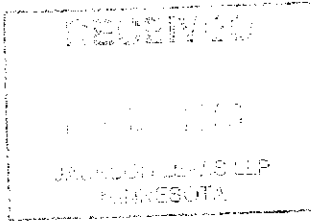


STATE OF MINNESOTA
COUNTY OF HENNEPIN



DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Employment
Court File No.: 27-CV-08-16153

April Bezdichek,

Plaintiffs,

vs.

SECOND AMENDED COMPLAINT
JURY TRIAL DEMANDED

Hilton Hotels Corporation d/b/a HHC-Hilton Minneapolis H & T,
and James M. Vennewitz (in his official and individual capacities),

Defendants.

Plaintiff April Bezdichek, for her Complaint against Defendants above-named,
states and alleges as follows:

PARTIES

1. Plaintiff April Bezdichek is a 25 year-old female residing in Corona, California. She was employed with Defendants from October of 2005 through October 15 of 2007 as an on-call cocktail server.
2. Plaintiff Bezdichek was praised for her job performance and was entrusted to train other employees.
3. Defendant Hilton Hotels Corporation d/b/a HHC-Hilton Minneapolis H & T, ("Defendant Hilton"), is a Delaware corporation. Its agent for service of process is Prentice-Hall Corp System Inc at 380 Jackson Street, #700, St. Paul, MN 55101
4. Defendant James M. Vennewitz is a 38 year-old male residing at 3635 D St.

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Francis Way, St. Paul, MN 55123. At all times material, he was Beverage Manager for Defendant Hilton.

5. Other persons employed during the period of Plaintiffs' employment include, but are not limited to: bartender Harley Gayle, night manager Deborah Smith, bartender/cocktail server Tom Anderson, Assistant Beverage Manager David Bullerman, cocktail server Koa Combs, Finance Director Paul Downing, Union Representative Nancy Goldman, Assistant Beverage Manager Mo Hassan, Room Service Manager Heather Huggins, Resident Manager Gordon Humbert, bartender Debbie Jahnke, Assistant Manager room service/Skywater Restaurant Gretchen Jorgenson, bartender Dawn Kenyon, cocktail server Kristin Lessard, Resident Manager Michael B. Loftus, General Manager John E. Luke, Resident Manager George E. Prine III, Beverage Manager Aaron Schulte, Beverage Manager Kim Thompson, Human Resources Director Traci Schultz, Food and Beverage Director Victor Salamone, Director of Property Operations Dale I/n/u, Assistant Director of Human Resources Kristen Erdmann, Skywater chef Julian Granger, Assistant Beverage Manager Nakeela Wright, Hannah I/n/u and others.

FACTS

6. Plaintiff Bezdichek was subjected to sexual misconduct by Defendant Manager Vennewitz.
7. Specifically, Defendant Manager Vennewitz told Plaintiff to come to the hotel on her night off. She was instructed to come to the banquet room in which (unknown to her), an orgy was occurring. The orgy included various members of Defendant

Hilton upper management. During this orgy, various Hilton executives were inebriated and engaging in sexual acts. In fact, Hilton executives were on the top of a table engaging in sexual activity.

8. After she came into the room, Defendant Manager Vennewitz pulled her onto his lap and pumped her up and down on his erect penis. He told her how good it felt and tried to physically force her up to a hotel room.
9. Human Resources Director Traci Schultz and Beverage Manager Kim Thompson were both aware that Defendant Manager Vennewitz was harassing and abusing Plaintiff Bezdichek but did nothing to stop it.
10. Defendant Manager Vennewitz had previously grabbed Plaintiff's breast, which Plaintiff had reported to management, specifically Human Resources Director Traci Schultz and Beverage Manager Kim Thompson. Her previous report was laughed off and no action was taken.
11. Because of the repeated sexual abuse, the fact that Plaintiff Bezdichek was instructed to lie about the misconduct, and that after her complaints she was no longer called for shifts and was shunned, she was forced to resign.
12. Plaintiff Bezdichek objected to the sexual harassment and other misconduct and made complaints. No prompt remedial action was taken and retaliation ensued.
13. Defendants' conduct was egregious, oppressive, and characterized by recklessness or malice or wantonness.
14. As a direct and proximate result of the above-described acts, Plaintiff has suffered and continues to suffer severe emotional, physical and economic damages.

COUNT ONE

**(Sex Discrimination/Sexual Harassment
against Defendant Hilton)**

Plaintiff realleges every paragraph of the Complaint.

15. Plaintiff Bezdichek was subjected to unwelcome sexual conduct directed at her on the basis of her sex. These actions constitute differential treatment because of sex.
16. This conduct was hostile, oppressive, severe, pervasive, abusive and intimidating.
17. The hostile environment pervading Defendant Hilton's workplace altered the terms and conditions of Plaintiff's employment, and resulted in tangible adverse employment actions including, but not limited to, those described herein.
18. Defendant Hilton failed to take prompt, appropriate remedial action in response to the repeated actual and constructive notice of sexual harassment, with the result that the misconduct continued and escalated.
19. Defendant Hilton failed to maintain adequate measures to prevent and promptly correct sexual harassment.
20. Plaintiff reasonably used any complaint procedures available.
21. The above-described conduct was within the scope of employment, and Defendant Hilton is responsible for it.
22. Defendant Hilton is responsible and liable as an employer for its actions and for the actions of its management in ignoring, condoning and contributing to the discrimination against Plaintiff.

23. At all relevant times, Plaintiff Bezdichek was an "employee" and Defendant Hilton was an "employer" under the MHRA, Minn. Stat. § 363A and other pertinent law.
24. Defendant Hilton knew or should have known about the conduct described herein toward Plaintiff.
25. Defendant Hilton accepted and ratified the conduct described herein toward Plaintiff.
26. Plaintiff was subjected to unlawful discrimination and sexual harassment under the MHRA and other pertinent law.
27. As a direct and proximate result of the acts alleged above, Plaintiff has been and continues to be damaged and suffer losses including, but not limited to, emotional distress, physical and mental anguish, bodily injury, physical sickness, pain and suffering, lost income, lost benefits, and lost earning capacity, past and future, in excess of \$50,000.00.

COUNT TWO

**(Retaliation/Reprisal
against Defendant Hilton)**

Plaintiff realleges every paragraph of the Complaint.

28. Plaintiff engaged in protected activity, resisting sexual harassment and other illegal conduct.
29. Defendant Hilton responded with adverse employment actions including, but not limited to, those described herein.
30. Defendant Hilton's conduct constitutes unlawful reprisal under the MHRA, Minn.

Stat. § 363A and other pertinent law.

31. As a direct and proximate result of the acts alleged above, Plaintiff has been and continues to be damaged and suffer losses including, but not limited to, emotional distress, physical and mental anguish, bodily injury, physical sickness, pain and suffering, lost income, lost benefits, and lost earning capacity, past and future, in excess of \$50,000.00.

COUNT THREE

**(Negligent Infliction of Emotional Distress
against Defendant Hilton)**

Plaintiff realleges every paragraph of the Complaint.

31. Defendant Hilton had a duty to Plaintiff to allow her to work in a place that does not subject her to a zone of danger or willful invasions of her rights.
32. Defendant Hilton knew or should have known that its employees, including but not limited to Defendant Manager Vennewitz and Manager Kim Thompson, were engaging in illegal actions toward Plaintiff as described herein.
33. By allowing/engaging in the sexually harassing, discriminatory, abusive and retaliatory conduct toward Plaintiff, Defendant Hilton placed Plaintiff in a zone of danger of physical impact and allowed her rights to be invaded willfully.
34. As a direct and proximate result of the acts alleged above, Plaintiff has been and continues to be damaged and suffer losses including, but not limited to, emotional distress, physical and mental anguish, physical sickness, pain and suffering, lost income, lost benefits, and lost earning capacity, past and future, in excess of

\$50,000.00.

COUNT FOUR

**(Negligence/Negligent Retention/Supervision
against Defendant Hilton)**

Plaintiff realleges every paragraph of the Complaint.

35. Defendant Hilton, as the owner/occupier of the premises where the misconduct occurred, and as Plaintiff's employer, owed Plaintiff the duty to exercise due care to prevent harm to Plaintiff.
36. Defendant Hilton, which possessed knowledge of prior and ongoing illegal/tortious activity by itself/its managers on its premises, and knowledge of the prior and ongoing failures of one or more of its managers to prevent such misconduct, owed a duty to Plaintiff to maintain adequate safety and security and to otherwise make their workplace reasonably safe.
37. Defendant Hilton was negligent in training, retaining and supervising managers as described herein.
38. Defendant Hilton breached its duty to Plaintiff, causing her severe harm.
39. As a direct and proximate result of the acts alleged above, Plaintiff has been and continues to be damaged and suffer losses including, but not limited to, emotional distress, physical and mental anguish, bodily injury, physical sickness, pain and suffering, lost income, lost benefits, and lost earning capacity, past and future, in excess of \$50,000.00.

COUNT FIVE

(Battery against both Defendants)

Plaintiff realleges every paragraph of the Complaint.

40. Defendant Manager Vennewitz engaged in unpermitted, harmful and offensive contact with Plaintiff Bezdichek as described herein.
41. Plaintiff Bezdichek did not consent to this offensive contact.
42. At all times material, Defendant Manager Vennewitz was an agent of Defendant Hilton.
43. Defendant Manager Vennewitz accomplished the offensive contact by virtue of his authority as Manager for Defendant Hilton and his superior/supervisory position relative to Plaintiff Bezdichek.
44. Defendant Manager Vennewitz's conduct was reasonably foreseeable by Defendant Hilton.
45. Defendant Hilton, before the offensive contact upon Plaintiff Bezdichek, knew or had reason to know that Defendant Manager Vennewitz engaged in sexual harassment and abuse of at least one female employee.
46. Defendant Manager Vennewitz was acting, at least in part, to serve the interests of Defendant Hilton at the time he engaged in the offensive touching of Plaintiff Bezdichek.
47. Defendant Manager Vennewitz's conduct occurred within the authorized time and space limits of his duties performed for Defendant Hilton.
48. Because Defendant Manager Vennewitz would not have been able to commit the

offensive contact with Plaintiff Bezdichek but for the authority of his position with Defendant Hilton, Defendant Hilton is liable for the negligent, intentional and wrongful conduct of Defendant Vennewitz under the law of vicarious liability, including the doctrine of respondeat superior.

49. The actions of Defendant Manager Vennewitz, factually stated herein with specificity, constitute intentional and unlawful touching, and excessive use of force upon Plaintiff Bezdichek, to which she did not consent, which under the law of Minnesota constitute batteries upon Plaintiff Bezdichek which resulted in Plaintiff Bezdichek suffering the damages alleged herein.
50. As a direct and proximate result of the acts alleged above, Plaintiff Bezdichek has been and continues to be damaged and suffers losses including, but not limited to, emotional distress, physical and mental anguish, bodily injury, physical sickness, pain and suffering, lost income, lost benefits, and lost earning capacity, past and future, in excess of \$50,000.00.

COUNT SIX

(Invasion of Privacy-Intrusion Upon Seclusion against both Defendants)

Plaintiff realleges every paragraph of the Complaint.

51. Plaintiff had a legitimate expectation of privacy.
52. By the acts described above, Defendant Manager Vennewitz intentionally intruded upon and violated the privacy, solitude and seclusion of Plaintiff Bezdichek.
53. These actions were highly offensive.

54. Defendant Hilton knew or should have known that Defendant Manager Vennewitz was engaging in these privacy violations against Plaintiff Bezdichek.
55. At times material hereto, Defendant Manager Vennewitz was an agent of Defendant Hilton and was under Hilton's direct supervision and control when he committed the wrongful and offensive acts described herein.
56. Defendant Manager Vennewitz engaged in this inappropriate conduct while acting as an agent of Defendant Hilton and accomplished the conduct by virtue of his authority as Manager for Defendant Hilton and his superior/supervisory position relative to Plaintiff Bezdichek.
57. As a direct and proximate result of the invasions of Plaintiff's privacy, solitude and seclusion, Plaintiff has suffered and continues to suffer damages including, but not limited to, emotional distress, mental and physical anguish, physical injuries and lost income and benefits, past and future, in excess of \$50,000.00.

COUNT SEVEN

(Assault against both Defendants)

Plaintiff realleges every paragraph of the Complaint.

58. Defendant Manager Vennewitz engaged in offensive, unpermitted contact with Plaintiff Bezdichek as described herein.
59. Plaintiff Bezdichek did not consent to the offensive contact.
60. Defendant Manager Vennewitz acted in a lecherous, harassing, volatile and violent manner toward Plaintiff Bezdichek and in her vicinity, causing reasonable apprehension of unwanted offensive contact.

61. As a result of the actions of Defendant Manager Vennewitz, Plaintiff Bezdichek was intimidated and apprehensive.
62. Defendant Manager Vennewitz's conduct was reasonably foreseeable to Defendant Hilton.
63. Defendant Hilton knew or should have known that Defendant Manager Vennewitz engaged and would continue to engage in unwanted and offensive contact with Plaintiff Bezdichek and that Plaintiff Bezdichek would be apprehensive that he would continue his misconduct.
64. At all times material hereto, Defendant Manager Vennewitz was an agent of Defendant Hilton and was under its direct supervision and control.
65. Defendant Manager Vennewitz engaged in this offensive conduct while acting as an agent of Defendant Hilton and accomplished the offensive conduct by virtue of his authority as Manager for Defendant Hilton and his superior/supervisory position relative to Plaintiff Bezdichek.
66. The combined actions of both Defendants caused Plaintiff Bezdichek to have reasonable apprehension of imminent harm and offensive contact.
67. Plaintiff Bezdichek believed that Defendant Manager Vennewitz had the present ability to cause offensive contact and bodily harm.
68. Plaintiff's belief was reasonable.
69. The actions of Defendants factually stated herein with specificity, under the law of Minnesota constitute assaults upon Plaintiff Bezdichek which resulted in her suffering the damages alleged herein.

70. As a direct and proximate result of the acts alleged above, Plaintiff Bezdichek has been and continues to be damaged and suffer losses including, but not limited to, emotional distress, physical and mental anguish, bodily injury, physical sickness, pain and suffering, lost income, lost benefits, and lost earning capacity, past and future, in excess of \$50,000.00.

COUNT EIGHT

**(Intentional Infliction of Emotional Distress
against both Defendants)**

Plaintiffs reallege every paragraph of the Complaint.

71. Defendants engaged in unpermitted, harmful and offensive discrimination, sexual contact, harassment and other misconduct upon Plaintiff Bezdichek as described above.
72. Plaintiff never consented to this conduct.
73. Defendants' conduct was reasonably foreseeable.
74. Defendant Hilton knew or had reason to know that Defendant Manager Vennewitz inappropriately touched, harassed and engaged in other misconduct and that Manager Kim Thompson ignored her complaints and retaliated against Plaintiff.
75. At all times material hereto, Defendant Manager Vennewitz and Manager Kim Thompson were agents of Defendant Hilton and were under its direct supervision and control when they committed the wrongful and sexual acts described herein.
76. Defendant Vennewitz and Manager Kim Thompson engaged in this inappropriate conduct while acting as agents of Defendant Hilton and accomplished the sexual

contact and harassment by virtue of their authority as managers for Defendant Hilton and their superior/supervisory position relative to Plaintiff.

77. The acts of Defendant Manager Vennewitz and Manager Kim Thompson described herein were done willfully, maliciously, outrageously, deliberately and purposely with the intention to inflict emotional distress upon Plaintiff and/or were done in reckless disregard of the probability of causing Plaintiff emotional distress, and these acts did in fact result in severe emotional distress.
78. As a direct and proximate result of the acts alleged above, Plaintiff has suffered and continue to suffer damages including, but not limited to, severe emotional distress, mental anguish and pain and suffering, in excess of \$50,000.00.

WHEREFORE, Plaintiff prays that she be granted the following relief:

1. A declaratory judgment that the practices complained of herein are unlawful and violative of the MHRA and other pertinent law.
2. An Order permanently restraining and enjoining Defendants from discriminating against Plaintiff, or any other individual, on any basis forbidden by the MHRA and other pertinent law.
3. An Order requiring Defendants to compensate, reimburse and make whole Plaintiff for their losses attributable to Defendants' misconduct including but not limited to, pay, benefits, training, promotions and seniority.
4. An award to compensate Plaintiff for the pain and suffering and for the humiliation caused by Defendants' unlawful treatment in an amount in excess of Fifty Thousand and No/100 (\$50,000.00) Dollars, per Count.

5. Plaintiff hereby gives notice of their intent to seek Punitive Damages under the MHRA and other pertinent law.
6. Actual damages for doctor, hospital and other medical expenses incurred as a result of Defendants' liability arising from the misconduct alleged herein.
7. A civil penalty payable to the State of Minnesota.
8. Treble compensatory damages as provided in the MHRA, Minn. Stat. § 363A.
9. The Court to award Plaintiff costs, disbursements and expenses of this action, including reasonable attorney's fees as provided in the MHRA and other applicable law.
10. All other remedies available at law.

Plaintiff demands a trial by jury on issues triable to a jury.

Dated: 11-21-08

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