

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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3	EQUAL EMPLOYMENT OPPORTUNITY)	
	COMMISSION)	
4)	
	Plaintiff,)	
5)	
	v.)	Case No. 8:07-CV-02612
6)	
	BLOCKBUSTER, INC.,)	
7)	
	Defendant.)	
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 DEPOSITION OF
 JENNIFER MARIE FITZGERALD
 SEPTEMBER 17, 2008

On the 17th day of September, 2008, at 9:03 a.m.,
 the oral deposition of the above-named witness was taken
 at the instance of the Plaintiff before Lezley Cull,
 Certified Shorthand Reporter in and for the State of
 Texas, at the offices of Morgan, Lewis & Bockius, LLP,
 1717 Main Street, Suite 3200, in the City of Dallas,
 County of Dallas, State of Texas, pursuant to Notice and
 the agreement hereinafter set forth.

<p style="text-align: right;">Page 21</p> <p>1 MS. SPEIGHTS: Objection. 2 You can answer. 3 A. I don't recall. 4 Q. (BY MR. PHILLIPS) Were you -- were you an HR 5 consultant during the time period of late 2004 to August 6 of 2005? 7 A. Yes. 8 Q. What were your -- well, strike that. 9 Did you have a particular geographic area that 10 was assigned to you? 11 A. Yes, the corporate office here in Dallas and 12 the on-line subscription distribution centers. There 13 were about 15 of them across the U.S. 14 Q. So all of those distribution centers were 15 assigned to you? 16 A. Yes. 17 Q. Was that true throughout your tenure as an HR 18 consultant at Blockbuster? 19 A. I believe we -- as -- as the company added 20 more distribution -- they pretty much doubled the number 21 they had from the beginning -- I believe I had some 22 help. I don't recall the specifics as to how many or 23 who helped me. 24 Q. And did your geographic territory then include 25 the distribution center in Gaithersburg, Maryland?</p>	<p style="text-align: right;">Page 23</p> <p>1 any employee performance issues. Also any time they 2 would hire a new employee, they would send the new hire 3 paperwork to me for processing to get them enrolled in 4 payroll. And that was primarily -- I mean, anything HR 5 related, they would call me for. 6 Q. Did you have duties and responsibilities 7 related to Equal Employment Opportunity compliance at 8 the Gaithersburg distribution center? 9 A. Yes. 10 Q. And what were those? 11 A. If they had any sort of complaint, EEO-related 12 complaint, they would -- the manager or the employee -- 13 well, I can't remember exactly. The manager usually 14 would contact me. 15 Q. Do you recall the name -- and when you say 16 "manager," do you mean the distribution center manager? 17 A. Yes. 18 Q. Do you recall what his name was during the 19 period of late 2004 to summer of 2005? 20 A. Lincoln Barrett. 21 Q. Did Mr. Barrett ever contact you while he was 22 the distribution center manager in Gaithersburg to 23 discuss Equal Employment Opportunity matters? 24 A. No. 25 Q. Did Mr. Barrett ever inform you of any</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Yes. 2 Q. And do you recall when that distribution 3 center began its operations actually distributing DVDs 4 and things? 5 A. I believe it was late in 2004, like 6 November/December 2004, I think. 7 Q. And was that distribution center in 8 Gaithersburg then within your responsibility from the 9 time that it started operations through the summer of 10 2005? 11 A. Yes. 12 Q. Now, I want -- we talked generally about your 13 duties and responsibilities as an HR consultant. But I 14 want to focus now specifically on what your duties and 15 responsibilities were as they related specifically to 16 the distribution center in Gaithersburg, Maryland during 17 this time period of late 2004 through the summer of 18 2005. Okay? 19 A. Okay. 20 Q. Can you tell me as it relates to the 21 Gaithersburg center, what were your duties and 22 responsibilities as an HR consultant? 23 A. I was their kind of point of contact for 24 anything HR related. So they would call me if they had 25 questions on, you know, company policy or if they had</p>	<p style="text-align: right;">Page 24</p> <p>1 complaints or allegations of sexual harassment at the 2 Gaithersburg distribution center? 3 A. He did not. 4 Q. Did Mr. Barrett ever inform you of any 5 complaints or allegations of national origin or race 6 discrimination at the Gaithersburg center? 7 A. He did not. 8 Q. Now, it is my understanding that during this 9 time period of late 2004 to the summer of 2005, there 10 were both temporary and permanent Blockbuster employees 11 working at the Gaithersburg center. 12 Is that your understanding? 13 A. Yes. 14 Q. And do you recall who the temporary agency was 15 who supplied workers for the Gaithersburg distribution 16 center during this time period? 17 A. The agency we used was Venturi Staffing. 18 Q. Where are they located? 19 A. I don't know where they're headquartered, but 20 the contact we used was here in Dallas. 21 Q. And do you know whether Venturi subcontracted 22 anyone? 23 A. Yes. 24 Q. Do you recall who that was? 25 A. I don't remember the name.</p>

<p style="text-align: right;">Page 25</p> <p>1 Q. Did you have any communications with the 2 subcontractor? 3 A. I don't recall. 4 Q. If I said the name Express Personnel, does 5 that ring a bell -- 6 A. Yes. 7 Q. -- as the subcontractor? 8 So you recall now that Express Personnel was 9 the subcontractor for Venturi at the Gaithersburg 10 center? 11 A. Yes. 12 Q. Do you recognize the name Cynthia or 13 Cinnie Brown? 14 A. Yes. 15 Q. Did you ever have any communications with 16 Cinnie or Cynthia Brown? 17 A. I don't recall. 18 Q. Do you recognize the name Drew Lenear? 19 A. No. 20 Q. If I told you that he was the owner of Express 21 Personnel, does that refresh your memory as to whether 22 you ever knew him? 23 A. No. 24 Q. Do you recognize the name June Davis? 25 A. Yes.</p>	<p style="text-align: right;">Page 27</p> <p>1 A. I don't recall. 2 Q. Did you -- do you recall having conversations 3 with her verbally? 4 A. Yes. 5 Q. Did you take any notes of those conversations? 6 A. I don't recall. 7 Q. Do you recall communicating with Ms. Davis by 8 any other means, not verbal, not e-mail, but, say, 9 formal letters or a memo or notes, that kind of thing? 10 A. No. 11 Q. Did you have any duties or responsibilities 12 related specifically to the temporary workers at the 13 Gaithersburg distribution center during this 2004-2005 14 time frame we're talking about? 15 A. No. 16 Q. Are you aware of any other human resources 17 employee of Blockbuster who had responsibility for the 18 Gaithersburg distribution center during the 2004-2005 19 time frame? 20 A. My vice president in my department, her name 21 was Ana Rivera. She would have been also over that area 22 for HR purposes. 23 Q. And when you say "over that area," would she 24 have had direct contact with the center on HR matters or 25 would that have been through you?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. Was she -- did you ever have any direct 2 communications with June Davis concerning the 3 Gaithersburg center? 4 A. Yes. 5 Q. Do you recall how many times you communicated 6 with June Davis regarding the Gaithersburg distribution 7 center? 8 A. No. 9 Q. Do you recall the subjects that you 10 communicated with June Davis about regarding the 11 Gaithersburg center? 12 A. No. I remember there were just some employee 13 performance issues from the temporary workers. I don't 14 recall specifically what we talked about. 15 Q. Did you ever communicate with June Davis 16 concerning Equal Employment Opportunity matters that may 17 have existed at the Gaithersburg distribution center? 18 A. Yes. I don't recall the specifics, but I do 19 know I talked to her about that type of topic. 20 Q. Did any of those matters involve allegations 21 of sexual harassment at the Gaithersburg center? 22 A. I don't recall. 23 Q. Can you tell me by -- whether -- well, strike 24 that. 25 Did you communicate with June Davis by e-mail?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. It would have been through me. 2 Q. Do you recognize the name Amado Hernandez? 3 A. Yes. 4 Q. Who is Amado Hernandez? 5 A. I believe he is one of the directors of human 6 resources who was over the field HR, meaning stores, the 7 stores division. 8 Q. So you did not have a reporting relationship 9 with Mr. Hernandez? 10 A. No. 11 Q. You mentioned some communications with 12 Ms. Davis regarding temporary employee performance 13 issues. 14 Do you recall what those issues were? 15 A. I do not. I don't recall. 16 Q. With respect to the permanent employees now of 17 Blockbuster who worked at the Gaithersburg distribution 18 center, did -- did you provide them with any training 19 related to Equal Employment Opportunity? 20 A. They -- yes. They watched a video and they 21 received a handbook. 22 Q. Now, did you -- do you recall personally 23 showing employees at the Gaithersburg distribution 24 center a video related to EEO? 25 A. No.</p>

<p style="text-align: right;">Page 29</p> <p>1 Q. Can you describe for me the video. 2 A. The video is something that Blockbuster 3 produced. We show it at the corporate office, as well, 4 to all new hires. And it just goes over company 5 policies that employees need to be aware of, as well as 6 just company -- just kind of an introduction to the 7 company. But it does mention Blockbuster's EEO policy. 8 Q. How long is the video, do you recall? 9 A. It's about 20 minutes. 10 Q. And about how -- of that 20 minutes, how much 11 time is spent on Equal Employment Opportunity, do you 12 recall? 13 A. Probably three to four minutes. 14 Q. Do you recall specifically what is discussed 15 as far as EEO in that three- to four-minute time frame? 16 A. I believe it talks about how Blockbuster, you 17 know, does not discriminate based on any of the Title 7 18 categories. And it also talks about the zero tolerance 19 for harassment policy. 20 Q. Do you recall it discussing anything else? 21 A. I don't recall specifics. 22 Q. Do you know whether the video was shown to any 23 of the permanent employees at the Gaithersburg 24 distribution center at any time? Do you know whether it 25 was actually shown?</p>	<p style="text-align: right;">Page 31</p> <p>1 A. I don't think they do. 2 Q. Do you -- do you know whether Blockbuster 3 provides copies of its EEO and zero tolerance policies 4 to temporary workers at its distribution centers? 5 A. I don't believe they do. 6 MR. PHILLIPS: Just for the record, 7 Grace, the EEOC requests production of the video 8 referenced in Ms. Fitzgerald's testimony. 9 Q. (BY MR. PHILLIPS) Do you know if Blockbuster 10 has any -- again, we're referencing the 2004-2005 time 11 frame -- if Blockbuster had any mechanism for follow-up 12 to make sure that the video was, in fact, shown at the 13 distribution centers? 14 A. I don't recall. 15 Q. Do you know if anyone at Blockbuster, not just 16 yourself, but anyone, whether within the HR department 17 or outside the HR department, provided Equal Employment 18 Opportunity training to the permanent employees, which 19 would include managers, at the distribution center in 20 Gaithersburg during the 2004-2005 time frame? 21 MS. SPEIGHTS: Objection. 22 You can answer. 23 A. Yes. Before the distribution centers opened, 24 all of the managers came to Dallas for training. And I 25 believe our in-house counsel, Julie Burnett, provided</p>
<p style="text-align: right;">Page 30</p> <p>1 A. I don't know. That was part of the policy, 2 was for the new hires to watch it. But since I wasn't 3 there in person to do it, I don't know. 4 Q. Whose responsibility was it to show the video? 5 A. The facility manager there, the distribution 6 center manager. That would be Lincoln Barrett. 7 Q. And you referenced that employees get a copy 8 of the policy. 9 A. Yes. 10 Q. What policy are you referring to? 11 A. Well, all of Blockbuster's policies that 12 relate to employees. But the EEO policy is included 13 there, as well as the zero tolerance for harassment 14 policy. The employees sign it and they have to send it 15 back with their new hire paperwork. 16 Q. Do you know whether the video is shown to -- 17 well, strike that. 18 Do you know whether the video that you 19 referenced in your testimony was shown to any of the 20 temporary workers at the Gaithersburg distribution 21 center? 22 A. I don't know. 23 Q. Do you know if Blockbuster has a practice of 24 showing or not showing the video to temporary workers at 25 its distribution centers?</p>	<p style="text-align: right;">Page 32</p> <p>1 employment law training to the managers. 2 Q. (BY MR. PHILLIPS) What is your basis for that 3 belief? 4 A. I was part of that orientation session with 5 the managers. So I was on the agenda for speaking on 6 other HR-related topics, just like how to process new 7 hires and such. So I know that she was on the agenda to 8 speak to them. 9 Q. Were you present during her presentation? 10 A. I believe I was during part of it. 11 Q. Do you know how long that presentation ran? 12 A. I don't recall exactly, but I know it was at 13 least two hours. 14 Q. And this was on -- do you know if the 15 presentation -- from what you could see on the agenda 16 and from being there for part of it, was the 17 presentation restricted to Equal Employment Opportunity 18 or did it cover all employment law related matters -- or 19 other employment law related matters? 20 MS. SPEIGHTS: Objection. 21 You can answer. 22 A. It covered other employment-related matters, 23 as well. 24 Q. (BY MR. PHILLIPS) As well as EEO? 25 A. As well as EE O, yes.</p>

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1 about the termination of her assignment?
2 A. I don't recall.
3 Q. Do you know why her assignment was ended?
4 A. No.
5 Q. No one ever provided you with any information
6 about that?
7 A. I don't recall.
8 Q. Now, you testified earlier -- and actually
9 just now -- that ultimately, Mr. Barrett and Mr. Johnson
10 were fired, correct?
11 A. Yes.
12 Q. And let's talk about them one at a time.
13 With respect to Mr. Johnson, do you know why
14 he was fired by Blockbuster?
15 A. Through the course of multiple complaints
16 about his behavior, we were able to establish a pattern
17 of behavior that was obviously unacceptable. And after
18 establishing that pattern of behavior, we were able to
19 decide to terminate him.
20 Q. You mentioned we.
21 Who is the "we" you're referring to there?
22 A. Scott Collen and myself.
23 Q. So the two of you were both involved in the
24 decision to terminate Mr. Johnson?
25 A. Yes.

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1 Q. And you -- were you both also involved in the
2 decision to terminate Mr. Barrett?
3 A. Yes.
4 Q. You referenced a pattern of behavior that
5 you -- you used the word "unacceptable."
6 What pattern of behavior caused you to
7 determine that Mr. Johnson should be discharged?
8 A. Behavior that was sexual harassment in nature
9 towards various individuals and behavior that created an
10 uncomfortable working environment, such as yelling at
11 people, losing his temper, not being -- not being very
12 patient, a combination of all of those behaviors.
13 Q. Sexual harassment in nature against various
14 individuals, which individuals?
15 A. Based on my own recollection, I don't remember
16 who they were. Based on this documentation, the
17 individuals named in the documents, meaning
18 Michelle Despertt, Say Wing, all the people listed right
19 here on Exhibit 8.
20 Q. Did you discuss with Mr. Collen what his
21 reasons were for agreeing that discharge was appropriate
22 for Mr. Johnson?
23 A. Yes. I don't remember specifics, though.
24 Q. Do you recall anything he said about what his
25 reasons were for approving discharge for Mr. Johnson?

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1 A. No, I don't recall.
2 Q. Did you express to him your belief that part
3 of the reason for discharge for Mr. Johnson was sexual
4 harassment? Did you communicate that to Mr. Collen?
5 A. I don't recall.
6 Q. Regarding yelling, do you recall who -- who
7 you concluded Mr. Johnson was yelling at?
8 A. No, I don't recall.
9 Q. Do you know if there was any inquiry by anyone
10 into whether or not that yelling was being done in a
11 discriminatory way or a selective way, only certain
12 persons being yelled at?
13 A. No, I don't recall.
14 Q. Did you have a concern upon discharge of
15 Mr. Johnson that there might be a safety issue regarding
16 him and the Gaithersburg center?
17 A. I don't recall that on my own. After
18 reviewing the documents, I remember seeing that I had a
19 concern about that. I think that was due to Taj's
20 volatile, you know, temper and yelling. I probably was
21 concerned that after he was terminated, that he might
22 come back to the facility.
23 Q. Do you know whether Mr. Johnson had made any
24 threats to anyone?
25 A. I don't recall, no.

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1 Q. Do you know whether Mr. Barrett had made any
2 threats to anyone?
3 A. I don't recall.
4 Q. After Mr. Johnson was terminated, did you --
5 do you know of him having any communications with anyone
6 at Blockbuster?
7 A. I don't recall that, no.
8 Q. Did you ever receive any information about
9 whether Mr. Johnson was rehired by Blockbuster at some
10 point?
11 A. No. I don't recall.
12 Q. Did you -- in formulating your conclusion that
13 Mr. Johnson should be discharged, did you consult with
14 anyone other than Mr. Collen?
15 A. I don't recall.
16 Q. What were your reasons for concluding that
17 Mr. Barrett should be discharged from his employment at
18 Blockbuster?
19 A. He was not meeting the standards of -- of an
20 effective manager of the facility. Even after the
21 corrective actions and after his action plan, he kept --
22 I guess he kept reverting back to being an ineffective
23 manager both from the managing employees standpoint and
24 managing the actual production of the facility.
25 Q. With respect to the standards for a manager