

NO. D-1-GN-11-001030

MICHAEL MERCEICA,
Plaintiff

vs.

TRACEY RUMMEL, and
MICROSOFT CORPORATION,
Defendants.

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IN THE DISTRICT COURT

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF'S THIRD AMENDED PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

NOW COMES Michael Mercieca, hereinafter called Plaintiff, and files this Amended Petition complaining of and about Tracey Rummel, individually, and Microsoft Corporation, hereinafter called Defendants, and for cause of action shows unto the Court the following:

I. DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends that discovery be conducted under Discovery Level 3.

II. PARTIES AND SERVICE

1. Plaintiff, Michael Mercieca, is an individual who resides in Travis County, Texas.
2. Defendant, Tracey Rummel, is an individual and resident of Harris County, Texas and has appeared and answered herein.
3. Defendant, **MICROSOFT CORPORATION**, is a Washington State corporation authorized to do business and doing business in the State of Texas at all relevant times hereto, and has appeared and answered herein.

III. JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.
5. This court has jurisdiction over the parties because Plaintiff and the individual

Defendant are both Texas residents, and some or all of the employees and agents of Microsoft Corporation that committed the acts described below work and reside in Travis County, Texas. Additionally, Microsoft Corporation has four offices within the State of Texas, located in Austin, Dallas, Houston and San Antonio.

6. Venue in Travis County is proper in this cause under the mandatory venue provision §15.017 of the Texas Civil Practice and Remedies Code because it is the county in which Plaintiff resided at the time of the accrual of Plaintiff's slander cause of action. Under such Code §15.004 and 15.005, venue for all of Plaintiff's other causes of action also lies in Travis County because such other causes of action arise out of the same transaction, occurrence or series of transactions or occurrences as Plaintiff's slander cause of action.

Alternatively, venue in Travis County is proper under the general venue provision of Code §15.002(a) (1) because it is the county in which all or a substantial part of the events or omissions giving rise to Plaintiff's claim occurred.

IV. FACTS

7. Plaintiff is an individual residing in Travis County, Texas. He turned 50 years of age as of his birthday on August 22, 2010. He was born in London, England, has British, Australian and New Zealand citizenship status, and became a nationalized USA citizen in September 2010. Plaintiff was a Senior Sales Executive for Microsoft Corporation and was employed with Microsoft around the globe for 17 years. Plaintiff consistently excelled with over quota sales performance to much critical acclaim. Plaintiff received awards and much positive feedback from Microsoft for his customer service and sales excellence and was widely recognized by his customers, partners, and his peers as one of the most passionate advocates for Microsoft and one of the most generous, compassionate, and supportive team players. Plaintiff was acknowledged

as a leader amongst his peers- he was a loyal, selfless, and inspiring friend and colleague and recognized as the very embodiment of integrity. During his time at Microsoft, Plaintiff received a number of Sales Recognition Awards, Long Service Awards and Customer Service Awards and was the first recipient of the Sales District "Spirit of the District Award" at Microsoft. In addition, Plaintiff received numerous letters and e-mails of commendation from Microsoft partners and customers, and from his peers and colleagues.

8. In or about September or October 2007, Lori Aulds, a Microsoft employee, became Plaintiff's direct manager. Plaintiff and Ms. Aulds had had a sexual relationship over a period of years prior to her promotion as Plaintiff's direct manager. Plaintiff had ended such relationship some time prior to Ms. Aulds's promotion to his manager. Ms. Aulds remained Plaintiff's direct manager until in or about December 2010.

9. Defendant. Rummel was an independent contractor hired through Xtreme Consulting to work for Microsoft as a contingent staffer "CS" and marketing consultant from on or about November 2008 through on or about February 15, 2010. In February 15, 2010, she was hired by Microsoft as a full-time employee. Prior to being hired by Microsoft, Ms. Rummel had such a close personal relationship with Ms. Aulds that they spent overnights together either at Ms. Aulds' home or while away on business. In or about November 8, 2009, Ms. Rummel and Ms. Aulds spent the night together and allegedly Ms. Rummel advised Ms. Aulds that she was subjected to sexual harassment comments and actions by Mr. Mercieca. Until Plaintiff filed this suit and conducted discovery, Plaintiff had not been told the substance of the actual allegations made by Ms. Rummel to Ms. Aulds in November 8, 2009. Based upon information and belief, Ms. Rummel, in this conversation with Ms. Aulds during this sleepover, *accused Plaintiff of sexually harassing her*. However, any statement made by Ms. Rummel to Ms. Aulds in or about November 8, 2009

accusing Plaintiff of "sexual harassment" was never communicated to Plaintiff by anyone, including by Ms. Rummel, until after Ms. Rummel's deposition was taken after this suit was filed.

10. It is undisputed that Ms. Rummel was not an employee of Microsoft in November of 2009 and that Ms. Aulds was not a member of Microsoft's Human Resources at all times relevant to this suit.

11. Thereafter, in late 2009 and early 2010, Ms. Aulds began to unduly scrutinize and criticize Plaintiff relative to his job performance and to discriminate against him in her treatment of him as an employee versus the treatment received from her by other employees that she supervised. Plaintiff met with Ms. Aulds in or about February 2010 to discuss his concerns over such treatment, and his concerns about the hiring of Ms. Rummel since Plaintiff had heard complaints from Microsoft partners/customers about Ms. Rummel. Ms. Aulds discouraged Plaintiff from going to Human Resources with such concerns. Ms. Aulds specifically told Plaintiff that Ms. Rummel had not filed any complaint against him. Ms. Aulds advised Plaintiff for the first time that Tracy Rummel had related complaints of sexual harassment to her and that she had advised Human Resources. In or about November of 2009, although Micky Shields told Ms. Aulds that the matter was not an Human Resources issue since no complaint had been raised and no one had contacted her about any facts or complaint and that the matter would be closed and confidential, Ms. Aulds took it upon herself to republish the false allegations made by Tracy Rummel and she passed it on to her boss David Tannebaum and then to his boss Eddie Obrien.

12. After the false allegations were passed on to Mr. Mercieca's upper management by Lori Aulds, Plaintiff began to be treated differently by his manager and upper management. On or about April 19, 2010, Plaintiff filed a complaint against Lori Aulds and other managers with Microsoft's Human Resources department, complaining of harassment, hostile work environment, and

discrimination based on sex, age and national origin. From that point on, Microsoft's mistreatment and discriminatory treatment of Plaintiff intensified to include but not be limited to, a bad faith investigation by was performed on Plaintiff's formal complaint.

13. Ms. Aulds's mistreatment and discriminatory actions towards Plaintiff included, without limitation, the following actions or omissions, some of which occurred after Plaintiff filed his complaint with Microsoft Human Resources:

- a. Ms. Aulds did not have one-to-one meetings with Plaintiff in the same amount and same frequency that she had with other employees she supervised;
- b. She urged Plaintiff to apply for a transfer within Microsoft to a position in Europe or Australia/New Zealand, and to Plaintiff's knowledge, never recommended him for a promotion to a position in the United States;
- c. She cut his expense budget when other employees similarly situated to Plaintiff did not have their expense budgets cut;
- d. She prohibited him from attending important meetings, and important conferences which he had attended in previous years, that were necessary for Plaintiff to maintain good relationships with his Microsoft accounts, whereas other employees she supervised who were younger than Plaintiff or less experienced than Plaintiff, or had been employed for less time with Microsoft than Plaintiff, were allowed to attend such conferences and meetings;
- e. She met and talked with Plaintiff's account customers without Plaintiff's knowledge and participation to discuss their accounts and to try and obtain adverse information about Plaintiff;
- f. She promised to support Plaintiff's request for a promotion, but then failed

to do so;

g. She deliberately failed to forward to Plaintiff communications from his customer accounts;

h. She falsely accused Plaintiff of expense irregularities;

i. She unduly scrutinized and questioned his request for vacation time;

j. She failed to recognize project accomplishments of Plaintiff while recognizing the accomplishments of other employees she supervised;

k. She failed to assign lead roles to Plaintiff that should have been assigned to him and that were assigned to similarly situated employees;

l. She made disparaging comments about Plaintiff's nation of origin and questioned his green card status and right to work for Microsoft;

k. She falsely accused Plaintiff of improper office behavior; and,

l. She conspired with David Tannebaum to give Mr. Mercieca a bad final review, which ultimately David Tannebaum used to demote Mr. Mercieca to a level 5 OEM team member when his manager at the time, Joe Sahagian, recommended Mr. Mercieca to a level 3.

14. Ms. Aulds has admitted to Plaintiff that she could not handle her relationship to Plaintiff as his boss and insisted that Plaintiff look for another job.

15. During Microsoft Human Resource's official investigation of Plaintiff's complaint, Ms. Aulds lied to the investigator, Dan Shea, and said that she had not had a prior sexual relationship with Plaintiff in order to show Plaintiff as a liar. The lies Ms. Aulds told were key to the investigation. Even though Microsoft subsequently became aware of Ms. Aulds lies during an official investigation, Microsoft subsequently promoted Ms. Aulds and demoted Mr. Mercieca. While the investigation was still ongoing David Tannebaum demanded the investigation end before

it was completed and before all of Mr. Mercieca's supporting witnesses were contacted.

16.. At or about the same time that Ms. Aulds was engaging in the above-described behavior towards Plaintiff, other Microsoft managers engaged in similar mistreatment and discriminatory treatment of Plaintiff including, without limitation, the following acts and omissions, some of which occurred after Plaintiff filed his complaint with Microsoft Human Resources:

- a. Plaintiff was chastised by manager David Tannebaum for missing a deadline by three hours, when other employees were not chastised for missing deadlines by such short time frames;
- b. Plaintiff was accused by manager David Tannenbaum of not performing his job adequately because of the length of time he remained at a certain grade whereas other similarly situated employees were not similarly criticized;
- c. Plaintiff did not receive promotions which he should have received and which were awarded to similarly situated employees and to American employees;
- d. Microsoft delayed its investigation and engaged in a bad faith investigation of Plaintiff's complaint;
- e. Microsoft's Human Resources summarily dismissed Plaintiff's complaint without speaking to Plaintiff;
- f. Microsoft reported to Plaintiff that it had found no basis for his complaint;
- g. Microsoft promoted Ms. Aulds, even after discovering that she had lied during the investigation of Plaintiff's complaint;
- h. In announcing the promotion of Ms. Aulds, Manager Eddie O'Brien emphasized her gender;
- i. Microsoft managers, including without limitation, Ms. Aulds, David

Tannenbaum, and Eddie O'Brien, communicated with Plaintiff's customer accounts without Plaintiff's knowledge and participation to discuss their accounts which marginalized Plaintiff's position with his accounts;

j. Microsoft managers, including without limitation, Ms. Aulds and David Tannenbaum, communicated with Plaintiff's customer accounts without Plaintiff's knowledge and participation to try and obtain adverse information about Plaintiff;

k. Microsoft managers, including without limitation, David Tannenbaum, made job assignments that discriminated against Plaintiff and one other person of approximately the same age as Plaintiff;

l. In Plaintiff's annual review conducted by Microsoft in or about August 2010, he received a vastly reduced pay raise even though his performance numbers were better than the previous year. He also received a bonus and stock options that were 70% lower than the previous year even though his performance numbers placed him among the top six sales representatives. Another sales representative of approximately the same age as Plaintiff also received reduced compensation during the same annual review. An American sales representative who finished towards if not at the bottom of the sales representatives in terms of performance numbers and who is far younger and less experienced than Plaintiff received the same rating as Plaintiff—"achieved"—even though he did not achieve his performance quota. Plaintiff believes that this younger, less experienced, and under achieving sales representative received similar or more generous compensation as Plaintiff during the August 2010 annual review. During Plaintiff's 2010 annual review, which was attended by two managers and a human resources representative, Microsoft raised

unsubstantiated and unsupported claims of negative job performance as a pretext for Plaintiff's reduced compensation increases. To Plaintiff's knowledge, no other sales representative was "ganged up" on in this manner;

m. Microsoft increased its scrutiny of Plaintiff's job performance and work product to an extent that exceeded the scrutiny of similarly situated employees or of younger, less experienced employees, and to such an extent that Plaintiff's customer accounts have told him that they fear they will suffer adverse consequences if they support Plaintiff;

n. Plaintiff was prohibited from attending a key conference with customers, which then resulted in Plaintiff being left out of subsequent meetings with his customer accounts. Instead of attending the conference, Plaintiff was required to attend a six hour internal training program;

o. Microsoft manager Eddie O'Brien prohibited Plaintiff from attending a sales meeting with one of Plaintiff's customer accounts even though other, younger American employees are allowed to attend the sales meetings where senior executives at Microsoft meet with their customer accounts;

p. Job anniversary milestones and project accomplishments of other employees are recognized by Microsoft, but Plaintiff does not receive such recognition for his anniversary milestones or project accomplishments;

q. Constructive criticism offered by Plaintiff concerning Microsoft services or products, which in the past was readily accepted by Microsoft managers, is now treated as evidence of Plaintiff's alleged "bad attitude" concerning his job;

r. Plaintiff was forced to perform duties that were clearly too much for one

person to perform;

s. Disparaging comments were made about Plaintiff's nation of origin. One of the managers, Eddie O'Brien, is known throughout the company, for his disparaging comments about different nationalities, including one time when shortly after the recent tsunami in Japan, he said that "I would have zero pity for Japan. I would push them right under the bus and create another tsunami;" and,

t. At off-site gatherings of Microsoft employees Plaintiff was ostracized by Microsoft managers, whereas the same managers were clearly engaging socially with other employees.

17. Within approximately 18 days of Plaintiff filing his complaint with Microsoft Human Resources, Plaintiff was notified by Microsoft, on or after May 12, 2010, that a Microsoft employee had filed a complaint against him. Plaintiff subsequently learned, on or about June 17, 2010, that Defendant Tracy Rummel had filed a sexual harassment complaint and retaliation complaint against him with Microsoft Human Resources, alleging that Plaintiff had been sexual harassing her for approximately from on or about November 8, 2008 through November 9, 2009.

18. Despite Ms. Rummel's claim of sexual harassment by Plaintiff occurring prior to her being employed by Microsoft, she sought to join the very sales team at Microsoft which included Plaintiff.

19. After this lawsuit was filed and through discovery, Plaintiff learned that Ms. Rummel filed her complaint against him with Microsoft on or about May 7, 2010. Through discovery Plaintiff has learned that Ms. Rummel never contacted anyone at Microsoft Human Resources from November 2009 until she was persuaded to file her complaint against Mr. Mercieca on or about May 7, 2010 by Ms. Aulds. And in retaliation for Mr. Mercieca's complaint against Ms. Aulds.

20. Microsoft investigated the Ms. Rummel's complaint and found it to be baseless and "unsupported", yet Ms. Rummel received no adverse consequences for engaging in such activity. The only reason Ms. Aulds received any disciplinary conduct was because after she got caught in her lies, she ultimately admitted to the lies, and of course, Microsoft was forced to admonish her.

21. After the onset of the above-described mistreatment and discriminatory treatment, some of Plaintiff's colleagues at Microsoft have noticed changes in Plaintiff's behavior at work, commenting to Plaintiff that he appeared withdrawn during conference calls and did not ask questions and discuss issues in the same manner and with the same enthusiasm as in the past.

22. One colleague whom Plaintiff highly respects has told Plaintiff that it is obvious or clear to him that Microsoft managers are treating Plaintiff differently and negatively, and are attempting to undermine anything that plaintiff says or does.

23. The environment at work has become so intolerable and stressful that Plaintiff could no longer work in Microsoft's Austin office unless it was absolutely necessary to get the job done, preferring to work instead from his home office or at customer's offices. The environment at work continued to be so intolerable and stressful that Plaintiff's employment with Microsoft was constructively terminated on or about February 22, 2012 and as a result of Plaintiff being ordered to be unjustly placed at a level 5.

V. RESPONDEAT SUPERIOR AND RATIFICATION

24. Whenever in this complaint it is alleged that the Defendant Microsoft did any act or thing, or failed to do any act or thing, it is meant that the Defendant's officers, agents, servants, employees or representatives did such act with full authorization or ratification of the Defendant, or was done in the normal and routine course and scope of employment of Defendant's officers, agents, servants, employees, or representatives including Tracy Rummel,

Marketing Manager, Marc Pisan, Marketing Director U.S. OEM, Lori Aulds, Regional Sales Director U.S. OEM, David Tannebaum National Sales Director U.S. OEM, and Eddie O'Brien, a Vice President U.S. OEM. Whenever it is alleged in this petition that a Microsoft employee did any act or thing or failed to do any act or thing, it is meant that such employee acted or failed to act with full authorization or ratification of Defendant, or was done in the normal and routine course and scope of employment by Defendant, or was done in a capacity or manner that makes Microsoft vicariously liable for such conduct.

VI. SLANDER & CONSPIRACY TO SLANDER

25. Plaintiff adopts and incorporates by reference into this section of his petition the statements set forth above in the Facts section as if set forth in this section.

26. During the deposition of Tracy Rummels in this case, Plaintiff learned that Defendant Rummels had published false statements to Micky Shields in the Human Resources Department at Microsoft in November 2009 in that she accused Plaintiff of sexually harassing her and of retaliating against her while she was a C.S. (i.e., non-employee) of Microsoft. Rummels's allegations were not investigated by Microsoft at the time. Upon information and belief, Aulds repeated these false allegations of sexual harassment David Tannebaum and Eddie O'Brien.

27. On or about May 7 or 10, 2010, false statements were published and/or republished by Defendant Rummel in that she accused Plaintiff of sexually harassing her and of retaliating against her while she was a vendor for Microsoft.

28. Plaintiff asserts the discovery rule.

29. After Rummel published or republished the false statements in May 2010, her allegations were for the first time investigated by employees of Microsoft and determined to be "unsupported."

30. As a result of the false allegations, Plaintiff has been subjected to undue strict scrutiny of his job performance, hostile work environment, continued harassment by Microsoft, retaliation, demotion and constructive discharge.

31. Defendant Microsoft, by and through its officers, agents, servants, employees, or representatives, including, but not limited to, manager, Lori Aulds, acting within the course and scope of her employment or under conditions that make Microsoft vicariously liable for her conduct, conspired with Defendant Rummel, to slander Plaintiff by making false statements of fact referring to Plaintiff, including without limitation, false allegations of sexual harassment and retaliation.

32. The false statements constitute defamation per se because they accuse Plaintiff of engaging in illegal activity and/or sexual misconduct and/or they directly bear on his fitness as a sales agent and businessman and/or they constitute injury to his personal and business reputation and to his occupation and/or impeach his honesty, integrity or virtue. Furthermore, these statements are defamatory because they tend to injure Plaintiff's reputation and occupation in the sales and business community and expose him to public hatred, contempt, ridicule, and financial injury, and impeach his honesty and integrity.

33. The defamatory statements are false, slanderous, and libelous. At all times relevant hereto, Plaintiff was an employee of Microsoft for 17 years and engaged in outside sales. Defendants made, or conspired with each other to make, the defamatory statements with the knowledge that they were false or with substantial grounds for knowing that they might be false and with reckless disregard to whether they were true or false. Alternatively, the defamatory statements were negligently published by Defendants. Upon information and belief, Defendant Rummel published her sexual harassment complaint against Plaintiff at the insistence of Microsoft and in

retaliation for Plaintiff filing a complaint against Microsoft.

34. As a direct and proximate result of Defendants' publication of, and/or conspiracy to publish, the defamatory statements, Plaintiff's business sales reputation has been severely injured. The false allegations contained in the defamatory statements have caused Plaintiff to suffer severe mental anguish, public humiliation and embarrassment as a result of Defendants' intentional and/or negligent acts since the truth was known to Defendants. As a direct and proximate result of Defendants' acts, Plaintiff has suffered pecuniary losses, including without limitation, loss of income as a result of his constructive discharge, loss of future income, and loss of employee benefits. Plaintiff seeks compensatory damages for these injuries in an amount that exceeds the minimum jurisdictional limits of this Court.

35. Plaintiff is entitled to exemplary damages from Defendants because they acted with a specific intent to cause injury to Plaintiff or with conscious indifference to the rights, safety, or welfare of Plaintiff and with actual, subjective awareness that their conduct involved an extreme degree of risk of harm to Plaintiff. Plaintiff seeks exemplary damages in an amount not to exceed three times the amount of his actual damages as determined by the fact finder.

36. The publication and republication of the false statements by Defendants was not privileged.

37. Defendants were not acting in good faith in publishing and republishing the statements.

38. Plaintiff did not consent to the publishing or republishing of the false statements about him. Plaintiff sought a fair investigation of his formal complaint yet Microsoft engaged in a bad faith investigation of his complaints in an effort to hide the truth.

VII. EXHAUSTION OF ADMINISTRATIVE REMEDIES

39. Plaintiff adopts and incorporates by reference into this section of his petition the statements set forth above in the Facts section as if set forth in this section.

40. Plaintiff timely filed a charge of discrimination against Defendant Microsoft with the Austin Human Rights Division, a division of the Civil Rights Division of the Texas Workforce Commission ("TWC"), and made a dual filing with the EEOC. Plaintiff exhausted his administrative remedies, received a right to sue letter from the appropriate State agency, and this suit has been timely filed under the Texas Labor Code. All conditions precedent to filing this claim have been performed by Plaintiff or have occurred.

**VIII. DISCRIMINATION IN VIOLATION OF
THE TEXAS COMMISSION ON HUMAN RIGHTS ACT**

41. Plaintiff adopts and incorporates by reference into this section of his petition the statements set forth above in the Facts section as if set forth in this section.

42. During the course of his employment, Defendant Microsoft discriminated against Plaintiff because of age and/or sex and/or national origin.

43. Specifically, and without limitation, Defendant subjected Plaintiff to undue scrutiny, denied him promotions, denied him bonuses and other compensation, question his green card status and right to work in the United States, subjected him to isolation and ostracized him, undermined him vis-à-vis other employees and his customers, and subjected him to a hostile work environment, retaliation, and/or constructive discharge, based upon his age, sex and/or national origin, or a combination of each.

44. Through such actions, Defendant Microsoft intentionally discriminated against Plaintiff in connection with the compensation, terms, conditions, and privileges of employment, or limited, segregated or classified Plaintiff in a manner that would deprive or tend to deprive

him of any employment opportunity or adversely affect his status as an employee, including without limitation, unjustly demoting him to a level 5 when his manager at the time had ranked him at a level 3, resulting in a constructive discharge.

45. Age and/or sex and/or national origin were motivating factors in Defendant Microsoft's treatment of Plaintiff.

46. Such conduct constitutes unlawful employment practices in violation of the Texas Commission on Human Rights Act, including without limitation, Texas Labor Code §21.051 and/or 21.056.

47. Plaintiff was proximately damaged as a result of the conduct of Microsoft, its agents and employees, in an amount within the jurisdictional limits of this court. Plaintiff seeks recovery of such damages, including without limitation, the damages provided by Texas Labor Code Sec. 21.2585.

IX. SEXUAL HARASSMENT

48. Plaintiff adopts and incorporates by reference into this section of his petition the statements set forth above in the Facts section as if set forth in this section. Additionally, Defendant Aulds, acting within the course and scope of her employment or in a manner that makes Microsoft vicariously liable for her conduct, made sexual comments to Plaintiff about her sex life (such as "you have ruined me for sex with my boyfriends"), commented on her sexual relationships with her boyfriends, and insisted that Plaintiff get involved in her and her boyfriend's relationship and disputes, even though on several occasions Plaintiff told Aulds that it made him uncomfortable being told and involved in these things, and handled her relationship with Plaintiff more like a "boyfriend/girlfriend" relationship rather than an employer/employee relationship.

49. The above-described conduct of Defendant Microsoft's manager employee, Lori

Aulds, was sufficiently severe and pervasive so as to alter the conditions of Plaintiff's employment and create an abusive work environment. The accumulated effect of her repeated verbal attacks and caustic comments to and about Plaintiff (which became known to Plaintiff) undermined Plaintiff's ability to succeed at his job, and caused harm to his emotional stability and health. Such gender-based animus exhibited by Ms. Aulds to Plaintiff constitutes sexual harassment of Plaintiff in violation of his rights under the law. Defendant Microsoft knew or should have known of the harassment and abusive work environment, yet failed to take prompt remedial action.

50. Plaintiff alleges that Defendant Microsoft, by and through its manager employee, sexually harassed Plaintiff and created an abusive work environment for Plaintiff with malice or with reckless indifference to the legally protected rights of Plaintiff.

51. Such harassment proximately caused damages to Plaintiff in an amount within the jurisdictional limits of this court.

X. RETALIATION

52. Plaintiff adopts and incorporates by reference into this section of his petition the statements set forth above in the Facts section as if set forth in this section.

53. Plaintiff alleges that Defendant Microsoft, by and through its officers, agents, servants, employees or representatives, including without limitation, Tracy Rummel, Marketing Manager, Marc Pisan, Marketing Director U.S. OEM, Lori Aulds, Regional Sales Director U.S. OEM, David Tannebaum National Sales Director U.S. OEM, and Eddie O'Brien, a Vice President U.S. OEM instituted a campaign of retaliation against Plaintiff due to Plaintiff filing his formal complaint against Lori Aulds, Regional Sales Director U.S. OEM, David Tannebaum National Sales Director U.S. OEM, and Eddie O'Brien, a Vice President U.S. OEM and

exercising his rights by filing a charge of discrimination with the Austin Commission on Human Rights, a branch of the Texas Commission of Human Rights, and EEOC. This retaliation included the filing of a bogus sexual harassment and retaliation complaint by Defendant Rummel while employed by Microsoft, and Microsoft causing or encouraging Tracy Rummel to file a false and misleading charge of sexual harassment and retaliation against Plaintiff.

54. Such conduct violates Texas Labor Code Sec. 21.055 and/or 21.056.

55. Such conduct proximately caused Plaintiff to suffer damages in an amount within the jurisdictional limits of this court.

XI. INVASION OF PRIVACY

56. Plaintiff adopts and incorporates by reference into this section of his petition the statements set forth above in the Facts section as if set forth in this section.

57. Defendant Microsoft, by and through its officers, agents, servants, employees or representatives, intentionally invaded Plaintiff's privacy by intruding on his solitude, seclusion, or private affairs. The invasion was highly offensive to Plaintiff and would be highly offensive to a reasonable person. Plaintiff was injured because of the conduct of Defendant. Plaintiff proximately suffered damages in an amount within the jurisdictional limits of this court for which Plaintiff herein sues.

58. Defendant Microsoft, by and through its officers, agents, servants, employees or representatives, verbally publicized facts regarding Plaintiff's private life which were not of legitimate public concern. The publicity was highly offensive to Plaintiff and would be highly offensive to a reasonable person. Plaintiff was injured as a result of the conduct of Defendant. Plaintiff proximately suffered damages as a proximate cause and result of Defendants' actions in an amount within the jurisdictional limits of this court for which Plaintiff herein sues.

XII. DAMAGES

59. Plaintiff sustained the following damages or elements of damage in an amount within the jurisdictional limits of this court for which he seeks compensation as a result of the actions and/or omissions of Defendants described above:

- a. Back pay from the date that Plaintiff was denied equal pay for equal work, and interest on the back pay, in an amount of compensation to Plaintiff as the Court deems equitable and just, and/or loss of earnings in the past;
AND, lost income resulting from Plaintiff's constructive discharge;
- b. Front pay in an amount the court deems equitable and just to make Plaintiff whole, and/or loss of earning capacity which will, in all reasonable probability, be incurred in the future;
- c. Loss of benefits, including bonuses, stock options, 401k matching contributions and any other pension plan contributions, and any profit-sharing plan contributions;
- d. Loss of enjoyment of life;
- e. Mental anguish in the past;
- f. Mental anguish which will, in all reasonable probability, be suffered in the future;
- g. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff and such charges are reasonable and were usual and customary charges for such services in Travis County, Texas;
- h. Reasonable medical care and expenses which Plaintiff will incur, in all reasonable medical probability, in the future;
- i. Deprivation of seclusion;
- j. Humiliation;
- k. Loss of time and Inconvenience;
- l. Physical discomforts; and,
- m. Injury to reputation.

XIII. EXEMPLARY DAMAGES

60. Plaintiff would further show that the acts and/or omissions of Rummel and of Defendant Microsoft, by and through its officers, agents, servants, employees or representatives, including Manager Lori Aulds and co-worker Tracy Rummel, which are complained of herein were committed with malice or reckless indifference to the protected rights of the Plaintiff. In order to punish Defendants, and to deter such actions and/or omissions in the future by Defendants or anyone else, Plaintiff also seeks a recovery of exemplary damages from

Defendants.

XIV. ATTORNEY'S FEES

62. Pursuant to Texas Labor Code Sec. 21.259, Plaintiff requests his attorney's fees and costs, and reasonable expert fees.

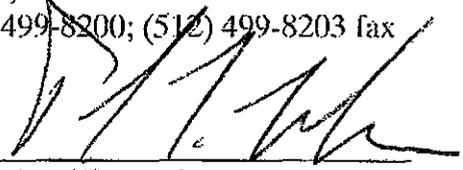
XV. CONDITIONS PRECEDENT

63. All conditions precedent to bringing this action have been performed or have occurred, or have been waived.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Michael Mercieca, respectfully prays that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants for actual damages in an amount within the jurisdictional limits of the Court; exemplary damages; pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate; attorney's fees; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 12, 2013 a true and correct copy of the foregoing was served upon the following as follows, and/or via the court's electronic notice system:

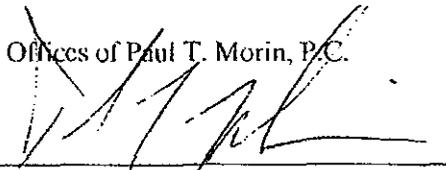
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