

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MARIA RIVERA

Plaintiff,

**COMPLAINT**  
Civil Case No.:

-against-

1 : 11 - CV - 0125 ( DNH / RFT )

ENVIRONMENTAL SERVICE  
SYSTEMS, LLC, UPPER HUDSON  
PLANNED PARENTHOOD, INC.,  
and MIKE CORNELL, as an aider and  
abettor.

Defendants.

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Maria Rivera (hereinafter referred to as "Plaintiff"), by and through her attorneys, Smith Hoke, PLLC, as and for her Complaint against Environmental Service Systems, LLC (hereinafter individually referred to as "ESS"), Upper Hudson Planned Parenthood, Inc. (hereinafter individually referred to as "UHPP") and Mike Cornell, as an aider and abettor (hereinafter with ESS and UHPP collectively referred to as "Defendants") alleges as follows:

**PARTIES**

1. Plaintiff is an individual residing in Watervliet, Albany County, New York and a former joint employee of ESS and UHPP.
2. ESS is a domestic limited liability company with a principal place of business located at 141 Broadway, Rensselaer, New York 12144.
3. UHPP is a domestic corporation with a principal place of business located at 259 Lark Street, Albany, New York 12210.
4. Mike Cornell was at all relevant times UHPP's Facilities Manager.

**JURISDICTIONAL STATEMENT**

5. The Court has jurisdiction of this matter pursuant to the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*
6. Plaintiff previously dual filed a Complaint with the Equal Employment Opportunity Commission (EEOC) and the New York State Division of Human Rights.

7. Plaintiff received a dismissal from the New York State Division of Human Rights for administrative convenience after that agency determined that probable cause existed to believe that the Defendants violated New York State Human Rights Law.
8. Thereafter, Plaintiff received a "Right to Sue" letter from the EEOC, a copy of which is attached hereto as Exhibit "A."
9. The Court has supplemental jurisdiction over Plaintiff's New York State claims pursuant to 28 U.S.C. §1367.

#### **VENUE**

10. The venue for this action is the Northern District of New York because the Plaintiff resides in the District, the Defendants either reside or have a principal place of business in the District and all of the matters alleged herein occurred within the District.

#### **JURY DEMAND**

11. The Plaintiff demands a jury trial on all issues triable by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### **STATEMENT OF FACTS**

12. The Plaintiff was hired by ESS (or a predecessor of ESS) in or about July 3, 2002 as a part-time cleaning supervisor.
13. In that capacity, her primary responsibilities were to oversee cleaners performing services with contract vendees throughout the Capital District.
14. During her tenure, the Plaintiff became a full-time supervisor, and by the date of her termination, was responsible for overseeing the performance of cleaners at approximately twenty separate buildings.
15. In July 2008, the Plaintiff was assigned to supervise services being provided to UHPP at three separate locations within the Capital District.
16. In that capacity, the Plaintiff's performance was directed by both her Operations Manager at ESS, Luis Tirado and UHPP's Facilities Manager, Mike Cornell.
17. Mike Cornell directed the manner in which the Plaintiff performed her job, and

contacted her to direct more attention to cleaning certain locations within UHPP's facilities.

18. Additionally, Mr. Cornell would direct the Plaintiff to maintain certain staffing levels within UHPP's buildings consistent with the needs of UHPP, and also played an important part in selecting the individuals who would work in UHPP's facilities.
19. The Plaintiff assiduously responded to the directions of Cornell, while reporting her interactions to her supervisors at ESS, Luis Tirado and General Manager, Floyd Dennis.
20. At no time prior to February 15, 2010 was the Plaintiff advised by anyone at ESS not to report or be directed by Mike Cornell or others at UHPP.
21. During Plaintiff's employment she was never given a negative performance evaluation and was consistently awarded merit increases in her pay so that her salary increased to an hourly rate of \$15.50 per hour by the date of her termination.
22. The Plaintiff's last merit pay increase occurred in December 2009 after she returned from an FMLA qualified absence.
23. At no time was Plaintiff ever informed that her performance was in any way deficient. To the contrary, Plaintiff was frequently commended for her work.
24. On February 15, 2010, Mike Cornell telephoned the Plaintiff on three separate occasions and verbally solicited her to go on a "date."
25. Having previously had many conversations with Mike Cornell in the course of her employment, the Plaintiff immediately became aware that Mr. Cornell was impaired at the time of the call.
26. Based upon his tone and demeanor, in addition to his persistence, the Plaintiff became concerned and uncomfortable.
27. The Plaintiff immediately contacted her ESS's Operations Manager, Luis Tirado, as well as, General Manager, Floyd Dennis. She was able to speak with Luis Tirado who advised the Plaintiff to avoid any further contact with Mike Cornell until the matter could be sorted out.

28. The Plaintiff was embarrassed and humiliated by the incident.
29. The next day the Plaintiff met with General Manager Floyd Dennis, who listened to the Plaintiff's account of the events surrounding her last interaction with Mike Cornell, after which he belittled the Plaintiff by stating that she was a pretty girl and should appreciate Mr. Cornell's solicitations.
30. That notwithstanding, the Plaintiff sought an accommodation to avoid contact with Mr. Cornell in the future.
31. Floyd Dennis consented, and informed the Plaintiff that Luis Tirado would have all future direct contact with Mike Cornell.
32. Floyd Dennis also indicated that he would speak with his counterparts at UHPP and inform them of the arrangement after conducting an investigation into the Plaintiff's allegations.
33. On or about March 17, 2010, the Plaintiff was performing as the cleaning supervisor overseeing cleaners operating in multiple locations including the UHPP facilities.
34. On that date, the Plaintiff was approached by UHPP Vice President, Dr. Christine Pluviose who provided the Plaintiff with instructions regarding purported deficiencies in ESS's cleaning service.
35. During that meeting, Dr. Pluviose instructed the Plaintiff to confer further with Mike Cornell regarding the deficiencies.
36. The Plaintiff informed Dr. Pluviose, pursuant to her instructions from Floyd Dennis, that she was not to directly communicate with Mike Cornell and that Mr. Cornell should contact Luis Tirado to discuss any concerns.
37. At some point between March 17, 2010 and March 18, 2010, Mike Cornell had a conversation with Floyd Dennis concerning the Plaintiff's February 15<sup>th</sup> allegations of harassment.
38. Prior to this date, and despite Floyd Dennis' promise to the Plaintiff that he would address her concerns with Mike Cornell and UHPP, he did nothing to remediate or even document the situation. Mr. Cornell first became aware of the Plaintiff's

allegations on either March 17<sup>th</sup> or March 18<sup>th</sup>.

39. After Mr. Dennis informed Mike Cornell of the Plaintiff's allegations, he summarily denied ever making the harassing phone calls to the Plaintiff.
40. Thereafter, on March 18, 2010, after consulting with Floyd Dennis, Mike Cornell changed all of the electronic entry codes at the UHPP facilities to exclude the Plaintiff from gaining entry.
41. Following that conversation, the Plaintiff was summoned by Floyd Dennis who informed her that she was being suspended for having interactions with Dr. Pluviose the evening before that had not been authorized.
42. During the meeting, the issue of the Plaintiff's previous complaint towards Mike Cornell was raised and Floyd Dennis indicated that the Plaintiff had brought this upon herself. Mr. Dennis also made clear that he was not prepared to jeopardize the UHPP contract over the Plaintiff's complaint of harassment.
43. Floyd Dennis further indicated that he did not believe the Plaintiff and insisted that the Plaintiff execute a disciplinary statement agreeing that she had made defamatory statements towards Mike Cornell.
44. The Plaintiff refused to execute the document and was told to surrender her keys.
45. On that same day, the Plaintiff attempted to contact Human Resources to report Mr. Dennis' retaliatory actions.
46. The Monday following March 18, 2010, the Plaintiff again attempted to contact ESS's Human Resources officer to determine the status of her complaint. Mr. Dennis intercepted the Plaintiff's complaint to Human Resources and informed the Plaintiff that she had been terminated.
47. Subsequent to the Plaintiff's termination, when she attempted to collect unemployment insurance benefits, ESS speciously asserted that the Plaintiff was terminated for misconduct.
48. Specious statements made by representatives of ESS at the Plaintiff's Unemployment Hearing were later contradicted and retracted by Luis Tirado. As a result of these

statements, the Plaintiff was denied an opportunity to collect unemployment insurance benefits causing extreme emotional and psychological stress.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**SEXUAL HARASSMENT UNDER TITLE VII**

49. Plaintiff repeats and realleges each and every allegation set forth in Paragraph "1" through "48" as if fully set forth herein.
50. On February 15, 2010, the Plaintiff was subjected to unwanted sexual advances on three separate occasions by Michael Cornell after informing him that she was not interested in any sort of relationship.
51. Mike Cornell was operating as Plaintiff's supervisor during the relevant time frame.
52. The Plaintiff sought Floyd Dennis' assistance in remediating the harassment.
53. Floyd Dennis took no action to remediate the harassment despite promising to do so.
54. During the course of the Plaintiff's employment, Plaintiff was exposed to an objectively and subjectively hostile work environment consisting of severe sexually harassing conduct in violation of the Civil Rights Act of 1964, as amended.
55. As a result of the Defendants' conduct, the Plaintiff has sustained damages in excess of the amount necessary to sustain diversity jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**SEXUAL HARASSMENT UNDER NEW YORK STATE**  
**HUMAN RIGHTS LAW**

56. Plaintiff repeats and realleges each and every allegation set forth in Paragraph "1" through "55" as if fully set forth herein.
57. For the reasons set forth *supra* at paragraphs "49" through "55," the Plaintiff was exposed to an objectively and subjectively hostile work environment consisting of severe sexually harassing conduct in violation of §296 of the New York State Human Rights Law.
58. As a result of the Defendants' conduct, the Plaintiff has sustained damages in excess of the amount necessary to sustain diversity jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**RETALIATION UNDER TITLE VII**

59. Plaintiff repeats and realleges each and every allegation set forth in Paragraph "1" through "58" as if fully set forth herein.
60. Plaintiff was terminated after Floyd Dennis and Mike Cornell first discussed the Plaintiff's allegations of sexual harassment against Mike Cornell on or about March 18, 2010.
61. Floyd Dennis indicated that a basis for the Plaintiff's termination was her allegations against Mike Cornell.
62. Subsequent to Plaintiff's termination, Floyd Dennis continued to retaliate against the Plaintiff by falsely asserting that the Plaintiff was terminated for misconduct.
63. The specious statements made by representatives of ESS at the Plaintiff's Unemployment Hearing were later contradicted and retracted by Luis Tirado. As a result of these statements, the Plaintiff was denied an opportunity to collect unemployment insurance benefits causing extreme emotional and psychological stress.
64. As a result, the Plaintiff was retaliated against for her exercise of her rights under the Civil Rights Act of 1964, as amended.
65. As a result of the Defendants' conduct, the Plaintiff has sustained damages in excess of the amount necessary to sustain diversity jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION RETALIATION**  
**UNDER THE NEW YORK STATE**  
**HUMAN RIGHTS LAW**

66. Plaintiff repeats and realleges each and every allegation set forth in Paragraph "1" through "65" as if fully set forth herein.
67. For the reasons set forth *supra* at paragraphs "59" though "65," the Plaintiff was retaliating against for making a complaint of sexual harassment in violation of §296 of the New York State Human Rights Law.
68. As a result of the Defendants' conduct, the Plaintiff has sustained damages in excess

of the amount necessary to sustain diversity jurisdiction.

**WHEREFORE** Plaintiff demands judgment against the Defendants on each cause of action in an amount to be determined at trial but in excess of the amount necessary to sustain diversity jurisdiction, along with reinstatement to her prior position, attorney's fees, punitive damage, together with interest, costs and disbursements of this action and such other, further and different relief as to the Court seems just and proper.

Dated: February 3, 2010

**SMITH HOKE, PLLC**

/s/ John J. Hoke  
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