IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

DENA LEWIS,

Plaintiff,

v.

CITY OF COUNTRY CLUB HILLS, a municipal corporation, CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA,

Defendants.

Case No. 12 L 009916

Judge Brigid Mary McGrath

DEFENDANTS' MOTION *IN LIMINE* TO EXCLUDE TESTIMONY REGARDING SPECIFIC PORNOGRAPHIC WEBSITES WITHOUT A FOUNDATION WITNESS

NOW COMES the Defendants and move this Honorable Court for entry of an order *in limine* excluding any testimony relating to the specific titles or contents of pornographic websites visited by specific City of Country Club Hills employees and firefighters absent foundation as to relevance in this lawsuit. In support thereof, Defendants state as follows:

1. The basis of this motion is that Plaintiff should be barred from offering *any* evidence of porn sites that were accessed, unless a specific foundation witness-whether a male or female—testifies that they saw a fellow firefighter watching the porn on a computer. Simply proving that porn sites were accessed—which defendants concede as a general proposition--without a specific witness to testify that they saw someone watching it, in which case it could, hypothetically, be circumstantial evidence of the gender discrimination claim, is inadmissible, not to mention prejudicial.

2. Plaintiff must prove that someone watched the porn, and that another witness saw them do it, or else the information disclosing a particular "porn hit" in the abstract is simply inflammatory, because the mere fact that the porn hits were made, in

and of themselves, is *not* in and of itself evidence of gender discrimination. This evidence produced by Plaintiff really follows the age old adage: If a tree falls in the forest but no one is around to hear it, does it make a sound? What if the only witness in this trial who claims they saw porn being watched is Dena Lewis herself (and possibly one or two other witnesses), but 25-30 present and former employees say they never saw it being watched? Should Plaintiff's counsel be permitted to repeatedly say the names of dozens of offensive porn sites to 25-30 witnesses who were unaware it was even going on?

3. This trial may see as witnesses virtually every female who ever worked with Dena Lewis during the relevant time period. If they testify that they saw porn being watched by a particular individual, then their testimony could be admissible as circumstantial evidence of gender discrimination. But if they testify that they never saw porn being watched on a computer, then plaintiff's specific evidence of "porn hits" is just flat-out prejudicial, proves nothing from these female witnesses, and she should be barred from repeatedly asking questions about the names of specific porn sites.

4. For example, counsel *should* be permitted to ask the question: "Did you ever see x person (or any person) watching porn in the firehouse?" She should *not* be permitted to ask—and this is strictly by example, not from the evidence--"Did you ever see x person watching the "Man on dog" porn site?" The prejudice is obvious. If the witness says they never saw someone watching porn—of any kind--then counsel's question, which recites the porn site "Man on dog," has just prejudiced the jury, but produced nothing admissible from the witness. And, despite having received a negative response from the witness, the damage will have already been done, since the jury will have heard the "Man on dog" reference—even though the witness had no knowledge of

it. And the defense believes plaintiff's counsel plans on repeating this salacious and prejudicial material—over and over and over again. This is the prejudice Defendants are seeking to avoid.

5. This is not a hypothetical. Defendants believe counsel intends to recite, with chapter and verse, many of the disgusting porn sites that her expert discovered had been accessed. This will be done to inflame the jury—its purpose is obvious. But it would be a misuse of this evidence, and should be carefully circumscribed by this Court.

6. In her September 25, 2017 Response to Plaintiff's Motion for Partial Summary Judgment ("Plaintiff's MSJ Response"), Plaintiff attached as Exhibit 10 a "Pornography Report," over 2,000 pages in length, containing the results of a forensic examination regarding computers located at the City of Country Club Hills' Fire Stations 1 and 2.

7. This report was ostensibly included to detail the incidence of pornography being viewed at the fire station, but in practice it was used by Plaintiff and her counsel to intimidate, harass, and embarrass Defendants and other City of Country Club Hills Fire Department employees, without providing any factual support or connection to the allegations at issue in the instant lawsuit.

8. First, the Defendants concede that information about whether individuals City of Country Club Hills firefighters watched porn in the presence of other employees at the City of Country Club Hills Fire Department is, in general, *relevant* to Plaintiff's claims of gender discrimination. The issue is one of foundation and admissibility.

9. Plaintiff's "Pornography Report" does not substantiate specific claims made by Plaintiff or other witnesses in this lawsuit of discrete instances of pornography being

viewed. Specifically, Plaintiff makes no attempt to tie a specific instance where pornography was allegedly being watched with a particular date and time on the Pornography Report where a porn website hit actually occurred. Instead, it includes a number of irrelevant details regarding the nature of websites allegedly visited by members of the Country Club Hills Fire Department, which Plaintiff uses only to include embarrassing and potentially inflammatory information about individual firefighters included in the report.

10. For instance, in footnote 4 of Plaintiff's MSJ Response, Plaintiff purports to provide factual support for her allegation that individuals were watching porn by matching her deposition testimony regarding the exact type of pornographic material allegedly being viewed to the type of pornographic material found in Plaintiff's "Pornography Report" attached to Plaintiff's MSJ Response. *See* Plaintiff's MSJ Response, attached hereto as Exhibit A, at 10.

11. On the surface, this appears to be a proper use of evidence to support a specific allegation in her deposition related to her underlying claims, i.e. that sometime in 2015 Plaintiff observed two firefighters watching "black on black" pornography which contributed to her belief that she was discriminated against. *See* Plaintiff's MSJ Response at 10; *see also* Plaintiff's June 22, 2016 Deposition, attached hereto as Exhibit B, at 237:7-237:12.

12. But Plaintiff's testimony contradicts the Porn Report, because in her deposition she testified that she saw "black on black" pornography being watched by two firefighters watching pornography *on television*. *See* Plaintiff's June 22, 2016 Deposition at 237:20-22 ("[The first firefighter] was in front of the dayroom TV, but [the second

firefighter] was watching the classroom TV"). In fact, Plaintiff goes out of her way to provide details as to the size of the television used to watch the pornography. *See id.* at 238:20-24, 239:1 ("Q: And what was he watching that program on? A: The big screen TV in the classroom ... I think they're 50-inchers or something like that.").

13. In contrast, Plaintiff's "Pornography Report" is explicitly an analysis of the use of "computers at station one, the middle office across from the bathroom at station one, the paramedic writing room computer at station two and the computer in the hallway by the engineer's office and station two," *not the televisions in the dayroom and classroom*. See Exhibit 10 to Plaintiff's MSJ Response at 3.

14. The "Pornography Report" related to computer and internet usage by Plaintiff in her MSJ Response does not provide evidence of the viewing of pornography on televisions. Plaintiff's attempt to use it to do so is either demonstrative of a lack of concern for the actual factual details in this case, or reflects a desire to highlight inflammatory and salacious details in the report even where there is no good faith basis to do so.

15. This information was irrelevant to the issues being argued in the motion for summary judgment, and was likely intended to harass and embarrass current and former City of Country Club Hills and Country Club Hills Fire Department employees.

16. Even if the incident highlighted in Plaintiff's deposition testimony had involved the use of the Country Club Hills Fire Department Computers analyzed in the "Pornography Report," the evidence provided by Plaintiff to substantiate her testimony is insufficient.

17. The ability to find pornographic website hits that have the word "black" in them, without identifying the specific date or user who actually accessed the material, does nothing to support Plaintiff's allegations that on some unknown date two firefighters were watching "black on black" pornography *on television*. See Plaintiff's June 22, 2016 Deposition at 236:9-236:18. Or, for that matter, that any employee saw them doing it. Plaintiff's attempt to use this report as evidence to support her testimony is intentionally misleading.

18. In Plaintiff's MSJ Response, she additionally goes out of her way to list the exact Google searches undertaken by a specific individual, whose name is redacted in the publicly filed version but nevertheless identified. The report says that this information is intended to demonstrate that the websites were not accessed accidentally because a specific search was undertaken. *See* Mr. Garrett's Forensic Report, excluding attachments, from Exhibit 10 to Plaintiff's MSJ Response, attached hereto as Exhibit C, at 17.

19. This argument simply does not withstand scrutiny. Plaintiff could have easily demonstrated that individuals were searching for specific material without naming the specific individual in a court filing that his current and former supervisors, as Defendants in this matter, would have unedited access to. Instead, Plaintiff deliberately included the name of a Country Club Hills Firefighter for no other conceivable purpose than to embarrass, harass and intimidate Defendants into settling the lawsuit.

20. The types of Google searches or pornography viewed by specific City of Country Club Hills or Country Club Hills Fire Department employees are irrelevant to the underlying issues of this case, including Plaintiff's claims under the Illinois Whistleblower

Act or the Illinois Human Rights Act and should therefore be excluded under Illinois Rule of Evidence 401.

21. Introducing evidence that specific Google searches were undertaken or particular types of pornography were viewed by specific individuals *without proof that one or more female employees saw these persons watching that porn and therefore arguably experienced gender discrimination* does not help Plaintiff prove her case that Defendants violated the Illinois Whistleblower Protection Act or the Illinois Human Rights Ac. This "evidence" is offered in a vacuum without foundational witness testimony, and is thus inadmissible. *Downey v. Dunnington*, 384 Ill. App. 3d 350, 381 (4th Dist. 2008), see also *People v. Starks*, 2014 IL App (1st) 121169, ¶ 60.

22. Even if this Court determines that this information is relevant, it should be excluded because its prejudicial impact would substantially outweigh its probative value. Illinois Rules of Evidence 403; *see also, e.g., People v. Walker,* 211 Ill.2d 317, 337, (2004).

23. Introducing this evidence would elevate the risk that jury will conflate the negative emotions associated with particular sites with the gravity of what actually occurred with regards to Plaintiff in terms of her alleged claim of discrimination. This type of evidence is unfairly prejudicial and misleading, and must be excluded. See, e.g., *People v. Blue*, 189 Ill.2d 99 (2000) (excluding an exhibit that was "uniquely charged with emotion" and "disturbing" as unfairly prejudicial), see also *People v. Hoerer*, 375 Ill.App.3d 148 (2d Dist. 2007) (excluding evidence that "would tend to color a juror's view of defendant").

24. Plaintiff's claims are not predicated on the types of pornography being viewed, and evidence that singles out individuals' search history would serve no purpose but to embarrass and harass Defendants' witnesses in an attempt to undermine their credibility with the jury on entirely irrelevant grounds. Because Plaintiff's counsel has shown a tendency to introduce evidence of this nature in previous cases in violation of motions *in limine* and the Illinois Rules of Evidence, it must be explicitly excluded at the beginning of trial. See, e.g., *Rojas v. Town of Cicero, Ill.*, 775 F.3d 906, 908 (7th Cir. 2015) (upholding the District Court's ruling overturning a jury verdict in favor of plaintiff, finding that "[Plaintiff's Counsel Dana] Kurtz made statements designed to mislead the jury, elicited hearsay responses that she knew would prejudice the defendants even though the judge was bound to strike the testimony (which he did), argued with the judge in a way that informed the jury about evidence that the court had excluded, and undermined the credibility of an important defense witness by asking him questions that presented him in a bad light, even though Kurtz lacked a good-faith basis for believing the questions proper.").

25. To the extent that the "Pornography Report" itself is prejudicial and irrelevant without the testimony of witnesses who lay a foundation as to specific websites being viewed, it should not be admitted as a whole into evidence.

26. Defendants concede that some of the information included in Plaintiff's "Pornography Report" may be relevant to Plaintiff's claim of gender discrimination if Plaintiff can lay a foundation through witness testimony of the relevance of the specific websites or Google searches undertaken by individual employees of Country Club Hills Fire Department. Absent any allegations that a specific individual was watching a specific

type of pornography on an identified date that contributed to the gender discrimination Plaintiff allegedly experienced, the information included in Plaintiff's "Pornography Report" is not probative and testimony or questions related to the same should be barred from this trial.

WHEREFORE, Defendants respectfully requests that this Honorable Court grant this Motion *in Limine* in its entirety and order such other relief as the Court deems just and proper.

Respectfully submitted,

CITY OF COUNTRY CLUB HILLS, CARL PYCZ, JOSEPH ELLINGTON, and ROGER AGPAWA

By: s/ Stephen R. Miller
Stephen R. Miller
One of Their Attorneys

Stephen R. Miller (smiller@robbins-schwartz.com)
Nikoleta Lamprinakos (nlamprinakos@robbins-schwartz.com)
Amanda T. Collman (acollman@robbins-schwartz.com)
Melinda J. Wetzel (mwetzel@robbins-schwartz.com)
Hailey M. Golds (hgolds@robbins-schwartz.com)
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
55 West Monroe Street, Suite 800
Chicago, IL 60603
312.332.7760
312.332.7768 – Facsimile
Attorney Firm No. 91219

CERTIFICATE OF SERVICE

Stephen R. Miller, an attorney, certifies that a true and correct copy of Defendants' Motion in *Limine* to Exclude Testimony Regarding Specific Pornographic Websites Without a Foundation Witness was served via U.S. email transmission this 17th day of September, 2018 to the below-named attorney:

Dana L. Kurtz
Kurtz Law Offices, Ltd.
32 Blaine Street
Hinsdale, IL 60521
dkurtz@kurtzlaw.us

s/ Stephen R. Miller
Stephen R. Miller

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

DENA LEWIS-BYSTRZYCKI, Plaintiff, v. CITY OF COUNTRY CLUB HILLS, *et al.*, Defendants.	No. 2012 L 009916 Honorable Brigid Mary McGrath

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff DENA LEWIS-BYSTRZYCKI, through her undersigned counsel, respectfully submits this Response in opposition to Defendants' Motion for Partial Summary Judgment. Defendants' motion for partial summary judgment is premised solely on the argument that the continuing violation theory does not apply to Plaintiff's hostile work environment and retaliation claims. For the reasons set forth below, Defendants' motion should be denied.

I. INTRODUCTION

Defendants' Motion for Partial Summary Judgment argues that this Court does not have jurisdiction over some of the acts alleged in Counts II and III because the acts occurred prior to the 180 day window for filing a charge with the IDHR. However, Defendants' Motion should be denied as Defendants have subjected Plaintiff to discrimination and a hostile work environment consistently, beginning in the early days of her employment and continuing up until she was put on administrative leave on August 27, 2015. (*See* Exhibit 1, Pl.'s 2nd Amend. Compl. ¶¶ 14-119.) As explained in more detail below, Plaintiff has consistently alleged throughout these proceedings and her IDHR Charge that Defendants' conduct was a continuing violation from the beginning of her employment continuing through the date Defendants suspended because she complained. (*See* Exhibit 1, ¶ 199.) Defendants never sought to clarify the allegations of the continuing violation, or filed a 2-615 motion on those allegations or the continuing violation doctrine. (*See* Exhibit 2,

9/15/15 Ct. Trans. (excerpts) at 24-25 (The Court: "Those 2-615 motions have passed.").) Defendants completely ignore the entire pattern of conduct by Defendants, including Defendant City of Country Club Hills, that make up Plaintiff's claims of a continuing violation in subjecting her to a hostile work environment "throughout her employment," and retaliating against her each time she complained. Defendants also ignore the case law that mandates that all of the actions towards Plaintiff, which constitute the hostile work environment, are in fact a continuing violation. Defendants also ignore the case law that holds that it is up to the fact finder to determine if the conduct and incidents are part of one "unlawful employment practice." As such, Defendants' partial motion for summary judgment must be denied.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On or about February 27, 2012, Plaintiff Lewis-Bystrzycki filed a charge of discrimination with the Illinois Department of Human Rights ("IDHR") claiming discrimination, hostile work environment, and retaliation against her employer, Defendant City of Country Club Hills, and Defendant Carl Pycz. (*See* Exhibit 3, IDHR Charge.) The charge of discrimination states: "***and*** on ***a continuing and ongoing basis***," and "***Throughout my employment*** continuing through the present, Respondent subjected me to harassment based on my gender (female), including but not limited to the following. . . ." and "Respondent's conduct constitutes ***a continuing violation***." (*Id.* at I(B)(4), II(B)(2) and (5) and (6), and III(B)(2) and (4) and (4)(k) (emphasis added).) The charge also alleges that Defendants "***engaged in systemic harassment*** against [Plaintiff Lewis-Bystrzycki] on account of [her] sex/gender (female) in that [Defendants] and its command staff and agents knowingly subjected [Plaintiff Lewis-Bystrzycki] to a hostile work environment, harassment and gender discrimination." (*See Id.* II(B)(2) (emphasis added).) On or about March 21, 2013, Plaintiff received a notice of dismissal from the IDHR (Exhibit 4, IDHR Dismissal), which was required in order for her to file her Illinois Human Rights Act ("IHRA") claims in state court. *See Zugay v. Progressive Care, S.C.*, 180 F.3d 901, 902 (7th Cir. 1999) ("[I]n a state like Illinois, which provides an

administrative remedy for employment discrimination, a plaintiff must give the state agency an opportunity to conciliate the employment dispute before pursuing federal remedies" and can only file suit once a dismissal is received).[1]

On April 15, 2013, after Plaintiff received her notice of dismissal from the IDHR, Plaintiff filed her First Amended Complaint. This Complaint included three counts against Defendants, including violations of the Illinois Whistleblower Protection Act (Count I), gender discrimination and hostile work environment claims in violation of the Illinois Human Rights Act (Count II), and a retaliation claim in violation of the Illinois Human Rights Act (Count III). This complaint clearly set forth the continuing violation doctrine as applicable to Plaintiff's claims, which included the following allegations:

> Defendants' actions as alleged herein constitute ***a continuing violation***.
>
> * * *
>
> Plaintiff Lewis began working for the City of Country Club Hills as a Fire Fighter in the Fire Department in or about May 1998. ***Throughout her employment*** and even more recently, Defendants subjected Plaintiff Lewis to harassment and a hostile work environment based on her gender (female). Defendants' perpetuation of a hostile work environment against women and against Plaintiff more specifically has occurred on an ongoing basis and constitutes a continuing violation.
>
> * * *
>
> ***On a continuing and ongoing basis***, Defendant City, through its agents and employees, has also subjected Plaintiff to discriminatory and disparate treatment based on her gender, including but not limited to, those incidents identified above, and further: ***subjecting her to a hostile work environment and harassment***, subjecting her to unwarranted and disproportionate disciplinary action; denying Plaintiff promotions; denying Plaintiff training, and treating Plaintiff differently in the terms and conditions of her employment.

(Defs.' Ex. D, Pl.'s First Amend. Compl. ¶¶ 2, 13-14, 72 (emphasis added).)

On June 2, 2015, Plaintiff filed a motion for leave to file a Supplemental Complaint, which continued to include the same allegations of a continuing violation and hostile work environment as in the amended complaint noted above. The supplemental complaint added Chief Agpawa, the current Chief of the Fire Department, as a Defendant because of the ongoing harassment,

---

[1] The original complaint filed on August 31, 2012 did not include the IHRA claims because Plaintiff had not yet received her right to sue from the IDHR.

discrimination, and retaliation against Plaintiff. On June 11, 2015, the Court granted Plaintiff leave to file Plaintiff's supplemental complaint (6/11/15 Order), which Plaintiff filed separately via the Court's ECF on July 7, 2015.

On August 19, 2015, Plaintiff filed another motion to supplement her complaint based on evidence obtained through depositions and discovery. Plaintiff's motion for leave stated in relevant part:

> Plaintiff's allegations of a continuing violation have become even more apparent with the discovery in this case and the more recent events of ongoing harassment. For example, Defendant Pycz admitted in his deposition that he has seen male employees watching pornographic material, and Lieutenant Dangoy, whose shift Plaintiff was transferred to after she filed her IDHR charge, admitted that he saw male employees watching pornographic material in the fire station and he himself also watched pornography at the station. He did not think anything was wrong with it.

(Exhibit 5, Pl.'s Mot for Leave (w/o exhibits) ¶ 8.) Defendants and Defendant's agents also admitted that they never disciplined any male employees for viewing pornographic material while at work and took no action against those employees to discipline them or to prevent the conduct from occurring. Plaintiff also included additional acts of harassment, discrimination and retaliation that had occurred since the filing of the first supplemental complaint just the month before, as noted in the motion for leave:

> [O]n or about July 14, 2015, the day after Plaintiff's deposition in this case in which Chief Agpawa was present, Plaintiff was informed by another firefighter that Lieutenant Kilburg had told him that he was now in charge of organizing the 2015 MDA Boot Drive; the male firefighter also told Plaintiff that Lieutenant Kilburg had met with Chief Agpawa over Plaintiff's removal. Plaintiff complained about the reassignment of the MDA Boot Drive by writing a memorandum to Chief Agpawa. Plaintiff also stated in the memo that she was being retaliated against and requested "once again" that the Chief "truly address these actions of harassment, retaliation, and discrimination, both on your part and the rest of the members of Country Club Hills." In response to Plaintiff's memorandum, Chief Agpawa disciplined Plaintiff for the memorandum complaining about the ongoing retaliation and being removed from the MDA Boot Drive. Further, when Plaintiff grieved this discipline, it was upheld and the Chief stated in his memo denying the grievance that she could have been discharged.

(Exhibit 5, Pl.'s Mot for Leave ¶ 6.)

Defendants did ***not object*** to Plaintiff's motion for leave to file Plaintiff's second amended (supplemental) complaint. (Exhibit 2, 9/15/15 Ct. Trans. at 16.) The Court granted Plaintiff's motion. (*See* 8/27/15 Order). As such, Plaintiff filed her Second Amended (Supplemental) Complaint on September 1, 2015. The Second Amended Complaint is the controlling complaint. *See Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 154 (1983) ("Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn."); *see also PAE Gov't Servs., Inc. v. MPRI, Inc.*, 514 F.3d 856, 858 (9th Cir. 2007) (finding that differences in pleadings are irrelevant and should not be considered). As such, all of Defendants' arguments about the prior version of the complaint are irrelevant and should not be considered. Even setting this aside, the Second Amended Complaint (like the original amended complaint) documents the continuing violation of the hostile and discriminatory conduct by Defendants, which began immediately after Plaintiff began her employment at the Country Club Hills Fire Department and which continued through the filing of the Second Amended Complaint. The Second Amended Complaint also describes the continuing nature that led up to the retaliation against Plaintiff due to her reporting the sexual harassment, hostile work environment, and gender discrimination and what she believed was illegal conduct by Defendants. After Plaintiff filed her IDHR Charge, Plaintiff continued to be harassed, discriminated against, and retaliated against in an abusive and sexual manner, and Defendants continued to alter the terms and conditions of her employment up through the date they suspended her "through the date of the trial" because she complained. Defendants stated in writing that Plaintiff was being suspended "through the date of the trial in your pending suit against the City." (*See* Exhibit 1, ¶¶ 2, 15-26, 32-39, 42-70, 74-92, 94-119.) Even to this day, Defendants have kept Plaintiff on a suspended status without the opportunity for promotions, training, and overtime, which has continued to have an adverse impact on the terms and conditions of her employment. (*Id.* ¶ 119.)

On September 4, 2015, Defendants filed a motion to move the trial that was set in this matter for October 5, 2015 (*see* 4/15/15 Order and 5/28/15 Order), which had been previously moved at Defendants' request from January 12, 2015 (*see* 7/21/14 Order). At the hearing on Defendants' motion to continue the trial, the Court suggested that it would vacate the prior order granting Plaintiff's motion for leave to file the second amended complaint if Plaintiff continued to object to moving the trial. (*See* Exhibit 2, 9/15/15 Ct. Trans. at 24-25.) The Court stated: "If you want a continuation of the trial date, we can leave [the Second Amended Complaint], but this has got to go to trial." Defendants' counsel responded: "I prefer a continuance." (*Id.*) As such, the allegations in the Second Amended Complaint stand. The trial was then rescheduled for April 11, 2016. (*See* 9/16/15 Order.) On February 8, 2016, Defendants filed another motion to move the trial, which the Court granted. (*See* 2/23/16 Order.) The trial was rescheduled to September 5, 2017. (*See* 11/9/16 Order.) This trial date was also stricken as a result of Defendants' delay in complying with this Court's orders on discovery. (*See* 8/4/17 Order.) No new trial date has been set.

III. PLAINTIFF'S RESPONSE TO DEFENDANTS' FACTS

Defendants' Statement of Facts grossly misstates the controlling complaint (as well as the other complaints) and pleadings, depositions, and facts. For example, Defendants claim that "all specifically dated allegations of discrimination based on gender (female) in the prima facie allegations for issues I, II, and III [of the IDHR charge] are dated no earlier than September 2011." (*See* Defs.' Mot. at 2.) Defendants similarly misstate the allegations in Plaintiff's First Amended Complaint and Supplemental Complaint. (*Id.* at 4-6.) In fact, Plaintiff's IDHR Charge, First Amended Complaint, Supplemental Complaint, and Second Amended Complaint, which is the controlling pleading, *see Foxcroft Townhome Owners Ass'n* and *PAE Gov't Servs., Inc., supra,* all clearly state that Plaintiff's claims are based on a "continuing violation," and allege that the hostile work environment has continued *throughout her entire employment* with the City of Country Club Hills, which began in 1998, and that "on a continuing and ongoing basis" and "[t]hroughout [her]

employment," Defendants subjected Plaintiff to discrimination, harassment, and a hostile work environment based on her gender. (*See, e.g.,* Exhibit 3, IDHR Charge and Particulars I(B)(4), II(B)(2) and (5) and (6), and III(B)(2) and (4) and (4)(k); Defs.' Ex. D, Pl.'s First Amend. Compl. ¶¶ 2, 13-14, 72 ("Defendants' actions [] constitute a continuing violation," "Throughout her employment," since she began working in May 1998, and "On a continuing and ongoing basis, Defendant City. . . has also subjected Plaintiff to discriminatory and disparate treatment based on her gender . . . [by] subjecting her to a hostile work environment and harassment."); Defs.' Ex. E, Pl.'s Supp. Compl. ¶¶ 2, 14-15, 112; Exhibit 1, Second Amend. Compl. ¶¶ 2, 15, 16, 125.)

Defendants also erroneously claim that Plaintiffs' Second Amended Complaint does not "identify a specific date before September 2011." (Defs.' Mot. at 7.) At worst this argument is frivolous, and at best it is disingenuous. The Second Amended Complaint clearly states that ***on the first day of Plaintiff's employment*** "the former Chief [said] to her that he 'wanted to cum in [Plaintiff's] pussy and eat it back out.'" (Exhibit 1, ¶ 16.) The Second Amended Complaint also states that harassment has occurred "***throughout her employment***" (¶ 15), and "started ***on the very first day of [her] employment and has continued to the present***" (¶ 16). The Second Amended Complaint also cites to the Plaintiff's deposition testimony[2] and interrogatory answers, which discuss some of the specific instances and dates of harassment and discrimination that have occurred consistently and continuously throughout her employment. (¶ 16.)

Regardless of Defendants' false assertions that "no dates" have been included in the complaint prior to September 2011, Illinois courts have found that a plaintiff does not have to state specific dates in order to allege the ongoing nature of a hostile work environment claim. *See Jenkins v. Lustig*, 354 Ill. App. 3d 193, 197 (3d Dist. 2004) (In finding that the plaintiff had timely alleged all incidents, the court stated that even though the plaintiff "did not provide specific dates on which

[2] Defendants deposed Plaintiff for 3 days and had a full opportunity to ask her about all of her allegations.

pre-limitations incidents occurred, the allegations indicated the same offensive conduct, office, and perpetrator as the incidents that occurred within the 180-day time period.").

Defendants also cite to the IDHR investigative report (Defs.' Mot. at 3-4), which is inadmissible and irrelevant to these proceedings. *See, e.g., Wells v. Berger, Newmark & Fenchel, P.C.*, 2008 WL 4365972, *4 (N.D. Ill. Mar. 18, 2008) ("[T]he conclusions of the administrative findings do not have any bearing on Wells' common law claims."), and cases cited therein. IDHR investigators are not lawyers and their investigations are poor and incomplete. The IDHR is under a federal injunction order that they are not allowed to make credibility determinations, *Cooper v. Salazar*, 196 F.3d 809, 817 (7th Cir. 1999), yet they did in this investigation by not crediting Plaintiff's statements to the investigator that in fact she had previously complained about the hostile work environment. The only requirement for filing an IHRA claim in the Circuit Court is that a charge of discrimination must be filed in order for a plaintiff to exhaust the administrative requirement to bring a lawsuit. *See Zugay*, 180 F.3d at 902 (reversing the district court's dismissal of the plaintiff's claim where the plaintiff withdrew her charge before the fact-finding conference, and holding that plaintiff exhausted her administrative remedies by merely filing the charge and waiting 60 days); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798 (1973) *holding modified by Hazen Paper Co. v. Biggins*, 507 U.S. 604 (the jurisdictional prerequisites to a lawsuit are: (i) filing timely charges of employment discrimination with the Commission, and (ii) receiving and acting upon the Commission's statutory notice of the right to sue or dismissal). In fact, this Court struck Defendants' fourth affirmative defense (*see* 4/12/16 Order), which stated: "To the extent Plaintiff purports to assert any claims that are not included in the Charge of Discrimination that Plaintiff filed with the Illinois Department of Human Rights, Plaintiff has failed to exhaust her administrative remedies" (*see* Defs.' Ex. A, Fourth Affirmative Defense).

The IDHR investigative report only purports to address Plaintiff's "complaints" to former Chief Kasper in 1998, 1999, and 2005, and does not address the underlying events about which Plaintiff

complained.[3] The investigative report does not address these facts, which obviously Plaintiff reported to the investigator in order for him to make note of the fact that she complained to the former Chief at least in 1998, 1999, and 2005. Plaintiff denies that she only "complained" to former Chief Kasper in 1998, 1999, and 2005; she testified in her deposition about numerous other times she reported the hostile work environment to him to no avail. Further, the investigative report is not admissible evidence or even an admission by Plaintiff. Defendants also make note of the comment in the investigative report that "Complainant is unable to provide any evidence other than her own assertion that she complained of discrimination in 1998, 1999, and 2005." (Defs.' Mot. at 3.) Setting aside the fact that such documents would be in the possession and control of Defendants and it is simply not relevant to the issue raised in Defendants' motion, Plaintiff believes that the search of Defendants' computers will reveal documented evidence of at least some of Plaintiff's complaints to Chief Kasper. It is no wonder why Defendants have continually stalled for over a year now in complying with the Court's orders on the ESI search of Defendants' computers and why Defendants failed to disclose the other computer servers that were in existence as required by the Court's orders (*see* Pl.'s Memorandum of Law in support of discovery sanctions). Further, Defendant City produced documents to the IDHR from as early as 1998 and through the date of the charge in 2012, which provides further support for the relevant timeframe in this case. (Exhibit 6, Moreno Affidavit.)

Defendants' argument that Plaintiff "did not complain about any pornography she allegedly saw," (Defs.' Mot. at 6 (citing Plaintiff's July 13, 2015 Deposition at 249-252)), is frivolous and

[3] Defendants argue that "[i]t is inconceivable that Plaintiff would forget to mention the alleged acts predating the 180 day period during the investigation by the IDHR. . . ." (Defs.' Mot. at 14.) Plaintiff did not "forget" to mention Defendants' harassing conduct and the events that created the hostile working environment predating the 180 days prior to her IDHR Charge. It is clear that she did mention these events, as the investigator had to have at least asked whether she complained about the events in order to note that she did complain in 1998, 1999, and 2005. Moreover, Plaintiff directly mentioned them in the Charge itself by reference to the allegation that the hostile work environment occurred on a "continuing and ongoing basis," "[t]hroughout [her] employment."

sanctionable under Illinois Supreme Court Rule 137 in light of Plaintiff's deposition testimony that she repeatedly complained (*see, e.g.,* Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 235:24-242:24[4]; Defs.' Ex. I, 4/20/16 Lewis-Bystrzycki Dep. 81:19-83:6 (she talked to Defendant Pycz about male employees watching pornography when he was her lieutenant), 84:22-85:11 (she talked to all of the Chiefs and supervisors asking them to deal with the fact that male employees were watching pornography), 88:10-91:21 (she went to former Chief Kasper about it repeatedly), 92:13-92:24 (complaining to Lt. Dangoy when he was her Lieutenant), and in light of Plaintiff's interrogatory answers, where she details numerous incidents throughout her employment, and who she complained to (Exhibit 7, Pl.'s Ans. to Defs.' Interrog. No. 3). Defendants also grossly misstate Plaintiff's deposition testimony at 249-252, when they claim that she "did not complain about any pornography she allegedly saw." (Defs.' Mot. at 6 (citing Plaintiff's July 13, 2015 Deposition at 249-252).) Plaintiff's testimony was related only to the issue of Norman Boyd putting a pornographic screen saver on Brendon Baldwin's computer. Plaintiff testified as follows:

> Q And you saw Norman Boyd put this on Brendan Baldwin's computer?
> A I said I want that off the computer, I want it off now, I'm not going to say anything, I have no right to saying anything, we're the same rank, I don't want to see that again. And he's like, well, this is going on Baldwin's. I said I don't know of anything happening and I'm out of this room right now.
> Q Did you complain to anyone at that time that Norman Boyd was putting any porn on Brendan Baldwin's computer?

---

[4] For example, when asked about Larry Gillespie, Plaintiff testified that he would masturbate while watching pornography "more times than I can count," and that "everyone knows that he watched," and that he has viewed pornography "from the time that he started working until the time that you guys suspended me." She further testified that she talked to Lt. McAuliff, her supervisor, about the fact that Gillespie and Marcus Craft had porn up, and "it was black-on-black porn," and that Gillespie was not waking up for the call to a fire, so she had to go wake him up and "his pants were off and down and his penis was out and all of the tissue papers were next to him" and that Craft was watching the same program about 80 feet away, and Craft was saying to Gillespie "'Larry, Larry, you see that one? See that bitch?' Se he was like yelling. She told McCaullif that she was sick of seeing this. She told Lt. McCauliff that Gillespie was masturbating, "diddling the dally," while watching pornography in the fire station.

Plaintiff's testimony that some male employees were watching black-on-black porn is supported by Plaintiff's expert report. (*See, e.g.,* Exhibit 10, Pornography Report, Attachment F at 1097 (rebuilt because of attempted deletion but showing "Nicki likes Big Black Cocks"), 1110, 1229 ("bigbrosblackporn.com"), 1245 ("blonde-enjoying-hard-sex-with-black-guy/. . . ."), 1249 ("monster-black-cocks-sharing-horny-brunette/"), 1261, 1270, etc.)

A They do not do anything about Larry watching porn every single night. There's no one to complain to, Mister. I forgot your last name all of a sudden. Sorry. There's no one to complain to. No, I didn't.
Q Did you complain to anyone at the City of Country Club Hills about Norman Boyd putting porn on Brendan Baldwin's computer?
A No, I did not. I did speak to Chief Agpawa briefly about how it was an unfair termination, and I asked him to reconsider it.

(Defs.' Ex. H, 7/13/15 Lewis-Bystrzycki Dep. 251:14-252:10.)

Plaintiff continually witnessed, on an almost daily basis, supervisors and coworkers watching pornography on either their computers or on the fire house television. (*See, e.g.,* Defs.' Ex. I, 4/20/16 Lewis-Bystrzycki Dep. 52:20-53:2 ("There's been so many of them that – have watched this stuff. Offhand, right now, you can – you can almost name the – all of the men there."); 53:19-22 ("Q. Is there somebody else that you think is part of these male firefighters that you've seen watching pornography allegedly on a regular basis? A. There's a lot of them. It's on every night."); 54:3-22 ("To give you an exact number, that would be impossible. I've worked there for 18 years."); 59:10-16 ("Every single day shift that I worked with [Larry Gillespie], he had it on. It always was on.").) Even more egregious, Plaintiff's coworkers would often masturbate openly in front of Plaintiff. (Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 231:22-232:10 ("Larry has masturbated numerous times. He watches porn every night he's at work."). Even though supervisors watched it themselves, including Defendant Lt. Carl Pycz, Lt. Dangoy, and others, and nothing was ever done and no employee was ever reprimanded even to this day, Plaintiff continually complained about male employees watching pornography, and even about the male employees masturbating while they were watching the pornographic material. (*See, e.g.,* Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 235:24-242: 24; Defs.' Ex. I, 4/20/16 Lewis-Bystrzycki Dep. 81:19-83:6, 84:22-85:11, 88:10-91:21, 92:13-92:24.) Plaintiff's last "complaint" on August 22, 2015 about male employees watching pornographic material in the workplace, resulted in the Defendant Chief Agpawa suspending her on August 27, 2015 "through the date of the trial in your pending suit against the City." (Exhibit 1, Second Amend. Compl. ¶ 119; *see also* Exhibit 8, 8/22/15 Pl.'s Email

to Deputy Chief Kopec; Exhibit 9, 8/27/15 Agpawa Memo suspending Plaintiff through the date of the trial.)

As is evidenced by the Second Amended Complaint, deposition testimony, and Plaintiff's answers to interrogatories, Plaintiff has suffered a constant barrage of harassment and abuse at the hands of Defendants, and their employees. This conduct has been consistent and continuous from 1998 to the date Defendants suspended her, creating a hostile work environment over the many years of Plaintiff's employment. All of the acts are related and are an affirmative effort to discriminate, offend, abuse, and retaliate against Plaintiff because of her gender, and created a hostile work environment that affected the terms and conditions of her employment in violation of the IHRA. As such, Defendants' motion should be denied.

IV. SUMMARY JUDGMENT STANDARD

Summary judgment is only proper when there is not a genuine issue of material fact. *Williams v. Manchester,* 228 Ill. 2d 404, 417 (2008). In determining the existence of a material fact, this Court "must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." *Id.* Summary judgment is not appropriate where material facts are in dispute or reasonable persons might draw different inferences from the undisputed facts. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007).

V. ARGUMENT

Defendants have subjected Plaintiff to discrimination and a hostile work environment consistently, beginning in the early days of her employment and continuing up until she was put on administrative leave on August 27, 2015. (Exhibit 1, ¶ 119.) Defendants' Motion for Partial Summary Judgment argues that this Court does not have jurisdiction over the acts that occurred prior to the 180 day window for filing a charge with the IDHR. However, the cases they cite are favorable to Plaintiff and hold that "in order for the charge to be timely, the employee need only file a charge within 180 or 300 days of ***any act*** that is part of the hostile work environment." *Gusciara*

v. Lustig, 346 Ill. App. 3d 1012, 1019 (2004) (emphasis added); *see also National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002) (hereinafter "*Morgan*") ("As long as the employer has engaged in enough activity to make out an actionable hostile environment claim, an unlawful employment practice has 'occurred,' even if it is still occurring. Subsequent events, however, may still be part of the one hostile work environment claim and a charge may be filed *at a later date* and still encompass the whole.") (emphasis added).

Plaintiff Lewis-Bystrzycki's pleadings, interrogatory answers, and deposition testimony, along with other discovery, clearly narrate the continuing and related nature of Defendants' conduct. Plaintiff alleges among the following incidents up to the date of the filing of her IDHR Charge (there are numerous incidents after the filing of her Charge as reflected in Plaintiff's second amended complaint and her interrogatory answers, as well as the 3 days of her deposition testimony, and other discovery taken in this case, which are not addressed herein):

- "Plaintiff Lewis began working for the City of Country Club Hills as a Fire Fighter in the Fire Department in or about May 1998." (Exhibit 1, Second Amend. Comp. ¶ 14.)
- "[On] the first day on the job, the former Chief saying to her that he 'wanted to cum in [Plaintiff's] pussy and eat it back out.'" (Exhibit 1, ¶ 16; Exhibit 7, Pl.'s Interrogatory Ans. No. 3(1).)
- Mid 1998, Plaintiff was told by a supervisor, Engineer Scott Tebo, when Plaintiff asked for a paramedic scholarship, that he was "not sponsoring a useless bitch." (Exhibit 7, No. 3(2).)
- In 1998, Defendants' fire instructors during fire trainings would only let Plaintiff use steel tanks, which were obsolete and never used, and far heavier than the new tanks used in fires and for training. Supervisors would make comments that this was done to "make a man out of her." (Exhibit 7, No. 3(3).)
- In or about 1998, Plaintiff was in the day room at the Fire House when Erik Hoffman threw his cockring at Plaintiff. Lt. Kilburg was present. (Exhibit 7, No. 3(38).)
- In or about 1999, "When Plaintiff was taking a shower at the fire house, a male employee broke the bathroom door down. Plaintiff shouted 'Chief!' but former Chief Kasper was already in the hallway, holding a towel to hand to Plaintiff as she exited the shower; the former Chief then reprimanded Plaintiff and wrote her up for not properly locking the bathroom door." (Exhibit 1, ¶ 16; Exhibit 7, No. 3(39).)

- In or about 1999 or 2000, "[a] male firefighter took Plaintiff's house keys and made a copy and broke into her home without her knowledge or permission, and when Plaintiff complained to the Chief, nothing was done." (Exhibit 1, ¶ 16; Exhibit 7, No. 3(40).

- In 2000, Chief Kasper calling Plaintiff "Hazel" and "bitch" and "bimbo." (Defs.' Ex. H, 7/13/15 Lewis-Bystrzycki Dep. 43:18-44:4, 45:13-46:24.)

- Throughout Plaintiff's employment and on an ongoing basis from the beginning of her employment up to the date she was suspended indefinitely pending the trial in this matter, Plaintiff has witnessed male firefighters and supervisors watching pornography on the computer and televisions in the fire station. (Exhibit 1, ¶ 16; Exhibit 7, No. 3(41).)

- "Current Lieutenants have admitted that they are aware of male employees watching pornography in the fire stations. One Lieutenant admitted he saw nothing wrong with it. That same Lieutenant also testified that he himself watched pornography at the fire station, even since he has been a Lieutenant." (Exhibit 1, ¶ 16; Exhibit 7, No. 3(41).)

- From 1998 up to the date of the imaging of Defendants' computers in January and April 2017, Defendants have continued to allow male employees to watch pornographic material. (Exhibit 10, Pornography Report by Andrew Garrett (pursuant to the Court's 8/4/17 Order employees' names have been redacted).)[5] Defendants even continued to allow male employees to view pornographic material on the Fire Department computers after their so-called "investigation," where they claim there was no evidence that male employees were viewing pornography, but trumped up allegations that it was Plaintiff that was looking at it. (*Id.* § 8.0 ("There is no evidence that Plaintiff was intentionally searching the internet for pornographic material."); *see also* Attachment C and D.) Defendants also allowed male employees to view pornographic material at work, on the Fire Department computers, and while on the clock. (*See generally* Exhibit 10, Pornography Report; and Section 5.1; *see also* 1/23/17 Order). Even supervisors, who denied under oath viewing pornographic material, conducted active searches for pornographic material while at work. (*See, e.g.,* Exhibit 10, Attachment F at 0016-23 (searching such things as: "huge+cock" and "gay+anal+sex").) Defendants have never disciplined any of these male employees for watching pornographic material, or the supervisors that allowed them to watch it without incident. (Exhibit 11, Kopec Dep. at 93:9-15.)

- At various times during Plaintiff's employment, especially at the beginning of her employment, male firefighters would lean into kiss her, would hug her, and hit on her in a romantic way. Lt. Kilberg was one male employee that Plaintiff recalls hugging her. (Exhibit 7, No. 3(46).)

- At various times during Plaintiff's employment, male firefighters would walk around the fire house with their pants off or pulled down while in Plaintiff's presence. (Exhibit 7, No. 3(47).)

---

[5] Plaintiff would have been able to obtain even more evidence of male employees viewing pornographic material on the Fire Department computers if Defendants had not run "disk cleanup" and "disk wipe" programs on the computers and spoliated evidence. (*See* Exhibit 10, § 2.0 at 4; *see also* Pl.'s Memorandum of Law in support of discovery sanctions.)

- One such male co-worker in 2001, Lt. Mike Kilburg, told Plaintiff he "was a shower not a grower" while exposing himself to her. (Exhibit 7, No. 3(47); Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 144:6-15.)

- Plaintiff was constantly called a "bimbo" or a "bitch" and her supervisors and employees would constantly walk around naked, in a towel, or expose themselves, or would watch pornography out in the open, masturbate, and compare Plaintiff to the actors onscreen. (*See* Defs.' Ex. H, 7/13/15 Lewis-Bystrzycki Dep. 41:3-42:7; *see also* Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 144:1-6, 145:11-18, 146:21-147:6, 147:17-148:8, 231:22-232:18, 233:2-4, 235:11-18; *see also* Defs.' Ex. I, 4/20/16 Lewis-Bystrzycki Dep. 51:12-15, 52:15-53:11; 53:22, 56:19-24, 58:10-18, 59:10-16, 80:2-5, 84:14-18.)

- From 2002 to 2009, Lt. Mike Kilburg walked around the firehouse with his pants pulled down. (Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 147:1-11),

- In 2004, male firefighters would walk around the firehouse naked or with just a towel on. (Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 145:11-23.)

- In 2004, a Country Club Hills Police Officer, Edison Torres, began stalking Plaintiff. Plaintiff obtained a restraining order against him. Former Chief Kasper told Plaintiff that she had to drop the restraining order against Torres if she wanted to keep her job. Torres then broke into Plaintiff's home while she was on shift. Torres was later charged and convicted. Members of the Fire Department and Plaintiff's supervisors still mock Plaintiff over this incident. (Exhibit 7, No. 3(5).)

- In 2004, Plaintiff accidently scratched a fire truck resulting in a scratch approximately 18 inches long; she was taken off duty and sent for a drug test. There have been many instances where male employees have had vehicle accidents and were not taken off duty or sent for a drug test. (Exhibit 7, No. 3(4).)

- In or about November of 2005, Plaintiff was responding to a possible structure fire and parked the fire engine and it sunk a foot into the ground. She was removed from duty, sent for drug testing, and required to take a driving course, which was not done to male firefighters when they had even more egregious vehicle accidents. (Exhibit 7, No. 3(6).)

- In May of 2008, Plaintiff was in a car accident and suffered severe facial trauma. Former Deputy Chief Pycz subjected Plaintiff to endless rants and insults including but not limited to, "cracked faced cunt." (Exhibit 7, No. 3(7).)

- From 2009 to 2015, male firefighters would walk around in their boxer shorts "wide open." (Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 152:3-14.)

- In or about 2009, when Plaintiff was sleeping in her bunk, several different male firefighter would climb into Plaintiff's bunk with her and say "cuddle with me," or something similar. These firefighters would climb into her bunk late at night, or in the early morning, around 12 - 2 a.m. This happed on at least 3-5 occasions over a 2 month time period. On one occasion, two male firefighters climbed in Plaintiff's bunk at the same time. (Exhibit 7, No. 3(42).)

- In or about June 2011, Plaintiff was first on the promotion list for Lieutenant. Lt. Cochran put in for his retirement 1 day after that promotion list expired, stating that Plaintiff "will not get the fucking promotion." Lt. Cochran waited until the day after the promotion list expired so that Plaintiff could not be promoted to Lt. (Exhibit 7, No. 3(8).) Defendant Chief Ellington admitted to hearing Lt. Cochran making this statement, and admitted he did nothing in response.

- In September 2011, Defendant Ellington delegated the task of writing one fourth of the promotion exam questions to Steven Pycz. Plaintiff complained that it was unfair and illegal due to the fact that Steven Pycz's son, Carl Pycz, would be taking the test. Later, Carl Pycz confronted Plaintiff with a big smile and said, "Let the best ***man*** win." (Exhibit 7, No. 3(9).)

- On or about October 10, 2011, Defendant Pycz singled Plaintiff out. "In or about the week of November 7, 2011, Plaintiff complained to Defendant Ellington that Defendant Pycz was singling out Plaintiff and treating her differently than others in the station. Defendant Ellington's response to Plaintiff was in effect, 'just deal with him.'" (Exhibit 1, ¶ 34; Exhibit 7, No. 3(10).)

- "On or about November 18, 2011, Plaintiff Lewis received a phone call informing her that her daughter was having a medical emergency, so Plaintiff informed Defendant Pycz that she was taking the Department car to check on her daughter and would respond if there was a call. When Plaintiff returned to the station, Defendant Pycz informed her that she was not to take the Department car for personal reasons. When Plaintiff responded that the Department car was often used for personal reasons in the past, Defendant Pycz yelled at Plaintiff, 'I don't care what we have always done' and 'I am in charge, this is my shift, I won, I'm Lieutenant,' and also called Plaintiff a 'fucking bitch.'" (Exhibit 1, ¶ 34; Exhibit 7, No. 3(11) and (48).)

- On or about January 8, 2012, Plaintiff was again left out of dinner. Defendant Carl Pycz was sleeping, so Plaintiff told FF Sam Wilson and FF Erik Goodloe that she was going to get food and asked if they needed anything while she was out, as was typical practice. Plaintiff announced out loud into the Lt.'s room that she was going to the store. Upon Plaintiff's return, Defendant Pycz told Plaintiff he was going to write her up for stealing a vehicle and threatened that he was going to call the police and have her arrested. (Exhibit 7, No. 3(12).)

- On or about January 11, 2012, Plaintiff was told to wash and wax all of the fire engines. Defendant Carl Pycz came out later and told Plaintiff that she needed to rewash and rewax them. Plaintiff responded by saying that was ridiculous. Defendant Pycz left and returned with Defendant Ellington. Both Pycz and Ellington berated Plaintiff verbally, yelling at her in front of other firefighters; Ellington told Plaintiff that he did not want her there; Defendants later suspended Plaintiff. (Exhibit 7, No. 3(13).)

- "On January 26, 2012, the day Plaintiff served her suspension, her locker was broken into. When Plaintiff returned to work, she reported the break in to Defendant Ellington, but he just said there was nothing he could do and ignored Plaintiff's complaint." (Exhibit 1, ¶ 42; Exhibit 7, No. 3(14).)

As iterated above, Defendants' conduct was a continuing violation. They constantly and continually discriminated against Plaintiff and subjected her to a hostile work environment because of her gender. *See Gusciara,* 346 Ill. App. 3d at 1020.

Similar to *Gusciara*, where the court found that the charge timely alleged a "single unlawful employment practice . . . resulting in an intimidating, hostile, or offensive working environment," Plaintiff Lewis-Bystrzycki has alleged a long, continuing, unlawful employment practice, which resulted in a hostile work environment, discrimination, and retaliation. *Id.* at 1022. The plaintiff in *Gusciara* complained that the CEO where she was employed "made provocative remarks and touched her" and when she rebuffed his advances, he retaliated by changing her job duties, demoting her and reducing her salary. *Id.* at 1014. The defendants argued that the plaintiff "had not been able to allege any incidents of sexual harassment occurring after July 16, 2000 (and thus within 180 days of when she filed her charge)." *Id.* at 1015. The defendants further argued that "the only two incidents occurring fewer than 180 days before the charge was filed were 'minor and non-sexual in nature'" and that the incidents within the 180 day time period were not related to the prior incidents. *Id.* at 1016. The court, however, found that the defendants "committed a variety of sexually harassing acts that cumulatively created a hostile work environment" and a charge based on the alleged conduct is timely "as long as *an act* contributing to that hostile environment took place within the statutory time period." *Id.* at 1020 (emphasis added).

Similarly here, Defendants committed numerous abusive, harassing, discriminatory, and retaliatory acts occurring since September 4, 2011, within the 180 days prior to Plaintiff Lewis-Bystrzycki's IDHR charge, so there is at least "an act" within the statutory time period. As stated above, Defendants and their employees, within the 180 time period, continued to watch pornography, including masturbating while doing so, in the workplace while Plaintiff was present. (Exhibit 1, ¶¶ 16-17.) Defendants continued to single out Plaintiff by excluding her from meals or assigning her to do menial and demeaning tasks such as scrubbing brick walls at the fire house or

washing and rewashing the trucks, and cleaning up after the male employees. *(Id.* ¶¶ 33, 38, 44, 46.) Defendants continued to single Plaintiff out by denying her training. (*Id.* ¶¶ 43, 45, 48-49, 125, 128.) Defendants continued to subject Plaintiff to disproportionate and discriminatory discipline for things male employees were not disciplined. (*Id.* ¶¶ 33, 38, 39, 69-70, 74, 77, 83-84, 117-118, 125-128.) All of Plaintiff's complaints about the hostile work environment and harassment and discrimination either fell on deaf ears or resulted in retaliation. Each of the discriminatory, harassing, and retaliatory incidents that Plaintiff was subjected to, both before and after the 180 days (from the beginning of her employment to the present) are connected and related, thus creating one single hostile work environment. *See, e.g., Jenkins*, 354 Ill. App. 3d at 196 ("[A] hostile work environment results from the cumulative effect of individual acts. Therefore, an employee need only file a charge within 180 or 300 days of 'any act that is part of the hostile work environment.'") (quoting *Morgan,* 536 U.S. at 118); *Jones v. Lockard*, 2011 IL App (3d) 100535, ¶ 29 ("The [Illinois Human Rights Act] does not distinguish different 'types' of acts, be they verbal, visual, or physical, to determine whether harassment has occurred. Stated differently, whether the act that causes the harassment is physical or not is irrelevant."); *see also Sangamon Cty. Sheriff's Dep't v. Illinois Human Rights Comm'n*, 233 Ill. 2d 125, 143 (2009) (affirming the Illinois Human Rights Commission's finding that the defendant "committed a variety of sexually harassing acts that cumulatively constituted a hostile work environment" and that such finding "was not against the manifest weight of the evidence").

Defendants cite *Jenkins v. Lustig*, 354 Ill. App. 3d 193 (3d Dist. 2004) in an effort to state that the Defendants' acts are not related due to their temporal distance from each other. However, the *Jenkins* court reversed the IDHR's finding that the plaintiff's allegations were time barred finding that the chief legal counsel abused her discretion. *Id.* at 197 ("A fact finder could easily conclude that this conduct was part of the same actionable hostile environment claim."). The *Jenkins* court went on to hold that the court agreed with sound reasoning in *Gusciara*: "A charge of sexual

harassment is timely if the petitioner files a charge within 180 days ***of any act*** that is part of the hostile work environment." *Id.* at 196 (emphasis added). The court stated that the acts "involved the same employer, were committed by the same person, occurred in similar settings, and continued with relative frequency." *Id.* at 196-97. Further, *Jenkins* holds that even though the plaintiff "did not provide specific dates on which pre-limitations incidents occurred, the allegations indicated the same offensive conduct, office, and perpetrator as the incidents that occurred within the 180-day time period." *Id.* at 197.

Similar to *Jenkins*, Plaintiff Lewis-Bystrzycki's allegations include the same employer (the City of Country Club Hills), were committed consistently by the same group of people, occurred in the same setting and continued with relative frequency. Beginning with the first day of Plaintiff's employment and continuing throughout her employment with similar comments and conduct by Defendants, Plaintiff was consistently and constantly harassed and subjected to a hostile work environment either sexually or otherwise based on her gender. (*See supra* at 13-17.)

While it is true that *Jenkins v. Lustig* states that "a lengthy period between individual incidents and the filing of a charge increases the likelihood that those acts that occurred within the 180-day filing period will be unrelated to those earlier acts," it does not define what period of time is too long, and further, only states that it "increases the likelihood" that the incidents are unrelated. 354 Ill. App. 3d at 197. However, *Jenkins* puts much more weight on the similarities between incidents (similar actors, location, circumstances and settings) than it does the temporal proximity. *Id.* 196-97. Moreover, this case is distinguishable from the scenario discussed in *Jenkins* because there is not a long period of time between incidents. Plaintiff details events that occurred every year of her employment. (*See supra* at 13-17.) The conduct that Plaintiff Lewis-Bystrzycki was subjected to is not only consistently similar in every way throughout her employment, but was also happening on a consistent and continuing basis. Defendants fail to address Plaintiff's testimony that she was constantly called a "bimbo" or a "bitch" and that her supervisors and employees would constantly

walk around naked, in a towel, or expose themselves, or would watch pornography out in the open, masturbate, and compare Plaintiff to the actors onscreen from the beginning of her employment up through the date of her suspension. Male employees, including Defendant Pycz and other supervisors, continued to watch pornographic material without reprimand or discipline even after Plaintiffs' suspension, including just days before the inspection and imaging of Defendants' computers and the days in between. (*See* Defs.' Ex. H, 7/13/15 Lewis-Bystrzycki Dep. 41:3-42:7; *see also* Defs.' Ex. F, 6/22/16 Lewis-Bystrzycki Dep. 144:1-6, 145:11-18, 146:21-147:6, 147:17-148:8, 231:22-232:18, 233:2-4, 235:11-18; *see also* Defs.' Ex. I, 4/20/16 Lewis-Bystrzycki Dep. 51:12-15, 52:15-53:11; 53:22, 56:19-24, 58:10-18, 59:10-16, 80:2-5, 84:14-18; *see generally* Exhibit 10, Pornography Report.) These incidents, when taken into consideration with the other, more obscene and abusive actions (and inactions by Defendant City), show that they are very much related to a larger, continuing scheme of discrimination and harassment, creating the hostile work environment, as well as Defendant City's failure to take any effective remedial action to prevent the hostile work environment. *See Morgan*, 536 U.S. at 115 ("Hostile environment claims are different in kind from discrete acts. Their very nature involves repeated conduct. The 'unlawful employment practice' therefore cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own. Such claims are based on the cumulative effect of individual acts."). In *Morgan*, the Supreme Court found that all of the actions of the defendant during the plaintiff's employment were "part of the same actionable hostile environment claim". *Id.* at 121; *see also Jones v. Lockard*, 2011 IL App (3d) 100535, ¶ ¶ 1, 32 (finding that harassment beginning weeks after the plaintiff was hired (August, 2000) that continued until her discharge in April, 2004, was timely filed as a continuing violation of a hostile work environment). Because the conduct and actions alleged and testified to by Plaintiff Lewis-Bystrzycki were performed by the same actors, and ultimately condoned by the City throughout Plaintiff's entire employment, occurred constantly

during the work day, in the common space, in the showers, and around the fire house, and were consistent and continuous in nature, they can be found to be related to the conduct that occurred within the 180 day time period. As such, they should not be dismissed by this Court under Plaintiff's continuing violation theory.

Ultimately, it is up to the fact finder to determine if the conduct and incidents are part of one "unlawful employment practice." *See Jenkins*, 354 Ill. App. 3d at 197; *see also Lively v. Flexible Packaging Ass'n*, 830 A.2d 874, 896 (D.C. 2003) ("Reasonable jurors could regard these comments and incidents as part of one 'unlawful employment practice,' [occurring over five years time] even though there were gaps in the occurrence of the acts constituting the hostile work environment claim."). As such, Defendants' motion must be denied.

CONCLUSION

For the reasons stated above, Defendants' motion for partial summary judgment should be denied.

Respectfully Submitted,

DENA LEWIS-BYSTRZYCKI

/s/Dana L. Kurtz

Attorney for Plaintiff

Dana L. Kurtz, Esq. (6256245)
KURTZ LAW OFFICES, LTD.
32 Blaine Street
Hinsdale, Illinois 60521
Phone: 630.323.9444
Facsimile: 630.604.9444
E-mail: dkurtz@kurtzlaw.us

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT** was served via the Court's ECF system and via email upon the parties designated below on September 25, 2017.

Daniel Boddicker	dboddicker@keefe-law.com
John Murphey	jmurphey@rmcj.com

s/Dana L. Kurtz

Dana L. Kurtz

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILL INOIS

COUNTY DEPARTMENT, LAW DIVISION

Dena Lewis-Bystrzycki,

Plaintiff,

vs. Case Number 201 2 L 009916

City of Country Club Hills,
Carl Pycz, Joseph Ellington
and Roger Agpawa,

Defendants.

Continued Deposition of Dena Lewis- Bystr zycki

Wednesday

June 22, 2016

-at-

Keefe, Campbell, Biery & Associates, L LC

118 North Clinton Street, Suite 300

Chicago, Illinois 60661

APPEARANCES

For the Plaintiff:

Dana L. Kurtz
Kurtz Law Offices, Ltd.,
32 Blaine Street
Hinsdale, Illinois 60521

For the Defendant:

Daniel J. Boddicker
Keefe, Campbell, Biery & Associates, LLC
118 North Clinton Street
Suite 300
Chicago, Illinois 60661

THE RECORDER: Okay. Good morning. We are on the record, June 22nd, 2016. The time now is 11:26 a.m. We are located at the law offices of Keefe, Campbell, Biery, 118 North Clinton Street, Suite 300, Chicago, Illinois 60661, for a deposition in the matter of Dena Lewis-Bystrzycki versus City of Country Club Hills, et al. Case Number is 2012 L 9916 before the County Department Law Division. Our witness today is the continued deposition of Dena Lewis- Bystrzycki. 0:00:43

Ms. Bystrzycki, my name is Mike Lieschke. I'm a notary public and recording this deposition for In Demand Reporting. At this time, would you please raise your right hand for the oath?

(Witness sworn.)

THE RECORDER: Okay. Attorneys, please state your appearances audibly.

MS. KURTZ: Dana Kurtz on behalf of the plaintiff.

MR. BODDICKER: Daniel Boddicker for the defendants.

THE RECORDER: We can proceed. 0:01:00

MS. KURTZ: And before we begin, pursuant to the Court's order of April 22nd, 2016, this deposition is limited to two hours.

What was the time we started?

THE RECORDER: 11:26.

MS. KURTZ: Thank you.

EXAMINATION

(Exhibit No. 57 marked for identification.)

BY MR. BODDICKER:

Q. Ms. Bystrzycki, you know who I am. I -- I'm going to show you what's been marked as Exhibit No. 57, which I purport is a deposition notice for your deposition. We noticed the dep for a different time today, but by agreement with counsel, we started today at 11:27 or 26, whatever you just said. 0:01:32

I want to take up where we stopped, in essence, at the last deposition. So have you done anything subsequent to our last deposition on April 20th, 2016, to prepare for your deposition today?

A. No. Just normal correspondence with my attorney.

Q. Okay. Have you looked at any additional documents since the end of the deposition on April 20th of 2016 in preparation for your deposition today? 0:02:08

A. No.

Q. Have you reviewed either the deposition video or the deposition – deposition transcript of the April

20th, 2016, deposition?

A. No.

Q. Okay. When we last stopped, I had referred you to -- I'm going to -- going to track it down. Here we go. I'm going to show you what was previously marked at your last deposition as Exhibit No. 54. 0:02:51

And I'm going to refer you specifically to page 27 of Exhibit 54.

A. Okay.

Q. We -- at the last deposition, we asked a few questions about that specific paragraph 46 that's related to what's -- it's headed "Inappropriate Romantic Advances." So I'm going to begin with the question. On page 27 of Exhibit 54 at 46©, it states, "At various times during Plaintiff's employment, especially at the beginning of her" -- of her "employment, male firefighters would lean in to kiss her, would hug her, and hit on her in a romantic way. Lieutenant Kilburg was one male employee that plaintiff recalls hugging her." 0:03:47

So my first question is: Are there any other firefighters, male firefighters, who would lean in to kiss you?

A. I believe in our last deposition -- deposition, that we were talking about some of these things, like Bob

Larry Gillespie masturbating while watching porn? 1:45:14
MS. KURTZ: Object to the form of the question.
THE WITNESS: Yeah. Never a formal complaint. But I did pull Glenn McAuliff aside and -- and asked him to address the issue with him, and Glenn had responded to me with do you want me to make this a thing or just have words with him. And I said go have words with him. 1:45:35
BY MR. BODDICKER:
Q. When was -- when was your conversation with Glenn McAuliff?
A. Approximately five, six months before they suspended me.
Q. In 2015 sometime?
A. Yeah.
Q. Do you remember what month?
A. It -- we had the bay doors open. It was warm. Which they were talking on the bay floor and I was washing the floor. 1:45:56
Q. And you said you asked him to just go talk to him.
A. Yeah.
Q. Did you tell -- let -- let me ask you this way. What do you recall saying to Lieutenant McAuliff and what do you recall him saying to you?

A. I was specifically talking about the incident that happened at night, because it was an early morning call, and we were just opening the station. And I don't remember if it was like 2 in the morning or 3 in the morning, but it was after midnight in those early morning hours. 1:46:26
And both Larry and Marcus had -- had porn up. And it was black-on-black porn. And I was, like, good God. And Larry wasn't waking up for the call. So I had to go over and shake the La-Z-Boy, and his pants were off and down and his penis was out and all of the tissue papers were next to him. 1:46:49
I woke him up for the call. We all left for the call. And then -- and then another one happened around --
Q. Let -- let me ask you about that one. You -- you said you had to wake them up. Where were they?
A. He was --
Q. Or where was Larry Gillespie?
A. Larry -- yeah. Larry was in front of the dayroom TV, but Marcus was watching the classroom TV, which is like approximately 80 feet from each other. 1:47:15
Q. Okay. And -- and Larry Gillespie was asleep, but his pants were down and he had tissues next to him.

A. And his penis was --
Q. Okay.
A. -- flaccid over on the side.
Q. And you had to wake him up.
A. Yeah.
Q. Okay. And that's one of the things you complained to Lieutenant McAuliff about. 1:47:31
A. Well, because Marcus was about 80 feet away watching the same program. And he was like, "Larry, Larry, you see that one? See that bitch"? So he was like yelling.
Q. Where was Marcus Franklin at that time?
A. In the classroom.
Q. Okay.
A. Which is like 80 feet behind the TV of --
Q. Could you see Marcus Franklin from where you were? 1:47:53
A. When I went and shook Larry, I can see Marcus and he had the same program on.
Q. Okay. And what was he watching that program on?
A. The big screen TV in the classroom.
Q. Okay.
A. They're -- they're both like -- I -- I think

they're 50-inchers or something like that. 1:48:11
Q. Do you recall -- okay. You -- you had described this program as -- as black and -- on black. Tell me what you saw.
A. I saw a woman with her breasts and the man inserting his penis into her. She was laying on her back and he was thrusting upon her.
Q. What -- do you know what kind of channel or program they were watching? 1:48:33
A. No.
Q. Okay.
A. But that -- can I -- can I finish my --
Q. Sure.
A. -- answer to that?
Q. Yes.
A. So that was -- because originally you asked me what I said to Glenn. And then you --
Q. Correct.
A. -- then you kind of stopped. But -- but it was an early morning, so it was about 6:45 or so the next morning, and I said, my God -- you know, I said you have to have a word with -- with Larry. 1:48:56
And he's like, what's going on. I was like -- and I said something to the effect of I don't even know

EXHIBIT C

EXHIBIT 10

Report For

Dena Lewis-Bystrzycki

v.

City of Country Club Hills, Carl Pycz,

Joseph Ellington, and Roger Agpawa

Case ID - 2012 L 00916

Prepared For: Dana Kurtz
Attorney at Law

Prepared By: Andy Garrett
Garrett Discovery Inc
agarrett@garrettdiscovery.com

Date: May 18, 2017

Contents

1.0 Expert Background

I, Andrew Garrett am employed by Garrett Discovery Inc, an Illinois based computer forensics firm specializing in digital investigations and computer forensics. I was selected to review digital evidence and write an expert report. I have been performing computer forensics for the last ten years and was formerly a contractor and principal responsible for the largest computer forensics and electronic discovery facility at the Department of Defense. I have performed forensic analysis for private corporations, federal and state courts. I have processed more than 500 investigations and cases. I have performed expert work by order of federal and state courts in Tennessee, Iowa, Illinois, Florida and Alabama.

I have received forensic training provided by Guidance Software and AccessData, whom are the leading forensic software companies in the United States. Additionally, I have been deemed an expert in multiple federal and state courts and have held numerous computer certifications. My CV and case history are attached at Attachment A and B.

2.0 Investigation Narrative

Plaintiff as a matter of reference provided the transcript from the August 31, 2016 hearing and order of the court where the court stated "After viewing everything, I am granting the second motion to compel regarding plaintiff's request for a forensic examination regarding those computers in the classroom at station one, the middle office across from the bathroom at station one, the paramedic writing room computer at station two and the computer in the hallway by the engineer's office and station two. After reading the depositions, I have concluded this isn't a fishing expedition. The plaintiff

was not wholly unable to come up with (inaudible) that she witnessed fellow employees watching pornographic material. The problem is according to her the pornography watching was pervasive. So, for example, every time she would work with [redacted] ... [redacted] ... he was watching pornography. And that applied to Mr. [redacted] 65 percent of the time and Mr. [redacted] 60 percent of the time. Again, that is according to her testimony. When I couple that testimony with the defendants' witnesses' testimony that they admit witnessing firefighters watching pornography or watching pornography themselves, I conclude that the forensic examination requested may lead to discoverable evidence and does not constitute a fishing expedition." Plaintiff also testified in her deposition as to male firefighters that she has seen watching pornography on a regular basis that "There's a lot of them. It's on every night." (Pl.'s Dep. 53.) Defendant's alleged that they "do not have sufficient knowledge or information regarding the allegations ... and, therefore, neither admit nor deny same, but demand strict proof thereof." (Defendants Ans to Pl's Second Amended Complaint 16, 17, 18)

Defendant's hired an outside consulting firm "MJW Consulting" whom wrote a report stating: "Taking all the facts into account, there is no evidence that watching Pornography while at the Fire House is a widespread problem or a current concern for employees," and referenced statements from employees, such as Mr. [redacted] "stated that he has only seen a sexual image on another employee's computer, and since that time that employee has been terminated," and Mr. [redacted] "stated that on occasions when they would be watching a movie then get called out on an emergency they would return to the fire house finding explicit scenes on TV". (See Attachment C)

Defendant's asserted by letter from Mr. Maybell, their IT Director, stating: "The city regularly monitors and / or logs network activity with or without notice, including and all web site communications, and therefore, users should have no reasonable expectation of privacy," and "The Fire Department Internet and Software Audit started 8/28/2015 and completed on 9/10/2016," and "Review

of the inventoried equipment disclosed no irregularities or misuse of the City equipment." (See Attachment D)

I was asked by counsel and ordered by the court to examine the computers that were in place during the time of employment of the plaintiff for usage of pornography and determine if the city's assertion in their pleadings was correct. During my examination, I also found evidence that suggests Defendants took certain actions to spoliate evidence, which will be addressed under a separate report and after further discovery. This report is limited to the issue of pornography being watched at Defendant's fire stations.

3.0 Key Concepts and Terms

3.1 User Profiles

In order for Microsoft Windows to separate one user's information from another user, profiles were created.

When a user establishes an account on a computer for the first time, he or she creates on that computer a registry key with the logged in name and a folder known as the user profile folder used to store data created by the user. At subsequent logons, the system loads the user's profile, and then other system components configure the user's environment according to the information in the profile.

For instance, when examining a computer and navigating to "C:\Users\" you may find multiple folders labeled the same as a user's login name. If I had a user profile on the

computer I was examining, it would contain a folder at "C:\Users\" named 'agarrett' because my login name is 'agarrett'.

It is the folders that are found in "C:\Users\" that contain the web history of web sites visited, searches, web chat history, files and other pertinent information to show user actions and based on the name of the user profile it is a good indicator of whom performed the specific actions on the computer.

3.2 Unallocated Space

When a computer user saves a file on a computer many things happen, but important to this investigation is the file name and date properties are written to a pseudo spreadsheet called the Master File Table and the data is stored on the physical hard drive.

When a computer user deletes a file by either (Shift+Delete) or drags those files to the recycle bin and subsequently empties the recycle bin the entry in the Master File table is marked as deleted and eventually overwritten. The data is still resident on the hard drive, but there is not reference to it from the operating system. It is essentially in a landfill of data that we often call 'unallocated space' because it is not allocated to a file name. Until a new file is stored on the computer and that data is stored at random unallocated spaces that was once allocated to the deleted file, it is recoverable using sophisticated tools.

Forensic software can recover files that were previously deleted by chaining back together the clusters on the hard drive that once was referenced by the file name listed in the master file table. When recovering some of the information, lost may be the file name itself and file ownership including whom created the file.

4.0 Timeline of Events

4.1 Initiation

July 11, 2015	Plaintiff sent her first amended notice of inspection, including the above referenced computers ordered by the court for imaging
September 11, 2015	Rudy Maybell Letter regarding monitoring of the computers and no misuse of equipment
October 7, 2015	MJW Consulting report stating that "There is no evidence of watching porn"
April 6, 2016	Plaintiff Filed 2nd Motion to Compel and for sanctions
August 31, 2016	Court Granted Plaintiff's April 6, 2016 Second Motion to Compel and for Sanctions
January 11, 2017	Plaintiff sent her 4th notice of inspection
January 16, 2017	Arrived on site to perform inspection of computers and was told by Defendants' counsel, Mr. Boddicker, that I would not be allowed
January 20, 2017	Plaintiff files her Motion for Sanctions for violations of the court's order regarding inspection of computers for pornographic material
January 23, 2017	Court granted Plaintiff's Motion for Sanctions and ordered Defendants to reimburse expert fees and costs

January 26, 2017	Forensic Imaging of computers at Station 1 and 2
February 6, 2017	Defendants filed a motion (emergency) for protective order
February 13, 2017	Delivered a Preliminary Report of the 1st set of Computers to Defendant's counsel, Mr. Boddicker
March 14, 2017	Deposition of Wayne Werosh, IT Consultant for Country Club Hills
April 12, 2017	Forensic Imaging of two workstations, that were ordered by the Court on August 31, 2016, but not previously disclosed after testified to by Wayne Werosh

5.0 Computers Examined

5.1 Examination of January 16, 2017

On January 16, 2017, I arrived at Country Club Hills Fire Station and a firefighter directed me to the computers I was to examine. I started to inventory the computers and Chief Agpawa arrived and told me to stop. He said that I was not going to be allowed to do the imaging on that day. I asked if there was a better time to do this examination and he stated that there was not and that the attorneys would have to work it out. I asked that he call attorney Boddicker so we could discuss this situation and to make sure there wasn't some sort of miscommunication. I asked if it was the Chief's decision not to go forward and he said that no it was Mr. Boddicker's decision not to allow the examination. I then left and called Ms. Kurtz. After about an hour they were both at an impasse and I returned to the office.

5.1 Examination of January 26, 2017

On January 26, 2017, based on the Court's order of January 23, 2017 granting Plaintiff's motion for sanctions for Defendants' violations of the court's order regarding inspection of computers for pornographic material, I arrived to examine multiple computers at fire stations 1 and 2. I was met by IT Director Rudy Maybell, IT Consultant Mr. Sachnoff and Mr. Boddicker. I was directed to the computers I was to image pursuant to the court's order.

After imaging one of the computers, I noticed that the computers were connected to a centralized server and asked whether or not Country Club Hills used roaming profiles. If a system has been setup with roaming profiles the user data from a computer would be synced to the server and therefore the server could contain relevant information. I was told by Mr. Maybell and Mr. Sachnoff that the computers did not have roaming profiles, but after further investigation I was able to determine the computers did have roaming profiles and explained how there would most likely be relevant information on the server because the profiles are synced. Mr. Maybell discussed me wanting to image the server with Chief Agpawa in the library while I was in earshot and the heated conversation between them was overhead. Mr. Maybell returned and said that I was not to image the server and that he was "glad (he)asked because I would have been without a job if (I) had (imaged the server)," and stated: "by the end of this I may be fired," and then, Mr. Sachnoff said in response: "you and I," suggesting that he (Sachnoff) and Maybell may be fired. I called Mr. Boddicker and explained the situation with him and he called Chief Agpawa and possibly the Mayor and finally came to the conclusion that it was necessary to image the server. Chief Agpawa slammed the door and then left the fire station.

I forensically imaged multiple computers and the forensic imaging reports are attached to this report, I also gave a copy of the hard drives to Mr. Sachnoff. (See Attachment E)

5.1 Examination of April 12, 2017

On April 12, 2017, I met with Country Club Hills consultant Brent Sachnoff and was notified by Mr. Sachnoff that he took the position as IT Director for Orland Park and was wearing a Government ID Badge. I asked if him if she was going to be testifying or is the expert for Country Club Hills and was told that he was not going to be testifying for them, but will still assist if needed under his own consulting company.

I was shown by Deputy Chief Kopec two computers in a closet bearing evidence tags as testified to by Mr. Werosh the former IT consultant (contractor) and former CCH police officer. I forensically copied both computers and gave a secondary copy to Mr. Sachnoff.

6.0 Other Discovery Materials

There has been other ESI that has yet to be examined and to date has not been examined.

1. Country Club Hills Email Server (aka Gmail for Business)

    a. This data has been acquired, but has yet to be examined and is in the custody of Country Club Hills

    b. Network Attached Storage - Mr. Werosh testified that it was used to hold images (copies) of the computers at the fire stations

c. Two portable hard drives – Mr. Werosh testified that he sold two portable hard drives to Country Club Hills Fire Department and supplied them with a script to copy data from their profiles to the drive and these have not been produced for examination

7.0 Forensic Examination

Forensic Examination consists of Acquisition, Analysis and Reporting. I used a Logicube Forensic Falcon which is a write block NIST certified Forensic Hard Drive Duplicator to create forensic images of the following hard drives.

I processed the hard drives for both present and deleted data including web history of many users using Magnet Forensic Axiom which is used by most law enforcement centers. I have attached a summary of the data containing pornography terms, websites and content below for reference. There is a total of 2101 pages containing pornography entries.

The matrix shows that more than a few users have had pornography displayed on screen.

For those users whom had only a few websites displayed, it could be easily attributed to "accidently clicking" on something that that linked to pornography websites and is not necessarily an intended action. For users that have performed "Google searches" for pornography words it is much more obvious that the user intended to visit a website containing pornography and shows intent.

Below is a matrix summarizing Attachment F, showing each of the users that were found to have pornography terms in the websites visited or pornography images within their user profile and web history. The # of records indicates the number of websites or entries that corresponds with the type of entry.

	# of Records	Bates
[redacted]		
Pictures	7	0001-0004
[redacted]		
Google Toolbar	4	0005-0006
Internet Explorer Main History	2	7
Pictures	3	0008-0009
Google Searches	5	0010-0012
[redacted]		
Google Maps	4	0013-0014
Google Toolbar	1	15
Internet Explorer Cache Records	10	0016-0019
Internet Explorer Main History	10	0020-0023
Internet Explorer PrivacIE Records	2	0024
Pictures	22	0025-0036
Rebuilt Webpages		0037-00323
Google Searches	51	0324-0342
[redacted]		
Internet Explorer Cookie Records	2	00343-00344
Internet Explorer Cookies	15	0345-0348
Internet Explorer PrivacIE Records	4	0349
Potential Browser Activity	1	0350
[redacted]		
Google Analytics First Visit Cookies Carved	1	0351-0352
Google Analytics First Visit Cookies	1	0353
Google Analytics Referral Cookies	1	0354

Internet Explorer Cookie Records	2	0355
Internet Explorer Cookies	15	0356-0360
Internet Explorer PrivacIE Records	3	0361

[redacted]

Google Searches	9	0362-0365
Parsed Search Queries	6	0366-0367
Flash Cookies	3	0368-0369
Google Analytics First Visit Cookies Carved	1	0370
Google Analytics First Visit Cookies Carved	1	0371
Google Analytics Referral Cookies Carved	2	0372
Google Analytics Referral Cookies	1	0373
Google Analytics Session Cookies Carved	1	0374
Google Analytics Session Cookies	1	0375
Google Maps	3	0376
Google Toolbar	2	0377
Internet Explorer Cache Records	185	0378-0455
Internet Explorer Cookie Records	4	0456
Internet Explorer Cookies	5	0457-0458
Internet Explorer Main History	6	0459-0460
Internet Explorer PrivacIE Records	2	0461
Internet Explorer Redirect Records	1	0462
Pictures	30	0463-0477
Pornography URL's	67	0478-0492
Potential Browser Activity	32	0493-0497
Rebuilt Webpages		0498-0801

[redacted]

Google Analytics First Visit Cookies Carved	1	0802-0803
Google Analytics First Visit Cookies Carved	1	0804
Google Analytics Referral Cookies Carved	1	0805
Google Analytics Referral Cookies	1	0806
Google Analytics Session Cookies Carved	1	0807
Google Analytics Session Cookies	1	0808
Google Toolbar	3	0809
Internet Explorer Cache Records	135	0810-0864
Internet Explorer Cookie Records	2	0865-0865

Internet Explorer Cookies	7	0866-0867
Inernet Explorer Favorites	1	0868
Internet Explorer PrivacIE Records	17	0869-0872
Pictures	4	0873-0874
Rebuilt Webpages		0875-1112

[redacted]

Internet Explorer Cookie Records	8	1113-1115
Internet Explorer PrivacIE Records	1	1116
Internet Explorer Redirect Records	2	1117
Pornography URL's	3	1118
Web Chat URL's	1	1119
Dating Sites URL's (Adult)	1	1120-1121
Internet Explorer Cache Records	54	1122-1139
Internet Explorer Cookie Records	4	1140-1141
Pornography URL's	1	1142
Carved Video	1	1143-1144
Internet Explorer Cache Records	12	1145-1148
Internet Explorer PrivacIE Records	369	1149-1220
Internet Explorer Redirect Records	284	1221-1279
Pornography URL's	14	1280-1282
Videos	4	1283-1284
Web Chat URL's	2	1288-1285
Web Video Fragments	2	1286-1286
Internet Explorer 10-11 Content	920	1287-1491
Internet Explorer 10-11 Weekly History	35	1492-1499
Internet Explorer 10-11 Main History	106	1500-1524
Parsed Search Queries	220	1525-1579
Pornography URL's	320	1580-1646
Potential Browser Activity	1	1647
Flash Cookies	2	1648-1649
Google Analytics Referral Cookies Carved	2	1650
Internet Explorer 10-11 Content	254	1651-1712
Internet Explorer 10-11 Main History	2	1713
Pornography URL's	13	1714-1716
Flash Cookies	3	1717-1718
Google Analytics First Visit Cookies Carved	1	1719

Google Analyticas Referral Cookies Carved	1	1720
Internet Explorer 10-11 Content	226	1721-1785
Internet Explorer 10-11 Cookies	3	1786
Internet Explorer 10-11 Daily/Weekly History	3	1787
Internet Explorer 10-11 Main History	1	1788
Pornography URL's	98	1789-809

[redacted]

Chrome Sync Data	6	1810-1812
Chrome Web History	2	1813
Chrome Web Visits	2	1814
Pornography URL's	4	1815

[redacted]

Dating Site URL's (Adult)	22	1816-1821
Internet Explorer Cache Records	16	1822-1826
Pornography URL's	22	1827-1831

[redacted]

Google Maps	3	1832-1833
Google Toolbar	2	1834
Internet Explorer Cache Records	2	1835
Internet Explorer PrivacIE Records	3	1836
Pictures	58	1837-1866
Rebuilt Webpages		1867-1891
Google Searches	50	1892-1909

[redacted]

Internet Explorer In Private / Recovery URL's	5	1910-1911
Internet Explorer Cookie Records	1	1912
Web Chat URL's (Adult)	2	1913
Google Searches	5	1914-1916
Dating Sites URL's (Adult)	4	1917-1918
Internet Explorer Cache Records	1	919
Internet Explorer PrivacIE Records	22	1924-1924
Internet Explorer Redirect Records	3	1925
Pornogrpahy URL's	26	1926

Internet Explorer PrivacIE Records	59	1932-1944
Pornogrpahy URL's	57	1945-1956

[redacted]

Google Toolbar	1	1957-1958
Internet Explorer In Private / Recovery URL's	2	1959
Internet Explorer Redirect Records	1	1960
Pictures	3	1961-1962
Pornography URL's	2	1963
Web Chat URL's	1	1964

[redacted]

Google Analytics First Visit Cookie Carved	1	1965-1966
Google Analytics First Visit Cookies	1	1967
Google Analytics Referral Cookies Carved	2	1968
Google Analytics Referral Cookies	2	1969
Google Analystics Session Cookies Carved	1	1970
Google Analystics Session Cookies	1	1971
Google Toolbar	4	1972
Internet Explorer Cache Records	19	1973-1981
Internet Explorer Cookie Records	2	1982
Internet Explorer Cookies	3	1983
Internet Explorer PrivacIE Records	29	1984-1989
Internet Explorer Redirect Records	16	1990-1992
Pictures	3	1993-1994
Pornography URL's	1	1995
Rebuilt Webpages		1996-2016
Google Searches	4	2019-2019

Unallocated (No user can be attributed)

Flash Cookies	2	2020-2021
Google Analytics Referral Cookie Carved	2	2022
Internet Explorer 10-11 Content	54	2023-2080
Pictures	4	2081
Pornography URL's	13	2082-2084
Carved Video	1	2085-2086
Pictures	59	2087-2101

For those whom have a large number of records categorized as Pictures, Carved Video, Pornography URL's including swinger and hookup sites where two people are looking for sex, it would be hard to attribute those sites to an accidental user action. Especially, for those whom have searched Google using pornography terms it would be impossible to attribute that to accidently visited. For example, Mr. [redacted] searched Google for the following:

adultporn	Ebony Pornhub	Lesbian Anal Sex	Moms On Pornhub Creampie	Sleeping Anal Sex
miggettsex	Female Midget Sex	Lesbian Sex	Most Painful Anal	Stockings Anal Sex
Accidental Anal Sex	First Time Anal Sex	Mature Anal	Most Painful Anal Ever	Stripper Sex
Amateur Anal Sex	Forced Anal Sex	Midget Anal	Nerdy Girl Sex	Surprise Anal
Anal Creampie	Forced Anal While Crying	Midget Anal Porn	Oops Anal Sex	Surprise Butt Sex
anal sex	Forced Lesbian Anal Sex	Midget Anal Sex	Painful Anal Sex	Tall Amazon Girl Sex
Anal Sex Positions	Forced to Have Anal Sex	Midget Fucking	pornhub	Unexpected Anal Sex
Anal Sex Pressure Points	Free Porn	Midget Fucking	Pornhub Blowjobs	Unwanted Anal Sex
Anal Sex Squirt	Fuck That Midget	Midget Gets Anal	Pornhub Good Times TV Sho	Vaginal-Sex
Anal Virgin	Gay Anal Sex	Midget Girl Sex	Pornhub Granny Gangbang	Violent Forced Sex
Animal Sex	Gay Midget Sex	Midget Lesbian Sex	Pornhub Mom Son	Virgin Anal Sex
Asian Anal Sex	Gay Midget Sex	Midget Porn	Pornhub Mom Son Classic	Wife Forced Anal Sex
Black Anal Sex	Gay Midget Sex	Midget Pussy	Pornhub Sister	Wife Forced to Have S
Black Midget Sex	Gay Midget Sex	midget sex	Pornhub Sister Brother	Wifey Anal Sex
Bridget The Midget Anal	Granny Anal	Midget Sex Tube	Pornhub Spring Break Bitche	Wrong Hole Anal
Bridget The Midget Does Anal	Her First Anal Sex	Midgets Doing Anal	Pornhub Squirt	Youporn Mom
Brutal Forced Anal	Her First Time Anal	Midgets Having Sex	Pornhub.Com Mature	
Brutal Forced Anal	Homemade Anal Sex	Mom Forced To Have Sex	Public Sex	
Brutal Forced Anal	Homemade Anal Sex	Mom Porn	Public Sex	
butt porn site:pornhub.com	Horse Sex	Mom Porno	Pussy	
College Sex	Hot Sex	Mom Sex	Retard Sex	
Dwarfs Having Sex	How to Have Anal Sex	Mom Sex	Reverse Cowgirl Anal Sex	
Ebony Church Sex	Incest Anal Sex	Mom Tits	Rough Anal Sex	
Ebony Midget Anal	Japanese Sex	Moms On Pornhub	Search Term	
Ebony Midget Sex	Large Cock Forced Anal	Moms On PornHub 3 Some	Sex With My Dog	

<Above Compiled from Attachment F - Bates 1525-1579>

8.0 Conclusion

Based on my review of the pleadings, investigative files, and direct examination of the hard drives my opinions are as follows:

1 Multiple fire fighters were viewing pornographic material on the fire stations on multiple occasion more than frequently

2. Defendant conducted an investigation conducted by MJW Consulting that consisted of interviewing fire fighters and many were not truthful as to their actions of visiting pornography websites while at the fire station. The report did not state that anyone examined the computers used by the fire fighters.

3. Rudy Maybell the IT Manager stated in a self-serving letter to Chief Agpawa that the defendants, in fact did "monitor[] and / or log[] network activity [], including and all web site communications," and if the monitoring was taking place it would have been obvious that the male firefighters were viewing and searching pornographic material. It is simply not reasonable that if Defendant conducted any investigation.

4. If defendants would have simply looked in the user profile folder which is accessible and contains folders such as downloads and documents, they would have found evidence of pornography.

5. There is no evidence that Plaintiff was intentionally searching the internet for pornographic material.

11.0 Declaration

I declare under penalty and perjury under the laws of the State of Illinois that the information provided is true and correct.

Andy Garrett

May 18, 2017

Andy Garrett Date