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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

B. JEANETTE BORTHICK, individually,
Plaintiff,

v.

ARTHUR BENJAMIN, in his official capacity as
president of the DataMark division of Focus Direct Inc.
and as president, chairman and CEO of DataMark Inc.;
TOM DEARDEN, in his official capacity as vice
president of the DataMark division of Focus Direct Inc.
and vice president and board member of DataMark Inc.;
DATAMARK INC., a Delaware corporation doing
business in the State of Utah;
FOCUS DIRECT, INC., a Texas corporation doing
doing business in the State of Utah
Defendants.

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)
) Case No. **2:01 CV - 100657**
)

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)
) **COMPLAINT**
) **JURY DEMANDED**
)

)
)
) Judge
) Magistrate
)
)
)

PLAINTIFF, B. JEANETTE BORTHICK, ("Borthick"), complains of the defendant
Arthur Benjamin, ("Benjamin"), defendant Tom Dearden, ("Dearden"), defendant DataMark

Inc., (“DataMark”) and defendant Focus Direct Inc., (“Focus”), and for causes of action against them alleges as follows:

NATURE OF THE CASE

1. This is a civil rights action brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et. seq.*, seeking damages and equitable relief for sexual harassment in the work place.

JURISDICTION & VENUE

2. Borthick re-alleges and incorporates by reference paragraph 1 as set forth above.
3. This Court has original exclusive jurisdiction pursuant to 42 U.S.C. Section 2000e-5(f)(3), 28 U.S.C. Section 1343(a)(4), and 28 U.S.C. Section 1331, over those causes of action set forth in the remainder of this complaint which are brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et. seq.*.
4. Venue is properly laid in this district pursuant to 42 U.S.C. Section 2000e-5(f)(3) and 28 U.S.C. Section 1391(b) and (c) inasmuch as a substantial part of the events and the unlawful employment practices occurred within the district, the employment records relevant to the allegations are located and kept in the district, the plaintiff worked and would have continued to work within the district but for the unlawful employment practices of the defendants, the principal offices of DataMark are within the district, the principal offices of the DataMark division of Focus, (“DataMark Division”), were within the district during all relevant times to that defendant, and the corporate

defendants are subject to personal jurisdiction within the district.

PARTIES

Plaintiff Borthick

5. Borthick re-alleges and incorporates by reference paragraphs 1 through 4, as set forth above.
6. Borthick is a female citizen of the United States who currently resides in the State of Utah.
7. Focus employed Borthick from February 1, 2000 to June 20, 2000 in the DataMark Division located in Salt Lake City, Utah. DataMark Division offered Borthick the position of Marketing Director, but when she started work, she learned that her position was actually Marketing Manager. Although her position was Marketing Manager, Benjamin repeatedly referred to her position as Marketing Director.
8. Borthick reported directly to Benjamin.
9. DataMark employed Borthick in Salt Lake City, Utah from June 21, 2000 until September 1, 2000 as Marketing Manager, though Benjamin referred to her position as Marketing Director.
10. Borthick is an "employee" within the meaning of 42 U.S.C. Section 2000e(f).

Defendant DataMark

11. Borthick re-alleges and incorporates by reference paragraphs 1 through 10, as set forth above.

12. DataMark is a Delaware corporation conducting business in Salt Lake City, Utah, and has been since June 21, 2000 when through an asset purchase transaction, DataMark Division management and others purchased the DataMark Division from Focus. Since June 21, 2000, DataMark has maintained its principal offices in Salt Lake City, Utah.
13. DataMark is an “employer” within the meaning of 42 U.S.C. Section 2000e(b) inasmuch as it is “a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.”

Defendant Focus

14. Borthick re-alleges and incorporates by reference paragraphs 1 through 13, as set forth above.
15. Focus is a Texas corporation which conducted business in Salt Lake City, Utah through its DataMark Division during all relevant periods prior to June 21, 2000. The principal offices of the DataMark Division were located in Salt Lake City, Utah.
16. Focus is an “employer” within the meaning of 42 U.S.C. Section 2000e(b) inasmuch as it is “a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.”

***Substantial Continuity Of Identity Between
DataMark And The DataMark Division***

17. Borthick re-alleges and incorporates by reference paragraphs 1 through 16, as set forth above.
18. There was a substantial continuity of identity between the DataMark Division and DataMark before and after the June 21, 2000 change of ownership, including a substantial continuity in the identity of the workforce, facilities, customers, vendors, machinery and equipment, and upper level management and supervisors.
19. Prior to June 21, 2000, Benjamin was president and Dearden was the vice president of the DataMark Division. At all relevant times after June 21, 2000, Benjamin was president, chief executive officer, and chairman of the board of directors, and Dearden was vice president and a member of the board of directors of DataMark. Dearden became chief operations officer sometime in August or September 2000.
20. Prior to and after June 21, 2000, nearly all employees of the DataMark Division and DataMark were the same.
21. Prior to and after June 21, 2000, operations of the DataMark Division and DataMark were the same.
22. Prior to and after June 21, 2000, the customer base for the DataMark Division and DataMark were substantially the same.
23. Prior to and after June 21, 2000, the vendors used by the DataMark Division and DataMark were substantially the same.

24. Prior to and after June 21, 2000, the DataMark Division and DataMark owned and operated the same machinery and equipment.
25. Prior to and after June 21, 2000, the managerial and supervisory employees at the DataMark Division and DataMark were substantially the same.

Defendant Benjamin

26. Borthick re-alleges and incorporates by reference paragraphs 1 through 25, as set forth above.
27. Benjamin is a citizen of the United States and a resident of Salt Lake County, Utah.
28. In 1995, Benjamin was employed by The Rhodes Group Inc. and MCS Technologies Inc., and was president of one of the private colleges owned by that group, specifically Watterson College. While employed as president of Watterson College, Benjamin raped a female employee of Watterson College named Debbie Juarez. Ms. Juarez sued Benjamin, MCS Technologies Inc. and Watterson College in California state court in *Juarez v. Benjamin et. al.*, case no. KC 020101, for sexual harassment and various state claims including assault. Benjamin settled with Juarez on the eve of trial for an undisclosed amount of money.
29. Benjamin has admitted to having a sexual relationship with a Watterson College 19-20 year old student while he was president of that school.
30. Benjamin has admitted to having a sexual relationship with a Watterson College employee by the name of Trish Pene while he was president of that school.

31. Benjamin has admitted to being the subject of a complaint of sexual harassment made by a receptionist at a previous employment 13 years prior to his employment with Watterson College.
32. Benjamin has admitted to being the subject of a complaint of sexual harassment made by another woman at the same previous employment.
33. Benjamin has admitted to being the subject of a complaint of sexual harassment made by a subordinate female employee at Dover Business College during a previous employment.
34. While the *Juarez* case was being litigated, Benjamin secured employment with DataMark Systems, Inc., a Utah company doing business in the direct mail and media advertising industry. Benjamin told the president of DataMark Systems Inc. about the *Juarez* case.
35. In 1998, Focus purchased the direct mail portion of DataMark Systems Inc., which became the DataMark Division.
36. When Focus purchased the DataMark Division from DataMark Systems Inc., Focus made it a condition of the purchase that Benjamin continue with the company as he was a key factor in their decision to make the purchase.
37. Focus did not undertake any investigation into Benjamin prior to hiring him as President of the DataMark Division.
38. Dearden knew about the *Juarez* case prior to Focus purchasing the DataMark Division

from DataMark Systems Inc., and Dearden was part of the top management of DataMark Systems Inc..

39. Upon information and belief, top management and owners of Focus were told about the *Juarez* case prior to May 7, 1999.
40. After Focus was told about the *Juarez* case, no investigation of Benjamin was undertaken by Focus.
41. While employed with DataMark Systems, Benjamin engaged in a pattern and practice of sexual harassment and discrimination against female employees, including the following incidents:
 1. Benjamin sexually harassed Joy Hedcock Grimshaw, a 19 year old employee at DataMark Systems Inc..
 2. Benjamin sexually harassed Marienela "Maggie" Gerhardt, Benjamin's personal assistant at DataMark Systems Inc. and the company settled her claim without litigation.
42. While employed with DataMark Division, Benjamin engaged in a pattern and practice of sexual harassment and discrimination against female employees, including the following incidents:
 1. Benjamin sexually harassed and retaliated against Connie Hollingshead, a sales representative of DataMark Division.
 2. Benjamin sexually harassed and retaliated against Angelina Small, an

employee at DataMark Division.

3. Benjamin sexually harassed and raped Angela Allen Stoll, ("Angela"), Benjamin's personal assistant at DataMark Division and at DataMark.

43. Upon information and belief, top management and owners of Focus were made aware of at least the Hollingshead and Gerhardt complaints prior to May 11, 2000.
44. Benjamin has engaged in sexually assaultive behavior outside of the work place, including raping Stacy Stanbrough in Florida in 1998.
45. While employed at the DataMark Division, Benjamin was the president of the division with substantial control over hiring, firing, and provision or denial of employment opportunities for employees of DataMark Division.
46. While employed at DataMark Division, Benjamin was permitted to continue in his employment though he refused to sign an acknowledgment that he was aware of the sexual harassment policies of the company.
47. While employed at DataMark, Benjamin was president, chief executive officer and chairman of the board, and a significant shareholder of DataMark, with substantial control over hiring, firing, and provision or denial of employment opportunities of other employees.

Defendant Dearden

48. Borthick re-alleges and incorporates by reference paragraphs 1 through 47, as set forth above.

49. Dearden is a citizen of the United States and a resident of Salt Lake County, Utah.
50. Dearden was vice president of operations at the DataMark Division with substantial control over hiring, firing, and provision or denial of employment opportunities for employees of DataMark Division.
51. Dearden was the vice president, a member of the board of directors, and a substantial shareholder of DataMark with substantial control over hiring, firing, and provision or denial of employment opportunities for employees of DataMark.
52. Dearden heard a rumor of a sexual relationship between Benjamin and Angela and did not investigate the rumor.

BACKGROUND FOR CLAIMS

53. Borthick re-alleges and incorporates by reference paragraphs 1 through 52, as set forth above.
54. Prior to May 11, 2000, Benjamin sexually harassed, sexually discriminated and sexually assaulted numerous females, and had multiple complaints made against him for such conduct, all of which should have put DataMark and Focus on notice that Benjamin posed a substantial risk to those female employees coming in contact with Benjamin. The information and knowledge available to DataMark and Focus was such that they should have known Benjamin would likely sexually harass female employees.
55. During the interviewing process at the DataMark Division, Rick Bentz, a supervisory/management employee asked Borthick how she dealt with men.

56. During a separate interview, Dearden asked Borthick how she dealt with men.
57. During a separate interview, Benjamin said that he and Borthick would be traveling together, and he wanted to know if she was going to get offended if he casually touched her on the arm or the shoulder. Benjamin said he did not want to be sued for sexual harassment.
58. When the human resources person, Kris Marchini, called Borthick's references, she asked them how Borthick dealt with men.
59. Benjamin told Borthick she was interviewing for the Marketing Director position.
60. After Borthick started working at the DataMark Division, Benjamin asked her to lunch.
61. During lunch, Benjamin asked Borthick whether she had ever been abused.
62. Benjamin told Borthick he wanted a woman on the management team and he thought she would be the right woman for the job.
63. Although Benjamin had told Borthick she was hired as the Marketing Director, Borthick's actual position with the company was as Marketing Manager. Benjamin continued to refer to Borthick as Marketing Director.
64. On or about May 11, 2000, Borthick was on a business trip for DataMark Division to Phoenix, Arizona.
65. DataMark Division provided Borthick with a hotel room during her stay in Phoenix.
66. Benjamin, Borthick and one of DataMark Division's sales people named Ed Patterson went to dinner together at a restaurant.

67. At the restaurant after Ed Patterson left to get the car, Benjamin grabbed Borthick by the waist and pulled her toward him.
68. Borthick pushed him away, saying "Arthur, that is dangerous."
69. Later on during that same trip while Borthick was in her hotel room, Benjamin came to her door and knocked.
70. When Borthick answered the door Benjamin entered the room, restrained Borthick, and sexually assaulted and raped Borthick.
71. During this encounter, Borthick was emotionally distraught
72. Benjamin made repeated statements to Borthick with the purpose of making her emotionally distraught.
73. On several occasions after May 11, 2000, Benjamin approached Borthick soliciting her to have a sexual relationship with him. His solicitations were unwelcomed and degrading to Borthick.
74. On several occasions after May 11, 2000, Benjamin told Borthick he wanted them to have a sexual relationship.
75. Borthick told Benjamin she did not want a sexual relationship with Benjamin and that she needed her job.
76. Benjamin told Borthick that if she did well there would be an ownership stake for her in the company, and that she would eventually have to move up in the company because he did not see her making any more money in the position she was in.

77. In June on a business trip, Benjamin asked Borthick to critique him as a man. Borthick declined to do so.
78. In June on a business trip, Benjamin called Borthick to his room to discuss what had happened between them in Phoenix.
79. When Borthick arrived, Borthick reiterated that she was not interested in a sexual relationship with Benjamin.
80. Benjamin took off his pants.
81. Benjamin asked Borthick to cuddle with him on the bed.
82. For the plane trip home, Benjamin requested that the airline place Borthick next to him.
83. On the plane, Benjamin began stroking Borthick's arm.
84. On the plane, Benjamin stated to Borthick "What circumstances would have to change that would then have a [relationship] support you?" Borthick did not respond.
85. Darren Brush was hired as Marketing Director and Customer Service Director, even though Borthick had been hired as Marketing Director and Benjamin continued to refer to her as the Marketing Director.
86. In July of 2000, Benjamin asked Borthick out to dinner and Borthick declined.
87. Benjamin met with Borthick to discuss her future with the company, explaining that eventually the company was going public and she would have a substantial stake in the future of the company. Benjamin apologized for anything he may have done to Borthick that may have damaged her. Benjamin then told Borthick not to talk to

anyone while he was gone because there were people who would want to cause trouble while he was away on business. Just previous to this conversation, Angela had confronted Benjamin that she thought he had done something to Borthick. Borthick understood Benjamin's statements during the meeting to mean that she would have a substantial stake in the company provided she did not tell anyone what he had done to her.

88. Darren Brush, ("Brush"), was a supervising employee over Borthick.
89. On May 17, 2000, Borthick told Brush that Benjamin had forced himself on her sexually.
90. Borthick told Pam Tiemeyer that Benjamin had sexually harassed her.
91. Borthick told Angela that Benjamin had forced himself on her sexually.
92. Borthick told the human resources person, Kris Marchini that Benjamin had forced himself on her sexually.
93. Borthick told Dearden that Benjamin forced himself on her sexually.
94. Marchini told Borthick that Dearden was not going to do anything about Benjamin harassing Borthick.
95. Borthick approached Dearden again and Dearden admitted that the sexual contact between Benjamin and Borthick in Phoenix was unwanted.
96. Dearden said he had taken over as chief operating officer and the following things were done: (1) He placed Benjamin on unpaid leave, (2) he was requiring Benjamin to go to

counseling and that he would receive updates on Benjamin's counseling to make sure Benjamin was making progress; (3) female employees would no longer report directly to Benjamin; (4) no female employee would be traveling with Benjamin; and (5) the company would pay Borthick \$500 in exchange for a release of liability on all claims.

97. Upon information and belief, Benjamin was never placed on unpaid leave, did not attend counseling related to him assaulting Borthick, and that female employees were not only reporting directly to Benjamin but were also directed to travel with Benjamin on out of state business trips.
98. Upon information and belief, Dearden knew Benjamin had forced himself on Borthick and did nothing about it.
99. Dearden failed to adequately investigate the claims Borthick made just as he had failed previously to investigate a rumor of a sexual relationship between Angela and Benjamin.
100. In the early part of August 2000, Borthick sought legal representation to assist her in dealing with the sexual harassment situation at work.
101. On August 10, 2000, after investigation, Borthick's attorneys met with attorneys representing Benjamin, DataMark and Focus to discuss the claims and their possible settlement, but efforts were unsuccessful. Borthick was placed on paid leave of absence immediately after her attorneys completed the August 10, 2000 meeting.
102. On September 1, 2000, Borthick's employment with DataMark was terminated.
103. After Dearden and Marchini had both learned that Benjamin had sexually assaulted

Borthick, Dearden told Marchini that he would do anything to protect Benjamin and the company.

104. Previously, in the summer of 1999, Dearden told Angela that he would do whatever Benjamin needed because Benjamin was so profitable for the company and without Benjamin there would be no company.

105. Marchini resigned her position reportedly because she could not work for a company led by Benjamin who violated the company sexual harassment policy.

ADMINISTRATIVE PROCEEDINGS AND RIGHT TO SUE

106. Borthick re-alleges and incorporates by reference paragraphs 1 through 105, as set forth above.

107. On September 11, 2000, Borthick filed a sworn charge of employment discrimination with the Industrial Commission of Utah, Labor/Antidiscrimination Division, which was referred to the EEOC pursuant to the work sharing agreement between those two agencies.

108. The discriminatory conduct and acts which form the basis for this complaint spanned a continuous period from the date of Borthick's hire through September 1, 2000.

109. Borthick requested a right to sue notice from the EEOC, and on September 25, 2001, the EEOC mailed a Notice of Right to Sue (Issued on Request) to Borthick's

attorneys; this complaint has been filed within 90 days of the date of receipt of that notice. A copy of the Notice of Right To Sue (Issued on Request) is attached hereto as Exhibit "A".

FIRST CAUSE OF ACTION
(Focus)

110. Borthick re-alleges and incorporates by reference paragraphs 1 through 109, as set forth above.
111. Borthick was subjected to *quid pro quo* discrimination as the actions of senior management at the DataMark Division of Focus, specifically Benjamin, conditioned the terms of Borthick's employment upon her enduring un-welcomed sexual advances by Benjamin, including a sexual assault. The discriminatory actions were taken against Borthick because of her sex.
112. Benjamin made it clear to Borthick on repeated occasions that if she were to concede to a sexual relationship with him, she would be the beneficiary of advancements in the company, including being promoted into the management team, making more money and having ownership in the company.
113. As a condition of keeping her job, Borthick (1) was forced to tolerate Benjamin asking personal questions about whether she had ever been abused, (2) was forced to tolerate Benjamin grabbing her by the waist in the restaurant in Phoenix, (3) was forced into

sexual relations with Benjamin, and (4) was forced to tolerate Benjamin's continuing requests for a sexual relationship. Borthick was led by Benjamin to believe she was hired as Marketing Director, when she was hired as Marketing Manager. Borthick was promised a substantial stake in the future of the company in exchange for not telling anyone that Benjamin had sexually assaulted Borthick in Phoenix. Those combined actions by Benjamin were wilfully and intentionally discriminatory, and were taken because of Borthick's sex. Those actions constituted a tangible employment decision in that they significantly changed Borthick's employment status and terms of her employment, and thus Focus is strictly liable for the discriminatory actions of Benjamin.

114. Borthick was subjected to a hostile work environment at the DataMark Division of Focus so severe and pervasive that it constructively altered the terms and conditions of her employment. The discriminatory actions were taken against Borthick because of her sex.
115. The actions of Benjamin created a sexually discriminatory hostile environment at the DataMark Division. Given Benjamin's extensive history of sexually harassing, sexually discriminating and sexually assaulting female employees, his mere presence at the DataMark Division (especially in his top managerial position) created an environment that was so extremely dangerous that no reasonable employee could be expected to

endure it. Any work environment that included Benjamin as a senior manager is severe in that it exposes female employees to extreme sexual harassment in the form of sexual assaults. Benjamin used his high ranking position with the company to victimize female employees. Any work environment that includes Benjamin as a senior manager is pervasive in that Benjamin sexually harassed, sexually discriminated against and sexually assaulted female employees on repeated occasions. Focus was aware that Benjamin had a tendency to sexually harass and discriminate against female employees because Focus knew of at least the Juarez, Hollingshead and Gerhardt claims. It was reckless indifference for Focus not to investigate Benjamin's prior history as a perpetrator of sexual harassment, discrimination and assaults given the information at its disposal. Focus knew Benjamin had been sued by Juarez and did not bother to investigate further. Focus knew Benjamin had been accused by Hollingshead and Gerhardt of sexual harassment, and failed to investigate appropriately. Focus did not contact Benjamin's prior employers who could have told Focus of Benjamin's long history of sexual harassment, discrimination and assault. When Dearden heard a rumor of sexual activity between Benjamin and Angela, he failed to investigate. By recklessly endangering Borthick and other female employees to the dangers posed by Benjamin, Focus created a hostile work environment where Borthick was required to work along

side Benjamin after he had sexually assaulted her and other women. The assaultive behavior and repeated requests for a sexual relationship created a hostile work environment. No reasonable employee could be expected to endure such an environment.

116. The actions of Focus and Benjamin constitute a willful and intentional violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e *et. seq.*.
117. Focus is strictly liable for the discriminatory and retaliatory actions of Benjamin because of his status as a high ranking officer and director of the company.
118. Focus is strictly liable for the discriminatory and retaliatory actions of Dearden because of his status as a high ranking officer and director of the company.
119. As a result of the *quid pro quo* discrimination and the hostile and discriminatory work environment, Borthick has been injured and seeks damages in the following respects:

(1) Borthick seeks back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and all other relief she is entitled to pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-5(g), in an amount to be determined at trial; (2) Borthick seeks pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. section 1981a, compensatory damages for future pecuniary losses, emotional pain, suffering, mental anguish, inconvenience, loss of enjoyment of

life, and other nonpecuniary losses sustained, in an amount to be determined at trial but at least \$300,000; (3) Borthick seeks pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. section 1981a, punitive damages in an amount to be determined at trial but at least \$300,000 as the discriminatory and retaliatory actions taken against her were done with malice or reckless indifference to her federally protected rights; (4) Borthick seeks pursuant to Section 706 of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-5(k), attorneys fees and costs; (5) Borthick seeks all other relief the Court finds she is so entitled to.

SECOND CAUSE OF ACTION
(DataMark)

120. Borthick re-alleges and incorporates by reference paragraphs 1 through 119, as set forth above.
121. Borthick was subjected to *quid pro quo* discrimination as the actions of senior management at DataMark, specifically Benjamin, conditioned the terms of Borthick's employment upon her enduring un-welcomed sexual advances by Benjamin. The discriminatory actions were taken against Borthick because of her sex.
122. As a condition of keeping her job, Borthick (1) was forced to tolerate Benjamin asking personal questions about whether she had ever been abused, (2) was forced to tolerate Benjamin grabbing her by the waist in the restaurant in Phoenix, (3) was forced into

sexual relations with Benjamin, (4) was forced to tolerate Benjamin's continuing requests for an on-going sexual relationship, (5) was told by Benjamin that she was marketing director when she was hired as marketing manager, and (6) when she complained, Borthick was first put on leave and then fired. Those actions by Benjamin were wilfully and intentionally discriminatory, and were taken because of Borthick's sex. Those actions constituted a tangible employment decision in that they significantly changed Borthick's employment status and terms of her employment, and thus Focus is strictly liable for the discriminatory actions of Benjamin.

123. Borthick was subjected to a hostile work environment at DataMark so severe and pervasive that it constructively altered the terms and conditions of her employment. The discriminatory actions were taken against Borthick because of her sex.
124. The sexually discriminatory hostile environment created at DataMark Division was continued and perpetuated by DataMark.
125. DataMark was on notice that Benjamin had a tendency to sexually harass and discriminate against female employees since it was at least aware of the Juarez, Hollingshead and Gerhardt claims, and DataMark willfully failed to investigate Benjamin's prior history during any time of his employment at DataMark.
126. DataMark willfully and intentionally altered the terms of Borthick's employment by

placing her on paid leave when she reported the sexual harassment and discrimination, and further by terminating her employment when she filed a charge with the EEOC. DataMark's actions in placing Borthick first on paid leave on August 10, 2000 and then terminating her employment on September 1, 2000 were taken because she opposed the discriminatory and unlawful practices of DataMark, and because she made a charge, assisted, or participated in any manner in the investigation, or proceedings under The Civil Rights Act of 1964, 42 U.S.C. section 2000e. Such acts were wilful and intentional violations of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-3. Such retaliatory acts were done with malice or reckless indifference to the federally protected rights of Borthick.

127. The actions of DataMark, Benjamin and Dearden constitute a willful and intentional violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e *et. seq.*.
128. DataMark is strictly liable for the discriminatory and retaliatory actions of Benjamin because of his status as a high ranking officer and director of the company.
129. DataMark is strictly liable for the discriminatory and retaliatory actions of Dearden because of his status as a high ranking officer and director of the company.
130. As a result of the *quid pro quo* discrimination, the hostile and discriminatory work environment, and DataMark's retaliatory actions, Borthick has been injured and seeks

damages in the following respects: (1) Borthick seeks back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and all other relief she is entitled to pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-5(g), in an amount to be determined at trial; (2) Borthick seek pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. section 1981a, compensatory damages for future pecuniary losses, emotional pain, suffering, mental anguish, inconvenience, loss of enjoyment of life, and other nonpecuniary losses sustained, in an amount to be determined at trial but at least \$100,000; (3) Borthick seeks pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. section 1981a, punitive damages in an amount to be determined at trial but at least \$100,000 as the discriminatory and retaliatory actions taken against her were done with malice or reckless indifference to her federally protected rights; (4) Borthick seeks pursuant to Section 706 of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-5(k), attorneys fees and costs; (5) Borthick seeks all other relief the Court finds she is so entitled to.

REQUEST FOR JURY

131. Borthick hereby demands that this matter be tried before a jury.

PRAYER FOR RELIEF

Wherefor, Borthick prays for relief against Focus as follows:

132. Equitable relief including compensation for back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and all other relief she is entitled to pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-5(g), in amounts to be determined at trial;
133. Compensatory damages in an amount to be determined at trial but at least \$300,000;
134. Punitive damages in an amount to be determined at trial but at least \$300,000;
135. For other damages to be determined at trial;
136. For attorneys fees and costs, including expert witness fees;
137. Such further and additional relief which the Court deems just and appropriate.


Wherefor, Borthick prays for relief against DataMark as follows:


138. Equitable relief including compensation for back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and all other relief she is entitled to pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-5(g), in amounts to be determined at trial;
139. Compensatory damages in an amount to be determined at trial but at least \$100,000;
140. Punitive damages in an amount to be determined at trial but at least \$100,000;

141. For other damages to be determined at trial;
142. For attorneys fees and costs, including expert witness fees;
143. Such further and additional relief which the Court deems just and appropriate.

DATED this 14 day of December 2001.

Respectfully Submitted


ROBINSON & SHEEN LLC
By JAY SHEEN
Attorneys for the Borthick


LAW OFFICE OF DARWIN
OVERSON LLC
By DARWIN OVERSON
Attorneys for the Borthick

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