

Maverick's executive sexually harassed and sexually assaulted a job applicant and that the Mavericks' employees and players were at risk for being sexually harassed by that executive.

2. Nelson and Maverick's executive Jason Lutin were in Chicago for the NBA All Star game activities staying at hotels and attending events sponsored by the NBA. Jason Lutin (hereinafter "Lutin") is Mark Cuban's Chief of Staff and Cuban's right-hand person who is intricately involved with Shark Tank and the Mark Cuban companies.

3. Donnie Nelson's nephew was interested in obtaining a job in the sports and entertainment industry. Nelson asked Lutin if he would visit with Nelson's nephew about job possibilities with the Mavericks and in the sports and entertainment industry. Lutin attended a lunch with the Nelson family and Nelson's nephew.

4. After lunch Lutin insisted that Nelson's nephew needed to come to Lutin's hotel room to discuss job possibilities. When in Lutin's NBA-sponsored hotel room, Lutin sexually harassed and sexually assaulted Nelson's nephew, who was a young, and a member of the LGBTQ community. This is a classic case of a wealthy and powerful executive using their power to take advantage of a vulnerable person in a subordinate position and leverage that power to obtain sexual favors. Experts agree that sexual harassment is often a power trip, not simply about sexual gratification.

5. Nelson's nephew notified the Mavericks of Lutin's wrongdoing in the NBA-sponsored hotel room. Without telling Nelson, Cuban and the Mavericks quickly and quietly settled Nelson's nephew's claim. Cuban's reaction after learning of Lutin's misdeeds was buy his way out of the problem and sweep Lutin's sexual harassment and sexual assault under the rug.

6. In August of 2020 Nelson and Cuban began discussions about replacing Nelson's lifetime contract of \$5 million a year with a 10-year contract. Later Cuban offered Nelson a 10-year contract at \$66 million. Nelson's sports agent countered at \$77 million.

7. Approximately five months after the sexual harassment and sexual assault occurred, Donnie Nelson learned, for the first time, of Lutin's mistreatment of his nephew.

8. Nelson brought Lutin's wrongdoing and Nelson's concerns that Lutin's sexual harassment tendencies and rogue attitude were putting the Mavericks' employees, players, and the entire organization at risk. Rather than taking prompt remedial action to address Lutin's wrongdoing, Cuban and the Mavericks retaliated against Nelson and eventually Nelson was asked to sign a confidentiality agreement to keep quiet about Lutin's sexual harassment in the hotel room. Cuban wanted to silence Nelson so the Mavericks could hide from the public and the Mavericks' employees that the Mavericks were allowing a sexual predator to continue working for the Mavericks.

9. Cuban's attitude towards Nelson clearly changed for the worse and Cuban gave Nelson the proverbially cold shoulder. The retaliation culminated with Cuban summarily firing Nelson. Despite Nelson's 24 years of loyal service to the Mavericks, Cuban did not pay Nelson any severance, or even hold a send-off party for Nelson.

10. Nelson filed an EEOC charge against the Mavericks for illegal retaliation for firing him. The Maverick's EEOC response contends it fired Nelson for poor job performance and that Nelson's EEOC charge is false. Cuban may not have disclosed Nelson's EEOC charge to the NBA or Cynthia Marshall. Cuban's lawyer instructed the EEOC to send all correspondence to the Mavericks care of Cuban's lawyers. That request is out of the ordinary as

the EEOC normally serves all correspondence directly to the company against whom the EEOC charge is filed.

11. As they say in Texas “the proof is in the pudding.” Despite claiming that Nelson's EEOC charge is false, Cuban offered Nelson ***\$52 million dollars***, if Nelson would withdraw his EEOC charge and enter into a strict confidentiality agreement regarding Nelson's retaliation claim and Nelson's nephew's sexual harassment and sexual assault claim. If the statements in Nelson’s EEOC charge were false and the Mavericks really fired Nelson for poor job performance, why in the world would Cuban, the Dallas Mavericks, or anybody offer Nelson \$52 million dollars to settle Nelson's legal claims?

12. In this lawsuit, Cuban will be held to account for his lip service and false public persona and repeatedly ignoring and repeatedly covering up high level executives' sexual harassment and discrimination against Mavericks' employees.

IDENTIFICATION INFORMATION REQUIRED BY TCPR §30.014

13. The last three digits of Plaintiff’s Texas Driver’s License number are 182 and the last three digits of the Plaintiff’s social security number are 889.

14. Defendants do not have a Texas Driver’s License or social security number because they are corporate entities.

MONETARY CATEGORY

15. Pursuant to Texas Rule of Civil Procedure 47, this matter should be assigned to category 4.

16. At the time of the filing of this Pleading, the damages are continuing and increasing. Plaintiff's investigation is continuing and is incomplete. Accordingly, the monetary category is an estimate at this time and is subject to being increased, decreased, or otherwise amended.

DISCOVERY CONTROL PLAN

17. Discovery should be conducted under Level III pursuant to Texas Rule of Civil Procedure 190.4 and a Motion is hereby made for entry of a Level III Scheduling Order.

THE PARTIES

18. Plaintiff is an individual and Texas resident.

19. Defendant DALLAS BASKETBALL LIMITED, d/b/a DALLAS MAVERICKS is domestic limited partnership duly qualified to do business in the State of Texas.

20. Defendant RADICAL MAVERICKS MANAGEMENT, LLC, is a Texas limited liability corporation duly qualified to do business in the State of Texas.

SERVICE

21. Defendant DALLAS BASKETBALL LIMITED, d/b/a DALLAS MAVERICKS may be served by serving this Pleading, citation, service upon the appropriate person and/or entity upon whom service can be obtained by and through its registered agent:

Capitol Corporate Services, Inc.
206 E. 9th Street, Suite 1300
Austin, TX 78701-4411

22. Defendant RADICAL MAVERICKS MANAGEMENT, LLC may be served by serving this Pleading, citation, service upon the appropriate person and/or entity upon whom service can be obtained by and through its registered agent:

Capitol Corporate Services, Inc.
206 E. 9th Street, Suite 1300
Austin, TX 78701-4411

JURISDICTION AND VENUE

23. Defendants were doing business in Dallas, Dallas County, Texas at all times relevant to this Action and did business in Dallas, Dallas County, Texas that caused the injuries and damages that are the subject of this Action. Therefore, jurisdiction and venue are proper in Dallas, Dallas County, Texas. As a direct and proximate result of Your actions and/or inactions, damages in excess of the minimum jurisdictional requirements of this Court were incurred. The damages suffered include, but are not limited to lost earnings compensatory and mental anguish.

24. All conditions precedent to all relief being sought by Plaintiff in this Action have been met, performed, occurred and/or been waived.

CAUSE OF ACTION: RETALIATION AND WRONGFUL TERMINATION IN VIOLATION OF THE TEXAS COMMISSION ON HUMAN RIGHTS ACT

25. Pursuant to Texas state law, a cause of action is pled against Defendants for retaliation in violation of § 21.055 of the TCHRA. The allegations contained in all of the paragraphs of this Pleading are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as if set forth verbatim herein.

26. Plaintiff reported sexual harassment to Defendants committed by one of Defendants' employees and opposed the discriminatory acts and practices by Defendants. Subsequent to the report, Defendants retaliated against Plaintiff for opposing the discriminatory acts and practices by wrongfully terminating Plaintiff. Despite Plaintiff's complaints regarding such discriminatory acts and practices, Defendants took no action to curtail or stop such actions. Defendants then retaliated against Plaintiff for opposing and reporting the discriminatory acts and practices. The retaliatory conduct continued and was not curtailed by Defendants.

27. Plaintiff has met all procedural prerequisites of bringing this TCHRA claim. Plaintiff filed TCHRA charges relating to these violations on or about December 2, 2021, and has received a Right to Sue letter from the Texas Workforce Commission relating to these charges. Further, Plaintiff is within all applicable statutes of limitations for bringing this Action.

28. As a direct and proximate result of Defendants' retaliation, Plaintiff suffered damages within the jurisdictional requirements of this Court.

DETAILED FACTS

29. Nelson, Lutin, and the Mavericks' executives were in Chicago for the NBA All Star game activities staying at hotels and attending events sponsored by the NBA. Jason Lutin is Mark Cuban's Chief of Staff for the Mavericks, second to Cuban in command of the Mavericks, and is Cuban's right-hand person who is intricately involved with Shark Tank and the Mark Cuban companies.

30. Donnie Nelson's nephew was seeking employment in the sports and entertainment industry. Nelson asked if Lutin would visit with Nelson's nephew about job possibilities with the Mavericks and in the sports and entertainment industry.

31. Lutin said he would be happy to meet with Nelson's nephew about those job opportunities and joined the Nelson family for lunch. The photo below shows the Nelson family having lunch. Jason Lutin is on the far right in the black shirt.



Lutin's Sexual Harassment and Assault of Young LGBTQ Male

32. Jason Lutin, a wealthy, high level executive with significant business and political clout was in the position of power. After lunch Lutin insisted Nelson's nephew meet him in Lutin's hotel room to discuss job possibilities.

33. When Nelson's nephew went to Lutin's hotel room to learn about job opportunities, Lutin asked Nelson's nephew to sit next to him on the bed and then sexually harassed and sexually assaulted an unsuspecting, vulnerable LGBTQ young man seeking employment with the Mavericks. Lutin's numerous policy violations and indiscretions--were clearly in breach of the Maverick's supposed "zero-tolerance" policy.

Cuban and Mavericks Sweep Lutin's Sexual Harassment of a Young LGBTQ Male Under the Rug

34. Nelson's nephew made a claim against the Mavericks regarding Lutin's sexual harassment and sexual assault. When Cuban learned of the harassment, rather than taking prompt remedial action and disciplining Lutin, Cuban directed his organization to buy its way out of the problem so it could be swept under the rug and Lutin's critical work for the Mavericks, the Mark Cuban Companies, and the Shark Tank TV show would not be tarnished or jeopardized.

35. The Mavericks' response is a far cry from Cynthia Marshall's promise that "the Dallas Mavericks organization will be setting the NBA standard" regarding workplace ethics. The Mavericks are not living up to Cynthia Marshall's promise to have "our immediate key focus areas include modeling a zero-tolerance policy for inappropriate behavior."

Cuban Values Money More than Preventing Discrimination, Harassment, and Retaliation in the Workplace

36. Any doubts that Cuban doesn't care about ensuring a workplace free of discrimination, harassment, and retaliation are proven by Cuban's actions, or more precisely, his inactions. Despite the Maverick's paying off the victim of Lutin's wrongdoings, Lutin remains an employee of the Dallas Mavericks, and the Mark Cuban companies working on Shark Tank and other projects for Cuban. As long as Lutin is helping Cuban make money, Cuban couldn't care less about employees, basketball players, job applicants, and others who are being put in harm's way by having to interact with this sexual predator who would take advantage of a young member of the LGBTQ community.

Cuban Did Not Discipline Lutin for His Wrongdoing

37. Even worse, Nelson is unaware of any disciplinary action taken against Lutin. Upon information and belief, Lutin was not even required to take education and training regarding avoiding sexual harassment in the workplace.

The NBA Does not Take Action Regarding Lutin's Sexual Harassment of Job Applicant

38. Upon information and belief, neither Cuban nor the Mavericks informed the NBA of Lutin's sexual assault during the All-Star activities in an NBA-sponsored hotel. The NBA never contacted Nelson to investigate Lutin or the Mavericks. Either the NBA was never notified of Lutin's assault, or the NBA chose to look the other way (assuming the Mavericks notified the NBA).

39. Certainly, no discipline of Lutin, Cuban, or the Mavericks was announced by the NBA or the Mavericks. Any organization whether it be a league or sports franchise that is committed to a workplace free of harassment and discrimination takes decisive and concrete action and announces the discipline given to a sexual harasser to deter other people in power from harassing or discriminating against employees.

40. Members of the LGBTQ community have suffered direct and overt discrimination for generations in and outside the workplace. It wasn't until June 15, 2020, that the U.S. Supreme Court finally recognized that the Title VII anti-discrimination laws also prohibit discrimination against the LGBTQ community in the workplace. Cuban projects and promotes a persona of caring about the LGBTQ community and minorities. However, Cuban does so only when it suits his reputational purposes. Cuban favors executives and employees who provide

value to him over minorities and LGBTQ members who have suffered direct and indirect discrimination throughout history.

Cuban Knew of and Tolerated the Sexist Environment Exposed by *Sports Illustrated*

41. Just as Cuban tolerated that the sexist working environment and gender discrimination uncovered and exposed in the *Sports Illustrated* story and wanted it swept under the rug. Cuban, once again, directed the Mavericks to cover up more sexual harassment in the workplace. Once again, neither Cuban nor the Mavericks took action to address the Mavericks' continuing, systemic workplace problems.

42. *Sports Illustrated* uncovered what it determined was a "corrosive corporate culture riddled with what were deemed institutional failures." Cuban claimed he had no knowledge of the pervasive sexist atmosphere of the Mavericks. Nelson and others who observed Cuban have seen him insist on controlling minute details of the Maverick's day-to-day operations. They believe that Cuban was well aware of the systemic, sexist, and discriminatory workplace environment reported in the *Sports Illustrated* article. Nelson is prepared to provide additional examples in the future.

43. Cuban cared only about punishment from the NBA and possibly losing draft choices--not the fact that female employees had been discriminated against and abused in the workplace for years under Cuban's watch, while he saw and ignored the problem.

Cuban's Cover-Up of Lutin's Sexual Assault is Similar to Cuban's Cover-Up of a Hangman's Noose in the Workplace

44. Cuban keeping Lutin's sexual harassment as a secret is consistent with a long history of Cuban and the Mavericks not simply tolerating a sexist and discriminatory working

environment, but intentionally covering up problems on a symptomatic basis, rather than taking prompt remedial action to address the root cause of these workplace environment problems.

45. Hiding Lutin's sexual harassment was similar to Cuban intentionally destroying evidence of racial intimidation and racial harassment when an African American employee of the Mavericks complained about a bear being hung in a hangman's noose in the Mavericks workplace during black history month. Specifically, the bear in the hangman's noose was hung in the control room in the workplace of the American Airlines Center. Cuban destroyed the evidence to cover-up this racial discrimination.

Cuban Sweeps Bear Placed in a Hangman's Noose Hanging In the Workplace During African American History Month

46. On February 22, 2011, a production company employee, Nate Rutkowski (a white male), who was working with the broadcast crew, put a hangman's noose in the "IT closet" in the workplace. The IT closet is located right across from Cuban's bunker suite on the event level of the American Airlines Center (hereinafter the "AAC"). The production company is a long-time contractor hired by the AAC and the Dallas Mavericks.

Hangman's Noose in the Workplace During Black History Month

47. On February 23, 2011, before a Dallas Mavericks game an African American Mavericks employee Tony Cooper (hereinafter "Cooper") saw the hangman's noose and took a photo of it. Cooper showed multiple employees who worked at the AAC the hangman's noose photo.

48. When Cooper saw the hangman's noose, he alerted various Dallas Mavericks executives. Cuban eventually saw the hangman's noose. Cuban's actions indicated to Cooper

that Cuban did not want to make a big deal out of a hangman's noose. Cuban then personally removed the hangman's noose and threw it in the trash. Cuban offered no apology, sympathy, or offer to investigate. Cooper felt like Cuban wanted to shut down and chill any discussion of the hangman's noose in the workplace during Black history month.

49. The next day, a cleaning crew was sent into the IT closet to clean it out, remove graffiti, and sanitize it. This was not a common occurrence.

50. As an African-American male, Cooper took the hangman's noose as a threat of violence against African-Americans. Nate Rutkowski, a white male, eventually admitted to hanging the noose in the workplace. Cooper alerted Human Resources who after some back and forth refused to require training of its contractors at the AAC, and for a long period of time thereafter Nate Rutkowski continued to work at the AAC nearby where Mr. Cooper worked. See the sworn affidavit of Cooper. Attached as Exhibit "1."

51. Cuban's cover up of Lutin's sexual harassment and sexual assault and cover up of the hangman's noose is proof that the only reason Cuban ever cared about the Mavericks discriminatory and sexist workplace environment exposed by *Sports Illustrated* was because of the reputational damage to the Maverick's organization. That exposure put Cuban at risk of the NBA taking corrective action against the Mavericks.

Nelson Reports His Concerns About Lutin to Cuban and the Mavericks

52. Nelson learned of Lutin's sexual harassment and sexual assault approximately five months after it occurred. On or about August 16, 2020, Nelson telephoned Cuban to notify Cuban of Lutin's wrongdoing and Nelson's concern about Lutin's sexual predatory tendencies

and the fact that Mavericks' players, employees, vendors, and customers were at risk for sexual harassment at the hands of Lutin.

After Nelson Reports Lutin's Harassment and His Concerns, a Confidentiality Agreement is Requested

53. Nelson followed up his first complaint with a second complaint to Cuban in-person on or about September 1, 2020. During the in-person meeting Nelson, once again, raised concerns about how Lutin was putting the Mavericks employees, players, the entire organization, and Cuban personally at risk. Nelson felt that the Mavericks organization was not enforcing its commitment to a zero-tolerance of sexual harassment.

54. Subsequent to that meeting Cynthia Marshall called Nelson and said a third party would be contacting Nelson to interview him. The Maverick's HR department had two other calls with Nelson and the investigator. Around this time Nelson was asked to sign a confidentiality agreement to keep Lutin's sexual harassment and wrongdoing strictly confidential.

55. Cuban's tolerance of Lutin's sexual harassment against Nelson's family member was so upsetting to Nelson that he needed psychological counseling.

Cuban and the Mavericks Retaliate Against Nelson

56. Soon after that in-person meeting, which occurred on or about September 1, 2020, Cuban revoked his 10-year \$66 million offer to Nelson in retaliation. The linkage between Nelson's complaint and report of Lutin's improper activities and Cuban's withdrawal of a contract offer was confirmed in writing by Cuban on September 18, 2020. Specifically, Cuban sent Nelson a text stating, "But honestly, before I can talk I have to find out more of what's

going on with the other matter. Since it's related to some of the discussions we have had." See text attached as Exhibit "2." Cuban's attached text is in reference to Nelson's warning to Cuban about Mavericks' employees being at risk of being sexually harassed by Lutin.

57. Cuban's campaign of retaliation ultimately culminated in Cuban notifying Nelson on June 13, 2021, that he was being fired. The Mavericks did not put Nelson on probation or put him on performance improvement plans regarding his job performance between the time Nelson reported Lutin's wrongdoing and the date Cuban fired him.

Nelson Files a Retaliation Charge with the EEOC and TCHRA

58. After being wrongfully fired for reporting an executive's sexual harassment, the fact that Lutin was putting Maverick's employees at risk, and opposing sexual harassment in violation of the anti-retaliation provisions of Texas Law, Nelson filed a charge of discrimination for retaliation with the EEOC and Texas Commission on Human Rights. A true and correct copy of Nelson's sworn EEOC charge is attached as Exhibit "3." (The name of the LGBTQ victim has been redacted to respect their privacy).

Cuban Offers to Pay Nelson \$52 Million to Withdraw What Cuban Claims is a False EEOC Charge

59. The Mavericks organization filed a response to that discrimination charge claiming that Nelson's discrimination retaliation claims were "false" and the Mavericks fired Nelson for "poor job performance."

60. Cuban and the Dallas Mavericks offered Nelson *\$52 million dollars* if Nelson would withdraw his EEOC charge and enter into a strict confidentiality agreement regarding Nelson's retaliation claim and Nelson's nephew's sexual harassment and sexual assault claim. If

the sworn statements in Nelson's EEOC charge were false and the Mavericks really fired Nelson for poor job performance, why in the world would Cuban offer Nelson \$52 million dollars to settle Nelson's legal claims?

61. This is just another example of Cuban sticking to his well-worn playbook of:

- 1) ignoring workplace harassment, sexism, racial discrimination, sexual harassment of the LGBTQ community; and,
- 2) **if** they become a problem, then Cuban can use his considerable wealth to buy his way out of the problem and cover it up.

62. A true and correct copy of an email from Cuban's lawyers trying to settle Nelson's retaliation claim for \$52 million dollars and a proposed settlement agreement are attached as Exhibits "4" and "5" respectively.

Cuban, Cynthia Marshall, and the Mavericks Cover-up Lutin's Sexual Harassment

63. Further evidence that Cuban doesn't care is proven by Cuban's subsequent cover up of Lutin's sexual harassment and sexual assault. Cuban would have the public and the media believe that he hired Cynthia Marshall to clean up the sexist and discriminatory environment at the Mavericks. However, it is clear that Cuban is still calling the shots. Just one example of Cuban's continuing control is the fact that Lutin still works for the Mavericks and is in position to harass Maverick's employees.

Cuban Implements Window Dressing, not Real Change in the Mavericks Workplace Environment

64. Cuban would have the public and the media believe that he appointed Cynthia Marshall to clean up the sexist environment at the Mavericks. However, it is clear that Cuban is continuing to call all the shots. It appears Cuban has kept Cynthia Marshall uninformed.

Did Cuban Hide Nelson's EEOC Charge from Cynthia Marshall?

65. Based on the settlement agreement Cuban proposed, it appears Cuban did not inform Cynthia Marshall or the NBA of Nelson's EEOC charge. If you look at the communications from Cuban's attorneys and the settlement agreement Cuban proposed, it appears Cuban was planning to pay the \$52 million dollar settlement to Nelson out of his own money, instead of the Mavericks making that payment. It's obvious that Cuban was trying to eliminate a payment trail indicating that the Mavericks organization was, once again, placing its reputation above the need to protect its employees and ensure a workplace free from discrimination, harassment, and retaliation.

66. Note that Cuban's lawyer also instructed the EEOC to send all correspondence to the Mavericks care of Cuban's lawyers. See the Right to Sue Letter attached as Exhibit "6." Cuban's request is out of the ordinary as the EEOC normally serves all correspondence directly to the company against whom the EEOC charge is filed. This is a further indication that Cuban hid Nelson's EEOC charge from Cynthia Marshall and/or the NBA.

Nelson Fired in Retaliation for Opposing Sexual Harassment of a Mavericks High Level Executive

67. Instead of disciplining Lutin, Cuban's response was to punish and retaliate against Nelson for reporting Lutin's improper acts and warning Cuban and the Mavericks that employees were at risk.

68. Cuban and Nelson's talent agent were in negotiations to replace Nelson's lifetime contract with a 10-year deal. Cuban had offered Nelson a 10-year deal worth \$66 million. Soon after Nelson told Cuban about Lutin's sexual harassment and sexual assault and his concern about Lutin sexually harassing Maverick's employees, Cuban abruptly and unilaterally revoked

Cuban's \$66 million dollar offer and later Cuban said he was satisfied with Nelson's current contractual arrangements with the Mavericks.

69. Many other instances of retaliation continued thereafter in many forms and fashions.

The Mavericks Falsely Claim that Nelson's Job Performance was Substandard

70. The Mavericks claim in its EEOC Response that Nelson's job performance was substandard. The facts and Cuban's micromanaging and meddling in basketball operations (detailed below) prove otherwise.

71. Through Nelson's vision, connections with players overseas, and his talent evaluation, Nelson led the Mavericks to a tremendous run of success unlike anything the Mavericks had ever experienced in the history of its organization. Nelson's leadership produced nine 50+ win seasons in a row, the first finals appearance in franchise history in 2006, and the 2011 NBA Championship. In 2007 a *Sports Illustrated* article ranking the best NBA personnel bosses from 1-30 ranked Nelson as number two. In 2009 a *Yahoo* sports article ranked Nelson as the third best General Manager of the *decade*. When Cuban wrongfully fired Nelson, Nelson was the longest-tenured General Manager in the NBA. Nelson was on his way to delivering more achievements for the Mavericks, but Cuban's meddling and micromanagement derailed Nelson's gameplan.

Nelson and His Father had Positioned the Mavericks for Great Success Before Cuban Bought the Team

72. June 1998 NBA Hall of Fame Coach Don Nelson and GM Donnie Nelson brokered a deal to bring Hall of Famer Steve Nash and future Hall of Famer Dirk Nowitzki to the

Mavericks. Both ended up being two-time League MVP's. Nelson and his father had set the table for the Mavericks for the next 10 years with these two superstars.

Cuban's Meddling in Basketball Operations

73. In January of 2000 Cuban bought the Mavericks. Half of the NBA owners did not approve Cuban's purchase, setting up a tie breaker whereby NBA Commissioner David Stern voted to allow Cuban to purchase the Mavericks.

74. In February 2000, less than a month later, Cuban's first ever move as an owner embarrassed the franchise. It also cost the young Mavericks their chances of making playoffs for first time in 10 years. Cuban insisted on adding Dennis Rodman to the team -- purely for marketing purposes. Rodman destroyed the team chemistry Coach Don Nelson had built and the Mavericks went 3-9 in Rodman's 12 games. After Cuban's marketing experiment failed and Rodman was cut, the Mavericks went 15-5 to end the season and barely miss the playoffs. In addition, evidence indicates that Cuban personally paid Dennis' gambling debts to enable the Mavericks to sign Rodman for less money to intentionally circumvent the NBA's salary cap.

75. Dennis Rodman attacked the Maverick's organization. Mavericks' legend Dirk Nowitzki recalled in an April 21, 2013 *Dallas Morning News* interview that Rodman humiliated the entire Mavericks' organization, including Nowitzki. Rodman said the Mavericks needed an entirely new roster and owner. "Well, they need a new point guard, a new shooting guard, a new power forward and a new center and a new owner. Other than that, they're ready to go." (See *Dallas Morning News* article in 2000).

76. In January of 2001, only one year to the day of his purchase, the NBA levied the largest fine for an individual in NBA history against Cuban (\$250,000).

Cuban insists on signing Erick Dampier *Instead of re-signing Steve Nash*

77. In July of 2004, despite Nelson and his father's strong recommendations, Cuban rejected Nelson and his father's recommendation to re-sign Nash substituted his own judgment to instead sign Erick Dampier. Even Cuban later admitted it was his biggest NBA regret. Nash would go on to take his new team, the Phoenix Suns, twice to the Western Conference finals, earn two league MVP's, and become a first ballot Hall of Famer.

78. On March 20, 2005, less than a year after fighting for and losing his quarterback Steve Nash (the #4 all-time NBA assist leader) and tired of Cuban's micromanaging and meddling, Don Nelson – the second winningest coach in NBA history and Hall of Famer resigned as the Mavericks coach.

79. How good would Nowitzki and Nash have been together? How many titles would a Dirk-Nash Mavericks team have won? "Sixteen," Cuban said. *Sports Illustrated*, July 18, 2020.

Cuban Overrules Nelson's Insistence that the Mavericks Draft the "Greek Freak"

80. Nelson's experience gave him the ability to identify international talent. Just one example is Nelson and his dad saw something in Dirk Nowitzki when few else did. Giannis Antetokounmpo is exactly the sort of player that Nelson was always on the lookout for.

81. In June of 2013, Nelson wanted to draft Giannis Antetokounmpo the "Greek Freak" with the 13th pick in the 2013 NBA draft. Nelson identified and evaluated Antetokounmpo as a great talent who would blossom into an all-star. Nelson was adamant that the Mavericks should draft him.

82. Nelson was all in on Antetokounmpo. Cuban said no. Cuban thought saving approximately \$400,000 in cap space would be more valuable to the Mavericks than Antetokounmpo. Cuban told Nelson, "What if, all of the sudden, we find out that so-and-so is dying to come to the Mavericks and now we don't have the cap room?"

83. Cuban's "so-and-so" was Dwight Howard. Cuban told Nelson that if Cuban believed Howard was dying to come to the Mavericks, not having an extra \$400,000 in cap room is not going to stop Howard from coming. Nelson said if that's the case, then Howard isn't "dying" to come to the Mavericks.

84. Antetokounmpo went on to win league MVP twice, the MVP of the NBA finals and lead The Milwaukee Bucks to an NBA championship.

Another NBA Star that Cuban Let Slip Away

85. Cuban failed to sign Los Angeles Clippers star DeAndre Jordan to the Mavericks. In 2015, Cuban took over Nelson's role and was negotiating directly with DeAndre Jordan's agent. They orally agreed to a four-year, \$80 million deal so Los Angeles Clippers star player DeAndre Jordan would join the Mavericks.

86. Cuban and Jordan sealed their agreement with a handshake--but Cuban's incompetence caused the deal to fall through. A short time later, Jordan re-signed with the Clippers, and spurned Cuban and the Mavericks. This is another example where Cuban's interference and intervention thwarted Nelson's efforts to improve the team.

87. On top of usurping the Nelsons' authority as President of Basketball Operations and General Manager, Cuban empowered Lutin and Bob Voulgaris to make significant decisions regarding the Maverick's basketball operations.

88. These are just a few examples of how Cuban, on occasion, usurped and undermined Nelson and interfered in basketball operations. Cuban's interference and overruling Nelson held the Mavericks back and prevented Nelson from delivering more success. Cuban's misguided meddling is the reason the Mavericks underachieved – not Nelson's alleged poor performance. Nelson will provide more examples in the future.

Cuban's Long History of Tolerating Harassment and Discrimination in the Workplace

89. Cuban tolerated Lutin's sexual harassment and many other bad acts just like he knew of and condoned sexual harassment by other Mavericks employees including, but not limited to, Terdema Ussery, and Chris Hyde -- who were guilty of repeated sexual harassment of female employees.

90. Cuban knowingly and repeatedly refused to hold Lutin to account for his improper acts. Cuban even tolerated Lutin's résumé fraud and Lutin's lie to the Mavericks that he received a law degree--which Lutin does not have.

91. Cuban's long-time tolerance of Lutin's wrongful acts emboldened Lutin by making him "bullet proof" and, thereby, empowered and enabled Lutin to commit more sexual harassment, because Lutin, as Cuban's favorite, Lutin knew he would never be held accountable for sexual harassment or other improper behavior.

92. Lutin's violation of team policies occurred with Cuban's full knowledge and acquiescence. Lutin's unbridled power and violation of team policies concerning not conducting negotiations involving players, agents, and player's family members created dysfunction and conflict with some of the most high-profile Dallas Mavericks' players. Cuban's tolerance of Lutin's wrongdoing was similar to Cuban's tolerance of Bob Voulgaris' improper acts.

93. Cuban's tolerance of Lutin's sexual harassment is also part of a pattern of misogynistic, Animal House atmosphere, not only tolerated, but encouraged by Cuban. The unbridled sexual harassment and sexist atmosphere described in the *Sports Illustrated* expose is something Cuban, a notorious micromanager, was well aware of during the entire time that sexist work environment existed. Cuban managed to dodge a bullet by pretending he had no knowledge of that sexist workplace atmosphere and bought his way out of the problem by making \$10 million in donations to various charities supporting women's causes.

94. Given the Mavericks' checkered history, Cuban decided he could not endure the reputational risk and likely NBA sanctions if Lutin's sexual harassment was revealed. Instead of taking prompt remedial action against Lutin and firing him, as required pursuant to the Mavericks supposed zero-tolerance policy against sexual harassment, Cuban and the Mavericks quietly and confidentially resolved Nelson's nephew's sexual harassment claim; and Lutin remained employed without any discipline.

MISCELLANEOUS

95. The right to plead any and all claims, causes of action and/or theories in the alternative is invoked and all claims, causes of action, and/or theories of recovery are hereby plead, in the alternative, to the extent necessary. Pursuant to Rule 194, You are requested to disclose, within the time provided by the Rules, the information or material described in Rule 194.2 (a)-(1). Demand is hereby made that the Official Court Reporter for this Court perform all the duties of the office, as set forth in Section 52.046 of the Government Code of the State of Texas, and as set forth in Rule 13 of the Rules of Appellate Procedure, including reporting all testimony and trial proceedings, voir dire examinations and jury arguments. The right to bring

additional causes of action against and to amend this Action as necessary is hereby specifically reserved. Documents produced are designated Confidential All conditions precedent to all relief in this Action have been met, performed, occurred, and/or waived.

DAMAGES FOR MENTAL ANGUISH

96. As a direct and proximate result of Your actions or inactions and the willful and malicious nature of the wrongs committed against the Plaintiff, Plaintiff has suffered and will suffer past, present, and future severe mental anguish. Plaintiff has needed and obtained counseling and prescription medicine to treat Plaintiff's mental anguish, for which Plaintiff pleads to recover at trial. The damages for Plaintiff's mental anguish exceed the minimum jurisdictional requirements of this Court.

JURY DEMAND

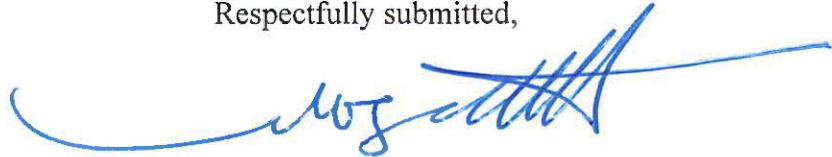
97. Demand is hereby made for this Court empanel a lawful jury to hear this case.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Prayer is hereby made that Defendant(s) Dallas Basketball Limited, d/b/a Dallas Mavericks and Radical Mavericks Management, LLC be cited to appear and to answer herein and that upon final hearing, this Court enter judgment in favor of Plaintiffs against Defendants, jointly and severally, in an amount in excess of the minimum jurisdictional requirements of this Court, for compensatory damages, punitive damages, reasonable attorneys' fees, reasonable paralegal fees, costs of court and pre- and post-judgment interest at the

highest rate allowed by law, and for such other and further relief, general or special, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,



ROGGE DUNN
State Bar No. 06249500

Email: Dunn@righttowork.com

JOSHUA J. IACUONE

State Bar No. 24036818
Email: Josh@RoggeDunnGroup.com

ROGGE DUNN GROUP, PC
500 N. Akard Street
Suite 1900
Dallas, Texas 75201
Telephone: (214) 888-5000
Facsimile: (214) 220-3833

ATTORNEYS FOR PLAINTIFF

DECLARATION OF TONY COOPER

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

1. My name is Tony Cooper and I am over eighteen (18) years of age, I am of sound mind and body, and I have never been convicted of a felony or offense involving moral turpitude. I am fully competent to make this declaration.

2. I have personal knowledge of and experience and familiarity with the matters that are the subject of this declaration. I have personal knowledge of the facts stated in this declaration. I have personal knowledge of the facts stated herein because I witnessed, saw, or heard the events described below. I also have personal knowledge of the facts stated herein because I am employed by Arena Operating Company ("AOC") as a Senior Telecom Analyst. In my job position, as a Senior Telecom Analyst I have experience with and one of my duties is working in the IT Closet and setting-up the Cat-5, TV connections, and electrical power for games at the American Airlines Center ("AAC").

3. Before I discussed any substantive matters with Joshua Iacuone or signed any statements, Joshua Iacuone asked me what job I had with the AOC or any other entity affiliated with the Dallas Mavericks, Mark Cuban ("Cuban"), or the AAC. I informed him that I had not been/was not an officer, managing employee or person with managerial responsibility with any entity, including any of the foregoing.

3. I have been asked to tell what I know about a hangman's noose found in the IT Closet right across from Cuban's bunker suite located on the terrace level of the



AAC (hereinafter "the Incident"). I am providing a summary of some of the information that I know of my own free will. I have not been promised anything of value for giving this declaration, nor threatened with any action if I do not give this declaration.

4. On February 22, 2011, a production company employee, Nate Rutkowski (a white male), who was working with the broadcast crew, put a hangman's noose in a private and dedicated "IT Closet" right across from Cuban's bunker suite located on the event level of the AAC. The production company is a long-time contractor hired by the AAC and the Dallas Mavericks. On February 23, 2011, before a Dallas Mavericks game, I witnessed the hangman's noose and took a photo of it with my mobile phone. I showed multiple employees who work at the AAC the hangman's noose photo, including Michelle Newsome. Upon seeing the hangman's noose, I alerted various executives of the Dallas Mavericks and AOC, with Cuban eventually seeing the noose, Cuban's actions indicated for me to not make a big deal out of it. Cuban then personally removed the hangman's noose and threw it in the trash. Cuban offered no apology, sympathy, or offer to investigate. I felt like Cuban wanted to shut down and chill any discussion of this incident.
5. The next day, a cleaning crew was sent into the IT Closet to clean it out, remove graffiti, and sanitize it. This was not a common occurrence.
6. As an African-American male, I took the hangman's noose as a threat of violence against African-Americans. Nate Rutkowski eventually admitted to handing the noose. I alerted AOC Human Resources who after some back and forth refused to require training of its contractors at the AAC, and Nate Rutkowski continued to work at the AAC in my proximity for a long period of time thereafter.

7. My name is Tony Cooper, my date of birth is May 22, 1963, and my address is 1004 Southeast 2nd Ave., Mineral Wells, Texas 76067. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 27 day of Mar. 2018.

FURTHER DECLARANT SAYETH NOT.


Tony Cooper, Declarant



Mark Cuban C >

PLAINTIFF'S
EXHIBIT2

Sep 18, 2020, 6:36 PM

Mark can you talk tomoryow?

I'm traveling tomorrow Donnie

But honestly, before I can talk I have to find out more of what's going on with the other matter.

Since it's related to some of the discussions we have had .

Understood

Tue, Feb 23, 6:49 PM



Text Message



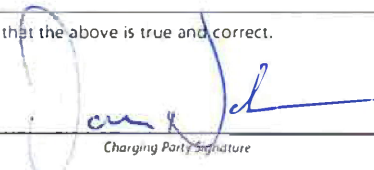
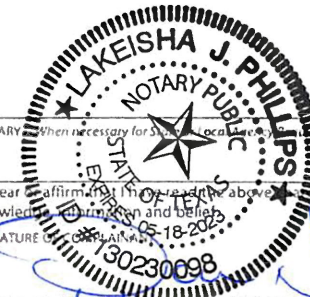

CHARGE OF DISCRIMINATION		Presented To: _____ Agency(ies) Charge No(s): _____	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input type="checkbox"/> FEPA	<input checked="" type="checkbox"/> EEOC
_____ and EEOC		TWC	
<small>State or local Agency, if any</small>			
<small>Name (Indicate Mr., Ms., Mrs.)</small> Mr. Donn C. Nelson		<small>Home Phone (Incl. Area Code)</small> 469-469-1776	<small>Date of Birth</small> 9/10/1962
<small>Street Address</small> 5209 Southern Hills Drive		<small>City, State and ZIP Code</small> Frisco, TX 75034	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two are named, list under PARTICULARS below.)			
<small>Name</small> Dallas Basketball Limited, d/b/a Dallas Mavericks		<small>No. Employees, Members</small> 250 - 300	<small>Phone No. (Incl. Area Code)</small> 214-747-6287
<small>Street Address</small> C/O its attorney Tom Melsheimer - Email: TMelsheimer@winston.com		<small>City, State and ZIP Code</small> (2121 N. Pearl St., Ste 900, Dallas TX)	
<small>Name</small> Radical Mavericks Management, LLC (General Partner of Dallas Basketball Limited)		<small>No. Employees, Members</small> Appx: 25	<small>Phone No. (Incl. Area Code)</small> 303-388-8500
<small>Street Address</small> C/O its attorney Tom Melsheimer - Email: TMelsheimer@winston.com		<small>City, State and ZIP Code</small> (2121 N. Pearl St., Ste 900, Dallas TX)	
<small>DISCRIMINATION BASED ON (Check appropriate boxes):</small> <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify) _____			<small>DATE(S) DISCRIMINATION TOOK PLACE</small> Earliest: September 18, 2020 Latest: June 13, 2021 <input type="checkbox"/> CONTINUING ACTION
<small>THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).</small>			
See attached Exhibit "A"			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY (When necessary for State or local Agency comments)	
I declare under penalty of perjury that the above is true and correct.		I swear to affirm that I have read the above and that it is true to the best of my knowledge, information and belief.	
12-1-21 Date	 Charging Party Signature	  SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) 12/1/21	

EXHIBIT "A"

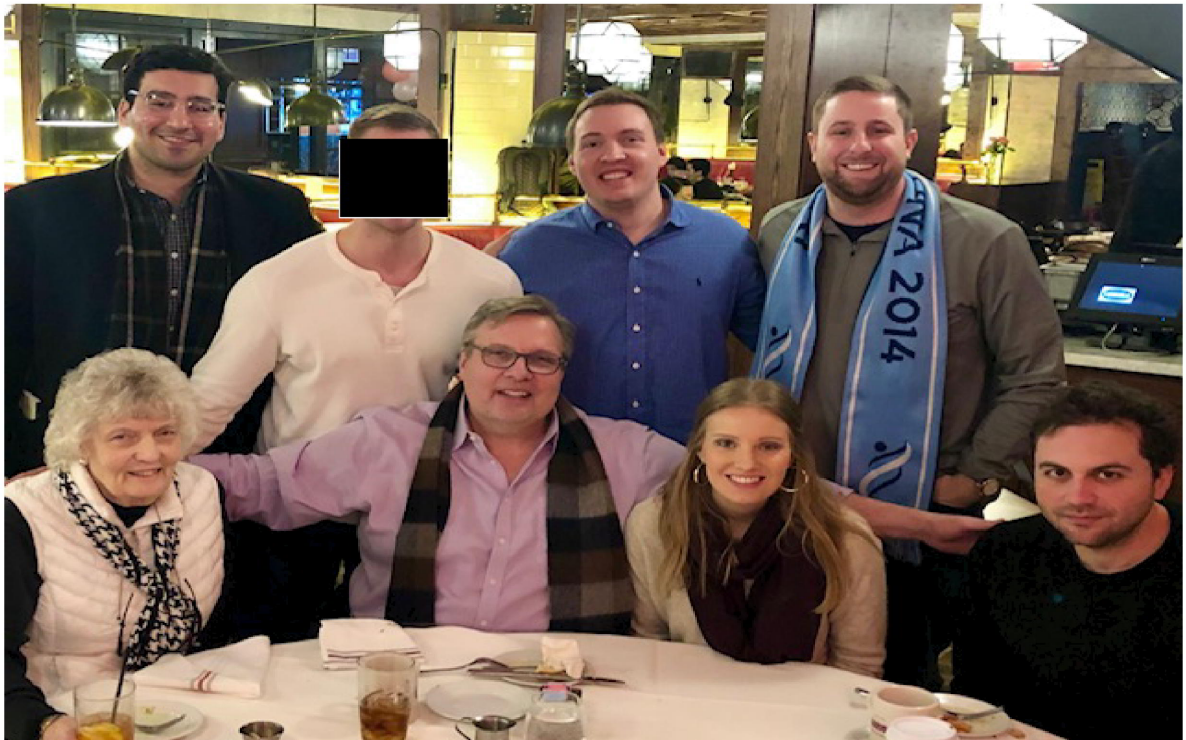
On February 16, 2020 Donnie Nelson, the Charging Party, was having lunch with Jason Lutin, and his mother, daughter, and other family members, including [REDACTED] during the NBA All-Star Game festivities.

The Mavericks team, including Mavericks high-level executive Jason Lutin, Mark Cuban's Chief of Staff, were staying at the NBA-sponsored hotel.

[REDACTED] had told Donnie Nelson he was unemployed and was looking for job opportunities. Donnie asked Jason Lutin if he could meet with [REDACTED] regarding potential job opportunities with the Mavericks, Mark Cuban's companies, and the sports industry.

Jason Lutin said he would be happy to meet with [REDACTED] about those job opportunities and said after [REDACTED] finishes lunch he should come to meet him in Lutin's hotel room.

The photo below is of the Nelson family having lunch. Jason Lutin is on the far right in the black shirt.



When [REDACTED] went to Lutin's hotel room, Lutin sexually harassed and sexually assaulted an unsuspecting LGBTQ young man seeking employment with the Mavericks.

Nelson learned of the sexual assault approximately five months after it occurred.

On or about August 16, 2020 Nelson telephoned Cuban to notify him of the assault and Nelson's concern about Jason Lutin's sexual predatory tendencies and the fact that other Mavericks' employees, vendors, and customers were at risk for sexual harassment or sexual assault at the hands of Jason Lutin.

Nelson followed up this complaint with a second complaint to Cuban in-person on or about September 1, 2020.

On that call and during the in-person meeting Nelson raised concerns about how Lutin was putting the Mavericks organization and Mark Cuban at risk and the Mavericks organization was not implementing its zero tolerance policy and taking that policy seriously.

Soon after the in-person meeting that occurred on or about September 1, 2020 Mark Cuban revoked his 10 year \$66 million offer to Nelson in retaliation. The linkage between Nelson's complaint and report of Lutin's improper activities was confirmed in writing by Mark Cuban stating that he couldn't talk further about Nelson's employment because of "some of the discussions we have had."

There were absolutely no mistakes, warnings, PIPs, or job performance issues with Nelson between the time he reported Lutin's sexual harassment and sexual predatory proclivities and the time period that Mark Cuban revoked the 10 year contract offer and began a campaign of retaliation, ultimately resulting in the Mavericks and Cuban's notifying Nelson on June 13, 2021 that he was being fired.

The subsequent cover up of Lutin's sexual assault by Cuban and the Mavericks organization and top Mavericks executives and the continued employment of Lutin within the Mavs and Cuban's other companies allowed Lutin to potentially prey upon others in the workplace with impunity.

Instead of disciplining Lutin, Cuban's response was to punish and retaliate against Nelson for reporting the assault by firing Nelson from *in Cuban's exact words* "your lifetime contract."

Prior to Nelson reporting Lutin's inappropriate sexual harassment to Cuban, Cuban and Nelson's talent agent were in negotiations to replace Nelson's lifetime contract with a 10-year deal. Cuban had offered Nelson a 10-year deal worth \$66 million.

Within days of Nelson's report to Cuban about Lutin's sexual harassment and sexual predatory proclivities, Cuban abruptly and unilaterally revoked the Mavs' \$66 million dollar offer as retaliatory punishment for Nelson reporting his concerns about Lutin's sexual harassment and sexual predator tendencies. Many instances of retaliation continued thereafter in many forms and fashions.

Lutin committed sexual assault and sexual harassment on a young, vulnerable member of the LGBTQ community because Cuban enabled him. Lutin's numerous policy violations and indiscretions--were clearly in breach of the Mavs "no tolerance" policy. Lutin also committed re'sume' fraud and lied about having received a law degree, which he does not have.

Cuban tolerated Lutin's sexual harassment and many other bad acts just like Cuban did with Mavericks employees including, but not limited to, Terdema Ussery and Chris Hyde. Cuban *knowingly* and repeatedly swept Lutin's repeated sins under the rug. Cuban's long-time tolerance of Lutin's wrongful acts emboldened Lutin by making him "bullet proof" and encouraged Lutin to commit more sexual harassment because Lutin knew, as Cuban's favorite, Lutin would never be held accountable for sexual harassment and his other improper actions.

Lutin's unbridled power and violation of team policies concerning relationships with [REDACTED], not to mention negotiations with players, agents, and family members created dysfunction and conflict with some of the most high-profile Dallas Mavericks players; similar to Cuban's tolerance of Bob Voulgaris' improper acts. Lutin's violation of team policies occurred with Cuban's full knowledge and acquiescence.

Nelson believes Lutin has had other improper sexual relationships with [REDACTED].

Mark Cuban's tolerance of Jason Lutin's sexual harassment is part of a misogynistic, Animal House atmosphere, not only tolerated, but encouraged by Cuban.

The unbridled sexual harassment and Animal House atmosphere described in the *Sports Illustrated* stories is something Mark Cuban, a notorious micromanager, was well aware of during the entire time that sexist work environment was occurring. Cuban managed to dodge a bullet and pretend he had no knowledge of that workplace atmosphere.

Cuban could not afford to be exposed for Lutin's sexual harassment. Instead of taking prompt remedial

action against Lutin and firing him, as required pursuant to the Mavericks supposed zero tolerance policy against sexual harassment, the Mavericks quietly and confidentially resolved the sexual harassment and sexual assault of [REDACTED] and Lutin remained employed without any discipline.

Cuban's cover up of Lutin's sexual harassment and sexual assault is proof that the only reason Cuban ever cared about the discriminatory and sexist work environment of the Mavericks was when it was exposed and publicized by *Sports Illustrated*. That exposure put Cuban at risk of the NBA taking corrective action against the Mavs and caused Cuban and the Mavs bad publicity. Cuban cared about punishment from the NBA and possibly losing draft choices--not the fact that female employees had been discriminated against and abused in the workplace for years under Cuban's watch.

Nelson/Mavs - Draft Settlement Agreement

Thomas, Scott <SCThomas@winston.com>

Mon 1/3/2022 10:12 AM

To: Rogge Dunn <dunn@roggedunnngroup.com>

Cc: LaKeisha Phillips <phillips@roggedunnngroup.com>; Melsheimer, Tom <TMelsheimer@winston.com>

📎 1 attachments (33 KB)

2022-01-03 DRAFT Settlement Agreement - DN DBL.docx;

Rogge,

Attached is a draft settlement agreement for your review. There are a couple of places for you to fill in information, which I highlighted, and I imagine there may be a provision or two you may want to propose. We may still have a tweak or two to make, but this captures the primary concepts.

Regards,
Scott

Scott C. Thomas

Partner

Winston & Strawn LLP
2121 North Pearl Street, Suite 900
Dallas, TX 75201

D: +1 214-453-6430

F: +1 214-453-6400

[Bio](#) | [VCard](#) | [Email](#) | [winston.com](#)

The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.



**CONFIDENTIAL SETTLEMENT AGREEMENT, CONFIDENTIALITY AGREEMENT
AND GENERAL RELEASE**

This Confidential Settlement Agreement, Confidentiality Agreement, and General Release (the “Agreement”) is hereby made and entered into as of the ___ day of January, 2022, by and between Donn C. Nelson (“Nelson”), an individual, on the one hand, and Dallas Basketball Limited d/b/a the Dallas Mavericks (“DBL”), the Mark Cuban Companies, Radical Mavericks Management LLC, and Mark Cuban individually (collectively the “DBL Parties”) on the other hand. Nelson and the DBL Parties are referred to collectively as the “Parties” and individually a “Party.”

WHEREAS, Nelson is a former DBL employee;

WHEREAS, Nelson filed an EEOC Charge of Discrimination on or about December 2, 2021 (the “Charge”) and previously sent a demand letter (the “Letter”) making similar allegations on or about November 16, 2021 through his counsel, Rogge Dunn (“Dunn”);

WHEREAS, the DBL Parties deny the allegations made by Nelson, in the Charge, and in the Letter, and deny that the DBL Released Parties (as defined below) are liable for any claims that have, could have been, or could be asserted by Nelson; and

WHEREAS, the Parties mutually desire to resolve (i) any and all claims that Nelson has against the DBL Released Parties and (ii) any and all disputes between DBL and Nelson relating to Nelson’s employment with DBL.

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **No Promises or Inducement.** Nelson represents and warrants that no promise or inducement has been offered or made except as set forth herein and that he is entering into and executing this Agreement without reliance on any statement, promise or representation by the DBL Parties or any person(s) acting on their behalf not set forth within this Agreement.

2. **No Admission of Wrongdoing.** The Parties understand and agree that this Agreement does not and shall not constitute an admission by any Party or entity of liability or of any fact or conclusion of law. Specifically, and without limiting the foregoing, the Parties understand and agree that this Agreement does not constitute an admission by any Party or by any of the DBL Released Parties that any allegation made by Nelson in the Charge or Letter are true, or that any of the actions of the DBL Released Parties were wrongful or unlawful.



3. **Settlement Payment.** In consideration of the releases, promises, and obligations herein, the DBL Parties shall pay Nelson a total of \$52,000,000.00 on or before January 31, 2022, paid in the following manner:

Nelson – Rogge to fill in

Dunn – Rogge to fill in

4. **Additional Potential Payment.** In further consideration of the releases, promises, and obligations herein, the DBL Parties shall pay Nelson an additional \$2,000,000.00 if at any time between January 1, 2022 and December 31, 2022, the Internal Revenue Service announces that the highest marginal tax rate for individuals for the 2022 tax year (ending December 31, 2022) is raised from the existing highest marginal tax rate of 37% to a rate of 38% or higher. This payment shall be made within thirty (30) days of such official announcement from the Internal Revenue Service.

5. **Tax Responsibilities.** Nelson acknowledges and agrees that (i) he and his lawyers are responsible for any and all federal, state and/or local tax liability owed by them, if any, arising from the payments referenced in this Agreement, and (ii) no tax advice has been provided to Nelson by the DBL Parties or their counsel whatsoever. In the event that any DBL Released Party is made a party to, or otherwise involved in, any dispute regarding Nelson's discharge of his tax liability, Nelson hereby agrees to indemnify, save and hold harmless the DBL Released Parties, as applicable, from any loss, liability, expenses, costs, or fees incurred in connection with any such dispute.

6. **No Other Compensation or Benefits Owning.** Nelson acknowledges and agrees that other than any amounts payable pursuant to this Agreement, he has received all compensation, benefits, payments, and reimbursements of any kind due to him by DBL or any DBL Released Party. Nelson acknowledges and agrees that he has been paid and/or received all leave (paid or unpaid), vacation pay, compensation, wages, bonuses, commissions, deferred compensation, and/or benefits to which he may be entitled and that no other leave (paid or unpaid), vacation pay, compensation, wages, bonuses, commissions, deferred compensation, and/or benefits are due to Nelson, except as provided for in this Agreement, which are in excess of any amounts otherwise owed to Nelson.

7. **Releases by Nelson.** Nelson on behalf of himself, his heirs, executors, administrators and assigns, hereby fully and unconditionally releases all Claims (as defined herein) he has or may have against the DBL Parties and each of their heirs, executors, trustees, past, present and future affiliates and related entities, parent and subsidiary corporations, divisions, shareholders, employee benefit plans and/or pension plans or funds, predecessors, insurers, successors and assigns, and each of their past, present or future officers, directors, trustees, fiduciaries, administrators, principals, partners, employees, agents, representatives, attorneys, shareholders, predecessors, insurers, successors and assigns (collectively the "DBL Released Parties"). This release of Claims includes but is not limited to Claims which could arise under the Family and Medical Leave Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act of 1990, as amended, the Age Discrimination in Employment Act of 1967 ("ADEA") as amended by the Older Workers Benefit Protection Act, the Workers

Adjustment and Retraining Notification Act, the Employee Retirement Income Security Act of 1974, as amended, the Texas Commission on Human Rights Act, the Texas Labor Code, the Texas Workers Compensation Act, , and any and all other federal, state and local laws or obligations regulating the employment relationship between the Parties. As used in this Agreement, the term “Claim” or “Claims” shall include all claims, lawsuits, charges, demands, causes of action, obligations, debts, attorneys’ fees, judgments, any judicial or government agency process, losses and liabilities, of whatsoever kind or nature, in law, equity or otherwise, whether known or unknown, or suspected or claimed, whether absolute or contingent, liquidated or unliquidated. Nelson agrees and understand that this release is a general release.

8. **Non-Assignment of Rights/ No Other Actions or Proceedings Commenced.** Nelson represents and warrants that he has not sold, assigned, transferred, conveyed, or otherwise disposed of to any third party, by operation of law or otherwise, any action, cause of action, suit, debt, obligation, account, contract, agreement, covenant, guarantee, controversy, judgment, damage, claim, counterclaim, liability or demand of any nature whatsoever relating to any matter covered by this Agreement. Nelson further represents and warrants that, other than the Charge, he has not filed or initiated any pending legal, equitable, administrative, or any other proceedings, against any DBL Released Party, and that no such proceeding has been filed on his behalf.

9. **Dismissal and Retraction of EEOC Filings.** Within three (3) business days of the execution of this Agreement, Nelson will file a withdrawal and retraction with the EEOC and any other agency to which he has submitted a filing which shall state:

“Mr. Nelson withdraws his December 2, 2021 Charge of Discrimination (the “Charge”) and retracts all statements made in the Charge. After filing the Charge, Mr. Nelson reviewed contemporaneous records from the dates at issue and his counsel met with the DBL Parties’ counsel. Mr. Nelson now realizes that the statements he made in the Charge were inaccurate and based on Mr. Nelson’s misunderstanding.”

Neither Nelson nor any of his attorneys, past, present or future, shall request a copy of the file from the EEOC for any reason.

10. **Release by DBL.** DBL releases all Claims against Nelson that are attributable or related in any manner to, Nelson’s employment with DBL.

11. **Covenant Not to Sue.** The Parties acknowledge and agree that it is the Parties’ intention that this Agreement shall be effective as a bar to all financial or other recovery against the Parties. To the maximum extent permitted by law, each Party covenants not to sue or to institute or cause to be instituted any action in any federal or state court against the other Party regarding the matters covered by the releases contained in Sections 7 and 10 above (except to enforce the terms of this Agreement).

12. **Confidentiality.** The Parties and their attorneys agree that (except pursuant to any arbitration to enforce this Agreement), they shall keep confidential the existence and terms of this Agreement, all performance hereunder, the claims made by Nelson, the contents and existence of the Charge, and the Parties’ discussions and negotiations leading up to this Agreement, and shall

not disclose this information henceforth to anyone other than, attorneys and tax advisors, whom the Parties shall inform of the confidentiality obligations and who shall agree to be bound by this confidentiality obligation. If the contents or existence of the Charge are made public (i.e. disclosed to anyone other than the Parties or their attorneys), in whole or in part, it shall be deemed a violation of this Section and a breach of this Agreement by Nelson. Nelson agrees that he shall instruct his family and any other individuals to whom he has previously disclosed the contents and/or existence of the Charge or the Letter to keep such information confidential pursuant to the terms of this Agreement (without disclosing to them any monetary-related provisions of this Agreement). If any of Nelson's known family members, agents, attorneys, affiliates, employees, representatives, or acquaintances disclose such information in violation of this Agreement, such disclosure(s) shall be deemed a violation of this Section and a breach of the Agreement by Nelson.

13. **Non-Disclosure.** Nelson agrees that he will not disclose to any third party any information he learned about the DBL Released Parties while employed by DBL or, except as permitted by this Agreement, make any statements whatsoever about Mark Cuban, the Mark Cuban Companies, the Dallas Mavericks, Dallas Basketball Limited, Radical Mavericks Management or their respective current and former affiliates, employees, parents, subsidiaries, agents, attorneys, successors or assigns. Nelson agrees that he shall instruct his family members, agents, attorneys, affiliates, employees, and representatives to refrain from disclosing any information Nelson has previously told them about the DBL Released Parties or making any statements about Mark Cuban, the Mark Cuban Companies, the Dallas Mavericks, Dallas Basketball Limited, Radical Mavericks Management or their respective current and former affiliates, employees, parents, subsidiaries, agents, attorneys, successors or assigns other than those permitted by this Agreement. If any of Nelson's known family members, agents, affiliates, employees, representatives, or acquaintances disclose any such information or make any prohibited statements in violation of this Agreement, such disclosure(s) shall be deemed a violation of this Section and a breach of the Agreement by Nelson.

14. **Non-Disparagement.** Nelson agrees that he shall not make (and shall instruct his affiliates, family members, acquaintances employees, and agents to not make – without disclosing the monetary provisions of this Agreement to them) any statement that disparages, defames, or, even if true, places the DBL Released Parties in a negative light. This restriction applies to statements made in public or in private, orally or in writing, to any person or entity, including but not limited to any media outlet (including but not limited to social media), industry group, or current or former employee of any of the DBL Released Parties. If any of Nelson's known family members, agents, affiliates, employees, representatives, or acquaintances makes such statements in violation of this Agreement, such statements shall be deemed a violation of this Section and a breach of the Agreement by Nelson.

Nothing in this Agreement shall be construed to prevent or impede any Party from truthfully testifying or complying with a subpoena from, or participating in any manner with an investigation conducted by the appropriate local, state, or federal agency; provided, however, that with respect to a legal proceeding in which a Party is testifying under oath or responding to a subpoena, the Party must first provide prompt written notice thereof to the other Parties of such subpoena or legal proceeding, which notice must be sufficient to permit the other Parties to contest or limit any such disclosures.

15. **Permitted Statements.** Notwithstanding the other provisions of this Agreement, if a Party is asked to make a public statement about Nelson's employment with DBL or any other aspect of Nelson's tenure with DBL, the Parties may make one or more of the statements listed in Exhibit "A" hereto, but may make only one or more of those statements and, if further questioned, shall decline to make further comments and no statement shall be made disclosing the existence of this Agreement.

16. **Additional Representations.** Nelson further represents and warrants:

(a) He has made no statements to the media, reporters, online, or otherwise to any other third parties regarding the allegations set forth in the Charge or the Letter.

(b) He is not aware that any other individual, including any family member, has made any statements to the media, reporters, online or otherwise to any other third parties regarding the allegations set forth in the Charge or the Letter.

(c) All of his assertions herein are true and complete and that he understands that the representations he has made in this Agreement are a material part of this Agreement and part of the inducement of the DBL Parties to enter into this Agreement.

17. **Non-Transferability.** Nelson may not sell, assign, bequeath, bestow, pledge, gift, donate, or otherwise transfer this Agreement to any other person, including his heirs or beneficiaries either during his life or at his death. Any attempt to sell, assign, bequeath, bestow, pledge, gift, donate or otherwise transfer this Agreement to any person or entity shall be deemed a breach of this Agreement by Nelson.

18. **Breach by Nelson.** In addition to any and all remedies at law or equity, if at any time Nelson, or any person acting in concert with him, on his behalf, or with his encouragement or assistance, engages in any act(s) that are determined by an arbitrator to constitute a breach of Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 or 17 of this Agreement, Nelson expressly agrees and acknowledges that monetary damages would be inadequate to compensate the DBL Parties for Nelson's breach, the breach of any of these provisions affects a material part of this Agreement going to the essence of the Agreement, and the DBL Parties shall be entitled to the equitable remedy of rescission of the Agreement and return of all settlement payments made to Nelson or any of his attorneys. Furthermore, any breach of Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 or 17 of the Agreement by Nelson or anyone acting in concert with him, on his behalf, or with his encouragement or assistance, shall, in addition to any other remedies at law or equity available to the DBL parties, result in the rescission of Section 10 and any restrictions placed on the DBL Parties by this Agreement and the rendering of those provisions null and void, and the DBL Parties may take or initiate any and all legal action against Nelson arising from his prior conduct or his conduct resulting in such breach.

19. **Construction and Illegality.** If, at any time after the date of the execution of this Agreement, any provision of this Agreement shall be held to be illegal, void, or unenforceable by a court of competent jurisdiction, such provision shall be of no force and effect. If, at any time

after the date of the execution of this Agreement, Nelson is found guilty of or pleads guilty to an illegal act relating in any way to this Agreement or in any way to his employment with DBL, this Agreement shall be rescinded and be of no force and effect. If any Party becomes aware of a holding, finding, or other act that would trigger this section, they shall immediately notify the other Party.

20. **Arbitration**. This Agreement shall be governed by the laws of the State of Texas, without regard to its conflict of laws principles and provisions. The Parties agree that any dispute regarding the terms of this Agreement shall be submitted to confidential, binding arbitration in Dallas, Texas and that the arbitration shall be subject to the rules of the American Arbitration Association. The Parties agree that the arbitrator(s) may award equitable relief as provided in this Agreement. **THE PARTIES WAIVE ALL RIGHTS TO FILE ANY SUCH DISPUTE IN ANY COURT OR OTHER VENUE AND WAIVE ANY RIGHT TO A JURY TRIAL.**

21. **Attorneys' Fees**. In the event that any Party claims a breach of this Agreement, the prevailing Party will be entitled to an award of reasonable attorneys' fees and costs incurred.

22. **Miscellaneous**.

(a) **Notices**. All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or seven days after being mailed by FedEx or registered or certified first class mail, postage prepaid, return receipt requested, to the following address:

If to Nelson,

Donn C. Nelson
5209 Southern Hills Drive
Frisco, TX 75034

With a copy to:

Rogge Dunn
500 N. Akard St., Suite 1900
Dallas, TX 75201

If to the DBL Parties,

Mark Cuban
5424 DeLoache Ave.
Dallas, TX 75220

With a copy to:

Thomas M. Melsheimer
WINSTON & STRAWN LLP
2121 N. Pearl St., Suite 900

Dallas, TX 75201
(tmelsheimer@winston.com)

(b) **Successors**. This Agreement shall be binding upon, enforceable by and inure to the benefit of Parties' personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees

(c) **Construction and Interpretation of Agreement**. The Parties agree that each party has been given an opportunity to participate in the drafting and preparation of this Agreement. Accordingly, the Parties agree that no provision of this Agreement shall be construed against any party.

(d) **Governing Law**. This Agreement shall be governed by the laws of the State of Texas, without regard to its conflict of laws principles and provisions.

(e) **Waiver**. No waiver of any right under this Agreement shall be deemed to have occurred unless contained in a written agreement signed by both Parties. A waiver by any Party hereto of a breach or default by another Party of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. Further, delay on the part of any Party in exercising any right, power or privilege hereunder shall not operate as a waiver thereof.

(f) **Multiple Copies and Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. Faxed signatures, electronic signatures and signatures in PDF-format documents shall be deemed valid as if they were inked originals.

(g) **Headings**. Section, paragraph and other captions or headings contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or otherwise describe the scope or intent of this Agreement or any provision hereof and shall not affect in any way the meaning or interpretation of this Agreement.

(h) **Amendments**. This Agreement may not be changed orally, and no modification, amendment, termination or waiver of any of the provisions contained in this Agreement, and no future representation, promise or condition in connection with the subject matter hereof, shall be binding unless made in a writing duly executed by each Party to this Agreement.

(i) **Entire Agreement**. This Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all prior agreements, representations, promises or understandings, written or oral with respect thereto, and any prior incentive compensation plans or schemes. This Agreement is an integrated document and the consideration stated in it is the sole consideration for this Agreement.

Donn C. Nelson

Date: _____

Rogge Dunn
Counsel to Donn C. Nelson

Date: _____

Mark Cuban, individually, and on behalf of
Dallas Basketball Limited and Radical
Mavericks Management, LLC

Date: _____

Thomas M. Melsheimer
Counsel to Mark Cuban

Date: _____

Exhibit A – Permitted Statements

Permitted Statements by Nelson:

- “I appreciated and enjoyed my time with the Mavericks’ organization.”
- “I will always appreciate the time I spent with the Mavericks”

Permitted Statements by the DBL Parties:

- “We thank Donnie for his time and work with the Mavericks and wish him well.”

Texas Workforce Commission

A Member of Texas Workforce Solutions

Bryan Daniel, Chairman
Commissioner Representing
the Public

Julian Alvarez
Commissioner Representing
Labor

Aaron Demerson
Commissioner Representing
Employers

Edward Serna
Executive Director

March 12, 2022

NOTICE OF COMPLAINANT’S RIGHT TO FILE CIVIL ACTION

Donn Nelson
c/o Lakeisha Phillips
Rogge Dunn Group
500 N. Akard St., Suite 1900
Dallas, TX 75201

Re: ***Donn Nelson v. Dallas Basketball Limited, d/b/a Dallas Mavericks***
EEOC Complaint # 450-2022-01263

Dear Donn Nelson:

The Texas Workforce Commission Civil Rights Division (TWCCRD) has received and carefully reviewed your recent request to issue the Notice of Right to File a Civil Action (NRTFCA) on the above referenced charge. According to the documentation provided, 180 days has not passed since the filing of this charge.

As stated in Texas Labor Code Chapter 21 Sec. 21.253, our agency may issue a notice to file civil action in the event that the executive director certifies that administrative processing of the complaint cannot be completed before the 181st day after the date the complaint was filed.

This is to certify that our office will be unable to complete an investigation before the 181st day and thus may issue a Notice of Right to File Civil Action.

The above-referenced case was processed by the United States Equal Employment Opportunity Commission or a local agency. Pursuant to Sections 21.252 and 21.254 of the Texas Labor Code, this notice is to advise you of your right to bring a private civil action in state court in the above-referenced case. **YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION.**

If your case has been successfully resolved by the U. S. Equal Employment Opportunity Commission or another agency through a voluntary settlement or conciliation agreement, you may be prohibited by the terms of such an agreement from filing a private civil action in state court pursuant to Chapter 21 of the Texas Labor Code.

The United States Supreme Court has held in *Kremer v. Chemical Construction Corporation*, 456 U.S. 461 (1982), that a federal district court must generally dismiss a Title VII action involving the same parties and raising the same issues as those raised in a prior state court action under Chapter 21 of the Texas Labor Code. Therefore, filing a lawsuit in state court based on the issuance of this notice of right to file a civil action may prevent you from filing a lawsuit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e - et seq.



Donn Nelson
March 12, 2022
Page 2

If you have any questions, please contact our office at (512) 463-2642 or (888) 452-4778.

Sincerely,



Bryan D. Snoddy
Director, Civil Rights Division

RETAIN ENVELOPE TO VERIFY DATE RECEIVED

Copy to:
Dallas Basketball Limited, d/b/a Dallas Mavericks
c/o: Tom Melsheimer
c/o Dallas Basketball Limited
2121 N PEARL ST STE 900
Dallas, TX 75201