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CENTRAL DISTRICT COURT
DISTRICT OF NEVADA

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

8 **IN THE UNITED STATES**
9 **FOR THE DISTRICT OF NEVADA**

CV-S-03-1229-LRH-PAL

10
11 EQUAL EMPLOYMENT OPPORTUNITY
12 COMMISSION,

Plaintiff,

v.

14 EXAMINATION MANAGEMENT
15 SERVICES, INC., A Nevada
16 Corporation d/b/a EMSI
Defendant(s).

COMPLAINT
AGE DISCRIMINATION
AND DEMAND FOR
JURY TRIAL

ORIGINAL

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18 NATURE OF THE ACTION

19 This is an action under the Age Discrimination in Employment Act to correct
20 unlawful employment practices on the basis of age and to provide appropriate relief
21 to Constance Damian. The Commission alleges that Examination Management
22 Services, Inc., d/b/a EMSI, hereafter "the Defendant" subjected Ms. Damian to a
23 hostile work environment because of her age, and terminated because of her age in
24 January 1999.

25 JURISDICTION AND VENUE

26 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
27 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section

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1 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C.
2 § 626(b) (the "ADEA"), which incorporates by reference Sections 16(c) and 17 of
3 the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§216(c)
4 and 217.

5 2. The employment practices alleged to be unlawful were committed within
6 the jurisdiction of the United States District Court of the District of Nevada.

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8 PARTIES

9 3. Plaintiff, the Equal Employment Opportunity Commission (the
10 "Commission"), is the agency of the United States of America charged with the
11 administration, interpretation and enforcement of the ADEA and is expressly
12 authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as
13 amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by
14 Public Law 98-532 (1984), 98 Stat. 2705.

15 4. At all relevant times, Defendant has continuously been doing business in
16 the State of Nevada and the City of Las Vegas, and has continuously had at least 20
17 employees.

18 5. At all relevant times, Defendant has continuously been an employer
19 engaged in an industry affecting commerce within the meaning of Sections 11(b), (g)
20 and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

21 CONCILIATION

22 6. Prior to institution of this lawsuit, the Commission's representatives
23 attempted to eliminate the unlawful employment practices alleged below and to effect
24 voluntary compliance with the ADEA through informal methods of conciliation,
25 conference and persuasion within the meaning of Section 7(b) of the ADEA, 29
26 U.S.C. § 626(b).
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2 STATEMENT OF CLAIMS

3 7. Since at least 1999 the Defendant engaged in unlawful employment
4 practices in its Las Vegas facility, in violation of 16(c) of the ADEA, 29 U.S.C. §
5 626(b). These practices include engaging in harassment of Damien because of her
6 age and terminating her because of her age.

7 8. The effect of the practices complained of in paragraph (7) above has been
8 to deprive Constance Damian of equal employment opportunities and otherwise
9 adversely affect her status as an employee, because of her age.

10 9. The unlawful employment practices complained of in paragraphs above
11 were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

12 PRAYER FOR RELIEF

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14 Wherefore, the Commission respectfully requests that this Court:

15 A. Grant a permanent injunction enjoining Defendant, its officers,
16 successors, assigns and all persons in active concert or participation with it, from
17 engaging in age-based harassment and any other employment practice which
18 discriminates on the basis of age against individuals 40 years of age and older.

19 B. Order Defendant to institute and carry out policies, practices and
20 programs which provide equal employment opportunities for individuals 40 years of
21 age and older, and which eradicate the effects of its past and present unlawful
22 employment practices.

23 C. Grant a judgment requiring Defendant to pay appropriate back wages in
24 an amount to be determined at trial, an equal sum as liquidated damages, and
25 prejudgment interest to Constance Damian.

26 D. Order Defendant to make whole Constance Damian, by providing the
27 affirmative relief necessary to eradicate the effects of its unlawful practices, including
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but not limited to reinstatement.

E. Order Defendant to post and keep posted the notices required by Section 8 of the ADEA, 29 U.S.C. § 626(a).

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

G. Award the Commission its costs of this action.

JURY TRIAL DEMAND

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

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September 29, 2003

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