

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

Amanda Kulkin,

Plaintiff

v.

SCI Mercer Department of Corrections,

Defendant

Case No.

COMPLAINT

Amanda Kulkin (“Plaintiff”), by and through her counsel Elizabeth L. Pollock-Avery, Esq. and David Manes, Esq. of Kraemer, Manes & Associates LLC file this Complaint against SCI Mercer Department of Corrections (“Defendant”) alleging the following:

I. Nature of the Action

1. This is an action for equitable relief as well as monetary damages, to redress Defendant’s unlawful employment practices against Plaintiff, including Defendant’s unlawful discrimination and harassment against Plaintiff because of her sex, disability and attempted use of FMLA time, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 USC §§2000e et seq. (“Title VII”); the Pennsylvania Human Relations Act (“PHRA”) 43 P.S. § 951 et. seq., the Americans with Disabilities Act (ADA), as amended 42 U.S.C. §§12101 et seq, and the Family and Medical Leave Act (FMLA) 29 U.S.C. §2601 et seq.

2. Amanda Kulkin suffered egregious sexual harassment at work. Ms. Kulkin was subject to repeated comments about her breasts, asked if she wanted to see what was in a male employee’s

“front middle pocket,” subjected to verbal and written catcalls about her appearance in person and over the radio, mocked for being a female where male guards made a fake report labeled “Hurt Feelings Report” which lists as reasons for filing the report “I am thin skinned,” “I am a wimp,” “I am a crybaby,” and “I have woman/man-like hormones.” Ms. Kulkin also experienced unwanted physical contact such as on one occasion where a male coworker approached her and licked her ear.

3. This sexual harassment and gender discrimination took a sickening turn when male guards learned about disabilities caused by a non-work related knee injury. Signs were created and posted around the correctional facility, alerting inmates to the fact that Ms. Kulkin had sustained an injury and may have been physically susceptible to an attack by an inmate. One such sign called Ms. Kulkin a “a festering wound in the tax payer’s side” another sign with a picture of a tombstone said “On said day began the downfall of Ms. Kulkin and began the demise of her fragile emotional well being.” Ms. Kulkin’s type of concerns were not taken seriously and were unfortunately highlighted in 2013 when a female at a Pennsylvania state prison was choked unconscious and raped for 27 minutes.¹

4. Defendant’s conduct was knowing, malicious, and wanton and/or showed a reckless disregard for Plaintiff which has caused and continues to cause Plaintiff to suffer a substantial economic and non-economic damages, severe mental anguish, and emotional distress.

II. Jurisdiction and Venue

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 1343 as this action involves federal questions regarding the violation of Plaintiff’s rights protected by Title VII, the FMLA, and the ADA. The Court has supplemental jurisdiction over Plaintiff’s related claims arising under the PHRA pursuant to 28 U.S.C. § 1367.

¹ Docket Number: CP-14-CR-0001772-2013. Commonwealth of Pennsylvania v. Omar Shariff Best

6. The amount in controversy in this case exceeds \$75,000.

7. The events or omissions giving rise to the claims occurred in Western Pennsylvania, and therefore, this action is within the jurisdiction of the United States District Court for the Western District of Pennsylvania and the venue is proper pursuant to 28 U.S.C. § 1391(b).

III. Parties

8. Plaintiff was a resident and citizen of Pennsylvania at all times relevant to this case.

9. Defendant is a state correctional institution located at 801 Butler Pike, Mercer, PA 16137.

IV. Facts

10. Plaintiff was hired as a Corrections Officer by Defendant on or about September 3, 2006.

11. On or about June 13, 2012, Plaintiff suffered a non-related work injury which required her to take approximately six days off from work, after which her doctor cleared her to return to work. As a result of this injury, Plaintiff suffered a knee injury to the extent that it qualifies as a permanent disability under the ADA. This injury has caused, and will continue to cause, Plaintiff great difficulty performing the following; walking, stooping, running, and standing for long periods.

12. Defendant refused to let Plaintiff return to work until they had received all medical information related to the injury along with a non-related medical injury.

13. This excessive demand for unnecessary medical information resulting in Plaintiff's return to work being delayed until approximately July 13, 2012.

14. Upon her return to work, Plaintiff was removed from her previous position of Yard Officer and reassigned to a variety of less desirable positions which included jobs in the lobby, transport, and infirmary. Instead of working a full shift in one location, Plaintiff was frequently reassigned during her shifts.

transport, and infirmary. Instead of working a full shift in one location, Plaintiff was frequently reassigned during her shifts.

15. When Plaintiff complained to Lt. Bill Ayers about her reassignment to inferior posts and tasks and stated her belief that she was being retaliated against, Lt. Ayers told Plaintiff “you need to drop it or you’re going to have all the shit spots.”

16. Plaintiff was subjected to sexual harassment from other employees which included:

a. A false request for transfer to SCI Cambridge (an all-women’s facility) submitted on Plaintiff’s behalf by fellow employee Al Harvey. Ms. Kulkin filed a complaint regarding this false transfer request on August 18, 2012. (Attached as **Exhibit 1**). Mr. Harvey was not disciplined for this behavior.

b. Verbal harassment by other employees, including radio and telephone statements that “Plaintiff needed to be with other women” and that “Plaintiff wanted to go to Cambridge because ‘you’re a lesbian’” despite the fact that Plaintiff had never requested a transfer to Cambridge.

c. Sgt. Dean Campbell told Plaintiff that he was concerned with her working in the yard and needed to watch her carefully because “you’re a woman.”

d. An insulting mock article purportedly published on the website “merceronline.com” which singled out Plaintiff and another female Corrections Officer for insult and referred to Plaintiff as “a festering wound in the tax payer’s side.” (Attached as **Exhibit 2**). This was posted to the state correctional facilities’ Docnet, a login-required website accessible by all the correctional officers in the state. State correctional officers use this site to get updates on important information and it is likely that an extensive number of officers saw this mock article.

e. The following signs were posted around the facility, visible not only to the guards but to the inmates as well, endangering Ms. Kulkin's safety:

i. A mock "Hurt Feelings Report" was created and lists as reasons for filing the report "I am thin skinned," "I am a wimp," "I am a crybaby," and "I have woman/man-like hormones." (Attached as **Exhibit 3**).

ii. A mock business card was created which read "It's all about me." (Attached as **Exhibit 4**).

iii. Sign which stated Plaintiff had "won" the "Modify the Yard Relief to Suit my Needs Contest." (Attached as **Exhibit 5**).

iv. Sign with a picture of a tombstone on which Ms. Kulkin's coworkers intentions were clearly spelled out "Ms. Kulkin did knowingly and of unsound mind enter into an ill advised challenge (sic) with one her peers. **On said day began the downfall of Ms. Kulkin and began the demise of her fragile emotional well being.** She leaves behind a shattered ego and shed tears that so far have gone unclaimed." (Attached as **Exhibit 6**).

f. Plaintiff was subjected to catcalls in person by coworkers and supervisors.

g. Plaintiff was subjected to comments about her breasts in person and over the radio made by coworkers and supervisors which included statements such as "you're going to give yourself a black eye, Kulkin."

h. On one occasion, Lt. Greg Giddens approached Plaintiff from behind and licked her ear with his tongue.

i. C.R. Clark made the sexually suggestive comment to Plaintiff of "Kulkin, want to see what's in my front middle pocket?"

17. Plaintiff reported the harassment and retaliation to the Defendant.

18. Defendant failed to take any action to eliminate the harassment.

19. Due to the ongoing harassment and retaliation, Plaintiff felt that she had no choice but to resign her position as of September 30, 2012 due to the hostile work environment.

COUNT I

TITLE VII, 42 U.S.C. §2000e et seq. - Sexual Harassment and Hostile Work Environment

20. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

21. Based on the foregoing, Defendant has engaged in unlawful practices in violation of Title VII. The said unlawful practices for which Defendant is liable to Plaintiff include, but are not limited to:

- a. fostering and perpetuating a hostile and offensive work environment;
- b. unlawful sexual harassment;
- c. creating an intolerable work environment; and
- d. constructive termination of Plaintiff's employment.

22. The harassment was so frequent and severe that it created a hostile and offensive work environment, resulting in the constructive termination of Plaintiff's employment.

23. Furthermore, Defendant failed to promptly investigate and cause the hostile work environment to cease.

24. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of Title VII, Plaintiff Kulkin has sustained a loss of earnings, severe emotional and psychological distress, loss of self-esteem, and loss of future earning power.

COUNT II
TITLE VII, 42 U.S.C. §2000e et seq. – Disparate Treatment

25. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

26. At all times relevant hereto, Plaintiff was a female employee of Defendant.

27. At all times relevant hereto, Plaintiff was treated worse than similarly situated male employees in the terms, benefits, privileges, and conditions of her employment for Defendant.

28. At all times relevant hereto, Defendant's explanations for the disparate treatment of Plaintiff are pretextual.

29. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of Title VII, Plaintiff Kulkin has sustained a loss of earnings, severe emotional and psychological distress, loss of self-esteem, and loss of future earning power.

COUNT III
TITLE VII, 42 U.S.C. §2000e et seq. – Retaliation

30. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

31. Defendant was made known of the harassment and hostile work environment being inflicted upon Plaintiff.

32. When Plaintiff complained about the harassment and hostile work environment, Defendant took no steps to stop it and allowed it to continue.

33. The harassment came from supervisors of Plaintiff.

34. The time proximity, along with Defendant's continued harassment against Plaintiff on the basis of her gender, evidence Defendant's animus against Plaintiff and the fact that it was this animus that motivated her constructive termination.

COUNT IV

PHRA, 43 P.S. § 951 et. seq. - Sexual Harassment and Hostile Work Environment

35. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

36. Based on the foregoing, the Defendant has engaged in unlawful practices in violation of the PHRA. The said unlawful practices for which Defendant is liable to Plaintiff include, but are not limited to:

- a. fostering and perpetuating a hostile and offensive work environment;
- b. subjecting Plaintiff Dumont to unlawful sexual harassment;
- c. creating an intolerable work environment; and
- d. constructive termination of Plaintiff's employment.

37. The harassment was so frequent and severe that it created a hostile and offensive work environment, resulting in the constructive termination of Plaintiff's employment.

38. Furthermore, Defendant failed to promptly investigate and cause the hostile work environment to cease.

39. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of the PHRA, Plaintiff Kulkin has sustained a loss of earnings, severe emotional and psychological distress, loss of self-esteem, and loss of future earning power.

COUNT V
PHRA, 43 P.S. § 951 et. seq. – Disparate Treatment

40. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

41. At all times relevant hereto, Plaintiff was a female employee of Defendant.

42. At all times relevant hereto, Plaintiff was treated worse than similarly situated male employees in the terms, benefits, privileges, and conditions of her employment for Defendant.

43. At all times relevant hereto, Defendant's explanations for the disparate treatment of Plaintiff are pretextual.

44. As the direct result of the aforesaid unlawful discriminatory employment practices engaged in by the Defendant in violation of Title VII, Plaintiff Kulkin has sustained a loss of earnings, severe emotional and psychological distress, loss of self-esteem, and loss of future earning power.

COUNT VI

ADA 42 U.S.C. §§12101 et seq. - Harassment Based on Disability

45. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

46. The ADA defines a disability as a "physical or mental condition that substantially limits a major life activity." The Americans with Disabilities Amendments Act expanded the definition of major life activity to include operations of major bodily functions.

47. Plaintiff has a disability as defined under the ADA, in that her knee injury prevents her from being able to walk, run, stoop, or stand for substantial periods of time.

48. Plaintiff was harassed by fellow employees and management when her disability became known.

49. Defendant was aware of Plaintiff's disability when she was terminated.

50. Plaintiff was capable of performing the essential functions of her job despite her disability.

COUNT VII

ADA 42 U.S.C. §§12101 et seq. – Retaliation

51. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

52. Upon returning to work from medical leave, Plaintiff was treated differently because of her disability and was reassigned to a different position.

53. When Plaintiff complained to supervisors about her reassignment, she was ignored.

54. The time proximity, along with Defendant's reassignment of her duties, evidence Defendant's animus against Plaintiff for her disability and the fact that it was this animus that motivated her constructive termination.

COUNT VIII

PHRA 43 P.S. § 951 et. seq. - Discrimination Based on Disability

55. All previous paragraphs are incorporated as though fully set forth herein.

56. The Pennsylvania Human Relations Act defines a disability as a "physical or mental impairment which substantially limits one or more of such person's major life activities."

57. Plaintiff has a disability as defined under the PHRA.

58. Defendant was aware of Plaintiff's disability when she was terminated.

59. Plaintiff was capable of performing the essential functions of her job with a reasonable accommodation.

COUNT IX

PHRA 43 P.S. § 951 et. seq. – Retaliation

60. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

61. Defendant was aware of the harassment against Plaintiff based on her sex and her disability.

62. When Plaintiff complained about the harassment and hostile work environment, Defendant took no steps to stop it and allowed it to continue.

63. The harassment came from supervisors of Plaintiff.

64. The time proximity, along with Defendant's continued harassment against Plaintiff on the basis of her gender, evidence Defendant's animus against Plaintiff and the fact that it was this animus that motivated her constructive termination.

COUNT X

FMLA 29 U.S.C. §§2601 et seq. – Interference and Retaliation

65. The above paragraphs are incorporated here by reference as though fully set forth at length herein.

66. Plaintiff requested FMLA time for her injury, but was denied because Defendant required information unrelated to the injury. Defendant's unreasonable request resulted in Plaintiff not being permitted to return to work for weeks longer than necessary.

67. This request for unnecessary private medical information, and the refusal to grant FMLA time based on Plaintiff's actions to protect her privacy by not supplying the information, interfered with Plaintiff's rights under the FMLA.

68. The time proximity shows Defendant's animus against Plaintiff for requesting FMLA time and the retaliation that resulted in her constructive termination.

Request for Relief

WHEREFORE, Plaintiff respectfully requests for this Court to grant the following relief in excess of \$75,000:

- a. Award Plaintiff with a rate of pay and other benefits of employment, to which she would have been entitled, had she not been subjected to unlawful discrimination;
- b. Award Plaintiff front pay, if appropriate;
- c. Award Plaintiff punitive damages, pre and post judgment interest, costs of suit and attorney and expert witness fees as allowed by law;
- d. Declare Defendant's conduct to be in violation of the Plaintiffs' rights under Title VII of the Civil Rights Act of 1964, PHRC, ADA, and FMLA;
- e. Award Plaintiff compensatory damages for lost wages, benefits, interest, and other remuneration, and for embarrassment, humiliation, emotional distress, and damage to reputation as well as punitive damages.
- f. Such equitable relief as may be appropriate under the circumstances; and
- g. Award such further relief as this Court deems necessary and proper.

JURY TRIAL DEMANDED.

Respectfully submitted,

Dated: September 26, 2014

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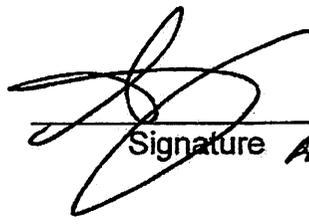
Counsel for Plaintiffs

COMMONWEALTH EMPLOYEE WITNESS STATEMENT

The following statement is being given by me freely and without coercion for official Commonwealth business and will be considered for all purposes, including actions under the Statutes of this Commonwealth, just as though it had been sworn or affirmed before a court of law or formal arbitration panel.

ON THIS DATE, 18 AUGUST 2012, I WAS ADVISED BY SEVERAL PEOPLE THAT MY NAME APPEARS ON THE H-1 TRANSFER LIST DATED 2 JULY 2012. UPON INVESTIGATION, MY NAME DOES APPEAR ON THE H-1 TRANSFER LIST. I HAVE NEVER REQUESTED A TRANSFER ELECTRONICALLY OR IN WRITING. THEREFORE, SOMEONE OBVIOUSLY SUBMITTED MY NAME FOR TRANSFER TO SCI CAMBRIDGE SPRINGS EITHER ELECTRONICALLY OR IN WRITING. I FEEL THIS IS BEING DONE AS SEXUAL HARASSMENT BECAUSE I AM A FEMALE OFFICER AND WHOEVER SUBMITTED MY NAME FOR TRANSFER, DID SO TO AN ALL FEMALE INSTITUTION.

18 AUGUST 2012
Date


Signature *Amanda Vecken*

Date

Signature

Note: This form is to be completed and signed by the employee who is a witness to an incident involving employees of the Commonwealth. If the text is typed by someone other than the employee giving the statement, it must be read and signed by the employee. In the event the statement is typed, the party typing the statement must sign and date the document.

Mercer County Times (06-16-2012)

http://www.merceronline.com/news/state/leave-abuse/article_276873c3-4c0d-5a50-a765-14d2a6d836d2.html

A northwestern Pennsylvania state correctional facility has started to save tax payer's money. Management at SCI Mercer has their hands full running the day to day issues at the institution, now they have to deal with staff who abuse leave. Just last month management gave Correction Officer V. Allison the choice of resigning or be terminated. She chose to resign. The reason for this decision was that CO Allison only worked 447 hours of the 912 hours she was scheduled to work. Management hated to make such a harsh decision but when an employee calls off it causes undue stress on the under paid LT. who has to find coverage and then pay someone 1 ½ times their hourly rate.

Management reported that after this decision was made and the action taken, it seemed that most employees took notice, except one, Correction Officer Amanda Kulkin.

CO Kulkin who was just recently presented with the coveted "Modify The Relief's To Suit My Own Needs" award was always the first one to complain when Allison would call off. It now appears that CO Kulkin herself has become a festering wound in the tax payers' side. CO Kulkin, who is all about herself and was always quick to rebuff a leave abuser with sarcasm, was going to be late for work and she followed policy by calling the control Lt to inform them she would be late. When the Lt. told her it would be a "CN" she just called off and has not returned to work as of this article. After several unsuccessful attempts to contact CO Kulkin for comments, we can only assume that she has taken a trip to Hawaii on behalf of the tax payers. An action like this just supports the reason she was presented with the latest award. At this press time it was reported that CO Amanda Kulkin had a large lead in the "You Cant Spell Mercer Without Me" award. This is the award given to any CO-1 who has total disregard for their fellow staff members. It has been reported that Amanda has taken this award the last 5 years in a row.

Management at SCI Mercer has been planning to implement a new busing program to assist irresponsible employees. PA DOC has been getting bids from local vendors for 3 passenger buses. Once the bid is awarded, Management will launch the A.K.M.T. (Amanda Kulkin Memorial Transit) program or AmandaTran for short. Once the program is under way, there will never be a reason to be late or miss work again. The company who gets the bid will not only be responsible to provide transportation to and from work, but will also provide wake up calls and a light breakfast while in route. This is only one of several ideas that PA DOC has planned to get their invaluable employees to show up to work consistently. Other ideas that are currently being refined are providing permanent housing on site, shock collars, Shake up with a white shirt, and hypnosis to instill good work ethics.
Shack

HURT FEELINGS REPORT

For use of this form, see FM 22-102; the proponent agency is TRADOC

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: 5 USC 301, Departmental Regulations; 10 USC 3015, Secretary of the Army and E.O. 9397 (SSN)
PRINCIPAL PURPOSE: To assist whiners in documenting hurt feelings, and to provide leaders with a list of soldiers who require additional counseling, NCO leadership, and extra duty.
ROUTINE USES: For subordinate leader development (AW FM 22-102). Leaders & whiners should use this form as necessary.
DISCLOSURE: Disclosure is voluntary, but repeated disclosure may result in a DA Form 77B-1A, Report of Wall To Wall Counseling

PART I - ADMINISTRATIVE DATA

A. WHINER'S NAME (Last, First, MI)	B. RANK/GRADE	C. SOCIAL SECURITY NUMBER	D. DATE OF REPORT
E. ORGANIZATION		F. NAME & TITLE OF THE PERSON FILLING OUT THIS FORM	

PART II - INCIDENT REPORT

A. DATE FEELINGS WERE HURT	B. TIME OF HURTFULNESS	C. LOCATION OF HURTFUL INCIDENT	D. NCO OR OFFICER SYMPATHETIC TO WHINER
E. NAME OF REAL MAN/WOMAN WHO HURT YOUR SENSITIVE FEELINGS		F. RANK/GRADE	G. ORGANIZATION (if different from 1a above)

E. INJURY (Mark all that apply)

1. WHICH EAR WERE THE WORDS OF HURTFULNESS SPOKEN INTO? <input type="checkbox"/> LEFT <input type="checkbox"/> RIGHT <input type="checkbox"/> BOTH	2. IS THERE PERMANENT FEELING DAMAGE? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> MAYBE
3. DID YOU REQUIRE A "TISSUE" FOR TEARS? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> MULTIPLE _____	4. HAS THIS RESULTED IN A TRAUMATIC BRAIN INJURY? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> MAYBE

F. REASON FOR FILING THIS REPORT (Mark all that apply)

I am thin skinned	The Army needs to fix my problems.	Two beers is not enough
I am a wimp	My feelings are easily hurt	My hands should be in my pockets
I have woman/man-like hormones	I didn't sign up for this	I was not offered a post brief
I am a crybaby	I was told that I am not a hero	Someone requested a post brief
I want my mommy	The weather is too cold	All of the above and more

G. NARRATIVE (Tell us in your own story words how your feelings were hurt.)

PART III - AUTHENTICATION

a. PRINTED NAME OF REAL MAN/WOMAN	b. SIGNATURE	c. PRINTED NAME OF WHINER	d. SIGNATURE
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We, as the Army, take hurt feelings seriously. If you don't have someone who can give you a hug and make things all better, please let us know and we will promptly dispatch a "bugger" to you ASAP. In the event we are unable to find a "bugger" we will notify the fire department and request that they send fire personnel to your location. If you are in need of supplemental support, upon written request, we will make every reasonable effort to provide you with a "blanky", a "binky" and/or a bottle if you so desire.



pennsylvania
DEPARTMENT OF CORRECTIONS

AMANDA KULKIN

Chow Relief Shifter

(It's all about me)

State Correctional Institution at Mercer

801 Butler Pike

Mercer, PA 16137

V 724-682-1837 F 724-682-1840

akulkin@state.pa.us

www.pa.gov

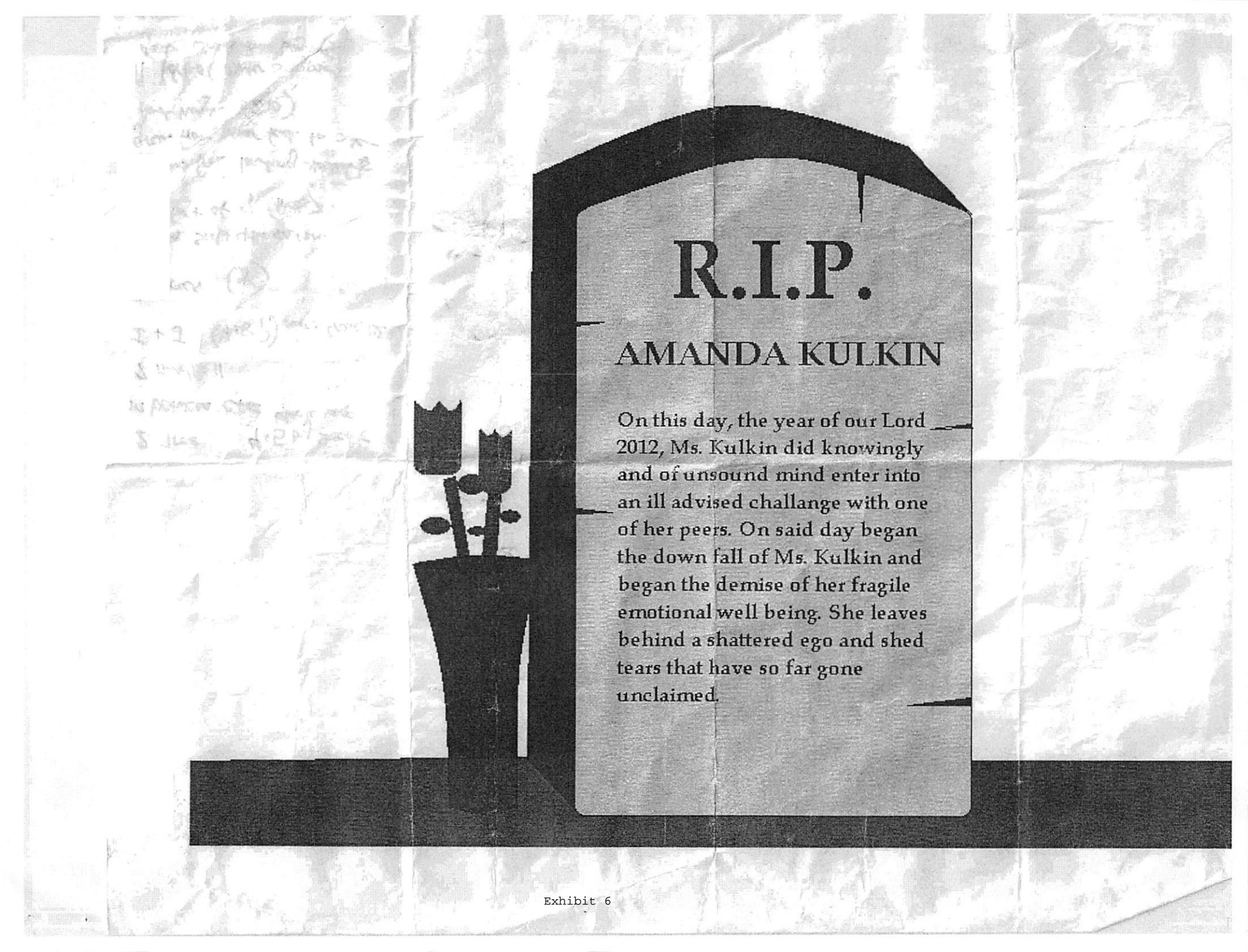
CONGRATULATIONS!
To this years winner of the

**MODIFY THE YARD RELIEF
TO SUIT MY NEEDS
CONTEST**

SCI-MERCER AND THE STAFF BONED BY SAID
MODIFICATIONS WOULD LIKE TO CONGRATULATE

AMANDA KULKIN

FOR HIS/HER UNCARING ATTITUDE TOWARDS OTHERS
AND COMPLETE DISREGARD FOR THEIR PEERS SCHEDULES.
IN KEEPING WITH DOC TRADITION, ABOVE STAFF MEMBER HAS
TAKEN THEIR FIRST STEP TOWARDS A CAREER IN MANAGEMENT



R.I.P.

AMANDA KULKIN

On this day, the year of our Lord 2012, Ms. Kulkin did knowingly and of unsound mind enter into an ill advised challenge with one of her peers. On said day began the down fall of Ms. Kulkin and began the demise of her fragile emotional well being. She leaves behind a shattered ego and shed tears that have so far gone unclaimed.