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FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO
Case No. D-0101-CV-2003-01120

ENTERED
First Judicial District Court

JUN 24 2003

Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2258
Santa Fe, NM 87504-0258

LOUISE WISE,
Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY
and JOHN DOE, Personal Representative
of the Estate of TODD AAKHUS, deceased,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO HUMAN RIGHTS ACT,
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS,
PRIMA FACIE TORT, PUNITIVE DAMAGES, AND ATTORNEY'S FEES**

PLAINTIFF, LOUISE WISE, by and through her counsel of record, the Law Offices of Daniel J. O'Friel, Ltd., Pierre Levy, Esquire, brings her Complaint for Violations of the New Mexico Human Rights Act, N.M.S.A. 1978, § 28-1-1 (2000), Intentional Inflection of Emotional Distress, Prima Facie Tort, Punitive Damages, and attorney's fees, and comes forth and states:

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff, LOUISE WISE, at all times material to the allegations of the Complaint was and is a resident of the County of Bernalillo, State of New Mexico.

2. Defendant, ALLSTATE INSURANCE COMPANY, at all times material to the

allegations of the Complaint was and is a corporation foreign to the State of New Mexico, but licensed to do business in the state.

3. Defendant, ALLSTATE INSURANCE COMPANY, at all times material to the allegations of the Complaint did and does maintain offices in Albuquerque, County of Bernalillo, State of New Mexico, and did and does business in the County of Santa Fe, State of New Mexico.

4. Defendant JOHN DOE is named pursuant to *Macias v. Jaramillo*, 2000-NMCA-086, 129 N.M. 578 (Ct. App. 2000) as the personal representative of TODD AAKHUS, deceased. Plaintiffs expect that a legal entity, the personal representative of the estate of TODD AAKHUS, will shortly be identified or lawfully come into existence to act for decedent's estate and to answer for the tortious actions of decedent TODD AAKHUS.

5. Defendant JOHN DOE's decedent, TODD AAKHUS, at all times material to the allegations of the Complaint was a resident of the County of Bernalillo, State of New Mexico.

6. Defendant JOHN DOE's decedent, TODD AAKHUS, at all times material to the allegations of the Complaint was Defendant, ALLSTATE INSURANCE COMPANY's highest ranking employee in Defendant, ALLSTATE INSURANCE COMPANY's Albuquerque litigation office.

7. At all times material to the allegations of the Complaint, Defendant JOHN DOE's decedent, TODD AAKHUS was the attorney in charge of Defendant, ALLSTATE INSURANCE COMPANY's Albuquerque, New Mexico litigation office.

8. As Defendant ALLSTATE INSURANCE COMPANY's employee, Defendant JOHN DOE's decedent, TODD AAKHUS, at all times material to the allegations of the

Complaint did business in the County of Santa Fe, State of New Mexico.

9. At all times material to the allegations of the Complaint Plaintiff LOUISE WISE was and currently is an employee of Defendant, ALLSTATE INSURANCE COMPANY in the Albuquerque, New Mexico office.

10. At all times material to the allegations of the Complaint, Defendant JOHN DOE's decedent, TODD AAKHUS, was Plaintiff's, LOUISE WISE, supervisor in the Albuquerque, New Mexico litigation office.

11. Shortly after Defendant JOHN DOE's decedent, TODD AAKHUS, became Defendant ALLSTATE INSURANCE COMPANY's employee, in October, 1998, Defendant, TODD AAKHUS began a pattern and practice of conduct that included sexual comments, sexual banter, and other conduct that discriminated against Plaintiff, LOUISE WISE, because of her sex and national origin.

12. Beginning in October, 1998, Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS discriminated against Plaintiff, LOUISE WISE because of her sex, in violation of the New Mexico Human Rights Act, N.M.S.A. 1978, § 28-1-1 (2000).

13. Beginning in October, 1998, Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS discriminated against Plaintiff, LOUISE WISE because of her national origin, in violation of the New Mexico Human Rights Act, N.M.S.A. 1978, § 28-1-1 (2000).

14. Beginning in October, 1998, Defendant JOHN DOE's decedent TODD AAKHUS and Defendant, ALLSTATE INSURANCE COMPANY, acting through its other employees, some of whom were regional supervisors and some of whom were from the corporate

headquarters, aided and abetted unlawful discriminatory practices directed against Plaintiff, LOUISE WISE.

15. When Plaintiff, LOUISE WISE complained about Defendants' conduct to Defendant JOHN DOE's decedent TODD AAKHUS and others within Defendant ALLSTATE INSURANCE COMPANY's corporate organization, Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS engaged in threats, reprisals, retaliation and discrimination against Plaintiff because she had opposed and continued to oppose discriminatory practices.

16. As a result of the discrimination and retaliation by Defendant JOHN DOE's decedent TODD AAKHUS and Defendant ALLSTATE INSURANCE COMPANY, Plaintiff, LOUISE WISE filed a charge of discrimination against Defendant ALLSTATE INSURANCE COMPANY and against TODD AAKHUS, prior to his death, with the New Mexico Department of Labor, Human Rights Division. The charge was cross-filed with the United States Equal Employment Opportunity Commission.

17. On April 28, 2003, the New Mexico Human Rights Division issued a Determination of Probable Cause to Plaintiff, LOUISE WISE.

18. On June 10, 2003, the Human Rights Division issued a Notice of Waiver of Hearing to Plaintiff, LOUISE WISE.

19. On June 18, 2003, Plaintiff, LOUISE WISE timely filed a Notice of Appeal to this Court, pursuant to N.M.S.A. 1978, § 28-1-13 (2000), requesting a trial *de novo*.

20. Plaintiff, LOUISE WISE has exhausted all her administrative remedies, so that this action is proper in this Court.

21. The Court has jurisdiction over the subject matter and the parties.

COUNT I
VIOLATIONS OF THE NEW MEXICO HUMAN RIGHTS ACT

22. Plaintiff, LOUISE WISE incorporates the foregoing allegations of the Complaint as if fully set forth below, and for her first cause of action against Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE, for violations of the New Mexico Human Rights Act, N.M.S.A. 1978, § 28-1-1 (2000), states as follows:

23. The aforementioned actions of Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS violated the New Mexico Human Rights Act, N.M.S.A. 1978, § 28-1-1 (2000).

24. As a direct and proximate result of those actions, Plaintiff, LOUISE WISE has suffered damages in an amount to be proven at trial.

COUNT II
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

25. Plaintiff, LOUISE WISE incorporates the foregoing allegations of the Complaint as if fully set forth below, and for her second cause of action against Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE, for intentional infliction of emotional distress, states as follows

26. Defendant JOHN DOE's decedent TODD AAKHUS made numerous comments of a racially discriminatory nature toward Native Americans. Defendant JOHN DOE's decedent TODD AAKHUS made numerous jokes of a sexual nature and numerous inappropriate sexual comments, all within the presence of Plaintiff, Louise Wise. Defendant JOHN DOE's decedent TODD AAKHUS frequently verbally badgered, yelled

and pointed his finger at Plaintiff, LOUISE WISE. Plaintiff, LOUISE WISE on numerous occasions, advised Defendant JOHN DOE's decedent TODD AAKHUS that she felt his behavior and comments were inappropriate and offensive.

27. Throughout this time, Plaintiff, Louise Wise reported this conduct to Defendant, ALLSTATE INSURANCE COMPANY many times. Despite being on actual notice of Defendant JOHN DOE's decedent TODD AAKHUS' conduct, Defendant, ALLSTATE INSURANCE COMPANY refused to act, and allowed Defendant JOHN DOE's decedent TODD AAKHUS to continue his behavior.

28. Defendant ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS retaliated against Plaintiff by giving her pay increases that were substantially lower than her co-workers, by showing bias toward other female employees and non Native-Americans, by requiring Plaintiff, LOUISE WISE to submit time cards, while not requiring others to do so, by monitoring her office activities to such an extreme that humiliated her by insisting that she inform TODD AAKHUS when she was going to the restroom and upon her return, and by generally making her work conditions intolerable.

29. Defendants ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS acted intentionally or recklessly.

30. The conduct of Defendant, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS was extreme and outrageous under the circumstances.

31. As a direct and proximate result of the intentional and reckless extreme and outrageous conduct of Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS Plaintiff, LOUISE WISE has experienced severe

emotional distress and has had damages in an amount to be proven at the time of trial.

**COUNT III
PRIMA FACIE TORT**

32. Plaintiff, LOUISE WISE incorporates the foregoing allegations of the Complaint as if fully set forth below, and for her third cause of action against Defendants, ALLSTATE INSURANCE COMPANY and JOHN DOE, for prima facie tort, states as follows:

33. Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS intended to cause harm to Plaintiff, LOUISE WISE.

34. Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS caused severe emotional harm to Plaintiff, LOUISE WISE.

35. The conduct of Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS, was not justifiable under all the circumstances.

36. As a direct and proximate result of the unjustified conduct of Defendants, Plaintiff LOUISE WISE has suffered damages in an amount to be proven at the time of trial.

**COUNT IV
PUNITIVE DAMAGES**

37. Plaintiff, LOUISE WISE incorporates the foregoing allegations of the Complaint as if fully set forth below, and for her fourth cause of action against Defendants, ALLSTATE INSURANCE COMPANY and JOHN DOE, for punitive damages, states as

follows:

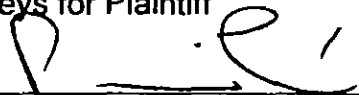
38. The aforesaid actions of Defendants, ALLSTATE INSURANCE COMPANY and Defendant JOHN DOE's decedent TODD AAKHUS, and each of them, were willful, wanton, malicious, reckless and grossly negligent so as to warrant an additional award of punitive damages as punishment and to deter others from committing like offenses.

WHEREFORE, Plaintiff, LOUISE WISE has stated her Complaint for Violations of the New Mexico Human Rights Act, Intentional Infliction of Emotional Distress, Prima Facie Tort, and Punitive Damages, as aforesaid, and prays for damages in an amount to be proven at the time of trial, pre-judgment interest, post-judgment interest, costs, attorney's fees as allowed by N.M.S.A. 1978, § 28-1-13(D), and any other relief the Court deems just and proper.

Respectfully Submitted By:

LAW OFFICES OF DANIEL J. O'FRIEL, LTD.
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By



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