

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

MARK HORTON,)	
)	
Plaintiff,)	
)	Case No. 14:17-CV-2324-JCH
v.)	
)	
MIDWEST GERIATRIC MANAGEMENT, LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	

PLAINTIFF’S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

COMES NOW Plaintiff, Mark Horton, by and through his attorneys, Mathis, Marifian & Richter, Ltd., and for his Motion for Leave to File Second Amended Complaint, states as follows:

1. Plaintiff filed his original Complaint alleging that his offer of employment with Defendant, Midwest Geriatric Management, LLC (“MGM”), was withdrawn due to his sex/sexual orientation and religion in violation of Title VII of the Civil Rights Act of 1964, as well as fraudulent inducement. [Doc. 1].

2. On December 21, 2017, this Court entered its Memorandum and Order granting Defendant MGM’s Motion to Dismiss all three Counts of Plaintiff’s Complaint. [Doc. 20]. Plaintiff filed a timely Notice of Appeal. [Doc. 23].

3. While this case was pending on appeal before the United States Court of Appeals for the Eighth Circuit, the United States Supreme Court entered its decision in *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 2020 WL 3146686 (2020), holding that “An employer who fires an individual merely for being gay or transgender defies the law.” 140 S. Ct. at 1754.

4. In light of the Supreme Court's decision in *Bostock*, on July 6, 2020, the Eighth Circuit entered a Per Curiam Order reversing the judgment of the district court and remanding this case for further proceedings.

5. Plaintiff previously amended his Complaint on or about August 27, 2020, to allege a single cause of action for sex discrimination consistent with the Supreme Court's decision in *Bostock*. [Doc. 40].

6. On or about July 23, 2021, the parties jointly moved to modify the Court's First Amended Case Management Order [Doc. 54], resulting in the order currently applicable to this case: the Second Amended Case Management Order. [Doc. 56].

7. The Second Amended Case Management Order provides that motions for the joinder of additional parties or amendment of pleadings shall be filed no later than September 2, 2020, and that discovery shall be completed by December 28, 2021. [Doc. 56].

8. Following the entry of the Second Amended Case Management Order, the parties continued to exchange discovery and began taking depositions.

9. Plaintiff's deposition was taken on October 14, 2021. The depositions of two key witnesses on behalf of the Defendant, Faye Bienstock and Judah Bienstock, were taken on October 27, 2021, and November 9, 2021, respectively.

10. During the depositions of Faye Bienstock and Judah Bienstock, additional information was discovered warranting the amendment of Plaintiff's Complaint to add additional parties and causes of action.

11. The information discovered during the depositions of Faye Bienstock and Judah Bienstock gives rise to multiple additional claims, both against the Defendant MGM and against two third-parties (Jobplex, Inc. and HireRight, LLC) retained by Defendant MGM to perform

certain tasks on behalf of MGM regarding the hiring and onboarding process, and who directly participated in the events leading up to and including MGM's decision to withdraw the written job offer which Plaintiff had accepted.

12. During their depositions, the Bienstocks testified that they relied on certain information and communications from Jobplex, Inc., and HireRight, LLC, in deciding to withdraw Plaintiff's offer of employment, including false and/or misleading information concerning Plaintiff and the verification of his educational background and other allegations as more fully set forth and alleged in Plaintiff's accompanying Second Amended Complaint.

13. The Bienstocks testified that they relied on this information in deciding to withdraw the offer of employment that Plaintiff had accepted.

14. This information was exclusively in the possession of Defendant MGM, Jobplex and HireRight, and was not discovered by Plaintiff until the depositions of the Bienstocks were recently completed.

15. Based on the recent deposition testimony from the Bienstocks, Plaintiff hereby seeks leave to file a Second Amended Complaint alleging additional causes of action against Defendant MGM, as well as causes of action against Jobplex and HireRight.

16. Jobplex is a Delaware corporation with its principal place of business in Chicago, Illinois, and HireRight is a Delaware corporation with its principal place of business in Nashville, Tennessee.

17. Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that a party may amend its pleading before trial with leave of court.

18. Rule 15(a)(2) further provides that "[t]he court should freely give leave when justice so requires."

19. In turn, Rule 16(b) guides the modification of pretrial scheduling orders, which may be modified for good cause and with the judge's consent.

20. If a party files for leave to amend outside of the court's scheduling order, the party must show cause to modify the schedule. *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716 (8th Cir. 2008).

21. Good cause is measured by the movant's diligence in attempting to meet the scheduling order's requirements. *Ellingsworth v. Vermeer Mfg. Co.*, 949 F.3d 1097, 1100 (8th Cir. 2020).

22. Good cause may be shown by pointing to a change in the law, newly discovered facts, or another significant changed circumstance that requires amendment of a party's pleading. *Id.*

23. In this case, Plaintiff's counsel did not learn of Judah and Faye Bienstock's alleged reliance upon representations made by Jobplex and HireRight until the Bienstocks' depositions were completed.

24. The information concerning the Bienstocks' reliance upon such information was exclusively in their possession and was not disclosed to Plaintiff prior to their depositions.

25. The Bienstocks' depositions were completed well before the deadline of December 28, 2021, set forth in the operative scheduling order, and Plaintiff hereby seeks leave to amend within 10 days of the completion of the depositions giving rise to these newly discovered facts.

26. As such, Plaintiff has been diligent in attempting to meet the scheduling order's requirements, but the amendment of Plaintiff's complaint outside of the operative scheduling order's deadline is necessary despite Plaintiff's diligence.

27. Simultaneously submitted for the Court's review is Plaintiff's proposed Second Amended Complaint (attached hereto as "Exhibit A") and a proposed order granting Plaintiff leave to file the same.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court GRANT Plaintiff's Motion for Leave to File Second Amended Complaint, and such other and further relief as the Court deems just and proper.

Respectfully Submitted,

MATHIS, MARIFIAN & RICHTER, LTD.

By /s/Mark S. Schuver

Mark S. Schuver, #34713
Natalie T. Lorenz, #65566
23 Public Square, Suite 300
P.O. Box 307
Belleville, IL 62220
(618) 234-9800 Phone
(618) 234-9786 Fax
mschuver@mmrltd.com
nlorenz@mmrltd.com

Attorneys for Plaintiff Mark Horton

CERTIFICATE OF SERVICE

I hereby certify that, on November 19, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Missouri by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Mark S. Schuver

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FOR THE EASTERN DISTRICT OF MISSOURI**

MARK HORTON,)	
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Plaintiff,)	
)	Case No. 14:17-CV-2324-JCH
v.)	
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MIDWEST GERIATRIC MANAGEMENT, LLC,)	JURY TRIAL DEMANDED
JOBPLEX, INC. and HIRERIGHT, LLC,)	
)	
Defendants.)	

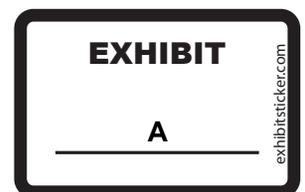
SECOND AMENDED COMPLAINT

COMES NOW Plaintiff, Mark Horton, by and through his attorneys, Mathis, Marifian & Richter, Ltd., and for his Second Amended Complaint against the Defendant, Midwest Geriatric Management, LLC, states as follows:

NATURE OF ACTION

This is an action under Title VII of the Civil Rights Act of 1964 to correct unlawful discrimination based on sex and sexual orientation, together with state law claims. Plaintiff, who had accepted a written offer of employment from Defendant, Midwest Geriatric Management, LLC (“MGM”), alleges in Count I that Defendant MGM unlawfully discriminated against him on the basis of his sex and sexual orientation. Thereafter, despite Plaintiff’s acceptance, Defendant MGM “withdrew” its offer of employment after discovering that Plaintiff was a homosexual and in a relationship with another male.

Plaintiff further alleges that the Defendant MGM, as well as Defendants Jobplex, Inc. (“Jobplex”) and HireRight, LLC (“HireRight”) were negligent and breached their respective duties towards Plaintiff (Counts II, III and IV), that Defendants MGM and Jobplex fraudulent



concealed material information from Plaintiff (Counts V and VI), and that Defendant Jobplex tortiously interfered with Plaintiff's business expectancy (Count VII).

JURISDICTION AND VENUE

1. Plaintiff brings this action to remedy violations under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, as amended by the Civil Rights Act of 1991, 42 U.S.C. §1981a, and to remedy violations of state common law based upon the pendent jurisdiction of this Court pursuant to United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966), and 28 U.S.C. § 1367. Jurisdiction of the state law claims is founded upon the pendent or supplemental jurisdiction of the Court pursuant to United Mine Workers of America v. Gibbs, 38 U.S. 715 (1966), and 28 U.S.C. § 1367.

2. The employment practices and alleged unlawful acts were committed within the jurisdiction of the United States District Court for the Eastern District of Missouri, and the Defendants are located in the Eastern District of Missouri.

3. Plaintiff has complied with all administrative prerequisites by filing timely a Charge of Discrimination based on racial discrimination with the Equal Employment Opportunity Commission ("EEOC") more than 60 days before the filing of this lawsuit. A true and accurate copy of that Charge is attached hereto as Exhibit 1.

4. The EEOC has issued a right-to-sue letter to Plaintiff. A true and accurate copy of Plaintiff's right-to-sue letter is attached hereto as Exhibit 2.

PARTIES

5. Plaintiff, Mark Horton, is male and was and is, at all times relevant herein, a resident of Madison County, Illinois, when Defendant's discriminatory and wrongful conduct occurred.

6. At all times relevant herein, Defendant, Midwest Geriatric Management, LLC (“MGM”), was and is a Missouri Limited Liability Company doing business in the State of Missouri, and having at least 15 employees.

7. At all times relevant herein, Defendant, Jobplex, Inc., (“Jobplex”) was and is a Delaware Corporation with its principal place of business located in Chicago, Illinois.

8. At all times relevant herein, Defendant, HireRight, LLC, was and is a Delaware limited liability company with its principal place of business located in Nashville, Tennessee.

9. At all times relevant herein, MGM was engaged in an industry affecting commerce and was an employer within the meaning of 42 U.S.C. §2000e(b), (g) and (h).

GENERAL ALLEGATIONS

10. Plaintiff is a homosexual male who has been legally married to his male partner since November 14, 2014.

11. Prior to accepting employment with the Defendant, MGM, Plaintiff was employed as Vice President of Sales & Marketing with Celtic Healthcare (“Celtic”).

12. Plaintiff’s status as a homosexual male did not negatively affect his job performance with Celtic in any way.

13. In February of 2016, while still employed by Celtic, Plaintiff received an unsolicited e-mail from Defendant MGM’s authorized agent, an executive search firm called “Jobplex,” who represented that they had been “exclusively retained to identify a Vice President of Sales and Marketing” for Defendant, MGM.

14. Plaintiff had never considered leaving his position with Celtic, but Jobplex, affirmatively represented to Plaintiff: “I can promise you that it will NOT be a waste of your time.”

15. Based on the representations of Jobplex, Plaintiff agreed to undergo the application process, including one or more interviews with Defendant MGM's President, co-owner and C.E.O., Judah Bienstock, and his wife, Faigie "Faye" Bienstock.

16. At the outset of the application process, Plaintiff submitted to MGM and Jobplex, a resume containing information regarding his employment history and educational background.

17. Plaintiff's resume clearly and unequivocally stated that he had obtained a Bachelor of Science ("BS") degree from Maryville College (n/k/a Maryville University and hereinafter referred to as "Maryville"), and that he had attended additional courses from Lewis and Clark Community College located in Godfrey, Illinois, and California College of Health Sciences located in San Diego, California.

18. After successfully completing a detailed assessment and interview process, Judah and Faye Bienstock sent Plaintiff a written job offer on behalf of MGM.

19. The job offer was contingent upon completion of a background check and references but contained no time limit for their completion.

20. Shortly after receiving the written job offer, Jobplex, informed MGM that Plaintiff had verbally accepted the offer.

21. On May 4, 2016, Plaintiff signed the written job offer accepting the position of Vice President of Sales and Marketing with MGM and transmitted the signed document via e-mail to Faye Bienstock and Jobplex. A copy of the signed and accepted written job offer is attached hereto as "Exhibit 3."

22. Jobplex, completed the reference check and informed MGM that Plaintiff's references were "all positive."

23. MGM and/or Jobplex retained HireRight to perform the background check.

24. HireRight worked with Jobplex in performing the background check.

25. Plaintiff was informed that HireRight had been retained to perform the background check.

26. At all times relevant herein, MGM and Jobplex knew that the completion of a background check was one of the two contingencies of the written job offer that Plaintiff had accepted.

27. At all times relevant herein, MGM, by and through its agents, Jobplex and HireRight, had a duty to perform an accurate background check of the Plaintiff.

28. At all times relevant herein, MGM, Jobplex and HireRight knew, or should have known, that the failure to perform an accurate background check could result in the withdrawal or termination of the employment agreement between MGM and Plaintiff.

29. At all times relevant herein, MGM and Jobplex knew or should have known that Plaintiff had clearly and unequivocally stated on his resume that he had obtained a Bachelor of Science (“BS”) degree from Maryville, and that he had obtained additional course work from Lewis and Clark Community College located in Godfrey, Illinois, and California College of Health Sciences located in San Diego, California.

30. Despite having knowledge of Plaintiff’s educational history as stated in his resume, MGM, by and through Jobplex and HireRight, requested verification of Plaintiff’s college degree from “Cathedral Catholic High School” in San Diego, California.

31. At no time did Plaintiff ever state that he had attended “Cathedral Catholic High School.”

32. At no time did Plaintiff ever state that he had obtained a degree from “Cathedral Catholic High School.”

33. At all times relevant herein, MGM, Jobplex and Hire Right knew or should have known that Plaintiff never stated that he had attended “Cathedral Catholic High School.”

34. At all times relevant herein, MGM, Jobplex and HireRight knew or should have known that Plaintiff never stated that he had obtained a degree from “Cathedral Catholic High School.”

35. HireRight was informed that “Cathedral Catholic High School” is “just a high school” and does not provide college degrees.

36. HireRight, requested that Jobplex obtain the exact name of the school.

37. Thereafter, Jobplex informed Plaintiff that HireRight was having a hard time verifying Plaintiff’s education, and requested the exact name and contact information for the school to share with HireRight.

38. Plaintiff responded to Jobplex’s request by providing internet URL addresses for Lewis & Clark Community College (<https://www.lc.edu/>), Maryville University (<https://www.maryville.edu/>), and California College of Health Sciences (<https://www.cc-sd.edu/>).

39. When Jobplex asked Plaintiff whether he had graduated from Maryville or CCHS (California College of Health Science), Plaintiff clearly and unequivocally responded in a written e-mail that he had obtained his “BS from Maryville.”

40. Even though Plaintiff had clearly and unequivocally stated in his resume and in an e-mail to Jobplex that he had obtained his degree from Maryville, and not from California College of Health Sciences, Jobplex and/or HireRight continued to request verification of a degree from California College of Health Sciences.

41. At no time did Plaintiff ever state that he had obtained a degree from California College of Health Sciences.

42. When HireRight was informed that Plaintiff did not receive a degree from California College of Health Sciences, it reported this as a “discrepancy” in Plaintiff’s educational background check.

43. At all times relevant herein, MGM, Jobplex and HireRight knew or should have known that Plaintiff stated that he received his degree from Maryville, and not from California College of Health Sciences.

44. Although Jobplex knew or should have known that Plaintiff stated that he received his degree from Maryville, and not from California College of Health Sciences, Jobplex continued to falsely and/or inaccurately represent that Plaintiff had stated that he had “placed his degree from CCHS” (California College of Health Sciences).

45. MGM, Jobplex and HireRight never sent a request to Maryville seeking verification of Plaintiff’s degree.

46. MGM, Jobplex and HireRight did not inform Plaintiff that they had failed to request verification of Plaintiff’s degree from Maryville.

47. Instead, Jobplex informed Plaintiff that they were unable to verify his degree.

48. After being informed that the Defendants were unable to verify his degree, Plaintiff stated that he would make calls and follow up with the colleges and universities himself.

49. At all times relevant herein, the URL for the website for California College of Health Sciences that Plaintiff had to Jobplex clearly and unequivocally stated that “CALIFORNIA COLLEGE SAN DIEGO CAMPUSES ARE PERMANENTLY CLOSED,” and provided alternative contact information.

50. Plaintiff informed MGM, Jobplex and HireRight that California College of Health Sciences had been sold to another university and, as a result, any request for verification needed to be sent to another entity.

51. Despite being informed of this information, neither MGM nor Jobplex nor HireRight contacted the new entity to obtain verification of Plaintiff's college credits from California College of Health Sciences.

52. In addition, Plaintiff informed the Defendants that he had contacted Maryville and was informed that it would take up to 6 weeks to obtain a copy of his diploma.

53. Neither MGM nor Jobplex nor HireRight voiced any concern to Plaintiff over this delay.

54. On May 4, 2016, with full knowledge that the background check had not yet been completed, Faye Beinstock sent an e-mail on behalf of MGM responding to Plaintiff's transmission of the signed written job offer accepting the position by stating: "*Wonderful! Congratulations! We are so excited! When will be your anticipated start date? Faye.*"

55. In reliance upon the written job offer that he had signed and accepted, and the confirmation by Faye Beinstock on behalf of MGM, Plaintiff gave notice to Celtic that he was resigning his employment.

56. On May 10, 2016, Plaintiff sent an e-mail to Faye Bienstock advising her that Celtic had agreed to release him from his employment early so that he could "*begin his new adventure*" with MGM.

57. On that same date, Faye Bienstock responded to Plaintiff on behalf of MGM, stating, "*We are ready for you whenever works for you!*"

58. On Thursday, May 12, 2016, Faye Bienstock sent Mr. Horton another e-mail, stating, *“Let’s just meet Monday [May 16, 2016 at] 9:00 am to get everything started!”*

59. In reliance upon the written job offer that he had signed and accepted, and the confirmation by Faye Beinstock on behalf of MGM, Plaintiff began working with Faye Bienstock to identify and recruit candidates for MGM’s Vice President of Human Resources and Regional Sales Manager positions.

60. On Friday, May 13, 2016, Faye Bienstock sent Plaintiff an e-mail informing him that he needed to complete the documentation regarding his education and complete a pre-hire assessment before attending orientation the following week. Faye Bienstock stated after completion of those two items *“[w]e can pick a new start date.”*

61. The completion of a pre-hire assessment was not a contingency of the written job offer that Plaintiff had accepted.

62. Plaintiff responded via e-mail that same date by stating that he had been working closely with Jobplex and HireRight the past few weeks, and had visited one of the colleges that day to request a copy of his transcript for verification.

63. At no time did Faye Bienstock, MGM, Jobplex or HireRight voice any concern or objection to Plaintiff about any delay in obtaining Plaintiff’s educational records.

64. On Tuesday, May 17, 2016, Plaintiff sent an e-mail to Faye Bienstock in which he updated her on the status of obtaining his educational records, stating that he had reached out to all of his colleges and requested transcripts and diplomas. In passing, Plaintiff disclosed to Faye Bienstock his homosexual relationship by stating: *“My partner has been on me about [my MBA] since he completed his PHD a while back.”*

65. After disclosing his homosexual relationship, Plaintiff personally experienced acts of discrimination by MGM on the basis of sex and sexual orientation.

66. The acts of discrimination were disclosed to Plaintiff in communications from Faye Bienstock, acting within the course and scope of her position and agency with Defendant MGM.

67. After disclosing his homosexual relationship to Faye Bienstock, the next response Plaintiff received was on May 20, 2016, from Faye Beinstock in which she stated in an e-mail: *“Are you able to come this afternoon? We would like to discuss the status of your employment.”*

68. Plaintiff replied on that same date, stating that he was out of town at the time and unable to come in that afternoon, but would be available on a different date.

69. At the time, only one week had passed since Faye Bienstock had informed Plaintiff on behalf of Defendant MGM that they could *“pick a new start date”* once Defendant MGM received his records.

70. On Sunday, May 22, 2016, Faye Beinstock sent Plaintiff an e-mail on behalf of Defendant MGM stating: *“Mark – I regret to inform you that due to the incompleteness of the background check of supportive documentation- we have to withdraw our offer letter for employment at MGM. We wish you much luck in your future endeavors. Judah and Faye.”*

71. At the time Faye Beinstock transmitted the May 22, 2016 e-mail, there were still nine days left prior to the date that Plaintiff had originally informed Defendant MGM that he could begin work.

72. After Plaintiff received the May 22, 2016 e-mail, he successfully obtained the requested college records himself and produced copies to MGM and Jobplex.

73. On June 21, 2016, upon learning that the Vice President of Sales and Marketing position with Defendant MGM was still open, Plaintiff sent an e-mail to Judah and Faye Bienstock stating, in relevant part, *“I would like to meet this week to discuss moving forward with the VP of Sales role with MGM.”*

74. Although the position was still open, Faye Bienstock responded on behalf of Defendant MGM on June 23, 2016, by stating: *“Thank you Mark for your communication. At this time –we are considering other candidates. We appreciate your continued interest in MGM- and will contact you if we wish to pursue a relationship.”*

75. Unbeknownst to Plaintiff, Jobplex had made false, inaccurate and disparaging statements and comments to Faye Bienstock regarding Plaintiff and the ability and efforts to verify his educational records.

76. Defendant Jobplex intentionally made false, inaccurate and disparaging statements and comments to Faye Bienstock regarding Plaintiff and the ability and efforts to verify his educational records, knowing that the statements were false, inaccurate and disparaging.

77. Defendant Jobplex made false, inaccurate and disparaging statements and comments to Faye Bienstock regarding Plaintiff and the ability and efforts to verify his educational records without justification.

78. At all times relevant herein, Plaintiff had developed a relationship of trust and confidence in Defendants MGM, Jobplex and HireRight, that they would perform the background check in a fair, reasonable and accurate manner.

79. At all times relevant herein, Plaintiff had reasonably and justifiably relied on the demonstrably superior knowledge on the part of Defendants MGM, Jobplex and HireRight to perform the background check in a fair, reasonable and accurate manner.

80. Plaintiff had a reasonable business expectancy that Defendant MGM would abide by the written job offer that he had accepted, but for, in whole or in part, the failure of Defendant MGM, Jobplex and HireRight, to perform the background check that they had represented to him they would perform.

81. Plaintiff had a reasonable business expectancy that Defendant MGM would abide by the written job offer that he had accepted, but for, in whole or in part, false, inaccurate and disparaging statements and comments made by Jobplex to Faye Bienstock regarding Plaintiff and the ability and efforts to verify his educational records without justification.

COUNT I
Title VII Sex Discrimination as Against Defendant MGM

82. Plaintiff incorporates Paragraphs 1 through 81 of this Complaint as if fully set forth herein.

83. Plaintiff proved himself to be qualified for the position of Vice President of Sales and Marketing, and was in fact chosen for that position before MGM learned that he was a homosexual male.

84. Since at least May 17, 2016, Defendant MGM engaged in the unlawful employment practice of sex discrimination by “*withdrawing*” its offer of employment, which Plaintiff had already accepted, after learning of Plaintiff’s homosexual relationship, and refusing to reconsider Plaintiff for the position, in that:

- a. MGM treated Plaintiff less favorably because of his sexual orientation, which is necessarily discrimination based on sex;

- b. MGM treated Plaintiff less favorably because Plaintiff, who is male, was associated with a male partner; and
- c. MGM treated Plaintiff less favorably on the basis of his nonconformity with sex stereotypes and MGM's preconceived definition of how males should behave.

85. "An employer who fires an individual merely for being gay . . . defies the law." *Bostock v. Clayton County, Georgia*, 590 U.S. ___, 2020 WL 3146686, at *18 (U.S. June 15, 2020).

86. The aforementioned unlawful conduct was directed at Plaintiff because of his male sex.

87. Plaintiff's association with his male partner motivated MGM to "withdraw" or terminated its already-accepted offer of employment to Plaintiff.

88. Plaintiff's sexual orientation is not consistent with MGM's and Faye and Judah Bienstock's perception of acceptable gender roles.

89. Neither sex, nor association with members of a particular sex, nor compliance with perceived sexual stereotypes is an occupational qualification for the position of Vice President of Sales and Marketing.

90. The effect of the aforementioned conduct of MGM has been to deprive Plaintiff of equal employment opportunities and otherwise adversely affect his status as an employee because of his male sex.

91. MGM knew, or should have known, of the unlawful employment practices being carried out by its officers and/or employees against Plaintiff.

92. MGM failed and/or refused to exercise reasonable care to prevent and promptly correct the unlawful employment practices.

93. MGM's failure and/or refusal to exercise reasonable care to prevent and promptly correct the unlawful employment practices amounted to condonation, ratification, approval, and/or perpetuation of said unlawful conduct.

94. MGM was responsible for the acts, omissions and unlawful conduct of its officers and/or employees who exhibited unlawful conduct toward Plaintiff including, but not limited to Faye Bienstock and Judah Bienstock, and, as such, acted as the alter ego of its officers and/or employees exhibiting unlawful conduct.

95. As a direct and proximate result of MGM's unlawful conduct, Plaintiff was subjected to sex discrimination.

96. As a direct and proximate result of MGM's unlawful conduct, Plaintiff has suffered the unlawful termination of his employment, including the loss of salary, wages, bonuses, benefits and other compensation that his employment with MGM was to entail.

97. As a direct and proximate result of MGM's unlawful conduct, Plaintiff has suffered, and will continue to suffer, severe humiliation, embarrassment, degradation, mental anguish, loss of reputation and standing in the community, and emotional and physical distress.

98. MGM's unlawful conduct was done with malice or reckless indifference to Plaintiff's rights under Title VII, and was so outrageous, extreme, and in disregard of the interests of Plaintiff so as to entitle Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, Mark Horton, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Midwest Geriatric Management, LLC, on Count I as follows:

(a) That a judgment be entered finding that Midwest Geriatric Management, LLC, intentionally discriminated against Plaintiff Mark Horton with malice or reckless indifference to

Plaintiff's federally protected rights in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e)-3, as amended by the Civil Rights Act of 1991;

(b) That Plaintiff Mark Horton be awarded all wages, benefits and compensation lost due to Midwest Geriatric Management, LLC's unlawful conduct, including back-pay and front pay, loss of benefits and other compensation, with prejudgment interest, and such other equitable relief as will make Plaintiff whole and as may be necessary to eradicate the effects of the unlawful employment practices;

(c) That Plaintiff Mark Horton be made whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices, including pain and suffering, loss of enjoyment of life, damage to reputation and standing in the community, and humiliation, in amounts to be determined at trial;

(d) That Plaintiff Mark Horton be awarded all other compensatory and lawful damages permitted by law;

(e) That Plaintiff Mark Horton be awarded substantial punitive damages;

(f) That Plaintiff Mark Horton be awarded reasonable attorneys' fees and costs; and

(g) That Plaintiff Mark Horton be awarded such other and further relief as this Court deems just and proper.

COUNT II
Negligence as Against Defendant MGM

99. Plaintiff incorporates Paragraphs 1 through 81 of this Complaint as if fully set forth herein.

100. Defendant MGM owed Plaintiff a duty to exercise reasonable care in conducting a background check.

101. Defendant MGM, individually and by and through its agents Jobplex and HireRight, breached its duty to Plaintiff in one or more of the following respects:

- (a) Carelessly and negligently sought to confirm his education with “Cathedral Catholic High School” when it knew, or should have known, that Plaintiff had never represented that he had attended “Cathedral Catholic High School;”
- (b) Carelessly and negligently sought to confirm a degree with “Cathedral Catholic High School” when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from “Cathedral Catholic High School;”
- (c) Carelessly and negligently sought to confirm a degree with California College of Health Sciences when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from California College of Health Sciences;
- (d) Carelessly and negligently failed to seek information regarding Plaintiff’s education from California College of Health Sciences from the appropriate source after being informed that California College of Health Sciences was permanently closed and that the information would have to be sought from an alternative source;
- (e) Carelessly and negligently failed to confirm his education and degree with Maryville when it knew, or should have known, that Plaintiff had represented that he had obtained a degree from Maryville;
- (f) Carelessly and negligently failed to monitor the efforts of Jobplex and/or HireRight to determine if they had properly and reasonably performed an accurate background check of Plaintiff’s educational background;

- (g) Carelessly and negligently failed to take action to investigate and remedy the failure of Jobplex and/or HireRight to properly and reasonably perform an accurate background check of Plaintiff's educational background after being informed by Plaintiff that he was able to do so;
- (h) Carelessly and negligently failed to take other reasonable action and efforts to confirm Plaintiff's educational background under circumstances that Defendant knew or should have known would result in harm to Plaintiff.

102. As a direct and proximate result of the negligence of the Defendant MGM and/or its agents, Plaintiff has suffered and will continue to suffer the loss of employment, including the loss of salary, wages, bonuses, benefits and other compensation, as well as humiliation, embarrassment, degradation, mental anguish, loss of reputation and standing in the community, and emotional and physical distress.

103. The acts and omissions of Defendant, MGM and its agents were knowing, willful and wanton, and were so outrageous, extreme, and in disregard of the interests of Plaintiff so as to entitle Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, Mark Horton, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Midwest Geriatric Management, LLC, on Count II as follows:

- (a) That a judgment be entered finding that Midwest Geriatric Management, LLC, was negligent and breached its duty to Plaintiff Mark Horton;
- (b) That Plaintiff Mark Horton be awarded all damages to which he is entitled under the law including, but not limited to, lost wages, benefits and compensation, including back-pay and front pay, loss of benefits and other compensation, past and future nonpecuniary losses

including pain and suffering, loss of enjoyment of life, damage to reputation and standing in the community, and humiliation, together with prejudgment interest, and such other relief as will make Plaintiff whole;

(c) That Plaintiff Mark Horton be awarded punitive damages; and

(d) That Plaintiff Mark Horton be awarded such other and further relief as this Court deems just and proper.

COUNT III
Negligence as Against Defendant Jobplex

104. Plaintiff incorporates Paragraphs 1 through 81 of this Complaint as if fully set forth herein.

105. Defendant Jobplex owed Plaintiff a duty to exercise reasonable care in conducting a background check.

106. Defendant Jobplex breached its duty to Plaintiff in one or more of the following respects:

(a) Carelessly and negligently sought to confirm his education with “Cathedral Catholic High School” when it knew, or should have known, that Plaintiff had never represented that he had attended “Cathedral Catholic High School;”

(b) Carelessly and negligently sought to confirm a degree with “Cathedral Catholic High School” when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from “Cathedral Catholic High School;”

(c) Carelessly and negligently sought to confirm a degree with California College of Health Sciences when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from California College of Health Sciences;

- (d) Carelessly and negligently failed to seek information regarding Plaintiff's education from California College of Health Sciences from the appropriate source after being informed that California College of Health Sciences was permanently closed and that the information would have to be sought from an alternative source;
- (e) Carelessly and negligently failed to confirm his education and degree with Maryville when it knew, or should have known, that Plaintiff had represented that he had obtained a degree from Maryville;
- (f) Carelessly and negligently communicated information to HireRight regarding Plaintiff's educational background;
- (g) Carelessly and negligently failed to monitor the efforts of its own staff and/or HireRight to determine if they had properly and reasonably performed an accurate background check of Plaintiff's educational background;
- (h) Carelessly and negligently failed to take action to investigate and remedy the failure of its own staff and/or HireRight to properly and reasonably perform an accurate background check of Plaintiff's educational background after being informed by Plaintiff that he was able to do so.
- (i) Carelessly and negligently communicated information to Defendant MGM regarding Plaintiff and the efforts to verify his educational background;
- (j) Carelessly and negligently failed to take other reasonable action and efforts to confirm Plaintiff's educational background under circumstances that Defendant knew or should have known would result in harm to Plaintiff.

107. As a direct and proximate result of the negligence of the Defendant Jobplex, Plaintiff has suffered and will continue to suffer the loss of employment, including the loss of salary, wages, bonuses, benefits and other compensation, as well as humiliation, embarrassment, degradation, mental anguish, loss of reputation and standing in the community, and emotional and physical distress.

108. The acts and omissions of Defendant Jobplex were knowing, willful and wanton, and were so outrageous, extreme, and in disregard of the interests of Plaintiff so as to entitle Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, Mark Horton, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Jobplex, Inc., on Count III as follows:

(a) That a judgment be entered finding that Jobplex, Inc., was negligent and breached its duty to Plaintiff Mark Horton;

(b) That Plaintiff Mark Horton be awarded all damages to which he is entitled under the law including, but not limited to, lost wages, benefits and compensation, including back-pay and front pay, loss of benefits and other compensation, past and future nonpecuniary losses including pain and suffering, loss of enjoyment of life, damage to reputation and standing in the community, and humiliation, together with prejudgment interest, and such other relief as will make Plaintiff whole;

(c) That Plaintiff Mark Horton be awarded punitive damages; and

(d) That Plaintiff Mark Horton be awarded such other and further relief as this Court deems just and proper.

COUNT IV
Negligence as Against Defendant HireRight

109. Plaintiff incorporates Paragraphs 1 through 81 of this Complaint as if fully set forth herein.

110. Defendant HireRight owed Plaintiff a duty to exercise reasonable care in conducting a background check.

111. Defendant HireRight breached its duty to Plaintiff in one or more of the following respects:

- (a) Carelessly and negligently sought to confirm his education with “Cathedral Catholic High School” when it knew, or should have known, that Plaintiff had never represented that he had attended “Cathedral Catholic High School;”
- (b) Carelessly and negligently sought to confirm a degree with “Cathedral Catholic High School” when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from “Cathedral Catholic High School;”
- (c) Carelessly and negligently sought to confirm a degree with California College of Health Sciences when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from California College of Health Sciences;
- (d) Carelessly and negligently failed to seek information regarding Plaintiff’s education from California College of Health Sciences from the appropriate source after being informed that California College of Health Sciences was permanently closed and that the information would have to be sought from an alternative source;

- (e) Carelessly and negligently failed to confirm his education and degree with Maryville when it knew, or should have known, that Plaintiff had represented that he had obtained a degree from Maryville;
- (f) Carelessly and negligently failed to monitor the efforts of its own staff to determine if they had properly and reasonably performed an accurate background check of Plaintiff's educational background;
- (g) Carelessly and negligently failed to take action to investigate and remedy the failure of its own staff to properly and reasonably perform an accurate background check of Plaintiff's educational background after being informed by Plaintiff that he was able to do so.
- (h) Carelessly and negligently communicated information to Jobplex and/or MGM regarding Plaintiff's educational background;
- (i) Carelessly and negligently failed to take other reasonable action and efforts to confirm Plaintiff's educational background under circumstances that Defendant knew or should have known would result in harm to Plaintiff.

112. As a direct and proximate result of the negligence of the Defendant HireRight, Plaintiff has suffered and will continue to suffer the loss of employment, including the loss of salary, wages, bonuses, benefits and other compensation, as well as humiliation, embarrassment, degradation, mental anguish, loss of reputation and standing in the community, and emotional and physical distress.

113. The acts and omissions of Defendant HireRight were knowing, willful and wanton, and were so outrageous, extreme, and in disregard of the interests of Plaintiff so as to entitle Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, Mark Horton, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant HireRight, LLC., on Count IV as follows:

(a) That a judgment be entered finding that HireRight, LLC, was negligent and breached its duty to Plaintiff Mark Horton;

(b) That Plaintiff Mark Horton be awarded all damages to which he is entitled under the law including, but not limited to, lost wages, benefits and compensation, including back-pay and front pay, loss of benefits and other compensation, past and future nonpecuniary losses including pain and suffering, loss of enjoyment of life, damage to reputation and standing in the community, and humiliation, together with prejudgment interest, and such other relief as will make Plaintiff whole;

(c) That Plaintiff Mark Horton be awarded punitive damages; and

(d) That Plaintiff Mark Horton be awarded such other and further relief as this Court deems just and proper.

COUNT V
Fraudulent Concealment as Against Defendant MGM

114. Plaintiff incorporates Paragraphs 1 through 81 of this Complaint as if fully set forth herein.

115. Defendant MGM failed to disclose to Plaintiff material information regarding its efforts to conduct a background check including, but not limited to, one or more of the following:

(a) That Defendant MGM and/or its agents had sought to confirm his education with “Cathedral Catholic High School;”

(b) That Defendant MGM and/or its agents had sought to confirm a degree with “Cathedral Catholic High School;”

- (c) That Defendant MGM and/or its agents had sought to confirm a degree with California College of Health Sciences;
- (d) That Defendant MGM and/or its agents had failed to seek information regarding Plaintiff's education from California College of Health Sciences from the appropriate source after being informed that California College of Health Sciences was permanently closed and that the information would have to be sought from an alternative source;
- (e) That Defendant MGM and/or its agents had failed to request confirmation of his education and degree from Maryville;
- (f) That Defendant Jobplex had made false, misleading and/or inaccurate statements to Faye Bienstock regarding Plaintiff and the efforts to verify his educational background;
- (g) That Defendant MGM and/or its agents had concealed other information regarding Plaintiff and the efforts to verify his educational background.

116. Instead of disclosing this material information, Faye Bienstock, on behalf of MGM, stated to Plaintiff: *“Mark – I regret to inform you that due to the incompleteness of the background check of supportive documentation- we have to withdraw our offer letter for employment at MGM. We wish you much luck in your future endeavors. Judah and Faye.”*

117. At the time that Faye Beinstock made this statement to Plaintiff, MGM, by and through its agents Jobplex and HireRight, had not undertaken efforts to complete Plaintiff's background check.

118. The information concealed by Defendant MGM was not within the fair and reasonable reach of Plaintiff.

119. Plaintiff was unable to discover the concealed information until after this lawsuit was filed and the information was obtained pursuant to subpoena and/or depositions and discovery.

120. Plaintiff exercised reasonable diligence in obtaining the concealed information.

121. Defendant MGM had a duty to disclose the information to Plaintiff and breached that duty.

122. As a direct and proximate result of the acts and omissions of the Defendant MGM and/or its agents, Plaintiff has suffered and will continue to suffer the loss of employment, including the loss of salary, wages, bonuses, benefits and other compensation, as well as humiliation, embarrassment, degradation, mental anguish, loss of reputation and standing in the community, and emotional and physical distress.

123. The acts and omissions of Defendant, MGM and its agents were knowing, willful and wanton, and were so outrageous, extreme, and in disregard of the interests of Plaintiff so as to entitle Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, Mark Horton, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Midwest Geriatric Management, LLC, on Count V as follows:

(a) That a judgment be entered finding that Midwest Geriatric Management, LLC, fraudulently concealed material information from Plaintiff Mark Horton;

(b) That Plaintiff Mark Horton be awarded all damages to which he is entitled under the law including, but not limited to, lost wages, benefits and compensation, including back-pay and front pay, loss of benefits and other compensation, past and future nonpecuniary losses including pain and suffering, loss of enjoyment of life, damage to reputation and standing in the

community, and humiliation, together with prejudgment interest, and such other relief as will make Plaintiff whole;

(c) That Plaintiff Mark Horton be awarded punitive damages; and

(d) That Plaintiff Mark Horton be awarded such other and further relief as this Court deems just and proper.

COUNT VI
Fraudulent Concealment as Against Defendant Jobplex

124. Plaintiff incorporates Paragraphs 1 through 81 of this Complaint as if fully set forth herein.

125. Defendant Jobplex failed to disclose to Plaintiff material information regarding its efforts to conduct a background check including, but not limited to, one or more of the following:

(a) That Defendant Jobplex and/or its agent had sought to confirm his education with “Cathedral Catholic High School;”

(b) That Defendant Jobplex and/or its agent had sought to confirm a degree with “Cathedral Catholic High School;”

(c) That Defendant Jobplex and/or its agent had sought to confirm a degree with California College of Health Sciences;

(d) That Defendant Jobplex and/or its agent had failed to seek information regarding Plaintiff’s education from California College of Health Sciences from the appropriate source after being informed that California College of Health Sciences was permanently closed and that the information would have to be sought from an alternative source;

- (e) That Defendant Jobplex and/or its agent had failed to request confirmation of his education and degree from Maryville;
- (f) That Defendant Jobplex had made false, misleading and/or inaccurate statements to Faye Bienstock regarding Plaintiff and the efforts to verify his educational background;
- (g) That Defendant Jobplex and/or its agent had concealed other information regarding Plaintiff and the efforts to verify his educational background.

126. Defendant Jobplex knew that, instead of disclosing this material information to Plaintiff, Faye Bienstock, on behalf of MGM, stated to Plaintiff: *“Mark – I regret to inform you that due to the incompleteness of the background check of supportive documentation- we have to withdraw our offer letter for employment at MGM. We wish you much luck in your future endeavors. Judah and Faye.”*

127. At the time that Faye Beinstock made this statement to Plaintiff, Jobplex and HireRight, had not undertaken efforts to complete Plaintiff’s background check.

128. The information concealed by Defendant Jobplex was not within the fair and reasonable reach of Plaintiff.

129. Plaintiff was unable to discover the concealed information until after this lawsuit was filed and the information was obtained pursuant to subpoena and/or depositions and discovery.

130. Plaintiff exercised reasonable diligence in obtaining the concealed information.

131. Defendant Jobplex had a duty to disclose the information to Plaintiff and breached that duty.

132. As a direct and proximate result of the acts and omissions of the Defendant Jobplex and/or its agents, Plaintiff has suffered and will continue to suffer the loss of employment, including the loss of salary, wages, bonuses, benefits and other compensation, as well as humiliation, embarrassment, degradation, mental anguish, loss of reputation and standing in the community, and emotional and physical distress.

133. The acts and omissions of Defendant, Jobplex and its agents were knowing, willful and wanton, and were so outrageous, extreme, and in disregard of the interests of Plaintiff so as to entitle Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, Mark Horton, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Joblex, Inc., on Count VI as follows:

(a) That a judgment be entered finding that Jobplex, Inc., fraudulently concealed material information from Plaintiff Mark Horton;

(b) That Plaintiff Mark Horton be awarded all damages to which he is entitled under the law including, but not limited to, lost wages, benefits and compensation, including back-pay and front pay, loss of benefits and other compensation, past and future nonpecuniary losses including pain and suffering, loss of enjoyment of life, damage to reputation and standing in the community, and humiliation, together with prejudgment interest, and such other relief as will make Plaintiff whole;

(c) That Plaintiff Mark Horton be awarded punitive damages; and

(d) That Plaintiff Mark Horton be awarded such other and further relief as this Court deems just and proper.

COUNT VII

Tortious Interference as Against Defendant Jobplex

134. Plaintiff incorporates Paragraphs 1 through 81 of this Complaint as if fully set forth herein.

135. Defendant Jobplex had actual knowledge of the written job offer and its terms and conditions between Defendant MGM and Plaintiff.

136. Defendant Jobplex had actual knowledge of Plaintiff's verbal and written acceptance of the written job offer between Defendant MGM and Plaintiff and its terms and conditions.

137. Defendant Jobplex, individually and by and through its agent HireRight, intentionally interfered with the written and accepted job offer between Defendant MGM by inducing or causing a breach of said contract or agreement in one or more of the following respects:

- (a) Seeking verification of Plaintiff's education from "Cathedral Catholic High School" when it knew, or should have known, that Plaintiff had never represented that he had attended "Cathedral Catholic High School;"
- (b) Seeking verification of a degree from "Cathedral Catholic High School" when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from "Cathedral Catholic High School;"
- (c) Intentionally concealing, falsely representing and/or failing to advise HireRight and/or MGM that Plaintiff did not obtain a degree from California College of Health Sciences when it knew, or should have known, that Plaintiff had never represented that he had obtained a degree from California College of Health Sciences;

- (d) Intentionally failing to seek information regarding Plaintiff's education from California College of Health Sciences after being informed that California College of Health Sciences was permanently closed and that the information would have to be sought from an alternative source;
- (e) Intentionally failing to take action to confirm Plaintiff's education and degree with Maryville when it knew that Plaintiff had represented that he had obtained a degree from Maryville;
- (f) Intentionally concealing and/or falsely representing information to HireRight regarding Plaintiff's educational background;
- (g) Intentionally concealing and/or falsely representing information MGM regarding Plaintiff, Plaintiff's educational background and the efforts to verify his educational background;
- (h) Intentionally undertaking such other acts and/or omissions which it knew would induce or cause a breach of the contract between Defendant MGM and Plaintiff.

138. Defendant Jobplex had no legitimate justification for its acts and omissions.

139. But for the acts and omissions of Defendant Jobplex, Plaintiff had a reasonable and valid expectation that he would satisfy the background check and work for Defendant MGM.

140. As a direct and proximate result of the acts and omissions of Defendant Jobplex, Plaintiff has suffered and will continue to suffer the loss of employment, including the loss of salary, wages, bonuses, benefits and other compensation, as well as humiliation, embarrassment, degradation, mental anguish, loss of reputation and standing in the community, and emotional and physical distress.

141. The acts and omissions of Defendant Jobplex were knowing, willful and wanton, and were so outrageous, extreme, and in disregard of the interests of Plaintiff so as to entitle Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff, Mark Horton, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Jobplex, Inc., on Count VII as follows:

(a) That a judgment be entered finding that Jobplex, Inc., tortiously interfered with the business expectancy between Defendant MGM and Plaintiff and induced or caused a breach of the written and accepted agreement;

(b) That Plaintiff Mark Horton be awarded all damages to which he is entitled under the law including, but not limited to, lost wages, benefits and compensation, including back-pay and front pay, loss of benefits and other compensation, past and future nonpecuniary losses including pain and suffering, loss of enjoyment of life, damage to reputation and standing in the community, and humiliation, together with prejudgment interest, and such other relief as will make Plaintiff whole;

(c) That Plaintiff Mark Horton be awarded punitive damages; and

(d) That Plaintiff Mark Horton be awarded such other and further relief as this Court deems just and proper.

CHARGE OF DISCRIMINATION

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

AGENCY

CHARGE NUMBER

FEPA
 EEOC

560-2017-00407

MISSOURI COMMISSION ON HUMAN RIGHTS

State or local Agency, if any

and EEOC

NAME (Indicate Mr., Ms., Mrs.)

HOME TELEPHONE (Include Area Code)

Mr. Mark Horton

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

8452 Foehrkolb Lane, Edwardsville, IL 62025

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

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

Midwest Geriatric Management, LLC

2,000+

(877) 215-4650

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

6 City Place Drive, St. Louis, MO 63141

St. Louis County

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

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

DATE DISCRIMINATION TOOK PLACE
EARLIEST (ADEA/EPA) LATEST (ALL)

RACE COLOR SEX RELIGION AGE
 RETALIATION NATIONAL ORIGIN DISABILITY OTHER (Specify) sexual orientation

Approx. May 20, 2016 - present

CONTINUING ACTION

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

I. I am a gay (homosexual) male and have been legally married to my male partner since November 29, 2014. I accepted a contract of employment with Midwest Geriatric Management, LLC, d/b/a/ MGM Healthcare ("MGM") as Vice President of Sales and Marketing. Immediately after informing ownership/upper management that I am in a gay relationship, my employment was terminated.

II. I was previously employed as Vice President of Sales & Marketing for Celtic Healthcare ("Celtic"). In February of 2016, while still employed by Celtic, I received an unsolicited e-mail from an executive search firm (Jobplex), which was retained by MGM to seek out a Vice President of Sales and Marketing. I never considered leaving my position with Celtic until I received this solicitation on behalf of MGM.

[Continued on the attached sheets]

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EEOC
ST LOUIS DISTRICT
DEC 13 AM 9

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 I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)
STATE OF FLORIDA PERSONALLY KNOWN
COUNTY OF LAKE
Cynthia G. Prevatt

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.

SIGNATURE OF COMPLAINANT

Mark Horton

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE

(Day, month, and year)

11/29/2016

11-29-2016

Mark Horton
Charging Party (

EXHIBIT



Charge of Discrimination
Mark Horton v. Midwest Geriatric Management, LLC

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EEOC
ST LOUISIS DISTRICT
2016 DEC 13 AM 8 27

As part of the application process, I interviewed with MGM's President and CEO, Judah Bienstock, and his wife, Faye Bienstock. On April 22, 2016, after successfully completing a detailed assessment and interview process, Judah and Faye Bienstock sent me a written job offer on behalf of MGM. The job offer was contingent upon a background check. The written job offer contained no time limit for the completion of the background check.

After I received the job offer, I was informed that Hire Rite, the company retained by MGM to perform the background check, was having difficulty obtaining my records from two colleges. I investigated the issue and determined that one college had been sold to another university and, therefore, the request for records needed to be made to the new entity. The other college did not have computerized records and, therefore, it would take additional time to locate and copy the records. I conveyed this information to Hire Rite, including the fact that it could take 4-6 weeks to obtain the requested information. Neither Hire Rite nor MGM voiced any concern over the delay.

On May 4, 2016, I signed the written job offer accepting the position as Vice President of Sales and Marketing with MGM. Even though the background check had not been completed, MGM congratulated me on my acceptance of the position. I gave notice to my former employer resigning my employment. Initially, I informed MGM that I would not be available to start work until May 31, 2016. However, on May 10, 2016, I sent an e-mail to Faye Bienstock advising her that my former employer had agreed to release me early so that I could "begin my new adventure" with MGM. That same date, Mrs. Bienstock responded in an e-mail by stating: "We are ready for you whenever works for you!" Thereafter, on May 12, 2016, Mrs. Bienstock sent me another e-mail, stating: "Let's just meet Monday 9:00 am to get everything started!"

On May 17, 2016, I sent an e-mail to Faye Bienstock in which I disclosed my relationship to my partner. Mrs. Bienstock responded to this e-mail on May 20, 2016, stating: "Are you able to come this afternoon? We would like to discuss the status of your employment." I replied that I was out of town at the time and was unable to come in that afternoon. On Sunday, May 22, 2016, I received an e-mail from Mrs. Bienstock stating that MGM had to "withdraw" its offer of employment. This was despite the fact that I had already accepted MGM's job offer in writing, and MGM had already acknowledged my acceptance.

In the May 22, 2016 e-mail, Mrs. Bienstock stated that the "withdrawal" of the offer of employment was "due to incompleteness of the background check." However, it is clear that this explanation was nothing more than a pre-text. MGM had previously been informed that it would take 4 - 6 weeks to obtain my college records and voiced no concern. Indeed, Faye Bienstock congratulated me on accepting the job offer knowing that it would take 4 - 6 weeks to obtain the records. When the offer was "withdrawn" on May 22, 2016, it was still nine (9) days prior to the date that I originally informed MGM that I would be starting.

After I received the May 22, 2016 e-mail, I obtained all of the requested college records myself without any problems. Upon learning that the position was still open, I informed MGM that I had obtained the records and that I wanted to move forward with the Vice President of Sales and Marketing position. Although the position was still open, Faye Bienstock responded that MGM was considering other candidates.

My status as a married gay male has no negative impact whatsoever on my ability to perform my job. I performed essentially the same job with my former employer with no negative consequences.

III. I was discriminated against on the basis of sex, sexual orientation, and religion in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended by the Civil Rights Act of 1991.

MGM terminated my employment after I accepted their job offer in writing because Judah and Faye Bienstock learned that I am gay and married to a male partner. Under Title VII, it is unlawful for a covered employer such as MGM to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion [or] sex." 42 U.S.C. 2000e-2(a)(1). Discrimination based on sexual orientation is necessarily discrimination based on sex. *Baldwin v. Foxx*, EEOC DOC 0120133080, 2015 WL 4397641 (July 16, 2015). Claims of discrimination based on sexual orientation implicitly state a claim of sex discrimination under Title VII. 2015 WL 4397641, at *10. ("[S]exual orientation is inherently a 'sex-based consideration,' and an allegation of

discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII. . . Sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex") *Id.* at *5. The EEOC's decision in *Baldwin* comes on the heels of the Supreme Court's landmark decision in *Obergefell v. Hodges*, 135 S. Ct. 2584, 2608 (2015), granting same-sex couples like me the right to marry under the Fourteenth Amendment.

MGM also discriminated against me on the basis of my sex because it treated me differently for associating with a person of a certain sex (the same sex as me). The fact that I am a man who is married to a man, instead of a man married to a woman, motivated MGM's discrimination and its decision to terminate my employment after I accepted their written job offer. *See, e.g., Holcomb v. Iona Coll.*, 521 F.3d 130, 138 (2d Cir. 2008) ("[A]n employer may violate Title VII if it takes action against an employee because of the employee's association with a person of another race."). *See also Price Waterhouse*, 490 U.S. at 243 n. 9 (Title VII treats each protected category equally – race, color, religion, sex, and national origin).

MGM further discriminated against me on the basis of gender stereotypes. *See Price Waterhouse*, 490 U.S. at 251 (Title VII "strike[s] at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.") I am a gay male whose sexual orientation is not consistent with MGM's perception of acceptable gender roles, and my orientation as being gay removes me from MGM's preconceived definition of "male." My inconsistency with MGM's perceptions of acceptable gender roles and preconceived definitions of "male" motivated its discrimination against me and caused MGM to terminate my employment after I had accepted their written job offer. *See Terveer v. Billington*, 34 F. Supp. 3d 100, 116 (D.D.C. 2014) (motion to dismiss Title VII claim denied where homosexual male alleged that because he was gay, he did not conform with male sex stereotypes, and was denied promotions for that reason).

In addition to discrimination on the basis of sex, MGM also discriminated against me because I failed to live up to MGM's religious expectations. *See Venters v. City of Delphi*, 123 F.3d 956, 972 (7th Cir. 1997) (A Title VII claim for religious discrimination is stated when plaintiff's perceived religious shortcomings played a motivating role in adverse employment decision). Because I am gay, my status as such does not conform to the religious beliefs or expectations of MGM's principals and/or management. After learning of my nonconforming status, MGM terminate my employment after I had accepted their written job offer because I do not share or follow their same religious beliefs. *See Terveer*, 34 F. Supp. 3d at 117-18 (Title VII claim for religious discrimination stated when homosexual male alleged that his status as such did not conform to his employer's religious belief and he was targeted for that reason).

For all of the above reasons, I believe that the actions by MGM were in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended by the Civil Rights Act of 1991.

RECEIVED
EEOC
ST LOUIS DISTRICT
2016 DEC 13 AM 9:27

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Mark Horton**
8452 Foehrkolb Ln
Edwardsville, IL 62025

From: **St. Louis District Office**
1222 Spruce Street
Room 8.100
Saint Louis, MO 63103

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
560-2017-00407	Patrick E. Hollis, Investigator	(314) 539-7905

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



**James R. Neely, Jr.,
Director**

AUG 23 2017

Enclosures(s)

(Date Mailed)

CC: **Michael Winter, Manager**
MIDWEST GERIATRIC MANAGEMENT, LLC
477 N. Lindbergh Blvd
Creve Coeur, MO 63141

Philip MacKey, Esq.
LEWIS RICE, LLC
600 Washington Avenue
Saint Louis, MO 63101

* **Mark S. Schuver**
MATHIS MARIFIAN & RICHTER, LTD.
23 Public Square, Ste. 300
PO Box 307
Belleville, IL 62222



JA-021



April 21, 2016

Mark Horton

Dear Mark:

We are pleased to offer you the position of VP of Sales and Marketing at MGM Healthcare. This letter confirms an offer of employment with MGM Healthcare.

Your initial salary for this position will be \$150,000 upon hire.

Upon successful completion of approved 90 day plan, annual salary will be increased to \$165,000.

This offer is also contingent upon successful completion of background checks and references.

In addition, you are eligible for the following:

- PTO accrual based on Handbook
- Paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day
- Medical, Dental, Vision, and Life are available for purchase
- Up to \$40/month cell phone reimbursement
- Expenses will be reimbursed per travel policy

We look forward to developing our relationship with you and hope you view this opportunity as a chance to have a long term positive impact on our business. Nonetheless, please understand that MGM Healthcare is an at-will employer. That means that either you or MGM are free to end the employment relationship at any time, with or without notice or cause.

We are excited about the opportunity to work with you in this capacity and welcome you to the MGM Team. If you have any questions, please feel free to contact me at 314 631-3000. Please acknowledge your acceptance of this position by signing below and returning.

Sincerely,

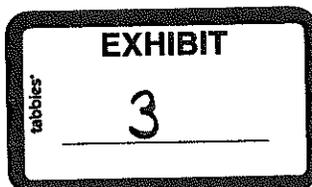
Judah and Faye Bienstock

ACCEPTED: _____

(Mark Horton)

DATE: _____

5/4/2016



JA-022

