

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION)	
)	
Plaintiff,)	NO: 05 C 6889
)	
and)	Judge Filip
)	
DANIELLE D’AMBROSIO)	
)	
Plaintiff-Intervenor)	
)	
v.)	
)	
FUN IN MOTION, Inc.,)	
)	
Defendant.)	

PLAINTIFF-INTERVENOR’S COMPLAINT

Plaintiff-Intervenor Danielle D’Ambrosio by through her attorney, John S. Bishof, Jr. complains against Defendant, Fun In Motion, Inc., as follows:

JURISDICTION and VENUE

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et. seq., as amended by the Civil Rights Act of 1991 (“Title VII”).
2. This Court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1343, and 42 U.S.C. §2000e-5(f)(3).
3. Venue of this action properly lies in the Northern District of Illinois, Eastern Division, pursuant to 42 U.S.C. §2000e5(f)(3) and 28 U.S.C. §1391(b) insofar as Defendant has its principal place of business in this district. A substantial part of the alleged events giving rise to the claims

occurred in this District.

PARTIES

4. Defendant, Fun In Motion, Inc., were at all relevant times incorporated in Illinois and does business in the counties within this Court's jurisdiction including, Cook, Will, Lake, DuPage, and McHenry and has continuously had at least (15) employees.

5. Danielle D'Ambrosio is a female citizen of the United States and is domiciled and resides in the Northern District of Illinois.

6. Ms. D'Ambrosio was hired by Defendant, Fun in Motion, Inc. in April, 2004. She worked as a cashier at the Defendant's store located in Crystal Lake, Illinois until she was discharged by Defendant on May 23, 2004.

EEOC ADMINISTRATIVE PROCEDURE

7. Ms. D'Ambrosio has fulfilled all conditions precedent to the institution of this lawsuit under Title VII. She filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on July 11, 2004, Charge No. 210-2004-05910, alleging that she had been subjected to sex discrimination, sex harassment, discriminatory conditions of employment and retaliation.

8. On December 7, 2005, the EEOC filed a Complaint against the defendant, Fun in Motion, Inc., in Case No. 05 CV 06889 based, in part, on the Charges of Discrimination D'Ambrosio had previously filed with the EEOC.

BACKGROUND

9. Danielle D'Ambrosio was hired by Defendant, Fun in Motion, Inc. on April 14, 2004 as a cashier.

10. Rob Cloney was Ms. D'Ambrosio's direct manager at Defendant's Crystal Lake, Illinois store. Heather Jensen was also a manager at said store.

11. During the course of the work day, and specifically within her first week of hire, and continuously thereafter, Cloney would come up from behind Plaintiff and squeeze and tickle the sides of her body. Cloney did this unwanted physical grabbing without prior notice and without the consent of the plaintiff.

12. After plaintiff applied for a position at Defendant's Crystal Lake store, Cloney graphically told a co-worker that he would have the plaintiff perform oral sex and then decide whether she would get the job. The co-worker told Plaintiff about Cloney's statement after she was hired.

13. Plaintiff complained to Defendant's Managers and co-workers about Cloney's conduct, specifically his unwanted physical conduct.

14. Upon information and belief past employees complained of Cloney's behavior.

15. During the end of April and/or early May 2004, Heather Jensen told plaintiff that Cloney was ordered to end his sexual harassment and inappropriate behavior toward female employees.

16. Defendant through its managers made inquiries to its female employees including plaintiff about Cloney's inappropriate behavior.

17. Plaintiff was assured by Heather Jensen that if Cloney ever touched Plaintiff again, Jensen would do something about it.

18. In the early part of May, 2004, plaintiff and Cloney were setting up a pool in the back of the Crystal Lake store, and Cloney told Plaintiff to go into the pool in her underwear because it was the same as a swimsuit. Plaintiff refused.

19. Cloney would tell Plaintiff graphic stories about his sexual encounters with his wife while using the hot tubs of different stores.

20. Cloney would refer to his employees as “bitches.”

21. In front of other co-workers, while trying to assemble a ladder, Cloney picked up the Plaintiff over his shoulder and threatened to throw her in a hot tub.

22. Cloney would often make graphic comments to Plaintiff’s co-workers speculating what sexual acts he would perform on other female employees including plaintiff. The co-workers would tell the Plaintiff what Cloney said.

23. Cloney asked her what parts of her body she shaved.

24. Although, Plaintiff told Cloney not to touch her, Cloney would laugh or ignore her requests and continue to grab or touch her.

25. About a week before Plaintiff’s termination, Plaintiff was sitting up on a counter in between cashing out customers. Cloney asked plaintiff how flexible she was, and then proceeded to lift her left leg almost above her head. Plaintiff told Cloney to stop. This unwanted physical contact caused plaintiff great pain.

26. A few days later, Plaintiff reported the last few incidents to Manager Heather Jensen.

27. Jensen told Plaintiff that she was happy she reported this incident to her.

28. The next time plaintiff reported for work, Cloney told her she was fired because she did not have enough experience.

COUNT I

(Violation of Title VII-Sexual Harassment)

1-28. Plaintiff adopts and realleges by reference paragraphs 1 through 28 above as though

fully set forth herein.

29. Between April 14, 2004 until Plaintiff's discharge on May 23, 2004, Defendant engaged in an ongoing campaign of sexually harassing behavior through its employees and managers against Plaintiff.

30. The actions of the Defendant, through its agents and as described and complained herein above, were unlawful employment practices, in that, they did have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting the Plaintiff because of her sex, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

31. The Defendant had direct knowledge of the sexually harassing conduct described herein. The Defendant knew that the incidents of said conduct were unwelcome to the Plaintiff. The Defendant knew or should have known that these incidents were so pervasive that they affected and altered the Plaintiff's conditions of employment and created an offensive, intimidating, hostile work environment.

32. Plaintiff told Cloney to quit harassing her. Plaintiff also made complaints about Cloney's inappropriate behavior to management personnel.

33. The Defendant failed to take any appropriate remedial action to stop the sexually harassing conduct.

34. The Defendant's conduct as alleged was intentionally discriminatory towards the Plaintiff.

35. The Defendant acted with callous disregard to the Plaintiff's federally protected rights by failing to take corrective actions with regard to the discriminatory acts committed against the

Plaintiff, by tolerating, permitting, and condoning the openly hostile work environment at the Defendant's Crystal Lake Store.

36. Punitive damages are necessary to punish the Defendant and to serve as a deterrent to such conduct.

37. The actions of the Defendant in intentionally engaging in and condoning sexual harassment against the Plaintiff has caused great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

Wherefore, Plaintiff, **Daniel D' Ambrosio** requests Judgment against the Defendant in excess of Seventy-Five Thousand Dollars (\$75,000), in actual damages, exemplary damages plus costs, interests and attorney's fees, together with whatever amount this Court and/or jury deems fair and equitable.

COUNT II

(Violation of Title VII Retaliation)

1-37. The Plaintiff adopts and realleges by reference paragraphs 1 through 37 above as through fully set forth herein.

38. The actions of the Defendant, as perpetrated by its agents and as described and complained hereinabove, are unlawful employment practices, in that, they likely have the effect and did have the effect of discriminating against, depriving and tending to deprive equal employment to, and otherwise adversely affecting the Plaintiff, and by engaging and condoning retaliatory conduct, Defendant discriminated against the Plaintiff in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*

39. The Defendant intentionally subjected the Plaintiff to unequal and discriminatory treatment by retaliating against her for complaining about sexual harassment and discrimination and by refusing and failing to protect the Plaintiff from retaliation by other Fun In Motion employees.

Specifically:

- a. Plaintiff's supervisors failed or refused to conduct a meaningful and reasonable investigation into the Plaintiff's complaints.
- b. Defendant encouraged the Plaintiff to report sexual harassment and discrimination, and then terminated her employment when she complied.
- c. Defendant refused and failed to take prompt and appropriate action to prevent retaliatory conduct against the Plaintiff after she complained about sexual harassment and discrimination.
- d. Initially, Defendant's supervisors and managers falsely claim that Plaintiff was terminated because she lacked experience.
- e. After plaintiff complained of Defendant's actions, Defendant's supervisors and managers falsely claim that Plaintiff was incompetent and that was the reason for her termination

40. The Defendant has engaged in a policy, pattern, and practice of retaliating and condoning retaliation against employees who complain of sexual harassment and discrimination.

41. The actions of the Defendant in intentionally engaging in and condoning discrimination and retaliation against the Plaintiff has caused her great mental anguish, humiliation, degradation, physical and emotional pain and suffering, inconvenience, lost wages and benefits, future pecuniary losses, and other consequential damages.

Wherefore, Plaintiff, **Danielle D'Ambrosio** requests Judgment against the Defendant in excess of Seventy-Five Thousand Dollars (\$75,000), in actual damages, exemplary damages plus costs, interests and attorney's fees, together with whatever amount this Court and/or jury deems fair and equitable.

Respectfully Submitted,

By: /s John S. Bishof, Jr.

John S. Bishof, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, **Notice of Filing and Plaintiff-**

Intervenor's Complaint, were served upon:

Ann M. Henry	Mark J. Unterberger
Diane I. Smason	Lurie & Unterberger, Ltd.
John C. Hendrickson	30 North LaSalle St.
U.S. EEOC	Suite 2040
500 West Madison	Chicago, IL 60602
Suite 2800	
Chicago, IL 60661	

Carol A. Poplawski
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Two First National Plaza, 25th Floor
Chicago, IL 60603

by using the CM/ECF system which sent notification of such filing to Ann M. Henry, Diane J.

Smason, John C. Hendrickson, Mark J. Unterberger and Carol A. Poplawski on this 15th day of

February, 2006.

By: /s John S. Bishof, Jr.
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