

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION**

<b>EQUAL EMPLOYMENT</b>	)	
<b>OPPORTUNITY COMMISSION,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	
	)	<b>No. 3:16-cv-5034 SWH</b>
<b>v.</b>	)	
	)	
<b>HOBSON BEARING INT’L, INC.,</b>	)	
	)	
<b>DEFENDANT.</b>	)	

**ORDER AND CONSENT JUDGMENT**

This Court, having reviewed and taken notice of the pleadings and with the consent of the Parties, hereby enters Judgment as follows:

**THE LITIGATION**

1. This action was instituted by the United States Equal Employment Opportunity Commission under the antiretaliation provision of the Fair Labor Standards Act of 1938 (FLSA), 52 Stat. 1060, as amended, 29 U.S.C. § 215(a)(3), as it applies to the United States Equal Employment Opportunity Commission’s enforcement of the Equal Pay Act of 1963 (EPA), 52 Stat. 1062, as amended, 29 U.S.C. § 206(d).
2. The Commission invoked and this Court has jurisdiction over the both the subject matter and the parties in this litigation.
3. In the interest of promptly resolving this matter and as a result of having engaged in settlement negotiations, the Parties agree that this action should be fully and finally resolved by entry of this Order and Judgment.

## FINDINGS

1. Tera Lopez was an employee of Defendant Hobson Bearing International, Inc., within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), from on or about October 2012 to on or about July 2015.
2. On August 3, 2015, Lopez prepared and filed a Commission intake questionnaire alleging discriminatory actions by Hobson Bearing, *inter alia*, violations of the EPA.
3. The Commission prepared a charge of discrimination form and Lopez signed it on August 12, 2015.
4. The Commission provided Hobson Bearing with timely notice of the charge.
5. After an investigation, on October 20, 2015, the Commission issued a Dismissal and Notice of Rights (“Dismissal and Notice”).
6. The Dismissal and Notice states that “[t]his does not certify that the respondent is in compliance with the statutes.”
7. On November 9, 2015, Hobson Bearing filed a malicious prosecution lawsuit captioned *Hobson International Inc. v. Lopez*, 15AO-CC000256, against Lopez in the Circuit Court of Jasper County, Missouri (“Lawsuit”).
8. The Lawsuit alleged that Lopez maliciously filed the EPA charge to harass Hobson Bearing and receive financial gain, that Hobson Bearing was “compelled to defend the [charge] at great expense”, and that “at great taxpayer expense, the government closed its case stating it did not find a violation of the statutes under the Equal Pay Act....”
9. The Lawsuit sought economic and punitive damages from Lopez.

10. Hobson Bearing actively litigated the Lawsuit for over four months (November 9, 2015 to March 21, 2016). The Commission notified Hobson Bearing on December 16, 2015, that it was investigating the Lawsuit as a violation of 29 U.S.C. § 215(a)(3). Hobson Bearing, maintaining its good faith belief the charge was false, continued to actively litigate the Lawsuit, including taking Lopez's deposition on December 22, 2015, and propagating discovery requests.

11. The Commission's asserts that the Lawsuit chills reasonable persons from engaging in protected activity under the EPA.

12. Hobson Bearing, on the advice of its then counsel, did not believe it was acting in a retaliatory manner.

13. On March 21, 2016, after the Commission filed this lawsuit, Hobson Bearing moved to dismiss the Lawsuit without prejudice.

14. The state court judge granted Hobson Bearing's motion, and the case was dismissed without prejudice on March 23, 2016.

15. As a result of Hobson Bearing's actions, Ms. Lopez was harmed. In addition to attorney's fees to defend against the Lawsuit, Lopez had pecuniary and nonpecuniary damages, including those for emotional distress. The Parties stipulate Ms. Lopez's total damages are \$37,500.00.

## ORDER

Based on the aforementioned Findings, this Court hereby orders as follows:

1. Although neither the Federal District Court for the Western District of Missouri (which includes Jasper County and Joplin Missouri) nor the Eighth Circuit Court of Appeals have ruled on whether employers are barred from suing employees who they believe have filed a false charge of discrimination, other state and federal courts in Missouri, however, have recognized the statutory bar against employers suing employees who file a charge of discrimination and the adverse policy implication of a contrary holding. *See Cooper v. Pic-Walsh Freight Co.*, 1976 WL 12, at \*1 (E.D. Mo. 1976) (dismissing the defendant's malicious prosecution counterclaim and noting that "[t]o entertain claims in the nature of malicious prosecution for the filing [of a charge of discrimination with the Commission] would seriously undermine the clear policy.... to protect an employee who utilizes the procedures provided by Congress for the vindication of his right to be free from unlawful discrimination in employment"); *see also Pic-Walsh Freight Co. v. Cooper*, 618 S.W.2d 449, 454 (Mo. App. E.D. 1981) (citing favorably to and giving *res judicata* effect to the related federal case, *supra*, and dismissing a malicious prosecution claim).

2. The reasoning of the *Pic-Walsh Freight* holdings has been extended beyond malicious prosecution lawsuits in other jurisdictions. *See e.g., Equal Employment Opportunity Comm'n v. Virginia Carolina Veneer Corp.*, 495 F. Supp. 775 (W.D. Va. 1980) (prohibiting an employer's defamation suit against an employee who filed a discrimination charge) (citing and quoting *Pic-Walsh Freight Co.*, 1976 WL 12, at \*1).

3. Summarizing the district court's holding in *Virginia Carolina Veneer*, in its order dismissing the remaining issue on appeal, the Fourth Court of Appeals noted that it had "granted summary judgment to both [the employee] and the EEOC in the form of a preliminary injunction and a permanent injunction ordering Virginia-Carolina to take a non-suit in its state defamation action.... reason[ing] that an absolute privilege attached to the filing of the charges with the EEOC so that the defamation action based on the charges constituted retaliation as a matter of law." *Cassidy v. Virginia Carolina Veneer Corp.*, 652 F.2d 380, 382 (4th Cir. 1981) (emphasis added). This is even the case if the employee's statements in the charge are false and defamatory. *Virginia Carolina Veneer Corp.*, 495 F. Supp. at 778 ("The importance of maintaining free access to the Commission is so great that the truth or falsity of a charge, may not be considered in providing protection to a person for filing a charge").

4. Therefore, the parties agree that Hobson Bearing's action of filing the Lawsuit because Lopez filed a charge of discrimination with the Commission pursuant to the EPA violated 29 U.S.C. § 215(a)(3), which prohibits "discriminat[ing] against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to [chapter 8 of the FLSA, which includes the EPA], or has testified or is about to testify in any such proceeding..."

5. Hobson Bearing, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them are permanently prohibited from "discharg[ing] or in any other manner discriminat[ing] against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to [the EPA], or has testified or is about to testify in any such proceedings," in violation of 29 U.S.C. § 215(a)(3).

6. Hobson Bearing is ordered to dismiss its Lawsuit against Lopez with prejudice. It is also enjoined from filing any other lawsuit or bringing any counterclaims against Lopez which are based upon her having filed a charge with the Commission, including but not limited to defamation. Nothing precludes Hobson Bearing from defending itself against claims by Lopez or from using any inconsistent testimony she may have given under oath in any past proceeding in any future proceeding.

7. Hobson Bearing is ordered to pay \$37,500.00 to Lopez for the damages suffered that are a direct and proximate result of its violation of 29 U.S.C. § 215(a)(3).

Dated: August 25, 2016



*Sarah W. Hays*  
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JUDGE SARAH W. HAYS  
CHIEF U.S. MAGISTRATE