

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>ROBERT DANIEL YOUNG,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Case No. 3:20-CV-363</b>
	)	<b>Chief Judge Waverly D. Crenshaw, Jr.</b>
<b>BERNHARD MCC, LLC,</b>	)	<b>Magistrate Judge Jeffrey S. Frensley</b>
	)	<b>Jury Demand</b>
<b>Defendant.</b>	)	

**AND**

<b>MICHAEL GLYNN YOUNG,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>BERNHARD MCC, LLC,</b>	)
	)
<b>Defendant.</b>	)

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**JOINT PRETRIAL ORDER**

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Pursuant to the Court’s January 18, 2022 Order (Doc. No. 77), Plaintiff, Michael Glynn Young and Defendant Bernhard MCC, LLC, jointly submit this Proposed Pretrial Order.

**1. Amendment of Pleadings**

Except with respect to the issues raised by the parties in their respective motions in limine, the pleadings are amended to conform to this Pretrial Order and this Pretrial Order supplants the pleadings.

## **2. Jurisdiction and Venue**

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 2000(e)(5)(f) for Plaintiff's claim based for Title VII of the Civil Rights Action of 1964.

## **3. Plaintiff's Theory**

Bernhard is a multi-state, construction company headquartered in New Orleans that hired Michael and his son, Robert Young to work on a large project in Clarksville, Tennessee. Robert was severely sexually harassed and assaulted by his supervisor, Tony Pufhal. Pufhal called Robert a "faggot," "cocksucker," and other homosexual slurs and assaulted with a screwdriver in his genitalia. Robert made numerous complaints to Pufhal's supervisors, but nothing was done. On the morning of August 15, 2018, Robert was again sexually harassed by Pufhal. Robert again told his father about all the incidents, and since nothing was being done, Michael decided that he would report the harassment to an "HR Man" who he dealt with when he was originally hired. Michael called the "HR Man," Dewayne Petrey, and explained the situation at approximately 1:06 pm. The "HR Man" was not actually with human resources but was a recruiter for Bernhard, who along with Justin Wisner, the overall supervisor of the project, recruited Michael to work on the project. Petrey called Wisner and alerted him to the fact that Michael was attempting to make a claim to human resources that Robert was being sexually harassed and Wisner was not doing anything about it.

Knowing there was going to be a sexual harassment claim involving his failure to stop sexual harassment and assault, Wisner decided to fire both Michael and his son that very same day. Wisner decided to get in front of the sexual harassment claim and cover up the retaliatory nature of the firing by sending an email to human resources before he fired the Youngs. At 2:04 p.m., approximately one hour after Michael reported Robert's sexual harassment to the "HR man," Wisner sent an email to

Bernhard's actual human resources office stating that he was going to fire Michael and Robert, that Michael was a compulsive liar, and that he had "no doubt" they would make a complaint. Wiser's email is a "smoking gun" because there is no explanation - other than retaliation - as to: 1) why both Michael and Robert were fired at the same time, 2) why they were both fired on the day that Michael reported sexual harassment, 3) why they were fired an hour after Michael's report, 4) why Wiser sent an email to human resources in the first place, 5) why Michael was called a compulsive liar, and 6) why Wiser had "no doubt" there would be a complaint to human resources.

At approximately 3:00-3:30 p.m., Michael and Robert simultaneous were fired. Michael was personally fired by Wiser, and when Michael accused Wiser of firing him because of the sexual harassment complaint, Wiser said "That's pretty much it." Justin Wiser and other employees of Bernhard attempted to and continue to cover up the true reason for Michael's firing, which is retaliation for Michael's complaint about Wiser failing to stop on-the-job sexual harassment.

#### **4. Defendant's Theory**

Bernhard is a regional contractor offering customers total mechanical, electrical, and plumbing preconstruction services, design-build/design-assist and construction capabilities. Michael Young is a former employee of Bernhard who began working on or around July 5, 2018 at a project site located in Clarksville, Tennessee. Michael Young was employed as a QC Manager and was tasked with overseeing welding on the Clarksville project. On July 18, 2018, shortly after Michael Young's hire, Bernhard hired Robert Young, Michael's son. Robert was hired as a Sheet Metal Worker. Michael Young alleges that his son was sexually harassed by a male co-worker during the course of his employment with Bernhard. Michael Young further alleges that his son reported the alleged harassment to his supervisors to no avail. After learning that the sexual harassment had not been addressed, Michael Young alleges that he reported the alleged harassment of his son to his

supervisors as well as “the HR man.” Young claims that within hours after he reported the alleged harassment of his son, he was terminated from his employment. Through his lawsuit, Young alleges that Bernhard violated Title VII of the Civil Rights Act, 42 U.S.C. §2000e (“Title VII”) by terminating his employment in retaliation for reporting his son’s alleged harassment. Bernhard submits that it did not terminate Young in violation of Title VII or that Young’s termination was in retaliation for Young’s report of alleged sexual harassment of his son. On the contrary, at the time the termination decision was made, Defendant Bernhard had no record of any complaint being made by Young to report the alleged sexual harassment of his son. Specifically, Michael Young’s supervisor, and the person who made the decision to terminate Young’s employment, had no knowledge of any complaint being made by Michael Young regarding the sexual harassment of his son. Moreover, Young was terminated for a legitimate, non-retaliatory reason. That is, Young was terminated because he was found to have engaged in multiple conflicts with his co-workers, including angry altercations that were disruptive to the work environment. After a trial on the merits, Young’s Title VII claim should be dismissed with prejudice because: (1) there is no evidence of protected activity; (2) there is no evidence that the decision-makers had knowledge of any alleged protected activity; (3) the evidence establishes that Young was terminated for legitimate, non-retaliatory reasons; and (4) Young has no evidence that he would not have been terminated “but for” his alleged protected activity.

**5. Plaintiff’s Issues**

**A. Proposed Issues of Fact for the Jury**

- a. Did Robert report to his father, Michael, that he was being sexually harassed and assaulted by his supervisor.
- b. Did Robert tell his father that he had reported sexual harassment and assault, but

nothing was being done to stop it.

- c. Was the nature and severity of Robert's statements of sexual harassment to his father, sufficient to motivate Michael to make a good faith report of the sexual harassment to human resources.
- d. Did both Robert and Michael report sexual harassment on August 15, 2018.
- e. Did Michael report his son's sexual harassment by calling Dwayne Petrey, who he thought was with corporate human resources.
- f. Did Justin Wiser learn that Michael was attempting to report sexual harassment and that nothing was being done about it to corporate human resources.
- g. Did Wiser decide to fire Michael and Robert on the same day that they made reports of Robert's sexual harassment.
- h. Did the Plaintiff prove by a preponderance of the evidence that Michael's firing was in retaliation for his complaint that his son was being unlawfully sexually harassed.
- i. What is the amount of Michael's back pay and front pay.
- j. What is the amount of Michael's compensatory damages
- k. Did Bernhard act with malice and reckless indifference when it terminated Michael Young.
- l. Is Michael entitled to punitive damages, and if so, what amount.

**B. Proposed Issues for the Court**

- a. Plaintiff's and Defendant's issues of law as asserted in the parties respective motions in limine.
- b. Is Michael entitled to front pay.
- c. If an award of damages is entered, whether there is an applicable cap on damages.

- d. If liability is established, the amount of reasonable attorney's fees, expenses, and costs to be awarded to Plaintiff.

**6. Defendant's Issues**

**A. Proposed Issues For The Jury.**

- a. The jury must decide whether Plaintiff has proven by a preponderance of the evidence that he engaged in activity protected by Title VII.

- b. The jury must decide whether Plaintiff has proven by a preponderance of the evidence that he would not have been terminated by Defendant Bernhard but-for his protected activity.

- c. The jury must decide whether Defendant Bernhard has proven by a preponderance of the evidence that it had legitimate, non-retaliatory reasons for the decision to terminate Plaintiff's employment.

- d. If Plaintiff offers direct evidence of retaliation, the jury must decide whether Defendant Bernhard has proven that it would have made the same decision to terminate Plaintiff's employment regardless of his protected activity.

- e. If liability is found, the jury must determine whether Plaintiff has proven by a preponderance of the evidence that compensatory damages are due and, if so, in what amount.

- f. If liability is found, the jury must determine whether Plaintiff has proven by a preponderance of the evidence that he suffered lost wages as a result of Defendant's actions and, if so, in what amount.

- g. The jury must determine whether Defendant Bernhard has proven by a preponderance of the evidence that Plaintiff Michael Young has failed to properly mitigate his damages and, if so, what amount of money represents what Michael Young would have earned had he exercised reasonable diligence under the circumstances to minimize his damages.

**B. Proposed Issues For The Court**

a. The Court must decide whether Plaintiff Michael Young is entitled to an award of front pay. (See Doc. No. 113.)

b. The Court must decide whether Plaintiff Michael Young can assert a claim for liquidated damages. (See Doc. No.111.)

c. The Court must decide whether Plaintiff Michael Young has properly plead and can validly assert a claim for punitive damages. (See Doc. No. 112.)

d. The Court must decide whether Plaintiff Michael Young can assert a claim for back pay beyond January 2020. (See Doc. No. 115.)

e. If an award of damages is entered, the Court must enforce the statutory cap on damages set forth in 42 U.S.C. § 1981a(b)(3).

f. If liability is established, the Court must decide whether, and in what amount, to enter an award of attorney fees and costs.

**7. Parties Stipulations**

a. **The parties stipulate that Michael Young suffered a materially adverse employment action when he was terminated on August 15, 2018.**

**8. Plaintiff's Relief Sought**

Michael Young seeks damages in amounts to be decided upon by a jury including back pay and front pay. He also seeks compensatory damages including loss of his professional and personal reputation, loss of income and earning capacity, loss of business opportunity, emotional and mental distress. Michael Young also seeks punitive damages because Bernhard acted with malice and reckless indifference knowing that it was violating the law and attempting to cover up its violations. Michael Young also seeks reasonable attorney's fees and costs and any other

relief authorized by law.

**9. Defendant's Relief Sought**

Defendant denies that Plaintiff is entitled to an award of damages or a judgment of any kind and, therefore, Defendant seeks a dismissal of this action with prejudice. However, if liability is established after a trial on the merits, Defendant seeks to offset Plaintiff's damages by his interim earnings and any amount caused by Plaintiff's failure to mitigate. Defendant also seeks to enforce the statutory cap on damages set forth in 42 U.S.C. § 1981a(b)(3).

**10. Anticipated Evidentiary Disputes**


The Parties have filed several motions *in limine* addressing anticipated evidentiary disputes. Plaintiff has filed motions *in limine* to exclude the following: (1) evidence of his pending lawsuit against Jack's Restaurant (2) evidence of the number of times Plaintiff has been married, (3) evidence regarding Robert Young's settlement with Bernhard, (4) to allow evidence of the name of the Clarksville site, and (5) to exclude testimony of witnesses not timely disclosed to wit, DeWayne Petrey and Charles Mandrell (Doc. No. 107)

Defendants have filed motions *in limine* to exclude the following: (1) evidence regarding Robert Young's allegations of sexual harassment and retaliation (Doc. No. 109), (2) evidence and testimony regarding the incident report by Scott Smith (Doc. No. 110), (3) evidence regarding Plaintiff's claim for liquidated damages (Doc. No. 111), (4) evidence regarding Plaintiff's claim for punitive damages (Doc. No. 112), (5) evidence regarding Plaintiff's claim for front pay (Doc. No.113), (6) evidence regarding probable testimony of witnesses not called for failure to call witnesses (Doc. No. 114), (7) and evidence regarding Plaintiff's claim for back pay (Doc. No. 115). In addition, the Court has reserved resolution these evidentiary disputes at the final pretrial conference.



**11. Anticipated Length of Trial**

The Parties believe the case will take four (4) days to try.

  
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WAVERLY D. CRENSHAW, JR.  
CHIEF UNITED STATES DISTRICT JUDGE