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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
	)	
Plaintiff,	)	Case No. 05 C 4995
	)	
GWENDOLYN FARLEY,	)	Judge Aspen
	)	
Intervening Plaintiff,	)	Magistrate Judge Ashman
	)	
ANITA EVANS,	)	
	)	
Intervening Plaintiff,	)	
	)	
v.	)	
	)	
H AND M INTERNATIONAL TRANSPORTATION, INC.,	)	
	)	
Defendant.	)	

**FILED**  
J.N  
JAN 27 2006  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

**COMPLAINT OF INTERVENING PLAINTIFF ANITA EVANS**

Intervening Plaintiff, ANITA EVANS (Evans), states as follows:

**INTRODUCTION**

**Jurisdiction and Venue**

1. This is an action to redress the deprivation of Evans' rights, secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. In addition, Plaintiff seeks relief pursuant to pendant state claims.
2. This Court has jurisdiction of this action under 42 U.S.C. 2000e-5(f)(3). The court also has jurisdiction under 28 U.S.C. § 1367.
3. Venue is proper pursuant to 28 U.S.C. § 1391(a).

### Parties

4. Evans is a female citizen of the United States and Illinois. At all times relevant herein, she has resided in the district of this Court. Evans has been an employee of the Defendant H & M INTERNATIONAL TRANSPORTATION, INC. ("H & M") from on or about May 8, 2002 through the present.

5. H & M is a New Jersey Corporation, doing business in the State of Illinois; with its principal place of business at 301 West Lake Street, Northlake, Illinois. H & M is in the business of providing transportation of goods for various manufacturers.

### ADMINISTRATIVE PROCEDURE

6. Evans filed charges of discrimination with the Equal Employment Opportunity Commission (EEOC) against H & M in 2004, consistent with Title VII. A copy of the relevant charge of discrimination is attached hereto as Exhibit A.

7. On or about June 9, 2004, Evans and another employee of H & M filed a police action report with the Northlake Police Department. A copy of the report is attached hereto as Group Exhibit B. This report relates to the conduct of one of H & M's managers/supervisors, James Nolan (Nolan).

8. On or about March 15, 2005, the EEOC forwarded correspondence to Evans stating in relevant part as follows:

"...evidence obtained in the investigation establishes reasonable cause to believe that Respondent (H & M) subjected a class of Black female employees, including Charging Party, to sexual harassment based on their sex, female, and race, Black, and retaliated against them and discriminated against them because of their sex, female, by discharging them and/or subjecting them to different terms and conditions of employment,

in violation of Title VII.

9. A copy of the March 15, 2005 letter is attached hereto as Group Exhibit C.

### **FACTUAL BACKGROUND**

10. At all times relevant hereto, Evans performed her employment duties in a satisfactory manner.

11. Shortly after she began to work at H & M, and continuing throughout her employment with H & M, Plaintiff was sexually harassed and sexually discriminated against by Nolan. At all relevant times, Nolan's conduct was condoned by H & M as was the harassing work environment that resulted from his conduct.

12. The unlawful discrimination and harassment included , but was not limited to the following:

- a. Nolan continually asking Evans to go out on a date with him;
- b. Nolan continually sticking his finger in Evans' ears;
- c. Nolan continually attempting to massage Evans' shoulders;
- d. Nolan massaging Evans' shoulders without her consent;
- e. Nolan continually telling Evans that she would be "his;"
- f. Nolan continually attempting to massage Evans back;
- g. Nolan continually massaging Evans back without her consent;
- h. Nolan continually rubbing various body parts against Evans body;
- i. Nolan putting things down the back of Evans, such as snow;
- j. Nolan chasing Evans out of the H & M office building;
- k. Nolan continually running his finger up and down Evans' arms;
- l. Nolan continually phoning Evans at work and blowing into the phone and making sounds;
- m. Nolan continually licking his lips while looking at Evans;
- n. Nolan continually making sexual comments such as "I will be your chocolate candy licker;"
- o. Nolan continually looking down Evans' shirt and making comments about melons;
- p. Nolan continually attempting to massage Evans' shoulders;
- q. Nolan massaging Evans' shoulders without her consent;

- r. Nolan continually stating that he hated women but that there was "something" about Evans that made him like her;
- s. Nolan stating that woman are only good for what they could do sexually for him; and
- t. Nolan continually displaying a mural of black women in suggestive positions.

13. The acts alleged above were unwelcome and directed to Plaintiff because she is female, and the acts created a hostile work environment.

14. Nolan was in a managerial/supervisory role at such a senior level that complaining to anyone would be an act of futility. However, did Evans complain to relevant H & M supervisory and management level personnel about the conduct of Nolan, and/or H & M supervisory and management level personnel had knowledge of Nolan's conduct, but did nothing to remedy the situation. As a result, the acts of sexual harassment and sexual discrimination continued throughout Plaintiff's employment with H & M.

15. In addition to Evans being female, she is also black. The sexual harassment and sexual discrimination was directed only to black women.

16. Evans experienced retaliation because she complained of the unlawful behavior cited above. The unlawful retaliation took four (4) forms. First, Nolan ensured that Evans' paychecks did not include all the hours she worked, and therefore numerous paychecks were "short." Second, Nolan made sure the Plaintiff was not given overtime and as a result, could not make the money that other employees were making. Third, Nolan made sure that Evans did not receive a raise in the years 2003, 2004 and 2005. Fourth, Nolan continually threatened to fire Evans.

17. H & M supervisory and management level personnel had knowledge of the

unlawful retaliation at all relevant times, but did nothing.

**COUNT I**  
**Federal Claim - Sex Discrimination**

18. Intervening Plaintiff incorporates paragraphs 1- 17 of the Introduction as though fully set forth in this Count I.

WHEREFORE, Intervening Plaintiff, ANITA EVANS, prays that this court enter judgment in her favor on COUNT I and against Defendant, H & M as follows:

- a. That a finding be entered that Defendant violated Title VII by sexually discriminating against Intervening Plaintiff;
- b. That Intervening Plaintiff be awarded the maximum monetary damages available;
- c. That Intervening Plaintiff be awarded all wages, benefits and other compensation due to her;
- d. That Intervening Plaintiff be awarded punitive damages;
- e. That Intervening Plaintiff be awarded reasonable attorney's fees and costs; and
- f. That Intervening Plaintiff be awarded such other relief as this court deems proper.

**COUNT II**  
**Federal Claim - Hostile Work Environment**

19. Intervening Plaintiff incorporates paragraphs 1-18 of Count I as though fully set forth in this Count II.

20. H & M by and through the management and supervisory personnel of the company permitted the unlawful conduct to be carried on in such a fragrant manner as to create an unreasonable hostile work environment. H & M condoned this work environment to which Evans was subjected.

WHEREFORE, Intervening Plaintiff, ANITA EVANS, prays that this court enter judgment in her favor on COUNT I and against Defendant, H & M as follows:

- a. That a finding be entered that Defendant violated Title VII by subjecting

- Intervening Plaintiff to a hostile work environment;
- b. That Intervening Plaintiff be awarded the maximum monetary damages available;
- c. That Intervening Plaintiff be awarded all wages, benefits and other compensation due to her;
- d. That Intervening Plaintiff be awarded punitive damages;
- e. That Intervening Plaintiff be awarded reasonable attorney's fees and costs; and
- f. That Intervening Plaintiff be awarded such other relief as this court deems proper.

### **COUNT III**

#### **Federal Claim - Race Discrimination**

19. Intervening Plaintiff repeats and realleges paragraphs 1-18 of Count I as though fully set forth in this Count IV.

20. The defendant treated the black women in a different manner than caucasian women as black women were the only women subject to such offensive and constant harassment.

21. Evans is black.

WHEREFORE, Intervening Plaintiff, ANITA EVANS, prays that this court enter judgment in her favor on COUNT III and against Defendant , H & M, as follows:

- a. That a finding be entered that Defendant violated Title VII by discriminating against Intervening Plaintiff due to her race;
- b. That Intervening Plaintiff be awarded the maximum monetary damages available;
- c. That Intervening Plaintiff be awarded all wages, benefits and other compensation due to her;
- d. That Intervening Plaintiff be awarded punitive damages;
- e. That Intervening Plaintiff be awarded reasonable attorney's fees and costs; and
- f. That Intervening Plaintiff be awarded such other relief as this court deems proper.

### **COUNT IV**

#### **Federal Claim - Retaliation**

19. Intervening Plaintiff repeats and realleges paragraphs 1-18 of Count I as though

fully set forth in this Count VI.

20. H & M, acting through Nolan, retaliated against Evans for complaining about sexual harassment, sexual discrimination and racial discrimination by giving her paychecks that did not equal the amount of hours she actually worked. In addition, H & M, acting through Nolan would not give Evans over-time work that other employees were receiving. Further, H & M acting through Nolan, would not give Evans raises in 2003, 2004 or 2005. Finally, Nolan continually threatened to fire Evans.

21 At all relevant times herein, H & M ratified and/or approved of Nolan's conduct.

22. At all relevant times herein, Nolan acted as the alter ego of H & M.

WHEREFORE, Intervening Plaintiff, ANITA EVANS, prays that this court enter judgment in her favor on COUNT IV and against Defendant H & M, as follows:

- a. That a finding be entered that Defendant violated Title VII by retaliating against Plaintiff;
- b. That Plaintiff be awarded the maximum monetary damages available;
- c. That Plaintiff be awarded all wages, benefits and other compensation due to her;
- d. That Plaintiff be awarded punitive damages;
- e. That Plaintiff be awarded reasonable attorney's fees and costs; and
- f. That Plaintiff be awarded such other relief as this court deems proper.

**COUNT V**  
**State Claim - Assault and Battery**

19. Intervening Plaintiff repeats and realleges paragraphs 1-18 of Count I as though fully set forth in this Count V.

20. By reason of the assault and battery by Nolan, Evans was injured in that she was reasonably afraid of bodily harm, and was touched in an offensive manner by a person she did not give permission to touch her in any manner.

21. Nolan was at all times relevant hereto, the agent of H & M and was using his authority or apparent authority as Evans' supervisor.

WHEREFORE, Intervening Plaintiff, ANITA EVANS prays that this court enters judgment in her favor on COUNT V and against Defendant, H & M, as follows:

- a. That a finding be entered that H & M injured Intervening Plaintiff by an assault and battery;
- b. That Intervening Plaintiff be awarded the maximum monetary damages available;
- c. That Intervening Plaintiff be awarded all compensation due to her;
- d. That Intervening Plaintiff be awarded punitive damages; and
- e. That Intervening Plaintiff be awarded such other relief as this court deems proper.

#### **COUNT VI**

#### **State Claim - Intentional and/or Reckless Infliction of Emotional Distress**

19. Intervening Plaintiff repeats and realleges paragraphs 1-18 of Count I as though fully set forth in this Count VI.

20. Nolan knew that there was a high probability that his conduct would cause severe emotional distress to Evans and acted intentionally, recklessly, and or willfully and wantonly, and with reckless disregard as to the effect of his conduct.

21. Nolan's conduct did in fact cause Evans severe emotional pain and suffering, distress, anguish and mental trauma.

22. At all relevant times herein, Nolan was an employee of H & M and acted within the scope of his employment.

23. H & M ratified and/or approved of Nolan's conduct.

24. At all relevant times herein, Nolan acted as the alter ego of H & M.

WHEREFORE, Intervening Plaintiff, ANITA EVANS, prays that this court enter judgment in her favor on Count VI and against Defendant H & M, as follows:



- a. That a finding be entered that Nolan injured Intervening Plaintiff by intentional and/or reckless and/or willful and/or wanton infliction of emotional distress;
- b. That Intervening Plaintiff be awarded the maximum monetary damages available;
- c. That Intervening Plaintiff be awarded all compensation due to her;
- d. That Intervening Plaintiff be awarded punitive damages;
- e. That Intervening Plaintiff be awarded reasonable attorney's fees and costs; and
- f. That Intervening Plaintiff be awarded such other relief as this court deems proper.

Respectfully Submitted,

ANITA EVANS

By: 

By one of her attorneys

ROSS J. PETERS

The Law Offices of Ross J. Peters, Ltd.

33 North County Street, Ste. 402

Waukegan, Illinois 60085

Telephone: 847-625-1854

Facsimile: 847-625-0282

Attorney Number: 03126326

# 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):

FEPA  
 EEOC

**AMENDED**  
**210-2004-05059**

## Illinois Department Of Human Rights

and EEOC

*State or local Agency, if any*

Name (Indicate Mr., Ms., Mrs.) **Ms. Anita D. Evans** Home Phone No. (Incl Area Code) **(773) 892-0612** Date of Birth

Street Address **8130 South Evans, Chicago, IL 60619** City, State and ZIP Code

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 **H & M INTERNATIONAL TRANSPORTATION** No. Employees, Members **15 - 100** Phone No. (Include Area Code) **(708) 216-0007**

Street Address **301 W. Lake Street, Northlake, IL 60164** City, State and ZIP Code

Name No. Employees, Members Phone No. (Include Area Code)

Street Address City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es))

RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  
 RETALIATION  AGE  DISABILITY  OTHER (Specify below:)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest **06-01-2002** Latest **04-30-2004**

CONTINUING ACTION

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

I was hired by Respondent May 8, 2002 and currently hold the position of Line Up Clerk. Beginning shortly after I began my employment on or around June 1, 2002 and on an ongoing basis I have been subjected to sexual harassment by my supervisor in the form of sexual comments, requests for sex and touching incidents. My supervisor sexually harasses Black females. I have reported these incidents to numerous management individuals but no action was taken. After reporting these incidents, I have been retaliated against by the alleged sexual harasser by his not approving my hours worked which resulted in not getting paid and threatening me with termination.

I believe I have been discriminated against based on my sex, female in violation of Title VII of the Civil Rights Act of 1964, as amended and retaliated against.

RECEIVED EEOC

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

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)

12/21/04 *Anita D. Evans*  
 Date Charging Party Signature

# NORTHLAKE POLICE DEPARTMENT POLICE ACTION REPORT

Address: <u>301 W. LAKE ST</u>	Date: <u>09 JUN 2004</u>	Time Received: <u>1343 hrs</u>	Incident Number: <u>04-12528</u>
Business Name: <u>H+M International</u>			

## INCIDENT REPORTED

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>1. Assist Fire</li> <li>2. Alarm: Burglary/Fire/Other</li> <li>3. Abandoned Auto</li> <li>4. Assist Other Agency</li> <li>5. Animal: Stray/Barking/Other</li> <li>6. Disturbance: Domestic/Drunk/Noise</li> <li>7. Curfew Violation</li> <li>8. 911: Misdial/Hangup</li> </ul> | <ul style="list-style-type: none"> <li>9. Lost D. L. / License Plate</li> <li>10. Lost / Found Property</li> <li>11. Notification</li> <li>12. Other Public</li> <li>13. Other Traffic / Local Ordinance</li> <li>14. Premise Check</li> <li>15. Suspicious Auto / Person / Circumstance</li> <li>16. Motorist Assist</li> <li>17. Civil Matter</li> </ul> |
|---|--|

## DISPOSITION

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>A. No Problem Found</li> <li>B. Unfounded</li> <li>C. Agency _____ Unit # _____</li> <li><u>D.</u> Other Police Service</li> <li>E. Area Secure</li> </ul> | <ul style="list-style-type: none"> <li>F. Advised To Seek Legal Assistance</li> <li>G. No Police Service</li> <li>H. Referred To: _____</li> <li>I. Card Issued: Yes ___ No ___</li> <li>D. L. / Plate # _____</li> </ul> |
|---|---|

C - COMPLAINANT    E - EMPLOYEE    J - JUVENILE    O - OWNER    OT - OTHER    P - PARENT  
 R - RESIDENT    SUB - SUBJECT    K - KEYHOLDER    SUS - SUSPECT    W - WITNESS

CODE	NAME: (Last, First, Middle)	Sex/Race	D.O.B.	D.L. #:
C	EVANS, ANITA D	F/B	11 APR 51	E15200454704
Address		City	Zip	Phone #
11312 S. EWING AVE		CHICAGO	60617	(773) 892 0612
CODE	NAME: (Last, First, Middle)	Sex/Race	D.O.B.	D.L. #:
C	FARLEY, GWENDOLYN	F/B	[REDACTED]	[REDACTED]
Address		City	Zip	Phone #
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
CODE	NAME: (Last, First, Middle)	Sex/Race	D.O.B.	D.L. #:
SUB	NOLAN, JAMES	M/W		
Address		City	Zip	Phone #
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
CODE	NAME: (Last, First, Middle)	Sex/Race	D.O.B.	D.L. #:
Address		City	Zip	Phone #

Narrative: ON 09 JUNE 2004 at 1343hrs Anita Evans and Gwendolyn Farley came into the Northlake Police Department to file a report against their ex-boss, James Nolan. Anita and Gwendolyn told me that they filed sexual harassment charges against James and he was fired approximately 2 weeks ago because

NO. 04-12528

Reporting Officer	Star Number	Sergeant / Watch Commander	Star Number
SGT K. Byars	105	SGT K. Byars	108

of the charges. They stated that they are afraid of James because he has made statements that if he lost his job he was going to go on a shooting Rampage. They were informed that he has ASSAULT weapons and they are afraid that he might harm them or their family. They wanted us to be aware of the situation and keep an extra watch out for him in the area of 301 W. Lake St. H & M International. James is described as [REDACTED] [REDACTED] [REDACTED] [REDACTED]. James also has a [REDACTED] [REDACTED] [REDACTED] [REDACTED]. James drives a [REDACTED] [REDACTED] only description. Anita and Gwendolyn stated that they needed a report as a matter of record and they will file a Restraining Order against James. I gave both of them the case number to this report and they left the station. The information was passed on to other members of our department.

NOTE: I was unable to Searched James Nollan's information.



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Chicago District Office**

500 West Madison St., Suite 2800  
Chicago, IL 60661  
PH: (312) 353-2713  
TDD: (312) 353-2421  
ENFORCEMENT FAX: (312) 886-1168  
LEGAL FAX: (312) 353-8555

**EEOC Charge Number 210-2004-05059**

Anita D. Evans  
8130 South Evans  
Chicago, Illinois 60619

Charging Party

vs.

H & M International Transportation, Inc.  
75 County Road  
Jersey City, New Jersey 07307

Respondent

&

H & M International Transportation, Inc.  
301 West Lake Street  
Northlake, Illinois 60164

Respondent

**AMENDED DETERMINATION**

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and all requirements for coverage have been met.

The Charging Party alleges that she was subjected sexual harassment by the Respondent and that she was retaliated against for opposing the sexual harassment by being terminated. In addition, Charging Party alleges that Respondent subjected a class of female employees, to include Charging Party, to sexual harassment because of their race, Black, in violation of Title VII.

I have determined that the evidence obtained in the investigation establishes reasonable cause to believe that Respondent subjected a class of Black female employees, including Charging Party, to sexual harassment based on their sex, female, and race, Black, and retaliated against them and discriminated against them because of their sex, female, by discharging them and/or subjecting them to different terms and conditions of employment, in violation of Title VII

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time, by proposing terms for a conciliation agreement; that proposal should be provided to the Commission representative within 14 days of the date of this determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventive relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of victims in positions they would have held but for the discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process, or the conciliation terms they would like to propose, we encourage the Respondent to contact the assigned Commission representative. Should there be no response from the Respondent in 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

On Behalf of the Commission

Date

3-15-05

John P. Rowe

John P. Rowe  
District Director

GROUP EXHIBIT C

**CERTIFICATE OF SERVICE**

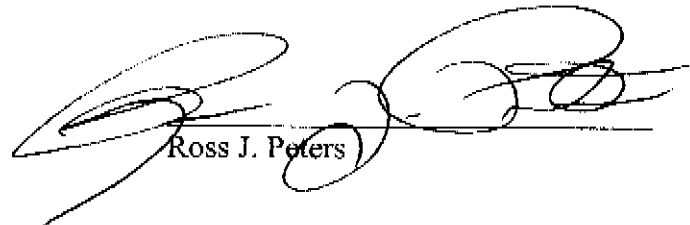
Ross J. Peters, an attorney, states that he caused a copy of the foregoing Defendant's Complaint of Intervening Plaintiff Anita Evans to be served upon the following attorneys of record:

Gordon G. Waldron  
U.S. Equal Employment Opportunity Commission  
Chicago District Office  
500 W. Madison Street  
Ste. 2800  
Chicago, Illinois 60661

Lawrence W. Byrne  
Pedersen & Houpt, P.C.  
161 N. Clark Street  
Suite 3100  
Chicago, Illinois 60601

Paul J. Krause  
Littler Mendelson, P.C.  
200 North LaSalle Street  
Ste. 290  
Chicago, Illinois 60601

by faxing a copy to each and enclosing a true and correct copy thereof in a duly-addressed, postage prepaid envelope, and depositing same in the United States Mail from 33 North County Street, Waukegan, Illinois 60085 before 5:00 p.m., this 27 day of January, 2006.

  
Ross J. Peters