

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

and

BETHANY L. BRANDSTATTER  
Plaintiff Intervenor,

v.

NOVARTIS PHARMACEUTICALS  
CORPORATION,

Defendant.

CIVIL ACTION NO. 05-0404

The Honorable Terrence F. McVerry

JURY TRIAL DEMAND

INTERVENOR COMPLAINT

Plaintiff Intervenor, Bethany L. Brandstatter, by and through her attorneys,  
Griffith, McCague & Wallace, P.C. files the within Complaint against Novartis  
Pharmaceuticals Corporation and makes the following statement:

INTRODUCTION

1. Plaintiff Intervenor, Bethany L. Brandstatter (hereinafter "Plaintiff Brandstatter"), brings this action against Defendant, Novartis Pharmaceuticals Corporation (hereinafter "Defendant Novartis"), under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, the Pennsylvania Human Relations Act, 43 P.S. 551 et. seq., and Pennsylvania Common Law to seek redress for discrimination based on her sex, sexual harassment, and retaliatory conduct to which she was subjected during her employment with Defendant Novartis.

## JURISDICTION AND VENUE

2. Plaintiff invokes jurisdiction of this Court pursuant to 28 U.S.C. §§ 451, 1331, 1332, 1337, 1343, and 1345 and 42 U.S.C. § 2000e-5(f).
3. Plaintiff Brandstatter requests that this Court exercise supplemental jurisdiction over her state law claims under the Pennsylvania Human Relations Act, 43 P.S. 951 et. seq., and Pennsylvania Common Law pursuant to 28 U.S.C. §1367(a). Plaintiff Brandstatter's state law claims are related to her federal claims and arise from the same nucleus of operative facts.
4. Plaintiff Brandstatter has complied with all jurisdictional prerequisites, including those set forth in 42 U.S.C. § 2000e-5.
5. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
6. The unlawful employment practices alleged in this Complaint were committed within the jurisdiction of the Western District of Pennsylvania.

## PARTIES

7. Plaintiff Brandstatter is a female citizen of the United States of America and is currently a resident of Washington County, Pennsylvania.
8. At all relevant times, Defendant Novartis has been a New Jersey corporation doing business in the Commonwealth of Pennsylvania and the County of Allegheny and has had at least fifteen (15) employees.
9. At all relevant times, Defendant Novartis has continuously been an employer engaged in an industry affecting commerce within the meaning of 42 U.S.C. §§ 2000e(b), (g), and (h) and the Pennsylvania Human Relations Act, 43 P.S. § 954.

### **ADMINISTRATIVE PROCEDURES**

10. Plaintiff Brandstatter timely filed a charge of discrimination against Defendant Novartis with the Equal Employment Opportunity Commission (hereinafter "EEOC") on or about April 17, 2003.

11. On August 26, 2004, the EEOC made a Determination that Defendant Novartis, in violation of Title VII, engaged in sexual harassment and retaliated against Plaintiff Brandstatter for reporting the harassment.

12. Plaintiff Brandstatter has complied with all administrative and judicial prerequisites for the institution of this Complaint under federal and state law.

### **FACTUAL BACKGROUND**

13. On April 19, 2002, Defendant Novartis hired Plaintiff Brandstatter to serve as a sales representative and assigned District Manager Mr. Ivory Gethers (hereinafter "Gethers") to be her manager shortly thereafter.

14. Gethers was Plaintiff Brandstatter's supervisor and exercised control over her employment with Defendant Novartis.

15. On June 18, 2002, Gethers said to Plaintiff Brandstatter during a telephone conversation regarding business issues, "I bet you're a freak", referring to her sexual behavior.

16. On July 19, 2002, Gethers said to Plaintiff Brandstatter during a telephone conversation regarding business issues, "Would you be offended if I said I wanted to fuck the shit out of you?"

17. On August 22, 2002, Plaintiff Brandstatter introduced another female sales representative to Gethers at a company event at which time he said, "Is she a present for me?"

18. In September of 2002, Plaintiff Brandstatter telephoned the Human Resources Department of Defendant Novartis to file a complaint (hereinafter the "Sexual Harassment Complaint") that she was being subjected to sexual harassment by her direct supervisor, Gethers.

19. On October 2, 2002, Defendant Novartis officials met with Gethers. Upon information and belief, Gethers admitted to making the comments described in paragraphs 15, 16, and 17.

20. Defendant Novartis thereafter issued a warning letter to Gethers for his actions.

21. On October 7, 2002, while accompanying Plaintiff Brandstatter on sales calls, Gethers told Plaintiff Brandstatter that a mature sales representative would have gone to the supervisor as opposed to going to the Human Resources Department, alluding to her Sexual Harassment Complaint, and that he would be putting her on a Territory Coaching Plan (hereinafter "TCP").

22. On December 9, 2002, Gethers placed Plaintiff Brandstatter on a TCP. After alterations initiated by Plaintiff Brandstatter, the final draft of the TCP was issued on December 18, 2002 and was scheduled to end on March 18, 2003.

23. During her annual review on January 28, 2003, Gethers advised Plaintiff Brandstatter that he had reduced one of her scores to "partially met expectations" as opposed to "met expectations" because she had "acted unethically" by contacting the Human Resources Department with her Sexual Harassment Complaint.

24. On January 30, 2003, Plaintiff Brandstatter began leaving messages with Defendant Novartis' Human Resources Department because she was concerned about Gethers' conduct and possible retaliation by Gethers in response to her Sexual Harassment Complaint. After several calls and no response, Plaintiff Brandstatter reported to Ms. Maria LaRosa, an official in Defendant Novartis' Human Resources Department, that Gethers was subjecting her to retaliation for filing the Sexual Harassment Complaint by placing her on the TCP and reducing her performance reviews. Ms. LaRosa advised Plaintiff Brandstatter that she did not have any basis for redress because the sexual harassment had ceased. Plaintiff Brandstatter spoke to Ms. LaRosa again on February 7, 2003 to discuss Defendant Novartis' position with respect to these matters.

25. On February 18, 2003, Plaintiff Brandstatter contacted Regional Director Gary Branch (hereinafter "Regional Director Branch"), a senior management employee of Defendant Novartis, to report that Gethers was subjecting her to retaliation for filing the Sexual Harassment Complaint with the Human Resources Department by reducing her score on her annual review, placing her on a TCP and treating her differently than other sales representatives by being hypercritical of her performance.

26. On March 7, 2003, during a "ride along" with Gethers, Plaintiff Brandstatter asked if she would be receiving a salary increase as many other representatives advised her that they were receiving raises. Gethers told her that she would not receive a raise because she was on a TCP. Plaintiff Brandstatter questioned why other representatives on TCPs received raises in spite of this fact. Gethers thereafter changed his response and said she was not getting a raise because of her "core competencies" and her TCP.

During this conversation Gethers screamed at Plaintiff Brandstatter, and she eventually asked him to get out of her car because she was uncomfortable with his hostile demeanor. Plaintiff Brandstatter contacted Ms. LaRosa of Defendant Novartis' Human Resources Department later that day to inform her of Gethers' retaliatory conduct.

27. Plaintiff Brandstatter did not hear back from Defendant Novartis until March 17, 2003 when Regional Manager Branch contacted her and offered to begin discussions about transferring her to another territory.

28. Although Plaintiff Brandstatter's TCP was scheduled to end on March 18, 2003, Gethers, in continuation of his retaliatory conduct, continued the plan until April 11, 2003.

29. On April 14, 2003, Plaintiff Brandstatter was informed via e-mail that her registration had been cancelled for two training sessions commonly known as I-Learn training sessions for which she had previously registered on March 31, 2003. Plaintiff Brandstatter reasonably believes and therefore avers that Gethers was initially notified of her registration and subsequently directed that her registration be cancelled.

30. In or about late April 2003, Plaintiff Brandstatter learned that she was not registered to participate in a training program commonly known as Phase III Training. Gethers had previously told Plaintiff Brandstatter on March 7, 2003 that she was eligible to attend the training.

31. Plaintiff Brandstatter contacted Mr. Dick Decker, the Novartis employee responsible for organizing the training, to ask for the reason for her absence from the registration list. She was directed to speak with Gethers who, after several contacts,

refused to give her any explanation for her current lack of eligibility to attend the training.

32. Beginning in April 2003 and continuing until the time her employment with Defendant Novartis was terminated, Plaintiff Brandstatter was ostracized and isolated by Gethers, who (i.) failed to include her in group voice-mails and e-mails sent to other sales representatives in her unit, (ii.) reduced company communications with her, and (iii.) failed to give her necessary coaching and marketing instruction.

33. In June 2003, Phase III training took place and several sales representatives in Plaintiff Brandstatter's division attended. Plaintiff Brandstatter reasonably believes and therefore avers that three of her colleagues who attended the training were promoted to sales consultant with concurrent salary raises. Because Gethers did not permit Plaintiff Brandstatter to attend Phase III training, she was refused a promotion and salary increase.

34. As a result of the sexual harassment and continued retaliation, Plaintiff Brandstatter developed physical ailments for which she received medical treatment.

35. As a result of the ongoing retaliatory conduct by Gethers and the unbearable conditions of her employment including the adverse employment action taken against her Defendant Novartis, Plaintiff Brandstatter had no recourse but to resign on August 29, 2003.

36. Defendant Novartis was at all times aware of the sexual harassment, adverse employment actions, and continued retaliatory conduct of Gethers, but refused or failed to take any remedial action.

37. The aforementioned unlawful employment practices, taken by or on the part of Defendant Novartis officials and managers, were and are intentional and were done with malice or reckless indifference to Plaintiff Brandstatter's rights protected by the laws of the United States and the laws of the Commonwealth of Pennsylvania. These unlawful acts and employment practices were committed because of her sex and, subsequently, because she engaged in the protected activity of filing a claim of sexual harassment with Defendant Novartis.

38. The effect of the aforementioned practices has been to deprive Plaintiff Brandstatter of equal employment opportunities and otherwise adversely affected her status as an employee.

### **CLAIMS**

#### **COUNT I**

39. Paragraphs 1 through 38 are incorporated herein by reference as if stated herein in full.

40. The acts, failures to act, practices and policies of the Defendant Novartis set forth above constitute sexual harassment of Plaintiff Brandstatter on the basis of her sex in violation of section 703 of Title VII, 42 U.S.C. § 2000e-2.

#### **COUNT II**

41. Paragraphs 1 through 38 are incorporated herein by reference as if stated herein in full.

42. The acts, failures to act, practices and policies of Defendant Novartis set forth above constitute hostile environment sexual harassment of Plaintiff Brandstatter on the basis of her sex in violation of Pennsylvania Human Relations Act, 43 P.A. § 955.



COUNT III

43. Paragraphs 1 through 38 are incorporated herein by reference as if stated herein in full.

44. The acts, failures to act, practices and policies of Defendant Novartis set forth above constitute retaliation for engaging in protected activity in violation of section 704 of Title VII, 42 U.S.C. § 2000e-3.

COUNT IV

45. Paragraphs 1 through 38 are incorporated herein by reference as if stated herein in full.

46. The acts, failures to act, practices and policies of Defendant Novartis set forth above constitute retaliation for engaging in protected activity in violation of Pennsylvania Human Relations Act, 43 P.S. § 955(d).

COUNT V

47. Paragraphs 1 through 38 are incorporated herein by reference as if stated herein in full.

48. The acts, failures to act, practices and policies of Defendant Novartis set forth above constitute constructive discharge of Plaintiff Brandstatter in violation of Section 703 of Title VII, 42 U.S.C. § 2000e-2.

COUNT VI

49. Paragraphs 1 through 38 are incorporated herein by reference as if stated herein in full.

50. The acts, failures to act, practices and policies of Defendant Novartis set forth above constitute constructive discharge of Plaintiff Brandstatter in violation of the Pennsylvania Human Relations Act, 43 P.S. § 955.

COUNT VII

51. Paragraphs 1 through 38 are incorporated herein by reference as if stated herein in full.

52. The acts, failures to act, practices and policies of Defendant Novartis set forth above constitute intentional infliction of emotional distress of Plaintiff Brandstatter.

**PRAYER FOR RELIEF**

For each of the above claims, Plaintiff Brandstatter respectfully requests that this Court grant judgment in her favor and against Defendant Novartis and award her relief including, but not limited to, the following:

53. Declaratory relief declaring the acts and practices of Defendant Novartis to be in violation of the statutes cited above;

54. Injunctive relief enjoining Defendant Novartis, its officers, and employees from engaging in discrimination on the basis of gender against its employees;

55. Injunctive relief enjoining Defendant Novartis, its officers, and employees from retaliating against its employees for engaging in protected activity under Title VII and the Pennsylvania Human Relations Act;

56. Reimbursement to make Plaintiff Brandstatter whole including back pay with prejudgment interest, in amounts to be proven at trial;

57. Reimbursement of all expenses and financial losses Plaintiff Brandstatter has incurred as a result of Defendant Novartis' actions including medical expenses and other pecuniary losses in amounts to be determined at trial;
58. Compensatory damages or other reimbursement for past and future nonpecuniary losses resulting from the unlawful practices of Defendant Novartis including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation in amounts to be determined at trial;
59. Punitive damages for Defendant Novartis' malicious and/or reckless conduct described herein in an amount to be determined at trial;
60. Reasonable attorneys fees plus costs and expenses, pre and post judgment interest and any delay damages as are allowed by law; and
61. Such other relief as the Court shall deem appropriate.

#### JURY TRIAL DEMAND

The Plaintiff requests a jury trial on all questions of fact raised in this Complaint.

Respectfully submitted,

GRIFFITH, MCCAGUE & WALLACE, P.C.



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