

SC DOCKET SHEET

CASE NO. PC-2015-2435

Jennifer McElroy
 v.
 Fidelity Investments Institutional Services Company,
 Inc., Fidelity Financial Advisor Solutions

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Location: Providence/Bristol County
 Superior Court
 Filed on: 06/09/2015
 US District Court Case Number: 1:15-cv-00287

CASE INFORMATION

Case Type: Civil Rights/Job Discrimination
 Case Status: 07/13/2015 Closed

DATE CASE ASSIGNMENT




Current Case Assignment

Case Number PC-2015-2435
 Court Providence/Bristol County Superior Court
 Date Assigned 06/09/2015

PARTY INFORMATION

Plaintiff	McElroy, Jennifer	<i>Lead Attorneys</i> FANNING, STEPHEN T. <i>Retained</i> 4012728250 x000(W)
Defendant	Fidelity Financial Advisor Solutions Fidelity Investments Institutional Services Company, Inc.	MCNAMARA, NEAL JAMES <i>Retained</i> 4014541028(W)

DATE EVENTS & ORDERS OF THE COURT

07/13/2015	Case Removed to US District Court
07/13/2015	Case Closed
07/10/2015	 Notice <i>Notice of Filing of Notice of Removal</i>
06/09/2015	 Summons Party: Defendant Fidelity Investments Institutional Services Company, Inc.; Defendant Fidelity Financial Advisor Solutions
06/09/2015	 Complaint Filed <i>Complaint</i>



STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

CLERK'S CERTIFICATE AND TRANSMITTAL OF THE RECORD

Case Information

Case Caption: Jennifer McElroy vs. Fidelity Investments Institutional Services Company
Federal Court Case No. 1:15-cv-00287 State Court Case No. PC-2015-2435

Record Information

Confidential: Yes No Description: _____
Sealed documents: Yes No Description: _____

Certification

I, Lynn Gaulin, Clerk of the Rhode Island Superior Court for the County of
Providence do certify that the attached documents are all the documents
included in the record in the above referenced case.

Date: 07/13/2015

Clerk of Court
/s/ Lynn Gaulin
By Deputy Clerk

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

JENNIFER MCELROY

Plaintiff

v.

FIDELITY INVESTMENTS
INSTITUTIONAL SERVICES
COMPANY, INC. & FIDELITY
FINANCIAL ADVISOR SOLUTIONS

Defendants.

C.A. No. PC-2015-2435

NOTICE OF FILING OF NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants Fidelity Investments Institutional Services Company, Inc. & Fidelity Financial Advisor Solutions, (“Defendants”), have removed this action from this Court to the United States District Court for the District of Rhode Island, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446.

A true and complete copy of the Notice of Removal, as filed with the United States District Court for the District of Rhode Island, is attached as **Exhibit A**.

Dated: July 10, 2015

Defendants,

Fidelity Investments Institutional Services
Company, Inc. & Fidelity Financial Advisor
Solutions

By their Attorneys,

NIXON PEABODY LLP

/s/ Neal J. McNamara

Neal J. McNamara (#4249)
One Citizens Plaza, Suite 500
Providence, Rhode Island 02903
(401) 454-1000
(401) 454-1030 (Facsimile)
nmcnamara@nixonpeabody.com

CERTIFICATION

I certify that, on July 10, 2015, I caused a copy of the within Notice of Filing Notice of Removal to be served upon Plaintiff's counsel of record below via the Court's CM/ECF system:

Stephen T. Fanning, Esq.
305 South Main Street
Providence, RI 02903

/s/ Neal J. McNamara

Neal J. McNamara



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

SUMMONS

	Civil Action File Number PC-2015-2435
Plaintiff Jennifer Mcelroy	Attorney for the Plaintiff or the Plaintiff Stephen T. Fanning
v.	Address of the Plaintiff's Attorney or the Plaintiff 305 SOUTH MAIN STREET PROVIDENCE RI 02903
Defendant Fidelity Investments Institutional Services Company, Inc.	
Licht Judicial Complex Providence/Bristol County 250 Benefit Street Providence RI 02903 (401) 222-3250	Address of the Defendant 245 Summer Street MZF7B Boston MA 02210

TO THE DEFENDANT, Fidelity Investments Institutional Services Company, Inc.:

The above-named Plaintiff has brought an action against you in said Superior Court in the county indicated above. You are hereby summoned and required to serve upon the Plaintiff's attorney, whose address is listed above, an answer to the complaint which is herewith served upon you within twenty (20) days after service of this Summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court.

As provided in Rule 13(a) of the Superior Court Rules of Civil Procedure, unless the relief demanded in the complaint is for damage arising out of your ownership, maintenance, operation, or control of a motor vehicle, or unless otherwise provided in Rule 13(a), your answer must state as a counterclaim any related claim which you may have against the Plaintiff, or you will thereafter be barred from making such claim in any other action.

This Summons was generated on 6/9/2015.	/s/ Henry Kinch Clerk
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Witness the seal/watermark of the Superior Court



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

<p>Plaintiff Jennifer Mcelroy v. Defendant Fidelity Investments Institutionl Services Company, Inc.</p>	<p>Civil Action File Number PC-2015-2435</p>
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PROOF OF SERVICE

I hereby certify that on the date below I served a copy of this Summons, complaint, Language Assistance Notice, and all other required documents received herewith upon the Defendant, Fidelity Investments Institutionl Services Company, Inc., by delivering or leaving said papers in the following manner:

- With the Defendant personally.
- At the Defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
 Name of person of suitable age and discretion _____
 Address of dwelling house or usual place of abode _____
 Age _____
 Relationship to the Defendant _____
- With an agent authorized by appointment or by law to receive service of process.
 Name of authorized agent _____
 If the agent is one designated by statute to receive service, further notice as required by statute was given as noted below.

- With a guardian or conservator of the Defendant.
 Name of person and designation _____
- By delivering said papers to the attorney general or an assistant attorney general if serving the state.
- Upon a public corporation, body, or authority by delivering said papers to any officer, director, or manager.
 Name of person and designation _____



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

Upon a private corporation, domestic or foreign: <input type="checkbox"/> By delivering said papers to an officer or a managing or general agent. Name of person and designation _____ <input type="checkbox"/> By leaving said papers at the office of the corporation with a person employed therein. Name of person and designation _____ <input type="checkbox"/> By delivering said papers to an agent authorized by appointment or by law to receive service of process. Name of authorized agent _____ If the agent is one designated by statute to receive service, further notice as required by statute was given as noted below. _____	
<input type="checkbox"/> I was unable to make service after the following reasonable attempts: _____ _____	
SERVICE DATE: ____ / ____ / ____ Month Day Year	SERVICE FEE \$ _____
Signature of SHERIFF or DEPUTY SHERIFF or CONSTABLE _____	
SIGNATURE OF PERSON OTHER THAN A SHERIFF or DEPUTY SHERIFF or CONSTABLE MUST BE NOTARIZED. _____ Signature State of _____ County of _____	
On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ <input type="checkbox"/> personally known to the notary or <input type="checkbox"/> proved to the notary through satisfactory evidence of identification, which was _____, to be the person who signed above in my presence, and who swore or affirmed to the notary that the contents of the document are truthful to the best of his or her knowledge. Notary Public: _____ My commission expires: _____ Notary identification number: _____	





STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

SUMMONS

	Civil Action File Number PC-2015-2435
Plaintiff Jennifer Mcelroy	Attorney for the Plaintiff or the Plaintiff Stephen T. Fanning
v.	Address of the Plaintiff's Attorney or the Plaintiff 305 SOUTH MAIN STREET PROVIDENCE RI 02903
Defendant Fidelity Investments Institutional Services Company, Inc.	Address of the Defendant 200 Seaport Blvd Boston MA 02110
Licht Judicial Complex Providence/Bristol County 250 Benefit Street Providence RI 02903 (401) 222-3250	

TO THE DEFENDANT, Fidelity Financial Advisor Solutions:

The above-named Plaintiff has brought an action against you in said Superior Court in the county indicated above. You are hereby summoned and required to serve upon the Plaintiff's attorney, whose address is listed above, an answer to the complaint which is herewith served upon you within twenty (20) days after service of this Summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Your answer must also be filed with the court.

As provided in Rule 13(a) of the Superior Court Rules of Civil Procedure, unless the relief demanded in the complaint is for damage arising out of your ownership, maintenance, operation, or control of a motor vehicle, or unless otherwise provided in Rule 13(a), your answer must state as a counterclaim any related claim which you may have against the Plaintiff, or you will thereafter be barred from making such claim in any other action.

This Summons was generated on 6/9/2015.	/s/ Henry Kinch Clerk
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Witness the seal/watermark of the Superior Court



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

Plaintiff Jennifer Mcelroy v. Defendant Fidelity Investments Institutionanl Services Company, Inc.	Civil Action File Number PC-2015-2435
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PROOF OF SERVICE

I hereby certify that on the date below I served a copy of this Summons, complaint, Language Assistance Notice, and all other required documents received herewith upon the Defendant, Fidelity Financial Advisor Solutions, by delivering or leaving said papers in the following manner:

- With the Defendant personally.
- At the Defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person of suitable age and discretion _____
Address of dwelling house or usual place of abode _____
Age _____
Relationship to the Defendant _____
- With an agent authorized by appointment or by law to receive service of process.
Name of authorized agent _____
If the agent is one designated by statute to receive service, further notice as required by statute was given as noted below.

- With a guardian or conservator of the Defendant.
Name of person and designation _____
- By delivering said papers to the attorney general or an assistant attorney general if serving the state.
- Upon a public corporation, body, or authority by delivering said papers to any officer, director, or manager.
Name of person and designation _____



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

SUPERIOR COURT

Upon a private corporation, domestic or foreign:

- By delivering said papers to an officer or a managing or general agent.
Name of person and designation _____
- By leaving said papers at the office of the corporation with a person employed therein.
Name of person and designation _____
- By delivering said papers to an agent authorized by appointment or by law to receive service of process.
Name of authorized agent _____
If the agent is one designated by statute to receive service, further notice as required by statute was given as noted below.

I was unable to make service after the following reasonable attempts: _____

SERVICE DATE: ____/____/____
Month Day Year

SERVICE FEE \$ _____

Signature of SHERIFF or DEPUTY SHERIFF or CONSTABLE

SIGNATURE OF PERSON OTHER THAN A SHERIFF or DEPUTY SHERIFF or CONSTABLE MUST BE NOTARIZED.

Signature _____

State of _____

County of _____

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ personally known to the notary or proved to the notary through satisfactory evidence of identification, which was _____, to be the person who signed above in my presence, and who swore or affirmed to the notary that the contents of the document are truthful to the best of his or her knowledge.

Notary Public: _____
My commission expires: _____
Notary identification number: _____



Before the
STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 15EPD104-26/50

EEOC NO. 16J-2015-00060

In the matter of

Jennifer McElroy
Complainant

Against

**NOTICE OF
RIGHT TO SUE**

Fidelity Investments Institutional Services Company, Inc.
Fidelity Financial Advisor Rhode Solutions
Respondents

This NOTICE OF RIGHT TO SUE is issued to the above cited complainant pursuant to Section 28-5-24.1(a) of the General Laws of Rhode Island because more than one hundred and twenty (120) days and less than two (2) years have elapsed since the charge was filed, the Commission is unable to secure a settlement or conciliation agreement, the Commission has not commenced hearings on a complaint and the complainant has requested a Right To Sue. With the issuance of the NOTICE OF RIGHT TO SUE, the Commission is terminating any further processing of this charge.

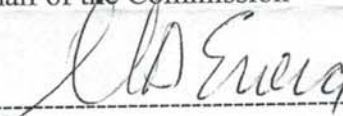
An information copy of this NOTICE OF RIGHT TO SUE has been sent to the persons indicated on the next page.

This NOTICE OF RIGHT TO SUE is issued at your request. If you intend to sue, YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE DATE OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.

On Behalf of the Commission

3/24/15

Date



Michael D. Évora
Executive Director

NOTICE OF RIGHT TO SUE
PAGE TWO

Section 28-5-24.1 of the General Laws of Rhode Island

(a) A complainant may ask for a right to sue in state court if not less than one hundred and twenty (120) days and not more than two (2) years have elapsed from the date of filing of a charge, if the Commission has been unable to secure a settlement agreement or conciliation agreement and if the Commission has not commenced hearing on a complaint. The Commission shall grant the right to sue within thirty (30) days after receipt of such request. This shall terminate all proceedings by the Commission and shall give to the complainant the right to commence suit in the superior court within any county as provided in Section 28-5-24 within ninety (90) days after the granting of such request. Any party may claim a trial by jury.

CC: Stephen T. Fanning, Esq.
Neal J. McNamara, Esq.
CT Corporation System, agent for (Fidelity Investments Institutional Services Co. Inc.)
CEO
Scott Couto, President

A-72

CERTIFICATION

I certify that on March 24, 2015 I sent out a **NOTICE OF RIGHT TO SUE** regarding Jennifer McElroy vs. Fidelity Investments Institutional Services Company, Inc. Fidelity Financial Advisor Solutions #15EPD104-26/50 to the following persons:

Ms. Jennifer McElroy 152 Gibson Avenue Narragansett, RI 02882	CEO Fidelity Financial Advisor Solutions 200 Seaport Boulevard Boston, MA 02210
Stephen T. Fanning, Esq. Law Office Stephen T. Fanning 305 South Main Street Providence, RI 02903 Neal J. McNamara, Esq Nixon & Peabody One Citizens Plaza, 500 Providence, RI 02903	Scott Couto, President Fidelity Investments Institutional Services Company, Inc. 245 Summer Street, MZ F7B Boston, MA 02210
	CT Corporation Systems 450 Veterans Memorial Parkway, Suite 7A East Providence, RI 02914 Agent for Fidelity Investments Institutional Services Company, Inc.
	Lynn C. Cimaglia Administrative Aide March 24, 2015

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

Jennifer McElroy,)
Plaintiff)

v.)
)

Fidelity Investments Institutional)
Services Company, Inc. &)
Fidelity Financial Advisor Solutions)
Defendants)

C.A. No.: _____

COMPLAINT

INTRODUCTORY STATEMENT/NATURE OF THE ACTION

This action is commenced by Jennifer McElroy (hereafter “McElroy” or “Plaintiff”), an individual, against Financial Investments Institutional Services Company, Inc. and Fidelity Financial Advisor Solutions (hereafter “Defendants” or “Employers”), in order to remedy and seek relief for the Defendants’ unlawful and discriminatory employment practices, in violation of Title VII of the Civil Rights act of 1964, The Rhode Island Fair Employment Practices Act, the Rhode Island Civil Rights Act and other state and federal laws.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to R.I.G.L. 8-2-13, 8-2-14, 28-5-1 et seq., 42-112-2 et seq. All conditions precedent to establishing this court’s jurisdiction over this action pursuant to R.I.G.L. 28-5-24.1 and other pertinent sections have been satisfied.

2. The employment practices hereafter alleged to be unlawful were, and are now, being committed in the State of Rhode Island, and form part of the same case or controversy.

3. Venue is proper in this Court, pursuant to, inter alia, R.I.G.L. 9-4-4 because:

- a. the alleged unlawful practices occurred and/or are continuing to occur within the State of Rhode Island, and in this judicial district;
- b. all records relevant to the alleged unlawful practices are maintained and administered in the Defendants' place of business, located in Smithfield, RI, within this judicial district;
- c. the Plaintiff would currently be employed by the Defendants at their place of business within this judicial district, but for the Defendants' unlawful employment practices.

4. Plaintiff timely filed a formal Charge of Discrimination with the Rhode Island Commission for Human Rights ("RICHR"), alleging that she had been discriminated against on the basis of her gender, condition of pregnancy, and that she was retaliated against.

5. In timely fashion, Plaintiff requested and received Right to Sue Authorization from the appropriate administrative agency. (ATTACHMENT A).

6. Plaintiff has filed this action within 90 days of the Right to Sue authorization, and has fulfilled all other conditions precedent to the institution of each count of this action.

PARTIES

7. The Plaintiff, Jennifer McElroy, is a female and a resident of the town of Narragansett, Rhode Island.

8. On information and belief, the Defendants are foreign corporations, duly registered and authorized to conduct business in, and pursuant to the laws of the State of Rhode Island, with an office and principal place of business, located in Smithfield, RI, at which the Plaintiff was employed.

9. The Defendants are sufficiently joined in terms of ownership and control to be considered one employer and held jointly and severally liable for the instant action.

10. On information and belief, at all times material to the allegations of this Complaint, the Defendants have continuously, and do now, employ at least 500 or more employees in the State of Rhode Island.

10. At all times material to the allegations of this Complaint, the Defendants qualified as an employer and/or covered entity pursuant to applicable provisions of The

Rhode Island Civil Rights Act of 1990, R.I.G.L. §42-112-1 et seq.; and The Rhode Island Fair Employment Practices Act, R.I.G.L. §28-5-1 et seq.

11. At all times material to this action, McElroy was an individual, employee, and/or person covered under the terms and provisions of The Rhode Island Civil Rights Act of 1990, R.I.G.L. §42-112-1 et seq.; and The Rhode Island Fair Employment Practices Act, R.I.G.L. §28-5-1 et seq..

12. On information and belief, and at all times pertinent to this Complaint, managers and supervisors engaging in discriminatory workplace treatment of the Plaintiff, were each a person acting in furtherance of the interest of, on behalf of, and as the agent of the Defendants, with respect to all allegations of this Complaint, and the Defendants knew or should reasonably have known of their unlawful conduct.

FACTS COMMON TO ALL COUNTS

13. Plaintiff is female.

14. Plaintiff worked for the Defendants for approximately ten (10) years. Throughout the tenure of her employment, the Plaintiff performed her assigned job duties in a satisfactory manner, meeting or exceeding the Defendants' legitimate expectations.

15. Plaintiff separated from the employer on May 30, 2014, at which time she held the position of Regional Vice President.

16. In September, 2012, Plaintiff was informed by the company that she could anticipate a significant promotion in fall, 2013.

17. In March, 2013, Plaintiff commenced an FMLA qualified medical leave related to her pregnancy.

18. Plaintiff returned to work in July, 2013, within the FMLA timeframe.

19. Within a few months of Plaintiff's return to work, she was removed from her position and placed into a different, less desirable, position. She was denied the promotion referenced in Paragraph No. 16, above.

20. Upon reasonable information and belief, other candidates who had not been pregnant and who had not taken medical leave, were granted promotions.

21. With respect to the new position that Plaintiff was placed, Plaintiff was informed by the Employer that it was temporary and that she would be returned to the position she was removed from.

22. After serving in the new position for several months, Plaintiff was informed by the Employer that there were no other positions for her, implying that if she did not continue in her current role, she would be terminated.

23. It is Plaintiff's belief that a male candidate assumed the duties that were taken from the Plaintiff when she returned from her leave.

24. Commencing in 2012, Plaintiff was subject to a number of unilateral reductions in her commissions, predicated on the Employer's assertion that she had been overpaid.

25. As a result of the mistreatment to which she was subjected, the Plaintiff was compelled to resign her employment.

26. The RI Department of Labor and training determined that the Plaintiff relinquishing her position did not disqualify her from receiving unemployment benefits, in that the job had become unsuitable.

27. The Defendants' conduct, as referenced in the preceding paragraphs, reflects, in both purpose and effect, a blatant, willful, and/or malicious pattern of discrimination and unlawful treatment against the Plaintiff. Such conduct has involved an intentional, reckless, and/or callous indifference to the statutorily protected rights of the Plaintiff. The Defendants knowingly and purposefully subjected the Plaintiff to humiliating, discriminatory, and retaliatory treatment, and constructively discharged her as a result of her gender, condition of pregnancy and because she availed herself of her rights pursuant to the FMLA.

COUNT I
RHODE ISLAND FAIR EMPLOYMENT PRACTICES ACT
R.I.G.L. §28-5-1 et seq.

DISCRIMINATORY TERMS AND CONDITIONS OF EMPLOYMENT
CONSTRUCTIVE TERMINATION
RETALIATION

28. Paragraphs 1-27 above are herein incorporated by reference in their entirety.

29. The Defendants' discriminatory conduct, policies, and practices are violative of the provisions of the RIFEPA, by:

- a. interfering with Plaintiff's right to avail herself of the full and equal benefit and protection of state and federal laws intended to prevent discrimination in the workplace based on gender;
- b. depriving her of the status, benefits, privileges, and other terms and conditions accruing to the employment relationship to which she was entitled;
- c. treating her in a hostile, demeaning, and otherwise unlawful manner based on her gender;
- d. retaliating against Plaintiff; and
- e. causing her lost income and benefits, humiliation, physical and emotional injury, as well as irreparable harm to her person and professional reputation.

30. The unlawful practices engaged in by the Defendants were motivated by impermissible and unlawful considerations concerning's gender. Such practices include, but are not limited to, Defendants':

- a. denying the Plaintiff promotion(s) and other benefits; &
- b. retaliating against Plaintiff because she availed herself of her medical leave rights with respect to pregnancy;
- c. constructively terminating the Plaintiff.

31. But for the Defendants' intent to discriminate against Plaintiff because of her gender, Defendants would not have constructively discharged Plaintiff, retaliated against her, or subjected her to discriminatory terms and conditions of employment.

32. The Defendants' conduct has unlawfully deprived Plaintiff of income, benefits, privileges, promotions, and other terms and conditions accruing to the employment relationship to which she was entitled; has caused irreparable harm to her reputation and professional mobility; and has caused her extreme humiliation, as well as physical and emotional injury.

WHEREFORE, Plaintiff prays that judgment be entered herein against the Defendants, jointly and severally, and in favor of Plaintiff for all damages and equitable relief available, as hereinafter requested.

COUNT II
THE RHODE ISLAND CIVIL RIGHTS ACT OF 1990
R.I.G.L. 42-112-1 ET SEQ.
DISCRIMINATORY TERMS AND CONDITIONS OF EMPLOYMENT
RETALIATION
CONSTRUCTIVE TERMINATION

33. Paragraphs 1-27 above are incorporated herein by reference in their entirety.

34. Despite Plaintiff's ability to perform the duties of her position in a satisfactory manner, the Defendants unlawfully subjected Plaintiff to discriminatory terms and conditions of employment, retaliated against Plaintiff, and constructively discharged Plaintiff because of Plaintiff's gender.

35. But for the Defendants' intent to discriminate against Plaintiff because of her gender, the Defendants would not have engaged in the unlawful conduct described in the preceding paragraphs.

36. By its conduct described in the preceding paragraphs, the Defendants have engaged in unlawful conduct in violation of R.I.G.L. 42-112-1 et seq.

37. The Defendants' conduct was undertaken with a reckless and/or callous indifference to the statutorily protected rights of the Plaintiff, and has unlawfully deprived the Plaintiff of her employment, income, benefits, privileges, promotions, and other benefits accruing to the employment relationship, as well as caused harm to her reputation, humiliation, and physical and emotional injury.

WHEREFORE, Plaintiff prays that judgment be entered herein against the Defendants, jointly and severally, and in favor of Plaintiff for all damages and equitable relief available, as hereinafter requested.

COUNT III
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
42 USC 2000e et seq.
as amended by the
PREGNANCY DISCRIMINATION ACT OF 1978
42 USC § 2000e(k)
Discriminatory Terms and Conditions of Employment
Constructive Termination

38. The allegations contained in Paragraphs 1-27, above, are incorporated herein by reference, in their entirety.

39. Plaintiff was qualified to perform all the duties of her position in a satisfactory manner, despite her condition of being pregnant.

40. The Defendants have violated Title VII of the Civil Rights Act of 1964, including Section 701(k), and the Pregnancy Discrimination Act, and other sections.

41. The Defendant's discriminatory conduct, policies, and practices violate the provisions of Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act by:

- a. interfering with Plaintiff's right to avail herself of the full and equal benefit and protection of state and federal laws intended to prevent discrimination in the workplace based on gender/pregnancy;
- b. depriving her of the status, benefits, privileges, and other terms and conditions accruing to the employment relationship to which she was entitled;
- c. treating her in a hostile, demeaning, and otherwise unlawful manner based on her gender/pregnancy;
- d. causing her lost income and benefits, humiliation, physical and emotional injury, as well as harm to her person and professional reputation.

42. The unlawful practices engaged in by the Defendants were motivated by impermissible and unlawful considerations concerning Plaintiff's gender/pregnancy. Such practices include, but are not limited to, Defendants':

- a. constructively terminating Plaintiff because of her gender/pregnancy;
- b. forcing Plaintiff to work under discriminatory terms and conditions of employment; and
- c. retaliating against Plaintiff for asserting her rights to be free from discrimination based on gender/pregnancy and availing herself to leave time due to her pregnancy.

43. But for the Defendants' intent to discriminate against Plaintiff because of her gender/pregnancy, Defendants would not have constructively terminated Plaintiff, subjected her to discriminatory terms and conditions of employment, or retaliated against her.

44. The Defendants purposefully, maliciously, and without justification or excuse, took discriminatory action with respect to Plaintiff's employment because of Plaintiff's gender/pregnancy. The Defendants' conduct has unlawfully deprived Plaintiff of her employment, income, benefits, privileges, promotions, and other terms and conditions accruing to the employment relationship to which she was entitled; has caused harm to her reputation; and has caused her humiliation, as well as physical and/or emotional injury.

WHEREFORE, Plaintiff prays that judgment be entered herein against Defendants, jointly and severally, and in favor of Plaintiff for all damages and equitable relief available, as hereinafter requested.

COUNT IV
RHODE ISLAND PARENTAL AND FAMILY MEDICAL LEAVE ACT
R.I.G.L. CH. 28-48-1 ET SEQ.

45. The allegations contained in Paragraphs 1-27 above are incorporated herein by reference in their entirety.

46. The Defendants' discriminatory conduct, policies, and practices are violative of the provisions of the Rhode Island Parental and Family Medical Leave Act, R.I.G.L. 28-48-1 et seq.

WHEREFORE, Plaintiff prays that judgment be made herein against the Defendants, jointly and severally, and in favor of the Plaintiff for all damages and equitable relief as hereinafter requested.

COUNT V
FEDERAL FAMILY AND MEDICAL LEAVE ACT of 1993
29 U.S.C. 2601 *et seq.*

47. The allegations in Paragraphs 1-26 are incorporated herein, by reference, in their entirety.

48. The Defendants' discriminatory conduct, policies, and practices are violative of the provisions of the federal Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.*

WHEREFORE, Plaintiff prays that judgment be made herein against the Defendants, jointly and severally, and in favor of the Plaintiff for all damages and equitable relief as hereinafter requested.

COUNT VI
BREACH OF CONTRACT

49. The allegations contained in Paragraphs 1-27, above, are incorporated herein by reference in their entirety.

50. Plaintiff performed his duties in a satisfactory and professional manner, consistent with those obligations as required by the Employer, as referenced in the official policies and documents of the Defendants applicable to, and establishing, the terms and conditions of Plaintiff's employment.

51. Plaintiff was entitled to certain compensation pursuant to the Employers' Compensation Plan.

52. Plaintiff fulfilled her obligations under the Employer's Compensation Plan, making her eligible for certain variable incentive compensation.

53. The Defendants unilaterally reduced Plaintiff's commissions in the year 2012 on its position that payments made to the Plaintiff in the year 2011 were erroneous.

54. The Defendants unlawfully breached their contractual obligation with the Plaintiff pursuant to this Plan, by, inter alia, denying her the contractual compensation and benefits to which she was due.

WHEREFORE, Plaintiff prays that judgment be made herein against the Defendants, jointly and severally, and in favor of the Plaintiff for all damages and equitable relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered herein against Defendants, jointly and severally, and in favor of Plaintiff for all damages and equitable relief available, including, but not limited to:

a. an order the Defendants institute and carry out policies, practices and programs which provide equal employment opportunities to qualified individuals regardless of gender.

b. an order that the Defendants make whole the Plaintiff with appropriate lost earnings, benefits, and interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including, but not limited to the reinstatement of Plaintiff to her position of employment, or some other appropriate position, with appropriate increases, benefits, status, and promotional opportunities;

c. an order that the Defendants make whole the Plaintiff by providing compensation for any pecuniary losses, including, but not limited to, any costs incurred for health and life insurance premiums, medical treatment while without insurance, losses in pension entitlement, vacation pay and other benefits, and the costs of seeking new employment, in amounts to be determined at trial;

d. an order that the Defendants make whole the Plaintiff by providing compensation for non-pecuniary losses, including, but not limited to emotional pain, suffering, humiliation, and mental anguish in amounts to be proven at trial, including an appropriate award of compensatory damages pursuant to R.I.G.L. §28-50-4, 42-112-2, and 28-5-24;

e. grant attorney's fees and the costs of this action;

f. grant punitive damages, as appropriate, to punish the Defendants for its malicious conduct and/or for its reckless and/or callous indifference to the statutorily

protected rights of the Plaintiff, including an appropriate award pursuant to R.I.G.L. §28-50-4, 42-112-2, and 28-5-1;

g. grant an appropriate award of prejudgment interest, including an award of interest for all damages awarded to the Plaintiff from the date this cause of action accrued, pursuant to R.I.G.L. §9-21-10; and

h. grant such further relief as this Court deems necessary and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury of all issues pertinent to the causes in this Complaint triable as of right by jury.

Respectfully Submitted,
Jennifer McElroy,
By Her Attorney,

/s/ Stephen T. Fanning

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