

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

11/29/04 5:00 pm

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

ACCULAB LABORATORIES, INC.

d/b/a/ ACCULAB

Defendant.

CIVIL ACTION NO.

Jury Trial Demanded
Injunctive Relief Sought

2:04-CV-364-FTM-33SPC

COMPLAINT OF INTERVENOR PLAINTIFF MICHELLE MAUS

COMES NOW the Intervenor Plaintiff, Michelle Maus, (hereinafter "Plaintiff" or "Maus"), by and through her attorney of record, and sues Defendant, Acculab Laboratories, Inc. d/b/a Acculab (hereinafter "Defendant" or "Acculab"), and alleges as follows:

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 and The Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes, to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Michelle Maus ("Ms. Maus") who was adversely affected by such practices. As stated with greater particularity in paragraph 9, Ms. Maus was subjected to sexual harassment by the brother and guest of Defendant's supervisor. The Defendant subsequently retaliated against Ms. Maus for complaining of the unlawful sexual harassment

by terminating her employment with Defendant. This complaint also states a claim against Acculab for violation of the Family Medical Leave Act of 1993, 29 U.S.C. § 2601, et seq., ("FMLA").

JURISDICTION AND VENUE

1. 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 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, 42 U.S.C. § 1981A. This court has supplemental jurisdiction over Plaintiff's state law claims brought pursuant to the Florida Civil Rights Act, Chapter 760, Florida Statutes.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Middle District of Florida, Ft. Myers Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII.

4. Intervenor Plaintiff Michelle Maus is a resident of the State of Florida residing in Charlotte County, Florida.

5. At all relevant times, Acculab Laboratories, Inc, d/b/a Acculab, a Nevada corporation, has continuously been doing business in the State of Florida and in the City of

Port Charlotte, and has continuously had at least 15 employees.

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

CONDITIONS PRECEDENT

7. All conditions precedent to bringing this action have been performed or have occurred.

COUNT I
(SEXUAL HARASSMENT IN VIOLATION OF TITLE VII)

8. This is a claim against Defendant Acculab for sexual harassment in violation of Title VII of the Civil Rights Act of 1964, as amended.

9. Since at least January 2003, Defendant Employer engaged in unlawful employment practices at its Port Charlotte, Florida, location in violation of Section 703(a) and Section 704(a) of Title VII, 42 U.S.C. §2000e-2(a) and §2000e-3(a). These practices included, but were not limited to the following:

- a. Permitting Ms. Maus, its employee, to be subjected to unwelcome physical and verbal conduct of a sexual nature, which was sufficiently severe and pervasive to constitute an intimidating, hostile, and offensive work environment.
- b. The older brother and guest of Defendant's South Regional Supervisor Letty Moreno, ("Ms. Moreno") who was Ms. Maus' immediate Supervisor, subjected Ms. Maus to repeated sexual

harassment.

- c. Ms. Maus repeatedly complained about the sexual harassment to Ms. Moreno, who failed to take any action to correct the harassment. Ms. Maus ultimately complained to Barbara Kupp, Defendant's Director of Operations. Defendant failed to take appropriate corrective action in response to Ms. Maus' complaints of the unlawful sexual harassment.
- d. Further, Defendant retaliated against Ms. Maus for complaining of the unlawful sexual harassment by terminating her employment.

10. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. Maus of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex and/or in retaliation for her opposition to unlawful employment practices.

11. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

12. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. Maus.

COUNT II
(UNLAWFUL RETALIATION IN VIOLATION OF TITLE VII)

13. This is a claim against Defendant Acculab for unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended.

14. Plaintiff Maus re-alleges paragraphs 9 a-d above.

15. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. Maus of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex and/or in retaliation for her opposition to unlawful employment practices.

16. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

17. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. Maus.

COUNT III
(SEXUAL HARASSMENT IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT, CHAPTER 760, FLORIDA STATUTES)

18. This is a claim against Defendant Acculab for sexual harassment in violation of The Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes.

19. At all relevant times, Defendant Acculab was an “employer” and Plaintiff Maus an “employee” within the meaning of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes. At all relevant times, Defendant employed fifteen (15) or more employees.

20. Plaintiff Maus re-alleges paragraphs 9 a-d above.

21. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. Maus of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex and/or in retaliation for her opposition to unlawful employment practices.

22. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

23. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. Maus.

COUNT IV
(UNLAWFUL RETALIATION IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT, CHAPTER 760, FLORIDA STATUTES)

24. This is a claim against Defendant Acculab for unlawful retaliation in violation of The Florida Civil Rights Act, Chapter 760, Florida Statutes.

25. At all relevant times, Defendant Acculab was an “employer” and Plaintiff Maus an “employee” within the meaning of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes. At all relevant times, Defendant employed fifteen (15) or more employees.

26. Plaintiff Maus re-alleges paragraphs 9 a-d above.

27. The effect of the conduct complained of in paragraph 9 a-d above has been to deprive Ms. Maus of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex and/or in retaliation for her opposition to unlawful

employment practices.

28. The unlawful employment practices complained of in paragraph 9 a-d above were intentional.

29. The unlawful employment practices complained of in paragraph 9 a-d above were done with malice or with reckless indifference to the federally protected rights of Ms. Maus.

PRAYER FOR RELIEF FOR COUNTS I-IV

Wherefore, with respect to Counts I-IV set forth above, Plaintiff Maus respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with Defendant, from engaging in sexual harassment or any other employment practice which discriminates on the basis of sex and/or opposition to an unlawful employment practice.

B. Order Defendant, to institute and carry out policies, practices, and programs which provide equal employment opportunities for females, and which eradicate the effects of its past unlawful employment practices.

C. Order Defendant to make whole Michelle Maus 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 its unlawful employment practices, including but not limited to reinstatement and/or front pay.

D. Order Defendant to make whole Michelle Maus by providing compensation

for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 9 a-d above, including out of pocket losses in amounts to be determined at trial.

E. Order Defendant to make whole Michelle Maus by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 9 a-d above, including emotional pain, suffering, inconvenience, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendant to pay Michelle Maus punitive damages for its malicious and reckless conduct described in paragraph 9 a-d above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award Michelle Maus all attorney's fees and costs incurred in this matter.

COUNT V
(VIOLATION OF THE FMLA)

30. This is a claim against Defendant for violation of the Family Medical Leave Act, 29 U.S.C. § 2617 and 28 U.S.C. § 1331.

31. Upon information and belief, Plaintiff was employed by Defendant for at least 12 months and worked for at least 1,250 hours during the 12 month period immediately preceding her FMLA leave request and in an office or work site at which 50 or more employees were employed or within 75 miles of that office or work site and Defendant qualifies as an employer as defined by 29 U.S.C. § 2611 (4)(A).

32. While employed by Defendant Acculab, Plaintiff requested and was eligible

for FMLA leave due to a “serious health condition,” specifically, Multiple Sclerosis.

33. The Employer Defendant violated the FMLA in that it failed to grant Plaintiff leave under the FMLA.

34. The defendant interfered with the Plaintiff’s substantive rights under the FMLA through its response to the Plaintiff’s FMLA leave requests. This conduct violates 29 U.S.C. §2615(a)(1).

35. The Plaintiff suffered an adverse employment action; namely, termination of employment.

36. There is a causal connection between the protected activity in which the Plaintiff engaged and the adverse employment action suffered.

37. The defendant’s termination of the Plaintiff’s employment violates 29 U.S.C. §2615(a)(1) and (2).

38. As a direct result of the Defendant’s unlawful conduct, as set forth above, the Plaintiff has suffered, and continues to suffer, the loss of income and the loss of the value of fringe benefits she received while in the defendant’s employ.

WHEREFORE, the Plaintiff prays that the Court enter judgment against the Defendant for the following damages:

- A. Lost wages, past and future;
- B. The value of his lost fringe benefits, past and future;
- C. Prejudgment and post-judgment interest;
- D. That the Court award the Plaintiff an additional amount as liquidated

damages equal to that awarded pursuant to Paragraph A-C, above;

E. That the Court award the Plaintiff the costs of this action, including reasonable attorney's fees; and

F. That the Court award any other relief it deems just and proper.

JURY TRIAL DEMAND

Intervenor Plaintiff requests a jury trial on all questions of fact raised by the complaint.

Respectfully Submitted,

By: 

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