

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 0:18-CIV-62813-MOORE

CAROLINA MATAMOROS,

Plaintiff,

.

vs.

BROWARD SHERIFF'S OFFICE,

Defendant.

**DEFENDANT'S ANSWER, DEFENSES & AFFIRMATIVE DEFENSES TO
AMENDED COMPLAINT**

Defendant, Broward Sheriff's Office ("BSO"), files this Answer, Defenses & Affirmative Defenses to the Amended Complaint and avers as follows:

1. Defendant admits this action claims violation of the FMLA and for FRCA retaliation, denies any unlawful conduct by it, denies injuries by plaintiff, denies liability thereunder, and denies entitlement by plaintiff to damages, legal and equitable relief.
2. Admitted.
3. Defendant admits that Plaintiff was and is a resident of Dade County and denies Plaintiff's entitlement to relief and/or protection under the FRCA and FMLA.
4. Denied.
5. Admitted.
6. Admitted.
7. Defendant admits only that Plaintiff filed a charge of associational-disability discrimination with the Equal Employment Opportunity Commission ("EEOC") dated July 18, 2017, a copy of which is attached as Exhibit A

8. Admitted.

9. Defendant admits that the EEOC did not issue a finding on Plaintiff's Charge until July 25, 2018, which is later than 180 days of the filing of said charge, as per the EEOC dismissal attached as Exhibit 2.

10. Denied.

11. Denied.

12. Admitted, except Plaintiff did not start as a Communications Operator 3.

13. Denied.

14. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but otherwise denied.

15. Admitted.

16. Admitted.

17. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but otherwise defendant admits only that Plaintiff found out about a part time position and communicated with Ms. Zarazinski and Ms. Elmaadawy about that position in August 2016.

18. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but is otherwise denied.

19. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but is otherwise denied.

20. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but is otherwise denied.

21. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but is otherwise denied as defendant approved the part-time position for

an employee that was known to be associated with a disabled person and also to have a known cardiac condition that jeopardized such employee's health.

22. Denied.

23. Denied.

24. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but is otherwise denied.

25. This allegation is no longer relevant as it pertained to Count II which has been dismissed, but defendant otherwise admits only that Plaintiff began a part-time position on January 20, 2017 and otherwise denies.

26. Defendant admits only that in May 2017 Plaintiff started to serve a twenty-day (160 hours) suspension without pay.

27. Defendant admits only that Plaintiff returned to work at the completion of her twenty-day (160 hours) suspension on or about July 2017.

28. Defendant admits only that Plaintiff filed a charge of associational-disability discrimination with the Equal Employment Opportunity Commission ("EEOC") dated July 18, 2017, a copy of which is attached as Exhibit A.

29. Defendant admits that on or about August 2017, Plaintiff requested FMLA leave.

30. Defendant admits that it denied the August 2017 FMLA request where Plaintiff failed to work the requisite 1,250 hours needed to qualify for FMLA.

31. Denied.

32. Defendant admits only that Plaintiff, throughout her employment at BSO, had 7 Internal Affairs Cases and investigations for her violations of BSO's attendance policy, among others, that were all sustained.

33. Denied.

34. Defendant admits that in January 2018, Tangila Tucker replaced Ms. Elmaadawy as the Site Manger where Plaintiff worked and denies that Ms. Elmaadawy had control over this site after January 20018.

35. Defendant admits only that on September 14, 2018 Plaintiff was administratively suspended without pay pursuant to her Internal Affairs Case # 2018-0117.

36. Defendant admits only that Plaintiff's termination became effective on November 26, 2018 for her sustained violations of BSO policy in Internal Affairs Case # 2018-0117 of Truthfulness, Off-Duty Employment, and Sick Leave Abuse.

37. Denied.

38. Defendant readopts its answers as averred in paragraphs 1-37.

39. Denied.

40. Denied.

41. Admitted.

42. Denied except as averred at paragraph 26 above.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47-56. These allegations pertain to Count II of the Amended Complaint which has been dismissed.

57. Defendant readopts its answers as averred in paragraphs 1-37.

58. Denied.

- 59. Denied.
- 60. Denied.
- 61. Denied.
- 62. Denied.
- 63. Denied.
- 64. Defendant readopts its answers as averred in paragraphs 1-37.
- 65. Denied.
- 66. Denied.
- 67. Admitted.
- 68. Defendant admits only that it approved intermittent FMLA leave for the period of March 22, 2016-March 21, 2017 for Plaintiff and that Plaintiff exhausted the maximum number of hours allowed by FMLA as of August 2016.
- 69. Admitted.
- 70. Denied except as averred in paragraphs 26 & 35.
- 71. Denied.
- 72. Denied.
- 73. Denied.
- 74. Denied.
- 75. Denied.
- 76. Any allegation of the amended complaint, or any portion thereof, not specifically admitted herein is denied.

Defenses and Affirmative Defenses to Amended Complaint

- 1. Plaintiff failed to exhaust administrative remedies required by FRCA by failing to bring an administrative charge claiming that Defendant retaliated against her for

filing her July 2017 EEOC Charge; this July 2017 EEOC Charge neither claimed nor cited any FRCA violation. (See Exhibit 1)

2. Plaintiff's repeated breaches of BSO policy from 2012 through 2018 provided a legitimate, non-retaliatory reason for investigating and disciplining Plaintiff for these demonstrated violations of BSO policy (including her 20-day suspension & termination), which negates a causal nexus for FRCA & FMLA retaliation as well as FMLA interference.

3. Plaintiff did not arbitrate, appeal, and/or grieve the "just cause" of any of her suspensions from five (5) of her Internal Affairs Cases that resulted in 1-day, 3-day, 5-day, 10-day, and 20-day suspensions under the governing Collective Bargaining Agreement affecting the parties to this lawsuit. Plaintiff has waived and/or is estopped to challenge the legitimacy of these suspensions.

4. No decisionmaker, supervisor identified in the amended complaint, Internal Affairs investigator, or person recommending or approving any discipline and/or adverse employment action for plaintiff was aware that Plaintiff brought her July 18, 2017 EEOC Complaint (Exhibit 1) thereby negating a retaliatory nexus for such protected activity.

5. All adverse employment actions following Plaintiff's filing of her July 18, 2017 EEOC Complaint were too remote in time to have a retaliatory nexus.

6. All adverse actions following Plaintiff's last or latest use of FMLA leave were too remote in time to have a retaliatory nexus.

7. A written counseling or notice thereof is not discipline at BSO per policy.

8. In every, single one of Plaintiff's Performance Evaluations at BSO, totaling 15 (from 2009-2018), the Category of Performance Criteria for "Attendance and Punctuality" was marked as "Needs Improvement."

9. BSO Policy ("SPM") 3.10.4 allows an appeal to challenge any performance criteria measured as "needs improvement" in the evaluation. No appeal was utilized by or on behalf of Ms. Matamoros in this regard. She has waived or is estopped to challenge this.

10. Other communications operators at Defendant with a lesser disciplinary history were terminated by Defendant within the last year.

11. Other communications operators at Defendant with less serious sustained, violations of BSO policy were terminated by Defendant within the last year.

12. Plaintiff's August 2017 FMLA request was denied because Plaintiff failed to work the requisite 1,250 hours needed to qualify for FMLA, and she still would have failed to meet this threshold (by working less than 1,250 hours) even if she hadn't served her 20-day (160 hour) suspension in mid-2017.

WHEREFORE, Defendant demands that Plaintiff take nothing by way of this complaint, and for such other relief as is just, equitable and proper.

Dated: June 10, 2019

Respectfully submitted,

s/Gale Ciceric Payne, Esq
Gale Ciceric Payne, Esq.
Florida Bar No. 306967
Email: gcpattorney@aol.com
Gale Payne & Associates
1220 East Broward Boulevard
Fort Lauderdale, FL 33301-2134
Telephone Number (954) 821-4500
Attorneys for Defendant, Broward
Sheriff's Office

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2019, I electronically filed the foregoing Defendant's Answer, Defenses, and Affirmative Defenses by CM/ECF. I also certify that the foregoing document is being served on June 10, 2019 on all counsel of record identified on the Service List below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

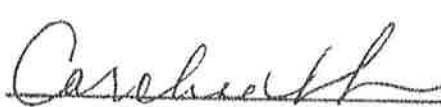
s/ Gale Ciceric Payne

SERVICE LIST

Plaintiff, Carolina Matamoros versus Defendant, Broward Sheriff's Office
Case No. 0:18-CIV-62813-MOORE
United States District Court, Southern District of Florida

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EEOC Form 5 (1/1/09)

CHARGE OF DISCRIMINATION		Charge Presented To: Agency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		☐ FEPA ☒ EEOC	
Florida Commission On Human Relations		846-2017-25982	
State or local Agency if any			
Name (indicate Mr., Ms., Mrs.)		Home Phone (incl. Area Code)	Date of Birth
Ms. Carolina Matamoros		(786) 768-0396	02-27-1988
Street Address		City, State and ZIP Code	
311 Sinbad Ave., Opa Locka, FL 33054			
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		No. Employees, Members	Phone No. (Include Area Code)
BROWARD SHERIFF'S OFFICE		201 - 500	(954) 446-3257
Street Address		City, State and ZIP Code	
2601 N. Broward Blvd., Fort Lauderdale, FL 33311			
DISCRIMINATION BASED ON (Check appropriate box(es))		DATE(S) DISCRIMINATION TOOK PLACE	
☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ RETALIATION ☐ AGE ☒ DISABILITY ☐ GENETIC INFORMATION ☐ OTHER (Specify)		Earliest Latest 08-01-2016 07-18-2017	
		☒ CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s))			
I am currently working with the above names employer as a communications operator 3 since January 2010. Throughout my employment, I have always remained an exemplary employee as I always completed my daily assignments within a satisfactory manner without little to no supervision. On or about August 17, 2016, I began requesting for an accommodation as I was the sole medical provider for my son's medical condition. I requested to work on a part-time shift as my son's medical condition exacerbated within each month to the point that he was hospitalized on 8 different occasions. On or about August 2016, I found out that a part time position became available. Upon receiving this information, I informed both Ms. Latasha Elmaadawya and Ms. Lisa Zarazinski that I was interested in the position and requested it as a form of accommodation due to my son's medical condition. Even though I followed company procedure in order to be chosen for the shift, I was denied the opportunity. I further noticed that the position was given to three other individuals who requested the shift after placing my request. I also noticed that my reasonable accommodations request was completely ignored without any justification. I was later subjected to several disciplinary actions even though this could have been avoided when I requested the part time position. I eventually received the part time position in January but also received an Internal Affairs investigation regarding my attendance. Despite communicating to management that my attendance was being affected due to my son's medical condition and required an accommodation, my request was once again denied and I was further subjected to several other disciplinary actions. To this date, I am constantly subjected to a hostile work environment in which my accommodations request was denied and I am constantly subjected to unwarranted Internal Affairs investigations, disciplinary actions regarding my attendance, and a negative evaluation conducted by Ms. Elmaadawya. I believe I was discriminated against due to my association with a disabled individual in violation of the Americans with Disabilities Act of 1990, as amended.			
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.	
7/18/17 Date  Charging Party Signature		SIGNATURE OF COMPLAINANT	
		SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY (month, day, year)	

EXHIBIT

1

EEOC Form 161 (11/15)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Carolina Matamoros
311 Sinbad Ave,
Opa Locka, FL 33054

From: Miami District Office
Miami Tower, 100 S E 2nd Street
Suite 1500
Miami, FL 33131



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

846-2017-25982

FLORENCIO R. OCAMPO,
Investigator

(305) 808-1760

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC: in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Michael J. Farrell
MICHAEL J. FARRELL,
District Director

JUN 25 2018

(Date Mailed)

Enclosures(s)

cc: Respondent Representative
BROWARD SHERIFF'S OFFICE
c/o Gale Ciceric Payne, Esq.
GALE, PAYNE, & ASSOCIATES
1220 East Broward Blvd.
Fort Lauderdale, FL 33301

EXHIBIT

2

Enclosure with EEOC
Form 161 (1-19)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

**EXHIBIT
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