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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOMANI NANTAMBU, an individual,

Plaintiff,

vs.

OFFICE DEPOT, a Delaware corporation,
and DOES ONE through FIFTY, inclusive,

Defendants.

Case No. C13 01456 EMC

**STIPULATION AND ORDER RE
PLAINTIFF'S AMENDED
COMPLAINT**

The parties, through their counsel, stipulate to the filing of an Amended Complaint, attached as Exhibit A.

The parties stipulate that Defendant will not be required to file a further Answer to this Amended Complaint.

The parties further stipulate that Defendant will be permitted to take Plaintiff's deposition with respect to the allegations added to the complaint by this amendment.

Dated: March 3, 2014

STEPHEN F. HENRY, ESQ.

By: /s/Stephen F. Henry _____
STEPHEN F. HENRY
Attorney for Plaintiff

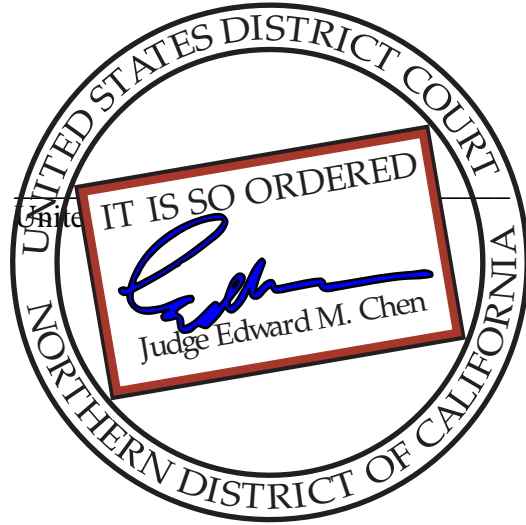
Dated: March 3, 2014

LITTLER MENDELSON, P.C.

By: /s/ Philip A. Simpkins
PHILIP A. SIMPKINS
Attorneys for Defendant OFFICE DEPOT

IT IS SO ORDERED:

Dated: 3/10/14



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EXHIBIT A

1 **STEPHEN F. HENRY, ESQ.**

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8 Attorney for Plaintiff

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 BOMANI NANTAMBU, an individual,

12 Plaintiff,

13 vs.

14 OFFICE DEPOT, a Delaware corporation,
15 and DOES ONE through FIFTY, inclusive,

16 Defendants.

17 Case No. C13 01456 EMC

18 **PLAINTIFF'S AMENDED**
19 **COMPLAINT FOR DAMAGES FOR**
20 **1. Wrongful Termination In**
21 **Violation of Public Policy**

22 **JURY TRIAL DEMANDED**

23 Plaintiff Bomani Nantambu ("Plaintiff"), for causes of action against defendants Office
24 Depot ("Defendant"), and Does One through Fifty, inclusive, alleges in this Complaint for
25 Damages ("Complaint") as follows:

26 **THE PARTIES**

27 1. Plaintiff was at all relevant times to this litigation a resident of the County of
28 Alameda.

1. Defendant Office Depot ("Defendant Office Depot") is a corporation organized
and existing pursuant to the laws of the State of Delaware.

3. Plaintiff is ignorant of the true names and capacities of the defendants sued in this
litigation as Does One through Fifty, inclusive and, as a result, sues these defendants by these
fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of
these defendants once they have been ascertained. Plaintiff is informed and believes and

1 thereupon alleges that each of the fictitiously named defendants is in some manner responsible
2 for the injuries and damages to Plaintiff alleged in this litigation.

3 4. Plaintiff is informed and believes and thereupon alleges that at all times relevant
4 to this litigation, defendants, and each of them, were the agents, servants, and employees of their
5 codefendants, and that these defendants, in doing the things mentioned in this Complaint, were
6 acting within the course and scope of their authority as such agents, servants, and employees, and
7 were acting with the permission and consent of their codefendants.

8 **JURISDICTION AND VENUE**

9 5. Plaintiff incorporates by reference each of the allegations contained in
10 paragraphs 1 through 4 above.

11 6. Jurisdiction over the defendant, Office Depot, is predicated on removal by
12 defendant based on diversity jurisdiction. Defendant is present and operating within the
13 jurisdictional limits of the Northern District of California. Subject matter jurisdiction exists
14 because the amount in dispute exceeds \$75,000.

15 7. Venue is proper because the employment relationship between Plaintiff and
16 Defendant Office Depot that gave rise to some of the claims in this litigation existed within this
17 judicial district and most or all of the acts and omissions complained of in this litigation took
18 place here..

19 **FACTUAL ALLEGATIONS**

20 8. On August 31, 2012, Plaintiff was assaulted by an associate, Prakash
21 Chandra, after asking that Mr. Chandra perform a different task. Plaintiff immediately reported
22 the behavior to Mark Bloom, acting senior manager, and then informed a senior Human
23 Resources manager, Pamela Williams, of the situation. After receiving no response from Ms.
24 Williams, Plaintiff emailed Ms. Williams a report of the situation and forwarded a copy of that
25 report to Steve Burns. The next day Mr. Chandra threatened Plaintiff again. Plaintiff informed
26 Steve Burns and Oscar Solis that he did not feel comfortable with the threatening situation.
27 Subsequently, Plaintiff spoke to Ms. Williams on the phone and Ms. Williams recommended that
28 Mr. Chandra be put on administrative leave. Steve Burns then contradicted Ms. Williams'

1 recommendation and told Plaintiff to keep Mr. Chandra at work. Mr. Chandra continued to act
2 belligerently toward Mr. Nantambu.

3 9. In a subsequent meeting, Ms. Williams backtracked on her original
4 recommendation and stated that there was not enough documentation of the incidents to justify
5 disciplinary action against Mr. Chandra. When Plaintiff disagreed, Ms. Williams reacted
6 negatively. On September 21, 2012, Oscar Solis and Mike Wagner informed Plaintiff that he
7 was being given a Manager Record of Discussion (“MRD”). The reasons were completely false.
8 Plaintiff then took a week off and when he returned, on October 2, 2012, Oscar Solis requested a
9 discussion of the MRD and, when Plaintiff requested that Human Resources be present, Mr.
10 Solis informed him that Ms. Williams had refused to attend. During the subsequent discussion
11 Plaintiff informed Mr. Solis that he felt unsafe with Mr. Chandra and Mr. Solis acknowledged
12 that management had done a poor job of managing the situation. In a subsequent meeting on
13 October 4, 2012, with Mike Wagner and Oscar Solis, Plaintiff continued to object to the MRD
14 and restated that he felt unsafe with Mr. Chandra, citing examples of aggressive behavior by Mr.
15 Chandra. Mr. Wagner acknowledged being unaware of the facts recounted by Plaintiff and then
16 told Plaintiff to go home for the night.

17 10. On October 5, 2012, Ms. Williams unexpectedly called Plaintiff in to a room to
18 discuss the situation. In that conversation Ms. Williams denied that Plaintiff had informed her
19 that he felt unsafe with Mr. Chandra. At this time Ms. Williams were clearly on notice that
20 Plaintiff felt unsafe with Mr. Chandra. Ms. Williams then accused Plaintiff of failing to fill out a
21 form regarding Mr. Chandra which Plaintiff had never received from Ms. Williams. Plaintiff
22 then objected to meeting with Ms. Williams alone without a member of senior management and
23 Ms. Williams accused him of being disrespectful. Mike Wagner and Paul Wurzel then placed
24 Plaintiff on administrative leave. Mr. Wagner claimed that the administrative leave was for Mr.
25 Nantambu’s protection and stated that “we are going to bring you back after we complete our
26 investigation.” Plaintiff was then escorted from the building by security. On October 18, 2012,
27 Ms. Williams and Douglas Pore terminated Plaintiff by phone.

1 **FIRST CAUSE OF ACTION**

2 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

3 **(Against Defendant Office Depot and Does One through Fifty)**

4 11. Plaintiff incorporates by reference each of the allegations contained in paragraphs 1
5 through 11 above.

6 12. Plaintiff alleges that being placed on administrative leave and investigated was an
7 adverse employment action in violation of public policy because those acts were, and were
8 designed to be, reasonably likely to deter him from engaging in protected activity.

9 13. Plaintiff alleges that his termination was wrongful because it was in violation of the
10 public policy of the State of California and the United States in that Plaintiff's termination was in
11 retaliation for, and was, and was designed to be, reasonably likely to deter him from engaging in
12 protected activity, including Plaintiff's opposing and reporting an unsafe work environment, as
13 described in preceding allegations.

14 14. Plaintiff further alleges that the termination of Plaintiff by Defendant and Does
15 One through Fifty, and each of them, was in violation of the public policy as expressed in State
16 of California and Federal laws and regulations governing Occupational Health and Safety,
17 including but not limited to Labor Code § 6310.

18 15. As a direct, foreseeable, and proximate result of the wrongful termination of
19 Plaintiff by Defendant and Does One through Fifty, and each of them, in violation of the public
20 policy of the State of California, Plaintiff has lost and will continue to lose income and benefits,
21 and has suffered and continues to suffer humiliation, embarrassment, mental and emotional
22 distress, and discomfort all to Plaintiff's damage, in excess of \$500,000, the precise amount of
23 which will be proven at trial.

24 16. WHEREFORE, Plaintiff demands judgment against Defendant and Does One
25 through Fifty, and each of them, as set forth in this Complaint.

26 **PRAYER**

27 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
28 follows:

