

COMPLAINT

Plaintiff, Carlos Camacho ("Camacho," "Plaintiff Camacho," or "Plaintiff"), through counsel, sues Defendants, Chattanooga Neighborhood Enterprise ("CNE" or "Defendant CNE") and Martina Guilfoil ("Guilfoil" or "Defendant Guilfoil") and for his causes of action would show:

Introduction:

- 1. This is an action for money damages brought pursuant to 42 U.S.C. §§
 1981, 1983 and 1988 to redress the deprivation of rights secured to Camacho by the First, and Fourteenth Amendments to the United States Constitution, and for violations of the common laws and the statutory laws of the State of Tennessee by the defendants.
- 2. Camacho avers that Guilfoil, acted as an agent of CNE and was at all times relevant to this matter acting under color of law and under color of her office with CNE.

- 3. Camacho maintains that Guilfoil committed these violations, further set forth herein, as a result of policies, customs, practices, and/or procedures of CNE.
- 4. In addition, Camacho avers that Guilfoil's acts and omissions subjected Camacho to mental anguish, emotional distress, and loss of income and slander to his reputation.
- 5. At all times during the events herein described Guilfoil and CNE were engaged in a joint venture and assisted each other in performing the various acts described herein and lent their support to one another in performing their various actions as described and lent the authority of their respective offices and power to each other during the said events.
- 6. As an additional theory of claim, Camacho avers that Guilfoil acted as an agent for CNE, and her acts and omissions were committed during her function as an agent for CNE, and thus CNE is liable to Camacho pursuant to respondent superior.

Jurisdiction and Venue:

- 7. This is an action to redress the deprivation of rights secured to Camacho by the First and Fourteenth Amendments of the United States Constitution and for violations of Tennessee common law and statutory law. Thus, as to the § 1983 claims, this Court is vested with original jurisdiction pursuant to the authority stated in Haywood v. Drown, 556 U.S. 729 (2009) and Poling v. Goins, 713 S.W.2d 305, 306 (Tenn. 1986). This Court is vested with original jurisdiction over Camacho's state claims pursuant to TENN. CODE ANN. § 16-10-101, et seq.
- 8. Venue is proper in this Court pursuant to Tenn. Code Ann. § 20-4-102, for acts averred herein happened within Hamilton County.

- a. Camacho is a resident of Hamilton County, Tennessee.
- To the best of Camacho's knowledge Guilfoil is a resident of Hamilton County, Tennessee.
- c. CNE is a corporation authorized to do business in Tennessee with its primary place of business listed with the Tennessee Secretary of State as 1500 Chestnut Street, Suite 102, Chattanooga, Hamilton County, Tennessee.
- d. CNE is a quasi-governmental actor, and as more fully set forth herein, performs public governmental functions in concert with the City of Chattanooga ("City").
- e. Guilfoil is listed with the Tennessee Secretary of State as the registered agent for CNE.

Factual Basis:

- 9. At all times relevant to this Complaint, Guilfoil was employed by CNE as the President and Chief Executive Officer of CNE.
- 10. CNE is an employer subject to the provisions of the Tennessee Human Rights Act, TENN. CODE ANN. § 4-21-101 et seq.
- 11. CNE is an employer in engaging in the industry affecting commerce and employs more than 8 employees.
- 12. CNE was created by former Chattanooga City Mayor and now US Senator Bob Corker to promote affordable housing for low income citizens.
 - a. CNE acted in concert with the City, a political sub-division of the State of Tennessee, to manage money sent to the City of

Chattanooga ("City") by the federal government through the

Department of Housing and Urban Development ("HUD") as loans
to persons needing affordable housing and/or to improve their
current housing.

- b. CNE performed a public function as a manager of how money sent to the City by the federal government through HUD is loaned to persons needing affordable housing and/or to improve their current housing.
- 13. Camacho is a 45 year old male and at all times relevant to this cause of action, was an employee of CNE.
- 14. Camacho started working for CNE as the Chief Financial Officer ("CFO") on January 26, 2011.
 - a. CNE initially hired Camacho after external auditors notified CNE that in order for the then on-going external audit to continue, CNE needed someone with Camacho's credentials to manage the accounting and finance departments of CNE and to assist in the ongoing external audit.
 - b. His last position held with CNE was CFO.
 - c. Camacho had a propriety interest in employment with CNE as
 explained to him by Rick Ebersol (a former CNE officer and Board
 of Directors member). Specifically, Ebersol notified Camacho that
 he had a right to contest the termination to the Board of Directors,
 but Camacho learned of this only after he was fired.

- 15. Camacho was qualified to be a Chief Financial Officer for CNE.
 - a. Camacho holds two masters degrees on in Business

 Administration, the other in Accountancy.
 - Camacho is a certified public accountant licensed in the states of
 Tennessee and Georgia.
- 16. Camacho performed his duties in a satisfactory manner.
- 17. Camacho's initial supervisor was CEO David Johnson ("Johnson") at the time CNE first hired Camacho. Guilfoil replaced interim CEO Rick Ebersole ("Ebersole"), and Guilfoil became Camacho's supervisor. Johnson, Ebersole, and Guilfoil Both had supervisory authority over Camacho.
- 18. Throughout her employment, Guilfoil made offensive, racially insulting and insensitive remarks, as well as sexually suggestive comments to and around Camacho.
- 19. Guilfoil also treated Camacho differently from other employees based upon his race, ethnicity and national origin. Camacho is Hispanic and he is originally from the country of Bolivia.
- 20. These and other problems for Camacho began when CNE hired Guilfoil as the new CEO. Guilfoil was white and would continually insult non-white employees, including Camacho, and would mock Comacho's Hispanic accent and language. Guilfoil made constant insinuations that non-white employees, such as Camacho, were inferior to her.
- 21. The annual Christmas party for CNE in 2014 was held at a bowling alley in Chattanooga, called Pin Strikes.

- a. During the party, CNE employees took part in different activities.
- b. One activity was a laser tag competition.
- c. Camacho was paired with two African American CNE employees.
- d. Camacho and his teammates won the competition.
- e. Guilfoil said to Camacho at a following office meeting that his team won the competition only "because everyone on your team is dark and we could not see you."
- 22. The harassment from Guilfoil was continuous, and she would constantly mock Camacho's accent and would mimic it in an insulting manner in the workplace.
 - a. Guilfoil also told Camacho she wanted to review his correspondences "since English was not [his] first language."
- 23. Guilfoil constantly made crude racial jokes, once telling an African American employee, in front of Camacho and during a meeting when compensation was being discussed, that the African American employee should change her name to "Chloe" so that she could ask for a pay raise because that name, "sounded white."
- 24. Guilfoil made constant and pervasive comparison between whites and non-whites and she would constantly make such comments in front of Camacho to suggest her perception of her own racial superiority.
- 25. Guilfoil also made Camacho uncomfortable with her sexual tone and jokes.
 - a. During a meeting shortly after CNE hired Guilfoil she tried to dance provocatively with Camacho and when he refused, she said he was not, "man enough" for her.

- Guilfoil drank heavily at office events and her sexual banter would escalate.
- 26. The harassment continued until the time Camacho was terminated.
- 27. Camacho also began raising his concerns to senior CNE employees and the CNE Board of Directors about the failure of Guilfoil's accounting practices.
 - a. Prior to CNE's employment of Guilfoil, part of Camacho's duties was to oversee the Loan Servicing Department of CNE, which included overseeing the integrity of the loans made by CNE with federal funds from the City.
 - b. Within about 30 days of CNE's employment of Guilfoil, Guilfoil removed Camacho from the duties as stated in ¶ 27a.
- 28. Camacho found that under Guilfoil's direction, CNE was giving false figures to the City to make the accounts appear reconciled when, in fact, they were not, and that under Guilfoil's direction, CNE was utterly failing to reconcile accounts and was co-mingling funds and paying expenses from the wrong accounts, in violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601, et. seq.
 - a. The City receives federal funds from HUD as loans to persons needing affordable housing and/or to improve their current housing.
 - b. CNE had a duty to the City to properly manage and account for the funds the City received from HUD.

- 29. Plaintiff Camacho made numerous requests for meetings with Ken Gross (then Director of Lending for CNE, hereinafter, "Gross") and Guilfoil to discuss reconciliation of the accounts and was ignored or rebuffed by Gross and Guilfoil.
 - a. The reconciliation of the accounts is a report to the City that the federal funds the City obtained from HUD were being properly managed.
 - b. Had Camacho been successful in the reconciliation of the accounts, the City would have been fully alerted to the fact that Guilfoil and CNE were grossly mismanaging the accounts.
- 30. Camacho sent to Gross and Guilfoil emails concerning reconciliation that reflected Camacho's desire to properly reconcile the accounts, and report the reconciliation to the City on at least sixteen occasions between January of 2015 and the time of his termination, and Camacho documented these emails as delivered on:
 - January 22, 2015
 - April 20, 2015
 - April 21, 2015
 - April 23, 2015
 - April 24, 2015 (2)
 - May 6, 2015
 - May 15, 2015
 - May 20, 2015
 - May 21, 2015
 - June 2, 2015 (2)

- June 4, 2015
- June 9, 2015
- June 17, 2015
- June 22, 2015
- 31. On May 7, 2015, CNE held a meeting of a Portfolio Review Committee ("Committee"), Guilfoil, Gross, and Divyesh Modi (a loan serving manager for CNE).
 - a. The Committee was set up by the CNE Board of Directors as an initial result of Camacho's initial reports of mismanagement of the Loan Servicing Department by Gross and Guilfoil.
 - b. The Committee included Peter Murphy, Frank Hughes, and Jerry

 Lee. Peter Murphy and Frank Hughes were members of the CNE

 Board of Directors, and the CNE Board appointed Jerry Lee to sit
 on the Committee.
 - c. Camacho reported to the Committee the mismanagement of the loans.
 - d. Upon the report, Frank Hughes turned to Guilfoil and told her a
 CEO could lose her job because of the mismanagement of the loans.
- 32. Subsequent to the June 22, 2015 email, Guilfoil and then Human Resource Manager Lisa Fields ("Fields") terminated Camacho's employment on July 6, 2015, under the pretext of "lack of work."
 - a. Neither CNE nor Guilfoil provided Camacho with a pre/posttermination hearing, or any other manner or ability to have the

- reasons for his termination addressed by the CNE Board of Directors.
- b. Rather, Guilfoil offered Camacho a severance of \$20,000.00, but Camacho did not accept the severance.
- c. As noted in this Complaint, Camacho had a propriety interest in employment with CNE as explained to him by Rick Ebersole (a former CEO and Board or Directors member) and that Camacho had a right to contest the termination to the Board of Directors, but Camacho learned of this only after he was fired.
- 33. The stated reason for termination is wholly without merit as this large non-profit employing dozens of employees and managing *millions of dollars* needs a Chief Financial Officer and certified public accountant.
 - 34. Since Camacho's termination, CNE hired another certified public account.
- 35. Guilfoil's harassment of Camacho was continuous and on-going, and the last episode occurred less than one year before the filing of the instant suit.
 - a. CNE's termination of Camacho was due to the culmination of the discrimination based upon his ethnicity, race and national origin, and hostile work environment. This termination also was due to retaliation, based upon his report of the illegality of the accounting practices under Guilfoil, his attempts to fully address the illegality to the CNE Board of Directors, and his plans to report the misconduct of Guilfoil and CNE to the City.

- 36. CNE has a past history of scandals, to include financial scandals, prior to the hiring of former Chief Executive Officer David Johnson who was to "clean up" CNE.
- 37. However, CNE hired Guilfoil as David Johnson and Rick Ebersole's successor with the full knowledge that Guilfoil had the propensity for misconduct.
- 38. CNE knew at the time Guilfoil interviewed with CNE for the Chief Executive Officer position that Guilfoil resigned in 2010 as a CEO from a former employer, Rainier Valley Community Development Fund, while under investigation for professional misconduct.
- 39. Despite this full knowledge by CNE, CNE Board member Steve Johnson disregarded Guilfoil's past misconduct and (as reported by the Times-Free Press) dismissed it as, "merely a joke that got out of hand."
 - a. The "joke" was a document drafted by Guilfoil to one Seattle resident Jessie Jones who had applied for a loan for her hair salon.
 - b. In the document (according to Seattle TV station KIRO 7 and the Times – Free Press), Guilfoil wrote: "I want to tell you that you are one crazy-ass bitch. It was a complete waste of time for you to come before the board, though it did provide us with some comic relief."
- 40. Only after Guilfoil and CNE terminated Camacho was Camacho able to meet with City officials to report to them the misconduct that Camacho could have reported by way of reconciliation as stated in the prior paragraphs of this Complaint and by direct and full disclosure to the Board of Directors of CNE.

Causes of Action:

Count One: Violation of Civil Rights Under Color of Law – First Amendment

- 41. Under the First Amendment of the United States Constitution, Camacho had an absolute right to express his concerns of the gross mismanagement of public taxpayer funds to the City and to the Board of Directors of CNE.
- 42. The acts of Guilfoil constituted retaliation discharge and an attempt to silence Camacho, and discredit him in order to prevent the City from learning of the gross mismanagement of public taxpayer funds.
- 43. Guilfoil's actions deprived Camacho, without Due Process of Law, of his right to exercise free speech by a report of misconduct to the City and the Board of Directors for CNE. Camacho sues Guilfoil in her official capacity and her individual capacity.
- 44. CNE's prior history of misconduct, and the Board of Director's employment of Guilfoil despite the full knowledge of her propensity to misconduct was a deliberate indifference to the rights of Camacho and had the force of official policy of CNE.
 - a. To have hired Guilfoil, and then ignore Camacho's attempts to report the gross mismanagement of public taxpayer funds by allowing Guilfoil to continue in her powerful role and employment was a direct and proximate cause of Camacho's damages, and constituted CNE condoning Guilfoil's misconduct.

- b. The Board of Directors is the highest policy making level of CNE,
 and its deliberate indifference and continued employment of
 Guilfoil constitutes a custom that carries the force of official policy
 of CNE.
- 45. In the alternative, Guilfoil, the President of CNE acted as the policy maker of CNE, and her active and direct participation in the events outlined in this Complaint constituted the direct participation of CNE in the violations set forth herein.
- 46. Camacho sues CNE in its governmental capacity and Guilfoil in her individual and official capacities.

Count Two: Violation of Civil Rights Under Color of Law – Denial of Procedural Due Process

- 47. Camacho had a proprietary interest in his employment with CNE.
- 48. CNE had a mechanism for a post-deprivation hearing to challenge the termination, but that was never explained to Camacho by Guilfoil.
- 49. CNE failed to set forth any official notice of any post-deprivation hearing or make it known to Camacho, and this constituted deliberate indifference of CNE.
- 50. The acts of Guilfoil constituted deceit in her refusal to notify Camacho of his ability to seek recourse of her actions with the Board of Directors, and her attempt to pay Camacho \$20,000.00 constituted her attempt to have Camacho simply take the money and go away.
- 51. The acts claimed herein by the defendants violated Camacho's right to Procedural Due Process to challenge the termination to the Board of Directors.

52. Camacho sues Guilfoil in her individual and official capacities and CNE in its governmental capacity.

Count Three: Violation of Civil Rights Under Color of Law – Denial of Equal Protection

- 53. Camacho had a right to be free from discrimination in employment as set forth in Title VII of the Civil Rights Act and 42 U.S.C. § 1981.
- 54. The acts averred herein reveal a discriminatory intent of the defendants to deprive Camacho of his employment with CNE without the Due Process of Law.
- 55. Camacho sues Guilfoil in her individual and official capacities and CNE in its governmental capacity.

Count Four: Violation of Tennessee Human Rights Act – Discrimination

- 56. CNE, by and through its agents and employees, had knowledge of the disparate treatment and hostile work environment inflicted upon Camacho and failed to take prompt effective remedial action. Thus, the discrimination and harassment continued. Camacho therefore sues CNE for harassment and disparate treatment.
- 57. CNE's conduct also constitutes discrimination against Camacho effecting a term condition or privilege of employment because of his race, ethnicity, national origin, and sex, in violation of TENN. CODE ANN. § 4-21-101, et seq.
- 58. CNE is responsible for the discriminatory actions and harassment of its agents and employees under the doctrine of respondent superior and under agency principles because of their supervisory positions and because they knew or should have known of their actions and failed to take prompt effective and complete remedial action.

By this failure, CNE acquiesced in, approved and ratified the actions of its supervisory employees as set forth herein.

- 59. As a result of CNE's actions, Camacho sues for discrimination.
- 60. As a result of the aforesaid, CNE violated the provisions of the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-101, et seq.
- 61. As a result of CNE's illegal actions, Camacho lost tangible job benefits including a loss of income and benefits, both past and future, and he has suffered and will continue to suffer emotional distress and pain and suffering, and other non-pecuniary losses as a direct result of CNE's discriminatory actions.
- 62. The actions of CNE as set forth herein, were intentional or with reckless indifference to Camacho's protected rights such as to justify the imposition of substantial punitive damages.
- 63. Guilfoil is liable as an aider and abettor pursuant to TENN. CODE ANN. § 4-21-301 (2).
 - 64. Camacho sues CNE in its corporate and governmental capacities.

Count Five: Negligent Hiring

- 65. CNE knew of Guilfoil's history of misconduct and discriminatory behavior yet hired her to occupy a position of power over Camacho, which allowed Guilfoil to commits the torts and acts as set forth in this Complaint.
- 66. As a direct and proximate result of CNE's illegal actions, Camacho lost tangible job benefits including a loss of income and benefits, both past and future, and he has suffered and will continue to suffer emotional distress and pain and suffering, and other non-pecuniary losses as a direct result of CNE's negligent hiring.

- 67. The actions CNE as set forth herein, were intentional or with reckless indifference to Camacho's protected rights such as to justify the imposition of substantial punitive damages.
 - 68. Camacho sues CNE in its corporate and governmental capacities.

Count Six:

Negligent Retention

- 69. Due to its conduct, CNE is liable to Camacho for the wrongful retention of Guilfoil.
- 70. Although CNE was aware of Guilfoil's behavior as reported by Camacho, CNE failed to take any corrective or disciplinary action against Guilfoil, which emboldened Guilfoil and allowed her to feel that she could continue her discrimination and harassment of Camacho with impunity.
- 71. As a direct and proximate result of CNE's illegal actions, Camacho lost tangible job benefits including a loss of income and benefits, both past and future, and he has suffered and will continue to suffer emotional distress and pain and suffering, and other non-pecuniary losses as a direct result of CNE's discriminatory actions.
- 72. In addition, the acts and negligence of CNE as set forth herein, were intentional or with reckless indifference to Camacho's protected rights such as to justify the imposition of substantial punitive damages.
 - 73. Camacho sues CNE in its corporate and governmental capacities.

Count Seven:

Violation of Tennessee

Human Rights Act - Malicious Harassment

74. CNE, by and through its agents and employees, had knowledge of the harassment and retaliation inflicted upon Camacho by Guilfoil and failed to take prompt

effective remedial action. Thus, the harassment and retaliation continued and Camacho therefore sues CNE and Guilfoil for malicious harassment pursuant to Tenn. Code Ann. § 4-21-207.

- 75. CNE is responsible for the malicious harassment of its employees under the doctrine of respondent superior and under agency principles and the termination of Camacho's employment was known to the Board of Directors and conducted by the President of its corporation: Guilfoil. CNE failed to take prompt effective and complete remedial action. By this failure, CNE acquiesced in, approved and ratified the actions of its supervisory employees as averred herein.
- 76. As a result of CNE and Guilfoil's illegal actions, Camacho lost tangible job benefits including a loss of income and benefits, both past and future, and he has suffered and will continue to suffer emotional distress and pain and suffering, and other non-pecuniary losses as a direct result of CNE and Guilfoil's malicious actions.
- 77. The actions of CNE and Guilfoil as set forth herein, were intentional or with reckless indifference to Camacho's protected rights such as to justify the imposition of substantial punitive damages.
- 78. Camacho sues CNE in its corporate and governmental capacities and Guilfoil in her official and individual capacities.

Count Eight: Violation of Tennessee Whistle Blower's Act – Tenn. Code Ann. § 50-1-304

- 79. Camacho brings this claim in his capacity as an employee of CNE.
- 80. CNE discharged Camacho in retaliation for his refusal to participate in false accounting practices and his complaints about and refusal to stay silent about illegal activities.
- 81. At the time of his termination, Camacho was an employee of CNE and was terminated based upon his refusal to participate in or remain silent about illegal activities. There is a causal relationship between his refusal and his termination.
- 82. As a result of CNE's conduct, Camacho has lost tangible job benefits including the loss of income and benefits, both past and future, and he has suffered and will continue to suffer irreparable injury, emotional distress, pain and suffering and other non-pecuniary losses as a direct result of CNE's illegal actions.
- and agency principles for the conduct of its supervisory employees involved in this matter and to whom Camacho tried to report the misconduct averred in this Complaint.

 CNE acquiesced, approved and ratified the actions of its supervisory employees as set forth herein by CNE's failure to fully and completely act upon Camacho's reports.
- 84. As a result of CNE's conduct, Camacho has lost tangible job benefits including the loss of income and benefits, both past and future, and he has suffered and will continue to suffer irreparable injury, emotional distress, pain and suffering and other non-pecuniary losses as a direct result of CNE's illegal actions.

85. The actions of CNE, as set forth herein, were intentional or with reckless disregard to Camacho's protected rights such as to justify the imposition of substantial punitive damages.

WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:

- A. That Camacho have proper process to compel CNE and Guilfoil to appear and answer by service of copy of the summons and complaint in this cause but their oath to said answer is waived.
- B. That an injunction be issued prohibiting the aforesaid practices in the future.
 - C. That Camacho be awarded attorney fees to prosecute this action.
- D. That Camacho be awarded damages for his lost time of work both backward and forward since reinstatement would place Camacho in a hostile environment.
- E. That Camacho be awarded punitive or exemplary damages to deter defendants from repeating this wrong doing and trespass.
- F. That Camacho be awarded discretionary costs for bringing this action together with prejudgment interest.
- G. That Camacho be allowed an election of remedies after bifurcation of his trial.
 - H. That Camacho have a jury to try to issues when joining.
- I. That Camacho be awarded the amount of \$5,000,000.00, which is inclusive of the various damages outlined above.

J. That Camacho have such other and further general relief to which he is entitled into which this Court's finds suitable, equitable and proper.

Respectfully submitted,

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