

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No: 1:15-cv-268

CLIFTON LEON WEBB,)
)
Plaintiff,)
)
v.)
)
THE UNIVERSITY OF NORTH)
CAROLINA AT CHAPEL HILL,)
a body politic and corporate)
institution of the State of North)
Carolina, GENA J. CARTER,)
sued in her individual and official)
capacities; DARIUS DIXON,)
individually; and BEN TRIPLETT,)
individually; and UNNAMED)
OTHERS;)
)
Defendants)

COMPLAINT

NOW COMES plaintiff CLIFTON LEON WEBB (“Plaintiff”), by and through counsel pursuant to Fed. R. Civ. P. 8, complaining against defendants, THE UNIVERSITY OF NORTH CAROLINA at CHAPEL HILL (individually “UNC-CH” and collectively “Defendants”), a body politic and corporate institution of the State of North Carolina; GENA J. CARTER (individually “Carter” and collectively “Defendants”), sued in her individual and official capacities as senior director for UNC-CH; DARIUS DIXON (individually “Dixon” and collectively “Defendants”) sued in his individual capacity; BEN TRIPLETT (individually “Triplett” and collectively “Defendants”), sued in his individual capacity; and UNNAMED OTHERS (individually “Others” and collectively “Defendants”), alleges and says as follows:

PARTIES AND JURISDICTION:

1. Plaintiff is a citizen and resident of Granville County, North Carolina. Plaintiff is a black male of African-American descent.

2. Defendant UNC-CH is located in Orange County, North Carolina and, at all times relevant herein, has been a body politic and corporate institution of the State of North Carolina, pursuant to N.C. Gen. Stat. § 116-4, *et seq.* As such, defendant UNC-CH is empowered to sue and be sued.

3. On information and belief, defendant Carter is a citizen and resident of Durham County, North Carolina and, at all times relevant herein, has served as senior director for UNC-CH and is being sued in her individual and official capacities as senior director for employee and management relations for UNC-CH's Office of Human Resources.

4. At all times relevant herein, defendant Carter's actions or inactions, as alleged herein, were done under the color of state law while she was physically present in Orange County, North Carolina.

5. On information and belief, defendant Dixon is a citizen and resident of Orange County, North Carolina and, at all times relevant herein, has served as director of housekeeping for UNC-CH and is being sued in his individual capacity.

6. At all times relevant herein, defendant Dixon's actions or inactions, as alleged herein, were done under the color of state law while he was physically present in Orange County, North Carolina.

7. On information and belief, defendant Triplett is a citizen and resident of Orange County, North Carolina and, at all times relevant herein, has served as assistant director of housekeeping for UNC-CH and is being sued in his individual capacity.

8. At all times relevant herein, defendant Triplett's actions or inactions, as alleged herein, were done under the color of state law while he was physically present in Orange County, North Carolina.

9. Other unnamed Defendants may include others, who are not known to Plaintiff at this time, but who were acting under the color of state law and who were instrumental in causing or condoning the employment actions and retaliation that Plaintiff experienced, as alleged herein, when those persons had a legal duty to protect Plaintiff from such wrongful acts in retaliation for having exercised his legal and protected rights.

10. On information and belief, Defendants knew or should have known the acts or omissions that through its managers and supervisors UNC-CH took against Plaintiff in violation of the First and Fourteenth Amendments to the Constitution of the United States and Title VII, but refused or otherwise failed to remediate such actions or omissions to act when Defendants had such a duty, as alleged herein.

11. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, over claims arising under 42 U.S.C. §§ 2000e-5, *et al*, and 42 U.S.C. § 1983, 42 U.S.C. § 1981.

12. This Court has personal jurisdiction in this action over Defendants, pursuant to 42 U.S.C. § 2000e-2, *et seq.*, 42 U.S.C. § 1983, *et seq.*, and/or 42 U.S.C. § 1981, *et seq.*

13. At all times relevant herein, defendant UNC-CH has been engaged in an industry affecting commerce, pursuant to 42 USC § 12111(5)(A), by providing public education services to citizens both within and outside North Carolina.

14. At all times relevant herein, defendant UNC-CH has had more than 500 employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year.

15. At all times relevant herein, defendant UNC-CH has been an “employer,” pursuant to 42 U.S.C. § 12111(5)(A), with no applicable exception.

ADMINISTRATIVE PROCEDURES:

16. On or about April 22, 2014, Plaintiff filed a completed intake questionnaire with the United States Equal Employment Opportunity Commission (“EEOC”). A true copy of the referenced notice of right to sue is attached hereto as Exhibit A and is incorporated herein by reference.

17. On May 22, 2014, and within 180 days of being subjected to the discriminatory employment practices, as alleged herein, Plaintiff filed a charge of discrimination with the EEOC concerning Plaintiff having been subjected to disparate treatment because of his race as a black male by defendant UNC-CH, as alleged herein. This charge was prepared on behalf of Plaintiff by the EEOC. A true copy of the above-referenced charge of discrimination is attached hereto as Exhibit B and is incorporated herein by reference.

18. On December 24, 2014, the EEOC issued Plaintiff a notice of right to sue regarding the above-referenced charge of discrimination. Plaintiff first received the referenced notice of right to sue on or after December 29, 2014. A true copy of the referenced notice of right to sue is attached hereto as Exhibit C and is incorporated herein by reference.

19. Within 90 days after having first received the referenced notice of right to sue, Plaintiff files this action in the United States District Court, pursuant to 42 U.S.C. § 2000e-5.

20. Plaintiff has satisfied all private, administrative, and judicial prerequisites for the institution of this action in that he has exhausted all administrative remedies, as required by law.

GENERAL ALLEGATIONS:

21. From January 8, 2007 to January 16, 2014, UNC-CH employed Plaintiff as a full-time, permanent employee in the Facilities Services Division. Defendant UNC-CH assigned Plaintiff to work as a second-shift zone manager for Zone 216.

22. During this period, UNC-CH's then director of housekeeping, Bill Burston ("Burston"), served as Plaintiff's immediate supervisor.

23. At no time during the course of his employment at UNC-CH did Plaintiff ever receive any disciplinary oral counseling, written warning, suspension, demotion, and/or dismissal, except as specifically alleged herein.

24. At all times herein, Plaintiff excelled in the performance of his work duties for UNC-CH. At some point, UNC-CH promoted Plaintiff from zone manager for a particular zone to project manager with campus-wide responsibilities.

25. From January 8, 2007 to around March 2011, Plaintiff became aware of illegal employment practices that Director Burston engaged in where he would offer jobs to employees of various Asian countries (or permit existing employees to keep their jobs at UNC-CH) in exchange for sex and/or sexual favors (collectively "sex trade" or "sex-for-hire" practices).

26. As part of his *modus operandi*, Plaintiff noticed that Director Burston would terminate the employment of numerous black or African-American employees for pretextual reasons to create vacant positions in which to hire employees from Asian countries in exchange for sex and/or sexual favors.

27. On approximately twelve occasions from 2007 to 2011, Plaintiff met with UNC-CH's director of university ombudsman, Wayne Blair ("Blair") to inform him about Director Burston's "sex trade" and "sex-for-hire" practices within UNC-CH's Housekeeping Department

and how the same was being used to “gentrify” the Housekeeping Department by supplanting a relatively large population of black or African-American employees with Asian employees for pretextual reasons.

28. On information and belief, Mr. Blair informed UNC-CH’s associate vice-chancellor for facility services, Carolyn Elfland (“Elfland”), about the information he received from Plaintiff concerning Director Burston’s “sex trade” and “sex-for-hire” employment practices.

29. On June 4, 2010, Plaintiff met with UNC-CH’s vice-chancellor for EEO/ADA, Ann Penn, at her office. During this meeting, Plaintiff informed Ms. Penn about his concerns regarding the Housekeeping Department under Director Burston and the hostile work environment, including the “sex trade” and “sex-for-hire” practices in the workplace.

30. Around March 2011, Bill Burston was removed as director of housekeeping and, on information and belief, reassigned to another position within the UNC-CH organization.

31. Also around March 31, 2011, then university chancellor, Holden Thorp, hired PRM Consulting Group to perform a comprehensive review and assessment of UNC-CH’s housekeeping department.

32. On information and belief, defendant Carter was adamantly against Chancellor Thorp’s decision to hire an outside independent entity, PRM Consulting Group, to perform the comprehensive assessment of the housekeeping department. On information and belief, defendant Carter felt strongly that any assessment of the housekeeping department should be kept “in-house” by her department within the UNC-CH organization.

33. On or about June 6, 2011, UNC-CH named Lea Holt (“Holt”) as the interim director for housekeeping services.

34. At interval times from around July 2011 to September 8, 2011, the senior director for employee relations, defendant Carter, contacted Plaintiff to obtain information from him about what had been happening in UNC-CH's Housekeeping Department, particularly as it pertained to Bill Burston and the "sex trade" and "sex-for-hire" employment practices and the racial discrimination in the "gentrification" of the Housekeeping Department. During each contact, Plaintiff provided defendant Carter with the information she requested concerning the same.

35. On or about July 11, 2011, in a *de facto* demotion without just cause, Interim Director Holt "reassigned Plaintiff from being a project manager to being a first-shift zone manager for Zone 214. At the time of *de facto* demotion, Interim Director Holt falsely informed Plaintiff that the "reassignment" was due to a reduction-in-force ("RIF").

36. On information and belief, UNC-CH's "reassignment" of Plaintiff from project manager to zone manager was an initial step taken by defendants UNC-CH, Carter, and Others to artificially "build a case" against Plaintiff for the ultimate purpose of dismissing his employment without just cause.

37. On information and belief, Interim Director Holt knew that she was making a false statement when she informed Plaintiff on or about July 11, 2011 that he was being "reassigned" from project manager to zone manager due to a "RIF." On information and belief, the purpose of "reassigning" Plaintiff from project manager to zone manager was to permit a situation where Plaintiff could be dismissed under the pretext of not getting along with subordinates, which Plaintiff did not have as project manager.

38. On July 11, 2011, Plaintiff met with PRM Consulting Group's contract investigator, Patricia W. Thomas ("Thomas"), regarding the "assessment." At the meeting,

Thomas informed Plaintiff that she did not have any questions for him because at the time, Plaintiff did not have any employees who reported to him when he was project manager.

39. Even though Thomas did not ask Plaintiff any questions about his workplace purportedly because he “had no employees under his supervision,” Plaintiff candidly informed Thomas that his work environment had consisted of hostility, retaliation, sexual innuendos, racial discrimination, and unfair hiring/firing practices under the “sex trade” and “sex-for-hire” practices—all of which had permeated the workplace.

40. On or about September 28, 2011, UNC-CH dismissed Bill Burston from his employment just a day prior to the release of PRM Consulting Group’s finalized “assessment” report concerning UNC-CH’s housekeeping department.

41. On or about March 29, 2012, Plaintiff met with UNC-CH’s associate vice-chancellor for facility services, Carolyn Elfland, at her request in her office in the South Building. Plaintiff answered Ms. Elfland’s questions regarding what he knew about Bill Burston and the “sex trade” and “sex-for-hire” scandals.

42. During the meeting, Ms. Elfland asked Plaintiff if he would be willing to testify for UNC-CH against Bill Burston during the grievance hearing related to Burton’s dismissal. Plaintiff informed Elfland that he would speak with his pastor about it and get back with her.

43. Approximately one week later, Plaintiff met again with Elfland to discuss his providing testimony during the above-referenced grievance hearing. Plaintiff candidly informed Elfland that he was fearful of retaliation if he were to testify in the grievance hearing. Vice-Chancellor Elfland promised Plaintiff that she would make sure that Plaintiff would not lose his job if he were to testify, and then she added in a light-hearted manner “so long as you do not commit a crime.” With that promise, Plaintiff agreed to testify.

44. Around April 2012, Plaintiff testified on behalf of UNC-CH against Bill Burston at the grievance hearing concerning his dismissal. At this hearing, Plaintiff testified about his personal knowledge of the “sex trade” and “sex-for-hire” practices along with his concern about racial discrimination in UNC-CH’s hiring/firing practices under Burston.

45. On information and belief, defendant Carter was present at this grievance hearing and heard Plaintiff testify about his personal knowledge of the “sex trade” and “sex-for-hire” practices and his concerns about racial discrimination under Burston.

46. Around April 23, 2012, UNC-CH hired defendant Dixon to serve as director of housekeeping. On information and belief, at some point, Dixon agreed to assist other Defendants in artificially “building a case” against Plaintiff for the pretextual purpose of dismissing his employment without just cause.

47. Around January 2013, UNC-CH hired defendant Triplett (“Triplett”) to serve as assistant director of housekeeping. On information and belief, at some point, defendant Triplett agreed to assist the other Defendants in artificially “building a case” against Plaintiff for the pretextual purpose of dismissing his employment without just cause.

48. Around June 30, 2013, Carolyn Elfland retired from her employment as associate vice-chancellor with UNC-CH.

49. On or about July 1, 2013, Dixon “reassigned” Plaintiff from being zone manager for UNC-CH’s Zone 214 to being zone manager for UNC-CH’s Zone 212.

50. On information and belief, UNC-CH’s “reassignment” of Plaintiff from zone manager in Zone 214 to zone manager in Zone 212 was a planned step taken by Defendants to “build a case” against Plaintiff for the pretextual purpose of dismissing his employment without just cause.

51. In July 2012, Dixon met with Plaintiff in the 1st floor of Carmichael Dorm as part of his pretextual “investigation” of Plaintiff for reasons unknown by Plaintiff.

52. Later in the month in July 2012, Dixon met again with Plaintiff as part of Defendants’ pretextual “investigations” of Plaintiff, but this time he met Plaintiff off-campus at Panera Bread Restaurant during after-work hours.

53. On or about April 5, 2013, UNC-CH’s assistant director, Ben Triplett, launched a “Climate Assessment” investigation of Plaintiff. On information and belief, Triplett’s “Climate Assessment” investigation was part of Defendants’ pretextual “investigations” of Plaintiff that were designed to “build a case” against Plaintiff for purposes of dismissing his employment without just cause.

54. On or about April 17, 2013, Plaintiff met with defendant Carter at her request as part of defendant Carter’s purported “Climate Control” investigation concerning Plaintiff. Also in attendance at this “meeting” were assistant director Triplett and Chris Chiron, a staff member of UNC-CH’s human resources department.

55. On information and belief, defendant Carter’s “Climate Control” investigation was part of Defendants’ pretextual “investigations” of Plaintiff that were designed to “build a case” against Plaintiff for purposes of dismissing his employment without just cause.

56. In April 2013, Plaintiff contacted Jackie Overton, then the chair of UNC-CH’s Employee Forum to arrange a meeting for him with UNC-CH’s Vice-Chancellor Carol Gray (“Gray”). Plaintiff informed Jackie Overton that he wanted to express concerns to Vice-Chancellor Gray that he was being “targeted” by Defendants in retaliation for his having reported the “sex trade” and “sex-for-hire” practices under Burton along with his concerns about racial discrimination.

57. On or about April 17, 2013, a staff member for Vice-Chancellor Gray contacted Plaintiff to schedule his meeting with the vice-chancellor. The meeting was scheduled for April 26, 2013.

58. On or about April 26, 2013, Plaintiff was informed that his meeting with Vice-Chancellor Gray had been re-scheduled for May 9, 2013.

59. On or about May 9, 2013, Plaintiff was informed that his meeting with Vice-Chancellor Gray had been cancelled and that Plaintiff was “reassigned” to meet with Darius Dixon, the supervisor who was the subject of Plaintiff’s concerns about being subjected to retaliation.

60. In May 2013, Plaintiff met with Darius Dixon and Vice-Chancellor Anna Wu to discuss Plaintiff’s concerns about being subjected to retaliation by Defendants.

61. On or about August 23, 2013, Plaintiff met with Darius Dixon at the Cheek-Clark Building. Dixon invited Plaintiff to “take a ride” with him after the meeting.

62. On information and belief, around September 2013, defendant Carter arranged for UNC-CH to conduct a “360-Degree Feedback” survey of Plaintiff’s work performance. The 360-Degree Feedback survey is a human resources tool that can have valid purposes, but can also be used to pretextually “build a case” against an employee to dismiss his employment without just cause.

63. On information and belief, defendant Carter arranged for the “360-Degree Feedback” survey to be used against Plaintiff to artificially “build a case” against him for the pretextual purpose of dismissing his employment without just cause. On information and belief, Defendants singled-out Plaintiff for the purported “360-Degree Feedback” survey (along with any other employees it wished to dismiss with or without just cause).

64. On October 25, 2013, while Plaintiff was on vacation, an anonymous person(s) allegedly sent a letter to defendant Carter to make vague complaints about Plaintiff. On information and belief, the letter asserted that “his [Plaintiff] workers are afraid of him and they’ve had enough. Erratic, threatening behavior in the workplace is not cool! Reassign or remove Clifton Webb until the issues brought up by his people have been properly evaluated.” On information and belief, Defendants were aware of the persons who had purportedly signed the letter.

65. On or about October 30, 2013, Triplett requested a “zone transition” meeting with staff members under Plaintiff’s supervision. On information and belief, the purpose of this “zone transition” meeting was in furtherance of Defendants’ plan to dismiss Plaintiff’s employment without just cause in retaliation for having reported UNC-CH’s “sex trade” and “sex-for-hire” practices under Burston along with Plaintiff’s concerns about racial discrimination pertaining to the same.

66. On or about November 1, 2013, anonymous person(s) allegedly posted defamatory bulletins about Plaintiff that were substantially similar in content as that contained in the anonymous letter, as referenced above. The anonymous bulletin also contained a picture of Plaintiff and invited others to “support this cause” by contacting managers within UNC-CH’s human resources department.

67. On information and belief, none of the posters of the defamatory bulletin or of the “anonymous” letter received any disciplinary sanction from defendant UNC-CH even though Defendants were aware, or with a reasonably conducted investigation, should have been aware of the identity of the employees who were involved.

68. On information and belief, as a result of the “anonymous” letter and/or the defamatory bulletin in addition to the other means used in retaliation to “build a case” against Plaintiff, Defendants launched a pretextual official “investigation” of Plaintiff to serve as a “basis” to terminate Plaintiff’s employment without just cause.

69. On information and belief, Mr. Dixon and Mr. Triplett performed the pretextual “investigation” of Plaintiff on behalf of Defendants.

70. On information and belief, at no time did Defendants ever make Plaintiff aware that he was being formally “investigated” in November 2013 for disciplinary sanctions. Insead, Plaintiff was led to believe that Defendants’ efforts with his subordinates were part of a “mediation” attempt to improve work relations.

71. On or about November 14, 2013, Plaintiff filed a workplace violence report in an effort to cause UNC-CH to investigate the defamatory bulletins that were posted all around campus about him from supposed “anonymous’ sources.

72. Also on or about November 14, 2013, defendant Carter informed the vice-chancellor, Brenda Malone, that the “pilot program” called “360-Degree Evaluations” had been completed for employees in the Housekeeping Department.

73. In November 2013, Defendants directed Plaintiff to attend “mediation” with Mr. Triplett and various employees along with UNC-CH’s senior HR consultant and grievance coordinator, Chariss Sanders Jones (“Jones”) serving as the “mediator.”

74. On information and belief, Chariss Jones, worked under the direct supervision of defendant Carter at the time of the “mediations.” At no time did Ms. Jones ever inform Plaintiff about a potential conflict-of-interest with her serving as the “mediator.”

75. On or about January 8, 2014, defendant Carter announced to attendees at the Employee Forum meeting that the “pilot program” known as the “360-Degree Evaluation,” which was be used to “evaluate” Plaintiff, was a “mistake” and would be discontinued from general use to evaluate the work performance of managers.

76. On January 13, 2014 at around 9:30 a.m., Ben Triplett handed Plaintiff a “notice to attend a pre-disciplinary conference” to be conducted that same day beginning at 3:00 p.m in the Administrative Office Building.

77. At all times relevant herein, including January 13, 2014, Plaintiff had a “property interest” in his employment at UNC-CH, and accordingly, had the right to receive due process pursuant to the Fourteenth Amendment to the United States Constitution.

78. On information and belief, Defendants arranged for Plaintiff’s pre-disciplinary conference to take place on the same date that he received the “notice” so that Plaintiff would not have sufficient time to prepare for the same and in violation of Plaintiff’s rights to due process.

79. Further, on information and belief, Defendants’ “notice” failed to provide Plaintiff with any particularized details or description of any specific acts that UNC-CH asserted constituted unacceptable personal conduct by Plaintiff in violation of the law and Plaintiff’s rights to due process.

80. On January 13, 2014 at 3:00 p.m., Plaintiff attended the purported pre-disciplinary conference. In attendance along with Plaintiff were Mr. Triplett and the “mediator,” Chariss Jones.

81. On January 16, 2014 and effective immediately, Defendants issued Plaintiff notice of their “disciplinary decision of dismissal” of Plaintiff’s employment.

FIRST CAUSE OF ACTION:
(Title VII -- Disparate Treatment)

82. The foregoing allegations are hereby realleged and fully incorporated herein by reference as if fully set forth herein.

83. As a black male, Plaintiff is a member of protected groups pursuant to Title VII, as codified in 42 U.S.C. §§ 2000e-5, *et seq.*

84. On information and belief, defendant UNC-CH discriminated against Plaintiff on the basis of his race as a black male when defendant UNC-CH terminated Plaintiff's employment without just cause on January 16, 2014.

85. On information and belief, defendant UNC-CH provides for a "progressive" disciplinary system for employees who are not a member of Plaintiff's protected class.

86. The "progressive" disciplinary system consists of levying disciplinary sanctions from "less severe" to "severe" within the various disciplinary sanctions (*e.g.* counseling, negative work performance evaluation, written warning, suspension, demotion, and dismissal). Further, in a progressive disciplinary system, managers provide employees with an open system of disclosure with identification of specific instances of performance or conduct with the goal to work in good faith to improve the employees' conduct or work performance.

87. Instead, on information and belief, Defendants singled-out Plaintiff for dismissal and endeavored to undermine Plaintiff and his job performance by working with Plaintiff's subordinates to undermine and work against him.

88. On information and belief, defendant UNC-CH dismissed Plaintiff's employment because of or used as his race as a motivating factor, Plaintiff's race as a black or African-American male in violation of Title VII of the Civil Rights Act of 1964, as amended and codified in 42 U.S.C. § 2000e-5, *et seq.*

89. As a direct and proximate result of defendant UNC-CH's discrimination against Plaintiff on the basis of his race, as alleged herein, Plaintiff has suffered and will continue to suffer harms, losses, and damages, including without limitation pecuniary losses of lost salary and benefits, and diminished earning capacity along with non-pecuniary losses of emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other damages in an amount to be determined at trial, but in excess of \$10,000.00.

SECOND CAUSE OF ACTION:
(Title VII--Retaliation)

90. The foregoing allegations are hereby realleged and fully incorporated herein by reference as if fully set forth herein.

91. Plaintiff engaged in activity protected under Title VII (42 U.S.C. § 2000e-3, *et seq.* when Plaintiff reported the "sex trade" and "sex-for-hire" practices; the racial discrimination concerns about "gentrification" as a result of the "sex trade" and "sex-for-hire" practices; and/or the various reprisal that he experienced as a result of having made reports of the same (collectively "illegal practices"; on the following occasions:

- a. Plaintiff reported the illegal practices to UNC-CH's ombudsman Wayne Blair on multiple occasions from 2007 to 2011;
- b. Plaintiff reported the illegal practices to UNC-CH's vice-chancellor for EEO/ADA on or about June 4, 2010;
- c. Plaintiff reported the illegal practices to defendant Carter on multiple occasions from around July 2011 to September 8, 2011;
- d. Plaintiff reported the illegal practices to investigator Patricia Thomas on or about July 11, 2011;

- e. Plaintiff reported the illegal practices to associate vice-chancellor Carolyn Elfland on or about March 29, 2012;
- f. Plaintiff reported the illegal practices when he testified at Burton's grievance hearing in around April 2012;
- g. Plaintiff reported the illegal practices to defendant Triplett on several occasions in July 2012;
- h. Plaintiff reported the illegal practices to Jackie Overton of UNC-CH's Employee Forum on or about April 2013;
- i. Plaintiff reported the illegal practices to defendant Dixon and Vice-Chancellor Wu in around May 2012;
- j. Plaintiff reported the illegal practices to UNC-CH's "mediator" Chariss Jones and defendant Triplett during the "mediation" sessions in around November 2013;
- k. Plaintiff reported the illegal practices to defendant Triplett and the "mediator" Chariss Jones during his pre-disciplinary conference on January 13, 2014, among other occasions (collectively "protected activity").

92. Because of Plaintiff having engaged in the protected activity, as alleged above, defendant UNC-CH through its managers intentionally caused Plaintiff to experience the adverse employment action of dismissal on or about January 16, 2014 along with the materially adverse actions, including being the target of multiple "investigations" for pretextual purposes and being subjected to multiple position "re-assignments," the 360-Degree Feedback, the "Climate Assessment," "mediation" sessions, and a hostile work environment, as alleged herein.

93. As a direct and proximate result of the retaliation and reprisal caused against Plaintiff by defendant UNC-CH, Plaintiff has suffered harms, losses, and damages in an amount to be determined at trial, but in excess of \$10,000.00.

THIRD CAUSE OF ACTION:
(42 U.S.C. § 1983-Denial of Equal Protection-Protected Class)

94. The foregoing allegations are hereby realleged and fully incorporated herein by reference as if fully set forth herein.

95. Defendants discriminated against Plaintiff on the basis of his race when Defendants terminated Plaintiff's employment on January 16, 2014 purportedly for "unacceptable personal conduct."

96. At no time did Plaintiff ever engage in the "unacceptable personal conduct," as alleged by Defendants.

97. Even if Plaintiff engaged in "unacceptable personal conduct," which is denied, Defendants' disciplinary sanction of dismissal is substantially more severe than those disciplinary sanctions, if any, that Defendants have issued to those members outside of the protected class for substantially the same or more egregious conduct.

98. On information and belief, Defendants have a preferential policy or practice favoring members outside of the protective class to the detriment of Plaintiff, in the application of disciplinary sanctions for substantially-similar or more egregious conduct.

99. Such preferential policies and/or practices of Defendants are not related to any business necessity, but violate Title VII in that the same have a disparate or adverse impact on black or African-American employees, like Plaintiff, for no legitimate or legal reason.

100. As a direct and proximate result of Defendants' policies and/or practices of issuing significantly more severe disciplinary sanctions against black or African-American

employees than what it issues to members outside of the protective class, Plaintiff has suffered damages in an amount to be determined at trial, but in excess of \$10,000.00.

FOURTH CAUSE OF ACTION:
(42 U.S.C. §1981 Action-Equal Rights under Law)

101. The foregoing allegations are hereby realleged and fully incorporated herein by reference as if fully set forth herein.

102. From January 8, 2007 until his termination on January 16, 2014, Plaintiff had a contract with defendant UNC-CH whereas Plaintiff would be paid a certain salary and benefits in exchange for serving as a manager and employee for defendant UNC-CH.

103. In violation of 42 U.S.C. § 1981, Defendants denied Plaintiff the right to make and enforce his contract with defendant UNC-CH and to have the full and equal benefits of all laws when Defendants intentionally discriminated against Plaintiff because of his race and/or retaliation for having engaged in protected activity, as alleged herein, by terminating Plaintiff's employment instead of issuing Plaintiff a less severe disciplinary sanction, if any, as Defendants have issued (or failed to issue) to members outside of the protected class for substantially similar or more egregious conduct or actions.

104. As a direct and proximate result of Defendants' acts of discrimination against Plaintiff on the basis of his race, as alleged herein, Plaintiff has incurred damages in an amount to be determined at trial, but in excess of \$10,000.00.

FIFTH CAUSE OF ACTION:
(42 U.S.C. § 1983-Denial of Due Process)

105. The foregoing allegations are hereby realleged and fully incorporated herein by reference as if fully set forth herein.

106. At all times herein, Plaintiff had a “property interest” in his employment by UNC-CH.

107. Defendants intentionally violated Plaintiff’s rights to due process under the Fourteenth Amendment of the United States Constitution when Defendants or any of them:

- a. Provided Plaintiff with less than six (6) hours of notice before conducting Plaintiff’s pre-disciplinary conference on January 13, 2014 while Plaintiff was required to work in the intervening six hour period and had no access to documentation;
- b. Provided Plaintiff with insufficient detail of any acts or actions that constituted “unacceptable personal conduct;”
- c. Failed to interview Plaintiff to seek his feedback as to any allegations of “unacceptable personal conduct” while Plaintiff was aware he was being interviewed for such purpose;
- d. Using a manager in UNC-CH’s Human Resources Department to serve as a “mediator” while knowing that this manager would be attending the pre-disciplinary conference and would be arranging any resulting grievance process pertaining to Plaintiff; and
- e. By arranging for erroneous charges, “investigations,” climate surveys,” and “360 Degree” evaluations to be used to “build a case” against Plaintiff as a pretext to dismiss Plaintiff from employment without just cause, among other reasons.

108. As a direct and proximate result of Defendants' acts of depriving Plaintiff of due process, as alleged herein, Plaintiff has incurred damages in an amount to be determined at trial, but in excess of \$10,000.00.

SIXTH CAUSE OF ACTION:
(42 U.S.C. § 1983-First Amendment Retaliation)

109. The foregoing allegations are hereby realleged and fully incorporated herein by reference as if fully set forth herein.

110. Plaintiff engaged in communication protected by the First Amendment of the United States Constitution when he engaged in the protected activity, as alleged herein.

111. Plaintiff's reporting UNC-CH's "sex trade" and "sex-for-hire" employment practices in the housekeeping department along with the effect of racial discrimination from the "gentrification" was a matter of public interest at all relevant times.

112. At no time did Plaintiff's job duties ever require or otherwise provide him with the duty to report UNC-CH's "sex trade" and "sex-for-hire" employment practices or the concerns for "gentrification."

113. As a direct and proximate result of Defendants' acts of retaliating against Plaintiff for having exercised his rights under the First Amendment of the United States Constitution, as alleged herein, Plaintiff has incurred damages in an amount to be determined at trial, but in excess of \$10,000.00.

DEMAND FOR JURY TRIAL:

Pursuant to Fed. R. Civ. P. 38(b) and 42 U.S.C. § 1981a(c), Plaintiff hereby makes demand for a trial by jury for all triable issues.

PRAYER FOR RELIEF:

WHEREFORE, Plaintiff prays unto the Court as follows:

1. That the Court issue a permanent injunction against Defendants jointly and severally in favor of Plaintiff as follows:
 - a. Defendants be required to reinstate Plaintiff to his former position, rank, and salary within the University of North Carolina at Chapel Hill; or alternatively at Plaintiff's option, receive front pay from Defendants; and
 - b. Defendants, and their agents, managers, and employees be enjoined from any further acts of discrimination or retaliation against Plaintiff;
2. That Plaintiff receive judgment against Defendants, jointly and severally, in an amount to be determined at trial, but in excess of \$10,000.00, as follows:
 - a. For all applicable back pay, lost benefits, and interest under 42 U.S.C. § 2000e-5; and
 - b. For all applicable compensatory damages for pecuniary and non-pecuniary harms and losses, including without limitation, that for emotional pain, suffering, mental anguish, loss of enjoyment of life, damage to reputation and any other applicable damages under 42 U.S.C. § 1981a, *et seq.* or otherwise;
3. That Plaintiff recover from Defendants all court costs, including expert witness fees, deposition costs, and attorney's fees, as permitted by law;
4. That Plaintiff receive a jury trial for all matters so triable; and
5. That the Court grant Plaintiff such other and further relief as the Court deems just and proper.

This the 26th day of March, 2015.

/s/ J. Heydt Philbeck

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