

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

JEANNE JAMES : Civil Action No. _____
c/o DAMON LAW OFFICE :
119 EAST COURT STREET, SUITE 402 :
CINCINNATI, OHIO 45202 :

Plaintiff,

-vs.-

COMPLAINT

MICHAEL CHERTOFF :
SECRETARY, DEPARTMENT OF : **JURY TRIAL DEMANDED**
HOMELAND SECURITY, :
TRANSPORTATION SECURITY :
ADMINISTRATION :

Defendant.

COMPLAINT

I. JURISDICTION AND VENUE

1. Jurisdiction over this matter is properly invoked under 28 USC § 1331, which conveys federal question jurisdiction and specifically under 28 USC §§ 1343(3), 1343(4), and 42 U.S.C. § 2000e-5(f), which grant jurisdiction over civil actions which seek monetary damages, equitable relief and declaratory relief for violations civil rights. Further, this action is brought in accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000, et.seq. governing claims for sexual harassment, hostile work

environment sexual harassment, gender-based discrimination and retaliatory discrimination based upon the Plaintiff having previously engaged in protected activity.

2. Venue is properly invoked under 28 USC § 1391, in that the conduct complained of occurred within this district and the Defendant, Michael Chertoff, the designated official, as the Secretary for the Department of Homeland Security, Transportation Security Administration, is the designated official, responsible for the conduct of the personnel at the Cincinnati Field Office of the Federal Air Marshal Service ("FAMS"), located at 4243 Olympic Boulevard, Suite 200, Erlanger, Kentucky 41018.

II. THE PARTIES

3. Plaintiff Jeanne James is a female resident of Jefferson County, Kentucky, who during the relevant times herein was an Assistant to the Special Agent in Charge ("ATSAC"), and worked at the Cincinnati Field Office of the Federal Air Marshal service from 2002 through 2006. During that time period, Plaintiff Jeanne James was subjected to sexual harassment, hostile work environment sexual harassment and retaliatory discrimination resulting from her 2004 EEO activity. Plaintiff Jeanne James was subjected to ongoing, persistent harassment, disparate treatment and retaliatory discrimination by her supervisors at the FAM service location in Erlanger, Kentucky.
4. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security, Transportation Security Administration, which has responsibility

over the FAM service , including the Cincinnati Field Office, which is the subject of this Complaint.

5. Plaintiff was supervised by Special Agent in Charge (“SAC”), John Michael Davis during most of her tenure with the FAM service. Ms. James was also supervised intermittently by Trace Lee Britsch, an Assistant Special in Charge (“ASAC”). Both Mr. Davis and Mr. Britsch were aware of her gender and of her prior EEO activity, at another federal agency.
6. David Connolly was an Assistant to the Special in Charge (“ATSAC”) for the Cincinnati Field Office for the period of November, 2002 through 2006. Mr. Connolly’s supervisors were John Michael Davis and Trace Lee Britsch and he was a co-worker with the Plaintiff Jeanne James.
7. John Michael Davis created and maintained a hostile work environment, by a consistent and pervasive disdain for Ms. James’ actions because she handled matters “like a woman” and not in the “manly” manner which Mr. Davis demanded.

III. ADMINISTRATIVE PROCEEDINGS

8. Plaintiff Jeanne James made initial contact with an EEO Counselor on November 21, 2005 and the initial interview as held on December 20, 2005. On March 17, 2006, Ms. James was issued a Notice of Final Interview and Notice of Right to File a Discrimination Complaint. On April 5, 2006, Ms. James filed a Formal Complaint of Discrimination against the agency.
9. The agency acknowledged receipt of the complaint assigned TSA number HS-06-TSA-001418 on May 12, 2006. On November 15, 2006, Ms. James’ claims

were accepted for investigation. During April 2007, Ms. James opted to have the agency to issue a Final Agency Decision. The agency has failed to do so as of the filing of this Complaint in the United States District Court.

10. Pursuant to 29 C.F.R. 1614.107(a)(3), Plaintiff has not received any official notification for the TSA Office of Civil Rights although 180 days has elapsed since Plaintiff filed her original complaint with the agency. Accordingly, Jeanne James now brings this action having taken the proper and required administrative steps with the agency.

IV. FACTUAL ALLEGATIONS

11. Plaintiff Jeanne James worked as an Assistant to the Special Agent in Charge during the time period of June 2002 through November 2005 and was repeatedly subjected to sexist remarks by the Special Agent in Charge regarding mission attire, such as requiring that no skirts be worn in the office or on missions and repeatedly stating that the image of the ideal FAM is that of a “manly” man. During August, 2002, SAC Davis called Ms. James into his office and told her that he did not want her to wear skirts into the office or on missions because they were “too girly.” In contrast, the male ATSACs were not admonished for wearing attire which was “too boyish” nor were the male ATSACs prohibited from wearing particular types of attire in the office or on missions. This policy created by SAC Davis set an official policy which was biased against women.
12. SAC Davis maintained that women had no place in law enforcement and maintained biased policies against women in the FAM service.

13. SAC Davis continually held up “macho” male employees as the epitome of a Federal Air Marshal. SAC Davis posted physical fitness results without including the age and gender leveling factors, which would have reflected her “Excellent” rating on those tests. Ranked solely by the total number of sit-ups done or the total number of push-ups performed, Ms. James appeared near the bottom of the list, for which she should have ranked near the top.
14. Plaintiff Jeanne James was subjected to disparate treatment when Ms. James had recommended a male FAM, Vanoy Harris for an award. Mr. Harris was exemplary employee, with a squeaky high pitched voice and a very slim physical build. SAC Davis changed the award from Mr. Harris to FAM Mike Stover, who had been a problem employee, yet had competed in an Ironman Competition. Both of these male FAMs were under Ms. James’ chain of command and SAC Davis deliberately undercut her authority by this unjustifiable change in the award.
15. Plaintiff Jeanne James was subjected to loud and berating comments on a persistent and pervasive basis from SAC Davis. SAC Davis displayed an openly hostile demeanor toward Ms. James in the workplace. This misconduct included comments regarding Ms. James being “too girly” and that SAC Davis would treat the male ATSACS in an appropriate manner. This conduct constituted sexual harassment and was not addressed by the agency in any manner.
16. Plaintiff Jeanne James was subjected to constant opposition and hostility to almost all of her opinions and statements; Ms. James was forced to

communicate her proposals through other male peer supervisors, so her recommendations and proposals would be given fair consideration. This consistent and pervasive hostile work environment was demeaning and humiliating to Ms. James on a daily basis.

17. This extreme and outrageous behavior included yelling at Ms. James through closed doors, raising immediate objections to Ms. James' position, using a sharp and irritated tone with Ms. James and physically turning his back upon Ms. James.
18. On or about December 7, 2004, Ms. James was subjected to a heated tirade from SAC Davis, in which he screamed that the only things she knew about her co-workers were there "children and what they liked to eat." During this fit of anger from SAC Davis, SAC Davis stood up, leaned over his desk and raised his fist as if to strike Ms. James. This misconduct constitutes sexual harassment, stereotyped ridicule of Ms. James and unacceptable workplace violence. SAC Davis did not conduct himself in this manner with any of the male ATSACS.
19. Plaintiff Jeanne James was not the only female in the Cincinnati Field Office to experience sexual harassment and hostile work environment sexual harassment. Nancy Leidner, a female FAM, has filed a federal lawsuit alleging sexual harassment, in Case No. **2:07-cv-00197-DLB** currently pending in the United States District Court, Eastern District of Kentucky. software development division of the company. During the time period in which Plaintiff Jeanne James, and Nancy Leidner were subjected to sexual

harassment and hostile work environment, there were flight attendants, that certain FAMs were assigned to protect, had notified the Cincinnati Field Office management of inappropriate sexual harassment. Despite management's actual knowledge of pervasive sexual harassment and hostile work environment sexual harassment, there was no corrective action taken by the agency.

20. During October of 2003, SAC Davis berated Ms. James in front of colleagues, when Ms. James requested that she be permitted to mentor an African American female Security Assistant ("SA") named Marisa Terry. SAC Davis began screaming the word "mentor" repeatedly raising his voice with each repetition, and then yelled in a derisive tone "We do not mentor people!" SAC Davis never treated male ATSACS in such a derisive manner.
21. SAC Davis sought to humiliate Plaintiff Jeanne James in front of her peers by unnecessarily confiscating her firearm. On or about November 8, 2004, Ms. James went to the firearms range and failed to recertify in firing. SAC Davis stated that the confiscation of her weapon was not warranted by policy. The gender based discrimination, hostile work environment, was demonstrated by this misconduct. Ms. James was not treated like a male peer supervisor, who would have been given an opportunity to re-test and qualify
22. Plaintiff initially shot a 254, which was one point below the qualifying score; ATSAC Scott Pickett informed her that she could shoot again the next day to qualify so Ms. James left the firearms range. SAC Davis proceeded to

confiscate her firearm, all in a derogatory and demeaning manner intended to humiliate Ms. James in front of her peers.

23. Plaintiff Jeanne James was further humiliated by SAC Davis when SAC Davis deployed her colleagues in response to Hurricane Katrina, except her. This deliberate act of exclusion constituted gender-based discrimination and hostile work environment sexual harassment.
24. Ms. James was well-qualified to be deployed to the Hurricane Katrina site as she had had disaster management training. The relief effort included responding to the Indianapolis airport, where Katrina victims were flown into and out of. SAC Davis rotated each supervisor except her to that location. A few months later there was an awards ceremony in which SAC Davis personally thanked each supervisor, except Ms. James for their contributions, in front of all of the supervisors and the FAMs.
25. During her tenure as an ATSAC, Ms. James had initiated an investigation into two FAMs, who were accused of theft through their use of fraudulent taxi vouchers. SAC Davis did not take Ms. James' investigation seriously; SAC Davis then reassigned the investigation to Messrs. Connolly and Pickett.
26. As with all of the misconduct complained of herein, there was no legitimate non-discriminatory reason for the actions of the SAC Davis.
27. SAC Davis required that a male supervisor be on duty in the office in addition to Ms. James; SAC Davis went so far to deny a vacation day of ATSAC Ed Lauer because it would mean that Ms. James would have been the only supervisor in the office

28. During July or August, 2003, a FAM had made a complaint to SAC Davis and ATSAC Pickett, that Ms. James had flown without her weapon. Ms. James was able to establish that she in fact had had her weapon in her fanny pack. Ms. James had gone on a vacation shortly after the incident and SAC Davis launched a full-scale investigation of her. SAC Davis interviewed employees who had nothing to do with the incident and inquired of various personnel whether or not they “liked” Ms. James and what was their opinion of her competency. This malicious and unfounded investigation was part of SAC Davis’ continued harassment of Ms. James. Further, the FAM who had made the false allegation against Ms. James was never disciplined by SAC Davis.
29. Plaintiff Jeanne James was never appointed as the Acting SAC whenever SAC Davis was away from the office. There was no legitimate non-discriminatory reason for this action.
30. SAC Davis persisted with his discriminatory misconduct by forcing Ms. James to serve rotations in the least desirable assignments, while allowing male ATSACS to refuse such undesirable assignments. The rotations included, Airport Liaison, Training, Operations (“Ops”) and Administration, with “Ops” being the least desirable rotation.
31. This failure to agree to have Ms. James placed in the more desirable rotations was motivated by gender discrimination, and by retaliatory discrimination, as SAC Davis had become aware of Ms. James prior EEO activity against another federal agency during 1993 or 1994.

32. Plaintiff Jeanne James was not given assignments dealing with other agencies or offices; Ms. James further alleges that all of the male ATSACS had been given numerous assignments to liaise with other airports or to attend meetings with SAC Davis. Plaintiff Jeanne James alleges that her gender was a factor, because these extra-office activities counted toward pay raises and she did not receive the percentage pay raise in either 2004 or 2005 nor was she given the same amount of the cash award, which the male supervisors received.
33. Plaintiff Jeanne James hereby alleges that there was disparate treatment by the agency regarding the pay raises and incentive awards which she received during the years of 2003 through 2005 compared to those received by the male ATSACS during the same time period.
34. Plaintiff Jeanne James was given assignments which were mostly clerical busy work in the office. During 2004, she was placed in charge of the government vehicles, an assignment which was generally given to a clerical employee and was outside of her job description. No male ATSAC was ever assigned to perform the vehicle maintenance assignment.
35. Ms. James was given other demeaning tasks such as cleaning the kitchen, while male ATSACS never had to perform such menial tasks.
36. Ms. James was given counseling regarding her use of profanity, was criticized for making a comment regarding "having a glass of wine and getting laid," was prohibited from bringing cookies and desserts into the office as being "too girly" or doing too much "Mom stuff." All of these actions by SAC Davis were done as part of a pervasive hostile work environment, in violation

of Title VII pertaining to compensation, terms, conditions and privileges of employment.

COUNT ONE: SEX DISCRIMINATION

[HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT]

37. The allegations contained in Paragraphs One through Thirty-six (1-36) are hereby restated and incorporated herein by reference.
38. Plaintiff Jeanne James hereby alleges that the Defendant Michael Chertoff as the designated official for the Transportation Security Administration, acting through SAC Davis and other other, committed sex discrimination, by virtue of the actions stated herein and that the agency is liable to Ms. James for damages suffered by her in the amount of three hundred thousand dollars or the maximum damages allowable under law, plus interest, attorneys fees and costs incurred in the prosecution of this action.
39. SAC Davis, among others, persistently and intentionally carried out actions and followed policies and/or customs, which did not have any legitimate non-discriminatory purpose and which constituted unlawful sex discrimination in the agency's employment and compensation practices.
40. The acts and misconduct of SAC Davis recounted herein were conducted routinely and persistently without any correction or discipline from the agency. The hostile work environment was pervasive, demeaning and was sufficient to change the terms of Ms. James' employment. The agency took no corrective action against this misconduct during Ms. James' tenure with the agency.

41. The sexually harassing and discriminatory misconduct was sufficiently severe and pervasive to unreasonably interfere with and Plaintiff's physical and emotional well-being and created an intimidating, hostile and offensive working environment. The TSA took no corrective action during Ms. James' tenure with the agency.
42. TSA was aware of the sex discrimination, the pervasive, hostile work environment and acquiesced in this discriminatory unlawful misconduct. As a direct and proximate result of the harassing and hostile work environment, Plaintiff Jeanne James suffered great embarrassment, humiliation, mental anguish and physical harm.
43. As a direct and proximate result of the discriminatory misconduct, the agency is liable to Plaintiff for compensatory damages in the amount of three hundred thousand dollars, plus interest, costs, attorneys fees incurred herein and for such further additional relief, as may be proper.

COUNT TWO: SEX DISCRIMINATION

44. The allegations contained in Paragraphs One through Forty-three (1-43) are hereby restated and are incorporated herein by reference.
45. During the course of Plaintiff's employment with Defendant, the Defendant, by and through its agents and employees including specifically, SAC Davis, discriminated against Ms. James, in the terms, conditions and privileges of her employment, in substantial part, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et.seq.

46. The above stated gender discrimination created an intimidating, oppressive, hostile and offensive work environment, which interfered with and damaged Plaintiff's emotional and physical well-being. The Defendant agency took no corrective action against SAC Davis, allowing the severe and pervasive hostile work environment and egregious disparate treatment to be perpetrated against Ms. James as alleged herein.
47. As a direct and proximate result of the Defendant's severe and pervasive hostile work environment and egregious disparate treatment, Plaintiff suffered humiliation, emotional distress and physical pain and discomfort.
48. Defendant Department of Homeland Security failed to supervise, control, discipline and/or otherwise penalize the conduct, acts, and misconduct of SAC Davis and others, responsible for the severe and pervasive hostile work environment and egregious disparate treatment.
49. Defendant DHS failed to take all reasonable and necessary steps to eliminate the sex discrimination in the workplace and to prevent it from occurring in the future.
50. As a further direct and proximate result of the Defendant's violations of Title VII of the Civil Rights Act of 1964 as described herein, Plaintiff has incurred attorneys' fees to enforce the lawful terms, privileges and conditions of the employment relationship with DHS.

COUNT THREE: SEX DISCRIMINATION

[Disparate Treatment]

51. The allegations contained in Paragraphs One through Forty-three (1-43) are hereby restated and are incorporated herein by reference.
52. During the course of Plaintiff's employment with Defendant, the Defendant, by and through its agents and employees including specifically, SAC Davis, discriminated against Ms. James, in the terms, conditions and privileges of her employment, in substantial part, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et.seq.
53. The above stated gender discrimination created an intimidating, oppressive, hostile and offensive work environment, and specifically constituted disparate treatment in violation of Title VII. This discriminatory misconduct interfered with and damaged Plaintiff's emotional and physical well-being. The Defendant agency took no corrective action against SAC Davis, allowing the severe and pervasive hostile work environment and egregious disparate treatment to be perpetrated against Ms. James as alleged herein.
54. As a direct and proximate result of the Defendant's severe and pervasive hostile work environment and egregious disparate treatment, Plaintiff suffered humiliation, emotional distress and physical pain and discomfort.
55. Defendant Department of Homeland Security failed to supervise, control, discipline and/or otherwise penalize the conduct, acts, and misconduct of SAC

Davis and others, responsible for the severe and pervasive hostile work environment and egregious disparate treatment.

56. Defendant DHS failed to take all reasonable and necessary steps to eliminate the sex discrimination in the workplace and to prevent it from occurring in the future.
57. As a further direct and proximate result of the Defendant's violations of Title VII of the Civil Rights Act of 1964 as described herein, Plaintiff has incurred attorneys' fees to enforce the terms and conditions of the employment relationship with DHS.
58. SAC Davis, who acted individually and in concert with others, deliberately, and/or recklessly and/or intentionally engaged in creating the hostile work environment and disparate treatment, in violation of Title VII.
59. As a direct and proximate result of the sex discrimination perpetrated by Defendant , Plaintiff has incurred damages, which include, inter alia., loss of income, loss of benefits, loss of promotion and employment opportunities, in an amount of three thousand (\$300,000.00) dollars and/or the maximum amount permitted by the applicable statutes and regulations to be determined by the trier of fact.
60. As a direct and proximate result of the willful and intentional sex discrimination perpetrated by Defendant , Plaintiff is entitled to an award of punitive damages in excess of one hundred thousand (\$100,000.00) dollars to be determined by the trier of fact.

COUNT FOUR: RETALIATORY DISCRIMINATION

[Retaliatory Discrimination/ Federal Claim]

61. The allegations stated in Paragraphs One through Sixty (1-60) are hereby restated and incorporated herein by reference.
62. Ms. Seymour engaged in protected activity in that she had filed an EEO complaint against another federal agency in 1993/1994; SAC Davis was fully aware of this EEO Complaint, which Ms. James had prosecuted against another federal agency. SAC Davis illegally retaliated against Ms. James by unlawfully criticizing her work, taking actions against her which were not taken against any male ATSAAC, and the above-referenced factual allegations, because of the protected activity which Ms. James' had engaged in.
63. There were no legitimate non-discriminatory reasons for the actions taken by SAC Davis; the Defendant agency's willful, knowing and intentional discrimination and retaliation against Plaintiff Jeanne James, Ms. James has suffered and will continue to suffer pain, humiliation and emotional distress. Plaintiff Jeanne James is thereby entitled to compensatory damages in amounts not less than three hundred thousand (\$300,000.00) dollars, to be proven at trial.
64. As a further direct and proximate result of the Defendant agency's violations of Title VII of the Civil Rights Act of 1964, as described herein, Plaintiff has incurred attorneys fees and costs, which the Defendant agency is liable to Ms. James to compensate her.

65. As a further direct and proximate result of the willful, wanton, malicious misconduct of SAC Davis, among others, Plaintiff is entitled to punitive or exemplary damages from the Defendant agency in amounts to be determined by the trier of fact.

WHEREFORE Plaintiff Jeanne James, hereby demands judgment against the Defendant agency, in an amount, which will compensate her for:

- 1. Violation of her rights under the Title VII of the Civil Rights Act of 1964 in an amount of three hundred thousand (\$300, 000.00) dollars or the maximum allowable damages under the applicable statutes and regulations;**
- 2. Compensatory damages, including amounts for all loss of income, past, present and future loss of earning capacity, physical pain, emotional distress, humiliation, past, present and future medical and/or psychiatric expenses, in an amount of three hundred thousand (\$300,000.00) dollars, or the maximum allowable damages under the applicable statutes and regulations;**
- 3. Punitive damages in an amount not less than one hundred thousand (\$100,000.00) dollars, to be determined by the trier of fact to be sufficient to punish the Defendant agency for its willful, wanton, oppressive, malicious discriminatory misconduct;**
- 4. Costs expended herein, including a reasonable amount of attorneys' fees;**
- 5. Pre-judgment interest and post-judgment interest; and**
- 6. Any and all other relief to which she may be entitled.**

Respectfully Submitted,

s/ Geoffrey P. Damon, Esq.
Geoffrey P. Damon, Esq.

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JURY DEMAND

Plaintiff Jeanne James hereby demands a trial by jury on all issues so triable in accordance with Rules 38(a) and 39(b) of the Federal Rules of Civil Procedure.

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