible with the trust and confidence placed in him as a Federal judge, as follows:

Judge Porteous, while presiding as a United States district judge in *Lifemark Hospitals of Louisiana, Inc. v. Liljeberg Enterprises*, denied a motion to recuse himself from the case, despite the fact that he had a corrupt financial relationship with the law firm of Amato & Creely, P.C. which had entered the case to represent Liljeberg. In denying the motion to recuse, and in contravention of clear canons of judicial ethics, Judge Porteous failed to disclose that beginning in or about the late 1980s while he was a State court judge in the 24th Judicial District Court in the State of Louisiana, he engaged in a corrupt scheme with attorneys, Jacob Amato, Jr., and Robert Creely, whereby Judge Porteous appointed Amato's law partner as a 'curator' in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm. During the period of this scheme, the fees received by Amato & Creely amounted to approximately \$40,000, and the amounts paid by Amato & Creely to Judge Porteous amounted to approximately \$20,000.

Judge Porteous also made intentionally misleading statements at the recusal hearing intended to minimize the extent of his personal relationship with the two attorneys. In so doing, and in failing to disclose to Lifemark and its counsel the true circumstances of his relationship with the Amato & Creely law firm, Judge Porteous deprived the Fifth Circuit Court of Appeals of critical information for its review of a petition for a writ of mandamus, which sought to overrule Judge Porteous's denial of the recusal motion. His conduct deprived the parties and the public of the right to the honest services of his office.

Judge Porteous also engaged in corrupt conduct after the *Lifemark v. Liljeberg* bench trial, and while he had the case under advisement, in that he solicited and accepted things of value from both Amato and his law partner Creely, including a payment of thousands of dollars in cash. Thereafter, and without disclosing his corrupt relationship with the attorneys of Amato & Creely PLC or his receipt from them of cash and other things of value, Judge Porteous ruled in favor of their client, Liljeberg.

By virtue of this corrupt relationship and his conduct as a Federal judge, Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for, and confidence in, the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

Article II

G. Thomas Porteous, Jr., engaged in a longstanding pattern of corrupt conduct that demonstrates his unfitness to serve as a United States District Court Judge. That conduct included the following: Beginning in or about the late 1980s while he was a State court judge in the 24th Judicial District Court in the State of Louisiana, and continuing while he was a Federal judge in the United States District Court for the Eastern District of Louisiana, Judge Porteous engaged in a corrupt relationship with bail bondsman Louis M. Marcotte, III, and his sister Lori Marcotte. As part of this corrupt relationship, Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. These official actions by Judge Porteous included, while on the State bench, setting, reducing, and splitting bonds as requested by the Marcottes, and improperly setting aside or expunging felony convictions for two Marcotte employees (in one case after Judge Porteous had been confirmed by the Senate but before being sworn in as a Federal judge). In addition, both while on the State bench and on the Federal bench, Judge Porteous used the power and prestige of his office to assist the Marcottes in forming relationships with State judicial officers and individuals important to the Marcottes' business. As Judge Porteous well knew and understood, Louis Marcotte also made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench.

Accordingly, Judge G. Thomas Porteous, Jr., has engaged in conduct so utterly lacking in honesty and integrity that he is guilty of high crimes and misdemeanors, is unfit to hold the office of Federal judge, and should be removed from office.

Article III

Beginning in or about March 2001 and continuing through about July 2004, while a Federal judge in the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., engaged in a pattern of conduct inconsistent with the trust and confidence placed in him as a Federal judge by knowingly and intentionally making material false statements and representations under penalty of perjury related to his personal bankruptcy filing and by repeatedly violating a court order in his bankruptcy case. Judge Porteous did so by--

- (1) using a false name and a post office box address to conceal his identity as the debtor in the case;
- (2) concealing assets;
- (3) concealing preferential payments to certain creditors;
- (4) concealing gambling losses and other gambling debts; and
- (5) incurring new debts while the case was pending, in violation of the bankruptcy court's order.

In doing so, Judge Porteous brought his court into scandal and disrepute, prejudiced public respect for and confidence in the Federal judiciary, and demonstrated that he is unfit for the office of Federal judge.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.

Article IV

In 1994, in connection with his nomination to be a judge of the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., knowingly made material false statements about his past to both the United States Senate and to the Federal Bureau of Investigation in order to obtain the office of United States District Court Judge. These false statements included the following:

- (1) On his Supplemental SF-86, Judge Porteous was asked if there was anything in his personal life that could be used by someone to coerce or blackmail him, or if there was anything in his life that could cause an embarrassment to Judge Porteous or the President if publicly known. Judge Porteous answered 'no' to this question and signed the form under the warning that a false statement was punishable by law.
- (2) During his background check, Judge Porteous falsely told the Federal Bureau of Investigation on two separate occasions that he was not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on his character, reputation, judgment, or discretion.
- (3) On the Senate Judiciary Committee's 'Questionnaire for Judicial Nominees', Judge Porteous was asked whether any unfavorable information existed that could affect his nomination. Judge Porteous answered that, to the best of his knowledge, he did 'not know of any unfavorable information that may affect [his] nomination'. Judge Porteous signed that questionnaire by swearing that 'the

information provided in this statement is, to the best of my knowledge, true and accurate'.

However, in truth and in fact, as Judge Porteous then well knew, each of these answers was materially false because Judge Porteous had engaged in a corrupt relationship with the law firm Amato & Creely, whereby Judge Porteous appointed Creely as a 'curator' in hundreds of cases and thereafter requested and accepted from Amato & Creely a portion of the curatorship fees which had been paid to the firm and also had engaged in a corrupt relationship with Louis and Lori Marcotte, whereby Judge Porteous solicited and accepted numerous things of value, including meals, trips, home repairs, and car repairs, for his personal use and benefit, while at the same time taking official actions that benefitted the Marcottes. As Judge Porteous well knew and understood, Louis Marcotte also made false statements to the Federal Bureau of Investigation in an effort to assist Judge Porteous in being appointed to the Federal bench. Judge Porteous's failure to disclose these corrupt relationships deprived the United States Senate and the public of information that would have had a material impact on his confirmation.

Wherefore, Judge G. Thomas Porteous, Jr., is guilty of high crimes and misdemeanors and should be removed from office.



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VOGEL D. NEWSOME

Post Office Box 31265
Jackson, Mississippi 39286
Phone: 601/885-9536 or 601/362-4910

December 11, 2004

L. F. Sams, Jr.
Mitchell, McNutt & Sams, P.A.
Post Office Box 7120
Tupelo, Mississippi 38802-7120

RE: *Retaliation - Unlawful/Wrongful Termination of Vogel Newsome*

Dear Mr. Sams:

I am in receipt of your letter dated December 10, 2004. This letter is basically being submitted in response to your letter to clear up some *distorted* facts you present in said letter in regards to my being represented by counsel.

Let me say that I *did not* advise you at the time of my termination that I was *represented* by counsel. Neither did I advise you that my counsel would be in contact with you. Like my annual Performance Review by MMS, it is apparent how MMS attempts to take information and distort it for unlawful means and purposes to suit them.

For clarification of the false information you provide in your December 10, 2004 letter, on Friday, December 3, 2004, at the time of my termination, you demanded that I give you the copy of the Mitchell McNutt & Sams, P.A. Employee Handbook that was mine. Although I objected to your request, I then provided you with the copy of the Employee Handbook and advised that any additional documentation that you and/or MMS seek from me would have to be sought through my attorney. You advised me after that comment to have my attorney contact you. You, having full knowledge, that I at no given time did I advise you that I am presently and/or currently represented by counsel.

Enough on the frivolous assertions made in the letter you have provided. You can address this matter with the appropriate agency(s). Because my *initial* Complaints with the Wage and Hour Division and OSHA are still pending, I believe you and/or MMS can address each of the issues raised in the Retaliation Complaint(s) that has been filed and/or will be filed with the appropriate agency(s). This particular incident you address in your December 10, 2004, has been addressed at ¶ 29 in a Retaliation Complaint I have filed with the United States Department of Labor - Wage and Hour Division. Said Department/Division should be contacting MMS shortly for its response. Therefore, if you have any recorded statements or evidence to support the assertion you make in your letter, you may present it at the time of the investigation.

I have advised the appropriate agency(s) that I intend and am requesting to be reinstated immediately. I have also shared with the Wage and Hour Division that I seek reinstatement immediately and I will proceed to bring legal action against MMS for its unlawful and/or wrongful termination of my employment for my reporting of violations which are *protected activities* through the appropriate avenues. But, first things first - getting my job back. A copy of excerpts from the *Handy Reference Guide to the Fair Labor Standards Act*, pp. 13 - 14 is attached hereto for your

EXHIBIT

9

reference. I expect the WHD to enforce the FLSA and upon doing so, I intend to bring legal actions against MMS.

I will share with you at this time, that I have found your actions and the repeat unlawful violations rendered by MMS' employees against me - for the filing of my Complaints with the firm, WHD and OSHA - willful, malicious and wanton. Moreover, the most recent ones of December 3, 2004, being done to cause me embarrassment, humiliation, distress, hardship, injury/harm, etc. Therefore, I intend to seek recovery (the maximum allowed under law) for all damages/injuries I have sustained as a direct and proximate result of said violations permitted under law including punitive damages - which if allowed, for up to one-half the financial worth of MMS. I provide you with *some* information for your review, research and reference in support thereof:

CASE LAW:

Scribner v. Waffle House, Inc., 14 F.Supp. 2d 873 - An employer is liable under Title VII for the discriminatory acts of an employee if it knew or should have known of the employee's offensive conduct and failed to take steps to repudiate that conduct and eliminate the hostile environment. *Id.* at 883 citing *Nash v. Electrospace Sys., Inc.*, 9 F.3d 401, 404 (5th Cir. 1993)(citing *Jones v. Flagship*, 793 F.2d at 720)(As this Court noted in *Waltman v. International Paper Co.*, the type and extent of notice necessary to impose liability on an employer under Title VII are the subject of some uncertainty. 875 F.2d 468, 478 (5th Cir. 1989)(concluding that three separate complaints to higher management constituted sufficient notice.)).

Although it felt this was "undoubtedly a close question" in *Farpella-Crosby*, the Fifth Circuit held that plaintiff had met her burden of proving that Horizon Health Care "knew or should have known" that she was being subjected to a hostile work environment - primarily with evidence of Farpella-Crosby's *complaints to two of the company's "human resource directors."*

Specifically, Farpella-Crosby testified that she frequently talked to Belinda Callejo about "her problems" with Jose Blanco, telling the human resource director.

The credibility of the witnesses issues is addressed in *Scribner* at 884-885.

To prove severe emotional distress, a plaintiff must show that she suffered "more than mere worry, anxiety, vexation, embarrassment, or anger. In making this determination, courts should consider "[t]he intensity and duration of the distress." *Scribner* at 932, 933 [*Behringer v. Behringer*, 884 S.W.2d 839, 844]

Also, "the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress existed." A plaintiff need not prove, however, that her emotional distress had physical manifestations. *Villasenor v. Villasenor*, 911 S.W. 2d 411, 417.

Her torment continued almost unbroken during her entire Waffle House employment. . . . The harassment of Scribner for this period was abusive and unrelenting. Having observed her demeanor in testifying about the extreme humiliation, disgust, and despair she endured, the court is convinced that she suffered severe emotional distress. *Scribner* at 933.

Considering all of these circumstances, the court finds that Therese Scribner is entitled to recover \$358,000 as mental anguish damages.

A party seeking punitive damages must establish either "actual malice" or that the defendant's acts were accompanied by fraud or other aggravating circumstances. Actual malice, as distinguished from "legal malice" requires a showing of "ill-will, spite, evil motive or purposing the injury of another. Scribner at 933.

. . . As in other instances which require proof of the wrongdoer's state of mind, the requisite state of mind can properly be inferred from the acts and conduct of the wrongdoer. *Chandler State Bank v. Dorsey*, 797 F.2d at 237.

A plaintiff injured by defamation is entitled to recover (i) actual damages, including lost income and mental anguish, and (ii) punitive damages. *Scribner* at 935 referencing *Brown v. Petrolite Corp.*, 965 F.2d 38 (5th Cir, 1992)

PUNITIVE DAMAGES:

In *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), the Supreme Court derived these principles from its earlier decision in *Halsip*¹ and *TXO*:²

Punitive damages may properly be imposed to further a States legitimate interests in punishing unlawful conduct and deterring its repetition . . . *Halsip*, 499 U.S., at 22, 111 S.Ct., at 1045-1046.

***. . . Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument *that strong medicine is required to cure the defendant's disrespect for the law.* . . *Haslip*, 499 U.S., at 5, 111 S.Ct., at 1036, *TXO*, 509 U.S., at 453, 113 S.Ct. at 2717-2718 (116 S.Ct. at 1601).

DEFAMATION:³

Damages for defamation may be based on elements other than injury to one's reputation such as personal humiliation, embarrassment, and mental anguish and suffering.

MALICE: The intent, without justification or excuse, to commit a wrongful act. (2) Reckless disregard of the law or of a person's legal rights. (3) Ill will; wickedness of heart.

¹ *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1, 113 L.Ed.2d 1 (1991).

² *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993).

³ An example of such defamation can be found in MMS 11/15/04 Performance Review prepared by Robert T. Gordon, Jr.

ACTUAL MALICE: The deliberate intent to commit an injury, as evidenced by external circumstances – Also termed *express malice*, *malice in fact*. Cf. *implied malice*.

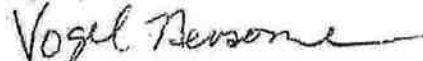
Damages Awarded in *Scribner*:

- \$119,500 – mental anguish as actual damage for defamation
- \$24,188 – Tortious interference
- 6.3M – Severe, pervasive harassment⁴
- \$1,149,504 – Punitive damages for defamation and tortious interference

Again, I will first be seeking reinstatement of employment with MMS as the law requires – MMS still has an opportunity to correct the wrongful termination and have me reinstated immediately itself. However, if MMS elects to do so without the assistance of the outside government agencies, MMS must keep in mind that I have every intention to move forward in seeking recovery for damages for the unlawful/wrongful termination. Believe the documents in MMS' possession will support just how severe, pervasive, unrelenting, etc. its harassment of me was. Moreover, that the actions by MMS was willful, malicious and wanton. MMS repeated discriminatory/retaliatory practices and its repeatedly subjecting me to a hostile work environment created by it in efforts to force me out of the workplace is unlawful – *MMS was timely, properly and duly notified of its unlawful/unethical practices, however elected not to do anything to correct them.* As a direct and proximate result of my reporting the unlawful/unethical practices, my employment with MMS has been terminated and I have been injured/harmed. It is clear from record evidence, that MMS *clearly disrespects the law and/or thinks that it is above the law.*

Thank you for your time and consideration in this matter. Should you have further questions, comments and/or want to discuss this letter, please feel free to contact me.

Respectfully,



Vogel Newsome
Post Office Box 31265
Jackson, Mississippi 39286
(601) 362-4910 or 885-9536

Enclosure

⁴ Please see MMS Employee Handbook also. Supporting MMS was aware that conduct by its employees towards me was indeed harassment. Yet MMS did nothing to deter nor discourage the unlawful practices once reported. Instead, MMS continued to seek ways to force me out of the workplace. When all such efforts to force me out of the workplace, MMS wrongfully terminated my employment for reporting violations which are protected activities.

PURDY & GERMANY, PLLC

ATTORNEYS AT LAW
587 HIGHLAND COLONY PARKWAY
RIDGELAND, MISSISSIPPI 39157

TELEPHONE (601) 969-4140
TELECOPIER (601) 960-4203

RALPH B. GERMANY, JR.
Direct Dial: (601) 914-1735
rgermany@purdygermany.com

MAILING ADDRESS:
P.O. DRAWER 1079
JACKSON, MS 39215-1079

August 18, 2003

Ms. Jane Sanders
Legal Resources, Inc.
1675 Lakeland Drive, Suite 306
Jackson, Mississippi 39216

RE: *Vogel Newsome*

Dear Ms. Sanders:

This letter follows-up my telephone conversation with your office on August 15, 2003. As you know, Bill Purdy and I just recently formed this firm. I left another firm to start this one. After leaving my previous firm, I needed a temporary secretary. For the last several weeks your office provided us with Ms. Vogel Newsome.

I have been very, very pleased with Vogel, not only in terms of her work product, but also in terms of her attitude and personality. I would rate her as one of the best legal secretaries with whom I have ever worked. I would highly recommend her to any one who is looking for a full-time legal secretary. If my previous secretary were not rejoining me, I would want Vogel to be my new permanent secretary.

If any one would care to discuss Vogel with me, please do not hesitate to give them my name and number. I will be more than happy to talk with them.

I am not certain of the exact day when my previous secretary will rejoin me. It could be immediately, or, it could be a couple of weeks. In light of that, we would like to request that we be allowed to continue to work with Vogel until further notice. However, the last thing I want to do is have Vogel miss another good opportunity that might lead to permanent employment. Therefore, if she must be reassigned, I will understand, but grudgingly so.

If you have any questions, please do not hesitate to give me a call.

Sincerely yours,

PURDY & GERMANY, PLLC


Ralph B. Germany, Jr.

RBGjr/vdn

EXHIBIT
10

LASH MARINE SERVICES, INC.

MEMORANDUM

TO: WHOM IT MAY CONCERN

FROM: Robert K. Lansden
Vice President



DATE: July 11, 1996

RE: **VOGEL D. NEWSOME**

This letter is to confirm and recommend Ms. Vogel Newsome to a position of Executive Assistant, Administrative or greater. While working with Lash Marine, she performed the duties of Executive Assistant with skill and energy. Her spirit and motivation acted as a beacon of light to others. Her leadership and training of others was a great service. Always willing to share; she possess a unique ability to teach complex skills to the beginner and bring them quickly up to speed. In addition, being a caring and concerned citizen she put aside her time to train and work with Training, Inc. employees to develop their office skills for a better future.

She is an asset and will be sorely missed at Lash Marine.

Vogel Newsome



Test Results from 11-20-02

Alphanumeric

8844 kph / 2% error rate

Typing

60 wpm / 1% error rate

Word 97

100 overall (100 on basic, intermediate
& ~~on~~ advanced)

Excel 97

100 overall (100 on basic, intermediate
& advanced)

Jane Hedglin
362-1010
Staffing Coordinator

EXHIBIT

11

11/1/04

831	1059	222	433	913
853	1102	231	453	918
853	1109	233	454	1057
913	1109	230		1058
914	1115	237		
924	1117	308		
926	1117	316		
958	1117	318		
1016	1201	323		
1019		329		
1020	134	338		
1021	136	343		
1023	147	352		
1053	148	410		
1056	205	427		
	206	429		

11/4/04

825	1014	1131	248
827	1015	1140	251
856	1023		255
856	1023	1219	320
909	1033	1227	324
909	1034	1228	326
919	1035		343
924	1049	125	346
927	1055	128	348
932	1111	158	352
936	1111	227	444
949	1112	234	445
950	1113	236	
	1114	236	
	1116	237	
	1120	247	

11/2/04

832	1204		948
838	134		949
841	149		1019
856	152		152
930	207		154
931	207		
1017	250		
1019	234		
1021	245		
1022	246		
1024	316		
1025	317		
1026	318		
1107	352		
1111	353		
1118	357		
1129	460		

11/5/04

835	1146	1200	107	943
857	1047	1201	110	950
858	1059	122	111	
911	1101	129	135	
926	1105	131	140	
939	1106	132	144	
940	1107	143	146	
959	1108	144		
959	1108	155		
1001	1125	156	200	
1001	1126	209	209	
1002	1128	210	210	
1003	1142	217	217	
1004	1147	252	252	
1038	1147	254	254	
		302	302	

11/3/04

1027 AM
really strong
energy

835	113	311	
907	116	334	
929	130-2:30-Cry card		
931	231	334	
933	234	335	
935	235		
937	236		
1000	249		
1002	250		
1026	257		
1106	258		
1152	305		
1157	305		
1158	307		
	309		

11/8/04

859	1023	223		842
901	1025	227		
902	1034	236		
915	1038	245		
917	1120	245		
954	1141	252		
955	1146	254		
1005		257		
1008	132	258		
1014	133	307		
1015	139	409		
1016	202	410		
1018	205	432		
	217	435		
	221	438		
	222			

11/9/04

829	943	144	341
835	943	148	347
844	945	149	412
846	945	200	434
846	956	212	440
846	959	239	
848	1003	241	
916	1121	251	
917	1127	254	
925	1128	255	
925	1130	259	
934	1150	303	
939	1155	305	
940	1155	340	
	1255		

11/12/04

831	239
834	241
885	242
913	256
914	256
949	315
1004	
1039	
1040	
1049	
1115	

11/10/04

1027	245
1028	250
1117	250
	258
154	259
155	304
155	306
156	308
205	311
215	312
217	315
226	317
227	
230	
241	
242	

Note
RTG came
in late send
not full
well.
RTG left early
not full
well.

11/15/04

855	1110	145
856	1131	146
941	1136	232
942	1137	239
1000	1137	410
1006	1138	412
1007	1139	415
1010	1152	416
1010	1207	456
1013	1208	
1015	126	
1055	127	
1108	136	
	143	

857
902
1052
1054
1112
1113

11/11/04

932	241	516
933	243	
955	258	
	315	
1027	322	
1118	323	
1120	324	
1122	339	
1123	355	
1143	358	
220	401	
220	408	
237	438	

11/16/04

919	218
925	305
934	313
950	338
958	345
958	352
1019	353
1024	402
	441
1026	442
202	443
214	445
216	

932

Note
Send to note
traders

11/17/04

836	105	245	844
837	1019	245	847
858	1020	306	857
859	1118	310	853
859	1202		1000
900	1207		1005
902	1222		1038
912	1223		1041
913	1229		853
928	1231		884
933	153		886
1009	210		247
1014	227		247
	241		

11/22/04

836	945	1208
837	945	300
838	948	329
841	949	355
841	950	366
843	955	421
857	958	423
858	956	425
931	1014	456
932	1016	500
935	1123	
939	1126	
944	1141	
	1206	

11/18/04

844	1001	1200	330	842	334
849	1003	1210	331	935	337
918	1003	1214	428	940	338
928	1004	1217	431	941	400
930	1004	134	431	1000	
940	1006	140	505	1025	
945	1007	142	506	1026	
946	1011	237	508	1032	
951	1012	240	525	1119	
952	1012	240		121	
952	1042	247		135	
952	1105	248		1208	
952	1140	319		1225	
953	1147	320		1226	
	1150	321		1230	
				134	

11/23/04

847	1227	252
848	1229	253
848	224	313
850	225	340
921	229	341
948	230	435
941	235	
941	235	
944	238	
943	243	
1031	244	
1147	245	
1148	245	
	247	

11/19/04

830	951	1040	235	856
832	952	1108	244	856
844	954	1109	244	924
850	955	1134	259	350
850	955	1222	300	429
852	956	1223	307	433
853	1006	1224	305	434
900	1007	140	320	436
901	1008	144	322	437
901	1009	144	324	
901	1010	145	329	
932	1024	159	342	
934	1025	218	342	
941	1029	221	344	
950	1031	223	347	
		226		

11/24/04

840	1038
850	1017
912	1049
914	1050
915	1056
915	1056
915	1128
916	218
921	220
933	
935	
954	
955	

11/29/04

836	1070	198	320	457
837	1038	198	338	
840	1108	203	348	
917	1108	223	400	
918	1114	225	401	
950	1115	249	407	
1019	1129	251	407	
1023	1131	256	407	
1025	1133	257	421	
1028	1135	308	421	
1037	1157	310	448	
1038	147	319	450	

11/30/04

831	1113	1214	302
837	1114	1214	328
845	1145	1228	330
847	1148	128	350
918	1150	140	353
919	1151	218	439
922	1201	228	441
940	1203	230	447
1051	1203	237	448
1054	1206	238	
1055		244	
		302	

12/1/04

831	940	1138	205	427
843	941	1159	206	428
844	1013	1200	209	429
846	1048	1205	238	436
846	1056	1219	243	506
847	1056	1222	309	507
850	1058	1232	310	517
850	1059		313	517
857	1108	122	324	519
857	1110	124	325	519
903	1127	125	415	
924	1135	126	416	
929	1137	128	420	
		131	424	

12/2/04

829				256
949	1029	1121	147	404
952	1038	1132	204	455
955	1043	1132	209	436
955	1048	1135	215	440
1005	1050	1135	243	456
1005	1050	1135	243	456
1014	1053	1150	254	458
1021	1056	1155	256	500
1021	1056	1270	309	
1022	1057	1232	316	
1022	1057	1232	317	
1022	1058	1232	317	
1022	1106	133	328	
1028	1109	135	330	
1028	1120	144	355	

for 2004

12/3/04

926				1022
927				1027
983				1022
983				
1026				
1029				
1142				
1143				
1200				
1202				
148				

NOTE: 1152P
was discharge
notified by LFS
1:55 began clearing out
desk as advised by LFS.



Section A. Legal Custodian

I HEREBY ATTEST, That the attached copy or copies of each document listed below is a true copy of a document in the official custody of the Department of Labor.

The attached letter dated February 25, 2005, transmitting information concerning Mitchell, McNutt & Sams, PC and the Four hundred seventeen (417) pages herewith are true and correct documents contained in an official file of the United States Department of Labor, Wage and Hour Division of which I am the custodian of records.

Signature	Official Title	Agency and Office	Date
<i>Carolyn H. Riddle</i>	<i>Carolyn H. Riddle</i>		
Carolyn H. Riddle	Regional Operations Manager	U.S. Department of Labor Wage and Hour Division	February 25, 2005
Section	Authentication Officer		

I HEREBY CERTIFY, That Carolyn H. Riddle who signed the foregoing attestation, is now and was at the time of signing (title) Regional Operations Manager and has legal custody of the official records of the United States Department of Labor therein attested and that full faith and credit should be given to his/her act as such.

IN WITNESS WHEREOF, I

Cindy L. Brown

duly designated by the Secretary of Labor as Authentication Officer of the Department of Labor, have here-unto subscribed my name and caused the seal of the Department of Labor to be affixed this 1st day of

March ~~XX~~ 2005.

Cindy L. Brown
 Authentication Officer
 Department of Labor

U.S. Department of Labor

61 Forsyth Street, S.W.
Atlanta, GA 30303

Official Business
Penalty for Private Use, \$300

Red 3/5
10/20/05



30

FIRST CLASS

3/5

Ms. Vogel Newsome
Post Office Box 31265
Jackson, MS 39286

FLSA NARRATIVE REPORT

Ms Newsome was interviewed (Exhibit B-3) during the course of this investigation. This supplemented her 26 page "Amended Retaliation Complaint"

Evidence: Interviews of Supervisor Robert Gordon, Attorney Mike Farrell, and Secretary, Ladye Margaret Townsend revealed that Ms Newsome had been rebellious and insubordinate in job duties assigned to her from the start of her employment.

EX
70
85
70

[REDACTED]'s interview (Exhibit [REDACTED]) stated that every since Ms Newsome was hired she been looking for a way to get fired to pursue a law suit. She further confirmed the event in which the baseball cap was worn and supervisor Gordon requested Ms Newsome to remove it and she was insubordinate. (Exhibit D-11...D-11-a) After this incident Ms Newsome began working on whether she was paid properly. According to [REDACTED], Newsome spent hours on research on this matter. She further confirmed that the firm did all they could to alleviate any concerns Ms Newsome had about by being paid properly under FLSA. (Exhibit D-8...D-8-h)

[REDACTED], Newsome disagreed with Attorney Farrell and told Cochauer and Townsend she was going to contact Wage Hour. [REDACTED] didn't know if Newsome did on not because nothing came of it. [REDACTED] further confirmed other events of insubordination. (Exhibit [REDACTED])

sams, PA
FLSA NARRATIVE REPORT

Further action:

[REDACTED]

EX-5

(Note) During the course of this investigation, District Director ("DD") Billy Jones retired from the department. Regional Administrator McKeon assigned Assistant District Director ("ADD") Oliver Peebles as Acting DD for the Gulf Coast District. DD Peebles has been advised through all actions of this case, and all of his instructions have been followed.

I recommend that a similar letter be sent to:

Attorney Sandy Sams, Partner
Mitchell, McNutt & Sams, P.A.
105 South Front Street
P.O. Box 7120
Tupelo, MS 38802-7120

with copies to:

Attorney Jim Allen, Executive Director
Mitchell, McNutt & Sams, P.A.
105 South Front Street
P.O. Box 7120
Tupelo, MS 38802-7120



In the Matter of:

VOGEL D. NEWSOME,

ARB CASE NO. 04-082

COMPLAINANT,

DATE: September 14, 2004

v.

MITCHELL, MCNUTT & SAMS, P.A.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:

Vogel D. Newsome, pro se, Jackson, Mississippi

FINAL DECISION AND ORDER

BACKGROUND

This case arises from a complaint filed by the Complainant, Vogel Newsome, against the Respondent, Mitchell, McNutt & Sams, P.A., for unpaid wages pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C.A. § 201 (West 1998). On March 19, 2004, the District Director of the Jackson, Mississippi office of the Department of Labor Wage and Hour Division issued a letter to the Complainant, notifying her that he found no violation of the FLSA and that the Wage and Hour Division would take no further action. On April 16, 2004, the Administrative Review Board (ARB) received a petition for review from the Complainant requesting the ARB to review the Wage and Hour Division's determination.

Because it did not appear from the face of the petition for review that the ARB had jurisdiction of the matter, the ARB ordered the Complainant to show cause why her petition for review should not be dismissed for lack of jurisdiction. The ARB explained,

“To show cause, the Complainant must demonstrate how her petition for review falls under this Board’s jurisdiction to review decisions made by the Administrator of the Wage and Hour Division (or an authorized agent of the Administrator) under Section 4 of the Secretary’s delegation of authority to the ARB.”¹

The Complainant filed a response to the Show Cause Order on July 7, 2004. For the following reasons we conclude that the ARB does not have jurisdiction to consider Newsome’s petition for review.

DISCUSSION

The Secretary of Labor established the ARB to issue final decisions for the Secretary in cases arising under a limited number of specified statutory provisions. Secretary’s Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). Accordingly, the ARB’s jurisdiction to issue such decisions is limited to the statutory provisions specifically enumerated. In this case, Newsome appeals a decision issued by the Department of Labor’s Wage and Hour Division. The Secretary of Labor has delegated authority to the ARB to review final decisions of the Administrator of the Wage and Hour Division or an approved agent of the Administrator² under:

(1) The Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.); any laws now existing or which may be subsequently enacted, providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) (except matters pertaining to safety); the Copeland Act (40 U.S.C. 276c); Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, subpart C and D.

b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of ALJ, arising under the McNamara-O’Hara Service Contract Act, as amended (41 U.S.C. 351); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) (except matters

¹ See Secretary’s Order 1-2002, Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 67 Fed. Reg. 64272 (Oct. 17, 2002).

² The Administrator of the Wage and Hour Division did not sign the letter of which Newsome seeks review, nor does the letter purport to be a final decision of the Administrator. Given our conclusion that the ARB does not have jurisdiction of this case in any event, it is not necessary for us to determine whether the letter was a final decision by an authorized agent of the Administrator.

pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 CFR parts 4, 5, 6, subparts B, D, E.

Secretary's Order 1-2002, 67 Fed. Reg. 64272 (Oct. 17, 2002). Thus, the Secretary has delegated to the Board the jurisdiction to review final decisions of the Administrator of the Wage and Hour Division only in cases arising under the statutes specified and these specified statutes do not include the FLSA.

In support of her argument that the ARB has jurisdiction of her appeal, Newsome contends that the ARB's statement in the Order to Show Cause that its jurisdiction is limited to those statutes enumerated in the Secretary's Delegation of Authority is belied by information posted on the ARB's website that states, "the Secretary delegated directly to the Administrative Review Board the authority of the Secretary of Labor and other deciding officials to issue final agency decisions under a broad range of Federal labor laws." Response to Show Cause (Resp.) at 4. The two statements are not contradictory. The variety of the subject matters of the statutes under which the ARB issues decisions for the Secretary is indeed quite broad, including, for example, environmental, airline, nuclear energy, trucking and airline whistleblower protections, federal contracts for construction and services, child labor protection, migrant and seasonal worker protection and H-1B non-immigrant employee protections. However, the Board's jurisdiction is in fact "limited," in that the Board may only issue decisions for the Secretary as specified in the Secretary's delegation of authority to the Board.³

Newsome also argues that Section 4(c)(10)-(13) of the Secretary's Order delegates to the Board authority to review decisions in cases arising under specified sections of the FLSA and its regulations. However, even if Newsome's claim fell within these enumerated sections and regulations, Section 4(c)'s delegation to the Board is limited to review of "[d]ecisions and recommended decisions by ALJs" in such cases. Newsome has petitioned for review of the letter of a Wage and Hour District Director, not from the decision of an ALJ. Therefore Section 4(c)(10)-(13) does not delegate authority to the Board to review the District Director's letter as requested by Newsome.

³ Newsome notes that the Board neglected to include a copy of the Secretary's Order of delegation with the Show Cause Order. The Board apologizes for any inconvenience caused by this omission and the necessity for Newsome to obtain a copy from the Department of Labor's website.

CONCLUSION

In response to the Board's Show Cause Order, Newsome has failed to demonstrate, nor is the Board cognizant of, any basis for asserting jurisdiction in this case. Consequently, we **DISMISS** the petition for review.⁴

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

⁴ In the event that the ARB determined that it did not have jurisdiction in this case, Newsome has requested us to forward her petition to the Secretary of Labor for her consideration. A copy of the petition will be so forwarded.

EMPLOYEE ACKNOWLEDGEMENT FORM

RECEIVED
NOV - 8 2003

The employee handbook describes important information about Mitchell McNutt, and I understand that I should consult the Chief Operations Officer regarding any questions not answered in the handbook. I have entered into my employment relationship with Mitchell McNutt voluntarily and acknowledge that there is no specified length of employment. Accordingly, either Mitchell McNutt or I can terminate the relationship at will, with or without cause, at any time, so long as there is no violation of applicable federal or state law.

Since the information, policies, and benefits described here are necessarily subject to change, I acknowledge that revisions to the handbook may occur, except to Mitchell McNutt's policy of employment-at-will. All such changes will be communicated in writing or via e-mail, and I understand that revised information may supersede, modify, or eliminate existing policies. Any revisions to the policies in this handbook must be approved by the firm's Board of Directors.

Furthermore, I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received the handbook, and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.

After this form is signed by all staff employees initially, future changes will be communicated in writing or via e-mail and this acknowledgement will be obtained as a response to the written or e-mail notification.

EMPLOYEE'S NAME (printed):

Vogel Newsome

EMPLOYEE'S SIGNATURE:

Vogel Newsome

DATE:

11-4-03

EXHIBIT
15

2004

Pay Period	# Work Days In Pay Period	# Hrs. In Pay Period @ 8 Hr. Days	MMS An Average Figure For # Hrs. In Pay Period	Gross Pay (Hrs In Pay Period x Hrly Rate)	MMS Pmt & Estimated Pmt for 2004	Money Owed
12/31/03-1/15/04	12	96	86.67	1523.52	1375.00	148.52
1/16/2004-1/30/04	11	88	86.67	1396.56	1375.00	21.56
1/31/04-2/15/04	10	80	86.67	1269.60	1375.00	-105.40
2/16/04-2/29/04	10	80	86.67	1269.60	1375.00	-105.40
3/1/04-3/15/04	11	88	86.67	1396.56	1375.00	21.56
3/16/04-3/30/04	11	88	86.67	1396.56	1375.00	21.56
3/31/04-4/15/04	12	96	86.67	1523.52	1375.00	148.52
4/16/04-4/30/04	11	88	86.67	1396.56	1375.00	21.56
5/1/04-5/15/04	10	80	86.67	1269.60	1375.00	-105.40
5/16/04-5/30/04	10	80	86.67	1269.60	1375.00	-105.40
5/31/04-6/15/04	12	96	86.67	1523.52	1375.00	148.52
6/16/04-6/30/04	11	88	86.67	1396.56	1375.00	21.56
7/1/04-7/15/04	11	88	86.67	1396.56	1375.00	21.56
7/16/04-7/30/04	11	88	86.67	1396.56	1375.00	21.56
7/31/04-8/15/04	10	80	86.67	1269.60	1375.00	-105.40
8/16/04-8/30/04	11	88	86.67	1396.56	1375.00	21.56
8/31/04-9/15/04	12	96	86.67	1523.52	1375.00	148.52
9/16/04-9/30/04	11	88	86.67	1396.56	1375.00	21.56
10/1/04-10/15/04	11	88	86.67	1396.56	1375.00	21.56
10/16/04-10/30/04	10	80	86.67	1269.60	1375.00	-105.40
10/31/04-11/15/04	11	88	86.67	1396.56	1375.00	21.56
11/16/04-11/30/04	11	88	86.67	1396.56	1375.00	21.56
12/1/04-12/15/04	11	88	86.67	1396.56	1375.00	21.56
12/16/04-12/30/04	11	88	86.67	1396.56	1375.00	21.56
		2096	2080.08	33263.52	33000.00	263.52

**Handy Reference
Guide to the
Fair Labor
Standards Act**



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1282
Revised July 1998

EXHIBIT
17

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This publication is available on the Internet on the Wage and Hour Division Home Page at the following address: http://www.dol.gov/dol/esa/public/whd_org.htm.

This material will be made available to sensory impaired individuals upon request.

Voice Phone: 202-693-0023

TDD* Phone: 1-800-326-2577

*Telecommunications Device for the Deaf

Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off instead of cash overtime pay.

Basic Wage Standards

Covered nonexempt workers are entitled to a minimum wage of not less than \$4.75 an hour, effective October 1, 1996, and not less than \$5.15 an hour, effective September 1, 1997. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular payday for the pay period covered. Deductions, made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, FLSA does *not* require:

- (1) vacation, holiday, severance, or sick pay;
- (2) meal or rest periods, holidays off, or vacations;
- (3) premium pay for weekend or holiday work;
- (4) pay raises or fringe benefits; and
- (5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commissions in excess of those required by the FLSA. However, some States do have laws under which such claims (sometimes including fringe benefits) may be filed.

Also, FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The above matters are for agreement between the employer and the employees or their authorized representatives.

Who is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

- (1) whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated); or
- (2) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
- (3) is an activity of a public agency.

Construction and laundry/dry cleaning enterprises, which had been previously covered regardless of their annual dollar volume of business, became subject to the \$500,000 test on April 1, 1990.

Any enterprise that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the \$500,000 test, continues to be subject to the overtime pay, child labor and recordkeeping provisions of FLSA.

Employees of firms which are not covered enterprises under FLSA still may be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical

and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and non-farm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural Jobs (Child Labor)

Regulations governing youth employment in non-farm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

- (1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
- (2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
- (3) Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned nonfarm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

Farm Jobs (Child Labor)

In farm work, permissible jobs and hours of work, by age, are as follows:

- (1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
- (2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
- (3) Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with a parent's written consent or on the same farm as the parent(s);
- (4) Youths under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent's written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

- (1) personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;

- (2) hour and day when workweek begins;
- (3) total hours worked each workday and each workweek;
- (4) total daily or weekly straight-time earnings;
- (5) regular hourly pay rate for any week when overtime is worked;
- (6) total overtime pay for the workweek;
- (7) deductions from or additions to wages;
- (8) total wages paid each pay period; and
- (9) date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers. Special information is required for homeworkers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.

Terms Used in FLSA

Workweek — A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked — Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek.

- (1) **Hourly rate** — (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid \$8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$8.00, or \$12.00, for each hour over 40. Pay for the week would be \$320 for the first 40 hours, plus \$48.00 for the four hours of overtime—a total of \$368.00.

- (2) **Piece rate** — The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piece-work basis works 45 hours in a week and earns \$315. The regular rate of pay for that week is \$315 divided by 45, or \$7.00 an hour. In addition to the straight-time pay, the employee is also entitled to \$3.50 (half the regular rate) for each hour over 40 — an additional \$17.50 for the 5 overtime hours — for a total of \$332.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is per-

formed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours.

The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

(3) **Salary** — the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid \$420 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$8.40 (\$420 divided by 50 hours). In addition to the salary, half the regular rate, or \$4.20 is due for each of the 10 overtime hours, for a total of \$462 for the week. If the employee works 60 hours, the regular rate is \$7.00 (\$420 divided by 60 hours). In that case, an additional \$3.50 is due for each of the 20 overtime hours, for a total of \$490 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by investigators stationed across the U.S. As Wage-Hour's authorized representatives, they conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to \$10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to \$10,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,000 for each such violation.

The FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Recovery of Back Wages

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

- (1) Wage-Hour may supervise payment of back wages.
- (2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.

Regulations Part Interpretative Bulletin On Overtime Compensation



Title 29, Part 778 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1262
Revised November 1991

EXHIBIT
18

in any workweek brings these provisions into operation. The employer is prohibited from employing the employee in excess of the prescribed maximum hours in such workweek without paying him the required extra compensation for the overtime hours worked at a rate meeting the statutory requirement.

§ 778.101 Maximum nonovertime hours.

As a general standard, section 7(a) of the Act provides 40 hours as the maximum number that an employee subject to its provisions may work for an employer in any workweek without receiving additional compensation at not less than the statutory rate for overtime. Hours worked in excess of the statutory maximum in any workweek are overtime hours under the statute; a workweek no longer than the prescribed maximum is a nonovertime workweek under the Act, to which the pay requirements of section 6 (minimum wage and equal pay) but not those of section 7(a) are applicable.

[46 FR 7309, Jan. 23, 1981]

§ 778.102 Application of overtime provisions generally.

Since there is no absolute limitation in the Act (apart from the child labor provisions and regulations thereunder) on the number of hours that an employee may work in any workweek, he may work as many hours a week as he and his employer see fit, so long as the required overtime compensation is paid him for hours worked in excess of the maximum workweek prescribed by section 7(a). The Act does not generally require, however, that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than the maximum number of hours prescribed in the Act are actually worked in the

workweek, overtime compensation pursuant to section 7(a) need not be paid. Nothing in the Act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other Federal or State law to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or workday. (The effect of making such payments is discussed in §§ 778.201-207 and 778.219.)

[46 FR 7309, Jan. 23, 1981]

§ 778.103 The workweek as the basis for applying section 7(a).

If in any workweek an employee is covered by the Act and is not exempt from its overtime pay requirements, the employer must total all the hours worked by the employee for him in that workweek (even though two or more unrelated job assignments may have been performed), and pay overtime compensation for each hour worked in excess of the maximum hours applicable under section 7(a) of the Act. In the case of an employee employed jointly by two or more employers (see Part 791 of this chapter), all hours worked by the employee for such employers during the workweek must be totaled in determining the number of hours to be compensated in accordance with section 7(a). The principles for determining what hours are hours worked within the meaning of the Act are discussed in Part 785 of this chapter.

§ 778.104 Each workweek stands alone.

The Act takes a single workweek as its standard and does not permit averaging of hours over 2 or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation

for the overtime hours worked beyond the applicable maximum in the second week, even though the average number of hours worked in the 2 weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers and employees paid on a commission basis. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers and commission employees on a weekly basis.

§ 778.105 Determining the workweek.

An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, is discussed in §§ 778.301 and 778.302.

§ 778.106 Time of payment.

There is no requirement in the Act that overtime compensation be paid weekly. The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in

which such workweek ends. When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, however, the requirements of the Act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after such computation can be made. Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid, as discussed in § 778.303. For a discussion of overtime payments due because of increases by way of bonuses, see § 778.209.

PRINCIPLES FOR COMPUTING OVERTIME PAY BASED ON THE "REGULAR RATE"

§ 778.107 General standard for overtime pay.

The general overtime pay standard in section 7(a) requires that overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may in no event be less than the statutory minimum. (The statutory minimum is the specified minimum wage applicable under section 6 of the Act, except in the case of workers specially provided for in section 14 and workers in Puerto Rico, the Virgin Islands, and American Samoa who are covered by wage orders issued pursuant to section 8 of the Act.) If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than one and one-half times such higher rate. Under certain conditions prescribed in section 7 (f), (g), and (j), the Act provides limited exceptions to the application of the

that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform.

§ 778.317 Agreements not to pay for certain nonovertime hours.

An agreement not to compensate employees for certain nonovertime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An agreement, for example, to pay an employee whose maximum hours standard for the particular workweek is 40 hours, \$5 an hour for the first 35 hours, nothing for the hours between 35 and 40 and \$7.50 an hour for the hours in excess of 40 would not meet the overtime requirements of the Act. Under the principles set forth in § 778.315, the employee would have to be paid \$25 for the 5 hours worked between 35 and 40 before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the Act. Unless the employee is first paid \$5 for each nonovertime hour worked, the \$7.50 per hour payment purportedly for overtime hours is not in fact an overtime payment.

[46 FR 7315, Jan. 23, 1981]

§ 778.318 Productive and nonproductive hours of work.

(a) *Failure to pay for nonproductive time worked.* Some agreements provide for payment only for the hours spent in productive work; the work hours spent in waiting time, time spent in travel on the employer's behalf or similar nonproductive time are not made compensable and in some cases are neither counted nor compensated. Payment pursuant to

such an agreement will not comply with the Act; such nonproductive working hours must be counted and paid for.

(b) *Compensation payable for nonproductive hours worked.* The parties may agree to compensate nonproductive hours worked at a rate (at least the minimum) which is lower than the rate applicable to productive work. In such a case, the regular rate is the weighted average of the two rates, as discussed in § 778.115 and the employee whose maximum hours standard is 40 hours is owed compensation at his regular rate for all of the first 40 hours and at a rate not less than one and one-half times this rate for all hours in excess of 40. (See § 778.415 for the alternative method of computing overtime pay on the applicable rate.) In the absence of any agreement setting a different rate for nonproductive hours, the employee would be owed compensation at the regular hourly rate set for productive work for all hours up to 40 and at a rate at least one and one-half times that rate for hours in excess of 40.

(c) *Compensation attributable to both productive and nonproductive hours.* The situation described in paragraph (a) of this section is to be distinguished from one in which such nonproductive hours are properly counted as working time but no special hourly rate is assigned to such hours because it is understood by the parties that the other compensation received by the employee is intended to cover pay for such hours. For example, while it is not proper for an employer to agree with his pieceworkers that the hours spent in down-time (waiting for work) will not be paid for or will be neither paid for nor counted, it is permissible for the parties to agree that the pay the employees will earn at piece rates is intended to compensate them for all hours worked, the productive as well as the nonproductive hours. If this is the agreement of the parties, the regular rate of the pieceworker will be the rate determined by dividing the total piecework earnings by the total hours

PART II

THE FAIR LABOR STANDARDS ACT

**COUNTY GOVERNMENTS
AND THE
FAIR LABOR STANDARDS ACT**

PREFACE

This document originally was published in 1987, and it was updated in 1992. Since that time, there have been a few changes in the law and expanded interpretations. Of particular note is the increase in the minimum wage and the change in interpretation of the salary basis test in reference to the exemption for executive, administrative or professional employees employed by governmental entities. The text of the original publication has been revised and updated to reflect these and other changes.

The advice and assistance of Mr. Robert S. Woodward of the United States Department of Labor, Wage and Hour Division, in the preparation of Part II of this manual is gratefully acknowledged.

TABLE OF CONTENTS

PREFACE	i
INTRODUCTION	1
WAGE AND HOUR OPINION LETTERS	3
WAGE AND HOUR INFORMATION ON THE WORLD WIDE WEB	3
DOL OFFICE INFORMATION	4
APPLICATION OF THE FLSA	5
NON-COVERED WORKERS	5
Elected Officials and Their Personal Staff	7
Volunteer Services	8
Prisoners	11
EXEMPT EMPLOYEES	11
Executive, Administrative and Professional Exemptions	11
The Salary Basis Requirement	12
The Primary Duty Requirement	14
Executive Employees	15
Administrative Employees	16
Professional Employees	17
Seasonal Recreational Employees	19
Public Safety Employees	19
TIME FOR PAYMENT OF WAGES	19
MINIMUM WAGE PROVISIONS	20
Deductions	20
OVERTIME PROVISIONS	22
Calculating Overtime Pay	23
Hourly Rate Employees	24
Day Rates and Job Rates	25
Employees Paid on a Salary Basis	25
Employees Working at Two or More Rates	25
On-Call Pay	26
Fixed Salary for Fluctuating Hours	26
Determination of the Applicable Workweek or Work Period	28
PUBLIC SAFETY EMPLOYEES	29
Firefighters	29
Law Enforcement Personnel	31

Employees Engaged in Both Fire Protection and Law Enforcement Activities	33
Trainees	33
Ambulance and Rescue Service Employees	33
Tours of Duty	35
Sleep Time under § 7(k)	37
Outside Employment	37
Interrelationship with Other Exemptions	38
HOSPITAL AND NURSING HOME EMPLOYEES	38
COMPENSABLE HOURS	38
Sleep Time	39
On Call Time	39
Waiting Time	40
Show-up, Call-in, or Reporting Time	41
Stand-By Time	41
Rest Periods or Breaks	41
Meal Periods	41
Training Programs	42
Travel Time	44
De Minimis Time	45
OVERTIME PAY MAY NOT BE WAIVED	45
COMPENSATORY TIME	46
Accrual of Comp Time	46
Use of Comp Time	47
Non-FLSA Comp Time	48
OCCASIONAL OR SPORADIC EMPLOYMENT	48
SUBSTITUTION	49
CHILD LABOR PROVISIONS	50
RECORDS TO BE KEPT BY EMPLOYERS	50
ENFORCEMENT AND PENALTIES	53
DEFINITIONS	55
APPENDICES	58
Coefficient Table for Computing Extra Half-Time for Overtime	
Sample Time Records	

below minimum wage, nor can the payment of overtime required by the FLSA be reduced, by the purchase of such required items.³

If the employer is required by court order to pay monies from wages to a third party under garnishment, wage attachment, or bankruptcy proceedings, such deductions from wages are permissible so long as neither the employer nor anyone acting on the employer's behalf derives any profit or benefit from the transaction.⁴ Payments so made are considered equivalent to payments of wages to the employee. Further, the FLSA does not prohibit voluntary assignment of wages by the employee to a third party provided that neither the employer nor anyone acting on the employer's behalf directly or indirectly derives any profit or benefit from the transaction.

Detailed rules for deductions from wages can be found in 29 C.F.R. § 531, and are explained in FLSA Fact Sheet No. 016, Deductions From Wages For Uniforms and Other Facilities under the Fair Labor Standards Act.

OVERTIME PROVISIONS

The FLSA requires that an employer compensate covered, non-exempt employees who work in excess of a maximum number of hours in an applicable workweek or work period on a time-and-one-half basis for all hours in excess of the number of allowable hours. As a general rule, the relevant work period is the 7-day workweek, and the maximum number of hours is 40. However, a longer work period may be used for public safety employees and hospital and similar employees if the local government follows specific procedures established by the FLSA, discussed later in this publication. If these specific procedures for establishing longer work periods are not followed, all local government employees covered by the FLSA, including firefighters and law enforcement officers, must be compensated for hours worked in excess of 40 hours in a 7-day period.

Many employees work only a part-time work schedule (e.g., 15 to 20 hours per week). Other employees work full-time but work 35 or 37½-hour workweeks. In such instances, overtime pay under the FLSA is not required to be paid to employees until they work in excess of 40 hours in a workweek. (Note, however, that the employee may be entitled to pay at the regular rate for any additional hours up to 40, depending on the employer's established policy.)

³ It is the DOL's position that non-voluntary deduction cannot be made from an employee's wages during any week the employee has worked overtime.

⁴ The requirements of Title III of the federal Consumer Credit Protection Act (the federal Wage Garnishment Law), 15 U.S.C. § 1671 et seq., and the regulations found at 29 C.F.R. part 820, must be considered when making deductions of this type. That act contains restrictions on the amount of deductions from wages that may be made for payment of debts. State garnishment law may also be followed.

\$ 30,000

$$\begin{aligned} \$30,000 &\div 2080 = 14.42 \\ &\times 1\frac{1}{2} \end{aligned}$$

$$\begin{aligned} &\$ 21.63 \text{ OT/HR} \\ &\times 5 \end{aligned}$$

\$ 108.17

5-hours OT

\$ 30,000

576.92 wk sal

$$\div 4.5 = 12.82^*$$

6.41 1/2 TIME

\$ 32.05

**Dept of Labor Wage Hour
Telephone numbers**

public 601-965-4347(8)
unlisted 601-965-5414(7)

VAL AUSTIN	14
AUDREY HALL	13
BILL JONES, ADD	12
CHARLA JORDAN	15
LOUISE KLEINSCHMIDT	11
ARNA-MILLER	16
ANGEL-PAGAN	17
LINDA WHATLEY	10
CTIS	18
FAX ROOM	19
CONFERENCE	20
RECEPTION	21

* REGULAR RATE

Terms Used in FLSA

Workweek -- A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek.

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Example: An employee paid \$8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$8.00, or \$12.00, for each hour over 40. Pay for the week would be \$320 for the first 40 hours, plus \$48.00 for the four hours of overtime--a total of \$368.00.

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Example: An employee paid on a piecework basis works 45 hours in a week and earns \$315. The regular rate of pay for that week is \$315 divided by 45, or \$7.00 an hour. In addition to the straight-time pay, the employee is also entitled to \$3.50 (half the regular rate) for each hour over 40 -- an additional \$17.50 for the 5 overtime hours -- for a total of \$332.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during nonovertime hours and must be enough to meet at least the minimum wage per hour.

- **Salary** -- the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid \$420 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$8.40 (\$420 divided by 50 hours). In addition to the salary, half the regular rate, or \$4.20 is due for each of the 10 overtime hours, for a total of \$462 for the week. If the employee works 60 hours, the regular rate is \$7.00 (\$420 divided by 60 hours). In that case, an additional \$3.50 is due for each of the 20 overtime hours, for a total of \$490 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Vogel Newsome

From: Vogel Newsome
Sent: Friday, December 19, 2003 2:45 PM
To: Rosonna Taylor
Cc: Jim Allen
Subject: OVERTIME

Rosonna,

You were going check into my concerns about possible unpaid overtime. Please provide me with the "total hours" in overtime I have been paid since September 30, 2003.

Attached for your review is a sample spreadsheet that I have created to help me determine if I am keeping track of this correctly. This is the time computed from Time Clock. Please feel free to review and let me know whether or not I have made a mistake somewhere.

Thanks.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

CONFIDENTIALITY NOTICE

This communication may be PRIVILEGED, WORK PRODUCT and/or CONFIDENTIAL. If so and you have received it in error, you are strictly and absolutely prohibited from disclosing, disseminating, producing, using or relying on it and its contents, and you are to immediately notify the undersigned by reply e-mail (including this communication with your reply) and then delete this communication and your reply from your system.

2/4/2004

EXHIBIT
22

VOGEL NEWSOME

	Hours	OT
9/30/2003	32.75	
10/6/2003	40.03	0.03
10/13/2003	40.92	0.92
10/20/2003	41.00	1.00
10/27/2003	40.62	0.62
11/3/2003	39.17	
11/10/2003	38.37	
11/17/2003	45.12	5.12
11/24/2003	42.20	2.20
12/1/2003	43.83	3.83
12/8/2003	34.85	
12/8/2003	42.88	<u>2.88</u>
	TOTAL	16.60
	Less Paid	_____
	Unpaid OT	=====

Vogel Newsome

From: Vogel Newsome
Sent: Monday, January 12, 2004 9:07 AM
To: Rosonna Murray
Cc: Jim Allen
Subject: FW: OVERTIME

Rosonna,

Just a follow-up to my Email of 12/19/03. Attached is what I have in regards to unpaid overtime. I would like to get paid this period for my overtime. I'm showing 16.56 hours.

Please also correct my time for 1/8/04 - It does not reflect my lunch. Please allow 1.25 (NOTE: Lunch has already been deducted from the time reflected on the spreadsheet.)

Thanks.

-----Original Message-----

From: Vogel Newsome
Sent: Friday, December 19, 2003 2:45 PM
To: Rosonna Taylor
Cc: Jim Allen
Subject: OVERTIME

Rosonna,

You were going check into my concerns about possible unpaid overtime. Please provide me with the "total hours" in overtime I have been paid since September 30, 2003.

Attached for your review is a sample spreadsheet that I have created to help me determine if I am keeping track of this correctly. This is the time computed from Time Clock. Please feel free to review and let me know whether or not I have made a mistake somewhere.

Thanks.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

CONFIDENTIALITY NOTICE

This communication may be PRIVILEGED, WORK PRODUCT and/or CONFIDENTIAL. If so and you have received it in error, you are strictly and absolutely prohibited from disclosing, disseminating, producing, using or relying on it and its contents, and you are to immediately notify the undersigned by reply e-mail (including this communication with your reply) and then delete this communication and your reply from your system.

2/4/2004

EXHIBIT
23

VOGEL NEWSOME

	Hours	OT	Paid
9/30/2003	32.75		
10/6/2003	40.03	0.03	
10/13/2003	40.92	0.92	
10/20/2003	41.00	1.00	
10/27/2003	40.62	0.62	1.92
11/3/2003	39.17		
11/10/2003	38.37		
11/17/2003	45.12	5.12	0.62
11/24/2003	42.20	2.20	
12/1/2003	43.83	3.83	
12/8/2003	42.88	2.88	
12/15/2003	31.23	Jury Duty	5.63
12/22/2003	39.77		
12/29/2003	46.70	6.70	
1/5/2004	41.43	1.43	
	TOTAL	24.73	
	Less Paid	<u>8.17</u>	
	Unpaid OT	<u><u>16.56</u></u>	

Vogel Newsome

From: Jim Allen
Sent: Monday, January 26, 2004 8:20 AM
To: Vogel Newsome
Subject: RE: CONFIDENTIAL -- TIMECLOCK & CALCULATION OF PAY RATE
Sensitivity: Confidential

I can't open it since it is password protected. I'll visit with you this week when I'm in Jackson. Thanks, Jim

-----Original Message-----

From: Vogel Newsome
Sent: Saturday, January 24, 2004 2:04 PM
To: Jim Allen
Subject: CONFIDENTIAL -- TIMECLOCK & CALCULATION OF PAY RATE
Importance: High
Sensitivity: Confidential

Jim,

Attached is a revised worksheet of my time pulled from Time Clock. Password is "vn54326."

In the previous worksheet, I see where the error may have occurred. I did not enter the information from pay period 11/30/03 which was paid with Check No. 38121 for 3.32 hours. After recalculating, it appears I have been paid for my overtime.

However, please review Worksheet #2 of this Spreadsheet and I will discuss with you upon your visit.

Please let me know the following:

(1) What is my hourly rate (realize I am a salaried employee - need to know how MMS determine hourly rate. See my breakdown of how I calculated rate.

(2) Need to know how MMS determine hourly rate and at what rate of pay I have been paid for each pay period (beginning 10/06/03 to present).

Thanks.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

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2/4/2004

EXHIBIT
24

Message

Vogel Newsome

From: Vogel Newsome
Sent: Wednesday, January 28, 2004 4:51 PM
To: Jim Allen
Subject: CONCERNS - UNPAID HOURS WORKED (Please See Spreadsheet IMANAGE DOC, No. 518945)
Importance: High
Sensitivity: Confidential

Jim,

This is per my conversation with you on yesterday and today regarding unpaid hours/overtime. I shared with you on both days my concerns of the substantial difference in the hours that MMS has paid me versus the hours I have actually worked. Believe I used "hidden/lost time" that is not reflected on my paycheck stubs.

You mentioned that the average per pay period is approximately 86.87. Therefore, I went back for each pay period and took the 86.67 and added the overtime hours ONLY to the 86.67. Sure enough, the computation on the paycheck stub only consisted of the 86.67 plus the actual overtime. What was absent from ALL of my paychecks were the 2.5 hours which would show 40 hours for each week where overtime occurred.

I express these concerns because (1) I believe I am a non-exempt employee, yet it appears that MMS have not paid me at all for any of the 2.5 hours in the weeks where overtime was worked (2) there is an accumulation of approximately 29.90 hours that I have worked and have not been paid at my regular hourly rate; and (3) the 6.15 in actual overtime hours that I have not been paid.

Based upon my calculations (at the hourly rate you provided), it appears that MMS has not paid me as follows:

\$474.21 (pay for straight time - based upon 29.9 x hr. pay rate)
\$146.30 (overtime pay)
TOTAL OWED/DUE - \$620.51

If indeed my figures are correct, I would appreciate your taking the time to correct this error and would like to be paid the entire amount in this paycheck.

Furthermore, because of this discovery and my concerns, I will discuss this with Bob Gordon.

Should you have further questions, please let me know.

Thank you for your assistance in this matter.

Sincerely,

Vogel Newsome
Mitchell, McNitt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

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1/28/2004

EXHIBIT
25

Vogel Newsome

From: Vogel Newsome
Sent: Thursday, February 05, 2004 5:52 PM
To: Jim Allen
Subject: RE: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)
Sensitivity: Confidential

Jim,
I will take this home and review it.
Mike talked to us today. My questions in regards to MMS paying for 40 hrs and its averaging of hours still are out there. The averaging of hours are evidenced on the paystubs. The 40 hrs. MMS says it is paying does not reflect such for pay periods with 11 to 12 working days.

Gave Mike some of the information I provided you. Mike extended to us the option to check into this. I have. If my questions are still not answered, do intend to check with the Labor Department and provide them with my paystub information.

If I worked all 12 days, etc., then I expect to be paid for them in full for each pay period.
As I shared with Bob and Mike, the Labor Department is there to look out for what is in the interest of employees.

-----Original Message-----

From: Jim Allen
Sent: Thursday, February 05, 2004 4:29 PM
To: Vogel Newsome
Cc: Mike Farrell
Subject: RE: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)
Sensitivity: Confidential

Vogel,

I'm sorry you feel that I have not been responsive to your questions. I have been busy due to the many hats I wear (I was in our Memphis office yesterday). I am not treating you any differently than any other employee, and the way I have explained the procedure to you is the way the firm has prepared payroll for years. Actually there have been some enhancements since I've taken it over. I respect your thoughts and believed that when I completed discussion with you when I was in Jackson this would conclude the issue since you informed me it would.

See answers below in bold.

-----Original Message-----

From: Vogel Newsome
Sent: Monday, February 02, 2004 4:16 PM
To: Jim Allen
Subject: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)
Importance: High
Sensitivity: Confidential

Jim,

2/5/2004

EXHIBIT 26

I have a few questions that need answers in regards to my concerns of possible workdays that I have not been paid. You have been paid a salary and any overtime due since you have been with the firm. I believe that there is a possibility that I may not have received the correct amount of pay for the past pay periods. As I shared with you in our conversation of 1/28/04, at times it is difficult for me to convey what it is that I am trying to say. Therefore, I hope putting it in writing will help clarify my concerns and help you get a better understanding of my concerns. I am still pursuing such concerns to you, pursuant to 409 Administrative Pay Corrections of the MMS Employee Handbook.

If you can answer these questions, that would be great. However, if you cannot, but know someone that can, please provide me with name, phone number, etc. I am asking these questions, with no intentions of becoming a nuisance in my quest for knowledge, to make sure that I have a full understanding of how Mitchell, McNutt & Sams, P.A.(MMS) pay non-exempt employees - In responding, please number your responses for the appropriate question(s):

1) Pursuant to 401 Timekeeping in the Employee Handbook of MMS, although we work 37.5 hour days, does MMS pay for 40 hours? As it says in the fifth paragraph of section 401 MM&S compensates "based on a 40 hour week."

2) MMS for each pay period is using Average Hours for the pay period rather than the actual work hours (i.e., for 11 workdays, total hours would be 88 - MMS pays only 86.67) the employee has worked for that pay period. If MMS is paying only for 86.67 hours, does this not compute to approximately 7.88 (when rounded) hours a day rather than 8 hours? The 86.67 "average" on the pay stub does not change the amount of salary each pay period. The salary does not change regardless of how many days are in the pay period. Employees are hired for an annual salary that is broken down into 24 pay periods. The OT is paid when an employee works in excess of 40 hours in each work week - Sunday to Saturday.

3) I am researching the use of "averaging hours." Is there a statute or rule this is based upon? If so, can you provide me with the information so that I may view it. I found a statute; however, it could be the wrong one. The one I found does not allow for averaging of hours that covers a period of two weeks or more. See attached hereto as (29 C.F.R. 778.104 - Each Workweek Stands Alone) I will have Mike Farrell give you the information about the FLSA statute since he practices in that area.

The policy in 401 of the MMS Handbook states "additional pay will not be made until the actual work hours exceed 40 hours per week at the pay rate of 1 1/2 times the straight time rate."

4) If my figure is correct, does this not compute to approximately 39.4 hours a week that MMS is paying rather than the 40 hours it states it is paying in the Employee Handbook? We have always calculated based on a 40 hour work week, as stated in the handbook.

5) Would the employee be entitled to receive compensation for 40 hours as expected based upon MMS' policy? Employees are paid based on a 40

hour week. We require a minimum of 37.5 hours of work in that week.

6) If MMS is only paying approximately 39.4 hours a week (in a work period of 11 days), are there not a loss in hours that should have been paid to the employee based on MMS' policy? There may be pay periods with 10 days and perhaps 12 days. The salary is always the same each and every pay period.

7) MMS is only paying non-exempt employees for 2080 days a year rather than 2088 days? That is hours not days : 52 weeks X 40 hours/ week = 2080 hours per year. This is the standard recognized. The other thing to consider is this does not include holidays, sick leave days, other excused leaves of absence (jury duty you had, etc.) and vacation days. The 2080 is just a standard.

8) I mentioned concerns to you in our conversation of 1/27/04 in regards to "lost hours." Can you tell me whether or not my 1/15/04, paycheck is for the pay period of 12/31/04 through 1/15/04? The January 15, 2004 paycheck was for the days 1/1/04 - 1/15/04. The two pay periods each month are the first of the month thru the 15th, and the 16th thru the end of the month.

Any OT was calculated on the weeks of 12/28 /03 - 1/3/04 and 1/4/04 - 1/10/04. OT is paid for work in excess of 40 hours in each respective week. No OT was paid for the week of 1/11/04 - 1/17/04 since the week has not been completed as of the end of the pay period, 1/15. If there is any OT for that week it will be paid the following pay period.

9) I attach for your review a sample spreadsheet for Cindy Wingate (just a name a random). This document is IManage Doc. #519021 (PASSCODE is "cindy" - in lowercase). The dates, etc. reflected in the spreadsheet are similar to mine since being with MMS. The only thing I have changed is the salary info for Ms. Wingate. If my research is correct, is Ms. Wingate entitled to unpaid wages of \$153.06? No, she is paid her salary of \$20,000 per year divided by 24 pay periods which equals \$833.33 per pay period.

10) Because MMS only pays for 2080 days a year, will Ms. Wingate's, in 2004, paycheck reflect payments for 3/31/04, 5/31/04 and 8/31/04? MMS has two payrolls each month - on the 1st thru 15th and the 16th thru the end of the month. The check arrives on the 30th of each month, except for February, but compensation is included for the 31st for those months that have 31 days in that month.

11) If MMS pays for only 2080 days in 2004, will the actual pay periods for Ms. Wingate show that MMS is not going to pay her for 16 hours (2 days work)? The spreadsheet does show 10, 11 or 12 "work days" in each pay period but there are 10 vacation days a year, 12 sick days a year, and 8 or 9 (depending on when 12/26 falls) holidays each year plus other approved leaves of absence as documented in the MMS Handbook. We do not subtract anything for those days taken. The salary stays the same each and every pay period.

12) For the 2004 pay period, will MMS pay period from 12/31/04 thru 12/30/04 using the 2080 method used by MMS, show that MMS paid her for (a) 12/31/03 in

2/5/2004

the 12/31/04 thru 1/15/04 pay period; (b) for 3/31/04 in the 3/31/04 thru 4/15/04 pay period; (c) for 5/31/04 in the 5/31/04 thru 6/15/04 pay period; and (d) for 8/31/04 in the 8/31/04 thru 9/15/04? See answer in 10 above.

13) Because MMS only provides employees with "Period End" information on its paychecks, for pay periods ending on the 15th for the month, does this include the 31st if the prior month had 31 days and the 31st fell on a workday? MMS has the second payroll of the month from the 16th to the end of the month. That payroll is made on the 30th but includes the 31st, if there is a month that has 31 days.

14) Why does MMS not provide employees with the "Period Begin" information on its paycheck/stubs?

Good question. I will ask our payroll provider to see if that information can be put on the pay stub.

Again, I am simply trying to get an understanding as to how MMS computes wages for non-exempt employees.

I have been thorough in answering the questions. I hope this gives you a full "understanding."

If my research on information is correct and my spreadsheet calculation prepared at IManage Doc. No. 518945 for myself is correct (I provided you with the password for this document in my 1/24/04 email to you), I would appreciate MMS submitting a check for this amount or the corrected amount based upon the information it provided. However, if MMS is aware that my computation is incorrect and I am due more than the calculation provided (or less), please provide me with the data information used to compute the information.

Vogel, your compensation has been calculated accurately, just as everyone else's has been.

Thanks you for your time and consideration in this matter. You're welcome.

Sincerely,

Vogel Newsome

Mitchell, McNutt & Sams, P.A.

Post Office Box 3647

Jackson, Mississippi 39207

2/5/2004

Message

Page 5 of 5

Phone: 601/932-4311

Facsimile: 601/932-4228

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2/5/2004

Vogel Newsome

From: Vogel Newsome
Sent: Friday, February 06, 2004 10:38 AM
To: Jim Allen
Subject: RE: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)
Importance: High
Sensitivity: Confidential

Jim:

Thank you for your response.

Please be advised that I intend to take Mike (MMF) up on his advice and contact the Labor Department to get a better understanding of MMS method of paying **NON-Exempt** employees.

Your recent response and responses in prior conversations have confirmed the following (if the following is not accurate, please advise - this is some of the information I intend to provide to the Department of Labor):

- (1) I am a **NON-Exempt** Salaried Employee.
- (2) MMS has been paying me as though I am an EXEMPT Employee (rather than **NON-Exempt**). MMS has been paying me each pay period an **Average** of 86.67 Hours regardless of the number of days and hours worked. MMS has been paying me for only 86.67. **AVERAGING OF HOURS** used by MMS is not in compliance with the FLSA and is not to be used on **NON-Exempt** Salaried Employees. See (29 C.F.R. 778.104 - Each Workweek Stands Alone).
- (3) MMS states in its Employee Handbook that it is paying its employees for 40 hours a week (although they work 37.5).
- (4) MMS is not paying me (a non-exempt employee) for 40 hours a week. When the pay period includes: (a) 12 working days - which is a total of 96 hours for the pay period, MMS is only paying approximately for 7.22 hours a day - this is approximately a total of 36.1 hours a week - the difference being approximately 3.9 hours that non-exempt employees have lost and not paid for; and (b) 11 working days - which is a total of 88 hours for the pay period, MMS is only paying approximately for 7.87 hours a day - this is approximately a total of 39.40 hours a week - the difference being approximately .60 in time employee has lost and not paid for.
- (5) MMS is only paying its **NON-Exempt** employees for 2080 hours a year - EVERY

2/6/2004

EXHIBIT
27

Year.

- (6) There were 2088 workday hours in 2003 - MMS only paid NON-Exempt employees for 2080 - holding to the same regimen as though they are Exempt employees. So regardless of how many hours the non-exempt employees worked, MMS held them to 86.67 hours each and every pay period.
- (7) In 2004, MMS intends to pay its NON-Exempt salaried employees for 2080 hours although there are approximately 2096 hours in 2004. Therefore, MMS' non-exempt employees will lose approximately 16 hours of pay.
- (8) MMS believes that because it has used the same computation in determining non-exempt employees pay for years that it is acceptable or okay. MMS will continue to use this method until told otherwise by the proper agency to correct any/all errors it may have in paying its employees.

Because of my concerns, I took Bob's (RTG) advice and decided to talk to someone in the legal profession (an attorney) to determine whether or not I am understanding the statute/codes correctly in regards to the FLSA. The attorney confirmed my understanding is correct. Based upon the information I provided, was advised that if indeed MMS is doing this, non-exempt employees would be entitled to the lost wages withheld, etc. and MMS required to comply with the FLSA in regards to wages. This being the case, I can now understand why MMS would want me to think that I was wrong.

I also decided to also talk to a person who handles the payroll for the company he/she works for to see if I had an understanding of the FLSA requirements. This person confirmed that I did.

Yet Jim, from the responses to my concerns, you are still telling me that MMS in paying its NON-Exempt salaried employees in compliance with the FLSA.

Mike (MMF) spoke with us on yesterday to explain how MMS computes the overtime pay for employees. I shared with Mike I believe I understand how overtime is to be computed. Mike presented us with documentation and then discussed overtime pay using "Chinese Overtime" computation. While I am not familiar with that (Chinese Overtime) term, if MMS is going to use that method, then I will have to check into this as well - to see if it is in compliance with the FLSA - to see what type of employees (factory, salaried non-exempt, etc.) that such computation is to be used on.

Mike also provided us with phone numbers he had of those who could answer questions for us. As I shared with Mike, he is talking to us with the interest of MMS in mind, and not as to the concerns of the employee. That it is the Labor Department that will be able to better answer my questions - because they have the interest of the employees at heart.

Therefore, if by Monday, February 9, 2004, I have not been compensated for the lost

2/6/2004

wages and hours I have advised you that I have concerns about under the FLSA, I will be taking this matter to the Labor Department for review.

Again, thank you for your time.

Sincerely,

Vogel Newsome

-----Original Message-----

From: Vogel Newsome

Sent: Thursday, February 05, 2004 5:52 PM

To: Jim Allen

Subject: RE: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)

Sensitivity: Confidential

Jim,

I will take this home and review it.

Mike talked to us today. My questions in regards to MMS paying for 40 hrs and its averaging of hours still are out there. The averaging of hours are evidenced on the paystubs. The 40 hrs. MMS says it is paying does not reflect such for pay periods with 11 to 12 working days.

Gave Mike some of the information I provided you. Mike extended to us the option to check into this. I have. If my questions are still not answered, do intend to check with the Labor Department and provide them with my paystub information.

If I worked all 12 days, etc., then I expect to be paid for them in full for each pay period.

As I shared with Bob and Mike, the Labor Department is there to look out for what is in the interest of employees.

-----Original Message-----

From: Jim Allen

Sent: Thursday, February 05, 2004 4:29 PM

To: Vogel Newsome

Cc: Mike Farrell

Subject: RE: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)

Sensitivity: Confidential

Vogel,

I'm sorry you feel that I have not **been responsive** to your questions. I **have been busy due** to the many hats I wear (I was in our Memphis office yesterday). I **am not treating you any differently** than any other employee, and the way I **have explained the procedure to you is the way the firm has prepared payroll** for years. Actually there have been some enhancements since I've taken it over. I respect your thoughts and believed that when I completed discussion with you when I was in Jackson this would conclude the issue since you informed me it would.

See answers below in bold.

-----Original Message-----

From: Vogel Newsome

Sent: Monday, February 02, 2004 4:16 PM

To: Jim Allen

2/6/2004

Subject: LOST WAGES/HOURS MATTER (Please see Sample Spreadsheet IManage Doc. 519021 - Cindy Wingate - referenced herein)
Importance: High
Sensitivity: Confidential

Jim,

I have a few questions that need answers in regards to my concerns of possible workdays that I have not been paid. **You have been paid a salary and any overtime due since you have been with the firm.** I believe that there is a possibility that I may not have received the correct amount of pay for the past pay periods. As I shared with you in our conversation of 1/28/04, at times it is difficult for me to convey what it is that I am trying to say. Therefore, I hope putting it in writing will help clarify my concerns and help you get a better understanding of my concerns. I am still pursuing such concerns to you, pursuant to 409 Administrative Pay Corrections of the MMS Employee Handbook.

If you can answer these questions, that would be great. However, if you cannot, but know someone that can, please provide me with name, phone number, etc. I am asking these questions, with no intentions of becoming a nuisance in my quest for knowledge, to make sure that I have a full understanding of how Mitchell, McNutt & Sams, P.A.(MMS) pay non-exempt employees - In responding, please number your responses for the appropriate question(s):

1) Pursuant to 401 Timekeeping in the Employee Handbook of MMS, although we work 37.5 hour days, does MMS pay for 40 hours? As it says in the fifth paragraph of section 401 MM&S compensates "based on a 40 hour week."

2) MMS for each pay period is using Average Hours for the pay period rather than the actual work hours (i.e., for 11 workdays, total hours would be 88 - MMS pays only 86.67) the employee has worked for that pay period. If MMS is paying only for 86.67 hours, does this not compute to approximately 7.88 (when rounded) hours a day rather than 8 hours? The 86.67 "average" on the pay stub does not change the amount of salary each pay period. The salary does not change regardless of how many days are in the pay period. Employees are hired for an annual salary that is broken down into 24 pay periods. The OT is paid when an employee works in excess of 40 hours in each work week - Sunday to Saturday.

3) I am researching the use of "averaging hours." Is there a statute or rule this is based upon? If so, can you provide me with the information so that I may view it. I found a statute; however, it could be the wrong one. The one I found does not allow for averaging of hours that covers a period of two weeks or more. See attached hereto as (29 C.F.R. 778.104 - Each Workweek Stands Alone) I will have Mike Farrell give you the information about the FLSA statute since he practices in that area.

The policy in 401 of the MMS Handbook states "additional pay will not

2/6/2004

be made until the actual work hours exceed 40 hours per week at the pay rate of 1 1/2 times the straight time rate."

4) If my figure is correct, does this not compute to approximately 39.4 hours a week that MMS is paying rather than the 40 hours it states it is paying in the Employee Handbook? We have always calculated based on a 40 hour work week, as stated in the handbook.

5) Would the employee be entitled to receive compensation for 40 hours as expected based upon MMS' policy? Employees are paid based on a 40 hour week. We require a minimum of 37.5 hours of work in that week.

6) If MMS is only paying approximately 39.4 hours a week (in a work period of 11 days), are there not a loss in hours that should have been paid to the employee based on MMS' policy? There may be pay periods with 10 days and perhaps 12 days. The salary is always the same each and every pay period.

7) MMS is only paying non-exempt employees for 2080 days a year rather than 2088 days? That is hours not days : 52 weeks X 40 hours/week = 2080 hours per year. This is the standard recognized. The other thing to consider is this does not include holidays, sick leave days, other excused leaves of absence (jury duty you had, etc.) and vacation days. The 2080 is just a standard.

8) I mentioned concerns to you in our conversation of 1/27/04 in regards to "lost hours." Can you tell me whether or not my 1/15/04, paycheck is for the pay period of 12/31/04 through 1/15/04? The January 15, 2004 paycheck was for the days 1/1/04 - 1/15/04. The two pay periods each month are the first of the month thru the 15th, and the 16th thru the end of the month.

Any OT was calculated on the weeks of 12/28 /03 - 1/3/04 and 1/4/04 - 1/10/04. OT is paid for work in excess of 40 hours in each respective week. No OT was paid for the week of 1/11/04 - 1/17/04 since the week has not been completed as of the end of the pay period, 1/15. If there is any OT for that week it will be paid the following pay period.

9) I attach for your review a sample spreadsheet for Cindy Wingate (just a name a random). This document is IManage Doc. #519021 (PASSCODE is "cindy" - in lowercase). The dates, etc. reflected in the spreadsheet are similar to mine since being with MMS. The only thing I have changed is the salary info for Ms. Wingate. If my research is correct, is Ms. Wingate entitled to unpaid wages of \$153.06? No, she is paid her salary of \$20,000 per year divided by 24 pay periods which equals \$833.33 per pay period.

10) Because MMS only pays for 2080 days a year, will Ms. Wingate's, in 2004, paycheck reflect payments for 3/31/04, 5/31/04 and 8/31/04? MMS has two payrolls each month - on the 1st thru 15th and the 16th thru the

end of the month. The check arrives on the 30th of each month, except for February, but compensation is included for the 31st for those months that have 31 days in that month.

11) If MMS pays for only 2080 days in 2004, will the actual pay periods for Ms. Wingate show that MMS is not going to pay her for 16 hours (2 days work)? The spreadsheet does show 10, 11 or 12 "work days" in each pay period but there are 10 vacation days a year, 12 sick days a year, and 8 or 9 (depending on when 12/26 falls) holidays each year plus other approved leaves of absence as documented in the MMS Handbook. We do not subtract anything for those days taken. The salary stays the same each and every pay period.

12) For the 2004 pay period, will MMS pay period from 12/31/04 thru 12/30/04 using the 2080 method used by MMS, show that MMS paid her for (a) 12/31/03 in the 12/31/04 thru 1/15/04 pay period; (b) for 3/31/04 in the 3/31/04 thru 4/15/04 pay period; (c) for 5/31/04 in the 5/31/04 thru 6/15/04 pay period; and (d) for 8/31/04 in the 8/31/04 thru 9/15/04? See answer in 10 above.

13) Because MMS only provides employees with "Period End" information on its paychecks, for pay periods ending on the 15th for the month, does this include the 31st if the prior month had 31 days and the 31st fell on a workday? MMS has the second payroll of the month from the 16th to the end of the month. That payroll is made on the 30th but includes the 31st, if there is a month that has 31 days.

14) Why does MMS not provide employees with the "Period Begin" information on its paycheck/stubs?

Good question. I will ask our payroll provider to see if that information can be put on the pay stub.

Again, I am simply trying to get an understanding as to how MMS computes wages for non-exempt employees.

I have been thorough in answering the questions. I hope this gives you a full "understanding."

If my research on information is correct and my spreadsheet calculation prepared at IManage Doc. No. 518945 for myself is correct (I provided you with the password for this document in my 1/24/04 email to you), I would appreciate MMS submitting a check for this amount or the corrected amount based upon the information it provided. However, if MMS is aware that my computation is incorrect and I am due more than the calculation provided (or less), please provide me with the data information used to compute the information.

Vogel, your compensation has been calculated accurately, just as everyone else's has been.

Thanks you for your time and consideration in this matter. You're welcome.

Sincerely,

Vogel Newsome

Mitchell, McNutt & Sams, P.A.

Post Office Box 3647

Jackson, Mississippi 39207

Phone: 601/932-4311

Faeximile: 601/932-4228

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2/6/2004

Vogel Newsome

From: Ladye Margaret Townsend
Sent: Thursday, February 26, 2004 2:39 PM
To: Vogel Newsome
Subject: RE: misc

LOL - I thought that you meant to spell it like that -

-----Original Message-----

From: Vogel Newsome
Sent: Thursday, February 26, 2004 1:58 PM
To: Ladye Margaret Townsend
Subject: RE: misc

Well I guess I meant to say wound(s) not womb(s).

-----Original Message-----

From: Ladye Margaret Townsend
Sent: Thursday, February 26, 2004 1:55 PM
To: Vogel Newsome
Subject: RE: misc

He is stomping and rushing around like he was the one expecting a baby!!!

-----Original Message-----

From: Vogel Newsome
Sent: Thursday, February 26, 2004 1:54 PM
To: Ladye Margaret Townsend
Subject: RE: misc

Where were you? Nowhere to be found. Abandoned, wombed, etc. - I was left to fend for myself.

I am now in recovery - attending to my womb(s) - Smile.

-----Original Message-----

From: Ladye Margaret Townsend
Sent: Thursday, February 26, 2004 1:51 PM
To: Vogel Newsome
Subject: RE: misc

I agree.

-----Original Message-----

From: Vogel Newsome
Sent: Thursday, February 26, 2004 1:48 PM
To: Ladye Margaret Townsend
Subject: RE: misc

Not sure - however, I have to keep going. He was so quick to jump the gun - he didn't wait for an explanation.

When a person is like that, I realize it is best just to be silent.

I know how he is and would not deliberately do something like that.

I thought we were coming right back.

3/2/2004

EXHIBIT
28

Hopefully, its now in the catagory as - Water under the bridge.
He was frustrated. hopefully, he will be okay.

-----Original Message-----

From: Ladye Margaret Townsend
Sent: Thursday, February 26, 2004 1:39 PM
To: Vogel Newsome
Subject: misc

Mike just came by my desk and wanted to know if Bob had ever calmed down - he said we weren't gone that long!

3/2/2004

Mitchell, McNutt & Sams

Performance Review

NAME: YOGEL NEWSOME Rating period 10/1/03 to 9/30/04

Record the rating that best describes this employee's performance in the blank space provided using the rating numbers shown below. The space on the right should be used to make any appropriate comments.

- 1. Outstanding
- 2. Above position requirements
- 3. Meets position requirements
- 4. Acceptable relative to position requirements
- 5. Needs significant improvement
- 6. Not acceptable

Comments

- 1. Speed of work production:
consider all functions,
typing, phone, filing, etc 5.00 _____
- 2. Neatness and accuracy:
quality of work 3.50 _____
- 3. Prompt completion of
assignments 4.50 _____
- 4. Promptness & attendance:
Is employee on time each
day? Is the attendance
record good? 3.00 _____
- 5. Accepting responsibility:
carrying out instructions 5.00 _____
- 6. Cooperating with other
employees: Does he/she
help out? Volunteer for
extra work? 3.50 _____
- 7. Clients: Does he/she make
visitors and callers feel
comfortable and at ease? 3.00 _____
- 8. Cooperation with superiors:

511778-1

EXHIBIT

29

- Does he/she perform assignments willingly? 6.00 _____
- 9. Housekeeping: Does he/she keep work areas neat? 3.00 _____
- 10. Telephone: Does he/she answer competently and present a good image? 2.00 _____
- 11. Knowledge of job: Closeness of supervision, required initiative 3.50 _____
- 12. Flexibility and adaptability to new situations 5.00 _____
- 13. Friendliness: Is he/she composed, collected and pleasant? 4.00 _____
- 14. Appearance and personal habits: Is he/she neat? 1.00 _____

OVERALL PERFORMANCE RATING: Consider all major work activities, their relative importance, the result actually achieved on goals set, and performance ratings assigned to each activity. On the basis of all this information, select the overall rating that best describes total performance. 5

Comments: _____

This evaluation was shown to and discussed with on _____

I wish to make the following comments relative to the above evaluation:

Rating Supervisor [Signature] Date 11/15/04

Rated Employee _____ Date _____

will not sign 11/30/04
J. T. Allen

PERFORMANCE REVIEW

VOGEL NEWSOME

10/1/03 - 9/30/04

COMMENTS

R. W. Jordan

11/15/04

Appearance and Personal Habits

Outstanding, except there were occasions during
 his 2nd 7th evaluation period when Friday
 attire was too casual.

Telephone Practice

Above position requirements

Dealings with Clients

Meets position requirements

All contacts with clients have been by
 telephone

Has had very limited contacts with clients.

Dealings with Courts

Acceptance

That as familiar with court systems, rules, procedures and practice as needs to be as a litigation legal secretary.

Improvement needed.

Dealings with Other Lawyers

Meet position requirements.

Dealings with Others/Public

Meet position requirements.

Computer Knowledge and Skills

Outstanding

Word Processing Skills

Accuracy of transcription of text which includes

Meets position requirements.

Accuracy of Typing

Meets position requirements.

Consistency of Handwritten Revisions to Transcription

Acceptable

Improvement needed

Speech

Needs significant improvement

Example, on occasions when some
 sort of dictation to secretarial pool,
 transcription has been done, and
 nearly completed in substantially
 less time than it takes Vegas (and
 pool secretaries are not familiar
 with the matter, my style or
 my dictation style)

Programming

Acceptable

Improvement needed

Filing

Filing

Needs significant improvement

Until recently, two or three, or more, weeks filing would ordinarily accumulate. Very often would have to devote large portion of time to getting filing up to date.

This requires transcription of dictation be sent to secretarial post.

Until at least recently, it has taken very an excessive amount of time to do filing

On one occasion, at least, took an substantial an entire week to get accumulated filing done. Could have taken two, perhaps three, days

Some occasions has placed filing base in better order than others.

Some instances of misfiling of documents

Maintenance of files

Acceptable To needs significant improvement

Folders often remain out of file an excessive period of time upon use of folders being completed and returned for filing.

Needs to give more attention and take more initiative to maintain folders in files in an orderly manner.

Familiarity with/Knowledge of Matters

Acceptable To needs significant improvement

Has not acquired expected familiarity with or knowledge of matters - policies; lawyers; subject matter.

Productivity

Shows significant improvement

Does not exhibit good, necessary work ethic

Does not demonstrate that places sufficient priority on work

Primarily works at a moderate, regulated pace.

Resists working at a more productive pace

Spends excessive amount of time on personal telephone calls.

During substantial portion of evaluation period, spent excessive amount of time on personal use of computer

Illustrative of foregoing,

Filing accumulating for two - three weeks, perhaps more, as previously described

Taking excessive amount of time to do filing, as previously described

Poor secretaries completing transcription of dictation in substantially less time than Voger, as previously described

Deficiencies in productivity are both

Time it takes to complete a given job or task

Overall volume or quantity of work performed

Would be able to take on and perform more ~~than~~ legal administrative tasks if more productive

As should be.

Defiant, Subversive, Hostile and/or Unprofessional Conduct

1. On an occasion in late February 2004, I had a motion and supporting memorandum I had to complete and get in the mail on a given day. On that day, we were working on it, and near the lunch hour, I told Vogel it would be necessary to shorten the lunch hour in order to be sure we got the motion and memorandum completed, copied and in the mail that day. I told her she could go out and pick-up something and bring it back to the office. She protested. She then went with Mike and Lady M., saying she was going to get something and bring it back. She did not return for 45 minutes or more, returning with Mike and Lady M., having eaten lunch. Her explanation was that she thought they were going to pick something up and bring it back to the office.

2. In the late winter or early spring of 2004, Vogel wore a baseball cap style hat to work on several Fridays. Then, on a Thursday, I told her that such a hat is not appropriate for the office - a law office - even on a casual Friday, and not to wear it to the office. She did not object or protest. However, the next day, a Friday, she wore that hat to the office. I instructed her to take it off, and she refused to do so.

The significance of this is not, as such, the wearing of a baseball style cap or hat to the office. The significance is that Vogel was given an instruction, she defied it, she then was given the same instruction, and she defied it again.

(She did not again wear the hat after the Friday.)

3. In May of 2004, upon the firm relocating to its new office in Jackson, I instructed Vogel to set-up an In-Tray and an Out-Tray for me to direct or give work to and for her to return or give completed work to me. A procedure for my routing work to her and her routing completed work to me. A procedure or system that had been used

at the former office location. She objected and refused to do so on multiple occasions until being told to do so in no uncertain terms.

4. In early March of 2004, following the occasion referred to in Item 1, ~~Vogel~~ and following an exchange of e-mails, Vogel placed on my calendar on Outlook reminders of her morning and afternoon breaks. She placed these reminders on every work day for an indefinite or infinite period of time into the future. Thus, my calendar was taken-up with her daily reminders of her breaks, morning and afternoon. I did not request or authorize her to put these reminders on my calendar. (I instructed her to remove them, and she did so.)

5. When I give her an assignment, for example, a letter or pleading, and she is told her that it has to be completed by a certain time, she often responds, "I'll try."

"I'll do my best," "if I can," or words to that effect, when there is more than sufficient time to do it. She will say this in such a manner as to indicate that she will do so if suitable to her.

b. On occasions I will ask Vagor if we have, or where one located, certain items or supplies in the office. She will tell me she doesn't know or where she thinks the item is located, but she will not undertake, or offer to undertake, to go out and get the item and bring it to me. However, on occasions, I will ask if and how a particular function can be performed on the computer, especially with e-mail. She will explain, usually, a procedure to do it, but she will not offer to do it or show me how to do it, even though she knows I have limited familiarity with computers.

In contrast, there have been times when I have asked Vagor M. about whether we have a particular item or supply in

to use and without my further asking,
she will get up and go get it for me.

As such, I am not comparing Vogel and
Lady M. Rubin, the point is that what
Lady M. did, as distinct from what Vogel
did, is what a cooperative, good legal
secretary does so that the lawyer can
continue to devote his time and attention
to legal matters.

Multiple Concurrent Tasks

Has demonstrated greater than expected difficulty prioritizing, managing and completing multiple concurrent tasks.

Requires greater degree of instruction and supervision

Sometimes requests instructions when should not have to do so.

Supervision

Requires high degree of instruction, supervision and monitoring

Often resists and shows resentment toward instruction or supervision

Vogel Newsome

From: Vogel Newsome
Sent: Friday, February 27, 2004 11:12 AM
To: Rosonna Murray
Cc: Jim Allen
Subject: TIMECLOCK - Please allow 35 minutes for lunch 2/26/04

Rosonna:

Bob wanted me to work through lunch (wanted me to work through lunch - pick up and bring back). Had incident where Bob got upset with me for going and not coming right back. I went with Mike and Ladye Margaret and thought we were coming right back. When I returned, Bob talked to me and expressed his frustration because I did not come right back. When I left, I thought we were coming right back and did not find out until I got to the place Mike was not coming right back. Bob made it very clear to me that he was frustrated and not pleased with what happened although I had no idea we were not coming right back. Bob did not allow me an opportunity to explain what happened.

FMI (For My Information), could you find out whether or not I did anything wrong in regards to this matter. I know I am entitled to lunch as well as breaks (which are not always taken). I came in early because Bob requested that I do so. Despite my good intentions of doing so, all went out the window for 35 minutes. So please check on this for me and get back.

Thanks!

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

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2/27/2004

EXHIBIT
30

Vogel Newsome

From: Vogel Newsome
Sent: Monday, March 08, 2004 8:28 AM
To: Bob Gordon
Subject: RE: Break Reminders

I have reminders on my calendar (mail, etc.). I realized that I have not been taking the recommended breaks. While you may feel that it is uncalled for, it has been placed on my calendar to remind me. You were provided with a notification of this as an FYI. While I understand that there are times that special incidences may arise, I believe for my information, I need to keep track of such times for my information - Project working on and deadline of such. I am certain that such breaks, etc. were created and designed with the interest of employees in mind. One can be better productive with the proper rest, lunch, etc.

Will reset on my calendar - with you excluded.

-----Original Message-----

From: Bob Gordon
Sent: Sunday, March 07, 2004 12:52 PM
To: Vogel Newsome
Cc: Jim Allen
Subject: Break Reminders

I received your reminders about morning and afternoon break periods.

The reminders were not necessary. Your placing continuing daily reminders of morning and afternoon breaks on my calendar was particularly uncalled for. There has not been, and is not, any question about these breaks.

In our initial interview, I explained, and you agreed, that the nature of the practice of law is such that there will be occasions when it will be necessary to come in before and/or stay beyond the normal office hours of 8:30 a.m. to 5:00 p.m. to meet deadlines or demands. The same is true with regard to morning and afternoon break periods. There will be occasions when the demands of the work will require that break time be changed, or the taking of a break be adjusted, or a break not taken.

You should cancel or remove all of the break reminders you put on my calendar.

Robert T. Gordon, Jr.
Mitchell, McNutt & Sams, P.A.
P.O. Box 3647
Jackson, MS 39207-3647
1080 River Oaks Dr., Ste. A280
Flowood, MS 39232
Tel. (601) 932-4311
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bgordon@mitchellmcnutt.com

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3/8/2004

EXHIBIT 31

Vogel Newsome

From: Vogel Newsome
Sent: Friday, April 23, 2004 11:01 AM
To: Bob Gordon
Cc: Jim Allen
Subject: CAP ISSUE

Per your concerns in regards to my wearing a casual cap, if you feel that this is not appropriate although my dress (shirt and skirt are), I have no problems replacing the current cap with a prayer covering type cap (one that tightly fits down over my hair and is often seen worn by women church services). Such caps are business-casual if you do not find that the one I am currently wearing is not.

However, as I shared with you, there are times when my hair is not fixed and I am not comfortable with the way I look. So I cover it.

Let me know what you suggest the casual cap (which is not a baseball cap) or the prayer caps.

Thank you.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

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4/23/2004

EXHIBIT 32

Message

Page 1 of 1

Vogel Newsome

From: Jim Allen
Sent: Monday, June 07, 2004 9:30 AM
To: Vogel Newsome
Subject: Memo

Vogel,

Attached is a memo for you.
Thanks
JTA

6/7/2004

EXHIBIT
33

Memorandum

To: Vogel Newsome
From: Jim Allen
Date: 6/7/2004
Re: Clarifying Work Related Issues

Vogel,

You have stated that you have or will file complaints with various federal agencies. You have the right to do so, and the firm has not interfered with, and does not intend to interfere with, your doing so. However, your filing these complaints is not a business related activity but a personal activity. You must discontinue working on your complaints in the office and, particularly, during working hours.

Your complaints, then, can and will be resolved through these agencies. In the meantime, the practice of the firm must continue and your work must be done.

You consistently have responded to work-related requests or instructions in a hostile and obstructive manner, refusing to do so until we were forced to give you ultimatums before you would comply. This insubordinate conduct must cease.

You must be respectful, courteous, cooperative, and professional in your dealing with others in the office and the firm, as well as clients and others outside the firm, responsive and productive in your work, and present an attitude that contributes to a positive atmosphere.

Jim Allen,
Executive Director

Vogel Newsome

From: Vogel Newsome
 Sent: Monday, June 07, 2004 5:47 PM
 To: Jim Allen
 Subject: FW: Memo

FYI:

Your email has been forwarded on to OSHA along with my concerns as to the nature of same. I advised OSHA of my concerns that your elaborate email was distributed the day prior to MMS's deadline (June 8, 2004) to respond to my complaint.

Felt email was discriminatively applied. For instance, when I began submitting my concerns to you/MMS regarding RTG's behavior, MMS did not create or distribute such an elaborate Memorandum as provided with your email on today for the way I advised you I was and am being treated.

Moreover, I had addressed how RTG uses the weekend to dictate and then submit. I have recently been tracking such as the attached will indicate - length of dictation. However, on yesterday, RTG dictated a job well over 1 hour in length. Mass dictation job and your email of today, leaves me with what I believe to be valid concerns of MMS continued unlawful practices and efforts of justifying its behavior. This job was not sent to the typing pool at all - but submitted to me for typing. While I have already addressed why such behavior is done, MMS is aware of same. From your email of today, gathered you were aware of this as well.

Creation and History of document is noted below as well for my response and record.

User	Appch	Activity	Date - Time	Duration	Project Path	Location
VNEWSOME	MANAGE32	View	6/7/2004 5:25:05 PM	0:00		0 SVW8841
VNEWSOME	MANAGE32	Print	6/7/2004 5:19:10 PM	0:00		0 SVW8841
VNEWSOME	MANAGE32	View	6/7/2004 11:57:07 AM	0:00		0 SVW8841
VNEWSOME	MANAGE32	Checkout	6/7/2004 8:51:14 AM	0:00		0 SVW8841
VNEWSOME	MANAGE32	View	6/7/2004 8:51:09 AM	0:00		0 SVW8841
VNEWSOME	MANAGE32	View	6/4/2004 2:29:00 PM	0:00		0 SVW8841
VNEWSOME	MANAGE32	View	6/4/2004 2:28:49 PM	0:00		0 SVW8841
VNEWSOME	MANAGE32	View	6/4/2004 2:28:23 PM	0:00		0 SVW8841
VNEWSOME	MANAGE32	Checkout	6/4/2004 2:28:09 PM	0:11		0 SVW8841
VNEWSOME	MANAGE32	View	6/4/2004 2:27:01 PM	0:00		4 SVW8841
VNEWSOME	MANAGE32	Checkout	6/4/2004 2:26:16 PM	0:00		0 SVW8841
VNEWSOME	MANAGE32	View	6/4/2004 2:26:05 PM	0:00		0 SVW8841
VNEWSOME	MANAGE32	View	5/27/2004 9:30:35 AM	0:00		0 SVW8841
VNEWSOME	MANAGE32	Checkout	5/27/2004 9:30:15 AM	0:00		0 SVW8841
VNEWSOME	MANAGE32	Checkout	5/27/2004 9:30:05 AM	0:00		0 SVW8841
VNEWSOME	MANAGE32	Checkout	5/27/2004 9:29:55 AM	0:00		0 SVW8841
VNEWSOME	MANAGE32	Checkout	5/27/2004 9:29:45 AM	0:00		0 SVW8841
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VNEWSOME	MANAGE32	Checkout	5/27/2004 9:29:25 AM	0:00		0 SVW8841
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Vogel Newsome
 Mitchell, McNitt & Sams, P.A.
 111 E. Capitol Street, Suite 290
 P. O. Box 3647
 Jackson, MS 39207-3647

6/7/2004

Message

Page 3 of 4

(601) 948-8508
(601) 948-8537

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From: Vogel Newsome
Sent: Monday, June 07, 2004 9:59 AM
To: Jim Allen
Subject: RE: Memo

Jim:

FYI - I am forwarding a copy of your email of today on to the appropriate agencies to add to the file.

Thanks.

Vogel Newsome
Mitchell, McNitt & Sams, P.A.
111 E. Capitol Street, Suite 290
P. O. Box 3647
Jackson, MS 39207-3647
(601) 948-8508
(601) 948-8537

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From: Vogel Newsome
Sent: Monday, June 07, 2004 9:47 AM
To: Jim Allen
Subject: RE: Memo

Jim:

Am in receipt of this, your most recent email.
While it is not clear why it was sent, I find that it is very misleading and again just an effort by MMS to preclude me from first bringing valid concerns to MMS attention pursuant 718 - Problem Resolution.

MMS's allowance of your and others to subject me to a hostile, discriminatory and retaliatory environment has also been reported to the appropriate agency(s) - Said conduct is in violation of MMS Policy No. 701 - Employee Conduct and Work Rules.

You attempt to make it seem as though I have been insubordinate - however, I believe the documentation will show that MMS has repeatedly allowed RTG to violate 701 and then rather than correct the problem, you attempt to project it on me.

Each and everytime the concerns were brought to MMS's attention, MMS did nothing. The concerns were

6/7/2004

addressed in a timely manner.

During my vacation, I was blessed with a computer, printer/fax.

Let me clarify for a response to your email, that the concerns I have addressed to MMS's attention and the method for addressing such, were all in compliance (I believe) with MMS policy. If MMS wants to make it appear that it is not firm related or of an interest to MMS, then so be it.

Let me say, that the same directives stating:

You must be respectful, courteous, cooperative, and professional in your dealing with others in the office and the firm, as well as clients and others outside the firm, responsive and productive in your work, and present an attitude that contributes to a positive atmosphere.

That I am requesting the same from MMS and its attorneys, supervisors, managers, employees, etc. MMS is not to single me out and issue such directives and violate them and subject me to such unlawful, discriminatory, retaliatory and hostile treatment for the filing of my complaints.

Therefore, I find your most recent email simply an effort by MMS to mask/shield and illegal animus. There simply was no need for issuance of this memo. MMS cannot say that I have acted in such a manner. However, MMS can say that if indeed it will try to assert such, that I simply responded to situations CREATED BY MMS - A Hostile/Discriminatory/ Retaliatory environment. This is just another effort by MMS to force me out of the workplace, since I advised you I will not be quitting.

Thanks.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
111 E. Capitol Street, Suite 290
P. O. Box 3647
Jackson, MS 39207-3647
(601) 948-8508
(601) 948-8537

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From: Jim Allen
Sent: Monday, June 07, 2004 9:30 AM
To: Vogel Newsome
Subject: Memo

Vogel,

Attached is a memo for you.
Thanks
JTA

6/7/2004

Vogel Newsome

From: Jim Allen
Sent: Thursday, May 06, 2004 11:26 AM
To: Vogel Newsome
Subject: RE: CONCERNS REGARDING NEW OFFICE SPACE - Response Requested!

Vogel,

The job requirements are that the secretary sit close to the atty. I will visit with Bob and see what other options we may have.

I did not. Our landlord takes care of all the compliance issues.

I'll review the Timclock software when I have more time. Please keep on task so that Bob's work is completed prior to the move.

Thanks for your efforts in this matter. Jim

-----Original Message-----

From: Vogel Newsome
Sent: Wednesday, May 05, 2004 12:58 PM
To: Jim Allen
Subject: FW: CONCERNS REGARDING NEW OFFICE SPACE - Response Requested!

Jim,

Because of the concerns I addressed in my emails on this matter, will it be a problem if I sit at the Receptionist station until I can check with the Department of Labor (or appropriate agency) to have them address my concerns?

I do not know what experience the people you spoke to have. However, I did gather from your email, you did not consult with anyone at the Department of Labor (OSHA Division, etc.).

Also, you may want to note that most of the time used on preparing original email was during my lunch break - as in this case. Feel free to check TIMECLOCK on this - I printed out to see myself because I thought it was sent to you during my lunch break.

Thanks.

-----Original Message-----

From: Jim Allen
Sent: Wednesday, May 05, 2004 12:11 PM
To: Vogel Newsome
Cc: Bob Gordon; Mike Farrell
Subject: RE: CONCERNS REGARDING NEW OFFICE SPACE - Response Requested!

Vogel,
Answers below.
Thanks, Jim

-----Original Message-----

From: Vogel Newsome
Sent: Monday, May 03, 2004 1:33 PM

5/6/2004

EXHIBIT
35

To: Jim Allen
Cc: Bob Gordon; Mike Farrell
Subject: CONCERNS REGARDING NEW OFFICE SPACE - Response Requested!
Importance: High

Jim,

I would like to address some concerns that I have in regards to the new office space. If I may, I am addressing these concerns under MMS Policy No. 718 - Problem Resolution.

I hold a B.S. Degree in Management from Florida A & M University. Therefore, the concerns that I address in this email are based upon my understanding from the education received and/or my training, research and/or experience gained through the years.

After dropping off the mail on Friday, April 30, 2004, I went by the new office location to view and get an idea where I will be working and the office setup. Based upon this visit, I will like to share with you, what I believe to be, some valid concerns of mine regarding my new office space.

- 1) It is extremely smaller than the office space I currently have. The work carrels in Jackson are larger than the ones in Tupelo.
- 2) I will re-emphasize tht I am requesting that in my new office space that my back is not to the door/entrance. I would like to be aware of who is coming into my space and/or my presence. (For example: RTG, from my observation and depending on what is taking place, frequently comes into my work space (if I had to guess) approximately every 20 to 30 minutes on days when he tackling certain deadlines - sometimes more, depending on what he is looking for or trying to observe.) The set-up allows for the computer network cabling to be on the back wall. Actually, it is similar to your desk presently where your back is to those entering the door when you are working at your desk.
- 3) I believe the office space is too small - gives me a feeling of being boxed in and mobility in movements will be heavily restricted. Moreover, to me, from what I gathered from viewing the new office space, it gave me the impression of how much value is given to the work I do and to the productivity thereof by MMS. **It is important to note** that my new office is way smaller than my present office area and the new office does not have the ergonomic dynamics as my present office space. **For instance**, this morning RTG came into my office space and was explaining to me what he need done. He was standing to the left of my chair and I was standing to the right of my chair. In other words, my chair was between us. We were able to discuss this task in this manner. However, in the new office space, such a meeting would be very uncomfortable, tight or perhaps not at all due to the restriction in office area space. **For instance**, there are times that RTG comes into my office space and sits in the extra chair provided to discuss things with me - in the new office space such meetings would not be possible. LMT and TC have also used this chair for meetings with me as well. The floor to ceiling walls were created to provide the secretary with more privacy, which other MM&S offices don't have. Carrels in Tupelo are only four feet high. Those type of meetings you mention can be held in the attorney office or with the

person standing in the entry - way of your carrel.

- 4) In all the jobs I have had, I have never worked under such "box-like" conditions. The ergonomics met my needs to accomplish the multiple tasks performed by me and greatly aided in my performance of such tasks.
Your set-up will include an articulating keyboard tray, and with your chair, allows for the 90 degree knee and elbow bend which are ergonomically ideal. You will be able to adjust the keyboard and chair as desired.
- 5) At other law firms I have worked at, the office space was not a "box" setup and allowed for variable movements and my movements were not be heavily restricted as it will be in the new office space. I was able to make any adjustments to the workstation to aid in performance of my tasks with no problems and/or restrictions. In the new office space, it appears my movements will be heavily restricted. I am constantly up and down at times. My concerns with the "box setup" MMS has created for me at the new office, I will be subjected to injuries - bruises, banging of legs/knees against office furniture because there is not enough office space to maneuver around in performing my tasks. We can remove the file cabinet if you prefer. Most are happy to have the extra space to store things.
- 6) After viewing the Department of Labor's website in regards to Ergonomics, I ask the following in regards to the new office space:
 - a. Is it in compliance with OSHA and/or any applicable statute/code governing such matters.
 - b. Will there be proper lighting and ventilation?
 - c. Gender and occupational makeup of the decision-makers in this planning process (i.e., male or female (how many of each), lawyers, managers/officers).
 - d. Whether MMS consulted with a specialist in the field of ergonomics on this project.
 - e. Whether MMS talked to the Administrative/Clerical Support Staff to get their feedback as to what they would require in the new workspace to aid them in their work productivity.
I visited with other legal administrators in what their construction was and revised the office space taking into consideration equity in other offices of MM&S.
I visited with our office sales and service provider before purchasing furniture and/or work stations.
There will be proper lighting and ventilation.
- 7) In a CHECKLIST: Worksheet and other website(s) viewed this weekend, I found

5/6/2004

information which lead me to wonder whether or not my new office space will be in compliance with OSHA requirements and/or statutes/codes governing such matters. For instance will my new office space be able to accommodate the following:

- a. In addition to workstation, can two 4x4 tables fit in the room?
- b. Is the room configuration flexible to allow meeting of 3 to 10 people? (For instance there have been times when RTG, TC and I held meetings in my office space at the last minute to discuss tasks, etc.)
- c. In addition to the workstations, tables and scanners, is there space for two printers? You will only have one printer similar to what you have now.
- d. Is there ample space for a person in a wheelchair to navigate the room (a 5-foot turning radius is necessary at the workstation and access to the within the room must have a minimum 36"W aisle)?
The Parkway Properties Architect helped prepare the plan to make sure we are ADA compliant.
- e. Is there room for an extra chair to accommodate another person (co-worker or visitor)?, etc. (For instance - the extra chair in my present office space has been used by RTG, TC and LMT since I have been here and believe one will be needed in the new space.)
It is a work carrel not an office.

- 8) I am requesting (if permissible by law) an office space that is in compliance with OSHA requirements and/or statute/codes governing such matters if the present office setup that I am moving to is not already. Office space that will accommodate me for the work tasks that I presently perform on a weekly/daily basis while at MMS. After looking at the floor plan with RTG, I requested one of the other office spaces. My request was refused/denied. Moreover, in our first meeting you had with the office staff Jim, I requested one of the other office spaces - out of fun, but had no idea at that time just how serious this issue would become. Just from appearance it looked to me as though it was going to be small. However, at that time, I was not aware that it was going to be as small as it is nor that my back was going to towards the entrance. I requested such based upon such observation but could not discuss further because of the difficulty I had formulating what it was going to actually be like once built. Therefore, I went to look at the office space on or about 4/19/04 to get a take on what it was going to be like. I did not think that time would be taken during work hours to go and view, so since I was in the area or if I had to make a trip after work (as I did on the 19th and 30th), then I would do so. However, could not tell because, as of 4/19/04, the walls/offices had not been set up for the layout presented to us. Therefore, could not provide my feedback to you prior to your visit to the Jackson office on 4/27/04 or my visit on Friday. Nor, was I requested to come and look at the office space prior to construction thereof. Not saying that that was required. However, I believe administrative/clerical support staff feedback is important in the planning process. That's why I showed you all the plans previously. They have been posted in the copy room too.
- 9) Will it be possible to have a door on the new office space? There are times when I have a need to close the door (such as RTG and MMF - when he is working on a

5/6/2004

task requiring total concentration) to focus on a special task/deadline. It aids in preventing distraction from things that may be taking place in the hallway or other offices. Moreover, it is important because MMS in the new office is not providing an office for employees in the Jackson office to rest and/or lay down during a break if the employee feels the need due to feeling ill (to see if the employee will feel better after a little rest), headache, etc. I myself, at MMS' Jackson office location, have been using the back office for such breaks and privacy in getting required rest. Because I will be much further from home, than I presently am, I will not be able to go all the way home during my lunch break and get the proper time to rest as desired - due to the fact that it may take 20 - 30 minutes to get home based on the traffic, etc. By that time, the lunch period is over. No doors are placed on the carrels. There is a break room and another location that can be used for such matters.

- 10) My concerns are also to the gender make-up of the decision makers on this project (office design and space creation/assignment). For instance was the make all male or predominately male. Did it just consist of (all male or majority male) Attorneys, Managers/Officers of MMS and Managers from outside organizations aiding in process? If so, whether any of those in the decision-making process would themselves want to work in such a "box-like" setup for 6 or more hours a day (there are times when overtime will be required)? If so, do not feel as though the decision-makers were sensitive to the needs of the Administrative/Clerical Support Staff and have placed such staff personnel in a setting that they themselves would not want to work in for the length of time (hours) we are required to be present and perform our job. The legal administrators I consulted with are all female.

I understand from our conversation that the Tupelo office is setup like this. My question is, if so, does it make it right or acceptable? Moreover, whether that office workstations are in compliance with OSHA requirements to accommodate the work task of the Administrative/Clerical Support Staff. Whether or not said Staff have voiced concerns and frustration as to the size of their workspace. How was such feedback (if any) from support staff received by MMS? If so, how did MMS handle such concerns? We have treated all support staff equally and have provided them with larger monitors, chairs, mats, keyboards, mouse pads and fans as needed to ensure they have proper ergonomics to reduce the risk of carpal tunnel syndrome, other back/neck discomfort and are comfortable.

I shared some of these concerns with RTG. RTG advised me to address my concerns with you.

I also shared with RTG, that although Ladye Margaret may be okay with the new office setup, to me the new office space does not appear to be in compliance with OSHA requirement and may not be acceptable to handle and accommodate the high demands required for this job - issues that should have been considered in the planning stage of the new office. The Parkway Properties Architect helped prepare the plan to make sure we are ADA compliant.

Thank you for your time and an opportunity for me to raise these concerns to your attention. You're welcome.

I am sensitive to your concerns. However, my concerns are that the research and writing of these e-mails are taking you away from work assignments.
Thanks, Jim

5/6/2004

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

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5/6/2004

Vogel Newsome

From: Vogel Newsome
Sent: Monday, May 10, 2004 11:37 AM
To: Jim Allen
Cc: Bob Gordon
Subject: SAFETY CONCERNS - OSHA & OTHER REQUIREMENTS

Jim,

Per our conversation on this morning, please provide me with the Standard Industrial Classification or SIC #. Also need to find out where MMS keeps their OSHA Poster.

Pursuant to Section 5(a)(1) OSHA enforces the "General Duty Clause" - which requires that every working man and woman must be provided with a safe and healthful workplace. - Some of my concerns in regards to this was previously brought to your attention as well as RTG's.

I am providing RTG with a copy of some excerpts taken from the OSHA Inspections and OSHA:Employee Workplace Rights.

Furthermore, I would like to reiterate to you my concerns of being forced to work in what I believe to be an unsafe workspace without the required deminsions to accomodate the job tasks that I perform and the constant up & down moving around movements associated with the job.

I advised concerns to you of my having to make a complete 90 degree turn to leave my workstation. At the present, the constant spinning around is real painful to my lower torso. Moreover, because of the restricted/confined work area, I am not able to leave my workstation without first rolling the chair out of the way to get out. In an emergency situation, such an obstruction or inability to get out quickly and smoothly may result in injuries from such an emergency situation, etc.

Workspace is not wheelchair accessible and/or cannot reasonably accomodate an employee that has a broken leg or other disability that may arise.

My present workstation does not accommodate my height. I cannot pull up and perform task or other things at my desk without the the drawer and panel heavily rubbing against my legs and knees.

I am providing RTG with a copy of excerpts taken from the OSHA documents I have. Please feel free to go out on their websit and retrieve information on your own.

Furthermore, it is my desire to seek an OSHA Inspection of not only my workspace but any other areas OSHA may feel necessary to check.

So please provide this office with the REQUIRED OSHA Poster.

Thanks.

5/11/2004

EXHIBIT
36

Subject: RE: WORKSPACE - Your Request For Me To Create An Additional Tray At My Workstation
Date: Tue, 11 May 2004 13:15:41 -0500
From: "Vogel Newsome" <[REDACTED]>  Add to Address Book
To: "Bob Gordon" <[REDACTED]>
CC: "Jim Allen" <[REDACTED]>

See my response below.

From: Bob Gordon
Sent: Tuesday, May 11, 2004 11:41 AM
To: Vogel Newsome
Cc: Jim Allen
Subject: RE: WORKSPACE - Your Request For Me To Create An Additional Tray At My Workstation

Vogel,

What I asked, and then had to instruct, you to do involves setting up one additional tray. (Per my email, have placed a folder for your work in my box).

For many years, I have worked on a system of having an in tray or box for work or tasks for my secretary and an out tray or box for items which my secretary has done for me. I have often placed items in my in tray in the order of priority when I feel there is a need (e.g., time requirements) to do so. No other secretary has complained about this procedure. (All secretaries and the way they work and functions are not the same. Each one is identical and knows what it takes to get the job done. You still have an In-Box with a Manilla Folder in it and Post-It outside the box. I'm not able to speak for other secretaries, nor do I know *how long* they worked for you. Again, I have and am continuing to set up my workstation to accommodate the work tasks presented. It should not always be about "I" but what can be worked out where all involved are concerned. I do not know whether any complaints if any other secretary had them would have been excepted based on what I gather from this present situation. A suggestion has been provided and is currently in place for use. As in a task you presented after my sending of prior email, I placed in task folder. Will grab and pull info from it. If you don't have time to place in folder, will do so when chance permit.)

Yes, we are still in the process of moving into our new offices, but work must still be done. That includes my giving or routing items to you, your doing them, and your giving or routing your work to me. Thus, it was and is important to set these trays up at this time. (I do not recall the way my work station is set up that you have been prevented from routing job task(s) to me and my getting them. I reiterate there has been trays set up to assist me with receipt and distribution of your work.)

For some time now, you have placed in my in tray what has appeared to be items, particularly relating to ongoing tasks, that you have begun work on but not completed. As a result, I have not always been able to quickly look or glance in or through my in tray to see what, of the present or immediate tasks, have and have not been done. Thus, I asked, and then had to instruct, you to set up a separate tray as your holding or pending tray for items you had started but not completed. (I reiterate, I have placed a Manilla Folder in the In-Box at my desk. You will be able to quickly and readily retrieve this information (for viewing) if needed. I shared with you the concerns of my workspace and the need for ability to change and work in various areas of my workstation. Again my workstation is being set up to assist the person using it and better aid in completion of task. Without you first trying this, how would you know if it works. Please remember that each and every individual is unique and has their own identity. It would be wrong for me to say that you are supposed to be like ALL other attorneys at MMS or that I have worked for and are to perform your duties and

tasks as the the ones I have worked with in the past. Professionals that I have worked with and have commended me on a job well done, if I may say.)

When I first asked you to do this, you stated, send me an e-mail so you could respond. My asking or instructing you to set up an additional tray involved a simple task that should take only a few minutes. It was not necessary to communicate such a task by e-mail. (Did not see anything wrong with this my request. You have submitted job task to me via email in the past. As you took the time her to respond my email, I would have explained as I did in my original email what has been created and set up to meet your needs and mine to get the job accomplished. You have been given the opportunity to set up your work area the way you would like it to be to do your job. I simply ask that I be allowed to set up my workstation in the way pleasing and comfortable to me to work and move around in from task to task. Again, I reiterate, that my workstation is not complete. Believe there are some more things coming in. Therefore, I have everything presently set up to assist me in completing my task at the present.)

I expect my in tray or box and my out tray or box to be set up today. If you want to set up a separate pending or hold box for pending items or items you are hoding, there is time to do so today and complete the word processing work which you have. (I mentioned to you in my email where this tray is and the file folder. It will meet you needs and allow me continue my duties and tasks as assigned. Again, I reiterate to you that my workstation is set up to assit me in my work task - MY CONCERNS are you most recent job task and demands which have already been addressed to you and Jim Allen. Moreover, this particular response. I currently have a box set up for this and will continue to use the method I have been using for the past 7 months that have worked for me to aid me in accomplishing and remind me of what is pending. Again my CONCERNS are to you most recent requests, demands and conduct. They have already been addressed and I will continue to do my work as I have been.)

Bob

From: Vogel Newsome
Sent: Tuesday, May 11, 2004 10:38 AM
To: Bob Gordon
Cc: Jim Allen
Subject: WORKSPACE - Your Request For Me To Create An Additional Tray At My Workstation

Bob:

This is in response to our conversation on this morning regarding the captioned matter. I asked you to send me an email with this request - however, you elected and/or chose not to do so.

Per our conversation on this morning, wherein you told me to create an additional tray for my work, I advised you that my workstation at this location is extremely much smaller than at the Lakeland location. Moreover, I have very limited workspace. I shared with you my concerns of overcrowding this space with additional trays (and further hindering the work process - due to lack of space to work with) and that I have designed the station, in which am not through, to assist me in my completion of task and remind me of what I have out there. I am also waiting to find out what else is coming since from my understanding the workspace/station is not complete.

You will recall as I shared with you in our meeting on today, that at the Lakeland location, your Pick-up Tray was on top of the file cabinet (at entrance).

5/21/2004

My In-box was at my desk.

The Filing Tray was on the credenza.

At the Lakeland location, I was probably working with workspace of approximately 8-10' x 8-10' (or larger). At the new location my workspace has been drastically reduced to approximately 7' x 6' (from my measurements).

As I shared with you, my concerns of cluttering up what little workspace I have to work with. Now you are requesting that I add an additional tray today - my concern is that there will be another one later on and then another one with your knowledge of how confined and limited my workspace is already. I believe the workspace should be allowed to be set up according to the user and what the user needs to accommodate certain tasks.

As I shared with you, the work process I have established for myself has been effective and has aided me in the completion of my tasks. I have used this method for approximately 7 months. As I shared with you my concerns as to your sudden request "all of a sudden." When this process is one that I have created to aid me in my work and to keep before me what I have to do.

In efforts to assist you and to address your concerns, I would further suggest that you use the Manilla Folder (with your name on it) and Post-its I have placed by the My In-Box. The Manilla Folder I have placed in the box is for your job requests. I will pull the information from the Manilla Folder and will work each task according to the number placed on it. For example: #1 being first item you want done, #2 being the second, etc.

As I shared with you, my concern is also not being able to continue to perform my task and organize my workstation in a manner that will accommodate me and the tasks that I perform. I will pull this folder - moreover, you will be able to pull the folder and look through it as well and it will be kept together for your review. If you need to pull an item, you can and then simply return the folder back to my In-Box after pulling the document you need. I have placed a Manilla Folder in the tray with your name on it. Will try to keep it on time for easy retrieval. However, if not on the top, you will still be able to pull it and all the jobs placed in it are together.

Please keep in mind the work process in my area has been set up to assist me in performing my tasks.

I would appreciate every effort by you to assist me in this endeavor.

Sincerely,

Vogel Newsome

5/21/2004

Vogel Newsome

From: Vogel Newsome
 Sent: Wednesday, May 12, 2004 10:23 AM
 To: Jim Allen
 Cc: Bob Gordon; Mike Farrell
 Subject: TAKING CONCERNS OF CONTINUED WORKPLACE VIOLATIONS (Harassment, Retaliation, etc.) TO EEOC

Jim,

This is Notice you MMS that I intend to ask the EEOC to investigate whether or not I am being harassed for my bringing valid concerns (Regarding Payment of Wages & Hours Worked). I believe that MMS was timely, properly and adequately notified of my concerns, yet elected not to pay me in accordance with the FLSA. I have submitted such concerns to the appropriate agency and it is presently under review.

Since bringing these concerns as well as the most recent (about safety of office workstation), I have noticed that I have repeatedly been subjected to what I believe to be harassment by attorney Robert T. Gordon, Jr. I have repeatedly brought concerns of such harassment and hostile treatment to your attention, to no avail. Therefore, I believe it necessary to bring it to the attention of the EEOC since MMS appears not to be doing anything about. MMS appears to be condoning the conduct and behavior of RTG. Behavior which it appears has been going on for quite some time. When female employees have complained about such behavior, they are either terminated or allowed to be harassed or subjected to hostile treatment as I am repeatedly being subjected to. Therefore, I believe it necessary to bring this matter before the appropriate agency for investigation.

Since bringing my matter before the Wage & Hours division:

- (1) I have repeatedly been subjected to what I believe to be unfair, retaliatory and discriminatory practices by MMS.
- (2) Called in and counseled about "PETTY" things. Such as: (a) wearing a cap on "CASUAL" Friday – Nothing in the MMS Policy Handbook addresses such issues – Other employees are allowed to dress and wear (casually dress) what they want through the week. However, whenever I elect to choose and wear what I believe to be casual, there is always something said. (b) "SCREEN" Cover one day; (c) FILING TRAYS the next. – on and on. **(NOTE MOST RECENT BEHAVIOR AFTER ADDRESSING OSHA CONCERNS)**

The most recent "PETTY" attacks have arisen since my bringing up of concerns of unsafe working conditions. It does not appear that MMS is going to do anything and is intentionally creating and subjecting me to what I believe to be retaliation, discriminatory practices, and efforts to force me out of the workplace.

I have already advised RTG of my concerns and bringing this matter before the EEOC to address. The harassment and hostile treatment is uncalled for. Moreover, I believe such practices from RTG have been repeatedly accepted and allowed to go on to force female workers out of the workplace. RTG is a male employee of MMS and at times I feel abuse such authority to harass, threaten and intimidate female subordinates under his supervision. Since being here, I have been subjected such treatment while other employees in the workplace are not. Furthermore, I believe such practices may have been used on other female employees to force them to quit.

5/12/2004

EXHIBIT
38

As I shared with you in our conversation of April 27, 2004, I enjoy my job here and I do not feel that being subjected to such treatment (which is unlawful) is fair. No other employees (which I am the only African American) are subjected to such hostile and intimidating treatment, but myself.

For instance such heavy and strict observation in intervals by RTG (for example 05/11/04):

9:54 a.m.

10:20 a.m.

10:30 a.m.

10:42 a.m.

10:44 a.m.

10:46 a.m.

10:48 a.m.

10:51 a.m.

11:01 a.m.

(Break of opening of Restaurant Below)

12:40 p.m.

1:34 p.m.

2:00 p.m.

2:53 p.m.

2:55 p.m.

3:00 p.m.

3:13 p.m.

3:15 p.m.

3:20 p.m.

3:32 p.m.

3:33 p.m.

3:43 p.m.

3:45 p.m.

4:10 p.m.

4:12 p.m.

4:15 p.m.

4:16 p.m.

4:18 p.m.

4:29 p.m.

4:31 p.m.

4:41 p.m.

Pretty frequent and heavy I believe – why is this also a concern, because, if I'm not mistaken, RTG's hours are billable. I hope that yesterdays time in observation is not being billed to any of our clients, but MMS.

I shared with RTG that such unfair treatment has been found to be in violation – providing RTG with *Francis v. AT&T* and that I intend to do addition research as to whether the conduct a and behavior of RTG since bringing these valid concerns (Wage & Hour and Unsafe Working Conditions) is lawful.

I close with information taken from *Francis v. AT & T* – 4 FEP 777:

That “the process of documenting the case against a particular person whom the employer wants to terminate safely and legally can itself be a discriminatory term and condition of employment. In this case it had been found by the Court that the

5/12/2004

employer documented "scores of lateness and *petty work-rule violations* against the Plaintiff because of her filing a charge of discrimination." The Plaintiff in whom is black. The supervisor who had done the documenting also black. However, the company *did not* document against everyone similarly situated. The Court found the very process of *fault finding* had been discriminatory . . .

I believe if there are cases such as *Francis* then, perhaps, there are case law out there to address the unlawful treatment and practices I believe I am being subjected to force me out of the workplace. Or, as in *Francis*, MMS is creating situations and subjecting me to unfair treatment so that is said to be safe and legal. However, I believe to the contrary.

I am available to address these concerns if you desire. However, again, I do intend to bring this matter before the EEOC and believe the pattern of harassment and unfair treatment is uncalled for.

Sincerely,

Vogel Newsome

5/12/2004

Jim Allen

From: Vogel Newsome
Sent: Friday, April 23, 2004 11:01 AM
To: Bob Gordon
Cc: Jim Allen
Subject: CAP ISSUE

Per your concerns in regards to my wearing a casual cap, if you feel that this is not appropriate although my dress (shirt and skirt are), I have no problems replacing the current cap with a prayer covering type cap (one that tightly fits down over my hair and is often seen worn by women church services). Such caps are business-casual if you do not find that the one I am currently wearing is not.

However, as I shared with you, there are times when my hair is not fixed and I am not comfortable with the way I look. So I cover it.

Let me know what you suggest the casual cap (which is not a baseball cap) or the prayer caps.

Thank you.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
Phone: 601/932-4311
Facsimile: 601/932-4228

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4/23/04
I spoke w/ Vogel to inform her that a baseball cap is not appropriate & is unprofessional for our law firm & she can not wear it. The handbook Section 705 personal appearance " states you supervisor and I are responsible for a reasonable dress code & can request that you not wear the cap. The policy won't say & I will not give a list of items you can or can not wear but if an item of clothing or appearance is not appropriate & does not convey a proper professional business image we will request not wearing it. She understood & said she would not wear a cap anymore. JTA

EXHIBIT
39

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DUDLEY THOMPSON, ET AL.

PLAINTIFFS

V.

CIVIL ACTION NO. 3:03CV37WS

REPUBLIC FINANCE, LLC, successor of
Fidelity National Corporation,
d/b/a Republic Finance, ET AL.

DEFENDANTS

**MOTION OF REPUBLIC FINANCE, LLC, FOR ENLARGEMENT OF TIME
TO SUBMIT REBUTTAL MEMORANDUM IN
SUPPORT OF MOTION TO RECONSIDER**

COMES NOW Republic Finance, LLC, successor of Fidelity National Corporation, d/b/a Republic Finance, and shows unto the Court the following:

1.

Republic's Rebuttal Memorandum in support of its Motion to Reconsider, Set Aside, Vacate, Withdraw, Alter or Amend presently is due on November 15, 2004.

2.

~~Due to the undersigned counsel's illness and resulting limited time and ability to work several days this week, Republic needs an enlargement of time through and including November 24, 2004, in which to file, submit and serve its Rebuttal Memorandum.~~

3.

This enlargement of time is not sought for the purposes of delay, and the Plaintiffs will not be prejudice by Republic's being granted this enlargement of time.

4.

Counsel for Republic has conferred with counsel for the Plaintiffs, and the Plaintiffs are agreeable to Republic's having the enlargement of time sought by this Motion.

521971/9287-67563

EXHIBIT
40

WHEREFORE, PREMISES CONSIDERED, Republic Finance, LLC, moves this Court for an enlargement of time through and including November 24, 2004, in which to file, submit and serve its Rebuttal Memorandum in support of its Motion to Reconsider, Set Aside, Vacate, Withdraw, Alter or Amend Order Granting Remand.

Respectfully submitted,

REPUBLIC FINANCE, LLC, successor of Fidelity National Corporation, d/b/a Republic Finance

By:

ROBERT T. GORDON, JR., MSB No. 4909
Post Office Box 3647
Jackson, Mississippi 39207-3647
111 East Capitol Street, Suite 290
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Telephone (601) 948-8508
Facsimile (601) 948-8537

ATTORNEY

OF COUNSEL:

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JAMES R. CHASTAIN, JR.
KEAN, MILLER, HAWTHORNE, D'ARMOND,
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Telephone: (225) 387-0999
Facsimile: (225) 388-9133

CERTIFICATE OF SERVICE

I, ROBERT T. GORDON, JR., do hereby certify that I have this day caused to be served by mail a true and correct copy of the foregoing upon:

Charles E. Gibson, III
Edward Gibson
The Gibson Law Firm
P.O. Box 3493
Jackson, MS 39201-3493

THIS, the 12th day of November, 2004.

ROBERT T. GORDON, JR.

Docket as of December 1, 2004 9:08 pm

Web PACER (v2.4)

U.S. District Court
Southern District of Mississippi (Jackson)
CIVIL DOCKET FOR CASE #: 03-CV-37
Thompson, et al v. Republic Finance, et al

Filed: 01/15/03
Assigned to: Judge Henry T. Wingate
Jury demand: Plaintiff
Demand: \$0,000
Nature of Suit: 370
Lead Docket: None
Jurisdiction: Diversity
Dkt # in Copiah Circuit : is 2002-0359
Cause: 28:1441 Notice of Removal-Fraud

DUDLEY THOMPSON
plaintiff

Jarret P. Nichols
[COR LD NTC]
THE GIBSON LAW FIRM
P. O. Box 3493
Jackson, MS 39207
601/354-2007

ERIKA BAILEY
plaintiff

Jarret P. Nichols
(See above)
[COR LD NTC]

TANGA HAMILTON
plaintiff

Jarret P. Nichols
(See above)
[COR LD NTC]

ALICE DIXON
plaintiff

Jarret P. Nichols
(See above)
[COR LD NTC]

BOBBY SMILEY
plaintiff

Jarret P. Nichols
(See above)
[COR LD NTC]

MARY BENSON
plaintiff

Jarret P. Nichols
(See above)
[COR LD NTC]

v.

FIDELITY NATIONAL CORPORATION
□

Robert T. Gordon, Jr.

dba
Republic Finance, Inc.
defendant
[term 05/10/04]

[term 05/10/04]
[COR LD NTC]
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[term 01/24/03]

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[term 01/24/03]
[COR LD NTC]
Louis Clifton Norvell
[term 01/24/03]
[COR]
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251/432-5511

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[term 01/24/03]

TROY EZELL
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Robert T. Gordon, Jr.
(See above)
[COR LD NTC]

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MARK HUGHES
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(See above)
[COR LD NTC]

James R. Chastain(PHV), Jr.
(See above)
[COR NTC]

TRACY SMITH
defendant

Robert T. Gordon, Jr.
(See above)
[COR LD NTC]

□

James R. Chastain(PHV), Jr.
(See above)
[COR NTC]

JANELL LOFTON
defendant

Robert T. Gordon, Jr.
(See above)

[COR LD NTC]
James R. Chastain(PHV), Jr.
(See above)
[COR NTC]
RHONDA CROSBY
defendant
Robert T. Gordon, Jr.
(See above)
[COR LD NTC]
James R. Chastain(PHV), Jr.
(See above)
[COR NTC]
JOHN DOES, 1-10
defendant

REPUBLIC FINANCE, successor of
Fidelity National Corporation
dba Republic Finance
defendant

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□

DOCKET PROCEEDINGS

DATE # DOCKET ENTRY

1/15/03 1 NOTICE OF REMOVAL by defendant Fidelity Nat'l Corp. with
copies of complaint, summons, etc.; FILING FEE \$ 150.00
RECEIPT # 54153 ; Notice of Assignment mailed. (thr)
[Entry date 01/16/03]

1/15/03 1 DEMAND FOR JURY TRIAL by all plaintiffs (thr)
[Entry date 01/16/03] [Edit date 01/16/03]

1/15/03 -- Magistrate Judge Assignment James C. Sumner (thr)
[Entry date 01/16/03]

1/15/03 -- Case assigned to Pending Track - designation of appropriate
track will be made after Case Management Conference and a
final track assignment. (thr) [Entry date 01/16/03]

1/15/03 2 Joinder by defendant Wells Fargo Fin. TN to [1-1] removal
notice by defendant (thr) [Entry date 01/16/03]

1/16/03 3 MOTION by defendant Fidelity Nat'l Corp. to Extend Time to
answer (cwl) [Entry date 01/17/03]

1/17/03 4 NOTICE of Filing of State Court File or Record by defendant
Fidelity Nat'l Corp. (cwl) [Entry date 01/17/03]

1/17/03 5 CERTIFICATE of Clerk (cwl) [Entry date 01/17/03]

1/17/03 6 ORDER granting [3-1] motion to Extend Time to answer,
reset Answer deadline to 1/31/03 for Rhonda Crosby, for
Janell Lofton, for Tracy Smith, for Mark Hughes, for Troy
Ezell, for Fidelity Nat'l Corp. (signed by Magistrate
Judge James C. Sumner); copies mailed. (pkm)
[Entry date 01/17/03]

1/24/03 7 STIPULATION of dismissal as to defendant Wells Fargo Fin.
TN, defendant Wells Fargo (sec) [Entry date 01/29/03]

1/31/03 -- Telephonic Case Management Conference set 3:00 2/19/03
Location: Jackson, MS, before Magistrate Judge James C.
Sumner copies mailed to Louis Clifton Norvell, Joe E.
Basenberg, Robert T. Gordon Jr., Jarret P. Nichols (sec)
[Entry date 01/31/03]

1/31/03 8 Rule 16.1(A) Initial Order; copies mailed (sec)
[Entry date 01/31/03]

2/3/03 9 ANSWER to Complaint by defendant Rhonda Crosby (Attorney
Robert T. Gordon Jr.), (sec) [Entry date 02/04/03]

2/3/03 10 ANSWER to Complaint by defendant Janell Lofton (Attorney
Robert T. Gordon Jr.), (sec) [Entry date 02/04/03]

2/3/03 11 ANSWER to Complaint by defendant Tracy Smith (Attorney
Robert T. Gordon Jr.), (sec) [Entry date 02/04/03]

□

2/3/03 12 ANSWER to Complaint by defendant Mark Hughes (Attorney
Robert T. Gordon Jr.), (sec) [Entry date 02/04/03]

2/3/03 13 ANSWER to Complaint by defendant Troy Ezell (Attorney
Robert T. Gordon Jr.), (sec) [Entry date 02/04/03]

2/3/03 14 ANSWER to Complaint by defendant Fidelity Nat'l Corp.
(Attorney Robert T. Gordon, Jr.), (sec)
[Entry date 02/04/03]

2/7/03 -- Tele-conference reset at 3:00 p.m. on 3/18/03 before Judge Sumner. Notices mailed. (csf) [Entry date 02/07/03]

2/18/03 15 MOTION by plaintiff Dudley Thompson, plaintiff Tanga Hamilton, plaintiff Alice Dixon, plaintiff Bobby Smiley, plaintiff Mary Benson to Remand(docket entry to Mag) (sec) [Entry date 02/19/03]

2/20/03 16 DISCLOSURE STATEMENT regarding corporate structure by defendant Fidelity Nat'l Corp. . (sec) [Entry date 02/20/03]

2/21/03 17 ORDER, Staying case pending resolution of motion to remand, terminated cmc deadlines (signed by Magistrate Judge James C. Sumner); copies mailed. (sec) [Entry date 02/21/03]

2/21/03 -- Case assigned to Suspension Track. (sec) [Entry date 02/21/03]

3/7/03 18 MOTION by defendant Fidelity Nat'l Corp. to Extend Time to respond to motion to abstain and in the alternative to remand. (sec) [Entry date 03/11/03]

3/11/03 19 ORDER granting [18-1] motion to Extend Time, Response to Motion reset to 3/19/03 for [15-1] motion to Remand (signed by Judge Henry T. Wingate); copies mailed. (sec) [Entry date 03/12/03]

3/19/03 20 MOTION by defendant Fidelity Nat'l Corp. to Extend Time to respond to plaintiffs' motion to abstain and alternatively to Remand (sec) [Entry date 03/19/03]

3/21/03 21 MOTION by defendant Fidelity Nat'l Corp. to Extend Time to respond to plaintiffs' Motion to Remand (sec) [Entry date 03/24/03]

3/24/03 22 ORDER granting [21-1] motion to Extend Time, granting [20-1] motion to Extend Time; that defendant granted an enlargement of time through and including 3/21/03 to serve response and memorandum in opposition to Motions (signed by Judge Henry T. Wingate); copies mailed. (sec) [Entry date 03/24/03]

□

3/24/03 23 RESPONSE by defendant Fidelity Nat'l Corp. in opposition to [15-1] motion to Remand by plaintiffsssss (sec) [Entry date 03/24/03]

4/17/03 24 REPLY by all plaintiffs to response to [15-1] motion to Remand by plaintiffsssss (sec) [Entry date 04/17/03]

4/17/03 25 ORDER, Reply to Response to Motion reset to 4/30/03 for [15-1] motion to Remand (signed by Judge Henry T. Wingate); copies mailed. (sec) [Entry date 04/18/03]

4/17/03 26 ORDER; tht Fidelity be and is granted and enlargement of time though and including 3/25/03 to serve, file and submit, by mail its Response and Memorandum in Opposition to the plaintiffs' Motion to Remand in this action (signed by Judge Henry T. Wingate); copies mailed. (sec)

- [Entry date 04/18/03]
- 4/12/04 27 MOTION by defendant Fidelity Nat'l Corp. to Substitute Party defendant (sec) [Entry date 04/13/04]
- 5/7/04 28 NOTICE of Change of Address, Telephone and Facsimile by defendant Fidelity Nat'l Corp.'s Attorney Robert t. Gordon, Jr. (copy handed) (sec) [Entry date 05/07/04]
- 5/10/04 29 ORDER granting [27-1] motion to Substitute Party defendant terminated party Fidelity Nat'l Corp. Addedn defendant Republic Finance (signed by Magistrate Judge James C. Sumner); copies mailed. (cwl) [Entry date 05/11/04]
- 5/13/04 30 MOTION by defendant Troy Ezell, defendant Mark Hughes, defendant Tracy Smith, defendant Janell Lofton, defendant Rhonda Crosby, defendant Republic Finance for James Chastain to Appear Pro Hac Vice (cwl) [Entry date 05/14/04]
- 5/17/04 -- Pro Hac Vice fee paid by James R. Chastain, Jr. FILING FEE \$ 25.00 RECEIPT # J067789 (cwl) [Entry date 05/17/04]
- 5/19/04 31 ORDER granting [30-1] motion for James Chastain to Appear Pro Hac Vice (signed by Magistrate Judge James C. Sumner); copies mailed. (cwl) [Entry date 05/19/04]
- 9/28/04 32 ORDER granting [15-1] motion to Remand; that Republic Finance asks this court not to consider the Fifth Circuit 's Smallwood decision at this time and to defer ruling on the instant motion to remand; that this court denies Republic Finance's request at this time; however, should the Fifth Circuit stay its mandate while certiorari is souht, Smallwood, Reublic Finance may reurge its requests at that time; ob 2004 pages 2545-2552 (signed by Judge Henry T. Wingate); copies mailed. (sec) [Entry date 09/30/04]
- 9/28/04 -- Case closed (sec) [Entry date 09/30/04]
- 10/12/04 33 MOTION by defendant Republic Finance to Vacate [32-1] orderSet Asite, Alter,Reconsider [32-1] order, or to Amend [32-1] order (sec) [Entry date 10/13/04]
- 10/12/04 34 MEMORANDUM by defendant Republic Finance in support of [33-1] motion to Vacate [32-1] order by defendant, [33-2] motion Reconsider [32-1] order by defendant, [33-3] motion to Amend [32-1] order by defendant (sec) [Entry date 10/13/04]
- 11/1/04 35 RESPONSE by Dudley Thompson, et al to [33-1] motion to Vacate [32-1] order by defendant, [33-2] motion Reconsider [32-1] order by defendant, [33-3] motion to Amend [32-1] order (thr) [Entry date 11/02/04] [Edit date 11/26/04]
- 11/1/04 36 MEMORANDUM by all plaintiffs in support of [35-1] modifier response by plaintiff (sec) [Entry date 11/26/04]
- 11/5/04 37 MOTION by defendant Republic Finance to Extend Time to submit rebuttal memorandum in support of motion to

reconsider (sec) [Entry date 11/05/04]
[Edit date 11/26/04]

11/12/04 38 MOTION by defendant Republic Finance to Extend Time to
submit memorandum in support of motion to reconsider (sec)
[Entry date 11/12/04] [Edit date 11/26/04]

11/23/04 39 MOTION by defendant Republic Finance to Extend Time to
submit memorandum in support of motion to reconsider. (sec)
[Entry date 11/24/04] [Edit date 11/26/04]

12/1/04 40 Rebuttal MEMORANDUM by defendant Republic Finance in
support of [33-1] motion to Vacate [32-1] order by
defendant, [33-2] motion Reconsider [32-1] order by
defendant, [33-3] motion to Amend [32-1] order by defendant
(sec) [Entry date 12/01/04]

Case Flags:
JCS
JURY
CLOSED

END OF DOCKET: 3:03cv37

Docket as of November 24, 2004 9:12 pm

Web PACER (v2.4)

U.S. District Court
Southern District of Mississippi (Jackson)
CIVIL DOCKET FOR CASE #: 03-CV-711

Dubose, et al v. Republic Finance, et al

Filed: 05/20/03
Assigned to: Judge Henry T. Wingate
Jury demand: Plaintiff
Demand: \$0,000
Nature of Suit: 370
Lead Docket: None
Jurisdiction: Diversity
Dkt # in Circuit-Holmes : is 2002-588
Cause: 28:1441 Notice of Removal-Fraud

LAWANDA DUBOSE
plaintiff

Thandi Wade
[COR LD NTC]
TATUM & WADE, PLLC
P.O. Box 22688
Jackson, MS 39225-2688
601/948-7770

JAMES WINTER
plaintiff

Thandi Wade
(See above)
[COR LD NTC]

CLYDE THORNTON
plaintiff

Thandi Wade
(See above)
[COR LD NTC]

v.

REPUBLIC FINANCE CORPORATION,
A Mississippi Corporation
defendant

Robert T. Gordon, Jr.
[COR LD NTC]
MITCHELL, MCNUTT & SAMS, PA
P. O. Box 3647
Jackson, MS 39207-3647
601/932-4311

James R. Chastain(PHV), Jr.
[COR LD NTC]
KEAN, MILLER, HAWTHORNE,
D'ARMOND,
MCCOWAN & JARMAN

P.O. Box 3513
Baton Rouge, LA 70821
225/387-0999

□

RANDALL KELLY
defendant

Robert T. Gordon, Jr.
(See above)
[COR LD NTC]

GLENDA BARNETT
defendant

REGINA GANT
defendant

KELLY TAGGART
defendant

ELIZABETH KELLY
defendant

JOHN DOES, 1-50
defendant

□

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
5/20/03	1	NOTICE OF REMOVAL by defendant Republic Finance with copies of complaint, etc.; FILING FEE \$ 150.00 RECEIPT # J057967. (cwl) [Entry date 05/22/03]
5/20/03	1	DEMAND FOR JURY TRIAL (cwl) [Entry date 05/22/03]
5/20/03	--	Magistrate Judge Assignment James C. Sumner□ (cwl) [Entry date 05/22/03]
5/20/03	--	Case assigned to Pending Track - designation of appropriate track will be made after Case Management Conference and a final track assignment. (cwl) [Entry date 05/22/03]
5/21/03	2	CERTIFICATE of Clerk with state court recored attached. (cwl) [Entry date 05/22/03]
5/22/03	3	Rule 16.1(A) Initial Order; copies mailed (cwl)

[Entry date 05/22/03]

5/22/03 -- Telephonic Case Management Conference set 9:30 7/11/03
location: Jackson, MS before Magistrate Judge James C.
Sumner copies mailed (cwl) [Entry date 05/22/03]

5/23/03 4 ANSWER to Complaint by defendant Randall Kelly (Attorney
Robert T. Gordon Jr.), (cwl) [Entry date 05/27/03]

5/23/03 5 ANSWER to Complaint by defendant Republic Finance (cwl)
[Entry date 05/27/03]

6/20/03 6 MOTION by plaintiff Lawanda Dubose, plaintiff James Winter,
plaintiff Clyde Thornton to Remand, and for Costs and
Attorney Fees (cwl) [Entry date 06/20/03]

7/1/03 7 ORDER, Staying the case pending ruling on the motion to
remand, terminated deadlines (signed by Magistrate Judge
James C. Sumner); copies mailed. (cwl)
[Entry date 07/01/03]

7/1/03 -- Case assigned to Suspension Track. (cwl)
[Entry date 07/01/03]

7/3/03 8 MOTION by defendant Republic Finance to Extend Time in to
respond to the motion to remand. (cwl) [Entry date 07/03/03]

7/10/03 9 ORDER granting [8-1] motion to Extend Time, Response to
Motion reset to 7/24/03 for [6-1] motion to Remand, reset
to 7/24/03 for [6-2] motion for Costs and Attorney Fees (signed by Judge Henry T. Wingate); copies mailed. (cwl)
[Entry date 07/11/03]

7/24/03 10 MOTION by defendant Republic Finance to Extend Time in
which to respond to motion to remand (cwl)
[Entry date 07/24/03]

□

8/7/03 11 MOTION by defendant Republic Finance to Extend Time in
which to respond to motion to remand (cwl)
[Entry date 08/08/03]

8/18/03 12 ORDER granting [11-1] motion to Extend Time , granting
[10-1] motion to Extend Time in which to respond to motion
to remand, Response to Motion reset to 9/30/03 for [6-1]
motion to Remand, reset to 9/30/03 for [6-2] motion for
Costs and Attorney Fees (signed by Judge Henry T. Wingate
); mailed. (cwl) [Entry date 08/18/03]

8/18/03 13 ORDER, Extending Timefor Republic to respond to the
motion to remand. (signed by Judge Henry T. Wingate);
copies mailed. (cwl) [Entry date 08/18/03]

9/24/03 14 MOTION by defendant Republic Finance to Extend Time in
which to respond to motion to remand (cwl)
[Entry date 09/24/03]

9/25/03 15 NOTICE by defendant Republic Finance to take remand-related
deposition of Clyde Thornton 10/6/03 at 8:30 AM; James
Winter 10/6/03 at 11:00 AM; Lawandra Dubose 10/6/03 at 2:30

PM (ddc) [Entry date 09/25/03]

10/15/03 16 NOTICE by defendant Republic Finance to take deposition of James Winter, Lawandra Dubose and Nathan Dubose. (cwl) [Entry date 10/17/03]

10/23/03 17 Re-NOTICE by defendant Republic Finance to take deposition of James Winter, Lawandra Dubose Nathan Dubose on 10/29/03. (cwl) [Entry date 10/23/03] [Edit date 10/23/03]

10/24/03 18 MOTION by defendant Republic Finance to Extend Time in which to respond to motion to remand (cwl) [Entry date 10/27/03]

10/28/03 19 ORDER granting [18-1] motion to Extend Time in which to respond to motion to remand, granting [14-1] motion to Extend Time in which to respond to motion to remand, Response to Motion reset to 11/30/03 for [6-1] motion to Remand (signed by Judge Henry T. Wingate); copies mailed. (cwl) [Entry date 10/29/03]

11/13/03 20 ORDER, Extending Time until 11/14/03 in which Republic file its response and memorandum in opposition to the motion to remand. (signed by Judge Henry T. Wingate); copies mailed. (cwl) [Entry date 11/13/03]

11/25/03 21 MOTION by defendant Republic Finance to Extend Time to respond to motion to remand (cwl) [Entry date 11/26/03] [Edit date 11/26/03]

12/5/03 22 MOTION by defendant Republic Finance to Extend Time to respond to motion to remand (lwe) [Entry date 12/05/03]

□

12/8/03 23 MEMORANDUM by defendant Republic Finance in opposition to [6-1] motion to Remand by plaintiffs, [6-2] motion for Costs and Attorney Fees by plaintiffs (ddc) [Entry date 12/09/03]

12/8/03 24 RESPONSE by defendant Republic Finance in opposition to [6-1] motion to Remand by plaintiffs, [6-2] motion for Costs and Attorney Fees by plaintiffs (ddc) [Entry date 12/09/03]

1/20/04 25 MOTION by defendant Republic Finance to Stay Proceedings, and to Review/Consideration of Motion to Remand Copy to Judge Wingate (lbt) [Entry date 01/21/04] [Edit date 01/21/04]

3/16/04 26 Minute entry: on Oral argument of pending motions before Judge Wingate on 3/10/04, Jackson, Ms. Action Taken: matter taken under advisement; order to be entered. (sec) [Entry date 03/17/04]

4/12/04 27 MOTION by defendant Republic Finance to Substitute Party of Defendant (cwl) [Entry date 04/13/04]

5/10/04 28 ORDER granting [27-1] motion to Substitute Party of Defendant and that Republic Finance be substituted for Fidelity National Corp. signed by Magistrate Judge James C.

Sumner); copies mailed. (cwl) [Entry date 05/11/04]

5/13/04 29 MOTION by defendant Republic Finance, defendant Randall Kelly for James R. Chastain, Jr. to Appear Pro Hac Vice (cwl) [Entry date 05/14/04]

5/14/04 -- Pro Hac Vice fee paid FILING FEE \$ 25.00 RECEIPT # J067792 (cwl) [Entry date 05/14/04]

5/19/04 30 ORDER granting [29-1] motion for James R. Chastain, Jr. to Appear Pro Hac Vice (signed by Magistrate Judge James C. Sumner); copies mailed. (cwl) [Entry date 05/19/04]

9/30/04 31 ORDER denying [6-2] motion for Costs and Attorney Fees (signed by Judge Henry T. Wingate); copies mailed. (cwl) [Entry date 09/30/04]

9/30/04 32 ORDER mooting [25-1] motion to Stay Proceedings, mooting [25-2] motion to Review/Consideration of Motion to Remand (signed by Judge Henry T. Wingate); copies mailed. (cwl) [Entry date 09/30/04]

9/30/04 33 ORDER mooting [22-1] motion to Extend Time, mooting [21-1] motion to Extend Time (signed by Judge Henry T. Wingate); copies mailed. (cwl) [Entry date 09/30/04]

□

9/30/04 34 ORDER granting [6-1] motion to Remand to the Circuit Court of Holmes County. (signed by Judge Henry T. Wingate); OB 2004, pages 2733-2739, copies mailed. (cwl) [Entry date 09/30/04]

9/30/04 -- Case closed (cwl) [Entry date 09/30/04]

10/14/04 35 NOTICE of Order Compelling Arbitration of Claims of plaintiffs and enjoining plaintiffs from proceedings in this action by defendant Republic Finance (cwl) [Entry date 10/14/04]

10/14/04 36 MOTION by defendant Republic Finance for Reconsideration of [34-1] order, to Vacate, to Withdraw (34-1) order. (cwl) [Entry date 10/14/04]

10/14/04 37 MEMORANDUM by defendant Republic Finance in support of [36-1] motion for Reconsideration of [34-1] order by defendant, [36-2] motion to Vacate by defendant, [36-3] motion to Withdraw by defendant (cwl) [Entry date 10/14/04]

10/27/04 38 RESPONSE by plaintiff Lawanda Dubose, plaintiff James Winter, plaintiff Clyde Thornton in opposition to [36-1] motion for Reconsideration of [34-1] order by defendant (cwl) [Entry date 10/28/04]

11/5/04 39 MOTION by defendant Republic Finance to Extend Time to submit rebuttal memorandum in support of motion to reconsider (sec) [Entry date 11/05/04]

11/12/04 40 MOTION by defendant Republic Finance to Extend Time to Submit Rebuttal Memorandum In Support of Motion to Reconsider (cwl) [Entry date 11/13/04]

- 11/18/04 41 MOTION by defendant Republic Finance to Extend Time to submit rebuttal memorandum in support of motion to reconsider (cwl) [Entry date 11/18/04]
- 11/24/04 42 Rebuttal MEMORANDUM by defendant Republic Finance in to [36-1] motion for Reconsideration of [34-1] order by defendant, [36-2] motion to Vacate by defendant, [36-3] motion to Withdraw by defendant (cwl) [Entry date 11/24/04]

Case Flags:
JCS
JURY
CLOSED

END OF DOCKET: 3:03cv711

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LAWANDRA DUBOSE, ET AL.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:03CV711-W-S

REPUBLIC FINANCE, LLC, successor of
Fidelity National Corporation d/b/a
Republic Finance

DEFENDANTS

**MOTION OF REPUBLIC FINANCE, LLC, FOR ENLARGEMENT OF TIME
TO SUBMIT REBUTTAL MEMORANDUM IN
SUPPORT OF MOTION TO RECONSIDER**

COMES NOW Republic Finance, LLC, successor of Fidelity National Corporation,
d/b/a Republic Finance, and shows unto the Court the following:

1.

Republic's Rebuttal Memorandum in support of its Motion to Reconsider, Set Aside,
Vacate, Withdraw, Alter or Amend presently is due on November 19, 2004.

2.

In the afternoon of November 17, 2004, counsel for Republic learned that on November
16, 2004, the United States Court of Appeals for the Fifth Circuit rendered an opinion and
decision in *Richard C. Rainwater, et al. v. Lamar Life Insurance Company, et al.*, No. 03-
60283, an appeal from *Rainwater v. Lamar Life Insurance Company*, 246 F.Supp. 2d 546 (S.D.
Miss. 2003), a decision which Republic relied on in its Motion to Reconsider. The Fifth Circuit
opinion in *Rainwater* addresses *Smallwood v. Illinois Central Railroad Company*, 385 F.3d 568
(5th Cir. 2004), the "common defense" rule, the statute of limitations, and the sufficiency of the

522015/9287-68337

EXHIBIT
43

particularity of the allegations of a complaint in the context of removal based on improper joinder of non-diverse defendants, all of which are the subject of Republic's Motion to Reconsider and the Plaintiffs' Response in Opposition to the Motion to Reconsider. While counsel for Republic has initially considered the implications of the Fifth Circuit's *Rainwater* opinion and decision to Republic's Motion to Reconsider, counsel desires and needs additional time to further consider the *Rainwater* opinion and decision and then address it in Republic's Rebuttal Memorandum in Support of its Motion to Republic.

3.

One of the two secretaries in the two-lawyer office of counsel for Republic was admitted to the hospital last night on an emergency basis, and thus the remaining secretary needs to assist both lawyers at this time.

4.

Counsel for Republic has a longstanding commitment to be out of town November 19 – 21, 2004.

5.

This enlargement of time is not sought for the purposes of delay, but in order that matters bearing on Republic's Motion to Reconsider can be appropriately addressed in its Rebuttal Memorandum.

6.

Counsel for Republic has conferred with counsel for the Plaintiffs, and the Plaintiffs are agreeable to Republic's having the enlargement of time sought by this Motion.

WHEREFORE, PREMISES CONSIDERED, Republic Finance, LLC, moves this Court for an enlargement of time through and including November 24, 2004, in which to file, submit and serve its Rebuttal Memorandum in support of its Motion to Reconsider, Set Aside, Vacate, Withdraw, Alter or Amend Order Granting Remand.

REPUBLIC FINANCE, LLC

By:

ROBERT T. GORDON, JR., MSB No. 4909
Post Office Box 3647
Jackson, Mississippi 39207
1080 River Oaks Drive, Suite A280
Flowood, Mississippi 39232
Telephone: (601) 932-4311
Facsimile: (601) 932-4228

ATTORNEY

OF COUNSEL:

MITCHELL, McNUTT & SAMS, P.A.
Post Office Box 3647
Jackson, Mississippi 39207
1080 River Oaks Drive, Suite A280
Flowood, Mississippi 39232
Telephone: (601) 932-4311
Facsimile: (601) 932-4228

JAMES R. CHASTAIN, JR.
KEAN, MILLER, HAWTHORNE, D'ARMOND,
MCCOWAN & JARMAN, L.L.P.
Post Office Box 3513
Baton Rouge, Louisiana 70825-3513
Twenty-Second, Floor
One American Place
Baton Rouge, Louisiana 70825
Telephone: (225) 387-0999
Facsimile: (225) 388-9133

CERTIFICATE OF SERVICE

I, Robert T. Gordon, Jr., certify that I have this day caused to be served by mail a true and correct copy of the foregoing upon:

Joe N. Tatum, Esquire
Tatum & Wade, P.L.L.C.
Post Office Box 22688
Jackson, Mississippi 39225-2688

Trent Walker, Esquire
Ungarino & Eckert, LLC
5269 Keele Street, Suite B
Jackson, Mississippi 39206

Blackmon & Blackmon, P.L.L.C.
Post Office Drawer 105
Canton, Mississippi 39046

This the 18th day of November, 2004.

Robert T. Gordon, Jr.

ROBERT T. GORDON'S WINSCRIBE JOBS

Date	Dictation Jobs	Total Time of Jobs
11/01/04	0	
11/02/04	2	9.34
11/03/04	2	1.12
11/04/04	3	3.51
11/05/04	4	15.15
WEEKEND		
11/08/04	6	16.43
11/09/04	4	13.03
11/10/04	1	7.54
11/11/04	0	
11/12/04	2	2.32
WEEKEND		
11/15/04	0*	
11/16/04	7	1:00.43
11/17/04	0	
11/18/04	0	
11/19/04	3	3.44
WEEKEND		
11/22/04	0	
11/23/04	3	6.42
11/24/04	0	
11/25/04	THANKSGIVING	
11/26/04	HOLIDAY	
WEEKEND		
11/29/04	0	
11/30/04	2	19.49

* This is the date (11/15/04) Performance Review was signed. The Performance Review was given to Newsome on 11/30/04.

¹ Decimal point separates the minutes from seconds – Example: 9.34 is 9 minutes, 34 seconds. Colon separates hour from minutes – Example: 1:00.00 is 1 hour, 0 minutes, 0 seconds.

My Local Jobs										
ID	Job	Key	Length	Date	Name	Job Type	Department	Usability 1	Usability 2	Usability 3
▼	59635	59635	0:04:21	11/8/2004 12:59:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59604	59604	0:08:39	11/9/2004 10:12:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59635	59635	0:01:11	11/9/2004 2:55:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59636	59636	0:02:13	11/9/2004 2:55:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59639	59639	0:01:05	11/9/2004 3:02:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59739	59739	0:02:54	11/10/2004 1:26:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59993	59993	0:00:40	11/12/2004 9:37:00 AM	Farell Mike Mr	Default Job	Jackson_2			
▼	59918	59918	0:01:44	11/12/2004 11:44:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59111	59111	0:01:34	11/16/2004 8:27:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59112	59112	0:03:40	11/16/2004 8:27:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59113	59113	0:02:24	11/16/2004 8:27:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59145	59145	0:17:23	11/16/2004 11:06:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59171	59171	0:16:47	11/16/2004 3:59:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59163	59163	0:13:39	11/16/2004 5:29:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59192	59192	0:05:08	11/16/2004 10:28:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59391	59391	0:05:56	11/19/2004 10:38:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59399	59399	0:00:44	11/19/2004 11:11:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59438	59438	0:02:04	11/19/2004 2:23:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59618	59618	0:04:10	11/23/2004 9:08:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59619	59619	0:01:32	11/23/2004 9:08:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59620	59620	0:01:00	11/23/2004 9:08:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59990	59990	0:06:28	11/30/2004 8:35:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
▼	59999	59999	0:13:21	11/30/2004 2:30:00 PM	Gordon Bob Mr	Default Job	Jackson_1			

My Local Jobs										
ID	Job	Key	Length	Date	Name	Job Type	Department	Usability 1	Usability 2	Usability 3
	59101	59101	0:03:09	12/7/2004 12:19:00 PM	Gordon Bob Mr	Default Job	Jackson_1			

Your Name: [Name] Login: [Login] Server: [Server] 12:38 PM

start [Icons]

Washburn Internet Dept

File View Actions Tools Help

My Local Job

ID	Job	File	Length	Date	Author	Job Type	Department	Usefield 1	Usefield 2	User
56753	56753		0:11:43	10/18/2004 2:15:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
56759	56759		0:02:21	10/19/2004 8:45:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
56852	56852		0:16:34	10/20/2004 3:03:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
56873	56873		0:09:08	10/20/2004 4:00:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
57013	57013		0:13:16	10/21/2004 9:37:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
57304	57304		0:02:32	10/25/2004 6:05:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
57335	57335		0:03:38	10/25/2004 6:05:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
57336	57336		0:02:36	10/25/2004 6:05:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
57525	57525		0:04:28	10/27/2004 11:45:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
57520	57520		0:08:58	10/27/2004 2:27:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
57551	57551		0:00:44	10/27/2004 2:27:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
57698	57698		0:13:05	10/28/2004 2:15:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
57721	57721		0:08:14	10/28/2004 3:44:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
58022	58022		0:08:33	11/2/2004 9:21:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58035	58035		0:01:01	11/2/2004 10:34:00 AM	Gordon Bob Mr	Default Job	Jackson_1			

My Server Jobs

ID	Job	File	Length	Date	Author	Job Type	Department	Usefield 1	Usefield 2	Usefield 3
53744	53744		2:00:24	9/10/2004 12:48:00 PM	Farell Mike Mr	Default Job	Jackson_2			
53698	53698		1:28:48	9/13/2004 3:28:00 PM	Farell Mike Mr	Default Job	Jackson_2			
54938	54938		0:51:32	9/21/2004 10:36:00 AM	Farell Mike Mr	Default Job	Jackson_2			
56157	56157		0:17:43	10/11/2004 11:04:00 AM	Farell Mike Mr	Default Job	Jackson_2			
58178	58178		0:00:34	11/3/2004 2:45:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
58179	58179		0:00:38	11/3/2004 2:45:00 PM	Gordon Bob Mr	Default Job	Jackson_1			

Visual Networks Local 8:28:16 Server 4:57:38 251 PM

start

My Server Jobs

Job	Key	Length	Date	Admin	Job Type	Department	Usefield1	Usefield2	Usefield3
58178	58178	0:01:01	11/2/2004 10:34:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58178	58178	0:02:34	11/2/2004 2:45:00 PM	Gordon Bob Mc	Default Job	Jackson_1			
58178	58178	0:02:38	11/3/2004 2:45:00 PM	Gordon Bob Mc	Default Job	Jackson_1			
58276	58276	0:02:27	11/4/2004 10:59:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58277	58277	0:01:17	11/4/2004 10:59:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58278	58278	0:02:07	11/4/2004 10:59:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58361	58361	0:02:23	11/5/2004 10:53:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58367	58367	0:03:35	11/5/2004 10:58:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58368	58368	0:01:32	11/5/2004 10:58:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58368	58368	0:01:45	11/5/2004 10:58:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58302	58302	0:05:28	11/8/2004 9:53:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58303	58303	0:01:44	11/8/2004 9:53:00 AM	Gordon Bob Mc	Default Job	Jackson_1			
58304	58304	0:02:27	11/8/2004 9:53:00 AM	Gordon Bob Mc	Default Job	Jackson_1			

My Server Jobs

Job	Key	Length	Date	Admin	Job Type	Department	Usefield1	Usefield2	Usefield3
58333	58333	0:02:02	11/8/2004 12:59:00 PM	Gordon Bob Mc	Default Job	Jackson_1			
58334	58334	0:02:31	11/8/2004 12:59:00 PM	Gordon Bob Mc	Default Job	Jackson_1			
58335	58335	0:04:21	11/8/2004 12:59:00 PM	Gordon Bob Mc	Default Job	Jackson_1			

start

My Server Jobs									
Job ID	Key	Length	Date	Name	Job Type	Department	Useful 1	Useful 2	Useful 3
58276	58276	0:02:27	11/4/2004 10:59:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58277	58277	0:01:17	11/4/2004 10:59:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58278	58278	0:02:07	11/4/2004 10:59:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58361	58361	0:08:23	11/5/2004 10:33:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58367	58367	0:03:35	11/5/2004 10:58:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58368	58368	0:01:33	11/5/2004 10:58:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58369	58369	0:01:45	11/5/2004 10:58:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58502	58502	0:05:38	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58503	58503	0:01:44	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58504	58504	0:02:27	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
58533	58533	0:02:02	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
58534	58534	0:02:31	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
58535	58535	0:04:21	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			

My Server Jobs									
Job ID	Key	Length	Date	Name	Job Type	Department	Useful 1	Useful 2	Useful 3
58560	58560	0:15:58	11/9/2004 8:22:00 AM	Farral Mike Mr	Default Job	Jackson_2			
58561	58561	0:08:38	11/9/2004 10:12:00 AM	Gordon Bob Mr	Default Job	Jackson_1			

Windows Internet Explorer

File View Actions Tools Help

My Recent Jobs

Job	Key	Length	Date	Artist	Job Type	Department	Usefield 1	Usefield 2	Usefield 3
98367	98367	0:03:35	11/5/2004 10:58:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
98368	98368	0:01:32	11/5/2004 10:58:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
98369	98369	0:01:45	11/5/2004 10:58:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
98370	98370	0:05:39	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
98503	98503	0:01:44	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
98504	98504	0:02:27	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
98533	98533	0:02:02	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
98534	98534	0:02:31	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
98535	98535	0:04:21	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
98604	98604	0:08:39	11/9/2004 10:12:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
98635	98635	0:01:11	11/9/2004 2:55:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
98636	98636	0:02:13	11/9/2004 2:55:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
98638	98638	0:01:05	11/9/2004 3:02:00 PM	Gordon Bob Mr	Default Job	Jackson_1			

My Server Jobs

Job	Key	Length	Date	Artist	Job Type	Department	Usefield 1	Usefield 2	Usefield 3
98739	98739	0:07:54	11/10/2004 1:24:00 PM	Gordon Bob Mr	Default Job	Jackson_1			

View Navigation | Local IP: 214.28 | Server: 00754 | 1:32 PM

start

Web Client Internet Explorer

File View Actions Print Help

My Server Jobs

Y	P	B	Job	Exp	Length	Date	Author	Job Type	Department	Usefield1	Usefield2	Usefield3
Y			98278	98278	0:02:07	11/4/2004 10:59:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98361	98361	0:08:23	11/5/2004 10:33:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98367	98367	0:03:35	11/5/2004 10:59:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98368	98368	0:01:32	11/5/2004 10:59:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98369	98369	0:01:45	11/5/2004 10:59:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98392	98392	0:05:39	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98393	98393	0:01:44	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98394	98394	0:02:27	11/8/2004 9:53:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98393	98393	0:02:02	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98394	98394	0:02:31	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98395	98395	0:04:21	11/8/2004 12:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98394	98394	0:02:39	11/8/2004 10:12:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98395	98395	0:01:11	11/8/2004 2:55:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98396	98396	0:02:13	11/8/2004 2:55:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98399	98399	0:01:05	11/8/2004 3:02:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98788	98788	0:07:54	11/10/2004 1:24:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
Y			98903	98903	0:00:49	11/12/2004 9:32:00 AM	Fordell Mike Mr	Default Job	Jackson_2			

My Server Jobs

Y	P	B	Job	Exp	Length	Date	Author	Job Type	Department	Usefield1	Usefield2	Usefield3
			98918	98918	0:01:44	11/12/2004 11:44:00	Gordon Bob Mr	Default Job	Jackson_1			

start

Windows Internet Explorer

File View Address Back Stop

My Local Jobs

Job ID	Job No	Length	Date	Name	Job Type	Department	UsedField1	UsedField2	UsedField3
58738	58738	0:07:54	11/10/2004 1:24:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
58803	58803	0:00:46	11/12/2004 9:37:00 AM	Fawell Mike Mr	Default Job	Jackson_2			
58898	58898	0:01:44	11/12/2004 11:44:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59111	59111	0:01:34	11/16/2004 8:27:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59112	59112	0:03:46	11/16/2004 8:27:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59113	59113	0:02:24	11/16/2004 8:27:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59145	59145	0:17:33	11/16/2004 11:46:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59171	59171	0:16:47	11/16/2004 3:58:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
59183	59183	0:13:38	11/16/2004 5:29:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
59192	59192	0:05:08	11/16/2004 10:28:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
59391	59391	0:00:56	11/19/2004 10:38:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59399	59399	0:00:44	11/19/2004 11:11:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59436	59436	0:02:04	11/19/2004 2:23:00 PM	Gordon Bob Mr	Default Job	Jackson_1			
59618	59618	0:04:10	11/23/2004 9:08:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59619	59619	0:01:32	11/23/2004 9:08:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59620	59620	0:01:00	11/23/2004 9:08:00 AM	Gordon Bob Mr	Default Job	Jackson_1			
59950	59950	0:06:28	11/30/2004 8:35:00 AM	Gordon Bob Mr	Default Job	Jackson_1			

My Server Jobs

Job ID	Job No	Length	Date	Name	Job Type	Department	UsedField1	UsedField2	UsedField3
59950	59950	0:13:21	11/30/2004 2:30:00 PM	Gordon Bob Mr	Default Job	Jackson_1			

Visual NameSpace Local118-842:38 Server1-81327 2:30 PM

start

Vogel Newsome

From: Vogel Newsome
Sent: Friday, May 14, 2004 9:24 AM
To: Jim Allen
Subject: RE: Monitor and Screen (TO ADDRESS USE OF FIRM COMPUTER FOR PERSONAL USE)

Jim,
Please be advise that the accusation regarding the captioned matter is false. You will find that the matters I have brought to MMS's attention are all related to firm matters. Furthermore, as you will see from my most recent response to you. The Complaint that I am preparing to submit to OSHA was not produced on company time. This is a firm matter. Moreover, I have breaks. As in this case, I worked on this document on last night and will finish it up perhaps this weekend. NOT AT THE OFFICE. MMS is not the only place with a computer. I have friends and there are public places.

WHAT I DID AS IN RESPONSE TO YOUR MOST RECENT EMAIL - Was simply CUT & PASTE the document. So please be sure get your facts straight before making such accusations.

Thanks.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
111 E. Capitol Street, Suite 290
P. O. Box 3647
Jackson, MS 39207-3647
(601) 948-8508
(601) 948-8537

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From: Jim Allen
Sent: Friday, May 14, 2004 8:15 AM
To: Vogel Newsome
Subject: Monitor and Screen

Vogel,

To follow up with our discussion on 5/10/04, now that the wood impediment is cut away from underneath your desk, you now **must** move the printer back to the corner it was originally placed and move the computer monitor back to the location it was originally placed and you must permanently remove the privacy screen off your monitor. That means the monitor must be on the desk top by the far wall, opposite the entrance, and the printer must be in the right corner just as it was placed by IT staff. These changes must be completed immediately.

You may **not** use the firm computer for personal use to the extent you have been. You need to work on the assignments that you have from your attorney.

Please let me know when you have completed the moves. I will call later this morning to confirm that my instructions are clear.

5/14/2004

EXHIBIT
45

Vogel Newsome

From: Vogel Newsome
Sent: Tuesday, August 10, 2004 11:39 AM
To: Yvette Wilson
Subject: RE:

No problem. MMF came to me, and I kept looking for the jobs and told him they were not there.

Of course, I looked in the job que and did not see the new jobs although I saw them there early that morning.

When there at the top, that tells me that I have worked on them.

The I save them like that, is for my record. I print info and then delete the oldest.

I know you were wondering why all those jobs are there. I have a reason for saving them and deleting them later.

→ When LMT was out, MMF was not concerned about getting me any help in doing his work. I was working on RTG's requests and MMF's. She is now back, so could not figure out why she couldn't do his work. The bottom line, LMT just didn't want to do it and MMF obliged her.

RTG sent me a 2 pg. email before he left telling me what he wants done in his absence. MMF seems to me to be trying to determine my work load and assuming because RTG is out, I have nothing to do.

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-----Original Message-----

From: Yvette Wilson
Sent: Tuesday, August 10, 2004 11:33 AM
To: Vogel Newsome
Subject: RE:

I will never transfer something without contacting all parties involved. LMT sent me an e-mail cc: Mike and Lowry on it about transferring those jobs to your queue. I replied to everyone telling them that I had moved them to you. Of course, dumb me, I made the assumption that they had coordinated this through you. I will make sure that I always contact the secretary in the future. This is the first time that something like this has happened and that the secretary didn't know about the new jobs in her queue. I really think it is my fault that you didn't know about it. I should never assume that everyone has been notified. I should make sure of that personally myself. Sorry about that.

-----Original Message-----

From: Vogel Newsome
Sent: Tuesday, August 10, 2004 11:25 AM
To: Yvette Wilson

Subject: RE:

Thanks.

As you know LMT is back. When she was out, I helped MMP out. The dictation job was for Mike's stuff - done by Nathan. Trying to figure out, why LMT could not do it. Now, if she were still out, I'm sure MMF would have requested that I do it all. I was given instructions by RTG before he left, what he wants done in his absence. I had concerns that something would probably come up to keep me from completing RTG's requests. Don't get me wrong, I don't mind helping. But, I just know when LMT was out, MMF didn't think about getting me any help on his work. I actually thought he had sent these jobs to the Typing Pool.

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-----Original Message-----

From: Yvette Wilson
Sent: Tuesday, August 10, 2004 11:02 AM
To: Mike Farrell; Lowry Wilson
Cc: Vogel Newsome; Ladye Margaret Townsend
Subject: RE:

I put them straight in Vogel's queue yesterday and didn't contact her about it. The new ones popped up in the middle of her old dictation sitting in her queue. She didn't receive the notification that you would normally get when a new dictation job arrives. I took it straight out of LMT's queue and put it in Vogel's queue. I should have called Vogel and told her to look for them, but I didn't. That is my fault. Sorry about that.

-----Original Message-----

From: Mike Farrell
Sent: Tuesday, August 10, 2004 10:47 AM
To: Lowry Wilson
Cc: Yvette Wilson
Subject:

Have you had time to find the two dictation jobs? Are they lost in cyberspace?

Vogel Newsome

From: Vogel Newsome
Sent: Thursday, November 18, 2004 10:03 AM
To: Yvette Wilson
Subject: RE: FYI OUT OF THE OFFICE - Ladye Margaret will be out of the office today. Was rushed to the hospital in the middle of the night.

Just typed up a pleading for RTG requesting an extension of time in one of his cases. Do you know he is going to use this situation (LMT's) in his pleading?
Of course I put a question mark by it and mentioned (in notation) that it is not his secretary that has been admitted. This is only his 3RD request for extension of time in this case. To me not a valid excuse. I also mentioned that we have the typing pool. From the pleading, he is telling the court there is only one secretary assisting two attorneys - according to others here at MMF this is not uncommon.

Now he is busy pacing back and forth by my *little* box. Time that could be better used on something else.

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12/1/2004

EXHIBIT
47

Vogel Newsome

From: Vogel Newsome
Sent: Tuesday, August 10, 2004 2:08 PM
To: Jim Allen
Subject: RE: Vacation

Will do.

Just wanted to know. Realize when LMT was out, had to do work for RTG, MMF and Nathan.

No assistance from the typing pool whatsoever.

Now that she is back and it is MMF's work, just needed to know.

I am backlogged and have not been able to get the filing or file cabinet up to speed like I want to. Thought with RTG out, would be able to do so.

However, LMT was out (with her absences) and of course this crashed that. Amply depending on who is viewing, however, not so based on what it is I am trying to get done and accomplished in the time that RTG is out.

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From: Jim Allen
Sent: Tuesday, August 10, 2004 2:03 PM
To: Vogel Newsome
Cc: Bob Gordon
Subject: RE: Vacation

Vogel,

Thanks for helping out in Ladye Margaret's absence. She will be able to cover Mike's work now that she is back.

Yes, the filing is important and should be completed in a timely manner. And yes, also, there may be some work for Nathan as well. The length of time that Bob is out should be ample time to complete the filing and assist in word processing or in other areas.

Thanks, JTA

From: Vogel Newsome
Sent: Tuesday, August 10, 2004 11:14 AM
To: Jim Allen
Cc: Bob Gordon
Subject: FW: Vacation

8/10/2004

EXHIBIT
48

Guess I need a clarification as to the priority of job request. RTG left instructions for me to work on his work. When LMT was out last week, as you know, I helped MMF with his work. I was able to do his dictation jobs as well as that given by Nathan. Now LMT is back, am I to continue doing work for MMF and put the RTG's filing and other job requests on the back burner. Is there a reason why LMT cannot do these jobs? They are related to MMF's cases. I am also using this time to continue to get my files set up and the cabinet the way I like it. However, if it is going to be determined that because RTG is out, that I have nothing to do or catch up on, how am I supposed to meet the requests left by RTG to do while he is out. It seems to me, that MMF is aware that RTG is out, so I have nothing to do or that filing is not important. What he fails to see, is that this is RTG's work and filing that I am working on. While he may not think that the filing is important, it appears from RTG's email, he wants this caught up when he returns.

I need some help and clarification on what it is I'm supposed to be working on - if so, just keep in mind that I will not be able to complete all that I am trying to do with RTG's filing and mine before he returns.

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From: Bob Gordon
Sent: Thursday, July 29, 2004 12:51 PM
To: Vogel Newsome
Cc: Jim Allen
Subject: Vacation

Vogel,

I will be out on vacation from Friday, July 30 to Monday, August 16, or Tuesday, August 17.

I will have my cell phone with me and can be contacted on it if and as needed. My cell phone number is 601-209-6082.

I will be traveling on Friday and Saturday, July 30 - 31 and Sunday, August 15, and possibly, Monday, August 16.

From Saturday, July 31 through Saturday, August 14, I will be staying at the

Ron Eydt Village Conference Centre
University of Waterloo
Waterloo, Ontario
Canada N2J 4C1

In sending things to me by overnight express, this is the address to use.

8/10/2004

Guess I need a clarification as to the priority of job request. RTG left instructions for me to work on his work. When LMT was out last week, as you know, I helped MMF with his work. I was able to do his dictation jobs as well as that given by Nathan. Now LMT is back, am I to continue doing work for MMF and put the RTG's filing and other job requests on the back burner. Is there a reason why LMT cannot do these jobs? They are related to MMF's cases. I am also using this time to continue to get my files set up and the cabinet the way I like it. However, if it is going to be determined that because RTG is out, that I have nothing to do or catch up on, how am I supposed to meet the requests left by RTG to do while he is out. It seems to me, that MMF is aware that RTG is out, so I have nothing to do or that filing is not important. What he fails to see, is that this is RTG's work and filing that I am working on. While he may not think that the filing is important, it appears from RTG's email, he wants this caught up when he returns.

I need some help and clarification on what it is I'm supposed to be working on - if so, just keep in mind that I will not be able to complete all that I am trying to do with RTG's filing and mine before he returns.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
111 E. Capitol Street, Suite 290
P. O. Box 3647
Jackson, MS 39207-3647
(601) 948-8508
(601) 948-8537

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From: Bob Gordon
Sent: Thursday, July 29, 2004 12:51 PM
To: Vogel Newsome
Cc: Jim Allen
Subject: Vacation

Vogel,

I will be out on vacation from Friday, July 30 to Monday, August 16, or Tuesday, August 17.

I will have my cell phone with me and can be contacted on it if and as needed. My cell phone number is 601-209-6082.

I will be traveling on Friday and Saturday, July 30 - 31 and Sunday, August 15, and possibly, Monday, August 16.

From Saturday, July 31 through Saturday, August 14, I will be staying at the

Ron Eydt Village Conference Centre
University of Waterloo
Waterloo, Ontario
Canada N2J 4C1

In sending things to me by overnight express, this is the address to use.

8/10/2004

The telephone number at the Centre's office is 519-884-5400. This is a number, in addition to my cell phone number, at which I can be contacted, although you will have to leave a message for me. I do not know if I will have a telephone in my room.

The Fax number at the Centre's office is 519-746-7599. You can send faxes to me at this number if and as needed.

I will have a lap top with me, and I will be checking my e-mail on at least a daily basis and responding as necessary. I so will be able to access iManage documents.

I will be checking my voice mail on at least a daily basis and responding as necessary.

In regard to telephone calls I receive at the office, send me an e-mail message about each, and I will return the call if and as necessary. However, if you feel the call needs my immediate attention, call me on my cell phone or at the Conference Centre number.

I will want you to open and review my mail as it comes in.

I will call in daily, and at that time we can review mail, phone calls, and other matters.

I will be taking work with me and working much of the first week but little of the second week.

I will be taking written drafts of a number of things with me, and as I revise them, I will send the mark -ups to you by overnight express for you to make the revisions. I will provide you with written or e-mail instructions with the mark-ups.

I also will be taking my dictation unit with me. I am hopeful that I will be able to send dictation to you much as I do now, but I won't know if this will be possible until I get to Waterloo.

When Leigh prints my pre-bills to here, I will want you to overnight them to me the day you receive them. I will review them and send them directly to Leigh by overnight express. I will talk with you about the invoices once Leigh has sent the invoices and marked-up pre-bills to you.

While I am on vacation, I want you to get all of the filing up-to-date and have it current upon my return.

Bob

Robert T. Gordon, Jr.
Mitchell, McNutt & Sams, P.A.
111 E. Capitol St., Suite 290
Jackson, MS 39207-3647
P.O. Box 3647
Jackson, MS 39201
Tel. (601) 948-8508
Fax. (601) 948-8537

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8/10/2004

Vogel Newsome

From: Vogel Newsome
Sent: Wednesday, August 11, 2004 4:21 PM
To: Yvette Wilson
Subject: RE: Response to your e-mail

Hey, you want to hear something funny.
LMT asked me when I get caught up, she has something. Need I tell you the number of calls she's taken on her cell phone or made today. Like I mentioned, she spends a great deal of time on personal calls and can't get her work done. Then she mentions needing help.

As I shared with you, I have no resentment. It doesn't make sense and it isn't right. She needs to focus on getting her work done rather than chatting on the cell phone. She's out too much to be spending the time she is here on that. I don't mind helping her - but let's get real.

Vogel Newsome
Mitchell, McNutt & Sams, P.A.
111 E. Capitol Street, Suite 290
P. O. Box 3647
Jackson, MS 39207-3647
(601) 948-8508
(601) 948-8537

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-----Original Message-----

From: Yvette Wilson
Sent: Wednesday, August 11, 2004 11:35 AM
To: Vogel Newsome
Subject: Response to your e-mail

I'm starting a new string so that it doesn't get caught in spam. I understand what you are saying. We have that same situation in this office as well (I'm sure all offices) where you have one or two people that are constantly out of the office, someone else has to cover for them. Then there is resentment, etc. I know what you mean.

I hope I am not becoming one of those people myself. Caitlyn is keeping me busy. I came into work late on Monday because I had to take her to the orthodontist. I didn't get in until 9:30 a.m. I then had to leave at 4:00 to drive across town and pick her up to be at her open house for school at 5:00. Then we had to leave the open house, go by Wal-Mart and pick up a few supplies, and then I got her to her cross country practice about 15 minutes late. She was supposed to be there at 6:30. Then I ran home, unpacked what I bought at Wal-Mart, Dave and I ate so fast that I was practically swallowing my food whole, and then I had to leave to go back to pick her up from practice. We got home at 8:00 p.m., and she wanted me to cook for her, and I ironed from 9:00 - 10:00 and then went to bed.

I need to leave around 3:00 - 3:15 today to take her to the eye doctor. I have to get her contacts (I don't have to, but I think it will be easier on her with cross country) at a 4:00 appointment. So, we will miss her 3:30 practice. She then tells me last night that she has to have a physical by today. Why no one told me prior to

this I don't know. She said that the coach told everyone about it while she was on vacation. He didn't bring it up again until last night. So, after we go to the eye doctor, I am going to see if I can swing by Med-Serve (a walk in type place) and have them give her a physical and sign off that she is okay.

Then, I am still trying to coordinate a pick-up schedule with other parents for the 3:30 practice. So far, the parents I have talked to either have kids in high school (caitlyn is in middle school), or they have a carpool arranged already and their cars are full (5 kids). I have two more people that I am going to try and contact today. I am not worried about today, but I have got to get something set up by tonight. I may have to leave early during the week, but I need to make sure that it is not a daily thing. I will end up having people resenting me.

Vogel Newsome

From: Jim Allen
Sent: Tuesday, October 19, 2004 3:28 PM
To: Tupelo Staff; Tupelo Secretary; Tupelo Paralegal; Columbus Staff; Columbus Secretary; Jackson Secretary; Oxford Secretary; Oxford Staff; Corinth Secretary
Cc: MMS BOARD
Subject: Cell Phone Usage

Noticed the unique cell phone rings in the office? So have others.

Personal cell phone use in the office has been disruptive, especially some of the ring tones. From this point forward while in the office, limit the use of cell phones as much as you can and put your cell phone on vibrate or other quiet mode.

Thanks.

10/19/2004

EXHIBIT
50

Bob and Penny Gordon

From: Avis Rent A Car [saveus1@wrc.avis.com]
Sent: Thursday, November 18, 2004 7:00 PM
To: bobandpenny@jam.rr.com
Subject: Avis Reservation Cancellation

The following reservation has been canceled:

Cancellation/Confirmation Number: 02389073US1
Pick-Up Location: GSO Greensboro Piedmont Triad
Pick-Up Date: Friday, November 19, 2004
Pick-Up Time: 2:00 PM

Return Location: GSO Greensboro Piedmont Triad
Return Date: Sunday, November 21, 2004
Return Time: 11:00 AM

Car Group: E

Name: ROBERT GORDON
Child Infant Seats: 0
Child Safety Seats: 0
Child Booster Seats: 0

If you did not cancel this reservation, please send an email with the Avis rental information to:
saveus2@wrc.avis.com

Thank you for visiting Avis Rent A Car: <http://www.avis.com>

11/18/2004

EXHIBIT
51



Canceled Reservation Confirmation

Your reservation has been canceled. Thank you for choosing Avis. Please consider Avis for any of your future rental car needs. We try harder!

Contact us anytime:

[Print This Page](#)

United States - 1-800-230-4898 // **Argentina** - 0810-9991-2840 // **Australia** - 1300 137 498 // **Brazil** - (55-11) 4225-8456 // **Canada** - 1-800-879-2847 // **Mexico** - 01-800-288-888 // **New Zealand** - 09-526-2847 // **Puerto Rico** - 787-253-5925 // **US Virgin Islands** - 340-778-9355

For all other countries, click on **Customer Service** on the navigation toolbar above in order to view our Worldwide Phone Numbers.

Confirmation Number: 02389073US1

CANCELED

Your Base Rate for a 1 day 24 hour rental is: 45.98 USD

Surcharge 8.43 USD

: * 1.5%
 (County Gross Receipts Tax)
 * 5% (North Carolina Transportation Tax)
 * 11.11 (Concession Recovery Fee)

Tax: 4.09 USD (8.000%)

Approximate Total: 58.50 USD

Mileage: Unlimited

Estimated Total: 58.50 USD

Optional coverages and one way fees are subject to tax in certain locations. This tax is not reflected in the estimated total.

[New Reservation](#)

Time & Place

Pickup:	GSO - Greensboro Piedmont Triad Friday, November 19, 2004 2:00 PM	Return:	GSO - Greensboro Piedmont Triad Sunday, November 21, 2004 11:00 AM
---------	-------------------------------------------------------------------------------	---------	--------------------------------------------------------------------------------

Preferred Yes

:

Airline: None

Flight: None

Rates & Discounts

Rate Type: All Rates
 AWD: None
 Rate Code: XR

Coupon Number: None
 Residence: US
 Child Seats: Infant - 0

IT'S BACK! **AVIS**

Drive Free

Rent 3 times and get a FREE weekend rental



[ENROLL TODAY](#)

Enjoy special online benefits and a customized site experience



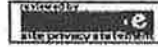
Always check Privacy for our most current policy.

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Click here



to verify





Passenger Receipt and Itinerary

Enjoy the fastest way to the gate. Use delta.com's Online Check-in from 24 hours to 30 minutes before departure. For questions, please visit delta.com or call 800-221-1212.

**ROBERT T GORDONJR
13 SHEFFIELD CT
JACKSON MS 39211-5738**

Confirmation Number/Record **6TB0IU**
Locator:
SkyMiles Number: **2000455705**

RECEIPT INFORMATION

Psg: ROBERT T GORDONJR Ticket Number: 00621618279402 Ticket Issue date: 18OCT04
Not Transferable This document expires 18OCT05.
Place of Ticket Issue: DFWRES
Issuing Agent Id: DL/FH

Fare Details: JAN DL X/ATL DL GSO 0.00Y/FD111 DL X/ CVG DL JAN 0.00Y/FD111 \$0.00END

TAX: 10.00 AY
TAX: EXEMPT XF
TOTAL: 10.00 USD

Form of Payment CA*****7622
FP A/CUSD0.00/AY10.00/TL10.00

Org Tkt 00608763059306
Org FOP Free

AWARD TICKET VALID DL ONLY-SVC CHG NON REF

This is a special fare ticket. Changing your reservation may result in penalties and increased fare. Always advise your airline or travel agent that you are traveling on a special fare.

TICKETED ITINERARY INFORMATION

Flight Nbr	Departure Date	Bkng Class	Status	Carrier/Vendor	Departure City	Departure Time	Arrival City	Arrival Time	Seat/Class	Meals Other
1704	19NOV04	N	OK	DELTA	JACKSON MISS	900A	ATLANTA	1112A	15A COACH	
1612	19NOV04	N	OK	DELTA	ATLANTA	1254P	GREENSBORO NC	202P	17A COACH	

5559	21NOV04	N	OK	DELTA/ Operated by COMAIR	GREENSBORO NC	1130A	CINCINNATI	1254P	8D COACH
5097	21NOV04	N	OK	DELTA/ Operated by COMAIR	CINCINNATI	150P	JACKSON MISS	235P	3A COACH

- Arrival date is 1 day after departure date.

Check-in with the operating carrier.

Song passengers departing from New York Kennedy (JFK) or Orlando (MCO) check-in at the Song ticket counter.

Please check-in early. Delta recommends the following minimum check-in times.

** - Check-in required
 *S\$ - Multiple Seats
 B - Breakfast
 L - Lunch
 D - Dinner
 S - Snack
 F - Food Available
 for Purchase
 *** - Multi Meals
 M - Movie

Destination	Ticket Counter	Departure Gate
U.S. Domestic Flights	60 minutes	30 minutes
International Flights	120 minutes	60 minutes

Checked baggage must be presented at least 30 minutes before departure for domestic flights and 60 minutes for international flights or the bag may be refused.

Exception: Passengers originating travel from Denver International Airport (DEN) or Las Vegas International Airport (LAS) must check their bags at least 45 minutes prior to the scheduled departure time or the bag may be refused. San Juan, P.R., (SJU) and Saint Thomas, U.S.V.I. (STT) originating passengers must check their bags at least 60 minutes prior to the scheduled departure time or the bag may be refused.

Domestic flights close for boarding 15 minutes before departure.
 International flights close 60 minutes before departure.



ROBERT T GORDON
Account Number
601 362-9206 934 0597

Monthly Statement
as of November 26, 2004

 Local
Your bill includes
BellSouth charges for:

Account Summary	Amount
Previous Bill	\$49.36
Payments (Posted as of November 26)	-49.36
Balance	\$0.00

Questions? Call:
 BellSouth 1 888 764-2500
 Automated Service System: PIN: 0460
 Customer Service: 1 888 757-6500
 Outside Calling Area: 1 800 522-8146
 Repair: 1 877 737-2478
 Pay By Phone: 1 800 807-4146
 Online: www.bellsouth.com

Current Charges Summary:
 BellSouth
 Local (Page 3)
 Total BellSouth Charges \$35.24
 \$35.24

Other Companies
 AT&T 1 800 222-0300

Other Companies	Amount
AT&T (Page 4)	\$18.80
Total Other Companies' Charges	\$18.80
Total Current Charges (Due December 16)	\$54.04
Total Amount Due	\$54.04

Now that BellSouth AnswersSM brings you unlimited local and long distance, you have a whole range of choices, including Wireless, Internet Services, and Digital TV from BellSouth. Call now to become a BellSouth AnswersSM customer.



ROBERT T GORDON
Account Number
601 362-9206 934 0597

Monthly Statement
as of November 26, 2004



Your bill includes
BellSouth charges for:

Local

Account Summary	Amount
Previous Bill	\$49.36
Payments (Posted as of November 26)	-49.36
Balance	\$.00

Questions? Call:

BellSouth 1 888 764-2500
Automated Service System: PIN: 0480
Customer Service 1 888 757-6500
Outside Calling Area: 1 800 622-6146

Repair: 1 877 737-2478
Pay-By-Phone: 1 800 807-4146
Online: www.bellsouth.com

Other Companies

AT&T 1 800 222-0300

Current Charges Summary:

BellSouth	(Page 3)	\$35.24
Local		\$35.24
Total BellSouth Charges		\$35.24

Other Companies

AT&T	(Page 4)	\$18.80
Total Other Companies' Charges		\$18.80
Total Current Charges (Due December 16)		\$54.04
Total Amount Due		\$54.04

Now that BellSouth Answers™ brings you unlimited local and long distance, you have a whole range of choices, including Wireless, Internal Services, and Digital TV from BellSouth. Call now to become a BellSouth Answers™ customer.



ROBERT T GORDON
Account Number
601 362-8206 934 0597

Detailed
Statement of
Charges

For AT&T Billing
Questions, Call
1 800 222-0300
24 Hours a Day -
7 Days a Week

AT&T (#0790)
AT&T Invoice Charges For Period Ending NOV 19, 2004
For 601-362-8206

Itemized Calls

Direct Dialed Calls

Date	Place Called	Number Called	Rate*	Time	Min.	Amount
1.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	.10
2.	10/19 GREENSBORO	NC 336 294-9922	D *	9:30AM	1	.30
3.	10/19 GREENSBORO	NC 336 294-9922	D *	9:31AM	3	[REDACTED]
4.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	.12
7.	11/18 GREENSBORO	NC 336 294-9922	D *	6:47PM	1	3.58
Total Direct Dialed Calls						3.58

Total Itemized Calls 3.58

* AT&T One Rate (R) Off-Peak II Plan State-to-State
Calls, Charge(s) are not included in Total.

Optional Calling Services

AT&T One Rate (R) Calling Card Plan Summary

8. AT&T One Rate (R) Calling Card Plan	1.00
NOV 19 thru DEC 18	
Total AT&T One Rate (R) Calling Card Plan	1.00
9. AT&T One Rate (R) Off-Peak II Plan	4.95
NOV 19 thru DEC 18	

AT&T One Rate (R) Off-Peak II Plan Summary

10. Direct Dialed Calls	3.10
Total AT&T One Rate (R) Off-Peak II Plan	8.05
Total Optional Calling Services	9.05

Other Charges and Credits

11. Universal Connectivity Charge	1.21
For an explanation of this charge, please call 1 800 532-2021 or visit www.consumer.att.com/connectivity_charge	
12. Bill Statement Fee	2.49
For an explanation of this charge, please call 1 888 ATT-BILL.	
13. Regulatory assessment fee99
This fee is not a tax or charge required by government. It helps AT&T recover expenses, including interstate access charges; property taxes; and costs of regulatory compliance and proceedings. For information, call 1 800 854-9940.	
Total Other Charges and Credits	4.69

Taxes

14. Federal Tax @ 3%44
15. Other Taxes	1.04
Total Taxes	1.48

* Taxes and Rate Codes - Page 7

11/5/04
File Missing
SLOAN MATTER

11/15/04
File out SLOAN

11/24/04
File still out

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY
NOTICE TO EMPLOYER OF CLAIM FILED AND REQUEST FOR INFORMATION

12/2004
(DATE)

Reporting nt No: 4

Claimant's Name: VOGEL D NEWSOME
EMPLOYER'S NAME AND ADDRESS:

SSN: _____

PLEASE ENTER YOUR CORRECT
MAILING ADDRESS HERE:

MITCHELL MCNUTT & SAMS
P O BOX 648
TUPELO MS 38802

TO THE EMPLOYER: The individual named above has filed a claim for Unemployment Insurance Benefits under the Mississippi Department of Employment Security Law. This individual states that he last worked for you before filing his claim and was separated on 12/03/2004 due to HAVING BEEN DISCHARGED.

**IF THE INDIVIDUAL WAS LAID OFF DUE TO LACK OF WORK,
IT IS NOT NECESSARY TO RETURN THIS FORM.**

In order that a proper determination may be made of this claimant's rights to Unemployment Insurance benefits, it is requested that you answer ALL questions under the "Employer's Statement" section and return this form immediately to the address shown on the reverse side. **NOTICE MAY BE FAXED TO TELECOPIER NUMBER: 601/961-7903. IT IS IMPORTANT THAT THIS FORM BE COMPLETED IN ITS ENTIRETY AND RETURNED WITHIN 5 DAYS. IF NOT RETURNED, A DETERMINATION WILL BE MADE ON INFORMATION AVAILABLE.**

***** EMPLOYER'S STATEMENT -- COMPLETE IN DETAIL *****

- Employed from 9/29/03 to 12/3/04 Date Terminated 12/3/04
Hire Date Last Day Worked
- Do you now have any work available for the claimant? Yes No
- Do you expect to rehire this claimant? Yes No
If "YES", when? _____
- Is claimant receiving or has he/she applied for a pension or retirement payment? Yes No
- Reason for Separation: Lack of Work Discharge Voluntary Quit
 Leave of Absence Labor Dispute Working Part-Time

Explain in detail if other than "Lack of Work".

Ms. Newsome was discharged with cause for destroying the working relationship with her supervisor, Bob Gordon, by making a false accusation of misconduct on his part. After investigating this allegation that Ms. Newsome made we determined that her allegation was false and she was discharged. In response to her annual evaluation, Ms. Newsome claimed that Bob Gordon was excessively monitoring her work. As an aside, she mentioned that if he spent less time monitoring her work, he would have more time to do his own work on a timely basis and would not have to give false reasons to the court for needing extensions of time. She made that accusation verbally to Bob Gordon and in writing to Jim Allen. While she may have made the comment as an aside or to deflect attention from her own performance, it was nevertheless investigated and found to be meritless and false. Such a serious charge against her supervising attorney destroyed any working relationship.

Name of Employer: MITCHELL MCNUTT & SAMS, P.A. Phone No. (662) 620-6200

By: Jim Allen Date: 12/15/04

Bob Gordon

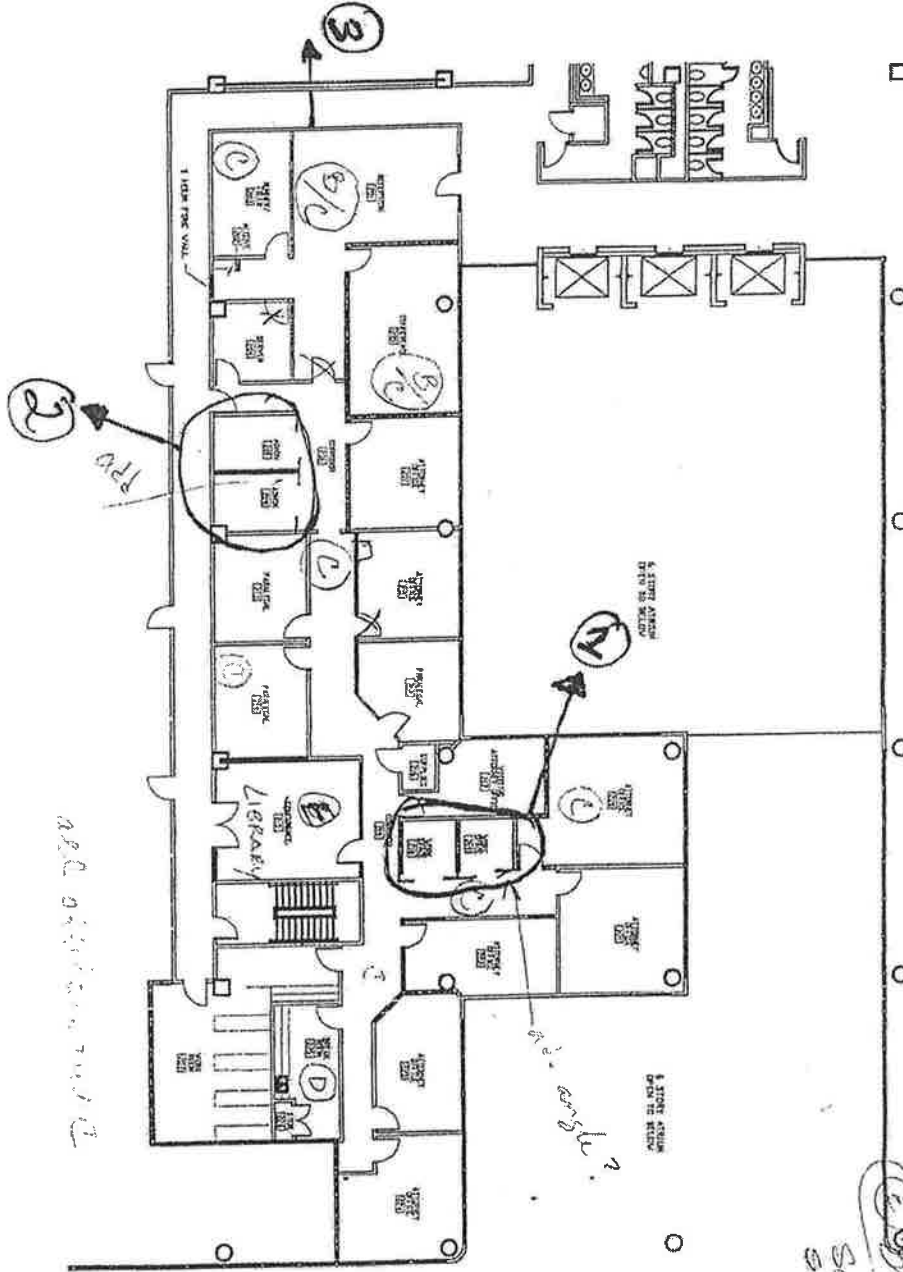
From: Bob Gordon
Sent: Wednesday, November 10, 2004 8:30 AM
To: Vogel Newsome
Cc: Ladye Margaret Townsend
Subject: Today

I did not sleep well last night or the night before and have not felt well the last day or so. I probably will be in later this morning. If anything comes up or you otherwise need some information from me, you can call me here at home or send me an e-mail. I will be using and checking e-mail through Citrix.

EXHIBIT

54

Exhibit



all additions

MITCHELL, MCNUTT & SAMS
 LEASE SPACE
 111 CAPITOL STREET
 JACKSON, MISSISSIPPI

Work Copy

ITEM: A Moderate White
 B Dairy
 C Caribbean Beer
 D Maple Sugar
 E Whiskey
 F Soda
 G Party
 H Super party
 I for walls

EXHIBIT
55

Mitchell, McNutt & Sams, P. A.
Timekeeper Diary

Report ID: OT1000 - 14356
Friday, December 03, 2004

Show Entry Narratives
Date [11/10/2004 - 11/11/2004]

ton, Jr., Robert T.

Client/Matter	Task Code	Activity Code	Bill ?	Hours Worked	Hours To Bill	Rate	Amount
Wednesday, November 10, 2004							
010030 [REDACTED]			Y	0.40	[REDACTED]	[REDACTED]	[REDACTED]
002428- [REDACTED]			Y	0.90	[REDACTED]	[REDACTED]	[REDACTED]
009287- [REDACTED]			Y	0.20	[REDACTED]	[REDACTED]	[REDACTED]
009287- [REDACTED]			Y	0.10	[REDACTED]	[REDACTED]	[REDACTED]
005555-00004 Firm Matters / Personal			N	5.70	5.70	.00	.00
Sick			Y	0.20	[REDACTED]	[REDACTED]	[REDACTED]
009287- [REDACTED]							
Totals for Day				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Thursday, November 11, 2004							
002428- [REDACTED]			Y	0.90	[REDACTED]	[REDACTED]	[REDACTED]
17- [REDACTED]			Y	0.90	[REDACTED]	[REDACTED]	[REDACTED]
005555-00004 Firm Matters / Personal			N	1.90	1.90	.00	.00
Sick			Y	0.70	[REDACTED]	[REDACTED]	[REDACTED]
009287- [REDACTED]							
009287- [REDACTED]			Y	0.80	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			Y	0.20	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]			Y	0.60	[REDACTED]	[REDACTED]	[REDACTED]
009287- [REDACTED]			Y	1.50	[REDACTED]	[REDACTED]	[REDACTED]
Totals for Day				[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Timekeeper Totals				15.00	15.00		\$1,168.00

EXHIBIT
56

Type a question for help

Manage Actions Help

Reply Reply to All Forward Send/Receive Find Type a contact to find

Messages

Inbox		Received	Size
From	Subject		
Bob Gordon	FW: New Jackson Office Letterhead	Thu 5/6/2004 5:24 PM	5 KB
Bob Gordon	New Jackson Office Letterhead	Thu 5/6/2004 5:20 PM	3 KB
Bob Gordon	Today	Thu 5/6/2004 8:22 AM	2 KB
Bob Gordon	FW: Har	Wed 5/5/2004 9:19 AM	7 KB
Bob Gordon	FW: 824292_1.DOC	Tue 5/4/2004 4:51 PM	54 KB
Bob Gordon	Har	Tue 5/4/2004 4:22 PM	3 KB
Bob Gordon	Bur	Tue 5/4/2004 1:42 PM	2 KB
Bob Gordon	RE: WORK LOAD - Need you to prioritize.	Tue 5/4/2004 10:08 AM	7 KB
Bob Gordon	FW: Bur Petitions	Tue 5/4/2004 8:53 AM	31 KB
Bob Gordon	FW: draft of complaint to file against Jen in ...	Tue 5/4/2004 8:50 AM	30 KB
Bob Gordon	FW: draft of petition for she is attached	Tue 5/4/2004 8:49 AM	30 KB
Bob Gordon	FW: draft of petition to compel against Phic i...	Tue 5/4/2004 8:47 AM	30 KB
Bob Gordon	FW: petition to compel arbitration against Oze...	Tue 5/4/2004 8:46 AM	30 KB
Bob Gordon	FW: bur - petition for rule	Tue 5/4/2004 8:44 AM	30 KB
Bob Gordon	Accepted: CONFERENCE ROOM - Billy Spencer and Rick Culp	Fri 4/30/2004 11:03 AM	800 B
Bob Gordon	Change of Address	Fri 4/30/2004 9:23 AM	3 KB
Bob Gordon	RE: Por Appeals	Thu 4/29/2004 2:44 PM	5 KB
Bob Gordon	Por Appeals	Thu 4/29/2004 2:40 PM	3 KB
Bob Gordon	Por Appeals	Thu 4/29/2004 2:35 PM	4 KB
Bob Gordon	FW: Change of Address Letters	Thu 4/29/2004 8:13 AM	12 KB
Bob Gordon	Change of Address Letters	Wed 4/28/2004 4:02 PM	11 KB
Bob Gordon	RE: Subpoena (MHP) AL V. LEE	Wed 4/28/2004 3:21 PM	2 KB
Bob Gordon	RE: Re v. Shir et al. - DO I NEED TO CREATE ...	Wed 4/28/2004 2:47 PM	5 KB
Bob Gordon	RE: Fed Ex	Tue 4/27/2004 4:44 PM	4 KB
Bob Gordon	Letters Re Change of Address, etc.	Mon 4/26/2004 3:09 PM	4 KB
Bob Gordon	Ske	Thu 4/22/2004 4:20 PM	3 KB
Bob Gordon	Por - Pending Dictation	Tue 4/6/2004 9:02 PM	3 KB
Bob Gordon	Supplies for Jackson Office	Tue 4/6/2004 1:17 PM	4 KB
Bob Gordon	RE: DOCKET SHEET (Ske - Request ...	Mon 4/5/2004 3:45 PM	10 KB

EXHIBIT
57

Message

Jim Allen

To: Vogel Newsome
 Subject: RE: Monitor and Screen

Vogel,
 Answers below.

Jim Allen

---Original Message---

From: Vogel Newsome
 Sent: Friday, May 14, 2004 9:13 AM
 To: Jim Allen
 Subject: RE: Monitor and Screen

Jim,

Although I do not find anything in the MMS Employee Handbook to support the demands you have made to me, the Monitor has been returned to original place. If you recall, I placed the printer where you saw it (to the right of monitor), **not IT**. Will you be telling me next that I cannot rotate and/or turn the monitor screen to my desired position comfortable to me?

You must put the monitor screen parallel to the back wall, opposite the entrance. It is not to be put at any angle.

The printer was originally placed near the corner of workstation near entrance. The printer now has been placed in left corner to allow me to utilize workspace on that side. If this is still not acceptable, please advise.

Putting the printer in that location is acceptable.

Am I violating any of MMS' policies in using the screen filter?
 Do not have to constantly use any type of adjuster (pushing buttons with filter).

The "screen filter" must be permanently removed from your monitor.

Again, let me reiterate my concerns of such demands of my belief of MMS retaliation against me for filing what I believe are valid complaints with the agencies assigned to address my concerns.

Thanks.

Vogel Newsome
 Mitchell, McNutt & Sarns, P.A.
 111 E. Capitol Street, Suite 290
 P. O. Box 3647
 Jackson, MS 39207-3647
 (601) 948-8508
 (601) 948-8537

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5/14/2004

EXHIBIT
58

~~e-mail of the erroneous transmission.~~

From: Jim Allen
Sent: Friday, May 14, 2004 9:09 AM
To: Vogel Newsome
Subject: RE: Monitor and Screen

Vogel,

As mentioned in my previous e-mail, the "screen filter" **must** be removed permanently and taken home. The monitor has a brightness adjustment.

Jim

-----Original Message-----

From: Vogel Newsome
Sent: Friday, May 14, 2004 8:34 AM
To: Jim Allen
Subject: RE: Monitor and Screen

Jim,

Am returning monitor and screen back to the position you are indicating. However, at times if I feel that the screen is too bright or irritating to my eyes, I will use the screen filter to ease such.

Furthermore, below, please find a "SAMPLE" of the Complaint I intend to file with OSHA to address my concerns. Believe OSHA will be better to assist me since MMS does not seem to be too concerned about what I believe to be unsafe working conditions. Am looking to submit for filing on Monday or shortly thereafter.

AGAIN - I am requesting that you provide this office with the OSHA Poster as well as MMS's SIC No.

**COMPLAINT
MAY 14, 2004
CONCERNS OF OSHA VIOLATIONS
BY MITCHELL, MCNUTT & SAMS - JACKSON OFFICE
UNSAFE WORKING CONDITIONS (IMMINENT DANGER(1))
AND
REQUEST FOR OSHA INSPECTION**

5/14/2004

[1] THERE IS A THREAT OF SERIOUS PHYSICAL HARM (Contact Stress/Injury to the Body). Because of risk of injuries in confined/constricted areas, present symptoms (pain, discomfort, constant physical/body contact with workstation, etc.), I believe the issues addressed here falls under Imminent Danger. Thus, because of concerns of unsafe working conditions and the risk/danger to employees, I believe an OSHA investigation into whether or not Mitchell McNutt & Sams, P.A. is complying with OSHA requirements. I believe such threat is immediate and/or imminent and serious physical harm could occur within a short time if OSHA does not intervene.

EMPLOYER: Mitchell, McNutt & Sams, P.A. ("MMS")

ADDRESS Physical: 111 East Capitol Street, Suite 290
 Jackson, Mississippi 39201
 Office Phone: 601/948-8508
 Fax: 601/948-8537

Mailing Post Office Box 3647
 Jackson, Mississippi 39207-3647
 Jackson

Office
 Chief Operations Officer: James "Jim" Allen
 Phone: 662/842-3871
 Fax: 662/842-8450

Immediate Supervisor: Robert T. Gordon, Jr.

How Long At Address: Move-in date - 05/07/04

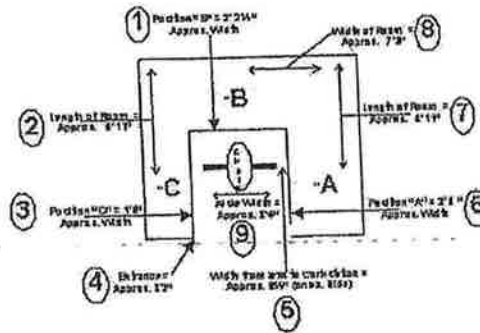
Approximate Sq. Footage: 5,787 Sq. Ft (Per Parkway Realty Services Representative)

NOTE: Out of 5,787 - Legal Secretaries workstations were allocated only 7'3" x 6'11" of space to perform their daily functions inside. Normal work hours being 8:30 a.m. until 5:00 p.m - plus overtime, if required.

Approximate size weight of users assigned 7'3 x 6'11" workstations:

- (1) Approximately 5' 7½" and 145 - 150 lbs.
- (2) Approximately 5'5" and 200 - 210 lbs.

DIAGRAM OF WORKSTATION (218)[1]:



INPUT HEIGHT DIMENSIONS

- How many employees are exposed to such unhealthy and threatening work conditions?
- How and when are these workers exposed?
- What type of equipment is used? Is it in good condition?
- What materials are used?
- What process and/or operation is involved?
- How often and for how long do employees work at the task that leads to exposure to unsafe working conditions?
- How long to your knowledge has condition existed?
- Have attempts been made to correct the problem?
- Has anyone been injured or made ill as a result of this problem?
- Has the employer conducted any tests to determine if employees are exposed to the unhealthful and dangerous conditions complained of?
- What are these tests and the results of the tests?
- What steps has the employer taken, if any, to control the hazard?

5/14/2004

- Do any employees have any symptoms that they think are caused by the hazardous conditions?
- Have any employees been treated by a doctor for a work-related condition caused by hazardous conditions?

VIOLATIONS (WHAT I BELIEVE TO BE VIOLATIONS UNDER OSHA):

1. MMS does not post OSHA Poster
2. Offices in location were recently built within last two weeks and painted – required to move in although paint not completely dry – paint fumes are still present – not sure of how safe this is. Affects – headaches. (NOTE: Ventilation is poor. There is no ventilation unit in workstation – just single ceiling lighting in drop ceiling.)
3. Construction/Renovation work is ongoing. At times there is falling plaster when they are working in ceiling area, sawing, drilling, etc. – required to work in these conditions without proper head covering or ear devices.
4. I was moved from an office space of approximately 8 – 10 feet (or more) x 8 – 10 feet (or more) to a confined/constricted workstation of approximately 7'3" x 6'11". Movement in office space is heavily restricted. Inability to move freely without constantly being concerned of getting injured in workspace. As a result, there is constant trauma to the body (banging/rubbing against workstation).
5. Present workstation is a walled/built-in *confined* area (7'3 x 6'11") – with one entrance:
 - a. Aisle space in workstation is approximately 3'4" wide.
 - b. Door entrance is approximately 3'2" wide.
 - c. Workstation measurements are approximately as follows:
 - i. Right Side ("A") approximately 2'6" from wall. Height approximately 2'5½". (See Diagram above).
 - ii. Front Station ("B") approximately 2" 2½" from wall. Height approximately 2'¼". (See Diagram above).

5/14/2004

Message

- iii. Left Side ("C") approximately 1'6" from wall. Height approximately 2 5/4". (See Diagram above).
- iv. Office Height – approximately 8'10".
- v. Drop ceiling .

6. At move-in, "B" was built-in with no leg space to pull up to work station – knee constantly subjected to trauma – banging and scraping against wood. Chief Operations Officer, Jim Allen, had section cut out to have a keyboard tray holder put in. Advised could not use this feature because it would be too low and due to my height, etc., causes excruciating pain to my wrist – prefer to use keyboard on top of desk because this is the only comfort zone I have found so far.

Although portion of section "B" was cut out, still not enough space for legs and knees. Where station has been cut out, wood is raw and splintery. Noticed strip of what looks like some type of tape, but, no protective finish/padding against raw/newly sawed section. It is still somewhat rough (underneath) in places. Not too sure of whether or not it is properly supported to handle weight of items placed on it and/or a people constantly leaning/resting body against. Further at position "A", "B" and "C" because there is not enough space (I have movements where I cross my legs quite often) for legs/knees/thighs may cause me to damage (skin abrasions, snagging skirt, dress, panty hose, etc. due to inadequate height and need for additional padding for underneath surface to avoid injuries like those mentioned here or similar – for user with work movements such as mine.

7. Corner of "B" and "C" is the only comfort zone and only position that I am able to work in with minimum risk of physical/bodily injury due to workstation ergonomics. "B" and "C" appears to have just a little more height than at position "A" or "B". (See Diagram above). "A" / "B" does not have enough leg space and was built too low (*built-in station – MMS selected this option to save money (cheaper)*). Because of such designs, I am subjected to legs banging or rubbing against the wood (when crossing legs or uncrossing, have to slightly twist at waist or angle to cross while under workstation at "A"/"B").
8. MMS has asked me to return monitor to "B" position – I advised MMS of the dangerous conditions as well as of my concerns of having my back to the entrance, thus, for me, this is very uncomfortable. *Believe that MMS's design of workstation may have been unlawfully motivated.* I believe MMS's failure to provide adequate and safe workstations and working conditions after bringing issues to its attention, warrants intervention by your agency. MMS's failure to provide adequate workspace for the duties (which requires a great deal of movement around in workstation as well as constantly getting up and down) performed by me, supports its lack of concern for my safety while on its premises. MMS insist on subjecting me to bodily injury and to a

5/14/2004

confined/constricted workstation. For example, I would be:

- a. Subjected to injury from splintered wood and or constantly scraping underneath/side of workstation.
- b. Would be required to turn a full 90° (degrees) to the entrance or approximately 45° to use section "A". This cause sever trauma to my lower torso and as a result in my being placed in such an environment/workstation, I am beginning to suffer lower back pain. The constant twisting from position "B", I believe will only continue to aggravate the problem. At position "B" & "C", I can stand - pushing the chair back- and simply move to my left and out. Even at this position, it is difficult to perform certain repetitive tasks. However, again this is the only space and/or position I have found to accommodate my movement under the workstation, my getting up and down, etc.

On Monday, May 10, 2004, although I shared my concerns with Chief Operations Officer, Jim Allen, of concerns of injuries, he demanded that I return the workstation back to its original setup - position "B". Demanding that I work in a position that I believe to be unsafe and will cause me personal bodily injuries. Given the impression from conversation, that if I do not work from position "B", rather than in position "B"/ "C" where I have found a better comfort zone - based upon the choices I thought I had as a user - I will lose my job. Again, believe that MMS's actions towards me are also illegally and unlawfully motivated by other factors.

- c. With my chair facing "B" position, I have only approximately 6½" on each side of my chair. Approximately 6½ inches between arms of chair to section "A" and also 6½ inches section "C". (See Diagram above).
- d. Cannot get up from working in position of section "B" and leave workspace without the chair obstructing my exiting. Would have to constantly turn and/or push chair out of the way, twist my body or sometimes straddle chair to get out. Pushing the chair quickly to the right (expecting it to stay) towards section "A" or to the left towards section "C", may result in the chair ricocheting back into me (banging against my body and/or forcing me into the opposite side of the workstation because of the arms of the chair hitting the sides of either "A" or "C". Just examples of some of the problems that is associated with working from position "B" and working in such a confined/constricted workstation.
- e. MMS does not allow users to set up workstation in a manner comfortable to user's needs. MMS orders users to use workstation in

5/14/2004

the structure design (keep monitor at position "B"). There is nothing in MMS's Employee Handbook on user's workstation having to be in one fixed position and/or in unison with other workstations. According to my conversation with Jim Allen on Monday, May 10, 2004, MMS wants the user's back facing the entrance and has no regard to the concerns of how uncomfortable this is - or may be - to the user(s). None of the attorneys or supervisors in the Jackson office are required to work in such confined/constricted areas, or with their back to the entrance. Neither do any of them want to work for the period of time we are required to be at work in such confined/constricted work areas.

- NOTE: Do not believe MMS consulted with an expert (not saying this is mandatory) in the field or ergonomics nor with an OSHA representative when designing office space. Out of 5,787 square feet of space, all MMS could afford to allocate to the Legal Secretaries was approximately 7'3" x 6'11" inches of space for a workstation. The offices at this location were recently built to the design MMS requested.

MMS does not allow users to set up workstations which will accommodate the user according to the user's desire or needs, but dictates to the user how the workstation will be set up. The Chief Operations Officer, Attorneys, Supervisors/Managers are not required to work in such confined/constricted work areas. Neither are they required to work with their backs towards the entrance.

- f. *If a serious emergency situation were to arise where the workstation is completely dark, consumed with smoke, etc., user's aisle would be heavily obstructed by chair and smoothly exiting workstation of workstation prohibited by the chair being in position "B". If the user, for instance, in an effort to exit the workstation in an emergency situation went to move the chair out of the way quickly and it ricochet off of either sides "A" or "C", in such a rush the chair may turn over, causing the user to lose balance, to stumble and/or crash to the floor - perhaps banging head and/or other body parts on the workstation furniture, to fall on the chair landing on the arms/base, etc. of chair and causing sever bodily injuries to the user. Workstation is too confined and constricted for the work and duties of user.*
- g. MMS will be putting a 42" 2-drawer file cabinet at position "C"- from the front of workstation. This will leave approximately 18" - 20" amount of space for the user at position "C" to utilize. The only position (once cabinet is in place) or workspace to utilize in such a confined area free of the monitor, would probably be position "A" - which does not comfortably accommodate my movements and/or work habits.

5/14/2004

- h. MMS is supposed to be putting in shelves and cabinets in workstation above user's head.
- i. Since being in this confined workspace, I have noticed that my lower back has begun to bother me. I have never had to work in such a confined or restricted work area such as that provided by MMS. The constant twisting and having to maneuver around the chair at times seems to aggravate the irritated portion in my back where the pain is felt. Stiffness and tightness has increased.

One other person (approximately 5'5" in height and weighs approximately 200 to 210 pounds) occupying the only other workstation similar to mine in design, has complained of major bodily discomfort and has recently visited a chiropractor. Moved into office workstation on Saturday, May 8, 2004. Advised visit to chiropractor on the morning of Thursday, May 13, 2004. Presently suffering from various symptoms. I believe it is associated with the confined/constricted movements of workstation. Workspace is definitely too small for employees of my and my co-worker's size. Moreover, for a persons performing the duties required of us. This is a fast pace/high impact/high demand job. The time restraints and pressure placed on Legal Secretaries require better and safe working conditions/workstations than that provided by MMS.

- j. Due to the confined/constricted workstation, I am repeatedly and/or constantly subjected to physical trauma/contact with workstation – rubbing/banging of my legs (front & back), thighs (front & back), hips against furniture in moving around/maneuvering around in an aisle approximately 3'4" wide. Cannot move around comfortably without fear of constantly being injured or hurt in my workstation. My movements are not only hindered by the workspace allocated for this workstation, but the chair provided – which takes up a great deal of space. Such uncomfot has caused me needless frustration and irritation because energy is constantly being exerted in maneuvering in workstation. This is very tiring.
- k. At position "B" there are quite a few cords which clutter station underneath. Surge protector is full or just about full (4 out of 7 presently being used). Shared by computer base.
- l. Boxes are presently being stored in office workstation (underneath at "A" and "C") until additional space is provided for storing of items in boxes.
- m. MMS does not provide headset for phone usage. When I asked MMS person, Lowry Wilson, who handles the telephone side/issues, about getting headset because I am the main person (required to perform

5/14/2004

receptionist duties as well) have to answer the phones and wanting to have my hands free, Lowry advised that the headset for the type of phones we have are too expensive (about \$200). Therefore, I will have to continue (at times) to cradle the phone between my shoulder and ear.

- n. <http://www.osha.gov/SLTC/etools/computerstations/checklist>:
- i. OSHA Ergonomics suggest 30" deep for section for monitor.
 - ii. OSHA Ergonomics suggest 15" for knee under workstation.
 - iii. OSHA Ergonomics – The leading edge of the work surface should be wide enough to accommodate the arms of your chair, usually about 24 inches to 27 inches. Spaces narrower than this will interfere with armrests and restrict you movement. This is especially important in four-corner work units.
- o. Workstation is not wheelchair accessible – nor can it accommodate a person who may have to use a wheelchair, have a broken leg. Workstation would not accommodate for such injuries or disability.

WEBSITE INFORMATION:

<http://www.cdc.gov/od/ohs/Ergonomics/compergo.htm>

9. "As we spend increasing amounts of time at our computer workstation, we need to be aware of how the design and arrangement of our equipment can impact our comfort, health, and productivity."

10. WORK AREA:

"The work area should be large enough to accommodate you, allow the full range of motions involved in performing required tasks, and provide room for the equipment and materials that make up the workstation."

- Use a headset for lengthy or frequent telephone work.
- Place the items you use most frequently directly in front of you.
- Avoid overcrowding of computer work areas.

I believe an OSHA Inspection will find violations by MMS.

11. DESK /WORKSTATION:

. . . The area underneath the desk should always be clear/uncluttered to accommodate user's legs and allow for stretching.

5/14/2004

I believe an OSHA Inspection will find violations by MMS.

12. CHAIR ADJUSTMENTS:

Contrary to popular belief, sitting, which most people believe is relaxing, is hard on the back. Sitting for long periods of time can cause increased pressure on the intervertebral discs – the spongy discs between the vertebra. Sitting is also hard on the feet and legs. Gravity tends to pool blood in the legs and feet and create a sluggish return to the heart.

- “Dynamic sitting,” don’t stay in one static position for extended period of time.
- When performing daily tasks, alternate between sitting and standing or take small walking breaks throughout the day. . .
- Ensure that you have some space (2 – 3”) between the top of your thighs and the underside of your workstation.
- Have enough space under your work surface so that you can pull yourself all the way up to the edge of the desk with room for your legs and knees to fit comfortably.

http://www.osha.gov/SLTC/etools/computerworkstations/components_desk.html

13. Areas Under the Desk or Work Surface:
Potential Hazard:

- Inadequate clearance under the work surface may result in discomfort and performance inefficiencies, such as the following:
 - Shoulder, back, and neck pain due to users sitting too far away from computer components, causing them to reach to perform computers tasks; and
 - Generalized fatigue, circulation restrictions, and contact stress due to constriction of movement and inability to frequently change postures.

[2]

Contact Stress

Contact stress can occur either internally or externally. Internal stress occurs when a tendon, nerve, or blood vessel is stretched or bent around a bone or tendon. External contact stress occurs when part of your body rubs against a component of the workstation, such as the chair seat pan or edge of the desk. Nerves may be irritated or blood vessels constricted as a result.