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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ESTELLA MAGRI,	)	
	)	
Petitioner,	)	
	)	DOAH Case No. 15-3836
v.	)	FCHR Case. No. 15-0080
	)	
AMS AVIATION,	)	
	)	
Respondent.	)	
	)	

JOINT MOTION FOR CLARIFICATION

Petitioner, Estella Magri, and Respondent, AMS Aviation, by and through their undersigned counsel, hereby file their Joint Motion for Clarification on this Court's Order Granting Continuance and Re-Scheduling Hearing by Video Teleconference and, as grounds, state as follows:

BACKGROUND AND FACTS

1. On or about October 16, 2014, Petitioner filed a Charge of Discrimination ("Charge"), alleging sexual harassment and retaliation, with the Florida Commission on Human Relations ("FCHR"). Exhibit A. Petitioner states in the Sworn Charge of Discrimination that she was not fired until October 25, 2015. *Id.*

2. On or about December 3, 2014, Respondent submitted a response to the FCHR investigator stating that Petitioner was terminated on October 10, 2013 and that her Charge was untimely. Exhibit B.

3. On or about April 30, 2015, FCHR issued a Notice of Determination: No Jurisdiction ruling the "complaint was received more than 365 days after the date of the alleged violation[.] Exhibit C.

4. The FCHR made this finding based on the investigative specialist's Investigative Memorandum finding that Petitioner was terminated on October 10, 2013, which was more than 365 days from the date of her Charge, October 16, 2014, and that "the Commission has no jurisdiction to investigate this complaint because the allegations are untimely." Exhibit D.

5. The FCHR did not make a determination as to Petitioner's substantive allegations. *Id.*

6. The Notice of Determination stated that Petitioner may file a Petition for Relief within 35 days of the Notice. Exhibit C.

7. On or about May 29, 2015, Petitioner filed her Petition for Relief, arguing that she was not terminated on October 10, 2013, but on October 24 or 25, 2013, thus making her Charge timely. Exhibit E.

8. On July 20, 2015, the Administrative Law Judge ("ALJ") entered a Notice of Hearing stating the issue to be determined at the final hearing is: "Whether Petitioner was discriminated against on the basis of her gender and retaliated against by Respondent, her former employer, for complaining about sexual harassment in violation of the Florida Civil Rights Act." Exhibit F.

9. The parties move for clarification as to whether the issue will be: (a) whether Petitioner was terminated a year prior to her Charge, meaning there is no subject matter jurisdiction over the instant claim; and/or (b) "Whether Petitioner was discriminated against on the basis of her gender and retaliated against by Respondent, her former employer, for complaining about sexual harassment in violation of the Florida Civil Rights Act" as stated in this Court's original Notice of Hearing. *See* Exhibit F.

10. In the event that the issue to be heard is not limited to facts relating to subject matter jurisdiction, the parties hereby move that as the agency made no findings as to discrimination and retaliation, DOAH lacks jurisdiction to hear the merits of the discrimination and retaliation claims. *See Baker v. Maycom Communications/Sprint-Nextel*, DOAH Case No. 08-5809, 2008 Fla. Div. Adm. Hear. LEXIS 550, *6 (Fla. Dept. of Admin. Hearings Dec. 22, 2008) (“The only issue properly before DOAH at this time is whether Respondent is a ‘public accommodation’, thereby giving FCHR jurisdiction over Petitioner’s discrimination complaint against Respondent; the merits of the complaint are not before DOAH at this time”).

11. The parties request the relief sought herein because the FCHR did not make a determination as to Petitioner’s discrimination claim, finding that it had no jurisdiction based on Petitioner’s untimely filing. The parties request that DOAH limit its review to the only determination that the FCHR made: No Jurisdiction. *See Exhibits C & D.*

12. This motion is not being filed for the purposes of delay or for any other improper purpose.

13. Pursuant to Rule 28-106.204, counsel for the parties conferred via electronic mail on September 1, 2015 and agreed to jointly seek the relief sought herein.

WHEREFORE, Petitioner and Respondent respectfully request that this Court enter an Order limiting the issue to be tried at the final hearing to the FCHR’s determination of “No Jurisdiction.”

Dated: September 2, 2015

Respectfully submitted,

By: s/Jason Remer
Jason S. Remer, Esq. (0165580)

By: s/David E. Block
David E. Block, Esq. (108820)

jremer@rgpattorneys.com

Brody M. Shulman, Esq. (092044)

bshulman@rgpattorneys.com

REMER & GEORGES-PIERRE, PLLC

Court House Tower

44 West Flagler Street, Suite 2200

Miami, FL 33130

Tel.: (305) 416-5000

Fax: (305) 416-5005

Counsel for Petitioner

david.block@jacksonlewis.com

Naveen Paul, Esq. (98059)

naveen.paul@jacksonlewis.com

JACKSON LEWIS P.C.

One Biscayne Tower, Suite 3500

2 South Biscayne Boulevard

Miami, Florida 33131

Tel.: (305) 577-7600

Fax: (305) 373-4466

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served via electronic mail on September 2, 2015, on all counsel or parties of record listed below:

Jason S. Remer, Esq. (0165580)

jremer@rgpattorneys.com

Brody M. Shulman, Esq. (092044)

bshulman@rgpattorneys.com

REMER & GEORGES-PIERRE, PLLC

44 West Flagler Street, Suite 2200

Miami, FL 33130

Counsel for Petitioner

s/Naveen Paul

Naveen Paul, Esq.

EXHIBIT A

MS 201500080

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

EEOC Form 5 (5/01)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented to: Agency(ies) Charge No(s):

16 AM 2:07
☒ FCHR

FCHR - Florida Commission on Human Relations.

State or local Agency, if any

Name (indicate Mr. Ms. Mrs.)

Estella Magri

Home Phone (Incl. Area Code)

305-340-1719

Date of Birth

10/26/55

Street Address

4003 SW Shore Blvd #4716

City, State and ZIP Code

Tampa, FL 33611

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

AMS AVIATION

No. Employees, Members

20+

Phone No. (Include Area Code)

305-871-5662

Street Address

5300 NW 36 St

City, State and ZIP Code

Miami, FL 33122

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN☒ RETALIATION ☐ AGE ☐ DISABILITY ☒ OTHER (Sexual Harassment)

DATE(S) DISCRIMINATION TOOK PLACE

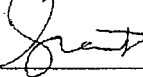
Earliest
July 2013Latest
October 25, 2013☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)):

I was discriminated against by my employer AMS Aviation by my supervisor Pedro, based on the fact that I am a Female. The discrimination I was subject to includes, but is not limited to, the following: I began working for my employer on or about January 16, 2011. I was assigned to work under my supervisor Pedro on or about July, 2013. Since being under his supervision, he started to make sexual comments towards me that include but is not limited to, the following: "You look so good", "Your ass looks so nice", "Your tits look so yummy", "The bitch of AMS", "Let's go have a drink to chillies or some other place" "You know what you have to give me to get overtime hours". There was also an incident on or about October 2013, where I was bent over picking up my tools and Pedro stood in back of me and rubbed his penis on my butt. I told him countless times to stop harassing me and he just laughed. Once Pedro saw that I was becoming irate with his actions, he started to cut my hours and make me clean the air plane instead of doing my job duties as an interior mechanic. I was terminated on or about October 25th, 2013 in retaliation for my complaints made to Pedro to stop the sexual harassment and not taking any action towards Pedro's sexual advances. Any reason proffered by my employer for my termination is mere pretext for unlawful discrimination; throughout my employment I was able to perform the essential functions of my job duties and responsibilities, and at all relevant times I did perform my job at satisfactory or above-satisfactory levels. I feel that I have been discriminated against because of my SEX, in violation of Title VII of the Civil Rights Act of 1964, as amended, the Florida Civil Rights Act, and local laws.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements




AYOCAH GRANT

NOTARY PUBLIC

STATE OF FLORIDA

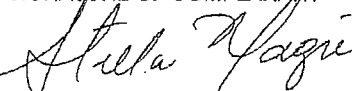
Comm# EE843251

Expires 10/14/2016

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT



SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Date

10/15/14

Charging Party Signature

REMER & GEORGES-PIERRE PLLC
ATTORNEYS AT LAW

COURTHOUSE TOWER
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL. 33130

TEL. (305) 416-5000
FAX: (305) 416-5005

Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
Telephone (850) 488-7082
Facsimile (850) 488-5291

Re: Charging Party: Remer & Gorges -Pierre PLLC

Employer: AMS Aviation

Today's Date: 10/16/14

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
2014 OCT 16 AM 2:07

Dear Commission:

With respect to the above referenced matter, please be advised that the law offices of Remer & Georges-Pierre, PLLC represent the above named Charging Party.

A copy of the Charge of Discrimination is enclosed. Kindly update your records accordingly and forward any and all correspondence to our attention. In addition, please advise our firm of any events which are scheduled in this matter with courtesy copies of same. All future scheduling issues should be coordinated with this office.

Thank you very much for your prompt attention to this matter. Please contact us directly with any questions regarding this matter at the numbers listed herein.

Cordially,

Remer & Georges-Pierre, PLLC

EXHIBIT B

VEDDER PRICE.

ANDREW OPPENHEIMER
ATTORNEY AT LAW
+1 (312) 609-7664
aoppenheimer@vedderprice.com

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T: +1 (312) 609-7500
F: +1 (312) 609-5005

CHICAGO • NEW YORK • WASHINGTON, D.C.
LONDON • SAN FRANCISCO • LOS ANGELES

December 3, 2014

VIA E-MAIL

Eric Goerd
Employment Investigator
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301-4857
Phone: (850) 488-7082 x 1074
Fax: (850) 488-5291

Re: *Estella Magri v. AMS Aviation*
FCHR No. 201500080

Dear Mr. Goerd:

This letter is submitted as the initial response of AMS Aviation ("AMS") to the Complaint filed by Estella Magri ("Complainant"), a former employee at AMS's Miami facility.¹ As we discussed during our phone conversation, Complainant's allegations are barred by the statute of limitations and the Florida Commission on Human Relations ("FCHR") should dismiss the Complaint in its entirety.

The Complaint alleges sex discrimination and harassment in violation of the Florida Civil Rights Act of 1992 (the "Act") and Title VII of the Civil Rights Act of 1964 ("Title VII"). The Complaint alleges sex harassment beginning in July 2013, and alleges that Complainant was terminated because of her sex "on or about October 25, 2013." However, Complainant was

¹ AMS does not consent to the use of this statement as evidence, as an exhibit or as an admission at any adjudicatory proceeding or to the disclosure of the contents of this statement to other individuals or entities beyond the FCHR. Rather, the information contained herein is intended for the sole use of the FCHR in investigating this Charge. AMS further states that the information set forth herein is based on its preliminary investigation of the allegations in the Charge and is necessarily limited by the lack of discovery or other procedures that would allow AMS to fully investigate this matter. This statement also focuses on the limited matters set forth in the Charge and your communications with us. AMS reserves the right to supplement this position statement in response to the Charge, in the event that new information becomes available to AMS in the future.

VEDDER PRICE.

Eric Goerdt
December 3, 2014
Page 2

actually terminated on and last worked for AMS on October 10, 2013, making her claims time-barred.

Complainant was hired by AMS on January 16, 2011. On October 10, 2013, Complainant was terminated as part of a reduction-in-force ("RIF"). AMS terminated eight (8) other employees (all male) that same day—and forty-one (41) that same month—as a result of the RIF. Attached as Exhibit A is the report of Complainant's hours worked during the month of October 2013. Her last clock-in was on Sunday, October 10, 2013 and AMS' paperwork verifies her termination date of October 10, 2013. (Ex. B).

Complainant's claims are time-barred. To maintain a claim under Title VII, the Complaint must be filed within 300 days of the last discriminatory act. In the case of the FCRA, the statute of limitations is 365 days. *See* 42 U.S.C. § 2000e-5(e)(1); Fla. Stat. § 760.11; *EEOC v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1271 (11th Cir. 2002). Here, AMS terminated Complainant on October 10, 2013, but she failed to file a Complaint until October 15, 2014. *Matthews v. City of Gulfport*, 72 F. Supp. 2d 1328, 1334 (M.D. Fla. Oct. 19, 1999) (court held that only alleged actions which took place on or after April 10, 1996 are actionable under FCRA for a Charge of Discrimination filed on April 10, 1997).

For this reason alone,² the FCHR should dismiss the Complaint in its entirety.

Very truly yours,

/s/ Andrew Oppenheimer

Andrew Oppenheimer
Attorney at Law

ATO

cc: Mr. Patrick Spangler

² Although the claims are clearly time-barred, AMS denies that it discriminated against Complainant in any way. AMS reserves the right to submit additional information if FCHR does not dismiss on statute of limitations grounds.

VEDDER PRICE.

Eric Goerd

December 3, 2014

Page 3

bcc: Jennifer Griffin
J. Kevin Hennessy

Exhibit A

Department 170 INTERIORS

Employee	Work Date	Clock In	Clock Out	***** Attendance *****				BH Description	***** Collection *****								
				ST	OT	PT	ST		OT	PT	Work Order	Zone	Item	Agency	Multi Card		
20036	10/04/2013	09:29:25	15:30:00	5.51	0.00	0.00											
ESTELLA MAGRI	Friday	09:29:25	15:30:00						5.51	0.00	0.00	2006155	2000	0199	AMS		
	Attendance Total			5.51	0.00	0.00		Labor Total:	5.51	0.00	0.00	5.51	5.51				
	10/05/2013	07:00:00	15:29:53	8.00	0.00	0.00			8.00	0.00	0.00	2006287	2000	0082	AMS		
	Saturday	07:00:00	15:29:53						8.00	0.00	0.00	8.00	8.00				
	Attendance Total			8.00	0.00	0.00		Labor Total:	8.00	0.00	0.00	8.00	8.00				
	10/07/2013	07:00:00	15:30:00	8.00	0.00	0.00			8.00	0.00	0.00	2006154	2000	0031	AMS		
	Monday	07:00:00	15:30:00						8.00	0.00	0.00	8.00	8.00				
	Attendance Total			8.00	0.00	0.00		Labor Total:	8.00	0.00	0.00	8.00	8.00				
	10/08/2013	07:00:00	15:30:00	8.00	0.00	0.00			8.00	0.00	0.00	2006155	2000	0199	AMS		
	Tuesday	07:00:00	15:30:00						8.00	0.00	0.00	8.00	8.00				
	Attendance Total			8.00	0.00	0.00		Labor Total:	8.00	0.00	0.00	8.00	8.00				
	10/09/2013	06:31:12	15:30:00	8.48	0.00	0.00			8.48	0.00	0.00	2006154	2000	0163	AMS		
	Wednesday	06:31:12	15:30:00						8.48	0.00	0.00	8.48	8.48				
	Attendance Total			8.48	0.00	0.00		Labor Total:	8.48	0.00	0.00	8.48	8.48				
	10/10/2013	07:00:00	15:29:52	7.52	0.48	0.00			7.52	0.48	0.00	2006155	2000	0199	AMS		
	Thursday	07:00:00	15:29:52						7.52	0.48	0.00	8.00	8.00				
	Attendance Total			7.52	0.48	0.00		Labor Total:	7.52	0.48	0.00	8.00	8.00				
	Employee Total			45.51	0.48	0.00	0.00		45.51	0.48	0.00	45.99	45.99	0.00			
				ST	OT	PT	BH		ST	OT	PT	Att	Labor	BH			
	Report Total:			45.51	0.48	0.00	0.00		45.51	0.48	0.00	45.99	45.99	0.00			

Exhibit B



AVIATION MAINTENANCE STAFFING

PERSONNEL ACTION REQUEST

PLEASE PRINT

Payroll Use:

Emp No. 2036

EMPLOYEE DATA	Name: <u>Estella Magri</u>		SSN: _____	Bonus Tier: _____
	Dept. Name/ #: _____		Job Title: _____	
	Division: _____		Business Title: _____	
	Employee to work in jurisdiction that the Division is currently registered to do business in: ☐ Yes ☐ No (If "No", General Manager or Sr. Executive must get approval from General Counsel and V.P. of Tax)			
	Action (please complete appropriate section below):		☐ Hire ☐ Change ☐ Termination	
HIRE	Please select one category from Options A, B, & C:		Relocation Approved: ☐ Yes ☐ No	
	A) ☐ New Hire ☐ Rehire ☐ Hire Date: _____		Date of Birth: _____ Gender: ☐ M ☐ F	
	B) ☐ Full Time ☐ Part Time		Address: _____	
	C) ☐ Regular ☐ Temporary		Supervisor: _____ Phone: _____	
	Base Rate of Pay: \$ _____ / ☐ Hour ☐ Year		Schedule (Days/Hrs): _____	
CHANGE	Effective Date of Change: _____		Reason for Change: _____ (i.e. Promotion, Demotion, Merit, Transfer, Equity, Lump Sum, Reorganization, etc.)	
	☐ Rate of Pay (attach review)	From: _____	To: _____	
	☐ Department Name & No.	From: _____	To: _____	
	☐ Division	From: _____	To: _____	
	☐ Job Code Title / Grade	From: _____	To: _____	
	☐ Business Title	From: _____	To: _____	
	☐ Work Schedule	From: _____	To: _____	
	☐ Supervisor	From: _____	To: _____	
	☐ Union Status	From: _____	To: _____	
	☐ Status	From: ☐ Full Time ☐ Part Time ☐ Regular ☐ Temporary	To: ☐ Full Time ☐ Part Time ☐ Regular ☐ Temporary	
TERMINATION	Date of Termination: <u>10/10/13</u>		ADDITIONAL PAY FOR PAYROLL USE	
	Reason: <u>RESIGNED</u> <u>TERMINATED</u>		Reason (Please Check):	
	☐ Another Job ☐ Absenteeism		☐ Lump Sum	
	☐ Dislike of Work ☐ Misconduct		☐ Bonus	
	☐ Family Responsibility ☐ Performance		☐ Other	
	☐ Location ☐ Refused Suitable Work		Vacation Due: _____	
	☐ No Call/No Show ☐ Reduction in Force		Processed: _____	
	☐ Retirement ☐ Other _____		Cancel AutoPay? ☐ Yes ☐ No	
	☐ Wages ☐ Temp Assign Completed		Amount: \$ _____	
	☐ Other _____		Pay in Lieu of Notice (Weeks/Days) _____	
Replacement Requisitioned? ☐ Yes ☐ No		☒ WFR ☒ STAAR ☒ EV5		
APPROVALS	Supervisor/Manager: _____ Date: _____		Human Resources: _____ Date: <u>10/10/13</u>	
	One over One: _____ Date: _____		Area Director: _____ Date: _____	
	General Manager: _____ Date: _____		Chief HR Officer: _____ Date: _____	
	Group Executive: _____ Date: _____			

EXHIBIT C



State of Florida

Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

Rick Scott
Governor

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082
<http://fchr.state.fl.us>



Gilbert Singer
Chair
Michelle Wilson
Executive Director

FCHR No. 201500080
Certified Receipt #: 70142120000439811764

Ms. Estella Magri
c/o Mr. Brody M. Shulman, Esquire
Remer & Georges-Pierre, PLLC
Courthouse Tower
44 West Flagler Street, Ste 2200
Miami, FL 33130

Complainant

AMS Aviation
c/o Mr. Andrew Oppenheimer, Esquire
Vedder Price P.C.
222 North LaSalle Street
Chicago, IL 60601

Respondent

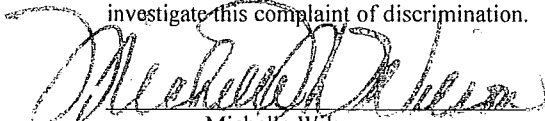
DETERMINATION: NO JURISDICTION

Complainant filed a Complaint of Discrimination alleging that Respondent discriminated against him/her in violation of the Florida Civil Rights Act of 1992, as amended, Section 760.10, Florida Statutes. The Florida Commission on Human Relations has investigated this matter and has found the following:

A complaint of discrimination such as this must be filed within 365 days after the alleged violation. This complaint was received more than 365 days after the date of the alleged violation, thus it was untimely filed pursuant to Section 760.11(1), Florida Statutes.

Pursuant to Rule 60Y-5.004(1), Florida Administrative Code, the Office of Employment Investigations has submitted an Investigative Memorandum;

On the basis of the report and recommendation, pursuant to the authority delegated to me by Rules 60Y-2.004(2)(e) and 60Y-5.004, Florida Administrative Code, I have determined that the Florida Commission on Human Relations has no jurisdiction to investigate this complaint of discrimination.


Michelle Wilson
Executive Director

Dated: April 29, 2015

Filed: April 30, 2015

By: Jimmy Barton
Clerk of the Commission

COMMISSIONERS

Derick Daniel
Tallahassee

Dr. Donna Elam
Orlando

Dr. Onelia Fajardo-Garcia
Miami

J. Jeff Graber
Longwood

Tony Jenkins
Orlando

Michael Keller, Vice Chair
Tampa

Jay Pichard
Tallahassee

Gilbert Singer, Chair
Tampa

Billy Whitefox Stall
Panama City

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Jacksonville

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Winter Springs

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Rick Scott
Governor

State of Florida Florida Commission on Human Relations

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(850) 488-7082
<http://fchr.state.fl.us>



Gilbert Singer
Chair
Michelle Wilson
Executive Director

FCHR No. 201500080

Ms. Estella Magri
c/o Mr. Brody M. Shulman, Esquire
Remer & Georges-Pierre, PLLC
Courthouse Tower
44 West Flagler Street, Ste 2200
Miami, FL 33130

Complainant

AMS Aviation
c/o Mr. Andrew Oppenheimer, Esquire
Vedder Price P.C.
222 North LaSalle Street
Chicago, IL 60601

Respondent

NOTICE OF DETERMINATION: NO JURISDICTION

The Florida Commission on Human Relations, in the above referenced complaint, has determined that it has no jurisdiction to investigate this complaint of discrimination. A copy of the determination is attached.

The Complainant may request an administrative hearing by filing a **Petition for Relief** within 35 days of the date of this **NOTICE OF DETERMINATION: JURISDICTION**.

A Petition for Relief form is enclosed with Complainant's notice. It may be beneficial for Complainant to seek legal counsel prior to filing the petition.

If the Complainant fails to request an administrative hearing within 35 days of the date of this notice, the claim shall be barred pursuant to Section 760.11, Florida Statutes.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

I HEREBY CERTIFY that a copy of the foregoing Notice of Determination was mailed to the above-named addresses this 30 day of June, 2015, by U.S. Mail.

By: Amey Baston
Clerk of the Commission

COMMISSIONERS

Derick Daniel
Tallahassee

Dr. Donna Elam
Orlando

Dr. Onelia Fajardo-Garcia
Miami

J. Jeff Graber
Longwood

Tony Jenkins
Orlando

Michael Keller, Vice Chair
Tampa

Jay Pichard
Tallahassee

Gilbert Singer, Chair
Tampa

Billy Whitefox Stall
Panama City

Rebecca Steele
Jacksonville

Sandra Turner
Winter Springs

20

EXHIBIT D

INVESTIGATIVE MEMORANDUM

FCHR NO. 201500080

To: Office of General Counsel

From: Eric Goerd
Investigative Specialist
Office of Employment Investigations

COMPLAINANT

Ms. Estella Magri
c/o Mr. Brody M. Shulman, Esquire
Remer & Georges-Pierre, PLLC
44 West Flagler Street, Ste. 2200
Miami, FL 33130

v.

RESPONDENT

AMS Aviation
c/o Mr. Andrew Oppenheimer, Esquire
Vedder Price P.C.
222 North LaSalle Street
Chicago, IL 60601

DECLARATION OF JURISDICTION

Respondent is an employer within the meaning of one or more of the following laws: (a) the Florida Civil Rights Act of 1992, as amended (Chapter 760, Florida Statutes); (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Age Discrimination in Employment Act (ADEA); and/or (d) the Americans with Disabilities Act (ADA), and all jurisdictional requirements for coverage have been met.

FOCUS OF THE COMPLAINT

Complainant filed this charge of discrimination against Respondent alleging that she was sexually harassed, subjected to different terms and conditions and discharged based on her sex (female) and retaliated against for engaging in a protected activity.

BACKGROUND

Complainant began employment with Respondent on January 16, 2011, as an Interior Mechanic, until her discharge in October of 2013. Complainant was responsible for performing installation and fabrication work on interior pieces found within airplanes. Respondent's business is an aviation services corporation in Miami, Florida.

COMPLAINANT'S ALLEGATIONS

Complainant alleged that when Pedro Esprada, Mechanical Lead started working, in June or July of 2013, the airplanes that Complainant was working on were no longer there. Therefore, she was being supervised by Esprada. Complainant stated that she asked Esprada, around July of 2013, for overtime and he responded "you already know what to do to get overtime."

Complainant stated that Esprada would invite her to out to a restaurant or a party on several occasions, around the end of July and Beginning of August of 2013, and she would always say "no." Complainant stated that in August of 2013, when she was working, Chris, General Manager, would get on the plane and he was "always watching" what she was doing.¹ Complainant asked "what are you doing here?" and told her to go home for 5 days." and stated to Complainant that she "had a lot of stress" and stated "please forgive me so that you do not have to go home." Complainant went to Luis Gonzalez, General Manager around August of 2013, and asked to speak with him about harassment. He told her to speak to Human Resources and she said that Human Resources would not talk to her. Complainant stated that she complained to Chris in a meeting in August of 2013, and complained that Esprada would not give her work and Esprada stated that he would not give Complainant work because he was alleging that "she would leave and go smoke."

Complainant stated that around August of 2013, when she started working again, she made a verbal complaint to Ramsey, General Manager, and she was told that she had to continue working with Esprada.² Complainant said that she did not want to work with Esprada and Ramsey told her that she had to work with Esprada. Complainant stated that on one occasion, she was cleaning the toilet on a plane and she asked Esprada where to put one of the tubes, Esprada told Complainant to "leave it outside the plane." Complainant left the tube outside the airplane and she went home. The next day, Complainant found the tube in the sink with a piece of cake. Complainant asked Esprada if he did that and he said "no."

Complainant stated that around October of 2013 Esprada would make such comments to her as, "what pretty tits you have and "what a nice ass you have" and she would tell him "stop bothering me with that." Complainant was not going to say anything because she was not used to working with men. Complainant stated that she asked Esprada to stop on numerous occasions, and she would also ask him for overtime and ask why she did not get overtime. Around October of 2013, Esprada would respond that "you know what you can do with me and I will give you overtime." Complainant stated that one day, around October of 2013, she was bent over in the bathroom, Esprada came over and pressed his penis up against her buttocks, and she stated "hey what are you doing?" Complainant told Neicy Rodriguez, Interior Mechanic and Anna Irrizary, Interior Mechanic, about the incident and stated that "Esprada started laughing when he did that to me."

Complainant stated that she hardly ever used her cell phone and that if she did not answer when Management called her phone, they would get upset. Complainant stated that on one occasion, around October of 2013, she was working on some tires and the Ilnova Plumbing, General Manager, asked her to come to his office and asked her why she was "texting for 10 minutes?"

¹ Complainant did not know Chris's last name (See Interview Notes).

² Complainant did not know Ramsey's last name (See Interview Notes).

Complainant stated that he stated to her that her last text message was during her break. Complainant stated that around October of 2013, she had a meeting with Esprada and Plumbing. During this meeting, Esprada and Plumbing counseled her for texting on the job. Complainant replied that she was not texting on the job. At that time, Esprada and Plumbing replied that Complainant was to be suspended for two weeks. Complainant stated that Respondent never called her back to work again and she did not receive any letter of termination.

Complainant stated that other male employees were allowed to talk on the phone all the time and they were not disciplined.³ Complainant stated that during her termination meeting Plumbing also stated that there was "not enough work and they had already taken out three other people" Complainant stated that Respondent called those three other people back but they did not call her back. Complainant stated that Wilson, Interior Mechanic and Lazoro, Interior Mechanic was called back to work.⁴

RESPONDENT'S POSITION

Respondent denied that Complainant was discriminated against. Instead, it contended that Complainant was not terminated on October 25, 2013, as she stated; rather, she was terminated on October 10, 2013.⁵ Complainant was terminated as part of a reduction in force. Respondent terminated eight other employees on the same day, all of which were male. Respondent terminated 41 employees that same month, as a result of the reduction-in-force. The last time that Complainant clocked in was on October 10, 2013.⁶

COMPLAINANT'S REBUTTAL

Complainant argued that she was not terminated as of October 10, 2013, as Respondent claims; rather, she was terminated on October 25, 2013. Respondent stated that Complainant was terminated, and it later contradicts that statement in the provided Personnel Action Request documentation, which states that Complainant resigned.

SUMMARY OF INVESTIGATIVE FINDINGS

Complainant's allegations that she was sexually harassed, subjected to different terms and conditions and discharged based on her sex and retaliation has been determined to be untimely for investigation. Documents provided by Respondent show that Complainant's last date of employment was on October 10, 2013. Complainant did not file this charge of discrimination until October 16, 2013. Therefore, the Commission does not have jurisdiction to investigate these allegations.

³ Complainant did not know the names of these male employees (See Interview Notes).

⁴ Complainant did not remember Wilson or Lazoro's last names (See Interview Notes).

⁵ Respondent provided a copy of a Personnel Action Request printout from its Attendance and Collection Details system, for the date range of October 01, 2013 through October 31, 2013. No attendance data exists for Complainant after October 10, 2013 (See Position Statement).

⁶ Respondent provided copies of Complainant's hours worked during the month of October, 2013 (See Position Statement).

RECOMMENDATION

Based on the documents provided, the Commission has no jurisdiction to investigate this complaint because the allegations are untimely.

EXHIBIT E

STATE OF FLORIDA
FLORIDA COMMISSION ON HUMAN RELATIONS
PETITION FOR RELIEF

Estella Magri
Petitioner

v.

FCHR No. 20150080

AMS Aviation
Respondent

Petitioner files this Petition for Relief from a (check the applicable one):

- ☒ Discriminatory Employment Practice
☐ Discriminatory Housing Practice
☐ Discriminatory Public Accommodation Practice

15 MAY 29 AM 11:32
FLORIDA COMMISSION ON HUMAN RELATIONS

1. PETITIONER'S CONTACT INFORMATION:

Name: Estella Magri
Address: 44 W. Flagler Street Suite 2200
City: Miami State: FL Zip Code: 33130
Telephone Number: (305) 416-5000 Fax Number: (305) 416-5005
E-mail address: jremer@rgpatorneys.com

2. RESPONDENT'S CONTACT INFORMATION:

Name: AMS Aviation c/o Mr. Andrew Oppenheimer
Address: 222 North LaSalle Street
City: Chicago, IL State: IL Zip Code: 60601
Telephone Number: () Fax Number: ()
E-mail address:

3. RESPONDENT'S REPRESENTATIVE (if any and if known):

Name: Andrew Oppenheimer, Esq.

Address: 222 North Cassille Street

City: Chicago State: IL Zip Code: 60601

Telephone Number: () _____ Fax Number: () _____

E-mail address: _____

4. WHEN AND HOW DID PETITIONER RECEIVE NOTICE OF THE COMMISSION'S DETERMINATION:

By mail around May 10, 2015

5. THE FOLLOWING IS A CONCISE STATEMENT OF THE ULTIMATE FACTS ALLEGED, INCLUDING THE SPECIFIC FACTS PETITIONER CONTENDS WARRANT REVERSAL OR MODIFICATION OF THE COMMISSION'S DETERMINATION:

① The Charge of Discrimination, sworn testimony, clearly states the Petitioner was fired on or about on October 25, 2013. Petitioner knows she spoke to her manager two weeks after she was told to go home because the company did not have hours available on October 10, 2013 and had this conversation with Plamen Ilonov, her manager, on October 24, 2013 or October 25, 2013 two weeks after. On October 24-25, 2013, Petitioner was clearly informed that she was fired and provided the Commission sworn testimony on this simple fact.

(2) Petitioner filed her Charge of Discrimination on October 16, 2014 prior to 365 days running between the termination and the filing.

(3) Petitioner will testify that the Respondent spoke to Petitioner through the manager two weeks after October 10, 2013 because the company discussed the termination for the first time with Petitioner weeks after October 10, 2013 on or about on Oct 25, 2013

④ The Commission has jurisdiction & Petitioner was discriminated against.

6. RESPONDENT HAS VIOLATED THE FOLLOWING FLORIDA STATUTE (Check One):

- ☒ Florida Civil Rights Act of 1992, as Amended, or
☐ Florida Fair Housing Act, as Amended

THE FOLLOWING IS AN EXPLANATION OF HOW THE ALLEGED FACTS RELATE TO THE SPECIFIC FLORIDA STATUTE:

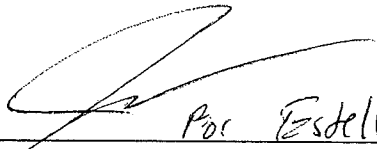
Petitioner was discriminated against and retaliated against in violation of the Florida Civil Rights Act and Title VII.

7. PETITIONER SEEKS THE FOLLOWING RELIEF:

The Commission should conduct an investigation and find jurisdiction exists.
The Commission should find Petitioner was discriminated against and fired in retaliation for her complaints.

*Note that 2 (provide #) additional pages have been attached.

WHEREFORE, Petitioner respectfully requests that the Florida Commission on Human Relations enter an Order prohibiting the discriminatory practice and granting affirmative relief, damages, attorneys' fees and other relief as may be just and equitable in this cause.


Petitioner's Signature

5-21-15
Date

15 MAY 29 AM 11:32

6. RESPONDENT HAS VIOLATED THE FOLLOWING FLORIDA STATUTE (Check One)

- ☒ Florida Civil Rights Act of 1992, as Amended, or
☐ Florida Fair Housing Act, as Amended

THE FOLLOWING IS AN EXPLANATION OF HOW THE ALLEGED FACTS RELATE TO THE SPECIFIC FLORIDA STATUTE:

Petitioner was discriminated against on the basis of race and color in the workplace. The respondent, [Name], [Address], [City], [State], [Zip] is the [Title] of [Company].

7. PETITIONER SEEKS THE FOLLOWING RELIEF:

The Commission should conduct an investigation and find jurisdiction exists. The Commission should find Petitioner was discriminated against and find in retaliation for her complaint.

*Note that 2 (provide #) additional pages have been attached.

WHEREFORE, Petitioner respectfully requests that the Florida Commission on Human Relations enter an Order prohibiting the discriminatory practice and granting affirmative relief, damages, attorneys' fees and other relief as may be just and equitable in this cause.

[Signature]
Petitioner's Signature

05-21-15
Date

FLORIDA COMMISSION ON HUMAN RELATIONS
15 MAY 29 AM 11:32

EXHIBIT F

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ESTELLA MAGRI,

Petitioner,

vs.

Case No. 15-3836

AMS AVIATION,

Respondent.

_____/

NOTICE OF HEARING BY VIDEO TELECONFERENCE

A hearing will be held in this case on September 24, 2015, at 9:00 a.m., or as soon thereafter as can be heard, by video teleconference at sites in Miami and Tallahassee, Florida. The Miami site will be at the Office of the Judges of Compensation Claims, The Ruth Bryan Owen Rohde Building, Video Teleconferencing Room 1, 401 Northwest Second Avenue, Suite N-918. The Tallahassee site will be at the Division of Administrative Hearings (check the reception area for hearing room assignment), the DeSoto Building, 1230 Apalachee Parkway. Witnesses, parties, representatives, and/or attorneys may report to either site. The Administrative Law Judge will be at the Tallahassee site. Continuances will be granted only by order of the Administrative Law Judge for good cause shown.

ISSUE: Whether Petitioner was discriminated against on the basis of her gender and retaliated against by Respondent, her former employer, for complaining about sexual harassment in violation of the Florida Civil Rights Act.

AUTHORITY: Chapter 120, Florida Statutes; and Florida Administrative Code Chapter 28-106, Parts I and II.

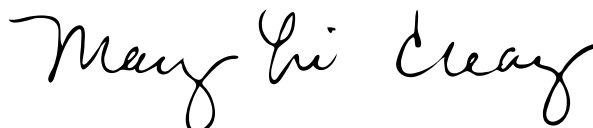
The parties shall arrange to have all witnesses and evidence present at the time and place of hearing. Subpoenas will be issued by the Administrative Law Judge upon request of the parties. All parties have the right to present oral argument and to cross-examine opposing witnesses. All parties have the right to be represented by counsel or other qualified representative, in accordance with Florida Administrative Code

Rule 28-106.106. Failure to appear at this hearing may be grounds for closure of the file without further proceedings.

On or before September 18, 2015, the parties shall provide the Administrative Law Judge with copies of all of the proposed exhibits. A notice of filing the proposed exhibits shall be filed electronically through the eALJ system and shall be served on all parties. The proposed exhibits, along with a copy of the electronically filed notice of filing, shall be submitted by mail or hand-delivery to the Division of Administrative Hearings and shall be served on all parties. The exhibits will not be considered until they are admitted into evidence during the final hearing.

The Florida Commission on Human Relations (FCHR) has announced its intention to resume ordering court reporting services for cases it refers to the Division of Administrative Hearings (DOAH). FCHR, however, will not provide transcripts for these hearings. If any party intends to order a transcript, the party should make its intention known as soon as possible, preferably no later than 48 hours prior to commencement of the hearing. If a party orders a copy of the transcript at its expense (or parties agree to share the costs of the transcript), the original certified copy (not a facsimile or e-filed copy) shall be filed at DOAH and become the official transcript. Fla. Admin. Code R. 28-106.214(1) and (2). The court reporter will be at the Miami site. Fla. Admin. Code R. 28-106.213(5) (b).

July 20, 2015



MARY LI CREASY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
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Compensation Claims
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(305) 377-5413 Ext. 101
(eServed)

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Judge's secretary no later than seven days prior to the hearing. The Judge's secretary may be contacted at (850) 488-9675, via 1-800-955-8771 (TDD), or 1-800-955-8770 (Voice) Florida Relay Service.

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