

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SEP 30 2005

MICHAEL N. MILBY, CLERK OF COURT

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Plaintiff

v.

TEXAS EAR, NOSE & THROAT  
CONSULTANTS, P.L.L.C.  
Defendant.

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**H-05 3374**

CIVIL ACTION NO. \_\_\_\_\_

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT**

1. This is an action under Title VII of the Civil Rights Act of 1964, *as amended*, and Title I of the Civil Rights Act of 1991, *as amended*, to correct unlawful employment practices on the basis of opposing discrimination and to provide appropriate relief to Sally Farris who was adversely affected by such practices. The Defendant, Texas Ear, Nose & Throat Consultants, P.L.L.C. ("Defendant" or "TENT") unlawfully terminated Ms. Farris in retaliation for opposing what she believed to be unlawful employment practices, specifically for reporting actions by a TENT physician she reasonably believed could be sexual harassment or result in sexual harassment liability.

**JURISDICTION AND VENUE**

2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, *as amended*, 42 U.S.C. §1981A.

3. Venue is proper in this court because the unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

#### PARTIES

4. Plaintiff, the Equal Employment Opportunity Commission ("Commission") is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706 (f)(1) and (3), 42 U.S.C. §2000e-5 (f)(1) and (3).

5. Defendant Texas Ear, Nose & Throat Consultants, P.L.L.C. has continuously been and is now doing business in the State of Texas and the City of Houston and has continuously had more than 15 employees. TENT may be served with process by serving its registered agent in Texas, Simon "Trey" W. Hendershot, III, 1800 Bering Drive, Suite 600, Houston, Texas 77057.

6. At all relevant times, TENT has continuously been an employer engaged in an industry affecting commerce with the meaning of Sections 701(b),(g) and (h) of Title VII, 42 U.S.C. §2000e(b), (g) and (h).

#### STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Sally Farris filed a charge of discrimination with the Commission alleging violation of Title VII by TENT, her former employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least 2003, TENT has engaged in unlawful employment practices at its Houston and Sugarland, Texas offices in violation of Section 704(a) of Title VII.

9. Ms. Farris began working for TENT in July 1999. As a result of her strong performance, the following year she was elevated to the position of Practice Administrator. She continued in that position throughout her employment until she was summarily fired in December 2003. As the Practice Administrator, she supervised all of the employees of TENT other than the partner physicians. She reported directly to TENT's Board. She received regular salary increases and merit bonuses as a result of her exemplary job performance.

10. In February 2003, Ms. Farris became aware that a TENT physician had been observed in a prolonged kiss with a nurse under his direct supervision. Concerned, she ultimately discussed the matter with the employee who had observed the incident and agreed that she would keep the employee's identity confidential as she pursued the matter further. Ms. Farris was worried that the physician's actions could subject TENT to liability for sexual harassment. Ms. Farris ultimately contacted TENT's attorney to discuss what steps should be taken and was advised that she should present the matter to TENT's Board for further action. The attorney indicated a course of action that should be taken by the Board, which included directly confronting the physician about his behavior while keeping the identity of the employee witness confidential.

11. Ms. Farris advised the Board about the physician's behavior at its March 2003 meeting and the guidance she received from the attorney. It was clear that some members of the Board were already aware or had heard of similar behavior by this physician and the nurse. The Board indicated that the matter would be discussed with the

physician and agreed to keep the employee's identity confidential. The following week, the physician at issue confronted Ms. Farris, began to verbally attack her using profanity and told her "you had no business going to the Board." He subsequently told her she had to talk to the employee who had observed the incident and she had to tell her she did not see what she thought she had seen. She refused.

12. On information, this physician demanded that the Board fire Ms. Farris immediately. The Board did not act on his request at that time, but he mobilized staff against Ms. Farris and constantly undermined her authority. The doctor in question significantly contributes to the partnership's financial success.

13. The following month, Ms. Farris wrote to TENT's corporate counsel advising him of the negative reaction to her report and that working conditions had deteriorated because of the mobilization efforts against her. He made no response to this letter. The working atmosphere became more and more hostile against Ms. Farris in the ensuing months.

14. Without warning, at the September 2003 Board meeting, Ms. Farris was presented with a two page document entitled "Recommendations for Improvement 9/2/03 Counseling Statement." The document purported to list shortcomings in her performance; these had not been discussed with her previously. When she attempted to address the items at the meeting as they were being read, she was instructed to keep quiet. After the list was read, the members of the Board were given an additional opportunity to add any comments. Although no criticisms were made, one Board member said that this was unfair and that Ms. Farris should be given the chance to address the items listed. She was not, however, provided that opportunity at the meeting. At no time did the Board ever meet and

discuss whether or not she was meeting the recommendations or needed to make additional improvements.

15. Ms. Farris again wrote to TENT's corporate counsel advising him what had occurred and told him about the document presented to her. She also indicated that she felt she was being retaliated against for reporting the physician's conduct. She received no response to this letter.

16. Three months after the September Board meeting, Ms. Farris was fired on December 9, 2003.

17. The effect of the practices complained of above has been to deprive Ms. Farris of equal employment opportunities and otherwise adversely affect her status as an employee because of her protected activity of opposing employment practices she believed to be discriminatory in violation of Title VII.

18. The unlawful employment practices described above were intentional and were committed with malice or with reckless indifference for the federally protected civil rights of Ms. Farris.

#### PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

19. Grant a permanent injunction enjoining TENT, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in employment practices which discriminate on the basis of opposition to discrimination;

20. Order TENT to institute and carry out policies, practices and procedures which provide equal employment opportunities for women and which eradicates the effects of its past and present unlawful employment practices;

21. Order TENT to make Ms. Farris whole by providing appropriate back pay, with prejudgment interest in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices she was subjected to;

22. Order reinstatement into a comparable position for Ms. Farris or award front pay in the amounts to be proven at trial if reinstatement is impractical;

23. Order TENT to make Ms. Farris whole by providing compensation for past and future pecuniary losses resulting from the unlawful practices described above, including out-of-pocket expenses such as job search expenses and insurance expenses in amounts to be proven at trial;

24. Order TENT to make Ms. Farris whole by paying compensatory damages to Ms. Farris for her past and future non-pecuniary losses including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses she suffered as a result of the unlawful employment practices described above, in amounts to be proven at trial;

25. Award punitive damages to Ms. Farris for TENT's malicious and/or reckless conduct described above, in amounts to be proven at trial;

26. Award pre-judgment and post-judgment interest on all amounts recovered as allowed by law;

27. Order all affirmative relief necessary to eradicate the effects of its unlawful employment practices;

28. Award the Commission its costs in this action; and

29. Grant such other and further relief as the Court deems necessary and proper.

JURY TRIAL DEMANDED

30. The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

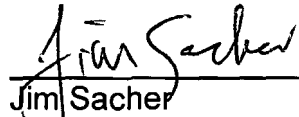
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OF COUNSEL



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(Rev. 07/89)

## CIVIL COVER SHEET

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

**I(a) PLAINTIFFS****EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS****TEXAS EAR, NOSE & THROAT CONSULTANTS, P.L.L.C.**

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Kathy Boutchec, Trial Attorney  
EEOC-Houston District Office  
1919 Smith Street, 7th Floor  
Houston, Texas 77002  
(713) 209-3399

ATTORNEYS (IF KNOWN)

**II. BASIS OF JURISDICTION**

(PLACE AN X IN ONE BOX ONLY)

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

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For Diversity Cases Only)
- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Texas Ear, Nose & Throat Consultants, P.L.L.C. engaged in unlawful employment practices by discharging Ms. Farris in retaliation for opposing what she believed to be unlawful practices, specifically for reporting actions by a TENT physician she reasonably believed could be sexual harassment or result in sexual harassment liability in violation of Title VII. Defendant has engaged in unlawful employment practices in violation of Sections 706(f)(1) and 3 of Title VII, 42 U.S.C. Sections 2000e-5(f)(1) and (3) and Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. §1981A.

**V. NATURE OF SUIT** (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Co. <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Label & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury--Med Malpractice <input type="checkbox"/> 365 Personal Injury--Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

**VI. ORIGIN**

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Appeal to District Litigation  
☐ 7 Appeal to District Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION

**DEMAND \$**

Check YES only if demanded in complaint:

☐ UNDER F.R.C.P. 23JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY** (See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT