Scardina v. Wiegand

District Court of Colorado, Denver County

June 15, 2017, Decided

CASE NUMBER: 2014CV31681

Reporter
2017 Colo. Dist. LEXIS 210 *

Jessica Caroline Scardina and Monique Cullens, Plaintiff(s) And Robert Wiegand II, Wiegand Attorneys & Counselors LLC, and Danos Rentals LLC, Defendant(s)

Judges: [*1] Ross B.H. Buchanan, Denver District Court Judge.

Opinion by: Ross B.H. Buchanan

Opinion

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT

THIS MATTER came on for a five-day trial to the court from April 25 through April 29, 2016. Plaintiff Jessica Scardina appeared in person and was represented by Rosemary Orsini. Plaintiff Monique Cullens appeared in person and was represented by David Lichtenstein and Matt Molinaro. Defendant Robert Wiegand II appeared in person, on behalf of himself and Defendant Wiegand Attorneys & Counselors LLC, and was represented by Leslie Schluter and Katrina Brannan. The Court, after reviewing the court file, hearing the testimony of the witnesses, assessing credibility, considering the exhibits admitted into evidence, and being otherwise fully advised in the premises, HEREBY FINDS and ORDERS as follows:

FINDINGS OF FACT

A. Background

1. Defendant Robert Wiegand II ("Mr. Wiegand") has been the sole member and manager of Defendant Wiegand Attorneys and Counselors, LLC ("Wiegand LLC") since November 2009. Wiegand LLC's offices are located at 280 E. 20th Ave in Denver, Colorado (the "Property").

2. Wiegand LLC leased the office space from Danos Rentals, LLC ("Danos") and has been **[*2]** in possession of the office space since November 2009. Danos also leases a portion of the Property to Uptown Oasis, a convenience store.

3. Mr. Wiegand is the sole member and manager of Danos.[1]

4. Wiegand LLC and Uptown Oasis share two single-stall unisex restrooms accessible through a common area hallway on the Property. The restrooms are located around a corner and down the hallway from the convenience store. The restroom on the right (as one faces them from the hallway) is further away from the convenience store. Plaintiff Jessica Scardina ("Ms. Scardina") testified she never noticed convenience store customers using either bathroom. The bathroom on the right was preferred by the employees of Wiegand LLC because it was usually cleaner. This preference for the right bathroom was known to the employees of Wiegand LLC.

5. Wiegand LLC hired Ms. Scardina in December 2009 as an associate attorney. Mr. Wiegand testified that he hired an associate he would be able to mentor and develop, and who he hoped would ultimately become his successor. It was the first time he had hired a full-time associate. Mr. Wiegand met on Mondays and Fridays with Ms. Scardina, and took her to lunch at the University **[*3]** Club on Wednesdays, to discuss their work.

B. Staring

6. Starting shortly after Ms. Scardina began to work at Wiegand LLC, Mr. Wiegand would stare at her breast, legs, and buttocks. Ms. Scardina testified that he would do so "constantly" and almost every time she dealt with

[1] Both Plaintiffs have settled with Danos and dismissed their claims against that entity.

him. Ms. Scardina testified that she felt uncomfortable and stopped wearing anything other than high-neck shirts and pants as a result. She did not complain directly to Mr. Wiegand because she did not think anything would change.

7. Ms. Scardina complained to Mary Kuehster ("Ms. Kuehster"), an independent contractor who performed accounting work for Wiegand LLC, about how uncomfortable she felt because of Mr. Wiegand's staring. Ms. Scardina understood from her conversations with Ms. Kuehster that she was not the first woman he had stared at inappropriately. Ms. Kuehster confirmed that Ms. Scardina complained to her about Mr. Wiegand's staring, and complained about his conduct about once a month.

8. Ms. Scardina testified that she had several tattoos when she started her employment with Mr. Wiegand, and she obtained an additional tattoo on her ankle during her employment. Wiegand LLC had office policies regarding office **[*4]** attire and prohibiting visible tattoos.

9. There was conflicting testimony regarding whether Ms. Scardina changed her attire to cover up more because of her tattoos, as opposed to Mr. Wiegand's staring. Ms. Scardina testified that she never told Ms. Kuehster that she changed her attire to conceal her tattoos. Mr. Wiegand testified that Ms. Scardina's tattoos did not bother him and he never told Ms. Scardina to cover up the tattoos. However, Ms. Kuehster testified that at one point, she and Ms. Scardina had a conversation as to why Scardina was wearing clothing with greater coverage, and Ms. Scardina informed her that the reason was because of the policy against visible tattoos. However, Ms. Kuehster also testified that at one point, Ms. Scardina mentioned that Mr. Wiegand stared at her, which made her uncomfortable. Ms. Kuehster testified that she did not believe Ms. Scardina, nor did she consider the statement a report of harassment.

10. Mr. Wiegand also commented on Ms. Scardina's attire. Ms. Scardina testified that on one occasion Mr. Wiegand said that her sweater "makes your eyes pop." She also testified that he told her that she "looked like a little girl." Both Ms. Scardina and **[*5]** Mr. Wiegand testified that she informed him that his criticism of her attire made her uncomfortable. Ms. Scardina testified that after she informed Mr. Wiegand of her discomfort, he made only one or two more comments regarding her attire.

11. Mr. Wiegand testified that his law firm serves an older, more conservative clientele. He therefore expected his employees to convey a professional appearance. He spoke to Ms. Scardina about his perception of the need for more professional attire. His comments were addressed to his desire that his associate, who was to be presented to clients as the future of the firm, should project a professional appearance. Mr. Wiegand also testified that he discussed Ms. Scardina's posture with her, and after she expressed discomfort at the conversation, he stopped all related comments.

12. Mr. Wiegand testified that he told Ms. Scardina that she sounded like a little girl and attempted to counsel her on conveying maturity and professionalism. Mr. Wiegand's wife, Pam Wiegand ("Mrs. Wiegand") also testified that she did not find Ms. Scardina professional for several reasons, one of which concerned Ms. Scardina's manner of talking.

13. Mr. Wiegand consulted his **[*6]** daughter, Juli Iacovone ("Ms. Iacovone"), about how to counsel Scardina regarding professional attire. Ms. Iacovone worked as an accountant at the time and had previously worked at the Ritz-Carlton. These work settings required her to dress professionally on a limited budget. Ms. Iacovone suggested providing Ms. Scardina a clothing allowance, and Mr. Wiegand provided Ms. Scardina a $500 clothing allowance.

14. Ms. Iacovone testified that she discussed how to acquire professional clothing affordably with Ms. Scardina, who confirmed this brief conversation.

15. Plaintiff Monique Cullens was hired by Wiegand LLC as the office manager in August 2010 on a part-time basis. She began full-time work in November 2011.

16. From the time of her hire, Mr. Wiegand frequently stared at Ms. Cullens's breasts. Ms. Cullens testified that she would often notice Mr. Wiegand looking at her breasts during conversations. Ms. Kuehster acknowledged that Ms. Cullens also complained to her about Mr. Wiegand's staring.

17. Mr. Wiegand does not deny that he may have stared at Ms. Scardina and Ms. Cullens. He further testified that he has had lifelong difficulty maintaining eye contact and that his gaze shifts when **[*7]** he is listening or thinking. He attributes his staring to Asperger's Syndrome, which a psychologist he was seeing in the 2007-2009 timeframe suggested to him, and gave him some reading material on. Mr. Wiegand does not have a formal diagnosis of Asperger's Syndrome. No one at

Wiegand LLC had heard of Mr. Wiegand's supposed Asperger's Syndrome until after the November 19, 2012 incident involving the discovery of a video camera in a bathroom, described *infra*.

18. Several other witnesses aligned with Defendant gave conflicting testimony regarding whether Mr. Wiegand has a tendency to stare. Wiegand LLC's current associate, Kimberly Raemdonck, testified that Mr. Wiegand's gaze is usually down or over her forehead, but she does not perceive it as looking at her breasts in particular. She also testified that Mr. Wiegand told her that he had Asperger's syndrome and that it caused him to stare. A prior office manager, Kathryn Dunn, also testified that Mr. Wiegand's gaze would wander and not look directly at her, which she regarded as a "quirk." Janet Dark, who also worked for Mr. Wiegand as an office manager, testified that she never perceived inappropriate staring.

C. Pool Parties

19. In the **[*8]** summers of 2011 and 2012, Mr. Wiegand hosted pool parties at his condominium. He viewed the pool parties as an opportunity for team building and a chance for his employees to relax away from work. Mr. Wiegand scheduled the pool party in 2011 to occur on a date his wife was out of state and would not be able to attend the pool party. Mrs. Wiegand testified that she was in New Orleans for four to six weeks during the summer of 2011 overseeing the remodel of a townhome. She further testified that Mr. Wiegand had consulted her regarding the idea of a pool party and she thought it would be fine. However, Ms. Cullens testified that, sometime after the party, Mrs. Wiegand asked her whether she had ever seen the pool at their condominium, which suggested to Ms. Cullens that Mrs. Wiegand had, in fact, not been aware of the pool party.

20. Mr. Wiegand sent an invitation via email, inviting Ms. Scardina and Ms. Cullens, along with spouses or guests. There was conflicting testimony as to whether Ms. Kuehster was invited to the 2011 party. Ms. Kuehster testified that she was invited to both parties, but she informed Mr. Wiegand that she was not going to attend the 2011 party because, among other **[*9]** reasons, she lives in Centennial and did not want to drive downtown for that purpose alone. Mr. Wiegand testified that he knew Ms. Kuehster would not attend. This functionally restricted the pool party invitations to Ms. Scardina and Ms. Cullens, and their guests.

21. In 2011, neither Ms. Scardina nor Ms. Cullens wanted to attend and initially did not confirm a date that they could attend. However, they both felt compelled to attend because the party was scheduled during the workday. Mr. Wiegand encouraged them to bring swimsuits and change in his condominium in both 2011 and 2012. Nonetheless, neither Plaintiff expressed any concern about the pool party directly to Mr. Wiegand.

22. Ms. Cullens brought a friend to the 2011 pool party, and Ms. Scardina's husband, Todd Scardina ("Mr. Scardina") also attended. At that party, Ms. Scardina did not wear a swimsuit because she did not want Mr. Wiegand to stare at her. Mr. Wiegand questioned Ms. Scardina about why she did not wear a swimsuit. When she responded that she did not like swimming, he questioned how someone who likes to surf (as she had told him she did during their interview) could not like swimming. Ms. Scardina evaded Mr. Wiegand's **[*10]** questions twice about why she did not wear a swimsuit.

23. Although Ms. Scardina testified that the pool party made her uncomfortable, both she and her husband acknowledged that nothing inappropriate happened either at the pool party or at the dinner later in the condominium. Everyone merely sat and talked by the pool.

24. Ms. Cullens testified that when she saw the Scardinas preparing to leave, she asked them not to leave without her. She was concerned about Mr. Wiegand's behavior, as he had been drinking, speaking to her "very closely" and she thought he might try to kiss her.

25. Mr. Wiegand sent out a second invitation for a pool party in June, 2012. Mrs. Wiegand testified that she hosted the 2012 pool party with Mr. Wiegand.

26. Ms. Cullens responded to the invitation, stating "I'd be ok with the bbq at the pool part, that would be fun! But getting in a bathing suit right now is not at all appealing. :)". Wiegand responded, "Seriously?!! You're WAY too worried about your figure. Relax & have fun." Mr. Wiegand testified that, based on his experience with his wife and daughters, he interpreted Ms. Cullens's statement as conveying a reservation about her weight. He responded in the same **[*11]** manner he would have with his daughters.

27. Ms. Scardina did not remember going to the pool at the 2012 party due to inclement weather, and recalled staying in the Wiegands' condominium the whole time. As with the 2011 party, Ms. Scardina admitted that

nothing inappropriate happened at this gathering.

28. Mr. Wiegand did not have pool parties for the Wiegand LLC office staff prior to hiring Ms. Cullens and Ms. Scardina. Wiegand LLC has not had any pool parties since 2012.

D. Physical Touching

29. Ms. Scardina testified that on one occasion, Mr. Wiegand inappropriately put his hand on the high part of her rib cage close to her breast while they were walking to lunch at the University Club. Mr. Wiegand testified that this was for the purpose of guiding her across the street but acknowledged that it was inappropriate to place his hand on her rib cage or close to her breast. Ms. Scardina quickly moved away from Mr. Wiegand and he did not attempt to touch her again. In Ms. Scardina's written statement to police from November 19, 2012, she affirmatively stated: "He [Mr. Wiegand] has never touched me inappropriately."

30. Ms. Cullens testified, and Mr. Wiegand admitted, that on one occasion in **[*12]** 2011, Mr. Wiegand hit her buttocks with a rolled up magazine. Ms. Cullens also testified to a separate incident in which Mr. Wiegand, in front of Ms. Kuehster's desk, "flicked" Ms. Cullens' buttocks with his index finger, after which he went to the bathroom. Mr. Wiegand denied this incident occurred. He also testified at one point that "I never flicked anyone in my life," but later admitted that he may have flicked Ms. Kuehster many years earlier, and had done the same with his daughters.

31. Ms. Cullens testified that after Mr. Wiegand flicked her, Ms. Kuehster recounted to Ms. Cullens an incident approximately 20 years earlier when Mr. Wiegand had similarly flicked Ms. Kuehster on the buttocks while they were working at his home. Ms. Kuehster testified about the incident at trial, and that she had firmly told him not to do that, and it was never repeated. At trial Ms. Kuehster confirmed that she told Ms. Cullens about the incident, but denied Ms. Cullens having complained about Mr. Wiegand hitting or flicking her buttocks. However, it is difficult for the court to understand how or why the issue would have come up otherwise.

E. Health Insurance

32. In August 2012, Ms. Cullens inquired **[*13]** about Wiegand LLC providing her health insurance. Ms. Scardina had a separate policy, and therefore Ms. Cullens would be the only employee covered by such a policy. Mr. Wiegand inquired by email with questions regarding, among other things, her gynecological health care. Mr. Wiegand testified that he thought of the questions himself, as opposed to taking them from an insurance application form, for instance. Ms. Cullens objected that the questions made her uncomfortable, but Mr. Wiegand persisted, stating that his lack of information made him uncomfortable.

33. Mr. Wiegand's explanations for these inquiries have shifted somewhat during this litigation. At his deposition, Mr. Wiegand testified that he did not know what he was going to do with the information. At trial, he testified that he was attempting to assess how much Ms. Cullens would use the health insurance to prevent a year-over-year increase in health insurance cost. In any event, Ms. Cullens did not answer his inquiries, and neither Ms. Cullens nor Mr. Wiegand pursued the matter further.

F. Comments

34. Plaintiffs testified that, on several occasions, Mr. Wiegand made inappropriate comments to Ms. Scardina and Ms. Cullens, including **[*14]** that they "could wear skirts as short as they wanted." The statement was made at lunch at the University Club after Mr. Wiegand had consumed an alcoholic beverage, which was an unusual occurrence at such lunches. Mr. Wiegand testified that he simply authorized skirts that would expose tattoos below the knee, even though in contravention of his written policy.

35. Ms. Cullens testified about a separate incident in November 2012, in which she wore a sweater with a zipper that she wore zipped all the way up. Mr. Wiegand asked her if she wanted him to turn up the heat so she could unzip her sweater. Mr. Wiegand recalls offering to adjust the heat in the interest of Ms. Cullens's comfort, and did not say anything regarding a zipper. Further, he did not recall whether the sweater had a zipper.

36. Ms. Cullens testified that Mr. Wiegand commented once in 2011 when she was wearing leggings that she could have been a model. Mr. Wiegand does not recall making such a comment but does recall Ms. Cullens informing him at one time but she had, in fact, been a model.

37. One Halloween, Ms. Cullens testified that she believed Mr. Wiegand overheard part of a conversation in which she discussed sending **[*15]** photos of her Halloween costume to the postman who delivered mail

to the office suite. According to Ms. Cullens, Mr. Wiegand suggested that photos be shared with the office, as well. Ms. Cullens testified that she had told the postman that she wore revealing costumes and she assumed Mr. Wiegand had overheard those comments. Mr. Wiegand denied that he knew anything about the nature of the costumes, but merely assumed that if they were appropriate for sharing with the postman, they were appropriate to share with the office.

38. Ms. Scardina and Ms. Cullens testified that Mr. Wiegand told them that they could leave work early if they texted him pictures of their costumes following his having overheard her conversation with the postman. Mr. Wiegand testified that he would not have conditioned leaving early on sharing photos, but he probably agreed to allow them to leave early because he knew he did not offer the highest salaries, and thus tried to be generous with leave.

G. Video Camera in Bathroom

1. Discovery of the Camera

39. On Monday, November 19, 2012, Ms. Scardina rode her bicycle to work, but experienced a "popped tube" in one of its tires on the way. She texted Mr. Wiegand, but continued **[*16]** into work, arriving at approximately 9:30 a.m., which was later than normal. Ms. Cullens and Mr. Wiegand were already there. She then changed clothes in the bathroom on the right before starting work for the day.

40. Later that afternoon, Ms. Scardina again went to the right bathroom customarily used by the law firm employees. As she entered, she saw something laying on the floor and some batteries. Initially, she thought it was a smoke detector and picked it up and began to put the batteries back in. She flipped an on-off switch, and when she realized that the device was, in fact, a camera, she pushed other buttons at the same time in an effort to determine how the camera worked. On the back of the camera was a piece of double sided tape, which caused her to believe that the camera had fallen off the wall or ceiling.

41. The camera was a "Covert DVR" known as the "Stealth 1," the front face of which had a tiny "pinhole camera" and a much larger "imitation sensor," which is obviously intended to disguise its true purpose. Trial witnesses testified that it appeared to be a smoke detector, fire alarm, air freshener, or other similar device, the presence of which would be unremarkable on **[*17]** the wall of a public restroom. According to an instruction manual for the device, it came with a mounting bracket, and could either be powered by a conventional 12 volt DC power cord or batteries. It also came with a 1 GB SD card, which inserted into a slot on one end of the camera.

42. Ms. Scardina returned from the restroom to her desk and told her husband via an ongoing Google chat what she had found.

43. Jeff Smith ("Mr. Smith"), Defendants' expert in digital forensic multimedia analysis, performed a forensic analysis on an exact, bit-by-bit copy of the SD card, which was created by Michael Bush ("Mr. Bush") of the Denver Police Department. He testified that, based on his analysis, it was during the time period between Ms. Scardina finding the camera and returning to her desk that the SD card was "quick formatted" in the camera.

44. Both Mr. Bush and Mr. Smith were able to recover videos from the SD card that included timestamps. The earliest timestamp on the videos is 9:39:47 AM and the latest timestamp is at 1:55:00 PM. The recovered videos recorded continuously during that time. Four restroom visits are depicted on the surviving videos, which consist of head, or head and shoulder **[*18]** views, visible by the illumination from the bathroom lights turning on. The wall of the single bathroom stall is in the foreground, preventing the camera from capturing nudity, clothing adjustment, or the toilet itself. The camera stayed in one location throughout. Ms. Scardina was recorded on three visits at approximately 11:23 AM, 11:55 AM, and 1:28 PM. Mr. Wiegand was recorded on one visit at approximately 1:03 PM. Ms. Cullens was not recorded at all.

45. Both Mr. Bush and Mr. Smith testified that the timestamp on the videos would reflect the camera's internal clock and that the camera's internal clock was dependent on user input. Accordingly, there is no way to verify the accuracy of the time stamps. Mr. Smith concluded, with a margin of error of approximately two to three minutes, that the SD card was quick formatted in the camera at 2:38:56 PM. The quick format of the camera deleted all recorded videos on the SD card.

46. Based on the testimony of Mr. Smith and Ms. Scardina, the court concludes that Ms. Scardina likely inadvertently performed a quick format of the SD card. The quick format button sequence requires pressing two buttons while simultaneously turning the power

switch **[*19]** from off to on (*see*, Ex. 8, p. 6). Ms. Scardina testified that she was pressing buttons on the camera in a deliberate effort to determine how it worked but could not say whether she pressed the buttons in the specific sequence which would have caused it to quick format. While Mr. Smith testified that it would be difficult to press the buttons inadvertently, the court understood him to be referring to an unintentional pressing of the buttons rather than the required sequence to quick format the SD card. In any event, that is not what happened here. It is undisputed that Ms. Scardina intentionally pressed the buttons, including intentionally operating the on/off switch.

47. However, it is unlikely that Ms. Scardina's specific intent was to perform a quick formatting of the SD card. There was no evidence that Ms. Scardina knew how to quick format the SD card. Because of the location and recession of the buttons in the camera's housing, Mr. Smith testified that it would have been impossible for the quick formatting to have occurred as a result of the device contacting the floor as it fell from the wall.

48. According to the testimony of Mr. Smith, the SD card was inserted into an Android **[*20]** phone at 2:44:36 PM. Ms. Scardina testified that she inserted the SD card into her Android phone in an attempt to see if there was video of the person responsible for the camera. Ms. Scardina opened the photo application on her Android phone in order to view the content on the SD card. She did not see anything. Mr. Smith's testimony is consistent with Ms. Scardina's description of inserting the SD card into her phone. It also established that when Ms. Scardina accessed the multimedia viewing application, her Android cell phone transferred her own personal photos to the SD card. These files overwrote the first one to five deleted video files, rendering them unrecoverable. The overwritten videos covered between 33 seconds and 2.5 minutes.

49. According to Mr. Smith's analysis, at 2:47:06, the final file was written by Ms. Scardina's Android cell phone. Again, this is consistent with Ms. Scardina's testimony that she removed the SD card from her cell phone and reinserted it into the camera. There was no activity on the SD card after that time.

50. Ms. Scardina stated in her CCRD charge and all three complaints filed in this case that she found the camera around 3:00 or 3:30 p.m. Police **[*21]** documents similarly record that she found the camera around 3:30 that day, and that she contacted Mr. Scardina around that same time.

51. The court notes the apparent discrepancy between the time range Ms. Scardina stated she found the camera and the physical evidence. The quick format occurred at 2:38:56 p.m., and the final file was written to the SD card at 2:47:06 p.m., while Ms. Scardina's CCRD charge and complaints in this action indicate that she did not find the camera until between 3:00 and 3:30 p.m. This equates to a discrepancy of somewhere between 21 and 51 minutes. In addition, Defendants emphasize that Ms. Scardina billed six hours of time on November 19, 2012 which, assuming she arrived at work at 9:30, would extend to approximately 3:30 p.m. However, the court finds Ms. Scardina's testimony at trial credible on these matters, despite these discrepancies. The hour following when Ms. Scardina found the camera was an extremely eventful one, she did not wear a watch at work, and the court finds it credible that Ms. Scardina simply erroneously estimated the time when she originally found the camera.

52. After finding the camera, Ms. Scardina continued a Google Chat with her **[*22]** husband on her office computer. Mr. Scardina advised Ms. Scardina to call the Denver Police and inform them she had found a camera in the restroom. However, before she called the police, Ms. Scardina decided to tell Mr. Wiegand about her discovery of the camera. She testified that she initially thought he may have had something to do with the camera's presence in the bathroom, based upon his staring at her and other female employees, and was concerned that there would be videos of them using the bathroom. However, she testified that she wanted to notify Mr. Wiegand before she called the police, both because she "wanted to give him the benefit of the doubt," and because he was responsible for the office.

53. Ms. Scardina entered Mr. Wiegand's office and told him that she had found a camera on the floor in the bathroom. She testified that Mr. Wiegand had a "weird look," which she interpreted as being shocked and surprised, and more than simply having been interrupted in his work. Ms. Scardina handed him the camera; she also informed him that it had an SD card and showed him how to eject it. Mr. Wiegand took the double sided foam tape off the back of the camera, balled it up, and threw **[*23]** it in his trash can. Mr. Wiegand then removed the SD card from the camera. Mr. Wiegand testified that he opened the battery compartment and "fiddled with" the batteries in Ms. Scardina's presence.

54. Ms. Scardina suggested that they call the police, but Mr. Wiegand responded that he would "take care of it."

Ms. Scardina asked what he meant by that. Mr. Wiegand then suggested destroying the SD card, but Ms. Scardina objected because she still believed that the camera might have an image of who placed the camera. It is disputed whether Mr. Wiegand agreed or stayed silent after Ms. Scardina's objection. Regardless, it is clear that he did not respond in a manner that reassured Ms. Scardina because Ms. Scardina remained worried about Mr. Wiegand destroying evidence on her subsequent 911 call. Mr. Wiegand testified that he believed Ms. Scardina was upset at the possibility of being recorded in the restroom and offered to destroy the SD card to protect her (and other potential victims') privacy.

55. Ms. Scardina again expressed her belief that the police should be called. Both Ms. Scardina and Mr. Wiegand testified that he responded, "Let me think about it." Mr. Wiegand further stated that **[*24]** he would "take care of it," and that he needed to "process it." When Ms. Scardina asked what he meant, Mr. Wiegand replied that he "didn't think they needed to call the police." Mr. Wiegand testified that he was in the middle of a complex accounting matter for a client when Ms. Scardina came into his office with the camera, and wanted to finish that project before turning his attention to the camera, and that he was "hard-pressed to see an emergency" requiring immediate police involvement.

56. There is a dispute as to whether Ms. Scardina actually accused Mr. Wiegand of placing the camera in the bathroom during this initial confrontation in his office. Ms. Scardina testified that his reaction to the revelation led her to believe that he was somehow involved, she was angry, and she accused Mr. Wiegand of placing the camera in the restroom based on his refusal to call the police. When she placed a 911 call shortly thereafter, Ms. Scardina told the dispatcher that she had taken the camera into Mr. Wiegand, and "he refused to call the police. So I asked him if he was involved with it somehow and he wouldn't give me an answer..." On the other hand, Mr. Wiegand denies that Ms. Scardina accused **[*25]** him of placing the camera. Although he was focused on a difficult accounting issue, Mr. Wiegand acknowledged that he recognized Ms. Scardina was extremely upset. Ms. Scardina testified that she asked for the camera back to call the police and reached to take it from Mr. Wiegand, but he pulled it towards his body and would not give it to her. Mr. Wiegand denies this happened, but in any event the camera remained with him when Ms. Scardina left his office.

57. Mr. Wiegand testified that he only touched the camera while in Ms. Scardina's presence. He acknowledged having knowledge about the SD card and how to insert it in the camera. Both he and Mrs. Wiegand testified they had two surveillance cameras that rested on surfaces in their home and that Mr. Wiegand purchased them after they believed their cleaning lady had stolen some of their possessions from their condominium.

58. During the course of this litigation, Mr. Wiegand gave varying accounts of whether he opened the battery compartment of the camera. At his first deposition on April 24, 2015, portions of which Plaintiffs introduced in their case-in-chief as substantive evidence under *C.R.C.P. 32(a)(2)*, he testified that the only things he did when **[*26]** Ms. Scardina first presented him with the camera were to remove the tape from the back of the camera (Exh. 49, 130:9-11; 180:7-12), and remove the SD card. After continued questioning, he added that it was "entirely possible" that he "fiddled with" the battery compartment but he didn't recall having done so. When asked specifically "what kind of batteries do these cameras use?," he responded "I don't recall opening the compartment, so I couldn't tell you." (Exh. 49, p.181, l. 25 - p. 182, l. 3). Then, in corrections to his deposition testimony made and signed on May 28, 2015, he changed all three answers to read, "Yes. I opened the camera and fiddled with the batteries." As his reason for the change, he stated, "Seeing this question in print brought back a memory I had forgotten." (Exh. 31). At his reconvened deposition on August 5, 2015, he admitted that he became aware, on May 5, 2015, that Ms. Cullens's counsel had asked for the court to order production of the camera by the Denver Police Department ("DPD"), although he denied specific awareness that the reason for counsel's request was so that the camera could be examined by a fingerprint expert (Exh. 50, 284:8 - 285:19). In his **[*27]** direct testimony at trial, Mr. Wiegand did not attempt to further elaborate on this issue, testifying only that he had removed the SD card.

59. Once more, Ms. Scardina returned to her office and resumed her Google Chat conversation with her husband and informed him about her conversation with Mr. Wiegand, including that he had refused to give her the camera back. Mr. Scardina left his nearby law firm to come to her office. Ms. Scardina gathered her belongings to leave. On her way out, Ms. Scardina told Ms. Cullens she needed to talk to her outside, and Ms. Scardina told Ms. Cullens that she had found a camera on the bathroom floor.

60. When Mr. Scardina arrived at the law office, he went directly into the office to retrieve the camera from Mr. Wiegand. He testified that he intended to retrieve the camera. Ms. Cullens unlocked the front door and followed Mr. Scardina into the office. While they were inside, Ms. Scardina made the 911 call at 3:47 p.m., slightly over an hour after she had first placed the SD card in her cell phone

61. Mr. Scardina entered Mr. Wiegand's office and demanded that Mr. Wiegand give him the camera so they could turn it over to the police. Both Mr. Wiegand and **[*28]** Mr. Scardina testified that when Mr. Scardina entered Mr. Wiegand's office, the camera was sitting on his desk. Mr. Scardina described Mr. Wiegand as white-faced, shoulders hunched, facing his computer and "pretending to be working." Mr. Scardina summarized his impression of Mr. Wiegand as looking "as guilty as anyone I've ever seen." Ms. Cullens, who followed Mr. Scardina into Mr. Wiegand's office, similarly described him as hunched over, but remembers the camera was in his lap, and he was looking or playing with it. Mr. Wiegand testified he was focused on a client project and was looking at his computer screen with his hands on the keyboard. He additionally testified that he had placed the camera on his desk while speaking with Ms. Scardina, where it had remained until Mr. Scardina arrived.

62. Mr. Scardina did not accuse Mr. Wiegand of having any connection to the camera. Mr. Wiegand either handed the camera to Mr. Scardina or pointed to the camera. Mr. Scardina remembers that Mr. Wiegand needed to reinsert the SD card before handing him the camera. Mr. Scardina picked it up and took it with him out of the office. Approximately 15 to 20 minutes passed between the time that Ms. Scardina **[*29]** presented the camera to Mr. Wiegand and the time that Mr. Wiegand was informed that the police had been called.

63. Mr. Scardina and Ms. Cullens returned outside with the camera to wait for the police with Ms. Scardina. While waiting, Ms. Cullens texted Ms. Kuehster that Ms. Scardina had found a camera in the restroom. Ms. Kuehster responded, "I assume the camera was found in the bathroom on the right side and only on that bathroom?" When Ms. Cullens asked how she knew it was only found in that bathroom, Ms. Kuehster responded, "It just makes sense." At trial, Ms. Kuehster explained that she said so because that was the restroom that everyone in the office used, but as she thought about it later, she realized that she was likely the only person who would have observed that tendency because of her desk location.

64. Mr. Wiegand did not go outside to speak with Mr. Scardina, Ms. Scardina, and Ms. Cullens while they waited for the police. When the police arrived, they spoke to Ms. and Mr. Scardina and Ms. Cullens outside, and then spoke briefly to Mr. Wiegand in his office. The police did not ask for a written statement, and Mr. Wiegand did not give them one. One officer asked Mr. Wiegand **[*30]** about the piece of tape. Mr. Wiegand retrieved the tape from the trash can and showed it to the officer. The officer looked at, but did not take custody of the tape.

65. Mr. Wiegand finished working on a complex accounting matter for a client. He had planned to have dinner with his family at one of his daughters' homes in Highlands Ranch that evening. The dinner included his other daughter, Julie Iacovone, who had just arrived in town for Thanksgiving. Mrs. Wiegand arrived at the law office as planned to leave with her husband for the family dinner, which was when she learned about the incident involving the video camera. The police were still at the office when Mrs. Wiegand arrived and had not completed their investigation when the Wiegands left for their family dinner. Mr. and Mrs. Wiegand did not remember spending a significant amount of time discussing the discovery of the camera during their drive to Highlands Ranch or at dinner.

2. Denver Police Department Investigation

66. The DPD assigned the case to Detective Daniel Tregembo ("Detective Tregembo"). Detective Tregembo visited the Wiegand law office on November 27, 2012, which was the Tuesday following the week of Thanksgiving, **[*31]** and Mr. Wiegand's first day back in the office since the previous Tuesday, November 20. He briefly spoke with Mr. Wiegand, and the conversation was recorded. In that conversation, Mr. Wiegand stated the camera "had been on the wall and fell onto the floor." When Detective Tregembo asked if the camera belonged to Mr. Wiegand, Mr. Wiegand paused for 3 or 4 seconds before replying, "no." Detective Tregembo acknowledged that the pause evident on the tape recording was consistent with his memory. Mr. Wiegand attributed the pause to his shock, as he claimed it was the first time anyone suggested that he might have had something to do with the camera.

67. The DPD was initially unable to retrieve any data from the SD card from the camera. When Detective

Tregembo communicated that fact to Ms. Scardina, Mr. Scardina, and Ms. Cullens over the telephone, each of them expressed some degree of frustration or anger, based upon their belief that Mr Wiegand had erased the contents of the SD card and gotten away with it.

68. Detective Tregembo informed Ms. Scardina and Ms. Cullens on or about November 28, 2012, that the DPD was closing their file as "unfounded or civil in nature" because they had found **[*32]** no videos of genitalia, which they indicated would be necessary for a criminal prosecution. Although Ms. Scardina had previously informed Mr. Wiegand that she would let him know when she heard something from the police, she did not advise him of this communication.

69. Mr. Wiegand did not independently follow up with the DPD. He testified that this was because he thought they were taking care of the investigation and that he relied on Ms. Scardina to update him about the investigation. However, Ms. Scardina's employment terminated in December 2012. By no later than early February, 2013, when Mr. Wiegand received Ms. Scardina's CCRD charge, he learned that the DPD had stopped their investigation. He still did not take any action or begin any sort of follow up investigation at that time.

70. Mr. Wiegand also made no effort to inform others in the office about the discovery of the camera. Ms. Kuehster had to ask Mr. Wiegand about the camera. When she did, Mr. Wiegand said he did not know if there was a camera in the bathroom but that Ms. Scardina had brought one into his office. Mr. Wiegand did not tell the new office manager, Kathryn Dunn, about the camera until after she saw some court **[*33]** documents. Mr. Wiegand had no specific recollection of any conversation with the convenience store owners or employees about the camera. He did not recall either informing them of the discovery of the camera, or making any effort to determine if they were responsible for the camera.

3. Aftermath of the Discovery of the Camera

71. Wiegand LLC had no policies regarding sexual harassment or discrimination during the time Ms. Scardina and Ms. Cullens worked for the law firm. Even after Ms. Scardina and Ms. Cullens had filed charges of sexual harassment, Wiegand LLC still did not have a policy or procedure in place to report discrimination or harassment.

72. Following discovery of the camera, on the evening of Monday, November 19, 2012, Ms. Scardina informed Mr. Wiegand by email that she did not feel comfortable returning to the office the following day. On Wednesday morning, Ms. Scardina again emailed Mr. Wiegand and told him she did not feel comfortable returning to the office until she heard back from the police about what they had found. Mr. Wiegand never provided her any assurances that he was taking steps to provide for a safe workplace.

73. The following Monday, November 26, 2012, Mr. **[*34]** Wiegand copied Ms. Scardina on various client emails and Ms. Scardina continued to work remotely. The next day, Ms. Scardina's password was changed and she no longer was able to access her work email. Mr. Wiegand testified that he diverted Ms. Scardina's e-mail during the week of November 27 so that he would receive client communications directed to her while she was out of the office.

74. Ms. Scardina had previously informed Mr. Wiegand in September, 2012, that she planned to resign from Wiegand LLC effective December 14, 2012 to travel the world with her husband.

75. On Friday, November 30, 2012, Mr. Wiegand emailed Ms. Scardina asking if she had heard anything from the police and when or if she would return to the office. He stated "I need to plan for the future operations of the office." Ms. Scardina responded on December 1, 2012, that she would not be returning. She wrote, "I did not quit my position at the firm, and expect that you will continue to pay me my regular wages through December 14, 2012, the original date of my resignation." Mr. Wiegand responded on December 3, 2012, stating that he would pay Ms. Scardina through November 30, 2012 because he had agreed to her leave of **[*35]** absence until that time, but her most recent communication made clear that she did not intend to return to work.

76. Ms. Scardina never physically returned to the office after November 19, 2012. She asserts that, due to her password changing, she was constructively terminated on December 1, 2012.

77. Ms. Cullens texted Mr. Wiegand the day following the discovery of the camera, November 20, 2012, to inform him that she was not coming to work because she was worried about the camera and needed a day to "process" the event. Mr. Wiegand replied to her text, in which he acknowledged his failure to adequately respond to the camera's discovery, and attributed that to

"Asperger's Syndrome." This was the first time Ms. Cullens had been informed of Mr. Wiegand's claim that he suffered from Asperger's Syndrome.

78. Mr. Wiegand was scheduled to be out of the office for Thanksgiving beginning Wednesday, November 21, 2012. On that date, Ms. Cullens went to the office to print materials related to this lawsuit. Ms. Cullens' counsel sent a demand letter to Mr. Wiegand that same day. Ms. Cullens never returned to work at the firm.

4. Factual Conclusions regarding Video Camera

79. Based upon the foregoing **[*36]** findings of fact, and by a preponderance of the evidence, the court reaches the ultimate factual conclusion that Mr. Wiegand was either directly responsible, or at least complicit, in the placement of the video camera in the bathroom at his law firm. This conclusion is based upon the following analysis of the evidence.

80. First, the camera itself is designed to and does appear to be something that it is not. It appears to be either a smoke detector, fire alarm, air freshener, or other similar, innocuous device, the presence of which would be completely unremarkable on the wall of a bathroom, even if someone were to notice its presence. Furthermore, the mounting bracket with which the camera is sold was not used to secure it to the wall, but rather a piece of double-sided tape, strongly suggesting that the camera was intended to be placed only temporarily, and perhaps hastily, and yet remain easy to remove quickly without leaving any evidence that it had ever been there in the first place. In short, the type of camera and the manner of its placement were apparently selected precisely to evade detection during the short period of time it was in place.

81. The camera was placed in the **[*37]** right bathroom, which was indisputably the bathroom used nearly exclusively by the employees of the Wiegand law firm, including Plaintiffs. There was no evidence that a similar camera was placed in the left bathroom, which was the one utilized by employees and patrons of the convenience store. Ms. Scardina utilized this bathroom to change clothes on the morning of November 19, 2012, after she had texted Mr. Wiegand to inform him that she would be late to work because she had experienced a flat tire with her bike. In this respect, the court found it particularly interesting that, in discussing the floor plan of the law office, Mr. Wiegand referred to the bathrooms as "two dressing rooms."

82. Mr. Wiegand's reaction to being confronted with the camera by Ms. Scardina following its discovery also strongly suggest his involvement in its placement. He initially appeared shocked and nervous to Ms. Scardina, beyond merely having been interrupted on a project he was focused on. He removed and discarded the piece of two-sided tape which had apparently adhered the camera to the bathroom wall, at least temporarily. He initially suggested that the SD card be destroyed, although ultimately he did **[*38]** not do so. He rejected at least one, and perhaps as many as several, suggestions from Ms. Scardina that they call the police, each time indicating that he would "take care of it," that he wanted to "process it," and that he wanted to "think about it." In fact, at trial, he indicated that he was "hard-pressed to see any emergency" requiring that the police be called, at least before he had finished his work on the accounting project. He did, however, take physical possession of the camera, and refused to return it to Ms. Scardina when she requested it before leaving his office. In summary, his reaction upon being abruptly confronted by Ms. Scardina was to establish control over a device of which he disclaims ownership, and at least delay if not prevent the involvement of the police. He also appeared white-faced and "guilty" to Mr. Scardina when he came into his office to retrieve the camera perhaps twenty minutes later.

83. The court finds particularly compelling the evolution of Mr. Wiegand's testimony regarding whether he had opened the camera's battery compartment and inspected the batteries when first confronted by Ms. Scardina. At trial, he testified unequivocally that he had opened **[*39]** the battery compartment and "fiddled with" the batteries in Ms. Scardina's presence. However, at his initial deposition on April 24, 2015, some two and a half years after the incident and approximately a year before trial, he testified that he had no specific recollection of opening the battery compartment, although he might have. However, when asked directly, he testified that he could not specify the types of batteries used to power the camera, because he had not opened the battery compartment. It was only after the Plaintiffs had sought an order compelling production of the camera by the DPD in early May 2015 that he changed these responses in his deposition to indicate that he had, in fact, opened the battery compartment and "fiddled with" the batteries. While Mr. Wiegand acknowledged in a follow-up deposition that he was aware of Plaintiffs counsel's Motion to Produce the camera, but not that the purpose of the Motion was to submit it to a fingerprint analysis, the court nevertheless finds his changes to his deposition clearly indicate his

concern for what a fingerprint analysis might have shown. Without the changes to his deposition indicating that he had, in fact, opened the **[*40]** battery compartment and "fiddled with" those batteries, he would have had no explanation whatsoever for how any of his fingerprints discovered within the battery compartment or on the batteries themselves had come to be there. Those changes were the only significant ones to his deposition, the transcript of which ran some 252 pages. Mr. Wiegand's concern about fingerprints might also explain why he had removed and discarded the two-sided tape from the back of the camera.

84. Mr. Wiegand's minimal involvement in the DPD's investigation also points to his complicity. Although he did not complete a written statement for the police on November 19, 2012, he told DPD Detective Tregembo on November 27 that the camera "had been on the wall and fell to the floor." In view of the fact that no videos had been retrieved by that time, and were not retrieved for many months thereafter, there is no way Mr. Wiegand would have known where the camera was placed unless he had been complicit in placing it there. On that same occasion, there was a very pregnant pause after Mr. Wiegand was asked directly whether the camera was his property, before he responded in the negative. Although Mr. Wiegand claims **[*41]** that the delay was due to his surprise at Detective Tregembo's question suggesting he had anything to do with the camera, the court finds that explanation incredible. Mr. Wiegand was the sole member of the entity which owned his law office premises. Following discovery of the camera on November 19, Ms. Scardina had confronted him with the camera, of which he took possession and refused to call the police. Even accepting Mr. Wiegand's version that Ms. Scardina did not directly accuse him of involvement in its placement, Mr. Wiegand acknowledges that he recognized Ms. Scardina was very upset, and it is undisputed that both Ms. Scardina and Ms. Cullens abruptly left the law office that afternoon, ultimately never to return for purposes of work. They, rather than he, initiated the police investigation of the case. Under these circumstances, the court finds it inconceivable that Mr. Wiegand was not aware that he was under suspicion by Plaintiffs for having placed, or at least having been complicit in the placement, of the camera. Rather, the court interprets Mr. Wiegand's delay in responding to Detective Tregembo as being based upon his recognition of the gravity of responding falsely to **[*42]** a police officer's direct question.

85. Other aspects of Mr. Wiegand's conduct following the discovery of the video camera are consistent with the court's finding of his involvement in its placement. Although he acknowledges being responsible for the condition of the premises, he apparently never went to the bathroom itself to inspect it in the immediate aftermath of the camera's discovery. In fact, he testified that he was "hard-pressed to see any emergency" in the aftermath of the discovery, and he took no affirmative steps to contact the police. As noted, he played only a very limited and passive role in the DPD's investigation. Nor does he remember ever approaching the proprietors of the Uptown Oasis convenience store to determine if they had any knowledge of the camera's placement or presence, despite them being the only other persons who had regular access to the bathroom. Nor did he take any affirmative steps to inform Ms. Kuehster or Ms. Dunn of these events. The most logical explanation for this series of omissions is that Defendant was not concerned about any ongoing threat to his law firm or its employees, since he knew the source of the camera. While Mr. Wiegand attributes **[*43]** his "tunnel vision" and lack of an appropriate reaction to the discovery of the camera to Asperger's Syndrome, no expert testimony was offered on that issue, and it is uncontested that he had never mentioned this condition to anyone in the office until his text to Ms. Cullens on November 20th.

86. The court has also carefully considered Defendants' alternative theory that, in fact, it was Ms. Scardina who placed the camera in the restroom, or was complicit in doing so. Defendants point out that Ms. Scardina arrived at the law office at approximately 9:30 AM that morning, and would have been in the bathroom changing clothes at approximately the time the camera's internal clock indicates it was set to commence videotaping. They also point out that Mr. Smith testified that the SD card was quick formatted in the camera at approximately 2:39 PM, then inserted into an Android phone, and Ms. Scardina's personal photographs written to it. They also point out the discrepancy between Ms. Scardina's consistent and repeated self-report of the timing of various events, and that which is recorded on the SD card as a result of having been plugged into her Android phone. The court finds that none of **[*44]** this evidence is irreconcilably inconsistent with Ms. Scardina's testimony. First, the accuracy of the camera's internal clock was based on user input, and therefore it is unclear exactly when the camera was placed on the wall or commenced videotaping. Furthermore, Ms. Scardina acknowledges that, upon finding the device on the floor, she reinserted the batteries and manipulated the various buttons and on/off switch repeatedly in an effort to

determine what the device was and how it worked. While quick formatting of the camera requires that two buttons be held down while the power switch is moved from off to on, that is obviously an operation which is intended to and can be performed by a single person, and there is no evidence that it could not be performed inadvertently. The suggestion that Ms. Scardina intentionally quick formatted the SD card assumes her pre-existing knowledge of how to do so, for which there is no evidence. She has acknowledged from the very outset having inserted the SD card into her Android phone, and opened the applications which apparently automatically allowed her personal photographs to be copied to the card. She did all of this in an effort to determine **[*45]** what was already on the SD card, rather than intending to overwrite or delete any existing content. With respect to the discrepancies in her reports of time, she also testified that she did not wear a watch at work, and does not remember looking at any clocks during the critical events of the day. The fact that her workday had started somewhat later than usual on November 19 might also account for her somewhat inaccurate estimate of the timing of events. In addition, and in marked contrast with Mr. Wiegand, several aspects of her post-incident conduct indicate that she had no involvement in the placement of the camera. Ms. Cullens testified to physical manifestations of Ms. Scardina's heightened emotional state in the aftermath of the discovery of the camera. She initiated the police contact in the case only after affording Mr. Wiegand an opportunity to react to the situation. She followed up diligently with Detective Tregembo, and was appropriately frustrated, and obviously angry, at the inconclusive outcome of the initial DPD investigation. In short, the court finds Ms. Scardina's testimony and post incident activities entirely consistent with its finding that Mr. Wiegand placed, **[*46]** or was complicit in the placement of the camera, and she was not.

H. Damages

87. Ms. Scardina filed her CCRD Charge on January 31, 2013, and received Notice of her Right to Sue dated January 24, 2014. Ms. Cullens also filed a CCRD Charge, in response to which Wiegand LLC filed a Position Statement with the CCRD dated May 6, 2013 (Ex. O). Ms. Cullens's Charge was therefore necessarily filed within six months of the date of the camera incident, November 19, 2012. Ms. Cullens received her Notice of Right to Sue on March 12, 2014. Both Plaintiffs filed their Complaint against Defendants within ninety (90) days of their receipt of their Right to Sue. Defendants have not pled or contended that their suits were not timely filed after they received their Notices of Right to Sue.

88. Both Ms. Scardina and Ms. Cullens explored other employment opportunities while working at Wiegand LLC.

89. Ms. Scardina and Ms. Cullens both suffered severe emotional distress as a result of the discovery of the camera in the bathroom. Mr. Wiegand and Ms. Cullens testified that they noticed Ms. Scardina was distraught on November 19, 2012. Ms. Cullens testified Ms. Scardina's neck was very red and she appeared distressed. **[*47]** Her anguish is also reflected in her voice on the recording of the 911 call. Both were similarly distraught when Detective Tregembo informed them that the DPD would not be investigating any further. That distress is captured on the recordings of both calls.

90. Mr. Scardina testified that Ms. Scardina is more emotional about things than she was in the past and is angry, cries more, and rants about what happened. Ms. Scardina continues to suffer from anxiety, sleeplessness, and physical symptoms including feeling hot all over and sensations of tingling skin, and hair standing up on her arms, all of which she attributes to the sexual harassment she suffered during her employment at Wiegand LLC, Mr. Wiegand's actions, and the knowledge that videos were taken of her using the restroom.

91. On December 11-12, 2012, Ms. Cullens was hospitalized following a suicide attempt. Before taking a large number of pills, she wrote in her journal "this final straw came with Sonny Wiegand filming me in the bathroom. He gets away with it. I get away with not having money for rent." (Exhibit 33, p. 21). Ms. Cullens told a nurse performing a psychiatric evaluation essentially the same thing, and that because **[*48]** of the camera in the bathroom "my world was crumbling, I felt so violated." This conversation is reflected in Ms. Cullens' medical records. (Exhibit 33, p. 36). After being discharged, she continued to suffer from a depressed mood. She slept late, often fifteen hours a night, and sometimes stayed in bed all day and did not get dressed. She began drinking more, and drinking alone, which she had not done before the camera incident. This continued until her move to California in June 2013. She does not claim damages for the period after she moved.

92. At the time Ms. Scardina was terminated, she was

earning $56,160 per year. She had planned to work for two more weeks, resulting in $2,160 of lost wages.

93. In addition, Mr. Wiegand had a long-standing policy of an annual bonus equal to one month's compensation. There was conflicting testimony on whether this bonus was conditioned on an employee's continued employment through the last day of the calendar year. Mr. Wiegand testified that an employee must be employed on the last day of the year to receive either a year-end or profit sharing bonus, but he could not point to any written policies concerning these requirements. Ms. Kuehster testified **[*49]** that the condition of employment through the end of the year was something of an office joke, as the bonuses were traditionally given out at the annual Christmas party, to which Ms. Scardina had been invited by Mr. Wiegand in 2012, and were always paid prior to the end of the year. Although the requirement of year-end employment was apparently a "joke," Ms. Kuehster also testified that Mr. Wiegand would pay the bonus before Christmas, but generally assumed that the employees would still work for him after Christmas. Similarly, Mr. Wiegand testified that he occasionally paid the annual bonus shortly before December 31.

94. In 2010 and 2011, Mr. Wiegand paid Ms. Scardina a discretionary bonus that he termed "profit sharing," but it was not under any formal plan or ERISA. Mr. Wiegand had never paid such a discretionary bonus to any employee before. Mr. Wiegand testified that he viewed the bonus as an incentive for Ms. Scardina, whom he believed would be his successor at the firm. Mr. Wiegand testified that due to the anticipated costs of hiring and training her replacement, he did not anticipate a profit to share in 2012.

95. Ms. Scardina would have received a year-end bonus equal to one **[*50]** month's pay or $4,600. It does not appear that she would have received a profit sharing bonus in 2012.

96. Ms. Cullens was paid $18.36 per hour prior to her termination from Wiegand LLC. Ms. Cullens had received a bonus in 2011. But for her constructive termination, Ms. Cullens would also have received a year-end bonus for 2012.

97. After her termination, Ms. Cullens made diligent efforts to search for replacement employment. She was only able to secure employment for a few weeks with iVita Wellness as a Vice President. She and the new President found themselves unable to work together. She earned $1692.31 in gross wages during this employment.

98. Ms. Cullens then moved to California on June 13, 2013. She claims no damages after that time. Her gross loss of wages between November 19, 2012 and June 13, 2013 that she would have earned with Wiegand, LLC is $24,920.64 based on 29 weeks and 3 days (three-fifths of a week) at her weekly rate of $734.40, plus her 2012 bonus, which would have been $3,182.40 but for her constructive termination.

CONCLUSIONS OF LAW

Plaintiffs have the burden of proving their claims by a preponderance of the evidence, _____ _____, except that they must prove their claims for **[*51]** exemplary damages beyond a reasonable doubt. *See generally,* _____ _____.

A. Colorado Anti-Discrimination Act

The Colorado Anti-Discrimination Act ("CADA") makes it unlawful to harass an employee. "'[H]arass' means to create a hostile work environment based upon an individual's...sex." *Id.* Because CADA closely resembles Title VII of the Civil Rights Act, Colorado courts rely on federal cases for guidance in applying CADA. *St. Croix v. Univ. of Colo. Health Sciences Ctr., 166 P.3d 230, 236 (Colo. App. 2007)*.

As a preliminary matter, CADA provides that "[h]arassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate." *C.R.S. § 24-34-402(1)(a)*.

Mr. Wiegand admitted that Wiegand LLC had neither discrimination or harassment policies or reporting policies or procedures. Because Defendant's reporting procedures were non-existent, they are unable to avail themselves of this section of the statute. *See Am. Legion v. Colo. Civ. Rights Comm'n, 2011 Colo. App. LEXIS 319, at 18-19* (Court of Appeals No. 10CA0254, January 31, 2011) (failure to file excused where no policy or procedure for addressing workplace harassment and complaint would be pointless and jeopardize her job). Similar to *American Legion*, it

is **[*52]** undisputed that there were no policies or procedures for addressing workplace harassment but also any complaints by Ms. Scardina or Ms. Cullens would likely be pointless and could potentially have jeopardized their jobs. Although Ms. Scardina complained to Mr. Wiegand that his comments regarding her attire made her uncomfortable, his comments did not stop. He admitted at trial that he continued to make comments after Ms. Scardina told him she was uncomfortable (albeit in a complimentary, rather than critical, manner). Further, both Ms. Scardina and Ms. Cullens informed Ms. Kuehster that some of Mr. Wiegand's actions made them uncomfortable; for her part, Ms. Kuehster dismissed these comments, and testified that she did not consider them to be complaints of harassment, but she did not dispute that they had, in fact, occurred.

Because Mr. Wiegand was their supervisor, he must affirmatively demonstrate that Wiegand LLC exercised reasonable care to prevent and promptly correct any harassing behavior and that Ms. Cullens and Ms. Scardina unreasonably failed to take advantage of any preventative or corrective opportunities that were provided. *Vance v. Ball State University, 570 U.S. 421, 133 S. Ct. 2434, 186 L. Ed. 2d 565 (2013)*. Mr. Wiegand offered no evidence carrying his **[*53]** burden on this affirmative defense.

For these reasons, the court finds that there was no appropriate authority for the Plaintiffs to report harassment. Accordingly, the court turns to Plaintiffs' claims under CADA.

B. Hostile Work Environment

A plaintiff asserting a claim for sexually hostile work environment must prove four elements: the plaintiff was (1) a member of a protected class; (2) subjected to unwelcome harassment; (3) which was based on sex; and (4) the harassment was sufficiently severe or pervasive to alter a term, condition, or privilege of employment and create and abusive work environment. *Dick v. Phone Directories Co., Inc. 397 F.3d 1256, 1262-63 (10th Cir. 2005)*.

With regard to the fourth element, the work environment must be both subjectively and objectively hostile. *St. Croix, 166 P.3d at 243*. The objective prong requires that a reasonable person would find the work environment hostile or abusive, while the subjective prong examines whether the plaintiff perceived the work environment as hostile or abusive. *Id.* Further, the court must look at the totality of the circumstances, including the frequency and severity of the discriminatory conduct, "whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes **[*54]** with an employee's work performance." *Harris v. Forklift Systems, Inc., 510 U.S. 17, 23, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993)*; *see also Meritor Sav. Bank, F.S.B. v. Vinson, 477 U.S. 57, 69, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986)* ("[T]he trier of fact must determine the existence of sexual harassment in light of the record as a whole and the totality of [the] circumstances."). Under the continuing violation doctrine, harassment outside of the six months immediately prior to Ms. Scardina's and Ms. Cullens's filing a charge with the CCRD may constitute the basis for a claim of sexual harassment. *See Harmon v. Fred S. James & Co., 899 P.2d 258, 261-62 (Colo. App. 1994)*.

The court finds that Ms. Cullens and Ms. Scardina are female, and thus members of a protected class. They were subjected to unwelcome harassment, and the harassment was because of their sex. Finally, the court finds that the harassment was sufficiently severe or pervasive as to alter a term, condition, or privilege of employment, and thus, created an abusive working environment.

The incidents of harassment, when viewed in isolation, do not appear particularly extreme. They include frequent staring by Mr. Wiegand; comments about both Plaintiffs' attire; inappropriate touching, including touching Ms. Scardina on the ribcage near her breast and striking Ms. Cullens with a rolled up magazine and "flicking" her posterior; throwing an office pool party, at which all employees **[*55]** were expected to wear swimsuits; and inquiring about Ms. Cullens' gynecological health. Some of these incidents have plausible explanations. For example, several witnesses testified that Mr. Wiegand expressed concern over Ms. Scardina's dress and overall professionalism, and wished to guide her toward a more composed demeanor and attire. Similarly, Mr. Wiegand testified that he questioned Ms. Cullens about her gynecological health to better understand the health insurance she desired, particularly its financial component.

However, all parties agree that by far the most severe incident occurred when Ms. Scardina found the camera in the bathroom. This was unquestionably a severe invasion of privacy; indeed, many courts have recognized that surreptitiously filming employees in the

bathroom is sufficiently severe to constitute a hostile work environment, even if there is only one incident. *See e.g.,* Hughes v. Pacienza, 2011 NY Slip Op 51810(U), 33 Misc. 3d 1208(A), 939 N.Y.S.2d 740 (N.Y. Sup. Ct. Sept. 22, 2011); *Ciesielski v. Hooters Mgmt. Corp.*, 03-C-1175 (N.D. Ill Mar. 15, 2005); Liberti v. Walt Disney World Co., 912 F.Supp. 1494, 1505 (M.D. Fla. 1995); Edwards v. Murphy-Brown, LLC, 760 F.Supp.2d 607 (E.D. Va. 2011).

Here, the discovery of the camera was not a single incident. There were numerous other events, although some of them were minor. Both Plaintiffs testified that they found these various instances of misconduct harassing. **[*56]** Further, the cumulative effect of these occurrences resulted in a work environment that a reasonable person would find severe and pervasive, thus satisfying the objective requirement.

The court is somewhat skeptical of the testimony of Mr. Wiegand's current employees regarding harassment. In re Wells Fargo Home Mortg. Overtime Pay Litig., 527 F. Supp. 2d 1053 (N.D. Cal. 2007) (finding that defendant's happy camper declarations presented "glaring reliability concerns" due to the "possible pressure arising from ongoing employment relationships."). Even if the court credits this testimony, it does not disprove the allegations of Ms. Scardina or Ms. Cullens. Strickland v. UPS, 555 F.3d 1224, 1230 (10th Cir. 2009) ("A sex discrimination claim does not fail simply because an employer does not discriminate against every member of the plaintiff's sex"). In any event, Ms. Raemdonck came to work for Mr. Wiegand after the events in this case, and her observations are not contemporaneous with the Plaintiffs experience. As noted, Ms. Kuehster herself reported a "butt flicking" incident involving Mr. Wiegand some years ago.

Accordingly, the court finds that Plaintiffs have proven the elements of a hostile work environment by the preponderance of the evidence.

C. Constructive Discharge

CADA also makes it unlawful to make an employee's working **[*57]** conditions so difficult that a reasonable person in the employee's position would feel compelled to resign. Krauss v. Catholic Health Initiatives Mt. Region, 66 P.3d 195 (Colo. App. 2003).

"To prove a constructive discharge, a plaintiff must present sufficient evidence establishing deliberate action on the part of an employer which makes or allows an employee's working conditions to become so difficult or intolerable that the employee has no other choice but to resign." Wilson v. Board of County Comm'rs, 703 P.2d 1257, 1259 (Colo. 1985). The test for constructive discharge is whether "sufficient words or actions by the employer would logically lead a prudent person to believe his tenure had been terminated." Colo. Civil Rights Comm'n v. State, 30 Colo. App. 10, 488 P.2d 83, 86 (Colo. App. 1971).

The discovery of a camera in the workplace would cause any reasonable woman in the position of Ms. Scardina and Ms. Cullens to resign. *See e.g.,* Hughes v. Pacienza, 2011 NY Slip Op 51810(U), 33 Misc. 3d 1208(A), 939 N.Y.S.2d 740 (N.Y. Sup. Ct. Sept. 22, 2011); *Ciesielski v. Hooters Mgmt Corp.*, 03-C-1175 (N.D. Ill Mar. 15, 2005); Liberti v. Walt Disney World Co., 912 F.Supp. 1494, 1505 (M.D. Fla. 1995); Edwards v. Murphy-Brown, LLC, 760 F.Supp.2d 607 (E.D. Va. 2011). The circumstances here are more egregious than these cases from other jurisdictions because here, Mr. Wiegand failed to take *any* kind of remedial action to allow Ms. Scardina and Ms. Cullens to return to work. Ms. Scardina and Ms. Cullens credibly testified that they both believed that Mr. Wiegand played a role in the placement of the camera, which caused them to terminate their employment with Wiegand LLC. **[*58]**

Further, an employer is also liable for a hostile work environment resulting in constructive discharge when an employer fails to take sufficient remedial action. Tademy v. Union Pac. Corp, 520 F.3d 1149, 1165 (10th Cir. 2008). Mr. Wiegand failed to take *any* action following the discovery of the camera. When Ms. Scardina asked that he call the police, he responded that he needed to "process it" and "think about it." Mr. Wiegand spoke with the police when they arrived, but did not take any affirmative action to investigate or alleviate his employees' concern about the camera. Defendant's actions—or more accurately, inaction—following the discovery of the camera would have compelled any reasonable woman in the position of Ms. Scardina and Ms. Cullens to resign. They credibly testified that Mr. Wiegand's failure to take sufficient action prevented them from returning to work.

For these reasons, the Court finds that Plaintiffs have proven their claims for constructive discharge by a preponderance of the evidence.

D. Retaliation

CADA makes it unlawful to retaliate against any person because such person has opposed any discriminatory or an unfair employment practice. *C.R.S. §24-34-402(1)(e)(4)*. The statute prohibits an employer from retaliating against an employee for reporting or **[*59]** opposing employment practices made illegal under the statute, including sexual harassment. In order to establish a *prima facie* case of retaliation under CADA, a plaintiff must show that (1) she engaged in protected opposition to discrimination; (2) that a reasonable employee would have found the challenged action materially adverse; and (3) there is a causal connection between the protected activity and the materially adverse employment action. *Pinkerton v. Colo. Dep't of Trans., 563 F.3d 1052, 1064 (10th Cir. 2009)*; *Smith v. Bd. of Educ., 83 P.3d 1157, 1162 (Colo. App. 2003)*.

Ms. Scardina confronted Mr. Wiegand when she found the camera and, at least according to her testimony, accused him of putting the camera in the restroom. She then specifically referenced being harassed to the DPD when they arrived after she called 911 on November 19, 2012. These facts are sufficient to establish the first prong for a retaliation claim. Ms. Scardina also alleges that she was terminated in connection with her report, an action any reasonable employee would find materially adverse.

However, the court cannot find a causal connection between Ms. Scardina's report of the camera and her termination. The timing of the two events is quite close. Ms. Scardina reported the camera on November 19, and the password to her e-mail was changed **[*60]** eight days later, on November 27. She considered herself constructively terminated at the beginning of December.

On the other hand, Mr. Wiegand testified that Ms. Scardina e-mailed him on November 21, 2012, stating that she did not feel comfortable coming into the office until she had received further information from the DPD. Because he did not hear from Ms. Scardina after that point, Mr. Wiegand changed her e-mail password on November 27 to ensure he did not miss any client communications. On November 30, Mr. Wiegand contacted Ms. Scardina to ask when she intended to returned to the office. The following day, Ms. Scardina e-mailed him, stating that she considered herself constructively discharged and would not be returning to work. The court finds Mr. Wiegand's testimony on this point credible. Accordingly, the court does not find that Ms. Scardina has proven her retaliation claim by a preponderance of the evidence.

E. Intentional Infliction of Emotional Distress

For Ms. Cullens to prevail on her claim for intentional infliction of emotional distress, a plaintiff must establish that: (1) the defendant engaged in extreme and outrageous conduct, (2) the defendant acted recklessly or with **[*61]** the intent to cause severe emotional distress, and (3) the defendant's actions caused the plaintiff severe emotional distress. *Palmer v. Diaz, 214 P.3d 546, 550-51 (Colo. 2009)*; *see also Culpepper v. Pearl St. Bldg., Inc., 877 P.2d 877, 882-83 (Colo. 1994)*. "Outrageous conduct is defined as conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.*

Placing a camera to film someone in the bathroom is outrageous conduct and a reasonable person knows that such conduct has a substantial probability of causing severe emotional distress. *See e.g., Johnson v. Allen, 613 S.E.2d 657, 661-62, 272 Ga. App. 861 (Ga. App. 2005)*; *Koeppel v. Speirs, 808 N.W.2d 177, 185 fn.2 (Iowa 2011)*. As stated above, the court has found that Mr. Wiegand placed, or was at least complicit in the placement, of the camera in the bathroom. At trial, Mr. Wiegand admitted knowing that surreptiously filming someone using the bathroom was offensive and would cause severe emotional distress. Ms. Cullens's emotional distress was further compounded by Mr. Wiegand's position of authority over her as her employer, as well as his sexual harassment prior to the discovery of the camera in the bathroom, and his failure to remedy the situation afterwards.

Ms. Cullens suffered severe emotional distress, **[*62]** as indicated by her hospitalization following a suicide attempt that she contemporaneously attributed to the discovery of the camera in the bathroom. Even if Ms. Cullens was more susceptible to severe emotional distress because of her prior psychological history, it is axiomatic that a defendant takes a plaintiff as he finds her. *Schafer v. Hoffman, 831 P.2d 897, 900 (Colo. 1992)*. Mr. Wiegand is liable for the entire amount of damages when the damages attributable to a pre-existing condition cannot be apportioned from the damages caused by the intentional infliction of emotional distress. *Stephens v. Koch, 192 Colo. 531, 561 P.2d 333, 334 (Colo. 1977)*. Mr. Wiegand made no effort to so apportion Ms. Cullens' emotional distress through appropriate expert testimony at trial.

For these reasons, the court finds that Ms. Cullens has demonstrated the elements of her intentional infliction of emotional distress claim by a preponderance of the evidence.

F. Premises Liability Act

The Premises Liability Act sets forth the standard of care that landowners owe to various categories of individuals. *See C.R.S. § 13-21-115*. A "landowner" is defined as "a person in possession of real property and a person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property." **[*63]** *C.R.S. § 13-21-115(1)*. An "invitee" is defined as "a person who enters or remains on the land of another to transact business in which the parties mutually interested." *C.R.S. § 13-21-115(5)(a)*. Here, Mr. Wiegand LLC was the entity in possession of the office, and both Plaintiffs were employees who entered the premises to conduct the business of the law firm, in which all parties were interested. Thus, they fall within the definition of invitees.

Under the Premises Liability Act, all landowners have a duty not to willfully or deliberately cause harm to anyone. *C.R.S. §13-21-115(3)(a)*; *(3.5)*. Additionally, an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew or should have known. *C.R.S §13-21-115(3)(c)(i)*. Thus, to recover on a premises liability claim, an invitee must prove: (1) the plaintiff was injured; (2) the defendant actually knew or should have known of a danger on the property; (3) the defendant "failed to use reasonable care to protect against the danger" on the property; and (4) such failure caused the Plaintiff's injury. *Lombard v. Colo. Outdoor Educ. Ctr., Inc., 266 P.3d 412, 418-19 (Colo. App. 2011)*.

First, Ms. Scardina and Ms. Cullens have demonstrated by a preponderance of the evidence that they were injured because they both suffered emotional **[*64]** distress resulting in physical injury. The Premises Liability Act follows Colorado's common law regarding the availability of damages for emotional distress. *See e.g., Scharrel v. Wal-Mart Stores, Inc., 949 P.2d 89, 93 (Colo. App. 1997)*. Generally, damages for emotional distress are unavailable unless it results in either physical injury or the creation of a reasonable risk of bodily harm. *Id.*

Both Ms. Cullens and Ms. Scardina proved physical injury. Ms. Cullens's emotional distress physically manifested itself in her suicide attempt requiring hospitalization, withdrawal from normal socialization, continued depressed state, crying spells, and hypersomnia. *See Towns v. Anderson, 195 Colo. 517, 579 P.2d 1163, 1164 (Colo. 1978)* (holding that nightmares, sleepwalking, nervousness and irritability were sufficient to show physical manifestation of injury); *Gottshall v. CONRAIL, 988 F.2d 355, 374*, *rev'd on other grounds*, *512 U.S. 532, 114 S. Ct. 2396, 129 L. Ed. 2d 427 (1994)* (suicidal preoccupations, anxiety, sleep onset insomnia, cold sweats, loss of appetite, nausea, physical weakness, repetitive nightmares and a fear of leaving home demonstrate sufficient physical symptoms); *Dobelle v. Nat'l R.R. Passenger Corp., 628 F.Supp. 1518, 1522, 1526-27 (S.D.N.Y.1986)* (hospitalization, subsequent out-patient treatment, major depression, crying spells, weight gain, and sleep disturbances showed sufficient physical symptoms to constitute "bodily harm"); *Toms v. McConnell, 45 Mich. App. 647, 207 N.W.2d 140, 145 (Mich. App. 1973)* (withdrawal from normal socialization and continued **[*65]** depressed state demonstrate sufficient physical symptoms).

Ms. Scardina also demonstrated physical injury. The emotional distress has physically manifested itself in the sensation of heat over her body, her anxiety, sleeplessness and tingly/hair standing up on her arms which continues to this day. *See id.*

With regard to the remaining elements, Plaintiffs have also proven that Wiegand LLC had knowledge of the dangerous condition—the camera in the bathroom—on the property; Wiegand LLC failed to use reasonable care to protect against the dangerous condition on the property; and Wiegand LLC's failure caused Ms. Scardina and Ms. Cullens' injuries.

The court finds that the camera constituted a dangerous condition within the meaning of the Premises Liability Act, which applies to injuries that "occurred by reason of the property's condition or as a result of activities conducted or circumstances existing on the property." *Larrieu v. Best Buy Stores, L.P., 303 P.3d 558, 559, 2013 CO 38 (Colo. 2013)*; *see also* March 10, 2015 Order re: Motion to Dismiss, p. 3. The camera was clearly a circumstance existing on the property at and for at least several hours prior to the time Ms. Scardina found it in the bathroom. The recovered videos include three visits to the bathroom by **[*66]** Ms. Scardina. Those which could not have been recovered very likely

included videos of Ms. Cullens as well. Wiegand LLC had the requisite knowledge because the court has found that its sole owner, Mr. Wiegand, placed the camera in the bathroom, or was complicit in doing so, thus creating the dangerous condition. Consequently, Wiegand LLC failed to use reasonable care to protect against the camera, and that failure caused both Plaintiffs' injuries.

G. Damages

Under the version of Colorado Anti-Discrimination Act in effect in 2012, Ms. Scardina and Ms. Cullens are entitled to equitable relief, including back pay. *See e.g., Continental Title Co. v. District Court, 645 P.2d 1310, 1317-1318 (Colo. 1982)*. Under the Premises Liability Act and intentional infliction of emotional distress claims, which sound in tort, Defendants are liable for non-economic as well as economic damages.

Ms. Cullens' economic damages from the date of her constructive termination until June 13, 2013, amount to $24,920.64. This total is based on her 29 weeks and 3 days (three-fifths of a week) at her weekly rate of $734.40 and her 2012 bonus, which would have been $3182.40 but for her constructive termination. Ms. Cullens mitigated that damage during her brief employment with iVita Wellness, **[*67]** in the amount of $1,692.31. Therefore, her resulting economic damages, payable as back pay under CADA or economic damages under her other claims, are $23,228.33.

Ms. Cullens suffered severe emotional distress, including a serious and acute emotional crisis resulting in her hospitalization following an attempted suicide which she attributed to Defendant's severe invasion of her privacy with impunity, and her resulting feelings of being violated. Because of the severity of her emotional distress, the court finds that an appropriate award of noneconomic damages is $100,000.00

Ms. Scardina's economic damages total $16,760. Therefore, her resulting economic damages, payable as back pay under CADA or economic damages under her other claims, are $16,760.

Ms. Scardina has also suffered and continues to suffer emotional distress, and the court awards her damages in the amount of $110,000.00

Plaintiffs also seek an award of exemplary damages. There is no doubt that the placement of a video camera in a bathroom for purposes of surreptitiously recording an employee's most intimate and personal moments constitutes willful and wanton conduct within the meaning of *C.R.S. §13-21-102(1)(b)*. However, while the court has concluded, **[*68]** by a preponderance the evidence, that Mr. Wiegand either placed or was complicit in the placement of the video camera in the bathroom, the court cannot reach that same conclusion by the higher standard of proof beyond a reasonable doubt, which applies to an award of exemplary damages. Accordingly, the court will not award exemplary damages.

ORDER AND JUDGMENT

Pursuant to *C.R.C.P. 58 (a)*, judgment is hereby entered as follows:

> A. In favor of Plaintiff Jessica Scardina and against Defendant Wiegand Attorneys and Counselors, LLC, on her claims of premises liability and sex discrimination in violation of the Colorado Anti-Discrimination Act, in the amount of $126,760.00, consisting of $16,760.00 in back pay, and $110,000.00 in non-economic damages, for a total of $126,760.00 in actual damages, *provided* that the extent of the judgment on her Colorado Anti-Discrimination Act claim is limited to $16,760.00. On her actual damages for all claims, Plaintiff Scardina is also awarded prejudgment interest under *C.R.S §13-21-101(1)* at the rate of nine percent per annum, computed as simple interest from the date this action accrued, November 19, 2012, through the date she filed suit, April 24, 2014, and compounded annually from April **[*69]** 24, 2014 through the date of this judgment, in the total amount of $60,866.42. Interest will continue to accrue at the *per diem* rate of $45.67 through April 23, 2018, or until satisfied.
>
> B. In favor of Plaintiff Monique Cullens and against Defendant Robert Wiegand, individually on her claim of intentional infliction of emotional distress, and against Defendant Wiegand Attorneys and Counselors, LLC on her claims of premises liability and sex discrimination in violation of the Colorado Anti-Discrimination Act, jointly and severally, in the amount of $123,228.33 in actual damages, consisting of $23,228.33 in back pay, and $100,000.00 in non-economic damages, *provided* that the extent of the judgment on her Colorado Anti-Discrimination Act claim is limited to $23,228.33. On her actual damages for all claims,

Plaintiff Cullens is also entitled to prejudgment interest under *C.R.S §13-21-101(1)* at the rate of nine percent per annum, computed as simple interest from the date this action accrued, November 19, 2012, through the date she filed suit, May 29, 2014, and compounded annually from May 29, 2014 through the date of this judgment in the total amount of $59,000.14. Interest shall continue to accrue at the **[*70]** *per diem* rate of $44.73 through May 28, 2018, or until satisfied.

C. Each Plaintiff shall have her costs, to be taxed pursuant to *C.R.C.P. 54* and *121, §1-22.1*.

DATED this 15th day of June, 2017.

BY THE COURT.

/s/ Ross B.H. Buchanan

Ross B.H. Buchanan

Denver District Court Judge

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