

FILED FEB 09 2000

LORETTA G. WHYTE  
Clerk

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

Vogel Denise Newsome )  
Plaintiff )  
vs. )  
Entergy New Orleans, Inc. )  
d/b/a - Entergy Service, Inc. )  
Defendant )

CIVIL ACTION NO. 99-3109  
SECTION "G" - JUDGE SEARS  
MAGISTRATE "1"

PLAINTIFF'S AMENDED COMPLAINT

1. This is an action for damages based on unlawful employment discrimination practices committed by the defendant, Entergy Services, Inc. and jurisdiction of this court is invoked pursuant to the provisions of 28 USC § 1343 (a) (4); 28 USC § 2000e-5(f). This is a suit in equity authorized and instituted pursuant to the Civil Rights Act of 1991, 42 USC § 2000e, et seq. and 42 USC § 1981. It seeks declaratory relief pursuant to 28 USC § 2201, § 2202.

The pendent jurisdiction of this court is invoked to redress violations of the Louisiana Commission on Human Rights Act, LSA-R.S. 51:2231 A, which Act's purpose is to safeguard all individuals within the state from discrimination because of race, creed, color, religion, sex, age, disability, or national origin in connection to employment. To protect their interest in personal dignity and freedom from humiliation. Also Section 4 of Acts 1997, No. 1409, § 1.

2. The claims asserted in this complaint arose in the State of Louisiana, Eastern District, Parish of Orleans. Plaintiff is a citizen of the United States, and has been a resident in the Parish of Orleans, State of Louisiana during the course of her employment with defendant.

3. Employer pursuant Louisiana Commission on Human Rights (LCHR), see LSA-R.S. 23:331 B, means "a person, association, legal or commercial entity, or the state, its agencies, boards, commissions, or political subdivision receiving services from an employee and, in return, giving compensation of any kind to an employee. The provisions of this Part shall apply only to an employer who employs more than fifteen employees within this state for each working day in each of twenty or more calendar weeks in the current or preceding calendar year", Section 4 of Acts 1997, No. 1409, § 1.

Fee \_\_\_\_\_  
Process \_\_\_\_\_  
X Dkt'd \_\_\_\_\_  
X CtRmDep \_\_\_\_\_  
Dec.No. \_\_\_\_\_

4. Employment Agency pursuant LCHR, see LSA-R.S. 23:302 means, "any person or agency, public or private, regularly undertaking, with or without compensation, *the procurement of employees for an employer or the procurement of opportunities for employees to work for an employer*".
5. Plaintiff brings this action for declaratory judgment, injunction and other relief pursuant to 42 USC § 2000e, et seq., 42 USC § 1981, and LCHR R.S. 51:2264. This action is brought to prevent defendant from maintaining a policy, practice, custom or usage, of discriminating against Plaintiff in regard to compensation, terms, conditions and privileges of employment. Plaintiff seeks damages to compensate her for the economic loss, humiliation, damage to reputation and other damages caused by defendant's unlawful employment practice committed against Plaintiff because Plaintiff is a member of the African-American race.
6. This is an action for damages based on Interference With Civil Rights and Deprivation of Rights against Plaintiff because of her race committed by her Contract Employer, Entergy Services, Inc. and jurisdiction of this court is invoked pursuant 28 USC § 1343(a) and 28 USC § 1331.
7. This is an action for damages based on Conspiracy To Interfere With Civil Rights Through Obstruction Of Justice, wherein Defendant when requested to provide the Equal Employment Opportunity Commission (EEOC) with response to Charge of Discrimination filed by Plaintiff, submitted frivolous responses willfully, maliciously and wanton to impede, hinder, frustrate and obstruct the investigation by the EEOC. Actions by the Defendant being done to deprive Plaintiff Rights secured under the Civil Rights Act of 1991 and the 14<sup>th</sup> Amendment to the U.S. Constitution pursuant 42 USC § 1985.
8. Defendant is a corporation, incorporated by virtue of the laws of the State of Louisiana, and licensed to do business in the Parish of Orleans, State of Louisiana. Defendant at all material times has been doing business in the Eastern District of Louisiana, Parish of Orleans. Defendant maintains and administers records relevant to unlawful employment practices within said district and division. Defendant is an employer within meaning of the Civil Rights Act of 1991, 42 USC § 2000e(b), in that defendant is engaged in an industry affecting commerce and employs at least fifteen (15) persons. Defendant is an employer within meaning of the LCHR R.S. 23:331. Defendant may be served in this cause by serving its registered agent for service of process Mr. Frank M. Wagar, Director - HR Litigation Support - Human Resources, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, LA 70161.
9. On November 6, 1998, Plaintiff filed a Charge Of Discrimination with EEOC in the Parish of Orleans, State of Louisiana - (SEE Appendix A). Charge being timely filed.
10. On November 25, 1998, the EEOC served Defendant with Notice of Charge of Discrimination. (SEE Appendix B) Defendant being requested to "*submit information and records relevant to the subject charge of discrimination*". The Commission being clear to let the Defendant know that, "*the enclosed request for information does not necessarily represent the entire body of evidence which we need...*".

11. On December 8, 1998, Defendant's Director of Human Resources Litigation Support, Frank M. Wagar files response. (SEE Appendix C). Actions in furtherance of conspiracy.
12. On January 19, 1999, EEOC submits request for materials from Defendant. (SEE Appendix D)
13. On February 25, 1999, Defendant's, Gail Elgiar fax response. Actions by Ms. Elgiar being done in bad faith and to impede justice. Actions being to deprive Plaintiff rights secured under the Constitution and Civil Rights Act of 1991. (SEE Appendix E). Actions in furtherance of conspiracy.
14. On March 9, 1999, EEOC request answers to questionnaire. (SEE Appendix F)
15. On March 19, 1999, Defendant's, Gail Elgiar files frivolous response to Charge of Discrimination and Information Requested By The Commission. Actions by Ms. Elgiar being done in bad faith and to impede justice. Actions being to deprive Plaintiff rights secured under the Constitution and Civil Rights Act of 1991. (SEE Appendix G and H). Actions in furtherance of conspiracy.
16. This charge was timely filed. Plaintiff has received her Dismissal and Notice Of Rights (SEE Appendix D). The EEOC closed Plaintiff's file without allowing her to rebut the information provided by the Defendant. The EEOC clearly states "*This does not certify that the respondent is in compliance with the statutes*".
17. Plaintiff being a contract employee through Employment Agency – Amicus Staffing, was assigned to work at Entergy Services, Inc. in a clerical capacity.
18. Although Plaintiff was a contract employee, she actually reported to work at the offices of Defendant. Compensation for services rendered by Plaintiff were provided by the Defendant through Amicus Staffing. Defendant assumed full responsibility for any and all liability that may arise out of supervisor employee(s) conduct – SEE Appendix J - Conditions of Assignment, which states:

**CLAUSE 2):** *If during the first eight hours of the assignment you are dissatisfied with the AMICUS employee assigned you, AMICUS will credit you up to the first eight hours worked, provided that AMICUS replaces the individual assigned you with another qualified AMICUS employee. ... Without such notice, you agree that our employee's performance of the assignment is satisfactory to you and you further agree to these Conditions of Assignment.*

**CLAUSE 6):** *Supervision of an AMICUS employee's work on your premises (or wherever you assign the AMICUS employee) is the Client's sole responsibility. Since AMICUS is not a professional association or law firm,...Accordingly, the assigned AMICUS employee and you, the Client, hereby release AMICUS from any liability therein.*

Any and all benefits associated with Plaintiff were the responsibility of Amicus staffing See CLAUSE 1). However, Defendant received services from Plaintiff and compensated her financially for such as an employer (See #3 and #4 above). Actions which constitutes employment. The EEOC advised Defendant, "*our analysis shows that Entergy exercised control over Ms. Newsome's employment with regard to job location, work hours, work assignments, supervision, and the*

determination to continue or discontinue her work relationship with Respondant." The Defendant misrepresented themselves as an Equal Employment Opportunity Employer. Because of misrepresentation, Plaintiff was subjected to unlawful employment practices of discrimination because of her race and sex.

19. In mid August 1998, Amicus Staffing contacted Plaintiff and advised her that Defendant was interested in interviewing her for a position. Amicus Staffing provided Defendant with Resume of Plaintiff. (SEE Appendix W – Example Resume of Plaintiff Defendant may have received from agency. Plaintiff updates periodically and do not know which one they were provided). Plaintiff having over ten (10) years of experience in a clerical support capacity. Plaintiff coming through the Clerical Division of Amicus Staffing. It is because of the skills and experience that Plaintiff possesses that Defendant selected her for the vacancy filled. Amicus Staffing posses documentation on Plaintiff's clerical skills. Testing given by Amicus will yield the following regarding Plaintiff's abilities:

Microsoft PowerPoint	100%	Microsoft Access	95%
Excel	97%	WordPerfect 6.0	100%
Microsoft Word	92%	WordPerfect 7.0	89%
WordPerfect 6.1	93%	WordPerfect 8.0	84%
Typing	63 WPM		

Evidence that Plaintiff possess the skills necessary and could use the applications used by Defendant to perform the work assigned her. Plaintiff having worked prior assignments for the Defendant at other locations and enjoyed them, accepted this assignment. Plaintiff prides herself on doing a good job. (SEE Appendix U – Letter Of Recommendation).

20. During contract employment with Defendant, Plaintiff was subjected to a **HOSTILE WORK ENVIRONMENT!!** The law requires that Plaintiff's claim must answer the following to establish and prove a Prima Facie Case for Hostile Work Environment:

- a) *Plaintiff is a member of a group protected under Title VII:* Plaintiff, Vogel Denise Newsome is a Female, African-American and a member of a group protected under Title VII.
- b) *Plaintiff was subjected to unwelcomed racial harassment by supervisors and co-workers:* Plaintiff was subjected to unwelcomed harassment by co-worker, Philip Conn (white male – Human Resources Representative, permanent employee of Defendant). The unlawful employment practices of Mr. Conn were sanctioned by the Human Resources Employee RELATIONS Manager – Jerald Bailey.

Within the last few weeks of Plaintiff's assignment of Defendant brought in Philip Conn to fill the vacancy created by Randy Floyd (white male, former permanent employee) who left the company. Philip Conn was brought in under the hiring manager – Jerald Bailey. Mr. Conn hitting the ground running with his *bulldog tactics*, began to subject Plaintiff to *strict and oppressive supervision*. HOVERING over the Plaintiff as means of intimidation, interrupting her work constantly with such supervision ranging in intervals of 5-10 minutes. The actions by Mr. Conn being violation of the Defendant's Policies & Procedures (P&P) – Page 2 of 4 entitled Equal Employment Opportunity under 3.0 DEFINITIONS 3.1(See Appendix L) which states:

HARASSMENT is defined as any annoying act or persistent actions that single out an employee, to that employee's objection or detriment, because of but not limited to race, sex, religion, national origin, age disability, or other personal characteristics. HARASSMENT is generally a pattern of behavior that interferes with an individual's work performance or creates a hostile, offensive or intimidating work environment. This also includes sexual harassment.

Plaintiff had several conversations with Mr. Conn advising objection to such supervision. To no avail. Plaintiff also had conversations with Mr. Bailey advising objection to such behavior. Although plaintiff during her discussions may not have stated the word harassment, it is implied from statements made such as "hovering", "constantly walking back-and-forth", etc. used by Plaintiff - SEE Appendix G, Pg 2 - Dated 3/18/99 Response To Charge Of Discrimination. Neither Mr. Bailey or Mr. Conn conducted themselves in a business-like and professional manner, to discourage any harassing activity and to report any suspected harassment. A violation to P&P entitled "Harassment Prevention" - SEE Appendix M, Pg 1 Titled: HARRASSMENT PREVENTION, Pg 1 of 3 4.0 RESPONSIBILITY (4.2). Plaintiff was never advised during contract employment that she was hostile. Defendant never advised Employment Agency - Amicus Staffing, that Plaintiff acted in a hostile manner.

Plaintiff also had a conversation with Mr. Bailey in regards to concerns of racial remarks, obscenity being used in the workplace - SEE Appendix A pg. 4 - Complaint Filed With The EEOC. Mr. Bailey never addressed Plaintiff's concerns.

Mr. Bailey and Mr. Conn met just about every morning at 8:00 a.m. Plaintiff believes it was during some of these meeting that the two conspired to subject her to further harassment with knowledge that Mr. Conn's unlawful behavior affected her work. Plaintiff believes these meetings were used by Mr. Bailey and Mr. Conn to force her out of the workplace because she was not willing to end her assignment. Several times when Plaintiff complained of the strict supervision, she was asked by Mr. Bailey and Mr. Conn whether she wanted to continue to work with Entergy. Plaintiff answered in the Affirmative - See Appendix A pg. 3 (C). When Plaintiff failed to leave, Bailey and Conn continued their plan to harass Plaintiff and find petty work-rule violations in efforts to conceal unlawful employment practices. Behavior they thought were safe to use in termination - See Francis vs. AT&T, 55 FRD 202, 4 FEP 777:

*The process of documenting a case against a particular person whom the employer wants to terminate safely and legally can itself be a discriminatory term and condition of employment. In this case it had been found by the Court that employer documented "scores" of lateness and "petty work-rule violations" against Plaintiff because of her filing of a charge of discrimination. The Plaintiff in whom is Black. The supervisor who had done the documenting also black. However, the company did not document against everyone similarly situated. The Court held that the very process of FAULT FINDING had been discriminatory and that the absence of similar documentation against other employees was evidence of an intent to discriminate against the Plaintiff.*

Strict and oppressive supervision has been found to be discriminatory when it is found that no other employee was subjected to such behavior or when such actions

occur directly after complaint. Defendant's creating situations which they felt could be grounds to terminate Plaintiff or force her out of the workplace.

The law finding such tactics (singling Plaintiff out) by Mr. Bailey and Mr. Conn to be discriminatory actions alone. Plaintiff being the "ONLY" employee treated in such a manner to address such behavior. Actions by the Defendant intensified when she complained (first verbally) of the unlawful practice. Although one other female African-American contract employee (Crystal Lowe) also felt she was being harassed and verbally expressed so, she chose to remain silent when questioned by the Defendant. Ms. Lowe was asked, "AFTER" termination of Plaintiff.

The Defendant strongly supporting the actions of Mr. Bailey and Mr. Conn stating, "Under the circumstances, close supervision was not only warranted, but also required. (SEE Appendix G pg. 1). According to documentation provided by the Defendant, their own admission being Plaintiff being the *only* one subjected to such harassment.

- c) *The harassment mentioned is based on race. Had Plaintiff been white, she would not have been subjected to overtures: (See Appendix A - Complaint Filed With The EEOC pg. 1 (C))*

Plaintiff believes that such harassment is based on race and sex. Had Plaintiff been white, she would not have been subjected to overtures by Mr. Conn and sanctioned by Mr. Bailey. All African-American employees in the Human Resources Employee Relations Department during Plaintiff's assignment served in a clerical support capacity. The members of the Employee Relations during Plaintiff's assignment being as follows:

Jerald Bailey – White Male (Manager, Human Resources – Employee Relations)  
Philip Conn – White Male (Filling vacancy created by Randy Floyd – White Male – HR Rep)  
Kristen Cobb – White Female (HR Representative)  
Marty Bonck – White Female (HR Representative)  
Angelic Dottery – African-American Female (Clerical – Administrative Assistant)  
Crystal Lowe – African-American Female (Contract Worker)  
Vogel Newsome – African-American Female (Contract Worker)

In efforts to shield an illegal animus of unlawful employment discrimination under the management of Mr. Bailey, Defendant falsified information requested by the EEOC. The EEOC requested that Defendant "*Identify every individual in the Employee Relations/Human Resources department with Ms. Newsome and include each person's name, race, gender, position, and last known address and telephone number*" - (SEE #12 EEOC Request).

In their response dated 3/18/99 (Information Requested By The Commission) – SEE Appendix H pg. 5, Defendant provided names of two female African-Americans (Adironke Izon and Sarina Giles) not working in the department during Plaintiff's assignment. Defendant provided this information with knowledge that it being false. Actions merely to impede, frustrate and obstruct justice. Actions willful, malicious and wanton in furtherance of conspiracy began by Mr. Bailey and Mr. Conn to deprive Plaintiff rights secured under the Civil Rights Act of 1991 and the 14<sup>th</sup> Amendment to the U. S. Constitution.

Based on the statement provided in response, Defendant acknowledges that Mr. Bailey was the manager of Human Resources/Employee Relations from August 1997, until January 28, 1999. In efforts to clean-up up Mr. Bailey's tainted actions, Defendant mentions, "*Specifically, Mr. Bailey selected Angelic (Angie) Dottery to work as his administrative assistant. He selected Sarina Giles and Adironke (Ronnie) Izon to work as human resources representatives. He assisted Sarina Giles in obtaining a position in the Human Resources Benefits Department, an area of interest to Ms. Giles.*" Based on this information, by the time Plaintiff accepted contract assignment, neither of the African-American Human Resources Representatives were in the department. Defendant acknowledges Mr. Bailey's assistance in Ms. Giles obtaining another position outside his department. By the time Plaintiff arrived, Mr. Bailey was reaching approximately one year with Defendant and neither of these Human Resources Representatives were a part of the department. There were two white female Human Resources Representatives (Ms. Bonck and Ms. Cobb) and one white male (Mr. Floyd) when Plaintiff began assignment. When a vacancy arose due to the departure of Mr. Floyd, Mr. Bailey filled the vacancy with another white male (Philip Conn). Therefore, all allegedly Human Resources Representative vacancies created after the two African-Americans left continued to be filled by whites. Supporting that Human Resources Representative replacements due to vacancies being 100% white. It appears Mr. Bailey used African-Americans until he could get white representatives to replace them.

From the information provided by the Defendant in response to EEOC's request for a "*List of all temporary employees hired in the Human Resources, Employee Relations Department since November 1, 1998*" (not November 1, 1997). Since Defendant was so gracious to provide this information, documentation shows that all positions were in the clerical capacity. During Mr. Bailey's tenure as Manager, Employee Relations, listing shows that there was a high turnover in contract employees. Out of 12 contract employees, only two were white. 17 % white vs. 83% black. List shows that Mr. Bailey was obtaining new contract workers in the clerical capacity just about every other month.

Defendant provided information that a contract employee, female African-American (Debra Jefferson) was discharged. "*Ms. Jefferson had hoped to be offered a permanent job with Entergy. She was disappointed when this did not happen, and she and Randy Floyd (white, male, lead human resources representatives) mutually agreed that it would be best for her to leave the assignment.*" Ms. Jefferson being with the Defendant for approximately 15 months and having over a year of experience in the Defendant's Employee Relations Department environment. However, Defendant willfully withheld information as to the position that Ms. Jefferson had hoped to be offered her. Plaintiff believes it was a Human Resources Representative vacancy that the Defendant filled with a white applicant.

Mr. Floyd could not perform the job duties of Human Resources Representative. Mr. Bailey expressed his disappointment in Mr. Floyd's work and that indeed his time was running out and that he was on to him. Mr. Bailey stating such in a meeting with Crystal Lowe and Plaintiff. (SEE Appendix A, pg. 3)

- d) *The harassment complained of affected a "term condition or privilege of employment". The relationship at Defendant changed toward Plaintiff for the filing of charge: (See Appendix A pg. 2 - Complaint Filed With The EEOC)*

On November 4, 1998, because prior discussions with Mr. Bailey and Mr. Conn regarding the strict and oppressive supervision seem to be falling on deaf ears, Plaintiff submitted an E:mail note to the attention of Mr. Bailey, with a copy of note to Mr. Conn and a bcc copy to Crystal Lowe. Plaintiff providing a copy of note to Ms. Lowe in that she expressed concerns about the supervision as well. Plaintiff's E:mail note's Subject being, HARASSMENT. (See Appendix N - E:mail note and Receipt Notification for Jerald Bailey)

Plaintiff is very clear in her note in stating to Mr. Bailey concerns of unlawful behavior by Mr. Conn: *"I have attempted to sit down and discuss matters regarding us working together and have expressed my discontent in what I believe to be strict and oppressive behavior by Philp....Such behavior I find to be unprofessional and very demeaning in nature. Plaintiff advises Mr. Bailey, "I believe Mr. Conn's behavior, is due to his lack of understanding in what Workplace Harassment encompasses...It appears to me that Mr. Conn has a misunderstanding of the working relationship that 'Entergy' requires of it's employees and contractors.... One should not have to be subjected to such harassment be they contractor or employee.... I believe it is important to put the fire out before it starts and continue to work towards the environment Entergy wants. One free of harassment, etc. I understand that we all bring assets to the table; however, when we cross the lines into harassment, etc.; then we make ourselves a liability to the company"*.

Plaintiff never was not provided any Policies & Procedures (P&P) from the Defendant. Evidence supports that Plaintiff immediately addressed harassment and when all failed she put it in writing. In obtaining copies of documents from the EEOC, Plaintiff finds the following regarding Defendant's P&P regarding HARASSMENT PREVENTION (SEE Appendix M):

**6.0 PROCEDURES – 6.1 Reporting and Investigation of Harassment or Suspected Harassment:** *It is each employee's responsibility to ensure that his or her conduct does not include or imply harassment in any form...*

**6.1.1:** *An employee should immediately report harassment or suspected harassment to his or her supervisor... If the harassment involves a supervisor, then the employee should report it to the next higher level of management, to the Director of Human Resources, or to a Human Resources representative in his or her business unit.*

As a result of this E:mail note, Plaintiff was terminated immediately. Plaintiff was replaced by another female African-American (Denise Leonard) it appears from documentation provided EEOC by Defendant – SEE Appendix H pg. 2.

- e) *Complainant reported to Respondent Superior:* (SEE Appendix A - Complaint Filed With The EEOC) Plaintiff reported the unlawful behavior to Jerald Bailey (See Appendix N). During meeting, Mr. Bailey advised Plaintiff he has held conversations with Mr. Conn. He made it clear to Plaintiff that Mr. Conn is a permanent employee he would like to keep and work with. Mr. Bailey advised Plaintiff that he would like to train Mr. Conn. So at the hands of a trainee, Plaintiff was subjected to such unlawful harassment. Mr. Conn having no prior Human Resources Representative experience. According to the HR Representative Job Duties Performed provided by the Defendant for Mr. Conn, supervising Plaintiff is not listed. (SEE Appendix O). In past situation when a female African-American (Debra Jefferson) had hoped to



be offered a permanent job with Entergy, she was deprived this opportunity. There was no willingness to train at all.

During meeting following receipt of E:mail note, Plaintiff asked Mr. Bailey the name of his supervisor. Mr. Bailey advised Plaintiff that Jerry Jackson was his supervisor. Plaintiff asked for the name of Mr. Jackson's supervisor. Mr. Bailey advised Mr. Jackson's supervisor being Mr. Clary. When Plaintiff wanted to provide Mr. Jackson and Mr. Clary a copy of her E:mail note, Mr. Bailey refused to let her do so. He advised Plaintiff that company equipment was not to be used to address such issues. Plaintiff left a voice mail message for Mr. Jackson. A message Mr. Jackson chose to ignore. Plaintiff contacted Mr. Clary via telephone. However, he was in a meeting so she left a message with his assistant. Mr. Clary returned the call and advised Plaintiff that he would speak with Mr. Bailey.

Mr. Bailey's office being a few doors away from the Director, Human Resources Litigation Support (Frank Wagar) – (SEE Appendix P - Sketch of layout as Plaintiff remembers). Evidence to support that Mr. Bailey willfully violated Defendant's P&P. Evidence to support that not even the Director or Litigation support was aware of Plaintiff's allegedly hostile actions by the Plaintiff. Mr. Wagar approving hours worked by Plaintiff – SEE Appendix J - Timesheet of Plaintiff.

21. Because Plaintiff reported harassment to Manager of Human Resources – Employee Relations, the Defendant **RETALIATED!!** The law requires that Plaintiff's claim must answer to following to establish and prove a Prima Facie Case for Retaliation:
  - a) *Plaintiff is a member of protected group under Title VII:* Plaintiff, Vogel Denise Newsome is a female African-American and member of protected group under Title VII.
  - b) *That an adverse employment by the Defendant occurred because of the filing of charge:* SEE #20 above of this Claim. (SEE Appendix A - Complaint Filed With The EEOC)
  - c) *There was a casual connection between the participation in the protected activity and the adverse employment decision:* SEE #20 above of this Claim. (SEE Appendix A - Complaint Filed With The EEOC)
22. Plaintiff's claim provides evidence to substantiate Defendant's actions are **PRETEXTUAL** and have been done to shield an illegal animus.
  - a) *Past and Present prejudice toward Plaintiff and members of her race:* SEE #20 above of this Claim.
  - b) *The articulated reasons given did not apply when members of other races or genders were involved. This being compelling evidence that reasons were indeed pretextually applied to cover-up/mask an illegal animus:* SEE #20 above of this Claim. Defendant stated the facts behind termination being (SEE Appendix H pg. 3):
    - i. *Excessively used company time for personal activities.* This reason being provided is false. Plaintiff did not conceal her activities during assignment. Plaintiff's Daily Logs submitted indicates: Miscellaneous, Open, "Personal" Development, etc. Daily Logs for Plaintiff are in

the records of the Defendant. Personal activities were approved by Defendant's Manager and Director. (SEE Appendix Q). Defendant's response being pretextual.

- ii. *Refused to perform work assignments:* Plaintiff was persistent in obtaining work to keep her busy. As a result of her willingness and determination to work and fill-in the extra time she had, Mr. Bailey had Marty Bonck (female, white) prepare Job Responsibilities for Ms. Lowe (female, African American) and Plaintiff. Plaintiff being Temp II. SEE Appendix R. In efforts to cover-up their unlawful actions, the Defendant withheld pertinent information regarding the Job Responsibilities assigned after Plaintiff's persistency from the EEOC investigation. Evidence supporting Defendant's actions being pretextual.
- iii. *Stated she was too qualified to do clerical work:* People of color were limited to clerical support roles in this department. Mr. Bailey was fully aware of Plaintiff's educational background from the resume received from Employment Agency – Amicus Staffing. Plaintiff has been doing contract work in the clerical field for over Five years. She enjoys doing so. Plaintiff worked for Defendant before in the clerical capacity at other locations. Prior assignment with Defendant being at their Jefferson Highway location. Plaintiff working with Mr. Joseph Pulizzano in a clerical capacity. Assisting with Senior Day event sponsored by Defendant. So, in efforts to shield their unlawful practices, Defendant states Plaintiff said this. A statement being made only "AFTER" receiving Complaint filed by Plaintiff with the EEOC. (SEE Appendix A pg. 4) Wherein it was Mr. Bailey who advised Plaintiff she was over qualified for the job. The person who interviewed Plaintiff for the position. Prior to coming to Defendant on this assignment, Plaintiff having over 20 months in the clerical field with another company.
- iv. *Refused to work with Mr. Conn:* This statement is false. Defendant states knowledge of Plaintiff's attempt to work with Mr. Conn in requesting a meeting. (SEE Appendix G pg. 2). Mr. Conn being a white, male and Plaintiff being a female, African-American. No prior problems with Plaintiff's work or activities during the day. It was Mr. Conn's prejudice and bias towards Plaintiff because of her race and sex that he felt the need to harass her. Methods used of intimidation. Being the professional she is, Plaintiff being willing to see if the two could resolve whatever issues Mr. Conn had against her. Willingness to work with Mr. Conn is evident in the E:mail note submitted the day she was terminated (SEE Appendix N).
- v. *Exhibited extreme hostility to Mr. Conn:* A statement which is false. Mr. Conn did everything he could do to provoke Plaintiff. Plaintiff advised Mr. Conn on a few occasions that she "was not going to entertain his spirit". It was *only after* receipt of the Complaint filed that Defendant struggled to shield the actions of their employees. In seeing that Plaintiff had established Prima Facie Case of Hostile Work Environment, chose to use "hostility" to describe Plaintiff's work relation with Mr. Conn. Plaintiff remained at her desk and performed the work assigned her. Defendant's Internet Logs supports time spent at her desk. Plaintiff was not a party to any of unlawful practices rendered but a victim of such. Plaintiff's sign she created during her assignment depicts the life that she leads. (SEE Appendix S – Personal Development Sign). A sign Plaintiff had hanging in her cubicle. A motivational sign needed when working under such unlawful conditions to encourage Plaintiff. Plaintiff complained of the racial remarks and obscenity used in the workplace by co-workers she believed to be offensive with Mr. Bailey in hopes that he would discuss in meetings with the department, Mr. Bailey chose not to do so. (SEE Appendix A pg. 4) It was Plaintiff who

was excluded from meetings, etc. because of peculiarity or as Defendant may put it, "other personal characteristics". (SEE Appendix L 3.0, 3.1 and Appendix A pg. 5).

- c) *Plaintiff has shown that Defendant's reasons are unworthy of belief: SEE #20 above of this Claim.* After the termination of Plaintiff, the Defendant paid her for the remainder of the week terminated and the following week. (SEE Appendix K - Pay Stubs) Internet usage is not the reason for dismissal. Plaintiff was terminated due to bias and prejudice toward her because of her race and sex. Being terminated out of unlawful discriminatory practices by the Defendant. Evidence to support that she was not terminated on the grounds provided the Commission. Daily Work Logs withheld from the Commission during their investigation supports Defendant's knowledge of Plaintiff's prior use and reason given was not sufficient. Therefore, their effort merely coming to shield the unlawful actions of their employees.

Plaintiff's timesheets were approved/signed by Director - Human Resources Litigation Support (Frank Wagar), Manager-Human Resources Employee Relations (Jerald Bailey), Human Resources Representatives, etc. (SEE Appendix J). Verification of the work Plaintiff for that week were kept for a period of time. Plaintiff turning in Daily Work Logs to Mr. Bailey. (SEE Appendix Q). In fact the evidence appendix displayed here is for the week that Mr. Wagar approved Plaintiff's timesheet. In efforts to conceal his unlawful practices, Mr. Bailey obtained Plaintiff's copies from the Personal Day Sorter she left behind. When Plaintiff returned to get her Day Sorter and saw that her copies had been removed, she was advised by Ms. Angelic Dottery that Mr. Bailey advised her that they were company documents. A statement which is false. Plaintiff submitted the originals and kept copies of logs for herself. Periodically bringing them home. In the meeting on November 4, 1998, with Mr. Bailey, he advised Plaintiff that she could use him as a reference.

The Defendant provided no documents regarding the alleged hostile conduct. Defendant reported no violations of employment policies by Plaintiff to Employment Agency - Amicus Staffing. Amicus Staffing has no reports from the Defendant in Plaintiff's files of such allegations. Such allegations by the Defendant being done to defame/slander Plaintiff and ruin her reputation.

- d) *Plaintiff has shown additional evidence in documents of improper motivation by the Defendant:* Evidence supports that although upper management of the Defendant may not have been aware of the unlawful actions of Mr. Bailey and Mr. Conn until after the fact, they chose to engage in the conspiracy began by the two *when providing false and misleading information* to impede, hinder and unlawfully influence the outcome of a federal investigation by the EEOC. Actions willful, malicious and wanton to deprive Plaintiff equal protection of the laws and due process of laws. Actions which are a clear Obstruction Of Justice.

Evidence supports, that although the EEOC advised the Defendant, "*Your organization is hereby requested to submit information and records relevant to the subject charge of discrimination*"; the Defendant chose to withhold relevant records, logs, etc. from the EEOC to assist them in their investigation. The Defendant singled out the Plaintiff again and provided only information regarding log usage on her. Actions which clearly supports discriminatory actions. Actions in furtherance of conspiracy birthed by Mr. Bailey and Mr. Conn.

23. Tacit agreement occurs when two or more persons pursue by their acts the same object by the same means. One person performing one part and the other another part, so that upon completion they have obtained the object pursued. Regardless of whether each person knew of the details or what part each was to perform, the end results being they obtained the object pursued. Agreement is implied or inferred from actions or statements.
24. To establish a Prima Facie Case of conspiracy pursuant 42 USC § 1985 the following is required:
- a) *Defendant's tacitly agreed with at least one other person and participated or caused something to be done in furtherance of agreement: SEE #20 and #22 above of this Claim. Substantiated by the evidence.*
  - b) *That agreement was to deprive Plaintiff of protected rights: SEE #20 and #22 above of this Claim. Substantiated by the evidence.*
  - c) *That Defendant(s) were motivated by dislike or hateful attitude towards specific class of people and that Plaintiff is a member of that class: SEE #20 and #22 above of this Claim.*
  - d) *That conspiracy caused deprivation or injury to Plaintiff: SEE #20 and #22 above of this Claim. The unlawful actions by the Defendant has ruined her reputation with them and with Employment Agency – Amicus. Since this incident, although Plaintiff has reported availability to the agency, she has not worked an assignment with them since her termination with Defendant. Evidence supports that Plaintiff worked other assignments with Defendant in the past and was never accused of the acts they allege in their response to the Commission.*
25. Defendant's actions being intentional, willful and malicious. Therefore, under Plaintiff is allowed under law Punitive Damages. The following is required in evaluating whether damage is proportionally excessive:
- a) *Nature of wrong: Race Discrimination, Sex Discrimination and Retaliation*
  - b) *Character of conduct involved: Plaintiff being assigned to the Human Resources Department, Employee Relations Division. Those involved in depriving Plaintiff federally protected rights were the Manager (Mr. Bailey) and co-worker (Mr. Conn). Days prior to the unlawful discharge, Plaintiff worked with Mr. Bailey on making revisions to Defendant's Affirmative Action Policy Manual. Mr. Bailey had to proof and read to insure revisions, etc. were completed by Plaintiff. Evidence to support that Mr. Bailey was fully aware (having knowledge) that his actions were unlawful and that of Mr. Conn. Even with their *hands caught in the cookie jar and crumbs all around their mouth*, Defendant chose to lie. Defendants are not trustworthy. Actions willful, malicious, wanton and reckless disregard to federally protected rights.*
  - c) *Degree of culpability of the wrongdoer: Very SEVERE! When Plaintiff complained, supervisor (Mr. Bailey) and co-worker (Mr. Conn) intensified their unlawful behavior. Plaintiff being assigned to the Human Resources Employee Relations department. Employees of Defendant clearly aware of the wrong they were doing. Upper management when made aware of the situation, chose to engage in the conspiracy instituted by Mr. Bailey and Mr. Conn's actions*

when providing false information to the EEOC. Evidence which goes to prove malice and reckless disregard to federally protected rights. Mr. Conn was so obsessed with harassing Plaintiff that he used working hours to do so. Actions requiring that he work late to make up for the time used to harass Plaintiff. Mr. Conn taking Friday he was to be off to come in and harass Plaintiff. Demanding fax request when Plaintiff was given specific instructions by Mr. Bailey to work with Ms: Dottery on a project because of a deadline provided.

- d) *Situation & Sensibilities of the parties:* Parties involved were fully aware of their conduct and behavior. They were bent on forcing Plaintiff to leave when she advised them she wanted to continue working for Defendant. Plaintiff being a contract employee. Parties could have ended the assignment; however, chose to subject her to unlawful discriminatory actions. Parties were advised prior to termination that their actions were unlawful in the E:mail note and that such practices will result in a liability to the company. Parties were not sensitive to Plaintiff's concerns at all. They were cold, uncaring and placed themselves above the law.
- e) *Extent to which Defendant's conduct offends public sense of justice and propriety:* The only person(s) subjected to such unlawful behavior were people of color. All clerical staff being people of color and positions above clerical support all were white. When vacancies occurred in higher positions, they were filled with whites. Evidence supports that Plaintiff immediately reported unlawful practices; however, for doing so, Defendant retaliated and terminated her assignment. When upper management was made aware of the situation, they failed Plaintiff as well. Plaintiff was not returned to the assignment. Evidence supports that she was replaced by another female African-American. Disparate treatment is prevalent under the administration of Mr. Bailey. When Plaintiff exercised her rights as a citizen of the United States and filed Charge of Discrimination with the EEOC, Defendant in furtherance of conspiracy and unlawful employment practices, chose to shield the illegal actions by Mr. Bailey and Mr. Conn. Defendant provided false and misleading information to Obstruct Justice in a federal investigation.

This unlawful discriminatory practice occurred at the CORPORATE office of the Defendant. This unlawful discriminatory practice occurred in the HUMAN RESOURCES department in the **EMPLOYEE RELATIONS** division. A department and division that is suppose to prevent and deter such actions. However such unlawful practices were sanctioned. The Defendant is responsible for the actions of their supervisor(s).

26. In July 1999, at the request of the EEOC, Plaintiff and Defendant's representatives went into mediation. The mediation was not successful. Parties could not come to an agreement on settlement. Defendant with knowledge they failed to refute the prima facie case, came to mediation with approximately a 2 to 3 inch binder of internet log usage by Plaintiff. Defendant offered \$500 for their unlawful actions. Plaintiff refused this offer. Defendant producing voluminous Internet log usage as a means to coerce and intimidate Plaintiff into a settlement. In attempts to add coal to this offer, stated that they have witnesses. Witnesses, Plaintiff is sure are among the group that excluded her from meetings and activities (SEE Appendix A pg. 5). Plaintiff at the time was asking for \$300,000 in damages as required by law. Plaintiff having no knowledge of the false and misleading information provided the Commission by the Defendant produced in this claim. Defendant refused Plaintiff's demands. Determined to take Plaintiff through a long and drawn out bout in the courts. Willingness to subject her to further harm.

27. The court can expect Defendant to attempt to build a baseless/shaky-foundation case around what they say is excessive internet usage. Actions being in furtherance of Conspiracy to Interfere With Civil Rights Through The Obstruction Of Justice. Actions to take Plaintiff through the Discovery Process (interrogatories, depositions, etc.) and inflict additional harm and financial burdens upon her.
28. The actions by the Defendant has ruined Plaintiff's reputation with Employment Agency – Amicus Staffing. Since termination from assignment. Plaintiff has not worked through this agency. Plaintiff has made herself available.
29. As a direct and proximate result of defendant's acts, Plaintiff has suffered economic and extreme emotional harm. Plaintiff has devoted a great deal of attention and care to performing a job well done (SEE Appendix U). At all times she conducted herself in a professional manner and reported concerns she had to the Manager. Because of the hostile and discriminatory work environment created by Defendant, Plaintiff was required during the last few weeks of her assignment to suffer indignities which were outlawed many years ago.
30. Because of Plaintiff's failure to support, condone, and conform to such unlawful work environment created by defendant, Defendant took retaliatory actions against her and terminated the assignment.
31. The above described conduct of the Defendant violates the Civil Rights Act of 1991, 42 USC § 2000e et seq. and the Louisiana Commission on Human Rights Acts 1997, No. 1409, -1. Further, this conduct also violates 42 USC § 1981 by constituting intentional discrimination against the Plaintiff in the making and enforcement of her contract of employment on account of her race (African-American) and sex (female). Thus, Plaintiff is also entitled to compensatory and punitive damages as a result of the Defendant's intentional, willful, malicious and/or wanton conduct in violation of 42 USC § 1981, LSA-R.S.51:2264, LSA-R.S. 23:332.
32. Plaintiff alleges further that defendant intentionally inflicted mental anguish and/or emotional distress upon her as a result of the above-described conduct. Such conduct by the defendant was intentional, willful, malicious and/or wanton and justifies the imposition of punitive damages. Such actions by the defendant caused the plaintiff damages for which she sues. *Information of defendant's net worth or financial condition is relevant in action which punitive damages are sought – MidContinent Cabinetry, Inc. vs. George Koch Sons, Inc., 130 F.R.D. 149 (D.C. KS 1990). Under Louisiana Law, nature and extent of harm to plaintiff is relevant consideration to assess defendant's wrongdoing in determining amount of punitive damages- Duhon vs. Conoco, Inc., 937 F.Supp. 1216.*

*“A punitive damages award of 6.3 million was reasonable for a former employee who endured almost three and one-half years of severe, pervasive sexual harassment...the harassers were never reprimanded, employer lied in response to employee's charges of discrimination and conducted no meaningful investigation of her complaints, employer had net income in fiscal year before trial of \$12 million, and actual damages for the harassment were \$473,775.*

*Joint award of punitive damages to former employee and her recruiting company in the amount of \$1,149,504 was warranted for her former employer's defamation of employee and its tortious interference with company's contract with client, both which involved lies told by two of former employer's executives to client regarding circumstances of employee's termination...conduct of*

executives was either condoned or sanctioned in advance by the highest levels of employer's management, *the baseless attacks* forced employee to relive the embarrassment and despair that she suffered when she was abruptly and wrongfully terminated, and actual damages for her mental anguish were \$119,500.

Conduct such as lying under oath and suborning perjury to cover up intentional torts may be taken into account in establishing punitive damages. Scribner vs. Waffle House, Inc., 14 F.Supp.2d 873 (1998)

Defendant's (Entergy) New Orleans location in one report reporting earnings of \$34,386,000, and Approximate Revenues of \$474,670,000 – (SEE Appendix V – 1999 U.S. Public Companies, pg. 593)

33. Plaintiff has no plain or adequate remedy at law to correct the wrongs complained of herein, and this suit for declaratory and injunctive relief is Plaintiff's only means of securing relief. Further, Plaintiff is suffering and will continue to suffer irreparable harm from defendant's policies, practices, customs and usages set forth herein.

"Victims of discrimination suffer an irreparable injury regardless of actual pecuniary damage – Vietnamese Fishermen's Assn vs. Knights of Ku Klux Klan, 518 F.Supp 993)"

34. Defendant's "Mere Denial" (stating for example, "Defendant denies...") by way of rebuttal is not sufficient as a matter of law. Defendant must produce *sufficient factual evidence* to rebut the prima facie case and evidence provided by Plaintiff.

"Mere denial of illegal motivation will not suffice to carry defendant's burden of articulating a specific reason. Nor will Defendant's burden of articulating a specific reason. Nor will Defendant's burden of coming forward with evidence be satisfied by vague subjective conclusions. – Wright vs. Metropolitan Hospitals, Inc., 726 F.2d 1346 (9<sup>th</sup> Cir 1984)."

"Unless Defendant produces legally adequate evidence to meet and refute the inference of illegal motivation drawn by the prima facie case, the fact-finder is required AS A MATTER OF LAW, to render judgment in favor of the Plaintiff. – Texas Dept of Community Affairs vs. Burdine, 450 U.S. 248, 101 S.Ct. 1089"

35. Plaintiff's claim is being filed in good faith and is not being filed to burden this court in any way. Plaintiff brings her claim before the court to obtain justice.
36. Plaintiff's claim is being timely filed. Plaintiff was denied equal protection of the laws and due process of the laws when the Commission failed to investigate charge as required by law. Plaintiff files this claim as she begins to research actions under 28 USC § 1361 – Action To Compel An Officer Of The United States To Perform His Duty. Based upon the Preponderance of the evidence provided in this complaint, had the EEOC opened up the files of the Defendant, further evidence of disparate treatment would have been found. The law requiring compensation to the victims of Defendant's actions.

WHEREFORE, Plaintiff respectfully prays that this Court advance this case on the docket and grant the following relief:

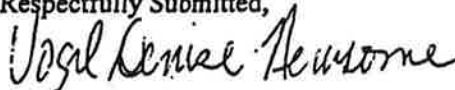
- a) Grant plaintiff a permanent injunction enjoining defendant, its agents, employees, successors, assigns and all persons in active concert or participation with it, from discriminating against her in violation of the Civil Rights Act of 1991, 42 USC § 1981, and the Louisiana Commission on Human Rights Acts of 1997;
- b) Grant plaintiff a declaratory judgment declaring defendant's practices complained of herein to be in violation of 42 USC § 2000e, et seq., 42 USC § 1981, and LSA-R.S. 51:2231;
- c) Grant plaintiff compensatory and punitive damages and any other necessary equitable and legal relief on account of said violation in an amount exceeding this court's minimum jurisdictional limits.
- d) Grant attorney fees appropriately recoverable, and costs of Court;
- e) Grant such other and further relief, at law or in equity, as the Court deems necessary and proper.

**JURY DEMAND:**

Plaintiff demands a jury on all issues so triable.

*The purpose of the prima facie case consist of sufficient evidence in the type of case to get Plaintiff past a motion for directed verdict in a jury case or a motion to dismiss in a nonjury case, it is the evidence necessary to require defendant to proceed with his case - White vs. Abrams, 495 F.2d 724, 729 (9<sup>th</sup> Cir 1974); FRCP Rule 41(b).*

Respectfully Submitted,



Vogel Denise Newsome  
Plaintiff - Pro Se  
P.O. Box 415  
Utica, MS 39175  
(504) 899-6322