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CLERK, U.S. DISTRICT COURT
OCALA, FLORIDA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION, JOHN FLORIDIA,
and ANNETTE FLORIDIA, his wife,

CIVIL ACTION NO.: 5:02-CV-169-OC-106RJ

Plaintiffs,

v.

MORGAN TIRE & AUTO, INC.
d/b/a OLSON TIRE COMPANY,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiffs, JOHN FLORIDIA and ANNETTE FLORIDIA, his wife,
by and through their undersigned counsel, and hereby sue Defendant, MORGAN TIRE &
AUTO, INC., (hereinafter referred to as "Defendant") and state as follows:

JURISDICTION AND VENUE

1. Plaintiff, JOHN FLORIDIA, is a citizen and resident of Marion County,
Dunnellon, Florida.

2. Defendant, MORGAN TIRE & AUTO, INC., is an active Florida corporation
authorized to do business in the State of Florida and within the jurisdiction of this Honorable
Court. Defendant maintains a business facility at 3400 S.E. Pine Avenue, Ocala, FL in
Marion County, Florida, and the alleged and unlawful practices were committed in Marion
County, Florida, and within the jurisdiction of this Court. Defendant, at all material times,
employed more than 15 employees.

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3. Plaintiff has complied fully with all prerequisites to jurisdiction in this Court under Title VII and the Florida Civil Rights Act. Jurisdiction of this Court is proper under §706(f)(3) of Title VII, 42 U.S.C. §2000e-5(f)(3). Jurisdiction of this claim under the Florida Civil Rights Act of 1992, §760.01 et seq., Florida Statutes, as well as the tort claims described more fully herein, is proper under the doctrine of pendant jurisdiction.

4. Venue is proper under 28 U.S.C. §1391(b) and 42 U.S.C. §2000e-5(f)(3). The Defendant corporations are authorized to do business and are doing business in the State of Florida and within the jurisdiction of this Honorable Court in Ocala, Florida. The alleged unlawful practices were committed in Marion County and in the State of Florida, and within the jurisdiction of this Honorable Court.

5. On or about May 26, 2000, Plaintiff filed a timely Charge of Discrimination alleging discrimination on the basis of his sex with the Equal Employment Opportunity Commission and the Florida Commission on Human Relations. Copy of said Charge is attached hereto and marked as Exhibit "A".

6. On or about July 25, 2001, Plaintiff received a "cause determination" from the Equal Employment Opportunity Commission. Copy of said "cause determination" is attached hereto and is marked as Exhibit "B".

7. The sexual harassment which violates rights guaranteed to the Plaintiff under Title VII of the Civil Rights Act of 1964, as amended, and the Florida Civil Rights Act, were done with malice and requisite disregard for Plaintiff's protected rights.

ALLEGATIONS COMMON AS TO ALL CAUSES OF ACTION

8. Plaintiff realleges and incorporates herein paragraphs 1 through 7 with same force and effect as set forth herein.

9. Plaintiff is a male and up until the time of his resignation on or about April 27, 2000, an employee of the Defendant, and all materials times hereto performed his job duties fully and at or above the standards of the Defendant.

10. Plaintiff was regularly subjected to sexual harassment by Service Manager Howard Cooper in the form of unwelcome physical and verbal conduct of a sexual nature which was sufficiently severe and pervasive to constitute an intimidating, hostile and offensive work environment. John Floridia made it known to Mr. Cooper and other management officials of Defendant that such conduct was unwelcome. Furthermore, Defendant Employer failed to exercise reasonable care to prevent and correct the sexually harassing behavior even after being placed on notice.

11. The sexual harassing behavior endured by John Floridia resulted in a significant change in his employment status, culminating in a tangible employment action by a supervisor with immediate authority.

12. On or about April 27, 2000, John Floridia was forced to resign his position as a salesman because the conditions of his employment were so intolerable (due to the persistent harassment by his supervisor because of his sex and Defendant's failure to take prompt remedial action) that a reasonable person subjected to the same or similar conduct and tangible employment actions would have been compelled to resign. The unlawful employment practices complained of herein were intentional, committed with malice, or with reckless indifference to the federally and state protected rights of John Floridia and other similarly situated male employees.

COUNT I

STATE CIVIL RIGHTS ACT VIOLATION
SEX DISCRIMINATION (SEX HARASSMENT)

13. Plaintiff re-alleges and incorporates herein paragraphs 1 through 12 of this Complaint with the same force and effect as is set forth herein.

14. The practices of the Defendant constitute unlawful discriminatory employment practice within the meaning of the Florida Civil Rights Acts of 1992, §760.01 et seq., Florida Statutes.

15. As a result of the Defendant's discriminatory acts, Plaintiff has suffered and will continue to suffer monetary damages and damages for mental anguish and humiliation unless and until this Court grants relief.

COUNT II – STATE CLAIM FOR RETALIATION

16. Plaintiff re-alleges and incorporates herein paragraphs 1 through 15 of this Complaint with the same force and effect as is set forth fully herein.

17. Defendant or Defendant's agents have retaliated against the Plaintiff and have denied him opportunities for employment on the basis of his having complained of discrimination, in violation of the Florida Civil Rights Act of 1992, §760.01 et seq., Florida Statutes.

18. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of the Defendant's retaliatory practices unless and until this Court grants relief.

COUNT III
STATE CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

19. Plaintiff re-alleges and incorporates herein paragraphs 1 through 18 of this Complaint with the same force and effect as is set forth fully herein.

20. The actions of manager Howard Cooper described herein, and as set forth above, were carried out within the course and scope of his employment in that they occurred during regular business hours on properties own by Defendant or on which Defendant was employed to carry out specific job duties, and occurred while Defendants' were carrying out their job duties as supervisor(s) of JOHN FLORIDIA.

21. The actions described herein as well as the actions of other employees constitute the following:

a. The deliberate and reckless infliction of mental suffering against the Plaintiff;

b. Outrageous conduct that was so outrageous in character and so extreme as to go beyond all possible bounds of decency as to be regarded as outrageous and utterly intolerable in a civilized community; and

c. Caused Plaintiff to suffer severe emotional distress and physical injuries.

22. Defendant failed to take appropriate action against Howard Cooper, who sexually harassed or retaliated against the Plaintiff, and physically and mentally tormented the Plaintiff. Defendant therefore condoned and perpetuated said acts. As a result, Plaintiff has suffered and will continue to suffer injury until this Court grants relief.

**COUNT IV – STATE CLAIM FOR NEGLIGENT TRAINING, SUPERVISION AND
RETENTION**

23. Plaintiff re-alleges and incorporates herein paragraphs 1 through 22 of this Complaint with the same force and effect as is set forth herein.

24. Defendant owed a duty to Plaintiff to provide him with a work environment free from discrimination, intimidation, humiliation and harassment.

25. Defendant breached this duty based upon the allegations set forth herein.

26. Plaintiff complained to Defendant and Defendant's representatives, regarding their sexual harassment and discriminatory conduct by Plaintiff's supervisors and employees, but Defendant's management or agents failed to take corrective steps designed to ameliorate the discriminatory actions of the Plaintiff's manager, Howard Cooper.

27. Defendant knew or should have known of their Management's propensities to discriminate against and harass males due to Plaintiff's complaints and the discriminatory practices by Defendant's management, and the fact that described herein acted in the ways described herein in front of all employees.

28. Defendant created a hostile work environment for men and perpetuated, encouraged, and condoned harassment and retaliation of the Plaintiff.

29. The Defendants negligently trained, supervised and retained Howard Cooper, and other employees and agents in that:

a. Defendant retained said employees as supervisors notwithstanding actual or constructive knowledge of discriminatory actions and comments towards the Plaintiff and retaliatory conduct based upon his sex or complaints of sexual harassment or complaints of illegal acts.

b. Defendant retained said supervisors despite the actions described herein.

30. Notwithstanding Defendant's actual or constructive knowledge of the behavior described herein, no appropriate action was taken by the Defendant.

31. Defendant negligently trained and supervised said employees in that they permitted them to engage in discriminatory and harassing behavior and then to retaliate against the Plaintiff. Defendant did not have in place an anti-harassment or retaliation policy, did not train supervisors, or conduct proper investigation upon encountering evidence of sex discrimination, whether actual or constructive, and intentionally retaliated against the Plaintiff due to his reports of same.

32. Defendant failed to engage in any background checks as to Howard Cooper or other employees and failed to undertake meaningful investigation or conclusion of any actions reported by any employee or the Plaintiff which were in violation of the rights of Plaintiff or other employees.

33. The actions of Defendant caused Plaintiff to suffer severe emotional distress and physical injury and resulted in great financial loss.

COUNT V - BATTERY

34. Plaintiff realleges and repeats the allegations set forth in paragraphs 1-33 hereof as if fully set forth herein.

35. Throughout his employment with the Defendant, Manager, Howard Cooper, intended to cause the Plaintiff fear of imminent injury or intended to actually touch or injure the Plaintiff, in that he physically grabbed him about his body, on numerous occasion, rubbed up against him with his genitals, and other physical acts of touching, without legal justification.

36. The actions of Howard Cooper in battering the Plaintiff occurred in the course and scope of their employment.

37. The actions of Howard Cooper occurred while he was supervising the Plaintiff, or otherwise directing him as to how to do his job and were activated at least, in part, by the purpose to serve the Defendant. The actions occurred during business hours and on the Defendants' place of business in Ocala, Marion County, Florida.

38. The actions of Howard Cooper were ratified by the Defendant or Defendants' agents in that the Defendant knew or should have known, due to the pervasiveness, of the harassment of the actions of Howard Cooper, and failed to intervene or to put a stop to his conduct.

39. Defendant, or Defendants through their agents and representatives, created a hostile environment and encouraged, condoned, and authorized discrimination and harassment of Plaintiff thereby directing or encouraging the acts of Howard Cooper.

40. The acts of the Defendant were willful and wanton, and in utter disregard of the rights of the Plaintiff.

WHEREFORE Plaintiff prays for a judgment against Defendant for compensatory and punitive, damages, including costs, and interest and all other relief this Honorable Court deems just and demands a trial by jury on all issues so triable.

COUNT VI - VIOLATION OF FLORIDA STATUTE §448.102

41. Plaintiff realleges and repeats the allegations set forth in paragraphs 1-40 hereof as if fully set forth herein.

42. Prior to Plaintiff's resignation on April 27, 2000, Howard Cooper and/or managers of Olson Tire, in the course and scope of their employment did direct, coerce, and

otherwise attempt to force Plaintiff to bill clients for unnecessary work or bill for work never completed, or asked him to condone same.

43. When Plaintiff refused, he was disciplined or otherwise retaliated against and subsequently constructively discharged.

44. The actions of Defendant were willful, outrageous, and in utter disregard of the rights of the Plaintiff so as to constitute a malicious act, and the Defendant was at all times acting within the course and scope of his employment and for the benefit of his employer.

45. Plaintiff resigned on April 27, 2000 due to the retaliation for Plaintiff threatening to disclose the practice of the Defendant in violation of law, rule or regulation or otherwise refusing or protesting participation within the meaning of Florida Statute §448.102(3).

46. Plaintiff brought the aforementioned violations of law to the attention of Howard Cooper, in writing and afforded the Defendant a reasonable opportunity to correct the activity, policy, or practice, or otherwise objected to or refuse to participate in any activity, policy or practice to the employer which in violation of law, rule or regulation within the meaning of Florida Statute §448.102(3).

47. Plaintiff has retained the undersigned attorney to represent him in this action, and has agreed to pay her a reasonable fee for her services.

WHEREFORE, the Plaintiff, JOHN FLORIDIA, demands judgment against the Defendant, MORGAN TIRE & AUTO, INC., for compensatory damages, including damages for mental anguish, lost wages and benefits in the past and in the future, punitive damages, costs and any and all other relief this Honorable Court deems just and demands a trial by jury for all issues so triable.

COUNT VII - CONSORTIUM CLAIM OF ANNETTE FLORIDIA

48. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 47.

49. At the time of the injury described above, ANNETTE FLORIDIA, was the lawful wife of JOHN FLORIDIA.

50. That as a direct and proximate result of the violations by the Defendant, the Plaintiff, ANNETTE FLORIDIA, has lost the society of services and companionship of her husband and has incurred expenses for medical/psychological treatment of her husband.

COUNT VIII –PRAYER FOR RELIEF

51. Plaintiff re-alleges and incorporates herein paragraphs 1 through 50 of this Complaint with the same force and effect as is set forth herein.

52. WHEREFORE, Plaintiff prays for judgement against Defendant for compensatory damages, including costs, interest and attorney's fees pursuant to Title VII and the Florida Civil Rights Act, and all other relief this Honorable Court deems just and demands a trial by jury on all issues so triable. Plaintiff respectfully prays for judgment against the Defendant as follows:

a. Declaring the acts and practices complained of are in violation of Title VII and the Florida Civil Rights Act and other violations of State law;

b. Directing the Defendants to place the Plaintiff in the position that he would have occupied but for the Defendants' discriminatory and retaliatory treatment of him and make his whole for all earnings he would have received but for the Defendants' discriminatory and retaliatory treatment;

- c. Awarding Plaintiff compensatory and punitive damages with statutory interest, pursuant to Federal and State law;
- d. Awarding Plaintiff the costs of this action, together with reasonable attorney's fees as provided by the specific provisions of Florida Civil Rights Act and Title VII, as amended;
- e. Directing the Defendants to pay Plaintiff compensatory damages and damages for his mental anguish, pain and suffering, and humiliation; and
- f. Granting such other and further relief as this Court deems necessary and proper.

JURY DEMAND

53. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, JOHN FLORIDIA, herein demands trial by jury on all issues in this action.

BOGIN, MUNNS & MUNNS

By: 
PAMELA BOUNDS OLSEN, ESQUIRE
2215 S.E Fort King Street
Suite A
Ocala, Florida 34471
Telephone: (352) 690-7400
Facsimile: (352) 690-6618
Florida Bar No: 0894117
Attorneys for Plaintiffs, John and Annette Florida

CHARGE OF DISCRIMINATION

 AGENCY
☒ X FEPA
☐ EEOC

CHARGE NUMBER

This form is affected by the Privacy Act of 1974, See Privacy Act Statement before completing this form.

Florida Commission on Human Relations and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.) JOHN FLORIDIA	HOME TELEPHONE (Include Area Code) (352) 861-1607
STREET ADDRESS CITY, STATE AND ZIP CODE 10665 S.W. 110TH ST., DUNNELLON, FL 34432	DATE OF BIRTH 12/4/64 Social Security Number: 266-71-0387

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME DON OLSON TIRE	NUMBER OF EMPLOYEES, MEMBERS 300+	TELEPHONE (Include Area Code) (352) 732-5200
STREET ADDRESS CITY, STATE AND ZIP CODE 3400 S.E. PINE AVE., OCALA, FL 34471	COUNTY MARION	
NAME MORGAN TIRE AND AUTOMOTIVE, INC.	TELEPHONE (800) 269-4424	
STREET ADDRESS, CITY, STATE AND ZIP CODE 2021 SUNNYDALE BLVD., CLEARWATER, FL 33765	COUNTY PINELLAS	

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE
 ☐ COLOR
 ☒ SEX
 ☐ RELIGION
 ☐ NATIONAL ORIGIN
☒ RETALIATION
 ☐ AGE
 ☐ DISABILITY
 ☐ OTHER (Specify) Pregnancy

DATE DISCRIMINATION TOOK PLACE
 EARLIEST LATEST
 SEPTEMBER 1999 APRIL 2000

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

I. STATEMENT OF DISCRIMINATION: Beginning September 1999 Service Manager Howard Cooper constantly made sexual remarks, propositions, and touched me in an offensive and unwelcome manner. He would constantly make comments about his sex life and ask me about mine and proposition me for sex. I felt that his propositions were a term and condition of my employment and it adversely affected the terms and conditions of my employment. When I rejected his sexual advances, I was treated differently than other employees and my employment was threatened by him. Mr. Howard even exposed his genitals as he propositioned me.

II. RESPONDENT'S REASON FOR ADVERSE ACTION. None given.

III. STATEMENT OF HARM: I have been sexually harassed and discriminated against on the basis of my gender (male) and have been retaliated against when I rejected sexual advances or complained of same. Service Manager Howard Cooper had control and authority over me and he abused said control and authority. My rights pursuant to Title VII, the Civil Rights Acts, as amended, and the Florida Civil Rights Act have been violated and I have suffered financially and emotionally as a result. Service Manager Howard Cooper had a history of this kind of behavior and Don Olson Tire/Morgan Tire and Automotive intentionally put him in a position of controlling authority knowing his past and history of sexual harassment and discrimination.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief

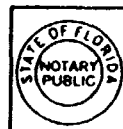
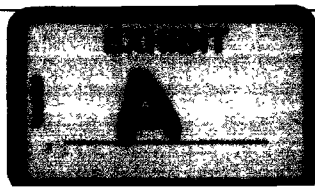
I declare under penalty of perjury that the foregoing is true and correct
Date

Charging Party (Signature)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

10/24/00 5/24/00

5/24/00 Elizabeth L. Hetchler



ELIZABETH L. HETCHLER

My Comm Exp 5/31/04

No. CC 935863

1/ Personally Known 1/ Other 1/0



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Miami District Office**

One Biscayne Tower
2 South Biscayne Blvd., Suite 2700
Miami, FL 33131
PH: (305) 536-4491
TDD: (305) 536-5721
FAX: (305) 536-4011

EEOC Charge No. 150 A0 2592

John Florida
10665 SW 110th Street
Dunnellon, FL 34432

Charging Party

Don Olson Tire/Morgan Tire and Automotive, Inc.
c/o Sue Carroll, VP, Human Resources
3400 SE Pine Avenue
Ocala, FL 34471

Respondent

LETTER OF DETERMINATION

I issue the following determination on the merits of this charge.

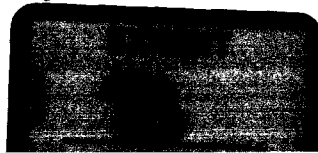
Respondent is an employer within the meaning of Title VII of the Civil Rights Act (Title VII) of 1964, as amended, and timeliness, deferral and all other requirements for coverage have been met.

Charging Party alleged that he was discriminated against in violation of Title VII in that he was subjected to a hostile work environment which included offensive sexual remarks and unwelcome physical touching of a sexual nature. Furthermore, the Charging Party alleges that Respondent retaliated against him for complaining. Charging Party also claims that due to the continued harassment, he was compelled to resign.

I have determined that the evidence obtained during the investigation establishes that there is reasonable cause to believe that violations of the statute has occurred.

Examination of the evidence of record shows that the Charging Party and similarly situated individuals were subjected to sexual harassment and compelled to resign to escape the intolerable working conditions. Furthermore, the evidence substantiates that Charging Party was subjected to unlawful retaliation.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Sections 706 and 709 of Title VII and the Commission Regulations apply to information obtained during conciliation.



Letter of Determination
EEOC Charge No. 150 A0 2592
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If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

Please respond to this invitation to conciliate in writing by **August 2, 2001**. Failure to respond will be deemed a denial of the invitation.

On Behalf of the Commission:

JUL 25 2001

Date


Federico Costales
District Director

Enclosure: Invitation to Conciliate

cc: Charging Party's Representative

Pamela Bounds Olsen, Esq.
Law Offices of Bogin, Munns & Munns
2215 S.E. FT. King Street,
Suite A
Ocala, FL 34471

Respondent Representative

William E. Curphey, III, Esq.
Shumaker, Loop and Kendrick
101 E. Kennedy Blvd.
Suite 2800
Tampa, FL 33602-5150