

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**YESENIA ESPINOSA,**  
*Plaintiff,*

v.

**MAGNOLIA FIRE DEPARTMENT, a  
government entity, MONTGOMERY  
COUNTY EMERGENCY SERVICES  
District Number 10, a government entity  
AUGUST NAUMANN, an individual,  
and JEFFERY HEVEY, an individual,**  
*Defendants.*

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**CIVIL ACTION NO.: 4:23-cv-3103**

**JURY TRIAL DEMANDED**

**PLAINTIFF’S ORIGINAL COMPLAINT**

This action is arising under Title VII of the Civil Rights Act of 1964, brought as an individual action to recover damages and attorneys’ fees owed to Plaintiff, owed by Defendant MAGNOLIA FIRE DEPARTMENT, a government entity, and its subsidiaries, MONTGOMERY COUNTY EMERGENCY SERVICES District Number 10, a government entity, and its subsidiaries, AUGUST NAUMANN, an individual, and JEFFREY HEVEY, an individual, and for good cause alleges as follows:

**I.**

**PARTIES**

1. Plaintiff, YESENIA ESPINOSA, is an individual and resident of Montgomery County, Texas.
2. Defendant MAGNOLIA FIRE DEPARTMENT (“MFD”) is a government entity with its principal place of business in Montgomery County, Texas and may be served through its

registered agent John W. Peeler, or a person he so designates to accept service, at 820 Gessner, Suite 1710, Houston, Texas 77024-8261.

3. MONTGOMERY COUNTY EMERGENCY SERVICES District Number 10 is a local government entity located at MAGNOLIA FIRE DEPARTMENT Station 181, 18215 Buddy Riley Blvd., Magnolia, TX 77354 and may be served through its registered agent John W. Peeler, or a person he so designates to accept service, at 820 Gessner, Suite 1710, Houston, Texas 77024-8261.

4. Defendant AUGUST NAUMANN is an individual residing in Montgomery County, Texas, and they be served at 22503 Rainfern Drive, Magnolia, Texas, 77353, or wherever he may be found.

5. Defendant JEFFREY HEVEY is an individual residing in Montgomery County, Texas, and they be served at 1147 Rennie Drive, Katy, Texas, 77450, or wherever he may be found.

## **II.**

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction under 29 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 12133. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper under 28 U.S.C § 1391, as the cause of action arose in this judicial district, and the events underlying this complaint arose in this judicial district as well.

## **III.**

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8. Plaintiff has exhausted her administrative remedies with the Equal Employment Opportunity Commission by filing a charge and obtaining a Right to Sue Letter, attached hereto as Exhibit A.

**IV.**

**FACTUAL BACKGROUND**

9. Plaintiff was employed with Defendant MFD from August of 2014 until October 14, 2022. Plaintiff began working for Defendant MFD as a volunteer fire person, then transitioned to a paid administrative role. The Magnolia Fire Department is fully funded through tax assessments collected by and is operated by Defendant Montgomery County Emergency Services Department No. 10 (“ESD No. 10”), and as a result, references to Defendant MFD refer to both Defendant Magnolia Fire Department and Defendant ESD No. 10.

10. Plaintiff’s job title was Assistant Office Manager upon termination of her employment. She earned a salary of \$52,400 annually, or \$24.42 an hour. Plaintiff also maintained health benefits for herself and her family as a term of her employment, as well as retirement benefits.

11. Defendant NAUMANN’s title is Assistant Chief of Logistics.

12. Defendant HEVEY’s title is Fire Chief. As such, Defendant HEVEY is the effective supervisor of Defendant MFD’s staff.

13. During Plaintiff’s employment with Defendant MFD, she was exposed to an ongoing hostile work environment, including gossiping, favoritism, and sexism. In particular, Defendant NAUMANN was known for his short temper, cursing at work and consistently making offensive hand gestures when irritated, raising both middle fingers at Plaintiff in the office.

14. As a result, Plaintiff attempted to ignore ongoing workplace dramas and perform her job to the best of her ability. Plaintiff was an exemplary employee, maintained outstanding reviews and relationships with her colleagues and was dedicated to serving her community. Plaintiff fully intended to work for Defendant MFD until the age of retirement.

15. However, Defendant NAUMANN's unwelcome and frightening conduct against Plaintiff continued to escalate. Plaintiff grew frustrated and frightened because Defendant NAUMANN's conduct was unpredictable. At times Defendant NAUMANN acted cruelly towards Plaintiff, yet at other times he acted friendly and cordial towards her.

16. Plaintiff's direct supervisor, Defendant HEVEY was well aware of Defendant NAUMANN's conduct, and Plaintiff's fear of Defendant NAUMANN. Plaintiff notified Defendant HEVEY both verbally and in writing of such on multiple occasions.

17. In particular, Plaintiff submitted an email, or written complaint to Defendant HEVEY about an incident with Defendant NAUMANN on September 13, 2022.

18. On September 13, 2022, as part of her normal job duties as an Assistant Office Manager, Plaintiff inquired of Defendant NAUMANN simply to store copy paper boxes in a proper place. Defendant NAUMANN abruptly got up from his desk and began yelling at Plaintiff, a petite female: "you're not asking! You demanded I respond to you"! Then, Defendant NAUMANN proceed to loudly throw and slam multiple (6-10) heavy boxes of copy paper against the wall and floor in a fit of rage. Defendant NAUMANN continued to curse and demean Plaintiff under his breath during this outburst. Plaintiff was terrified and felt sick to her stomach.

19. Thereafter, Plaintiff emailed her supervisor, Defendant HEVEY, a detailed account of the incident and requested that she no longer be assigned to work alongside Defendant NAUMANN. Plaintiff told Defendant HEVEY that she wished to work in a peaceful atmosphere.

20. On September 15, 2022, a second incident between Plaintiff and Defendant NAUMANN arose. Plaintiff arrived at work and was putting away her purse, and Defendant NAUMANN came behind Plaintiff, put his hand on her shoulders and attempted to hug Plaintiff. Plaintiff removed herself and asked Defendant NAUMANN to “please stay away”.

21. Defendant NAUMANN persisted in repeatedly telling Plaintiff “I have only one question, just answer one question! Did you tell the Chief?”, in reference to the September 13<sup>th</sup> incident. Plaintiff declined to respond to Defendant NAUMANN, as she felt it was both unnecessary and unreasonable. Defendant NAUMANN continued to invade Plaintiff’s space and block her movement from her desk. Defendant NAUMANN finally receded, stating “F--- you” and “F--- yourself” to Plaintiff.

22. Again, Plaintiff lodged a written complaint via email to her supervisor Defendant HEVEY, communicating the details and pleaded that she wanted to work in a safe environment.

23. On September 20, 2022, following notice of the previous two incidents, Defendant HEVEY instructed Plaintiff to communicate with Defendant NAUMANN and inquire about purchasing smoke detectors. When Plaintiff responded that she did not want to talk to Defendant NUEMANN, Defendant HEVEY replied “sooner or later you will have to, or you will get written up for retaliation”.

24. On September 21, 2022, Defendant HEVEY called a meeting with the Plaintiff and Defendant NAUMANN to discuss only the first incident on September 13<sup>th</sup> incident. Defendant NAUMANN was allowed to have the option to bring an individual of his choosing for his separate interrogation, while Plaintiff was only given the option to bring someone of Defendant HEVEY’s choice. Plaintiff was frightened Defendant NAUMANN’s reaction, and apprehensive of workplace retaliation.

25. During the September 21, 2022 interrogation, Defendant HEVEY did not acknowledge or mention the second incident, on September 15<sup>th</sup>. Defendant NAUMANN's witness, Chief Pengarakis, best friends with Defendant NAUMANN, was permitted to stay and participate in Plaintiff's meeting. Defendant HEVEY did so as means to scare Plaintiff.

26. On September 23, 2022, Defendant HEVEY informed Plaintiff that Defendant NAUMANN was placed on two weeks of leave as a disciplinary measure. Defendant HEVEY claimed he had to "convince ESD board to put Chief NAUMANN on leave" and "everyone had good things to say about you and I was surprised". Defendant HEVEY's comments connote both his favoritism towards Defendant NAUMANN and disregard for wrongdoing Plaintiff endured.

27. Defendant NAUMANN was placed on leave, thus absent from the office, from September 26, 2022 through October 10, 2022.

28. On September 29, 2022, upon entering the premises, Defendant HEVEY and Chief Pengarakis made comments eluding to Plaintiff being evil, saying "666, that's you" and "that's the devil's number, Yesie". Plaintiff responded "I am not the devil and that number is not for me". It is Plaintiff's opinion and belief these jabs were made as a means to harass, intimidate and demean Plaintiff for lodging harassment complaints about Defendant NAUMANN.

29. Later, on September 29, 2022, Defendant HEVEY met with Plaintiff privately to quiz Plaintiff on some social media posts from an unknown woman. The messages stated that MFD put certain employees on paid vacation for misconduct. Defendant HEVEY was insinuating that Plaintiff knew of or directed those messages, from a stranger. Plaintiff reiterated that she shared the incident with no one, did not and would not put such information on social media, and her social media account was set on private nonetheless.

30. On September 29, 2022, as a direct result of the stress from the above incidents, Plaintiff inquired about counseling services offered by Defendant MFD, through Human Resources (“HR”) Manager, Eloise Roberson, an agent and employee of Defendant MFD. Plaintiff also sought counseling services on her own previously, because the ongoing and unresolved workplace hostility was negatively impacting her emotional health.

31. Plaintiff was not offered counseling services by or through Defendant MFD until she tendered her resignation.

32. October 10, 2022, Plaintiff grew increasingly anxious about additional and escalating harassment and retaliation in anticipation of Defendant NAUMANN’s return to from leave.

33. As a result, Plaintiff felt she had no other choice but to resign from the job she loved and spent 8 years serving her community. She gave Defendant HEVEY her two weeks written resignation. Her last day of work was effectively October 21, 2022. Defendant HEVEY taunted Plaintiff, “there’s no turning back” and “if you resigned, then it’s true” referring to the social media posts that Plaintiff was no part of.

34. Going forward, it appeared all Plaintiff’s private discussions with Defendant HEVEY were made well known, as Ms. Eloise Roberson, Chief Pengarakis and Defendant NAUMANN consistently questioned Plaintiff about resigning. They kept baiting Plaintiff with Defendant HEVEY’s offer of two weeks paid vacation to reconsider.

35. On October 11, 2022 upon return to the office, Defendant NAUMANN approached Plaintiff’s desk, issued an apology and said “Chief Hevey said we should talk and smooth things over”.

36. As a direct and proximate result, Plaintiff was immensely distressed by Defendant NAUMANN approaching her and stating that Defendant “Chief HEVEY asked us to smooth things out”. However, Defendant HEVEY communicated the exact opposite to Plaintiff, which caused her to expedite her resignation to October 14, 2022.

37. In so doing, Plaintiff was constructively terminated because her workplace grew unreasonably adverse.

V.

**CAUSES OF ACTION**

**Count 1: Gender Discrimination: Against All Defendants**

38. Plaintiff repeats and realleges each and every allegation of paragraphs above, as set forth fully herein.

39. Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment on of race, color, disability, religion, sex, national origin, or age.

40. Here, Defendants treated Plaintiff, a female, in such a manner that adversely affected her employment, in violation of Title VII of the Civil Rights Act of 1964.

41. Defendant NAUMANN, individually and as an agent and employee of Defendant MFD, intentionally targeted Plaintiff on the basis of her gender. Defendant NAUMANN capitalized on the vulnerabilities of Plaintiff as a female, and capitalized on his stature and anger as a means to intimidate and harass Plaintiff.

42. Defendants treated Plaintiff, a female, in a disparate manner compared to males in that Plaintiff was subject to yelling, screaming, cussing, crude jokes, threats to her physical safety and unwelcome physical touch, whereas male counterparts were not.



43. Defendants treated Plaintiff in a disparate manner on the basis of gender, thus unlawfully discriminated against Plaintiff in violation of Title VII of the Civil Rights Act of 1964.

44. Therefore, Defendants are liable to Plaintiff for damages within the jurisdictional limits of this court.

**Count 2: Hostile Work Environment- Sexual Harassment: Against All Defendants**

45. Plaintiff repeats and realleges each and every allegation of paragraphs above, as set forth fully herein.

46. An employer is liable for a hostile work environment claim if: (1) the employee is a member of a protected class, (2) the employee is subject to unwelcome sexual harassment, (3) the harassment is based on sex, (4) the harassment effected a term, condition or privilege of employment, and (5) the employer knew, or should have known, to take remedial action.

47. Here, Plaintiff is a member of a protected class in that she is a female.

48. Plaintiff was subjected to unwelcome sexual harassment by Defendant NAUMANN repeatedly gesturing double middle fingers at Plaintiff, grabbing Plaintiff from behind without her consent, throwing boxes of paper in a fit of rage against Plaintiff, yelling at Plaintiff, and repeated use of sexually disparaging words “F--- you” and “F---yourself”, which are offensive and sexual in nature.

49. The harassment Plaintiff endured was based upon her gender. Males were not treated in this manner. The harassment was utilized as a means to intimate Plaintiff, a female.

50. The harassment effected a term, condition or privilege of employment in that the harassment directly impacted Plaintiff's workplace daily. The ongoing harassment caused Plaintiff significant emotional distress and fear.

51. Defendant MFD and Defendant HEVEY knew or should have know of the harassment, and failed to take remedial action. Defendants knew of the harassment, as it was communicated by Plaintiff both in person and in writing. Defendant HEVEY failed to take remedial action, and even taunted Plaintiff about Defendant NAUMANN's disciplinary leave not being his decision, and warned Plaintiff she would "get in trouble for retaliation" if she did not play nice with Defendant NAUMANN.

52. Further, Defendant HEVEY failed to take remedial action, and actually exacerbated the harassment by wrongfully gossiping and disclosing Plaintiff's complaints to co-workers and Defendant NAUMANN, pressuring and shaming Plaintiff to work alongside Defendant NAUMANN with known harassment, engaging and condoning further retaliatory acts as a means to thwart remedial action.

53. As such, Defendants created a work environment that was severe or pervasive enough to be considered hostile.

54. Therefore, Defendants are liable to Plaintiff for damages within the jurisdictional limits of this court.

**Count 3: Constructive Termination- Retaliation: Against All Defendants**

55. Plaintiff repeats and realleges each and every allegation of the paragraphs above, as set forth fully herein.

56. Wrongful termination is defined as terminating "at will" employment for an illegal reason. Retaliation is an illegal reason for terminating employment.

57. Retaliation by an employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person if the employee: (1) opposes a discriminatory practice; (2) makes or files a charge; (3) files a complaint; or (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

58. Plaintiff was retaliated against by making complaints about Defendant NAUMANN's harassment on two separate occasions.

59. Plaintiff submitted two written complaints about Defendant NAUMANN'S actions.

60. Thereafter, Defendant HEVEY called a meeting with Defendant NAUMANN and Plaintiff separately. Defendant HEVEY allowed Defendant NAUMANN a witness or participant of his choice, while depriving Plaintiff of the same option.

61. As a direct result of Plaintiff's complaints and opposition to discriminatory practices, Plaintiff experienced taunting, escalated verbal harassment, gossiping and disregard for Plaintiff's safety concerns with Defendant NAUMANN.

62. Also, as a direct and proximate result of the retaliation, Plaintiff was forced to seek counseling to manage the stress and mental anguish of her working condition.

63. Any reasonable person in Plaintiff's position would have felt they had no other option but resign, due to the ongoing hostile work environment, escalating retaliation and the impact it was having on her physical and mental health.

64. Plaintiff was constructively terminated for an illegal reason, in retaliation for her complaints.

65. Thus, Plaintiff is entitled to damages within the jurisdictional limits of this Court.

**Count 4: Assault: Against Defendant NAUMANN only**

66. Plaintiff repeats and reallages each and every allegation of the paragraphs above, as set forth fully herein.

67. Defendant NAUMANN put Plaintiff in imminent apprehension of her physical safety on September 13, 2022 in the workplace, in that Defendant NAUMANN abruptly got up from his desk and began yelling at Plaintiff: “you’re not asking! You demanded I respond to you”! Defendant Plaintiff was in fear for her safety.

68. Then, Plaintiff was placed in further fear of her safety when Defendant NAUMANN proceed to throw and slam multiple (6-10) boxes of copy paper against the wall and floor in a fit of rage, in response to Plaintiff making a simple inquiry about copy paper.

69. Understandably, Plaintiff was in great fear of Defendant NAUMANN given that he would act so violently in a work setting in response to Plaintiff.

70. Moreover, on September 15, 2022, Defendant NAUMANN placed Plaintiff in imminent apprehension of her safety by going to Plaintiff’s work space and kept asking “I have only one question, just answer one question! Did you tell the Chief?”, in reference to the September 13<sup>th</sup> incident. Plaintiff declined to respond to Defendant NAUMANN. Plaintiff was in fear that Defendant NAUMANN would become physically and verbally violent, as he did two days prior.

71. Defendant NAUMANN continued to dominate Plaintiff’s physical space and block her from movement from her desk, causing Plaintiff imminent apprehension of her safety.

72. Finally, Defendant NAUMANN receded, stating “F--- you” and “F--- yourself” to Plaintiff. Defendant NAUMANN openly cursing at Plaintiff was done with the intent to scare Plaintiff into compliance.

73. Thus, Plaintiff is entitled to damages within the jurisdictional limits of this Court.

**Count 5: Battery: Against Defendant NAUMANN only**

74. Plaintiff repeats and reallages each and every allegation of paragraphs above, as set forth fully herein.

75. On September 15, 2022, Plaintiff was subjected to unwelcome and offensive physical touch from Defendant NAUMANN in that he came behind Plaintiff, put his hand on her shoulders and attempted to hug Plaintiff.

76. Plaintiff found Defendant NAUMANN's actions to be harmful and offensive, so much so that Plaintiff asked Defendant NAUMANN to "please stay away".

77. Thus, Plaintiff is entitled to damages within the jurisdictional limits of this Court.

**VI.**

**JURY TRIAL DEMAND**

78. Plaintiff requests a jury trial on all questions of fact raised in this Complaint.

**VII.**

**PRAYER**

WHEREFORE, Plaintiff YESENIA ESPINOSA respectfully asks that the Defendants MAGNOLIA FIRE DEPARTMENT, AUGUST NAUMANN and JEFFREY HEVEY, be cited to appear and answer, and that on final trial, Plaintiff be awarded a judgment against Defendants, jointly and severally, for the following:

- a. Actual and consequential damages
- b. Compensatory and non-compensatory damages;
- c. Front and back pay;
- d. Punitive damages;
- e. Attorneys' fees and costs;

- f. Pre-judgment and post-judgment interest allowed by law;
- g. Past and future non-pecuniary damages, including emotional pain, suffering, mental anguish, damage to reputation and other non-pecuniary damages as a result of Defendant's unlawful employment practices described above, in amounts to be proven at trial;
- h. Costs of court;
- i. Such other further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

**ROGER G. JAIN & ASSOCIATES, P.C.**



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**YESENIA ESPINOSA**



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Houston District Office  
1919 Smith Street, 6th Floor  
Houston, TX 77002  
(346) 327-7700  
Website: [www.eeoc.gov](http://www.eeoc.gov)

### **DETERMINATION AND NOTICE OF RIGHTS**

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 05/26/2023

To: Mrs. Yesenia Espinosa  
33022 Kinley Ann Ct  
MAGNOLIA, TX 77354

Charge No: 460-2023-01853

EEOC Representative and email: RAFAEL RIVERA  
Investigator  
[rafael.rivera@eeoc.gov](mailto:rafael.rivera@eeoc.gov)

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### **DETERMINATION OF CHARGE**

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

### **NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 460-2023-01853.

On behalf of the Commission,

Digitally Signed By: Rayford O. Irvin  
05/26/2023

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Rayford O. Irvin  
District Director

**Cc:**

Jeff Hevey  
18215 Buddy Riley Blvd  
Magnolia, TX 77354

Please retain this notice for your records.