

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.:
)	6:04-cv-1223-Orl-22KRS
CYNTHIA LANE)	
)	
Intervenor-Plaintiff)	
)	
v.)	
)	
EXECUTIVE RECORD SERVICES, INC.,)	
)	
Defendant.)	
)	
)	

INTERVENOR-PLAINTIFF CYNTHIA LANE'S VERIFIED COMPLAINT

Intervenor-Plaintiff, CYNTHIA LANE, by and through her undersigned counsel, hereby sues Defendant, EXECUTIVE RECORD SERVICES, INC., and alleges the following:

INTRODUCTION

1. This action involves claims sexual harassment and retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000c, et seq., as amended by the Civil Rights Act of 1991, and pursuant to the Florida Civil Rights Act of 1992, *Florida Statutes* § 760.01, et seq., and is brought by Intervenor-Plaintiff, CYNTHIA LANE.

JURISDICTION, VENUE AND PARTIES

2. This action arises, in part, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000, et seq., as amended by the Civil Rights Act of 1991. This Court has original jurisdiction to

grant relief pursuant to 28 U.S.C. §§ 1331, 1332(a)(1) and 1343 (3) and (4). This Court is vested with jurisdiction to order an injunction, front pay, back pay or any other equitable relief as may be proper, and compensatory and punitive damages, attorneys' fees and costs pursuant to 42 U.S.C. §§1981a and 2000e-5(g). This action also arises under the Florida Civil Rights Act of 1992, *Florida Statutes* § 760.01, *et seq.*(the "FCRA"). This Court has jurisdiction over all state law claims pursuant to 28 U.S.C. §1331 and §1367. The state claims herein are for damages in excess of \$75,000.00 and are therefore within the jurisdiction of this Court.

3. Venue is proper in the Orlando Division of the Middle District of Florida pursuant to 28 U.S.C. § 1391(a) and (c) because Defendant's principal place of business is located in Orlando, Florida, and because the unlawful employment practices giving rise to this action were committed within this judicial district.

4. Plaintiff, EEOC, made a finding of sexual harassment and retaliation against ERS, and filed suit in its own right on behalf of LANE, giving her the right to intervene as a Plaintiff. LANE brings her claims herein as an intervening plaintiff. A copy of the EEOC's Letter of Determination is attached to this Complaint as **Intervenor's EXHIBIT "A."**

5. Intervenor-Plaintiff, LANE, is an individual who resides in Orange County, Florida, during the time of her employment with ERS. LANE was employed by ERS in the position of Field Supervisor. She is female and is therefore protected from discrimination in employment under the FCRA and Title VII.

6. Defendant, ERS, is a Florida corporation. At all times material, ERS was and is engaged in providing medical record management services. ERS is an "employer" as defined by 42 U.S.C. § 2000e(b) and §760.02(7), *Florida Statutes* because it employs fifteen or more employees

for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

7. Defendant, ERS, is a Florida corporation. At all times material, ERS was and is providing medical record management services in Orlando, Florida. ERS is an "employer" as defined by 42 U.S.C. § 2000e(b) and §760.02(7), *Florida Statutes* because it employs fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

8. LANE timely filed a charge of discrimination with the Equal Employment Opportunity Commission and the Florida Commission on Human Relations, alleging harassment on the basis of sex and retaliation. LANE has satisfied any and all administrative requirements precedent to the filing of this action pursuant to §760.11, *Florida Statutes*.

GENERAL ALLEGATIONS

9. LANE was employed with Executive Record Services as Field Supervisor from February 2002 until her discriminatory and retaliatory termination on August 21, 2002.

10. At all material times in her employment with ERS, LANE was a fully qualified, competent, and dedicated employee and was routinely praised for her work performance. In addition, LANE never received a reprimand or any other disciplinary action.

11. Mr. Anthony Paschal, Director of Marketing and Sales, began his employment in July of 2002. From that date forward, Mr. Paschal subjected LANE to a pattern and practice of highly graphic, unwelcome sexual advances and physical misconduct and touching of a sexual nature, as well as offensive verbal threats that created a hostile work environment.

12. The hostile and sexually-harassing conduct to which Mr. Paschal subjected LANE during her employment with ERS included, but was not limited to, the following:

- a) He threatened, "Sleep with me and Lisa (Lovelace), or you will be canned."
- b) He threatened that Ms. Lovelace would terminate LANE if she reported his comments and physical misconduct to Ms. Lovelace.
- c) He demanded, "As a white girl, don't you want to suck my big, black d k?"
- d) He rubbed his crotch up against LANE's her backside.
- e) He would routinely touch LANE's waist, arms, shoulders and thighs, even after she repeatedly told him that this touching was offensive and unwelcome, and that LANE felt humiliated and degraded by it.

13. LANE reported the sexual harassment to ERS Director, Lisa K. Lovelace, who not only failed to take corrective action, but defended Mr. Paschal, stating that he was going to remain with the company whether the employees, "*f king liked it or not.*" Ms. Lovelace thereby empowered and/or condoned Mr. Paschal's highly offensive daily sexual comments and threats toward LANE, and ERS thereby created a discriminatory and demeaning work environment for female employees wherein LANE was routinely subjected to sexual harassment by Mr. Paschal.

14. In addition, Ms. Lovelace also frequently sexually harassed LANE by conveying graphic details of her own sadomasochistic relationship with Mr. Paschal. Ms. Lovelace's sexually harassing comments to LANE included, but were not limited to, expressing to LANE that Mr. Paschal was her "master," and Ms. Lovelace was his "slave," and that if Ms. Lovelace did not "obey him", he would subject her to "lashing with a whip." Such remarks continued and intensified after

LANE asked Ms. Lovelace to refrain from such inappropriate and offensive conduct. Additionally, LANE verbally reported the sexual harassment to Human Resources Manager, Ms. Rhonda Stevens. However, there was no investigation, and no corrective action was taken.

15. On August 19, 2002, when Mr. Paschal expressed his desire to share a vehicle with LANE during a work errand, LANE complained to Mr. Paschal and Ms. Lovelace that she would be extremely uncomfortable being alone with Mr. Paschal in light of his repeated, highly offensive touching and sexual advances. Ms. Lovelace insisted that LANE share the vehicle with Mr. Paschal, and LANE once again stated her objections to his offensive physical and verbal misconduct, and refused to ride with him.

16. On August 20, 2002, only one day after LANE refused to be alone with her known sexual harasser, Mr. Paschal, Ms. Lovelace terminated LANE's employment. This unlawful dismissal was in retaliation for her legally protected reports of hostile work environment sexual harassment. LANE had received no previous warnings from the company regarding her performance or any violations of company policies.

17. All conditions precedent to filing this action have been performed, have occurred or have been waived.

18. LANE has engaged the services of legal counsel and is obligated to pay legal counsel their fees incurred in the prosecution of her claims.

COUNT 1
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED –
SEXUAL HARASSMENT

19. LANE repeats and realleges the allegations in paragraphs one through eighteen.

20. LANE had all the necessary qualifications and did, in fact, adequately and effectively performed all of the duties of her position.

21. The harassment to which LANE was subjected was based upon her gender, female.

22. EMS, by and through its owners, agents, directors and/or supervisors, violated 42 U.S.C. § 2000e-2(a)(1) by perpetrating, tolerating and/or condoning sexual harassment in the workplace and creating a hostile work environment sufficiently severe and pervasive that it interfered with and subjected LANE to inferior terms and conditions of employment outside of the protected class and negatively affected LANE's physical and psychological well-being.

22. LANE suffered an adverse job action when EMS terminated her in direct retaliation for her legally protected reports of sexual harassment.

23. The conduct of ERS, by and through its agents, employees, managers, partners, supervisors and/or corporate executives, ERS's failure to investigate and/or to take prompt remedial action to prevent continued discrimination and harassment of LANE, deprived LANE of her statutory rights under 42 U.S.C. § 2000, *et seq.*

24. Neither a legitimate non-discriminatory reason nor a *bona fide* occupational qualification exists to justify EMS's intentional disparate treatment of LANE. EMS failed to institute an adequate anti-harassment policy and complaint procedure, and further, failed to take reasonable care to prevent and correct the reported sexual harassment.

24. The actions of EMS and/or its agents, were willful, wanton, intentional and with malice or with reckless indifference to LANE's federally protected rights, entitling LANE to damages in the form of compensatory and punitive damages pursuant to 2000(e)-5(g) to punish EMS for these actions and to deter EMS, and others, from such actions in the future.

26. As a direct, natural, proximate and foreseeable result of EMS's actions, LANE has suffered past and will suffer future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, loss of dignity and other non-pecuniary losses and intangible injuries.

27. The actions of ERS make reinstatement ineffective as a make whole remedy, entitling LANE to front pay in lieu of reinstatement.

28. As a direct, proximate and foreseeable result of the actions of ERS, LANE has suffered past and future pecuniary losses, emotional pain, suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

DEMAND FOR RELIEF

WHEREFORE, Intervenor-Plaintiff, CYNTHIA LANE, demands judgment against Defendants, EXECUTIVE RECORD SERVICES, INC., for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorneys' fees, costs of this action and such other relief as this Court deems just and proper.

COUNT II **VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED -** **RETALIATION**

29. LANE repeats and realleges the allegations in paragraphs one through eighteen.

30. ERS violated Title VII of the Civil Rights Act of 1964, as amended, by retaliating against LANE for complaining about the sexual harassment to which she was subjected, which is considered an unlawful employment practice under Title VII.

31. The actions of ERS and/or its agents were willful, wanton, intentional and with malice or with reckless indifference to LANE's federally protected rights, entitling LANE to damages in the form of compensatory and punitive damages pursuant to 2000(e)-5(g) to punish ERS for these actions and to deter ERS, and others, from such actions in the future.

32. The actions of ERS make reinstatement ineffective as a make whole remedy, entitling LANE to front pay in lieu of reinstatement.

33. As a direct, proximate and foreseeable result of ERS's actions, LANE has suffered past and will suffer future pecuniary losses, emotional pain and suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

DEMAND FOR RELIEF

WHEREFORE, Intervenor-Plaintiff, CYNTHIA LANE, demands judgment against Defendant, EXECUTIVE RECORD SERVICES, INC., for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorneys' fees, costs of this action and such other relief as this Court deems just and proper.

COUNT III VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT OF 1992 SEXUAL HARASSMENT

34. LANE repeats and realleges the allegations in paragraphs one through seventeen.

35. The discrimination and harassment to which LANE was subjected was based upon her sex/gender, female.

36. ERS, violated *Florida Statutes §760, et seq.*, by intentionally discriminating against LANE and subjecting her to different terms and conditions of employment on the basis of her sex as more specifically alleged in the General Allegations section of this Complaint.

37. The offensive, threatening, intimidating and humiliating verbal and unwelcome physical conduct of ERS's agents, employees, managers, supervisors and/or corporate executives was sufficiently severe and pervasive and created a hostile and offensive work environment and negatively affected LANE's physical and psychological well being.

38. The conduct of ERS, by and through its agents, employees, managers, partners, supervisors and/or corporate executives, ERS's failure to take prompt remedial action to prevent continued sexual harassment of LANE deprived LANE of her statutory rights under the FCRA.

39. There was no legitimate non-discriminatory reason to justify ERS's intentional disparate treatment of LANE, and male employees at the Hospital were not subjected to the same sexual harassment and sexually offensive and humiliating verbal and physical conduct.

40. The actions of ERS and/or its agents, employees managers, supervisors and/or corporate executives were willful, wanton, intentional and were performed with malice or with reckless indifference to LANE's legally protected rights, entitling LANE to damages in the form of compensatory and punitive damages pursuant to Florida Statutes §760.11(5) to punish ERS for its actions and to deter it, and others, from taking such actions in the future.

41. The actions of ERS make reinstatement ineffective as a make whole remedy, entitling LANE to front pay in lieu of reinstatement.

42. As a direct, proximate and foreseeable result of ERS's actions, LANE has suffered past and will suffer future pecuniary losses, emotional pain, suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

DEMAND FOR RELIEF

WHEREFORE, Intervenor-Plaintiff, CYNTHIA LANE, demands judgment against Defendants, EXECUTIVE RECORD SERVICES, INC., for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorneys' fees, costs of this action and such other relief as this Court deems just and proper.

COUNT IV **VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT OF 1992** **RETALIATION**

43. LANE repeats and realleges the allegations in paragraphs one through eighteen.

44. ERS violated *Florida Statutes* §760.10(7) by retaliating against LANE for complaining about the sexual harassment to which she was subjected, said discrimination being considered an unlawful employment practice under *Florida Statutes* §760.10(1).

45. The actions of ERS and/or its agents were willful, wanton, intentional and with malice or with reckless indifference to LANE's protected rights, entitling LANE to damages in the form of compensatory and punitive damages pursuant to *Florida Statutes* §760.11 to punish EMA ERS for these actions and to deter ERS, and others, from such actions in the future.

46. The actions of ERS make reinstatement ineffective as a make whole remedy, entitling LANE to front pay in lieu of reinstatement.

47. As a direct, proximate and foreseeable result of ERS's actions, LANE has suffered past and future pecuniary losses, emotional pain and suffering, inconvenience and mental anguish, loss of enjoyment of life, loss of dignity, emotional distress, and humiliation as well as other non-pecuniary losses and intangible injuries.

DEMAND FOR RELIEF

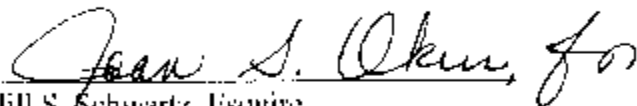
WHEREFORE, Intervenor-Plaintiff, CYNTHIA LANE., demands judgment against Defendants, EXECUTIVE RECORD SERVICES, INC. for back pay, front pay in lieu of reinstatement, compensatory damages, punitive damages, prejudgment interest, attorneys' fees, costs of this action and such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Intervenor-Plaintiff, CYNTHIA LANE., demands a trial by jury on all issues so triable in each count of the Complaint.

DATED this 30 day of September, 2004.

Respectfully submitted,



Jill S. Schwartz, Esquire

Florida Bar No.: 523021

Joan S. Okun, Esq.

Florida Bar No.: 0544507

JILL S. SCHWARTZ & ASSOCIATES, P.A.

180 Park Avenue North, Suite 200

Winter Park, Florida 32789

Telephone: (407) 647-8911
Facsimile: (407) 628-4994
Attorneys for Intervenor-Plaintiff

VERIFICATION

Personally appeared before the undersigned, CYNTHIA LANE who, being first duly sworn, deposes and says that the allegations of this Verified Amended Complaint and Demand for Jury Trial, are true and correct to the best of her knowledge, information and belief.

Cynthia Lane
CYNTHIA LANE

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 29 day of Sept 2004, by CYNTHIA LANE, who is personally known to me or who did take an oath.



L. Aldridge
NOTARY PUBLIC, STATE OF FLORIDA

L. ALDRIDGE
Name of Officer

DATED this 30 day of September 2004.

JILL S. SCHWARTZ & ASSOCIATES, P.A.
180 Park Avenue North, Suite 200
Winter Park, FL 32789
(407) 647-8911

BY: Joan S Okun, for
Jill S. Schwartz, Esquire
Florida Bar No.: 523021
Joan S. Okun, Esquire
Florida Bar No.: 0544507
Jill S. Schwartz & Associates, P.A.
Counsel for Plaintiff



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Miami District Office

One Biscayne Tower
2 South Biscayne Blvd., Suite 2700
Miami, FL 33131
PH (305) 536-4491
TDD (305) 536-5721
FAX (305) 536-4011

JUN 25 2004

EEOC Charge No.: 150 2003 02201

Cynthia Lane
505 Garden Heights Drive
Winter Garden, Florida 34761

Charging Party

Executive Record Service
600 W Silverton Street
Orlando, Florida 32803

Respondent

LETTER OF DETERMINATION

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended and timeliness, deferral and all other requirements for coverage have been met.

Charging Party alleged that she was subjected to sexual harassment and terminated in retaliation for complaining of the sexual harassment.

I have determined that the evidence obtained during the investigation establishes that there is reasonable cause to believe that the Charging Party was sexually harassed and retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

Upon finding that there is reason to believe that violation has occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation.

Please complete the enclosed Invitation to Conciliate and return it to the Commission at the above address no later than **July 7, 2004**. You may fax your response directly to (305) 530-7660 to the attention of Rosemary Caddle, Investigator. Failure to respond by **July 7, 2004** will indicate that you are not interested in conciliating this matter and the Commission will determine that efforts to conciliate this charge as required by Title VII of the Civil Rights Act of 1964, as amended, have been unsuccessful.

Intervenor's Exhibit "A"

Letter of Determination
EEOC Charge 150 2003 02201
Page 2

Should the Respondent decline to discuss settlement or when, for any other reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons. A Commission representative will contact each party in the near future to begin conciliation.

You are reminded that Federal law prohibits retaliation against persons who have exercised their right to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On Behalf of the Commission:

JUN 22 2004

Date



Federico Costales

District Director

Enclosure: Invitation to Conciliate

cc: **Respondent Representative**
Rhonda Stephens
Human Resources/Operations Manager
600 1/2 Silverton Street
Orlando, Florida 32808

Charging Party Representative
Jill S. Schwartz, Esq.
Jill Schwartz and Associates, P.A.
180 North Park Avenue, Suite 200
Winter Park, Florida 32789

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

INVITATION TO PARTICIPATE IN SETTLEMENT DISCUSSIONS

Section 706(b) of Title VII, Civil Rights Act of 1964, as amended, requires that when the Commission determines there is a reasonable cause to believe the charge is true, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods to conference, conciliations, and persuasion. This invitation is being issued to both parties to determine their willingness to engage in such settlement discussions. If either party declines discussion, or the Commission is unable to secure an acceptable settlement, the District Director shall inform both parties, in writing, of alternatives for obtaining relief available to the Charging Party(ies) and the Commission.

Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned.

DATE JUNE 22, 2004	CHARGE NUMBER 150-2003-02201
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PLEASE COMPLETE THE FOLLOWING INFORMATION AND RETURN TO EEOC IN ATTACHED SELF-ADDRESSED ENVELOPE:

I WILL WILL NOT ENGAGE IN SETTLEMENT DISCUSSIONS.

TO: EEOC ONE BISCAYNE TOWER TWO SOUTH BISCAYNE BLVD. SUITE 2700 MIAMI, FLORIDA 33131	FROM: (Name and address of charging party or respondent) Cynthia Lane 595 Garden Heights Drive Winter Garden, Fl 34761
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SUGGESTED

DATE	TIME
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LOCATION

COMMENTS

DATE	TELEPHONE NUMBER WHERE SIGNEE CAN BE REACHED
------	--

TYPED NAME OF CHARGING PARTY/RESPONDENT	SIGNATURE
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