

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

MARIA L. BROWN

PLAINTIFF

VS.

CIVIL ACTION NO. 3:07CV727 HTW/LRA

**DAVID NUTT, P.A.;
DAVID NUTT & ASSOCIATES, P.C.;
NUTT & MCALISTER, PLLC;
DAVID H. NUTT, INDIVIDUALLY;
MARY E. MCALISTER, INDIVIDUALLY;
ERNIE COWARD, INDIVIDUALLY; AND
WILLIAM S. JONES, INDIVIDUALLY**

DEFENDANTS

COMPLAINT

Jury Trial Demanded

COMES NOW Plaintiff Maria L. Brown and files this her Complaint against the Defendants alleging the following:

PARTIES

1. The Plaintiff Maria L. Brown is an adult female resident citizen of Hinds County, Mississippi who resides at 1038 Cedar Hill Drive, Jackson, MS 39206.

2. The Defendant, David Nutt, P.A. is Plaintiff's former employer that is a Mississippi corporation with its principal place of business located at 605 Crescent Blvd., Suite 200, Ridgeland, MS 39157.

3. The Defendant David Nutt & Associates, P.C., is Plaintiff's former employer that is a Mississippi corporation with its principal place of business located at 605 Crescent Blvd., Ste. 200, Ridgeland, MS 39157. The Defendant

may be served with process through its registered agent, David H. Nutt, 605 Crescent Blvd., Suite 200, Ridgeland, MS 39157.

4. Defendant Nutt & McAlister, PLLC is Plaintiff' former employer that is a Mississippi corporation with its principal place of business located at 605 Crescent Blvd., Suite 200, Ridgeland, MS 39157.

5. The Defendant David H. Nutt is an adult resident citizen of Madison County, Mississippi who resides at 290 Chapel Hill Road, Madison, Mississippi 39071. Defendant Nutt may be served with process at his residence or his place of employment.

6. The Defendant Mary E. McAlister is an adult resident citizen of Hinds County, Mississippi who resides at 10045 Lebanon-Pine Grove Road, Terry, Mississippi 39170 who may be served at her residence or her place of business.

7. The Defendant Ernie Coward is an adult male resident of Madison County, Mississippi, who resides at 102 Laird Ave., Madison, MS 39110 who may be served at his place or residence or his place of business.

8. Defendant William S. Jones is an adult male resident citizen of Rankin county, Mississippi who resides at 2039 Carolyn Lane, Pearl, MS 39208 and may be served with process at his place or residence or his place of business.

9. The Defendants listed above were joint employers of Plaintiff.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over the parties identified in this Complaint.

11. This Court has subject matter jurisdiction over the claims contained in this Complaint.

12. Venue is proper in this Court.

13. Plaintiff timely filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission and a copy of her Charge is attached as Exhibit "A". Plaintiff has timely filed her claims upon receipt of her Notice of Right to Sue, a copy of which is attached as Exhibit "B".

STATEMENT OF FACTS

14. Plaintiff began working for Defendants in July 2004 as a paralegal. At the time of her termination, Plaintiff worked primarily on Katrina insurance litigation.

15. Approximately two years ago, a member of Defendants' management, William S. Jones, CPA, began making Plaintiff feel uncomfortable to be around one on one because he would constantly rub Plaintiff's hand which gave Plaintiff the chills.

16. When Marcie Poss was fired, Ernie Coward, began asking Plaintiff if she would perform oral sex on him. Plaintiff was offended by his request and responded "No." Mr. Coward then asked Plaintiff if she knew anybody that would.

17. One day, Ernie Coward, showed Plaintiff a picture of his genitalia and asked Plaintiff "how did she like the way it looked?"

18. Coward asked Plaintiff to photograph her genitalia and give it to him. Plaintiff refused.

19. Male members of management routinely engaged in inappropriate sexual behavior.

20. The overall environment was saturated with sex which consisted of sexual innuendoes, sexual acts, on-line masturbation, payments for sexual favors performed in the broom closet, sexual overtures and adultery.

21. Plaintiff reported the acts and the use of unauthorized pass codes, to McAlister in October of 2006.

22. After the reporting of the unauthorized pass codes, the working environment worsened.

23. In December of 2006, McAlister and Derek Wyatt promised Plaintiff that if she worked overtime on week nights and weekends and gave up personal time to work on the Katrina insurance litigation, that Defendants would pay off her house note in the amount of \$85,000.00 or move her to Madison upon the successful settlement of Katrina insurance litigation claims that Defendants were associated with other law firms representing Plaintiffs.

24. Based upon Defendants' promise, Plaintiff began working longer hours, did not take lunch breaks and worked on weekends, and at home.

25. Plaintiff was not paid time and a half her regular rate of pay for all hours worked in excess of 40 for each given work week, when work was done at home or when the day was a firm paid holiday. In addition, Defendant McAlister

directed for Plaintiff to work off the clock to assist with running errands and performing tasks for Derek Wyatt when he was out town.

26. Plaintiff regular rate of pay was \$16.87 per hour.

27. Bill Jones continued to rub Plaintiff's hand when no else was present. In March or April of 2006, Plaintiff complained to her supervisor McAlister about the sexual harassment of Jones. After Plaintiff complained, Defendants did nothing to investigate or eradicate the unwanted physical touching and overall sexually hostile work environment.

28. On December 8, 2006, Judge William M. Acker with the United States District Court for the Northern District of Alabama, Southern Division, entered a Preliminary Injunction in E.A. Renfroe & Company, Inc., v. Cori Rigsby, et al.; Civil Action No. 2:06-cv-01752-WMA. A copy of the Order is attached hereto as Exhibit "C."

29. In clear violation of the Judge's Order, the Defendants scanned all the documents they were order to return and not use, and were saved on the Defendants' local server. These scanned images were then electronically copied and then saved again at Business Communications, Inc., which is located at 442 Highland Colony Parkway, Ridgeland, MS 39157.

30. In March of 2007, Plaintiff complained to McAlister regarding Katrina documents that McAlister would not turn over in accordance with the Preliminary Injunction which had been entered by Judge William M. Acker. McAlister told Plaintiff that "because the documents were in the public domain that they were not

covered by the injunction” and that she did not have to turn them over because they were in the “public domain”.

31. After receipt of this injunction by McAlister and Wyatt, Plaintiff was instructed to contact the Rigsby sisters to set up conferences to review documents prior to the filing of a complaint setting forth RICO claims. Between March and May of 2007, Plaintiff was required on several different occasions to conduct additional telephonic conferences to discuss Renfroe adjusters' involvement in Katrina cases.

32. Toward the end of May of 2007, Plaintiff complained to McAlister and another paralegal regarding problems with Katrina settlement releases.

33. On May 30, 2007, Plaintiff was paid a partial bonus of \$5,000.00 because of the settlement of some Katrina related claims.

34. McAlister informed Plaintiff this bonus was to “tide you over through the Summer.” When Plaintiff later inquired about the remainder of her promised bonus, she was informed that she would not be receiving it “because she did not deserve it.”

35. In June of 2007, Plaintiff informed the Human Resources Director, Johnathan Jones, that she had been sexually harassed by men in upper management.

36. On July 27, 2007, McAlister, along with William S. Jones and Derek Wyatt, informed Plaintiff that she was being “laid off due to reorganization.”

CAUSES OF ACTION

COUNT I

BREACH OF CONTRACT

37. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs 1 through 36.

38. Defendants promised Plaintiff a bonus in the amount of \$85,000.00 in December of 2006. Plaintiff performed the work requested of her and worked overtime on weekends and holidays on the Katrina insurance litigation.

39. Although Defendant paid Plaintiff a \$5,000.00 partial bonus from Katrina insurance settlement proceeds, Defendant has refused to pay Plaintiff the remaining \$80,000.00 it owes her.

40. Defendants' actions constitute a tortious breach of contract.

COUNT II

WRONGFUL TERMINATION

41. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs 1 through 40.

42. By their actions, Defendants have wrongfully retaliated against and terminated the Plaintiff because the Plaintiff "blew the whistle" and informed Defendants of illegal activity with regard to utilizing documents in ongoing litigation in violation of Judge Acker's Memorandum Opinion and Preliminary Injunction.

See Exhibit C at pp. 13-14.

COUNT III

CONSPIRACY/AIDING AND ABETTING

43. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs 1 through 39.

44. The reason given to Plaintiff for her discharge was that she was being "laid off due to reorganization."

45. William S. Jones, Derek Wyatt, Mary E. McAlister and Jonathan Jones conspired together to have the Plaintiff wrongfully terminated for informing the Human Resources department of the sexual harassment and sexually hostile work environment she had been exposed to as well as the illegal activity she complained of with regard to Judge Acker's Preliminary Injunction and the documents maintained by Defendants in violation of the Court's Preliminary Injunction. See Judge Acker's Memorandum Opinion and Preliminary Injunction at pp. 13-14, a copy of which is attached as Exhibit "C".

COUNT IV

**SEX DISCRIMINATION/SEXUAL HARASSMENT/SEXUALLY
HOSTILE WORK ENVIRONMENT**

46. Plaintiff re-alleges and incorporates all averments set forth in paragraphs 1 through 45 above as if fully incorporated herein.

47. Defendants' actions constitute unlawful sex discrimination, sexual harassment and a sexually hostile work environment on the basis of sex in violation of Title VII.

48. As a direct and proximate result of Defendants' unlawful, discriminatory conduct toward Plaintiff, Plaintiff has suffered damages including but not limited to: future pecuniary losses; emotional pain; suffering; inconvenience; mental anguish; loss of enjoyment of life; and other non-pecuniary losses.

49. The unlawful actions of the Defendants complained of above were intentional, malicious, and taken in reckless disregard of the statutory rights of Plaintiff.

COUNT V

RETALIATION

50. Plaintiff re-alleges and incorporates all averments set forth in paragraphs 1 through 49 above as if fully incorporated herein.

51. Defendants have violated Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1985, by retaliating against the Plaintiff for making complaints regarding sex discrimination, sexual harassment and a sexually hostile work environment. Plaintiff is entitled to protection for making complaints or charges of misconduct in violation of Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C. § 1985.

52. The acts of the Defendants constitute a willful intentional violation of Title VII of the Civil Rights Act of 1964 and other state and federal laws, including but not limited to 42 U.S.C. § 1985 and entitle Plaintiff to recovery of damages, both compensatory and punitive in nature.

COUNT VI

VIOLATION OF THE FAIR LABOR STANDARDS ACT

53. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs 1 through 52.

54. Plaintiff is a non-exempt employee and subject to the provisions of the Fair Labor Standards Act as it pertains to whether or not Plaintiff is entitled to minimum wage and overtime pay for all hours over forty (40) hours worked in a given week.

55. The Fair Labor Standards Act requires that employees be paid an overtime premium at a rate not less than one and one-half (1 ½) times the regular rate at which they are employed for all hours in excess of forty hours in a work week. 29 U.S.C. § 207(a).

56. The Plaintiff has not been paid overtime compensation under the Fair Labor Standards Act at a rate of 1 ½ her regular rate.

57. The acts of the Defendants constitute a willful intentional violation of the Fair Labor Standards Act.

COUNT VII

**INTENTIONAL INFLICTION AND/OR NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS**

58. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs 1 through 57.

59. By their actions, Defendants have intentionally and/or negligently inflicted emotional distress upon Plaintiff. Defendants' actions have been such to

evoke outrage and revulsion. Defendants' behavior has been malicious, willful, wanton, grossly careless, indifferent, and/or reckless.

60. The effect of these actions on Plaintiff was reasonably foreseeable.

61. Plaintiff has suffered injury as a result of the Defendants' actions.

COUNT VIII

NEGLIGENCE PER SE

62. Plaintiff re-alleges and incorporates all averments set forth in paragraphs 1 through 61 above as if fully incorporated herein.

63. The actions of the Defendants constitute violations of Miss. Code Ann. § 97-3-107 (2006) and Miss. Code Ann. § 97-29-45(2006). A violation of a state statute is negligence *per se*.

COUNT IX

NEGLIGENT SUPERVISION

64. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs 1 through 63.

65. At all times material hereto, Meg McAlister, was employed by or was an agent of Defendants.

66. Meg McAlister had a history of lying to employees and making them false promises.

67. Defendants were aware of Meg McAlister's actions. Ms. McAlister conducted herself in a manner of authority over the Plaintiff and other similarly situated employees.

68. As a result, the Defendants failed to properly supervise, control, restrict, and discipline Meg McAlister, and as a result, the Plaintiff was made false promises, retaliated against, wrongfully terminated, and suffered economic losses.

COUNT X

NEGLIGENCE

69. Plaintiff re-alleges and incorporates herein by reference the above and foregoing paragraphs 1 through 68.

70. Defendants had a duty to not wrongfully terminate the Plaintiff, and to fully investigate her claim that she was terminated wrongfully.

71. Defendants have breached this duty by not fully investigating the situation surrounding the Plaintiff's termination. Because of this breach, it was foreseeable that the Plaintiff would suffer damages because of her termination.

COUNT XI

PUNITIVE DAMAGES

72. Plaintiff re-alleges and incorporates all averments set forth in paragraphs 1 through 71 above as if fully incorporated herein.

73. Plaintiff is entitled to punitive damages against each Defendant as a result of Defendants' intentional acts and as a result of their extreme and outrageous conduct. Alternative, Plaintiff is entitled to damages because Defendants' unlawful acts against Plaintiff were committed maliciously and/or in reckless disregard of Plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court cause service to issue in the cause upon the Defendants and that this matter be set for trial. Upon trial by jury thereon, Plaintiff prays that the following relief be granted:

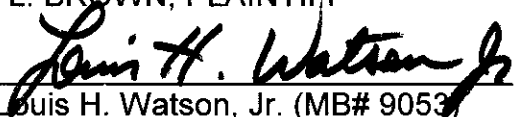
- a. Reinstatement or front pay in lieu of reinstatement, back pay, lost benefits, and other pecuniary losses proximately caused by Defendants unlawful conduct;
- b. Compensatory damages against Defendants in an amount to be determined by the jury;
- c. Punitive damages against Defendants in an amount to be determined by the jury;
- d. All costs, disbursements, pre-judgment interest, post-judgment interest, expert witness fees and reasonable attorney's fees allowed under actions brought pursuant to Title VII, the FLSA, 42 U.S.C. 1985 and Mississippi statutory and common law and;
- e. Such further relief as is deemed just and proper.

THIS the 12th day of December, 2007.

Respectfully submitted,

MARIA L. BROWN, PLAINTIFF

By:


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Nick Norris (MB# 101574)
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