

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KLAYTON FENNEL

(b) County of Residence of First Listed Plaintiff Burlington (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) KATHERINE C. OELTJEN, ESQ.; CONSOLE MATTIACCI LAW 1525 LOCUST ST., 9TH FL. PHILADELPHIA, PA 19102, (215) 545-7676

DEFENDANTS

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC COMCAST CORPORATION

County of Residence of First Listed Defendant Philadelphia (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 2000e, et seq.; 43 P.S. §951, et seq. ("PHRA")

Brief description of cause: Plaintiff has been subjected to discriminatory conduct, resulting in a hostile work environment.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 10/14/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Shamong, NJ

Address of Defendant: Comcast Center, One Comcast Center, Philadelphia, PA 19103

Place of Accident, Incident or Transaction: Comcast Center, One Comcast Center, Philadelphia, PA 19103

RELATED CASE, IF ANY:

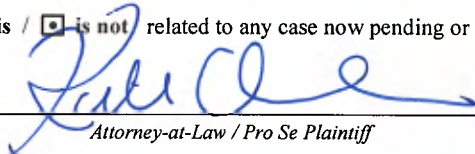
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when *Yes* is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/14/2019


Attorney-at-Law / Pro Se Plaintiff

318037

Attorney I.D. # (if applicable)

CIVIL: (Place a √ in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify): _____
- 7. Products Liability
- 8. Products Liability – Asbestos
- 9. All other Diversity Cases
(Please specify): _____

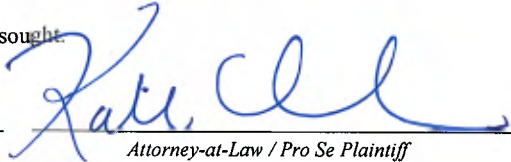
ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Katherine C. Oeltjen, Esq, counsel of record or pro se plaintiff, do hereby certify:

- Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- Relief other than monetary damages is sought.

DATE: 10/14/2019


Attorney-at-Law / Pro Se Plaintiff

318037

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

KLAYTON FENNELL

CIVIL ACTION

v.

COMCAST CABLE COMMUNICATIONS
MANAGEMENT,LLC and
COMCAST CORPORATION

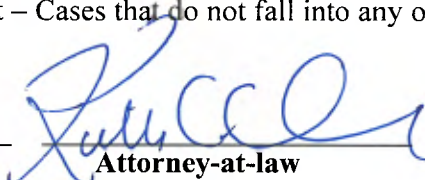
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

10/14/2019



Plaintiff, Klayton Fennell

Date

Attorney-at-law

Attorney for

215-545-7676

215-565-2852

oeltjen@consolelaw.com

Telephone

FAX Number

E-Mail Address

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

KLAYTON FENNELL
Shamong, NJ 08088

Plaintiff,

v.

**COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC**
COMCAST CENTER
One Comcast Center
Philadelphia, PA 19103

AND

COMCAST CORPORATION
COMCAST CENTER
One Comcast Center
Philadelphia, PA 19103

Defendants.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

I. INTRODUCTION

Plaintiff, Klayton Fennell (“Plaintiff” or “Fennell”), is an eighteen-year employee of Defendant Comcast Cable Communications Management LLC and Defendant Comcast Corporation (collectively, “Defendants”) and currently serves as the Senior Vice President of Government Affairs and Principal for LGBTQ External Affairs for Defendants. Fennell has consistently performed his job well and received annual performance evaluations confirming his exemplary performance. Fennell is one of the highest-ranking out, gay employee in Defendants’ organization and is routinely perceived as not conforming to traditional sex and/or gender based-

stereotypes. As a result, despite his strong performance on Defendants' behalf, he has, throughout his employment been subjected to discriminatory conduct, resulting in a hostile work environment. Defendants have also consistently paid Plaintiff substantially less than his heterosexual, male peers who are perceived as conforming to traditional sex and/or gender based stereotypes despite the level of work required of Plaintiff and the skill with which he performs his job. Since 2001, Defendants have, without limitation also: denied promotions to Plaintiff, telling him on more than one occasion, in essence, that his sexual orientation and manner was the reason he was not promoted; allowed Plaintiff to be called a "faggot" by a fellow employee; and, forced Plaintiff into "hiding" from senior executives of Defendants amid their own bias toward Plaintiff. In contrast to how Defendants treat Plaintiff, Defendants hold Plaintiff out to the public, including the LGBT and other interested communities, as an example of their non-discriminatory or "inclusive" environment in an effort to bolster their public image and further their businesses as a media company.

When Plaintiff complained of the discriminatory conduct to which he was subjected, Defendants failed to conduct an investigation into his claims, isolated him within the organization, failed to remedy his pay disparity and allowed the hostile work environment to persist. After Plaintiff filed a complaint of discrimination with the Philadelphia Commission on Human Relations, Defendants further retaliated against Plaintiff, telling him that they had investigated him and warning him, for the first time, about his own performance. Plaintiff now brings claims pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII"), the Pennsylvania Human Relations Act, as amended, 43 P.S. §951, *et seq.* (hereinafter "PHRA") and the Philadelphia Fair Practices Ordinance, Phila. Code §9-1101, *et seq.* ("PFPO"). Plaintiff seeks damages, including back-pay, front-pay, compensatory,

punitive, costs and attorneys' fees, and all other relief that this Court deems appropriate.

II. PARTIES

1. Plaintiff, Klayton Fennell, is an individual and a citizen of the State of New Jersey. He resides in Shamong, New Jersey 08088.

2. Plaintiff is male.

3. Plaintiff is homosexual/gay.

4. Defendant Comcast Cable Communications Management LLC ("Defendant Cable") is organized under the laws of the Commonwealth of Pennsylvania and maintains a principle place of business at One Comcast Center, Philadelphia, Pennsylvania.

5. Defendant Comcast Corporation ("Defendant Comcast") is a Pennsylvania corporation. Defendant Cable is a wholly owned subsidiary of Defendant Comcast.

6. Defendant Comcast maintains its principle place of business at One Comcast Center, Philadelphia, Pennsylvania.

7. During his employment, Plaintiff regularly worked out of Defendants' headquarters at One Comcast Center, Philadelphia, PA 19103. Plaintiff also held "field" positions outside of Pennsylvania and traveled across the United States on Defendants' behalf.

8. Defendants are engaged in an industry affecting interstate commerce and regularly conducts business in the Commonwealth of Pennsylvania and the City of Philadelphia.

9. At all times material hereto, Defendants acted by and through their authorized agents, servants, workmen, and/or employees acting within the course and scope of their employment with Defendants and in furtherance of Defendants' business.

10. At all times material hereto, Defendants employed more than fifteen (15) individuals.

11. At all times material hereto, Defendants were employers within the meanings of Title VII, PHRA and PFPO.

12. At all times material hereto, Plaintiff was an employee within the meanings of Title VII, PHRA and PFPO.

III. JURISDICTION AND VENUE

13. The causes of action that form the basis of this matter arise under Title VII, PHRA and PFPO.

14. The District Court has jurisdiction over Count I (Title VII) pursuant to 28 U.S.C. §1331.

15. The District Court has jurisdiction over Counts II (PHRA) and II (PFPO) pursuant to 28 U.S.C. §1332 since the amount in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interests and costs, and as there is complete diversity of citizenship as Plaintiff is a citizen of New Jersey and Defendants are citizens of Pennsylvania.

16. Venue is proper in the District Court pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §2000e-5.

17. On or about June 6, 2018, Plaintiff filed a Complaint with the Philadelphia Commission on Human Relations (“PCHR”), complaining of the acts of discrimination alleged herein (“PCHR Complaint”). The PCHR complaint was cross-filed with the Equal Employment Opportunity Commission (“EEOC”). Attached hereto, incorporated herein, and marked as Exhibit “1” is a true and correct copy of the PCHR Complaint (with personal identifying information redacted).

18. On July 16, 2019, the EEOC issued to Plaintiff a Notice of Right to Sue. Attached hereto and marked as Exhibit “2” is a true and correct copy of this notice (with personal identifying information redacted).

19. Plaintiff has fully complied with all administrative prerequisites for the commencement of this action.

IV. FACTUAL ALLEGATIONS

20. Plaintiff was hired by Defendants in or about May, 2001 as Director of Government Affairs to support Comcast Business Communications and Defendants’ Cable business.

21. Upon his hire, Plaintiff reported to Shelia Willard (“Willard”), then Senior Vice President and John Sullivan (“Sullivan”), General Counsel for Comcast Business Communications.

22. Defendants, almost immediately, demonstrated bias toward Plaintiff because of his sexual orientation and because he does not conform to gender-based stereotypes. For example and without limitation:

a. Willard attempted to “hide” Plaintiff from her supervisor, Mike Tallent (“Tallent”), then CFO of Defendant Cable, by instructing Plaintiff not to interact with him and other select senior leaders. Instead, Willard and others assigned one of Plaintiff’s subordinates to be the “point of contact” with certain senior leaders including Tallent and Art Block (“Block”), current Executive Vice Present/Secretary/General Counsel of Defendant Comcast. Plaintiff understood that Willard was trying to “protect” Plaintiff from anti-gay bias held by certain senior leaders; and,

b. At or around the same time as the events described in (a) above, Willard and members of Defendants' Human Resources organization sent Plaintiff to an "executive coach," Proteus International. During the coaching session Plaintiff was told that he was "too gay and flamboyant" for Defendants' "conservative" culture. The coach, based on feedback from Defendants, suggested that Plaintiff look for employment elsewhere.

23. Plaintiff complained to Willard and Melanie Penna ("Penna"), Human Resources of the discriminatory comments made by Proteus on Defendants' behalf.

24. To the best of Plaintiff's knowledge, Defendants did not conduct any investigation into the discriminatory comments Proteus relayed on Defendants' behalf.

25. In or about 2002, when Plaintiff asked Willard about promotion opportunities within Defendants' organization, he was told that he needed to take a leadership position outside of headquarters, or in the "field," in order to advance.

26. Plaintiff followed Willard's instruction and in or about November, 2002, took a position as a Regional Vice President of Government Affairs, Communications and Community Investment in South Florida ("RVP").

27. Defendants discriminatory treatment of Plaintiff continued in the RVP position. For example, and without limitation:

a. During an "all hands" meeting with an audience of employees of Defendants, in or about 2005, Plaintiff was twice called a "faggot" by (an) employee(s) in the audience. The epithet was shouted loudly enough for Plaintiff to hear from the risers on the stage before the gathered audience.

Many attendees, including members of Defendants' human resources organization, heard the epithet, but not took any action; and,

b. Steve Dvoskin ("Dvoskin"), Regional Vice President, stated during a conference call with employees, including some of Plaintiff's subordinates, that Plaintiff should not be allowed to appear in certain Florida communities on behalf of Defendants because Plaintiff's manner and sexual orientation would not be well received and would impact Defendants' business negatively.

28. Plaintiff complained to Karen Abeleda ("Abeleda"), Area Vice President of Human Resources about the use of the word "faggot" by an employee directed at him. Plaintiff also told Abeleda that he was concerned that the corporate culture of Defendants that allowed the word to be used risked customers within the LGBTQ community being subjected to similar treatment.

29. To the best of Plaintiff's knowledge Abeleda did not investigate Plaintiff's complaint or take any steps to ensure that neither Plaintiff nor LGBTQ customers would be treated in a discriminatory manner.

30. Plaintiff complained of Dvoskin's statements about him to John Ridall ("Ridall"), President of the Division.

31. To the best of Plaintiff's knowledge, Defendants did not conduct an investigation into Plaintiff's complaint about Dvoskin's statements and Dvoskin was not disciplined in any manner for his discriminatory comments.

32. In or about 2007, Plaintiff applied for a promotion to Southern Division Vice President of Government, reporting to Ridall.

33. Ridall selected a less qualified, male employee who identified as heterosexual, for the position. Ridall told Plaintiff that he (Plaintiff) was more qualified for the position, but that Ridall was more “comfortable” working with the employee he selected.

34. Plaintiff complained to Helen Miranda-Smith (“Miranda-Smith”), Regional Vice President of Human Resources and Grace Killelea (“Killelea”), Vice President of Talent Management at Defendant Cable’s Headquarters of Ridall’s failure to promote him for discriminatory reasons.

35. To the best of Plaintiff’s knowledge, Defendants did not conduct any investigation into Plaintiff’s complaints or discipline Riddal for his discriminatory animus in failing to promote Plaintiff.

36. The discriminatory conduct to which Plaintiff was subjected continued, for example, and without limitation:

a. In or about 2008, while participating in Defendants’ Executive Leadership (“ELF”) forum, Plaintiff was told that he should only engage with ELF’s “Executive Champion” Brad Dusto (“Dusto”), President West Division, via telephone rather than in person because Dusto had made several discriminatory comments in the past regarding men who do not conform to traditional sex and/or gender stereotypes; and,

b. In or about 2009, Plaintiff applied for the Division Vice President, West Division position for which he was well qualified. He was told the day prior to his interview that he “needed” to withdraw his application as he was not a “cultural fit” for the new President of the West Division, Steve White (“White”). White selected a less qualified, heterosexual male

who conformed to traditional sex and/or gender stereotypes for the position.

37. Willard promoted Plaintiff's heterosexual peer, Bret Perkins ("Perkins") to Vice President of Government Affairs, a headquarters based position. Perkins did not have any "field" experience and Willard did not require that Perkins gain "field" experience as she had required of Plaintiff.

38. In or about November, 2011, Plaintiff became Vice President, Government Affairs Cable Headquarters reporting to Perkins.

39. Defendants told Plaintiff the position and associated return to Defendants' Philadelphia headquarters was a promotion. He accepted the new role on Defendant's representation it was a promotion.

40. Plaintiff learned after he took the position that it was, in fact a demotion, not a promotion. Plaintiff's rank and pay were reduced in Defendants' systems from a "VP2" to a "VP1." At the same time all of Plaintiff's heterosexual peers were ranked as "VP2" or the higher "VP3."

41. In addition to reporting to Perkins, Plaintiff had a reporting relationship to Kathy Zachem ("Zachem"), Corporate Executive Vice President of Regulatory and State Legislative Affairs for Defendant Comcast. Both Perkins and Zachem report to David Cohen ("Cohen"), Senior Executive Vice President of Defendant Comcast and Chief Diversity Officer.

42. When Plaintiff learned that he had, in fact, been demoted, he complained to Sandy Lau ("Lau"), Human Resources. Plaintiff told Lau that he believed his sexual orientation and the fact that he did not conform to gender stereotypes was at the root of his demotion.

43. Lau told Plaintiff to disregard his classification within Defendants' systems and to "move on."

44. At or around the same time, Defendants increasingly utilized Plaintiff's position and sexual orientation to hold him out to the community as evidence of Defendants' "inclusive workplace."

45. In or about 2013, despite his excellent performance reviews in the headquarters position, Zachem and others encouraged Plaintiff to take yet another demotion to a regional position in the San Francisco area.

46. When Plaintiff complained that taking another demotion would be a backwards step in his career trajectory within the organization, he was told that it would get him "out of the dysfunctional corporate culture" of headquarters.

47. Plaintiff understood that Defendants wanted to move him to an area of the country where it would be more "acceptable" to be gay and where Defendants could use his sexual orientation to advance their business.

48. At or around the same time, Plaintiff asked Zachem to be promoted to a Division Vice President position in the West reporting to White. Again, Plaintiff was told that he was not a "cultural fit" for a role reporting to White. Plaintiff understood that White did not want a homosexual person who did not conform to traditional sex and/or gender stereotypes in his chain of command.

49. In or about 2013, Plaintiff asked Perkins to adjust his title to appropriately to reflect that he was performing a portfolio of work consistent with a Senior Vice President title albeit with Vice President title and pay. Plaintiff provided Perkins with evidence that he was

given a lesser title despite a larger portfolio and greater experience than heterosexual, sex and/or gender stereotype confirming peers.

50. Perkins denied Plaintiff's request to be paid consistently with his heterosexual, traditional stereotype conforming peers.

51. Perkins told Plaintiff that in order to receive a Senior Vice President position he would have to improve his relationship with a peer, Richard Smotkin ("Smotkin"), Vice President of Government Affairs. Smotkin also reported to Perkins. Smotkin had conflicts with many leaders within Defendants' organization and Plaintiff's relationship with him was not atypical of others within the group.

52. To the best of Plaintiff's knowledge, no other leader was required to overcome Smotkin's conflict-prone persona in order to receive a title and salary commensurate with the work he performed.

53. In early 2015, Plaintiff presented a business case to Cohen and William Strahan ("Strahan"), Executive Vice President, Human Resources Defendant Cable in support of Defendants signing onto an amicus brief in support of marriage equality in connection with the *Ogberfell v. Hodges* case then pending before the United States Supreme Court.

54. Cohen and Strahan rejected Plaintiff's recommendation and described Plaintiff as "too personally invested" in the outcome of the *Ogberfell* case. However, when the heterosexual, general counsel of NBCUniversal recommended that Defendants sign the brief, they did.

55. On or about March 1, 2015, after multiple requests over a period of years, Plaintiff's title was adjusted to Senior Vice President ("SVP") without any change in his job duties.

56. Defendants refused to revise his base pay, bonus or equity award to reflect his SVP status, resulting in Plaintiff's on-going pay disparity to his heterosexual, traditional stereotype conforming male peers.

57. Defendants in turn told Plaintiff he was required to sign an employment agreement that would codify his pay disparity and subject him to a strict non-compete agreement, substantially impacting his ability to find work if he ever left Defendants' organization.

58. Plaintiff complained to Lau of the on-going discrimination toward him in connection with his pay, bonus and equity award. He also provided Lau with information relating to the disparate impact that non-compete agreements had on gay employees.

59. At or around the same time, the *Philadelphia Business Journal* recognized Plaintiff as a "Top LGBT Leader in Business." Defendants refused to sponsor the recognition or to communicate the recognition to other employees via their intranet or other employee communications.

60. In contrast, Defendants routinely sponsor other awards and accolades received by heterosexual and traditional sex and/or gender stereotype conforming employees.

61. In or about 2016, during an executive level, strategic briefing and planning session, D'Arcy Rudnay ("Rudnay"), Executive Vice President and Chief Communications Officer for Defendant Comcast announced to all in attendance that Plaintiff reminded her of a specific male ice skater. Another executive offered in response "Johnny Weir." Rudnay confirmed that Weir reminded her of Plaintiff.

62. Plaintiff and Johnny Weir have absolutely no physical resemblance to one another. However, Weir is an openly gay male who does not conform to traditional sex and/or

gender based stereotypes. For example, Weir often wears make-up and will dress in clothing marketed to women.

63. Shortly thereafter, in a meeting, Jennifer Khoury Newcomb (“Newcomb”), Senior Vice President Corporate and Digital Communications for Defendant Comcast referred to a female cultural influencer and stated that “that was before she turned gay.” Plaintiff told Newcomb that the appropriate terminology was “coming out” not “turned gay.” Plaintiff’s comment was not well received.

64. In or about May, 2016, surrounding his fifteenth (15th) anniversary with Defendants, Plaintiff met with Cohen in his Philadelphia office.

65. Plaintiff detailed for Cohen the severe and pervasive discrimination to which he had been subjected and provided specific details of his discriminatory experiences at Defendants.

66. During the same meeting, Plaintiff expressed his desire to remain employed by Defendants and continue to contribute to the organization by advancing to a more senior position, with the hope that Defendants’ organization would become a more inclusive workplace for gay senior leaders.

67. Cohen told Plaintiff during the meeting that Defendants considered him to be high performing and high potential.

68. To the best of Plaintiff’s knowledge Defendants did not investigate Plaintiff’s complaints to Cohen.

69. In follow up to his meeting with Cohen, Plaintiff met with Lau in late May, 2016 to solicit her feedback as to why he was not being treated equally to his heterosexual, conforming, male SVP peers.

70. Lau told Plaintiff that his work was highly regarded and that he was known for his strong performance. However, Lau told Plaintiff, Cohen and other senior leaders viewed him as “high pitched.” Lau suggested that the view that Plaintiff was “high pitched” was impacting his career trajectory.

71. Plaintiff told Lau that “high pitched” sounded like code for sex and/or gender bias. Lau, in response, looked at her watch and left the meeting.

72. In or about February, 2017, Perkins told Plaintiff that he planned to engage Proteus to perform projects within the department, including projects related to workforce planning and organizational structure. Plaintiff responded, in writing, that he hoped Comcast would not use Proteus since that firm had previously told Plaintiff he should leave Comcast because he was not a cultural fit as an out, gay leader.

73. Perkins retained Proteus to do work within the Government Affairs organization, including in connection with tasks that could result in workforce changes, including hiring and firing of employees (including Plaintiff).

74. In or about July, 2017, Plaintiff met with Strahan to review his concerns about the negative impact the employment agreement he was being told to sign had on him (and others) as a homosexual employee who did not conform to traditional sex and/or gender based stereotypes.

75. In or about mid-December, 2017, Plaintiff sent a memorandum to Perkins asking for his “gay pay gap” to be addressed and explaining that Plaintiff learned that he was the lowest paid SVP in Government Affairs despite his experience, education and length of service. Plaintiff also learned that he was the only SVP not receiving a standard 60% bonus.

76. Plaintiff also asked Strahan to meet again as Strahan had not responded to any of the information that Plaintiff had provided to him in July, 2017 and Defendants continued to instruct Plaintiff to sign the employment agreement.

77. In or about January, 2018, Strahan met Plaintiff for coffee and told Plaintiff that other than adding reference to Defendants' anti-discrimination policies, Defendants would not revise the employment agreement.

78. In or about March, 2018, Plaintiff asked Perkins for a response to his request that the "gay pay gap" be cured. Perkins told Plaintiff that Defendants would not address any pay gap. Perkins further told Plaintiff that if he would sign the employment agreement, he would receive the 60% bonus other SVPs received immediately, albeit benchmarked against Plaintiff's relatively lower rate of pay.

79. In May, 2018, Lau sent Plaintiff a new version of the employment agreement via email. The employment agreement did not include an immediate, "standard," 60% bonus as Perkins had promised. Instead, his bonus was substantially less with an "opportunity" in the second year of the employment agreement to reach the "standard" bonus for other SVPs.

80. Plaintiff understood the new employment agreement to be retaliatory.

81. When Plaintiff complained, Lau responded that the agreement was "final" per Cohen, Zachem, Perkins, human resources and legal.

82. On or about June 6, 2018, Plaintiff filed a complaint with the PCHR, cross-filed with the EEOC, complaining of the acts of discrimination and retaliation detailed above and without limitation.

83. Following his filing of a complaint with the PCHR, Defendants' discriminatory treatment of Plaintiff has intensified. For example, and without limitation:

- a. Plaintiff has been intentionally left out of or marginalized during key meetings and business initiatives, including, without limitation, in connection with meetings essential to the performance of his job. For several meetings, while Plaintiff was excluded, his subordinates and supervisors were included;
- b. Plaintiff has been delayed and blocked in efforts to backfill a direct report's position by Perkins and Lau resulting in an increased workload on Plaintiff;
- c. Plaintiff's profile within the organization has been diminished and he has not been invited to participate in strategic planning sessions held by Cohen in which he has historically been included; and,
- d. Defendants again asked Plaintiff to take a demoted position to remove him from the headquarters location.

84. Effective January 1, 2019, Defendants revamped its Deferred Compensation Plan, a significant benefit to senior leaders. With the changes, including a change in the threshold salary required for eligibility, and amid his lesser rate of pay because of his sexual orientation and failure to conform to traditional sex and/or gender based stereotypes, Plaintiff will likely be the only SVP of Government Affairs to be ineligible to participate in the Deferred Compensation Plan. At the same time, Plaintiff is one of the longer-tenured SVPs within the Government Affairs organization.

85. Defendants informed Plaintiff that if he did not sign the employment agreement, he would not receive a substantial part of his annual compensation.

86. Despite their treatment of Plaintiff, Defendants continued to benefit from his status by representing Defendants publicly as the public face of Defendants' "inclusive" environment for LGBT employees. For example and without limitation, on or about February 11, 2019, Defendants had Plaintiff fly to Nashville to represent Defendants at a press conference with that city's mayor, Mayor Briley. During the conference, Mayor Briley issued an executive order related to inclusion of LGBT owned businesses in the City's procurement and supplier processes. No other senior leader of Defendants, including the Regional Vice President assigned to Nashville, appeared at the event.

87. On or about September 5, 2019, during a regular one-on-one call with Perkins, Lau joined the call unexpectedly and told Plaintiff that they had investigated him and his management style. Lau went on to tell Plaintiff that he needed coaching, suggested his employment was in jeopardy, and falsely suggested that Plaintiff had engaged in poor management of his employees.

88. Subsequently, amid all of the conduct detailed above, and the resulting extreme impact on his health, Plaintiff was required to take medical leave from Defendants.

89. Defendants' have either failed to provide any reason for Plaintiff's treatment or the stated reason(s) is/are pre-textual.

90. Plaintiff's sexual orientation was a motivating and/or determinative factor in connection with Defendants' discriminatory and retaliatory treatment of Plaintiff.

91. Plaintiff's sex, including in connection with his failure to conform to traditional sex and/or gender based stereotypes, was a motivating and/or determinative factor in connection with Defendants' discriminatory and retaliatory treatment of Plaintiff.

92. Plaintiff's complaining of discrimination was a motivating and/or determinative factor in Defendants' discriminatory and retaliatory treatment of Plaintiff.

93. Defendants failed to prevent or address the discriminatory and retaliatory conduct referred to herein and further failed to take corrective and remedial measures to make the workplace free of discriminatory and retaliatory conduct.

94. The retaliatory actions taken against Plaintiff after he complained of discriminatory conduct would have discouraged a reasonable employee from complaining about discrimination.

95. The discriminatory and retaliatory conduct of Defendants, as alleged herein, was severe and/or pervasive enough to make a reasonable person believe that the conditions of employment had been altered and that a hostile work environment existed, and made Plaintiff believe that the conditions of employment had been altered and that a hostile work environment existed.

96. As a direct and proximate result of the discriminatory and retaliatory conduct of Defendants, Plaintiff has in the past incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, pain and suffering, embarrassment, humiliation, loss of self-esteem, mental anguish, and loss of life's pleasures, the full extent of which is not known at this time.

97. Defendants acted with malice and/or reckless indifference to Plaintiff's protected rights.

98. The conduct of Defendants, as set forth above, was outrageous under the circumstances and warrants the imposition of punitive damages against Defendants.

99. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendants' discriminatory and retaliatory acts unless and until this Court grants the relief requested herein.

100. No previous application has been made for the relief requested herein.

COUNT I—TITLE VII

101. Plaintiff incorporates herein by reference paragraphs 1 through 100 above, as if set forth herein in their entirety.

102. By committing the foregoing acts of discrimination and retaliation against Plaintiff, Defendants have violated Title VII.

103. Defendants acted intentionally, and with malice and/or reckless indifference to Plaintiff's rights, and its conduct warrants the imposition of punitive damages.

104. As a direct and proximate result of Defendants' violation of Title VII, Plaintiff has suffered the losses set forth herein and has incurred attorneys' fees and costs.

105. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendants' retaliatory acts unless and until this Court grants the relief requested herein.

106. No previous application has been made for the relief requested herein.

COUNT II—PHRA

107. Plaintiff incorporates herein by reference paragraphs 1 through 106 above, as if set forth herein in their entirety.

108. Defendants, by the above improper and discriminatory acts, has violated the PHRA.

109. Said violations were intentional and willful.

110. As a direct and proximate result of Defendants' violation of the PHRA, Plaintiff has sustained the injuries, damages and losses set forth herein and has incurred attorneys' fees and costs.

111. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages as a result of Defendants' discriminatory acts unless and until the Court grants the relief requested herein.

112. No previous application has been made for the relief requested herein.

COUNT III—PFPO

113. Plaintiff incorporates herein by reference paragraphs 1 through 112 above, as if set forth herein in their entirety.

114. By committing the foregoing acts of discrimination against Plaintiff, Defendants have violated the PFPO.

115. Defendants acted willfully and intentionally, and with malice and/or reckless indifference to Plaintiff's rights, thereby warranting the imposition of punitive damages.

116. As a direct and proximate result of Defendants' violation of the PFPO, Plaintiff has sustained the injuries, damages and losses set forth herein and has incurred attorneys' fees and costs.

117. Plaintiff is now suffering and will continue to suffer the irreparable injury and monetary damages as a result of Defendants' discriminatory, retaliatory and unlawful acts unless and until this Court grants the relief requested herein.

118. No previous application has been made for the relief requested herein.

RELIEF

WHEREFORE, Plaintiff seeks damages and legal and equitable relief in connection with Defendants' improper conduct, and specifically prays that the Court grant the following relief to the Plaintiff by:

(a) declaring the acts and practices complained of herein to be in violation of Title VII;

(b) declaring the acts and practices complained of herein to be in violation of the PHRA;

(c) declaring the acts and practices complained of herein to be in violation of the PFPO;

(d) enjoining and permanently restraining the violations alleged herein;

(e) entering judgment against the Defendants and in favor of the Plaintiff in an amount to be determined;

(f) awarding compensatory damages to make the Plaintiff whole for all lost earnings, earning capacity and benefits, past and future, which Plaintiff has suffered or may suffer as a result of Defendants' improper conduct;

(g) awarding compensatory damages to Plaintiff for past and future pain and suffering, emotional upset, mental anguish, humiliation, and loss of life's pleasures, which Plaintiff has suffered or may suffer as a result of Defendants' improper conduct;

(h) awarding punitive damages to Plaintiff;

(i) awarding Plaintiff other such damages as are appropriate under Title VII, PHRA, and PFPO;

(j) awarding Plaintiff the costs of suit, expert fees and other disbursements, and reasonable attorneys' fees; and,

(k) granting such other and further relief as this Court may deem just, proper, or equitable including other equitable and injunctive relief providing restitution for past violations and preventing future violations.

Dated: October 14, 2019

BY:

CONSOLE MATTIACCI LAW, LLC



Stephen G. Console, Esquire (36656)
Katherine C. Oeltjen, Esquire (318037)
1525 Locust Street, 9th Floor
Philadelphia, PA 19102
(215) 545-7676
(215) 565-2852 (fax)

Attorneys for Plaintiff Klayton Fennell

EXHIBIT 1

CITY OF PHILADLEPHIA
COMMISSION ON HUMAN RELATIONS

KLAYTON FENNELL)	
[REDACTED])	
Shamong, NJ 08088)	
)	
Complainant,)	PCHR No.:
)	
)	EEOC No.:
v.)	
)	
)	
COMCAST CABLE)	
COMMUNICATIONS MANAGEMENT,)	
LLC & COMCAST CORPORATION)	
1710 JFK Blvd.)	
Philadelphia PA 19103)	
)	
Respondents.)	
)	
)	

COMPLAINT

1. The Complainant herein is:

Name: Klayton Fennell
Address: [REDACTED]
Shamong, NJ 08088

2. The Respondents herein is:

Name: Comcast Cable Communications Management, LLC
Address: Comcast Center
1701 JFK Blvd.
Philadelphia, PA 19103

Name: Comcast Corporation
Address: Comcast Center
1701 JFK Blvd.
Philadelphia, PA 19103

Introduction

I, Klayton Fennell, the Complainant herein, allege that by and through my employment with Comcast Cable Communications Management, LLC and Comcast

Corporation (collectively, “Respondents”), I was subjected to unlawful discrimination because of my sex (including without limitation failure to conform to traditional sex and/or gender based stereotypes) and my sexual orientation (homosexual). I was also subjected to retaliatory conduct because of my complaints of unlawful discrimination

Throughout my employment with Respondents, I have been a loyal, dedicated and hard-working employee; I have also been an “out” gay man. At all material times, I conducted my duties in a consistently exemplary manner. Without exception, I have received positive performance reviews and associated bonuses.¹ I have earned and received a number of awards and commendations during my employment, including without limitation: The Point of Light Award, Leadership in Action awards (multiple), a Comcast Circle of Success nomination, and I have been recognized by the Philadelphia Business Journal as a *Top LGBT Leader in Business*.

I have promoted diversity in Respondents’ workforce through service on a number of internal and external committees and by accepting public speaking engagements on Respondents’ behalf at conferences or other events promoting diversity in the workforce. Respondents have routinely held me forth to the external community as an example of its own “diverse” workforce. Thus, Respondents have benefitted from my public speaking and other events in that it has likely fostered the impression in the cable/media/entertainment community that Respondents are inclusive employers. Currently, I serve on Corporation’s Internal Diversity Council and as Corporation’s liaison to the LGBTQ ad-hoc Joint Diversity Council members. Since 2011, I have exclusively worked out of Respondents’ Philadelphia headquarters; however, throughout my employment I have had reporting relationships into Philadelphia headquarters and routinely attended meeting and events in Philadelphia.

Respondents’ Discriminatory and Retaliatory Conduct

3. I specifically allege:

Background/Employment History

- a. I was hired by Respondents, Comcast Cable Communications Management, LLC (“Cable”) and Comcast Corporation (“Corporation”) in or about 2001 as Director of Government Affairs supporting Comcast Business Communications (“CBC”) and Cable. I reported to John Sullivan, General Counsel for CBC and Sheila Willard (“Willard”), Senior Vice President.

¹ Albeit at amounts and rates lesser than my heterosexual, male peers who conform to traditional sex and/or gender stereotypes.

- b. Amid my exemplary performance, I rose through the ranks of Respondents' organizations (albeit at a slower pace than my heterosexual peers), reporting to a number of individuals between 2002 and the present.
- c. I was promoted to Vice President, Government Affairs for Cable-Headquarters ("HQ") in or about 2011. The position required that my employment shift from a field-based position to Philadelphia. My title was adjusted to Senior Vice President of Government Affairs for Cable-HQ ("SVP") in or about 2015 without any change in my job duties or work location.
- d. Since 2011, I have worked in Philadelphia, Pennsylvania with travel across the country on behalf of Respondents.
- e. As SVP, I lead local government affairs operations and policy. I am also the External Affairs Principle to national Lesbian, Gay, Bisexual, Transgender and Queer ("LGBTQ") organizations on behalf of Respondents.
- f. I currently report to Bret Perkins ("Perkins"), Corporate Vice President of External Affairs and Government Affairs. I have a "dotted line" reporting relationship to Kathy Zachem ("Zachem"), Corporate Executive Vice President of Regulatory and State Legislative Affairs for Corporation. Many of my counterparts within Respondents' organization are Zachem's direct reports and Zachem refers to me as her "lead" on local government affairs.

Discriminatory and Retaliatory Treatment

- g. Evidence of Respondents' on-going discriminatory conduct toward me because of (1) my sexual orientation (homosexual); and (2) my sex (including without limitation my failure to conform to traditional sex and/or gender stereotypes), includes but is not limited to the following:
 - i. I am the only openly gay senior executive who does not conform to traditional sex and/or gender stereotypes within Respondents' organization. I have been openly gay throughout my employment with Respondents.
 - ii. From the time of my hire, from in or about 2001 to 2002 and while I was working in Philadelphia, my boss, Sheila Willard ("Willard") (then SVP of Government Affairs, Cable-HQ) attempted to "hide" me from her supervisor, Mike Tallent ("Tallent"), then Cable CFO. Specifically, I was asked not to go to the East Tower (the executive tower) nor interact with certain senior leaders including Tallent and Joe Waz, SVP of Public Policy. It is my understanding that Willard set the foregoing limitations upon my employment due to my sexuality and my failure to conform to traditional sex and/or gender

stereotypes and Willard's belief that Tallent, Waz and others would discriminate against me for same.

- iii. At or around the same time, Willard and others assigned one of my subordinates to be the "point of contact" with Art Block ("Block") then Senior Vice President/Secretary/General Counsel of Respondent Corporation (current Executive Vice President/Secretary/General Counsel of Respondent Corporation). I understood that Willard believed that Block would discriminate against me because of my sexuality and my failure to conform to traditional sex and/or gender stereotypes.
- iv. In 2002, while working in Philadelphia, Willard and members of Respondents' Human Resources team sent me to an executive coach, Proteus International ("Proteus"). During the coaching session, I was told that I was "too gay and flamboyant" for Respondents' conservative culture. I understood that this feedback was relayed to me through Proteus but reflected Respondents' views on my mannerisms against the backdrop of my sexual orientation. The Proteus coach, based on feedback from Respondents, suggested I look for other employment.
- v. Following the feedback I received from Proteus, I complained to Willard and to Melanie Penna, Human Resources of the discriminatory comments. My coaching with Proteus ended, but I was not offered any explanation for the discriminatory feedback I received nor did Respondents undertake any investigation into my complaints regarding same.
- vi. Thereafter, I spoke to Willard about promotion opportunities for me within Respondents' organization. Willard told me that in order for me to garner a promotion, I would need to take a leadership position in the "field" or outside of Respondents' headquarters.
- vii. Following Willard's instruction, I took a position as a Regional Vice President of Government Affairs, Communications and Community Investment in South Florida ("RVP"). The new position required that I move from Philadelphia to Florida. In taking the RVP position at my boss' instruction, I was no longer visible to senior leaders at Respondents' headquarters, thereby presumably diminishing my chances for advancement through the ranks at headquarters.
- viii. Shortly thereafter, despite my requests for promotion, Willard promoted my heterosexual colleague Bret Perkins ("Perkins") from Director of Government Affairs to Vice President of Government Affairs (both headquarters-based positions). Perkins did not have "field" experience.

- ix. I understood that Willard required me, as an openly gay employee who did not conform to traditional sex and/or gender stereotypes, to have additional experiences and qualifications for promotion that heterosexual, conforming peers were not required to have.
- x. In or about 2005, during an “all hands” meeting with an audience of employees of Respondent I was called a “faggot” (twice) from an employee in the audience during my presentation. The epithet was shouted loudly enough for me to hear from the risers on the stage. I understood that many within Respondents’ Florida organization heard the epithet, yet none took any action. The audience included members of Respondents’ human resources organization.
- xi. I complained to Karen Abeleda (“Abeleda”), Area Vice President of Human Resources and others about my treatment. I further complained that, against the backdrop of the undisciplined “faggot” comment by an employee, I understood that the corporate culture of Respondents risked LGBTQ customers being subjected to similar treatment.
- xii. To the best of my knowledge, Abeleda did not investigate the incident.
- xiii. In or about 2006, Steve Dvoskin (“Dvoskin”), Regional Vice President, stated during a conference call with Government Affairs team members (including some with reporting relationships to me) that I should not be allowed to appear in certain Florida communities on behalf of Respondents as those communities would react negatively to me because of my sexual orientation, and thus potentially impact Comcast’s business.
- xiv. My team members reported Dvoskin’s comments to me. I complained to John Ridall (“Ridall”), President of the Division, of the discriminatory statement.
- xv. To the best of my knowledge, Ridall did not investigate my complaints. Dvoskin was not disciplined or counseled in any way about his discriminatory conduct.
- xvi. In or about 2007, I applied for a promotion to Southern Division Vice President of Government Affairs which would report to Ridall. I did not receive the promotion. Instead, a less qualified male who identified as heterosexual and conformed to traditional sex and/or gender stereotypes was given the position. Ridall told me that I was “more than qualified” for the position, but he chose the candidate that he would be more “comfortable” working with. I understood Ridall’s comments to reflect his bias toward me as

an openly gay man who failed to conform to traditional sex and/or gender stereotypes.

- xvii. I complained to Helen Miranda-Smith (“Miranda-Smith”) Regional Vice President of Human Resources and Grace Killelea (“Killelea”), Vice President of Talent Management at Respondent Cable’s Philadelphia headquarters of Ridall’s discriminatory bias and Respondents’ related failure to promote me. Neither Miranda-Smith nor Killelea took any action to investigate my complaints of discrimination.
- xviii. In 2008, while participating in Respondents’ Executive Leadership Forum (“ELF”), I was advised to engage with my ELF team’s “Executive Champion” Brad Dusto (“Dusto”), President West Division, via telephone rather than in person because Dusto had made several discriminatory comments in the past regarding men who fail to conform to traditional sex and/or gender stereotypes.
- xix. In or about 2009, I applied for the Division Vice President position in the West Division. I was well qualified for the position. The day prior to my interview, I was told by Filemon Lopez (“Lopez”), Senior Vice President Florida Region that I needed to withdraw my application as Lopez reported that I was not a “cultural fit” for the new President of the West Division, Steve White (“White”). I understood “cultural fit” to be a euphemism for being gay and for my failure to conform to traditional sex and/or gender stereotypes.
- xx. White selected a less qualified, heterosexual male, who conformed to traditional sex and/or gender stereotypes for the Division Vice President position.
- xxi. In 2011, I was approached for an HQ based-position in Philadelphia. Respondents represented to me that the position, Vice President of Government Affairs Cable-HQ, was a promotion and I accepted the position with that understanding.
- xxii. However, I learned after I assumed the position that my rank and pay were reduced within Respondents’ systems from a VP2 to a VP1. As a result, the Vice President Affairs Cable-HQ position was a demotion.
- xxiii. All of my peers who were not openly gay and who conformed to traditional sex and/or gender based stereotypes and who performed the same caliber and quantity of work that I did were either ranked as VP2s or VP3s.

- xxiv. In Philadelphia, I complained to Sandy Lau (“Lau”), Human Resources of the demotion described above and told her that I believed that my sexual orientation and failure to conform to traditional sex and/or gender stereotypes was at the root of Respondents’ shifting me downward from VP2 to VP1. Lau told me to “ignore” the level I was assigned in Respondents’ pay rubric and move on. Lau did not undertake any investigation as a result of my complaints.
- xxv. In or about 2013, Respondents asked me to investigate a complaint from a transgender customer in Florida who alleged that a Comcast contractor verbally and physically assaulted her during a tech visit. However, my efforts were diminished and minimized by leaders within the Florida organization of Respondents who instructed employees to “work around me” and limit my interactions with employees necessary to my investigation. Further, following my investigation, Respondents’ Florida organization refused to provide any further guidance or training for employees on LGBTQ issues.
- xxvi. Also in or about 2013, Respondents, including without limitation Zachem,² encouraged me to take a demotion to a regional position in the San Francisco area despite my exemplary performance reviews. When I responded that the position would be a “backwards” step for my career trajectory within Respondents’ organization, I was told that it would get me out of the “dysfunctional corporate culture.” I understood that Respondents wanted to move me to an area of the country with a substantial homosexual population so that it could use my sexual orientation as a way of furthering its business in an area of the country where it was more “acceptable” to be gay.
- xxvii. At the same time, I learned that a Division Vice President position reporting to White was open in Denver, Colorado. I asked to be promoted into that position. Zachem questioned whether I was a “cultural fit” for the role. I understood that in questioning my “fit” for White, Zachem meant that White did not want a homosexual person who did not conform to traditional sex and/or gender based stereotypes in his reporting chain of command.
- xxviii. Shortly thereafter, also in or about 2013, I asked Perkins to adjust my title to appropriately reflect the portfolio of work that I was tasked with in comparison to my heterosexual, conforming peers. I highlighted to Perkins the following: my experience, my portfolio of skills within the governmental affairs organization, my education (I have a law degree) and my pay and title history relative to my heterosexual, conforming peers. I explained to Perkins

² By this time, Perkins was reporting to Zachem, so in addition to my dotted line relationship to Zachem, she was also my supervisor’s supervisor.

that while I was substantially more experienced than my peers with a broader portfolio of current work, I worked at a Vice President title for Senior Vice President work. My request for a title adjustment was denied.

- xxix. In or about March, 2014, when promotions and performance ratings were announced, my title was not adjusted. When I asked for an explanation, I was told that I needed to improve my relationship with Richard Smotkin (“Smotkin”), Vice President of Government Affairs. Smotkin also reported to Perkins.
- xxx. Smotkin, notoriously, had conflicts with many leaders within Respondents’ organizations; I was the only leader required to cure/overcome Smotkin’s well-known propensity for conflict.
- xxxi. During 2014 and 2015, I was routinely praised for my efforts on behalf of Respondents in connection with a proposed merger with Time Warner Cable.
- xxxii. Despite the above, I continued to rank at a VP1 level in stark contrast to my peers.
- xxxiii. In or about early, 2015, Corporation (and several other large-national employers) was asked by multiple organizations, including without limitation, the ACLU, to sign onto an employers’ amicus brief in connection with a marriage equality case (*Obergefell v. Hodges*) pending before the Supreme Court. I prepared a presentation for David L. Cohen (“Cohen”), Senior Executive Vice President of Corporation and Chief Diversity Officer and William Strahan (“Strahan”), Executive Vice President, Human Resources Cable outlining the business case for why Corporation should sign onto the brief.³
- xxxiv. Respondents told me that Cohen and Strahan rejected my business recommendation and felt that I was “too personally invested” in the outcome of the *Obergefell* case.
- xxxv. Ultimately, Corporation signed onto the brief at the urging of a heterosexual colleague that Cohen did not perceive as “too personally” vested in the outcome of the Supreme Court case.
- xxxvi. In or about early 2015, after years of repeated requests, my title was adjusted to Senior Vice President without any change in my job duties. However,

³ Ultimately, more than 350 employers, including Apple, Aetna, Coca-Cola, General Mills, PepsiCo and Verizon, signed onto the brief.

Respondents would not revise my base pay, bonus and equity award to the level of my SVP peers unless I signed a restrictive employment agreement.

- xxxvii. Respondents' restrictive employment agreements have a disparate impact on homosexual employees and employees who do not conform to traditional sex and/or gender based stereotypes.
- xxxviii. I complained to Lau of Respondents' on-going discrimination toward me in connection with my pay, bonus, and equity award. I also advised Lau of the disparate impact that the employment agreement had on gay employees.
- xxxix. That same year, 2015, the Philadelphia Business Journal recognized me as a *Top LGBT Leader in Business*. Respondents refused to sponsor the recognition. Respondents refused to communicate news of the award to fellow employees via its intranet or other employee communications. No one from Respondents attended the event at which I received the award.
- xl. Respondents routinely sponsor other awards and accolades received by my heterosexual and traditional sex and/or gender stereotype conforming peers.
- xli. In or about 2016, during an executive level, strategic briefing and planning session in Respondents' Philadelphia HQ, D'Arcy Rudnay ("Rudnay"), Executive Vice President and Chief Communications Officer for Corporation, announced to those in attendance that I reminded her of a specific ice skater. As she searched her memory for his name, she made swooping gestures with her hands and referenced the ice skater's hair style. Another executive offered in response, "Johnny Weir." Rudnay excitedly responded that that is who I reminded her of. Weir and I have absolutely no physical resemblance to one another. However, Weir is an openly gay male, who does not conform to traditional sex and/or gender based stereotypes (he often wears make-up and will dress in clothes marketed to women).
- xlii. Also in or about 2016, Jennifer Khoury Newcomb ("Newcomb"), Senior Vice President Corporate and Digital Communications for Corporation, was trying to identify for the gathered executives a particular female cultural influencer. Newcomb could not remember the woman's name. Newcomb began describing the woman by referencing her ex-husband and then stating "that was before she turned gay." I stopped the meeting and stated that the more appropriate terminology was "coming out," not "turned gay." The inappropriate description by Newcomb made me feel marginalized and out of place.

- xl. In or about May, 2016, I met with Cohen in Philadelphia upon the occasion of my fifteenth work-anniversary with Respondents. I complained to Cohen of the severe and pervasive discrimination to which I had been subjected to at Respondents and provided specific details regarding same. At the same time, I expressed my desire to continue to contribute to the organization and advance to a more senior position.
- xli. Cohen stated during the meeting that I was high performing and high potential.
- xlii. To the best of my knowledge, Cohen did not take any action in response to my complaints discrimination, including without limitation in connection with a hostile work environment.
- xliiii. Later that month, in or about late-May 2016, I met with Lau to garner feedback as to why I was not being treated as my SVP peers were—including in connection with treatment of my direct reports.⁴
- xliiiii. Lau told me my work was highly regarded and I was known for strong performance.
- xlv. Lau also told me that Cohen (and others) viewed me as “high pitched” and suggested that the view that I was “high pitched” was impacting my career trajectory and treatment.
- xlv. I told Lau that “high pitched” sounded like code for gender expression bias.
 - i. Lau, upon hearing my comment, looked at her watch and left the meeting.
 - ii. After the conversations with Cohen and Lau, I further understood that I was being marginalized, demeaned and prevented from advancement because of my sexual orientation and failure to conform to traditional sex and/or gender stereotypes.
 - iii. In or about February, 2017, Perkins told me that he and Lau were considering engaging Proteus to perform projects within Government Affairs. I told Perkins in writing that I hoped “Comcast is not using Proteus for anything since it’s the coaching firm that told me in 2002 that I should leave Comcast as I’m not a cultural fit as an out gay leader.”

⁴By way of example, I was the only SVP not given an “SVP” office space. Members of my team were forced to share offices and engage in other workspace sharing arrangements that their peers reporting to heterosexual (and stereotype conforming) supervisors.

- liii. In or about July, 2017, I met with Strahan to review my concerns about the negative impact that the employment agreement had on me and other gay (and non-conforming) employees. I explained to Strahan that in addition to the specific impact the agreement had on me, that it also had a disparate impact on other gay or non-sex and/or gender stereotype conforming employees.
- liv. In or about September, 2017, Perkins informed me via email that despite knowing of Proteus' bias that it would move forward with a project for Comcast. The project requires Proteus to consider the organization of Government Affairs, its alignment with other aspects of the organization and could result in workforce changes, including hiring and firing of employees (including me).
- lv. I again complained to Perkins of Proteus' proven history of bias.
- lvi. In or about December, 2017, I asked Strahan to meet with me again. He had not responded to any of the information I provided to him in or about July, 2017 regarding my discriminatory treatment.
- lvii. At the same time, in or about mid-December, 2017, I sent a memo to Perkins asking for my "gay pay gap" to be addressed. I explained to Perkins that I learned that I was the lowest paid SVP in Government Affairs (despite my experience, education and length of service to Respondents) and that I was the only SVP not receiving the standard 60% bonus.
- lviii. In or about January, 2018, Strahan met me for coffee and told me that Respondents would not make any changes to the employment agreement, save for specifically referencing Respondents' anti-discrimination policies within, without regard to its disparate impact on gay employees.
- lix. In or about March, 2018, I asked Perkins for an update on any response to my December, 2017 memo in which I detailed and described the "gay pay gap."
- lx. Perkins said that Respondents would not address any pay gap, but that if I signed the restrictive employment agreement I would receive the standard 60% bonus—albeit benchmarked against my relatively low rate of pay—immediately.
- lxi. I again complained of discrimination in connection with my pay to Perkins.
- lxii. In or about May, 2018, Lau sent me an email containing a new version of the employment agreement. This version did not even include an immediate standard 60% bonus that all other SVPs received—instead, my bonus amount

was listed as 45% with the opportunity to shift the bonus to 60% in the second year of the employment agreement.

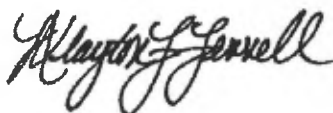
- lxiii. I understood the revised employment agreement to be retaliatory for my on-going efforts to bring on-going discrimination within the organization to Respondents' attention.
 - lxiv. When I complained to Lau about the on-going bias and discriminatory conduct, she told me that this new, reduced agreement was "final" per "Cohen, Zachem, Perkins, human resources and legal."
 - lxv. I told Lau that I could not sign the biased, restrictive and retaliatory agreement. I also told Lau that the employment agreement would memorialize and further bind me to on-going pay inequity between me and my heterosexual, conforming peers.
 - lxvi. To the best of my knowledge, Respondents have not investigated nor taken remedial measures in response to anyone of my complaints.
 - lxvii. I continue to perform my duties in an exemplary manner for less pay and without any hope for promotion amid the discriminatory conduct described above.
4. Respondents have subjected me to sex (including without limitation failure to conform to traditional sex and/or gender stereotypes) and sexual orientation discrimination, including without limitation in connection with my pay and in subjecting me to a hostile work environment. Respondents have retaliated against me for complaining of same. As result, Respondents have violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, the Pennsylvania Human Relations Act, 43 P.S. §955 *et seq.*; and the Philadelphia Fair Practices Ordinance, Bill No. 130687, Philadelphia §9-1100 *et seq.*, as set forth herein.
5. Other action based upon the aforesaid allegations has been instituted by the Complainant in any court or before any other commission within the Commonwealth of Pennsylvania as follows:
- This charge will be referred to the EEOC for the purpose of dual filing.
6. The Complainant prays that Respondent be required to:
- a) Make the Complainant whole.
 - b) Eliminate all unlawful discriminatory and retaliatory practice(s) and procedure(s).
 - c) Remedy the discriminatory and retaliatory effect of past practice(s) and procedure(s).

- d) Take further affirmative action necessary and appropriate to remedy the violation complained of herein.
- e) Provide such further relief as the Commission deems necessary and appropriate.

VERIFICATION

I, Klayton Fennell, hereby verify that the statements contained in this Complaint are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 P.A.C.A § 4904, relating to unsworn falsification to authorities.

June 6, 2018



(Date signed)

(Signature)

Klayton Fennell

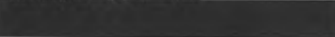

Shamong, NJ 08088



EXHIBIT 2

EEOC Form 161-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Klayton Fennel**
[Redacted]
Shamong, NJ 08088

From: **Philadelphia District Office**
801 Market Street
Suite 1300
Philadelphia, PA 19107

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
17G-2018-00156	Kurt Jung, State & Local Program Manager	(267) 589-9749

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**, or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

7/16/2019

Enclosures(s)

Jamie R. Williamson,
District Director

(Date Mailed)

cc:

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(Charging Party Attorney)

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Carolyn P. Short Esq.
(Respondent Attorney)

cc: *(Sent by e-mail only: oeltjen@consolelaw.com; carolyn.short@hklaw.com)*

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Enclosure with EEOC
Form 161-B (11/16)

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 – not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA): The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):

- **The limitations from the impairment no longer have to be severe or significant** for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **“major life activities” now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- **Only one** major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, **the beneficial effects of “mitigating measures”** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.
- An impairment that is **“episodic”** (e.g., epilepsy, depression, multiple sclerosis) or **“in remission”** (e.g., cancer) is a disability if it **would be substantially limiting when active**.
- An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

“Regarded as” coverage:

- An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively **BOTH** transitory (lasting or expected to last six months or less) **AND** minor.
- A person is not able to bring a failure to accommodate claim *if* the individual is covered only under the “regarded as” definition of “disability.”

Note: *Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For more information, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.