

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

IZZA LOPEZ, a/k/a RAUL LOPEZ, JR.
Plaintiff,

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Civil Action No. 06-3999

vs.

RIVER OAKS IMAGING AND
DIAGNOSTIC GROUP, INC.,
Defendant.

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT

Plaintiff Izza Lopez, a/k/a Raul Lopez, Jr., now files this Complaint against the Defendant, River Oaks Imaging and Diagnostic Group, Inc., alleging as follows:

PARTIES, JURISDICTION AND VENUE

1. The Plaintiff in this case is Izza Lopez, a/k/a Raul Lopez, Jr. ("Lopez"), who is a citizen of the United States of America and the State of Texas.
2. The Defendant in this case is River Oaks Imaging and Diagnostic Group, Inc. ("River Oaks"), which is a Delaware corporation authorized to do business in the State of Texas. River Oaks may be served with process through its registered agent, James W. King, 3000 Richmond Ste 300, Houston, TX 77098.
3. This Court has subject matter jurisdiction over the claims described in this Complaint pursuant to 28 U.S.C. §1331 and 42 U.S.C. § 2000e-5(f)(3).
4. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. §1391(b), as all or part of the claims alleged in this Complaint arose based upon conduct committed by River Oaks within this judicial district.

ADMINISTRATIVE PROCEDURES

5. On November 3, 2005, Lopez timely filed a charge of sex discrimination against River Oaks with the Houston District of the Equal Employment Opportunity Commission (EEOC).
6. On September 22, 2006, the EEOC issued a Dismissal and Notice of Rights to Lopez, a true and correct copy of which is attached hereto as Exhibit "A," giving her ninety (90) days from the date of receipt of the Dismissal and Notice of Rights to commence legal action. Lopez's lawsuit is timely filed.

FACTS

7. At the time of her birth, Plaintiff was assigned the sex of male.
8. From early in life, however, Plaintiff has been aware that her gender identity is female. Gender identity is a person's deeply-rooted, internal psychological identification as male or female.
9. In accordance with her gender identity, Lopez consistently has lived as a woman in all aspects of her life for several years. She has received medical treatment to bring her appearance in line with her gender identity, and she is known and accepted as a woman by her extended family, her friends, and previous coworkers.
10. In September 2005, Lopez applied to River Oaks for the position of Scheduler.
11. River Oaks asked Lopez to come to its office and interview for the position. The interview of Lopez was conducted on or around September 27, 2005 by Maddy Williams, who was at all relevant times River Oaks' Director of Scheduling, and Tameka Dixon, who was at all relevant times River Oaks' Scheduling Manager.

12. At the time of the interview, Tameka Dixon knew that Lopez is a transgender woman, meaning that she knew that Lopez was assigned the sex of male at birth but has a female gender identity and lives as a woman.
13. At the interview, Lopez filled out a written job application on which she provided the name by which she is known, Izza, and wrote in parentheses her legal first name, which is Raul.
14. On or about September 29, 2005, River Oaks sent Lopez a written job offer, pending the successful completion of a background check and drug screen.
15. Lopez filled out the background check form with her legal name, Raul Lopez. Where the form asked for any other names used, Lopez wrote "Izza Lopez."
16. On October 4, 2005, Lopez got a call from Elle Pallugna, a River Oaks employee who works as a recruiter of job applicants for positions at River Oaks. Elle Pallugna told Lopez that she had passed the background check and drug screen, and asked her to begin the job as soon as possible.
17. Elle Pallugna and Lopez agreed that Lopez would commence work on October 24, 2005.
18. On October 5, 2005, Lopez gave two weeks' notice at her then-current job.
19. On October 10, 2005, Elle Pallugna and Cherrone French, River Oaks' Human Resources Director, telephoned Lopez and informed her that River Oaks was withdrawing the job offer that had been made to Lopez because of Lopez's "misrepresentation" of herself as a woman.
20. Lopez asked for the rescission to be put in writing.
21. On November 14, 2005, Cherrone French sent Lopez a letter stating in part, "As was previously explained to you, our offer was rescinded because we believe you

misrepresented yourself to us during the interview process. You presented yourself as a female and we later learned you are a male.”

22. Izza approached her then-current employer and asked for her job back, but her employer declined.

CAUSE OF ACTION

**(Violation of Title VII of the Civil Rights Act of 1964, as amended,
codified at 42 U.S.C. § 2000e et seq., and the Civil Rights Restoration Act of 1991)**

23. Lopez repeats each of the foregoing allegations as if fully set forth herein.
24. Lopez was qualified for the position of Scheduler at River Oaks.
25. Lopez is within the class protected by Title VII of the Civil Rights Act of 1964.
26. River Oaks rescinded the job offer that it had made to Lopez because it perceived Lopez as not conforming with sex stereotypes River Oaks associated with people of the sex it perceived Lopez to be.
27. In the alternative, or in addition, River Oaks discriminated against Lopez because of her transgender status.
28. River Oaks’ conduct constitutes discrimination because of sex in violation of Title VII of the Civil Rights Act of 1964.
29. Sex is not a bona fide occupational qualification for the position of Scheduler at River Oaks.
30. Lopez has been damaged as a result of River Oaks’ discrimination against her. Lopez’s damages include lost back pay, lost benefits, lost front pay, emotional distress and pain and suffering.

31. River Oaks' discrimination was done with malice and/or with reckless disregard for Lopez's statutorily-protected rights. An award of exemplary damages is therefore warranted.

JURY DEMAND

32. Lopez hereby demands a jury trial as to all claims that may be tried to a jury.

PRAYER

Wherefore, Plaintiff Lopez respectfully requests that the Defendant River Oaks be cited to answer this Complaint, and to defend against the allegations contained herein. Plaintiff asks that the Court award her, to the fullest extent allowed by law:

- A. Reinstatement and/or front pay;
- B. Compensatory damages, including back pay, and compensation for lost benefits, emotional distress and pain and suffering;
- C. Exemplary damages;
- D. Attorneys' fees;
- E. Costs, including expert witness fees; and
- F. Such other and further relief to which Plaintiff may be entitled.

Dated this 18th day of December, 2006.

Respectfully submitted,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

By: /s/ Kenneth D. Upton, Jr.
Kenneth D. Upton, Jr. (Attorney in Charge)
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ATTORNEYS FOR PLAINTIFF

Of counsel:

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(pro hac vice motion to be submitted separately)

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Raul (Izza) Lopez, Jr.**
516 North Super
Houston, TX 77011

From: **Houston District Office - 460**
1919 Smith St, 7th Floor
Houston, TX 77002



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

EEOC Charge No.

EEOC Representative

Telephone No.

330-2006-00235

Joseph M. de Leon,
Enforcement Supervisor

(713) 209-3423

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA **must be filed in a federal or state court 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 state claim may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought 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.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Jeanette M. Leino,
District Director

9/22/06

 (Date Mailed)

Enclosures(s)

cc: **Matthew T. Noll**
MCCORMICK HANCOCK & Newton
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Houston, TX 77027

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