

FILED
14 DEC 01 PM 4:41
DISTRICT OF UTAH
BY:
DEPUTY CLERK

JEFFREY ROBINSON (4129)
JAY SHEEN (3749)
ROBINSON & SHEEN LLC
801-273-0855 / 801-273-0875 facsimile

DARWIN OVERSON (7956)
MARK A. FLORES (8429)
LAW OFFICE OF DARWIN OVERSON L.L.C.
801-277-0325 / 801-277-0521 facsimile

Attorneys for Plaintiff
1366 East Murray Holliday Road
Salt Lake City, Utah 84117

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

ANGELA ALLEN STOLL, 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.)

Case No **2:01 CV - 1005 S**

COMPLAINT
JURY DEMANDED

Judge
Magistrate

PLAINTIFF ANGELA ALLEN STOLL, (“Angela”), 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; and under the Family and Medical Leave Act, 28 U.S.C. Section 2601, *et. seq.*, seeking damages and equitable relief for work place violations of the Act.

JURISDICTION & VENUE

2. Angela 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. This Court has original jurisdiction pursuant to 28 U.S.C. Section 2617(a)(2) over those causes of action set forth in the remainder of this complaint which are brought pursuant to the Family and Medical Leave Act, 28 U.S.C. Section 2601, *et. seq.*.
5. 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 Angela

6. Angela re-alleges and incorporates by reference paragraphs 1 through 5, as set forth above.
7. Angela is a female citizen of the United States who currently resides in the State of Utah.
8. Focus employed Angela from April 1999 to June 20, 2000 in the DataMark Division located in Salt Lake City, Utah. Angela held the position of personal executive assistant to Benjamin. For a significant period of her employment with Focus, Angela also had human resource duties until those were taken away from her.
9. DataMark employed Angela in Salt Lake City, Utah from June 21, 2000 until September 1, 2000 as Benjamin’s personal executive assistant. DataMark placed Angela on paid leave on August 10, 2000 and terminated her employment on September 1, 2000 by letter.

10. Angela is an “employee” within the meaning of 42 U.S.C. Section 2000e(f).
11. Angela is an “eligible employee” within the meaning of 28 U.S.C. Section 2611(2) in that she was employed for at “least 12 months by the employer with respect to whom leave [was] requested . . . and for at least 1250 hours of service with such employer”
12. Angela is a “parent” of a “son” suffering from a “serous health condition” within the meaning of 28 U.S.C. Section 2611(7), (11) and (12) inasmuch as she is the biological parent of Andrew Allen, a person under the age of 18 years of age, who has a mental condition involving continuing treatment by a healthcare provider.

Defendant DataMark

13. Angela re-alleges and incorporates by reference paragraphs 1 through 12, as set forth above.
14. 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.
15. 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.”

16. DataMark is an “employer” within the meaning of 28 U.S.C. 2611(4) inasmuch as it is “a person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calender workweeks in the current or preceding calender year.”
17. DataMark employed more than 50 employees at the Salt Lake City, Utah work site during all times of Angela’s employment.

Defendant Focus

18. Angela re-alleges and incorporates by reference paragraphs 1 through 17, as set forth above.
19. 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.
20. 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.”
21. Focus is an “employer” within the meaning of 28 U.S.C. 2611(4) inasmuch as it is “a person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calender workweeks in the current or preceding calender year.”

22. Focus employed more than 50 employees at the Salt Lake City, Utah work site during all times of Angela's employment.

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

23. Angela re-alleges and incorporates by reference paragraphs 1 through 22, as set forth above.
24. 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.
25. 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.
26. Prior to and after June 21, 2000, nearly all employees of the DataMark Division and DataMark were the same.
27. Prior to and after June 21, 2000, operations of the DataMark Division and DataMark were the same.
28. Prior to and after June 21, 2000, the customer base for the DataMark Division and

DataMark were substantially the same.

29. Prior to and after June 21, 2000, the vendors used by the DataMark Division and DataMark were substantially the same.

30. Prior to and after June 21, 2000, the DataMark Division and DataMark owned and operated the same machinery and equipment.

31. Prior to and after June 21, 2000, the managerial and supervisory employees at the DataMark Division and DataMark were substantially the same.

Defendant Benjamin

32. Angela re-alleges and incorporates by reference paragraphs 1 through 31, as set forth above.

33. Benjamin is a citizen of the United States and a resident of Salt Lake County, Utah.

34. 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.

35. Benjamin has admitted to having a sexual relationship with a Watterson College 19-20

year old student while he was president of that school.

36. 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.
37. 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.
38. Benjamin has admitted to being the subject of a complaint of sexual harassment made by another woman at the same previous employment.
39. 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.
40. 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.
41. In 1998, Focus purchased the direct mail portion of DataMark Systems Inc., which became the DataMark Division.
42. 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.

43. Focus did not undertake any investigation into Benjamin prior to hiring him as President of the DataMark Division.
44. Dearden knew about the *Juarez* case prior to Focus purchasing the DataMark Division from DataMark Systems Inc., and Dearden was part of the management of DataMark Systems Inc..
45. On information and belief, top management and owners of Focus were told of the *Juarez* case prior to May 7, 1999.
46. After Focus was told of the *Juarez* case, no investigation of Benjamin was undertaken by Focus.
47. 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 Hedgcock 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 settle her claim without litigation.
48. 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 Jeannette Borthick, an employee of DataMark Division.
-
49. Top management and ownership of Focus were made aware of the Hollingshead complaints prior to May 7, 1999.
 50. Benjamin has engaged in sexually assaultive behavior outside of the work place, including raping Stacy Stanbrough in Florida in 1998.
 51. 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.
 52. 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.
 53. 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

54. Angela re-alleges and incorporates by reference paragraphs 1 through 53, as set forth above.
55. Dearden is a citizen of the United States and a resident of Salt Lake County, Utah.
56. 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.
57. 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.

BACKGROUND FOR CLAIMS

58. Angela re-alleges and incorporates by reference paragraphs 1 through 57, as set forth above.
59. Prior to May 7, 1999, 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 that Benjamin would likely sexually harass female employees.
60. After Angela had been hired at the DataMark Division, Benjamin invited her to dinner

to discuss her new position.

61. During dinner and at repeated times thereafter, Benjamin asked Angela in-depth questions about her personal life, about her son, about her ex-husband, about her being a single mother, about her family, about what she did outside of work for fun, about the people she dated, about her living arrangement, and about whether she had a roommate.
62. After employment commenced, Angela was invited by Benjamin to dinner at the Tuscany Restaurant in Salt Lake County, Utah, to discuss work related matters. During the Tuscany dinner, Benjamin complained to Angela that he was not happy with his marriage and relationship with his wife, and that he had not had sex with his wife in five years.
63. During the Tuscany dinner, Benjamin asked Angela about her tongue stud, asking her why she got it, and Angela told him she got it because she was feeling old with all the responsibilities of being a single mother. Benjamin asked her whether the tongue stud helped with giving oral sex. Benjamin also asked Angela whether she got the tongue stud for oral sex. Angela was shocked and confused by the conversation and questions Benjamin put to her during dinner, and felt uncomfortable with the direction Benjamin had taken the conversation.
64. After the Tuscany dinner, Benjamin told Angela he left some papers in his office and he wanted her to accompany him inside the DataMark building so he could retrieve them.

Upon Angela's entering Benjamin's office, he locked the door and grabbed her and forcefully began kissing her. He pushed her to the floor and placed his penis in her mouth. Angela did not reciprocate. She was shocked and repulsed. After sodomizing Angela, Benjamin directed her to the women's restroom. While Angela was in the restroom, Benjamin came in and grabbed Angela and penetrated her from behind with his penis. Angela did not invite or welcome Benjamin's actions.

65. On or about May 11, 1999, Angela was on a business trip in Los Angeles, California staying at the Westin Southcoast Plaza Hotel. Benjamin was on the same trip staying at the same hotel. After company meetings, Angela returned to her hotel room, where she received a call from Benjamin telling her to come to his room for the purpose of discussing the next day's agenda. When Angela arrived at Benjamin's room, Benjamin grabbed Angela and sexually assaulted and raped her. During the act, Benjamin degraded her by making derogatory statements to her until she broke out in tears. He slapped her across the face several times leaving red marks on her face.
66. On or about May 25, 1999, Angela was on a business trip in Kansas City, Missouri, staying at the Ritz Carlton Hotel. Benjamin was on the same business trip staying at the same hotel. Benjamin called Angela and told her to come to his room. When Angela arrived at Benjamin's room, he engaged her in unwanted sexual intercourse. Again Benjamin made derogatory statements to her in order to humiliate her to the point that she broke down in tears.

67. On or about June 2, 1999, Angela was on a business trip in San Antonio, Texas, staying at the Camberly Gunter Hotel. Benjamin was on the same business trip staying at the same hotel. Benjamin came to Angela's room and grabbed her, and fondled her breast and genitals. Again, Benjamin forced himself on Angela by sexually assaulting and raping her.
68. On or about June 5 or 6, 1999, in Salt Lake County, State of Utah, Benjamin grabbed Angela against her will and put his hands up her skirt, touching her genitals, all being unwelcomed actions.
69. On or about June 26, 1999, Benjamin grabbed Angela and forced kisses upon her and grabbed her breasts and genitals. Angela pushed Benjamin away and started to talk about something else, and asked him about something relating to work, to which Benjamin responded "Well, if you'd like my help" and pulled her near him again. In response, Angela said "That's *quid pro quo*." Benjamin did not deny that it was *quid pro quo*.
70. Angela had told Benjamin at various times between the dates of June 2 and June 26, 1999, that his inappropriate behavior had to stop. She told him the behavior was wrong, that she did not want to participate in his behavior, that he should not be acting like he was because he was her boss, and finally that it had to stop because she was trying to get back into the Mormon church.
71. On or about October 21, 1999, Angela was on a business trip in San Diego, California, staying at the Paradise Point Resort. Benjamin was on the same business trip staying at

a different hotel. As part of Angela's job, she was to scout out hotels for an upcoming conference and Benjamin told her she needed to see his room for this purpose. When she arrived to view the room, Benjamin advanced upon Angela and grabbed Angela and started kissing her as he had done before. Angela left the room.

72. After Angela rebuffed Benjamin in October 1999, things changed for Angela at work. Until then, Benjamin was relatively patient in explaining things to Angela that needed to be done. After October 1999, Benjamin was curt and would unduly criticize her in her work performance. He started blaming Angela for mistakes he had made; he belittled her in front of other employees; he yelled at her over the intercom system; and he repeatedly criticized, intimidated and insulted her. Benjamin created a new policy directed solely at Angela that if she were ever to leave her desk for anything, she first had to get permission from either Benjamin or Dearden. Angela being away from her desk was never a problem before October 1999. Benjamin and Dearden told Angela that she was over paid and under-qualified, and that she could never find a job making what she was making at the DataMark Division. They told her not to expect any increases in her salary or bonus for several years because it would take that long for her to be worth the money they were paying her. Dearden was overly critical of Angela's performance at work and repeatedly sent her emails criticizing her work performance. Benjamin was overly critical of Angela's performance. At the end of 1999, Benjamin began to criticize Angela's clothing at work, even though it met the dress code established by the company.

73. Angela's initial salary was \$32,000 per year plus a \$2,000 bonus. She was told that after several months, her salary would increase to \$35,000 per year plus a \$3,000 bonus. Angela was told that after three quarters of a year, her bonus would be increased to \$6,000 per year on a prorated basis. Angela was told that her bonus structure at the beginning of the year 2000 was such that she would receive a \$4,000 bonus. However, in January 2000, Benjamin cut Angela's bonus back to \$3,000 per year and did not inform her that he had done so. Angela did not learn of the cut in her bonus until July 2000 and was then told that there was nothing that could be done to reinstate the bonus. Upon information and belief, no other employees in the DataMark Division had their salaries capped or their bonuses cut in a similar manner to Angela's.
74. In August 1999, Angela told Benjamin and Dearden she wanted to move into the human resources managers position. At a luncheon with Benjamin and Dearden, Angela was told by both there would never be an human resources manager at the company, they told her there was no need for it. Benjamin and Dearden told Angela they had enough experience to deal with all the human resource issues that came up. When Angela complained to Dearden that Benjamin mistreated her, however, Dearden just responded by telling Angela "That's how Arthur is. We just all deal with it."
75. Kris Marchini, ("Marchini") was hired in late 1999 to take over Angela's human

resources duties. When Marchini was hired, Angela was directed by Benjamin and Dearden to stop all work on human resource matters and turn the work over to Marchini. When Angela complied, she was criticized for dumping projects on Marchini that were not completed.

76. Dearden told Marchini that he had heard rumors of something going on between Benjamin and Angela. Though he was made aware of these rumors, he did not investigate them when they were brought to his attention.

77. On information and belief, Dearden knew that Benjamin had made unwanted sexual advances upon Angela and did nothing other than to participate in Benjamin's discriminatory and retaliatory actions.

78. Benjamin told Angela on several occasions during the period when she worked for the DataMark Division that he had told Fred Lederman, the president and CEO of Focus, and Dearden about the *Juarez* case. Benjamin told Angela that Lederman, Dearden and Benjamin wanted to keep the *Juarez* case a secret. Based on conversations with Benjamin, Angela believed Lederman already knew about the Hollingshead and Gerhardt cases.

79. Angela believed reporting the sexual harassment to Focus would be futile because she believed Lederman knew about the *Juarez*, the Hollingshead and the Gerhardt cases.

80. During early 2000, Angela was informed by the staff at her son's day care that unless her son attended child-parent counseling sessions at the Children Center, he would be kicked out of the day care for behavior problems. Angela asked Benjamin to permit her to have her shift moved to flex time so that she could attend counseling with her son at the Children's Center to deal with her son's health condition.
81. Angela's son, Andrew Allen was diagnosed with Adjustment Disorder and ADHD by his medical health provider and has been treated for those conditions on continuous basis since being diagnosed.
82. After Angela made the request for flex time, Benjamin told her he could not grant the request because it would set a precedent that would not be good for the company, and had it been anyone else he would have had an easier time saying no. Angela learned several months later that Dearden gave Rick Bentz, a supervisor, permission to allow one of his employees to move to flex time on an even more sporadic schedule than what Angela had proposed for herself.
83. In July 2000, Angela told Marchini that over a course of several months Benjamin had forced himself on Angela.
84. Dearden told Marchini in July 2000 that he would do anything to protect Benjamin and the company. Marchini told Angela that Dearden had said this, and it rang true with

Angela because in the summer of 1999 Dearden told her that he would do whatever Benjamin needed because Benjamin was so profitable for the company and without Benjamin there would be no company; and Dearden had made a significant personal investment in the company during the asset purchase transaction, and seemed to Angela to be more concerned with losing his investment than in protecting female employees from Benjamin's sexual harassment, discrimination and assaultive behaviors.

85. In July 2000 after Angela told Marchini, Angela told Borthick that over the course of several months Benjamin had forced himself on Angela, that she felt she had been sexually harassed and retaliated against for not cooperating with Benjamin's sexual advances.

86. After speaking with Marchini, Angela approached Dearden and told him about Benjamin forcing himself sexually on Angela, that Angela wanted Benjamin to stop preying on vulnerable women, that Angela did not want to work with Benjamin anymore and told Dearden he needed to talk to Melanie Wilcox because Wilcox had mentioned something that made Angela believe she may have been victimized too.

87. Marchini resigned as human resource manager shortly after learning about what had happened to Angela and Borthick reportedly because she could not work for a company that was led by Benjamin who violated the company's anti-discrimination

policies.

88. In another meeting with Dearden shortly after the first, Dearden told Angela he was taking the allegations seriously, that he had placed Benjamin on unpaid leave, that he was going to require Benjamin to go to counseling and that he would receive updates on Benjamin's counseling to make sure Benjamin was making progress; Dearden also told Angela that female employees would no longer report directly to Benjamin and that no female employee would be traveling with Benjamin.
89. During this same meeting, Dearden told Angela that he was going to make her human resource manager and give her a raise to \$37,000 per year, and he was going to give her \$500 cash at the time she signed a waiver of all claims stating she would not sue.
90. Upon information and belief, Benjamin was never placed on unpaid leave, did not attend counseling related to him assaulting Angela, and female employees were not only reporting directly to Benjamin but were also directed to travel with Benjamin on out of state business trips.
91. Dearden failed to adequately investigate the claims Angela made just as he failed previously to investigate the rumors of a sexual relationship between Angela and Benjamin.
92. In early August of 2000, Angela retained attorneys in order to seek legal advice relating

to Benjamin's behavior, and her attorneys sent correspondence to DataMark that further discussion needed to be conducted through counsel. On August 10, 2000, after investigation, Angela's attorneys met with attorneys representing Benjamin, DataMark and Focus to discuss the claims and their possible resolution, but efforts were unsuccessful. Immediately after the August 10, 2000 meeting, Angela and Borthick were placed on paid leave of absence. Angela filed a charge of sexual discrimination under Title VII on August 16, 2000. On September 1, 2000, both Angela's and Borthick's employment with DataMark was terminated by certified letter sent from DataMark.

ADMINISTRATIVE PROCEEDINGS AND RIGHT TO SUE

93. Angela re-alleges and incorporates by reference paragraphs 1 through 92, as set forth above.
94. On August 16, 2000, Angela 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.
95. The discriminatory conduct and acts which form the basis for this complaint spanned a continuous period from the date of Angela's hire through September 1, 2000.

96. Angela 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 Angela'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)

97. Angela re-alleges and incorporates by reference paragraphs 1 through 96, as set forth above.
98. Angela 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 Angela's employment upon her enduring un-welcomed sexual advances by Benjamin. The discriminatory actions were taken against Angela because of her sex.
99. As a result of Angela's refusal to be further victimized by Benjamin, (1) Benjamin cut Angela's bonus without her knowledge, (2) Benjamin told Angela she would not be considered for a raise for several years, (3) Benjamin told Angela she was not worth the money she was being paid, (4) Benjamin implicitly told Angela that if she acceded to his sexual advances her job would be easier, (5) Benjamin implicitly told Angela that if she did not accede to his sexual advances her job would be more difficult, (6)

Benjamin made Angela the subject of undue criticism, intimidation, insults, ridicule and harassment, (7) Benjamin denied Angela's request for flex-time when other employees were given flex-time, and (8) Benjamin demoted Angela by taking from her the human resource duties. Benjamin took those actions in retaliation for Angela refusing further sexual advances by Benjamin. Those actions by Benjamin were wilfully and intentionally discriminatory, and were taken because of Angela's sex. Those actions constituted a tangible employment decision in that they significantly changed Angela's employment status and effected the terms of her employment, and thus Focus is strictly liable for the discriminatory actions of Benjamin.

100. Angela 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 Angela because of her sex.
101. 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 includes 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 discrimination, harassment and assaults given the information at its disposal. Focus knew that Benjamin had been sued by Juarez and failed to investigate properly. 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 Angela and other female employees to the dangers posed by Benjamin, Focus created a hostile work environment where Angela was required to work along side Benjamin after he had sexually assaulted her and other women. The assaultive behavior of Benjamin created a hostile work environment.

Further intolerable was the continuing unfounded criticism, intimidation, insults, reticule and harassment Angela endured from Benjamin when Angela rebuffed Benjamin's sexual advances. No reasonable employee could be expected to endure such an environment.

102. 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.
103. 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.
104. 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.*.
105. As a result of the *quid pro quo* discrimination and the hostile and discriminatory work environment, Angela has been injured and seeks damages in the following respects: (1) Angela seeks back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and expenses resulting from the denial of flex-time, 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) Angela 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) Angela 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) Angela 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) Angela seeks all other relief the Court finds she is so entitled to.

SECOND CAUSE OF ACTION
(DataMark)

106. Angela re-alleges and incorporates by reference paragraphs 1 through 105, as set forth above.
107. Angela was subjected to *quid pro quo* discrimination as the actions of senior management at DataMark, specifically Benjamin and Dearden, conditioned the terms of Angela's employment upon her enduring un-welcomed sexual advances by Benjamin. The discriminatory actions were taken against Angela because of her sex.
108. As a result of Angela's refusal to be further victimized by Benjamin, (1) Benjamin cut Angela's bonus without her knowledge, (2) Benjamin told Angela she would not be considered for a raise for several years, (3) Benjamin told Angela she was not worth

the money she was being paid, (4) Benjamin implicitly told Angela that if she acceded to his sexual advances her job would be easier, (5) Benjamin implicitly told Angela that if she did not accede to his sexual advances her job would be more difficult, (6) Benjamin made Angela the subject of undue criticism, intimidation, insults, ridicule and harassment, (7) Benjamin denied Angela's request for flex-time when other employees were given flex-time, and (8) Benjamin demoted Angela by taking from her the human resource duties. The retaliation against Angela for her refusal to accede to Benjamin's sexual advances continued through from the time before June 21, 2000 to the time when Angela's employment was terminated. Benjamin took those actions in retaliation for Angela refusing further sexual advances by Benjamin. Those actions by Benjamin were wilfully and intentionally discriminatory, and were taken because of Angela's sex. Those actions constituted a tangible employment decision in that they significantly changed Angela's employment status and the terms of her employment, and thus DataMark is strictly liable for the discriminatory actions of Benjamin.

109. Angela 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 Angela because of her sex.
110. The sexually discriminatory hostile environment created at DataMark Division was

continued and perpetuated by DataMark.

111. DataMark should have been 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.
112. DataMark willfully and intentionally altered the terms of Angela'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 Angela 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 acts were done with malice or reckless indifference to the federally protected rights of Angela.
113. 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.*.

114. 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.
115. 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.
116. As a result of the *quid pro quo* discrimination, the hostile and discriminatory work environment, and DataMark's retaliatory actions, Angela has been injured and seeks damages in the following respects: (1) Angela seeks back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and expenses resulting from the denial of flex-time, 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) Angela 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) Angela 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) Angela

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) Angela seeks all other relief the Court finds she is so entitled to.

THIRD CAUSE OF ACTION
(Focus & Benjamin)

117. Angela re-alleges and incorporates by reference paragraphs 1 through 116, as set forth above.
118. Benjamin's denial of Angela's request for flex-time to enable her to care for her son Andrew Allen as stated above was in violation of the Family Medical Leave Act, 28 U.S.C. Section 2611, et. seq. inasmuch as Angela was an eligible employee entitled under 28 U.S.C. Section 2612(b) to leave taken intermittently or on a reduced leave schedule.
119. Benjamin is and was an employer within the meaning of 28 U.S.C. 2611(4) inasmuch as he was a "person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer."
120. As a direct and proximate cause of Benjamin unlawfully denying Angela's request for family medical leave, Angela has incurred actual monetary losses in the form of the cost of providing care, additional costs of medical treatment as a result of the delay in treatment, additional lost wages as a result of being required to attend child-parent

treatment sessions that would not have otherwise been necessary but for the delay in treatment, additional lost wages as a result of Angela being terminated from a subsequent employer due in substantial part to her having to attend child-parent treatment sessions that would not have otherwise been necessary but for the delay in treatment, and other lost benefits of employment such as medical insurance benefits.

121. Angela seeks an award of damages pursuant to 28 U.S.C. 1617(a)(1)(A)(i), (ii) and (iii) in the form of lost wages, salary, employment benefits, or other compensation denied or lost by reasons of the violations; and in the alternative, any actual monetary losses sustained by Angela as a direct result of the violations; and in addition, Angela seeks interest on all amounts awarded for lost wages, salary, employment benefits, or other compensation denied or lost by reason of the violations. Angela also seeks an award of additional damages equal to the sum of the amount awarded of liquidated damages under subsections (i) and (ii) of 28 U.S.C. Section 1617(a)(1)(A).
122. Angela seeks attorneys fees and costs pursuant to 28 U.S.C. 2617(a)(3).

REQUEST FOR JURY

123. Angela hereby demands that this matter be tried before a jury.

PRAYER FOR RELIEF

Wherefor, Angela prays for relief against Focus as follows:

124. Equitable relief including compensation for back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and expenses resulting from the denial of flex-time, 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;
125. Compensatory damages in an amount to be determined at trial but at least \$300,000;
126. Punitive damages in an amount to be determined at trial but at least \$300,000;
127. For other damages to be determined at trial;
128. For attorneys fees and costs, including expert witness fees;
129. Such further and additional relief which the Court deems just and appropriate.


Wherefor, Angela prays for relief against DataMark as follows:

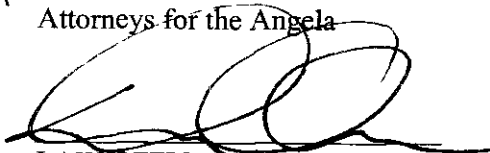
130. Equitable relief including compensation for back pay, interest on back pay, forward pay, lost benefits, her medical expenses, costs and expenses resulting from the denial of flex-time, and all other relief she is entitled to pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-5(g), in amounts to be determined at trial;

131. Compensatory damages in an amount to be determined at trial but at least \$100,000;
132. Punitive damages in an amount to be determined at trial but at least \$100,000;
133. For other damages to be determined at trial;
134. For attorneys fees and costs, including expert witness fees;
135. 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 Angela


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

Plaintiff's Address:
Angela Alan Stoll
234 Balsam Drive
Centerville, Utah 84014