

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
TASHA MURRAY and MATTIE SMITH,	)	Case No. 1:07-CV-00592
	)	
Intervenor-Plaintiffs,	)	
	)	
vs.	)	
	)	
THE UNIVERSITY OF NORTH CAROLINA,	)	
	)	
<u>Defendant.</u>	)	

COMPLAINT OF INTERVENOR-PLAINTIFF MATTIE SMITH

COMES NOW INTERVENOR-PLAINTIFF, MATTIE SMITH, by and through counsel,
complaining of the defendant named herein, and does hereby allege and aver as follows:

PARTIES

1. Plaintiff, Mattie Smith, is a citizen of and resides in Guilford County, North Carolina.
2. Upon information and belief, defendant The University of North Carolina ("UNC"), including its constituent institution, North Carolina A&T State University ("A&T") is a North Carolina state body politic and corporate and on information and belief at all times relevant hereto was an educational institution engaging in educational programs and/or activities receiving federal financial assistance within the meaning of Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), and was also Ms. Smith's employer within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"), Title IX, and North Carolina state law.

3. Upon information and belief, UNC and A&T have waived sovereign immunity by the purchase of insurance or by providing self insurance in an amount greater than or equal to \$150,000.00.

4. Upon information and belief, the North Carolina A&T State University Campus Police Department itself at all relevant times hereto was a program or activity of an educational institution receiving federal financial assistance within the meaning of Title IX.

FACTS

5. Plaintiff Smith was hired by, and began working for, the defendant UNC/A&T on or about December 2004.

6. During plaintiff's tenure as a telecommunicator at A&T, Plaintiff was subjected to and victimized by a long-standing and continuing course of sexually hostile and harassing, abusive and humiliating conduct by her supervisor, Lieutenant William Gilchrist, a manager employed by defendant, while plaintiff was engaged in her work at the workplace, which included, among other things, continual implied demands that plaintiff repeatedly subject herself to the sexual advances of Gilchrist in order to retain her job status, privileges and/or other employment benefits, Gilchrist's repeated, continual making of lewd, offensive and sexually discriminatory remarks and gestures to plaintiff and in her presence, and Gilchrist's repeated, continual efforts to view and comment upon plaintiff's gender-specific body parts.

7. On such occasions as plaintiff would be subjected to the various forms and incidents of sexually harassing conduct as are set forth in paragraph 6 hereinabove, plaintiff would categorically display her displeasure and discomfort at being subjected to same, and would respond in one or more of the following ways: by requesting Gilchrist to discontinue such behavior; by

telling Gilchrist that she did not feel such conduct and remarks were appropriate; by refusing to offer any verbal acknowledgment of Gilchrist's inappropriate remarks; by removing herself from Gilchrist's presence and proximity and attempting to avoid contact with Gilchrist.

8. Plaintiff is informed and believes, and therefore alleges upon such information and belief, that, prior to the time when she was subjected to Lieutenant Gilchrist's sexually harassing behavior, officials of the A&T campus police, including former Chief of Police Curtis W. Bigelow and Deputy Chief Richetta Slade, had received complaints from one or more other female officers regarding Gilchrist's sexually harassing conduct, including both verbal and physical harassment, of the type referenced in paragraph 6 above.

9. Defendant UNC/A&T was aware of Gilchrist's wrongful conduct by and through the knowledge of its supervisory officers, and defendant UNC/A&T acquiesced in Gilchrist's sexually harassing conduct toward plaintiff and others, as alleged herein, and permitted same to occur, in that Gilchrist, at all relevant times, maintained his employment with the A&T campus police department, was not disciplined, was instead promoted, and in all respects was permitted to continue to make sexual advances and otherwise create a sexually hostile working environment toward plaintiff without consequence.

10. In or about the second week of July 2005, plaintiff was interviewed by A&T campus police Chief Bigelow regarding reports of sexual harassment of plaintiff by Lieutenant Gilchrist, which were brought to the attention of Bigelow by plaintiff Tasha Murray. On or about November 28, 2005, following plaintiff's complaints about Gilchrist's sexual harassment, plaintiff was notified of the termination of her employment as a telecommunicator with the A&T police department, effective December 15, 2005. Plaintiff at all relevant times performed her duties in a satisfactory

and efficient manner. There was no just cause or reason for terminating plaintiff's employment. Plaintiff is informed and believes, and therefore alleges upon such information and belief, that the true reason and motive for defendant's termination of her employment was to retaliate against her for reporting and opposing the sexually hostile work environment created by Gilchrist's ongoing and pervasive sexual harassment.

11. As a direct and proximate result of defendant's various acts of wrongdoing as alleged hereinabove, both individually and in aggregate, plaintiff has suffered damages in the form of lost employment, lost income, lost enjoyment in her daily activities, and emotional damage.

12. Plaintiff has filed a timely charge of discrimination with the United States Equal Employment Opportunity Commission and has otherwise timely fulfilled all legal conditions precedent to the filing of this complaint.

FIRST CLAIM FOR RELIEF
(Title VII Hostile Employment Environment)

13. Plaintiff hereby restates and incorporates by reference each of the allegations of the above-enumerated paragraphs 1 through 12, inclusive, of the complaint as if set forth fully herein.

14. As a result of the conduct of Lieutenant Gilchrist as alleged herein, plaintiff was subjected to sexual harassment in the form of unwelcome sexual advances, sexually demeaning comments and other verbal and physical conduct of a similar nature such that her working environment at UNC/A&T was rendered severely and pervasively hostile on the basis of sex in violation of Title VII, 42 U.S.C § 2000e-2.

15. As a result of the conduct as alleged herein, with actual notice of Gilchrist's conduct and the hostile working environment created thereby, the responses of defendant

UNC/A&T, acting by and through its managers, to such sexual harassment constituted intentional official decisions not to adequately remedy the violation and was so clearly unreasonable that such responses themselves further subjected plaintiff to a working environment at UNC/A&T that was abusive and severely and pervasively offensive on the basis of sex. The conduct of defendant UNC/A&T as described herein was systemic and serial and thus constitutes a continuing violation of Title VII.

16. Such working environment had the effect of unreasonably interfering with plaintiff's work performance and created an intimidating and hostile working environment that seriously affected plaintiff's psychological well-being such that plaintiff suffered a tangible employment action as a result of the hostile working environment.

17. As a direct and proximate result of such sexually hostile working environment and adverse tangible employment actions, plaintiff is entitled to damages in an amount in excess of \$10,000.

SECOND CLAIM FOR RELIEF
(Title VII Retaliatory Discharge)

18. Plaintiff hereby restates and incorporates by reference each of the allegations of the above-enumerated paragraphs 1 through 17, inclusive, of the complaint as if set forth fully herein.

19. Defendant retaliated against plaintiff due to her reporting of and opposition to the sexually hostile work environment as alleged herein by terminating plaintiff from her employment in violation of Title VII, specifically 42 U.S.C. 2000e-2.

20. As a direct and proximate result of unlawful retaliation, plaintiff is entitled to damages in an amount in excess of \$10,000.

THIRD CLAIM FOR RELIEF
(Title IX Hostile Employment Environment)

21. Plaintiff hereby restates and incorporates by reference each of the allegations of the above-enumerated paragraphs 1 through 17, inclusive, of the complaint as if set forth fully herein.

22. As a result of the conduct of Lieutenant Gilchrist as alleged herein, plaintiff was subjected to intentional sexual harassment in the form of unwelcome sexual advances, sexually demeaning comments and other verbal and physical conduct of a similar nature such that her working environment at UNC/A&T was intentionally rendered severely and pervasively hostile on the basis of sex in violation of Title IX.

23. As a result of the conduct as alleged herein, with actual notice of Gilchrist's conduct and the hostile working environment created thereby, the responses of defendant UNC/A&T, acting by and through its managers, to such sexual harassment constituted intentional official decisions not to adequately remedy the violation and were so clearly unreasonable that such responses themselves further intentionally subjected plaintiff to a working environment at UNC/A&T that was abusive and severely and pervasively offensive on the basis of sex. The conduct of defendant UNC/A&T as described herein was systemic and serial and thus constitutes a continuing violation of Title IX.

24. Such working environment had the effect of unreasonably interfering with plaintiff's work performance and created an intimidating and hostile working environment that seriously affected plaintiff's psychological well-being such that plaintiff suffered a tangible employment action as a result of the hostile working environment.

25. As a direct and proximate result of such sexually hostile working environment

and adverse tangible employment actions, plaintiff is entitled to damages in an amount in excess of \$10,000.

FOURTH CLAIM FOR RELIEF
(Title IX Retaliatory Discharge)

26. Plaintiff hereby restates and incorporates by reference each of the allegations of the above-enumerated paragraphs 1 through 17, inclusive, of the complaint as if set forth fully herein.

27. Defendant retaliated against plaintiff due to her reporting of and opposition to the sexually hostile work environment as alleged herein by terminating plaintiff from her employment in violation of Title IX.

28. As a direct and proximate result of unlawful retaliation, plaintiff is entitled to damages in an amount in excess of \$10,000.

WHEREFORE, plaintiff prays the Court for judgment as follows:

1. That upon her FIRST, SECOND, THIRD, and FOURTH CLAIMS FOR RELIEF, plaintiff have and recover of defendant all equitable remedies (including but not limited to an injunction to prohibit defendant from continuing its discriminatory conduct) and compensatory damages available at law in such amounts as may be proven at the trial herein, together with such prejudgment interest as is available to plaintiff by law;
2. That defendant be taxed with the entire costs of this action, including the reasonable attorneys' fees incurred by the plaintiff in the prosecution thereof; and
3. That the Plaintiff be granted such other and further relief as the Court, in its wisdom, may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable which are raised by the pleadings herein.

This the 1st day of October, 2007.

/s/ David B. Puryear, Jr.
David B. Puryear, Jr.
NC State Bar No. 11063
puryear@puryearandlingle.com

/s/ R. J. Lingle
R. J. Lingle
NC State Bar No. 18290
lingle@puryearandlingle.com
Attorneys for Applicant Intervenor-Plaintiff
Mattie Smith
PURYEAR & LINGLE, P.L.L.C.
Adams Farm Professional Center
5501-E Adams Farm Lane
Greensboro, NC 27407-6396
Phone: (336) 218-0227
Fax: (336) 218-0240

CERTIFICATE OF SERVICE

I certify that on this day I electronically filed the foregoing COMPLAINT OF INTERVENOR-PLAINTIFF MATTIE SMITH with the Clerk of Court in the United States District Court for the Middle District of North Carolina using the CM/ECF system which will send notification of such filing to the following:

Elaine J. Grant, Esq.
elaine.grant@usdoj.gov
Sarah C. Blutter, Esq.
sarah.blutter@usdoj.gov
US Department of Justice – Civil Rights
950 Pennsylvania Ave., NW, PHB 4017
Washington, DC 20530

Thomas J. Ziko, Esq.
tziko@ncdoj.gov
John P. Scherer, II, Esq.
jscherer@ncdoj.gov
N. C. Department of Justice
P. O. Box 629
Raleigh, NC 27602

This the 1st day of October, 2007.

/s/ David B. Puryear, Jr.
David B. Puryear, Jr.
NC State Bar No. 11063
puryear@puryearandlingle.com
PURYEAR & LINGLE, P.L.L.C.
Adams Farm Professional Center
5501-E Adams Farm Lane
Greensboro, NC 27407-6396
Phone: (336) 218-0227