

**STATE OF INDIANA  
CIVIL RIGHTS COMMISSION**

**ICRC No.: EMsh11040161  
EEOC No.: 24F-2011-00266**

**KARA MOORE,  
Complainant,**

**v.**

**KING GYROS OF ANGELO'S INC.,  
Respondent.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER**

On July 23, 2013, Noell F. Allen Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") entered her Proposed Findings Of Fact, Conclusions Of Law, And Order as amended ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

**INDIANA CIVIL RIGHTS COMMISSION**

  
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**COMMISSIONER**

  
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**COMMISSIONER**

  
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**COMMISSIONER**

Dated this 23<sup>rd</sup> Day of August, 2013.

To be served by first class mail on the following parties:

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Mason, Michigan 48854

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King Gyro's  
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1827 ½ Michigan Street  
Plymouth, IN 46563-1007

and to be personally served on the following attorney:

Frederick S. Bremer, Esq.; Staff Attorney  
Indiana Civil Rights Commission  
Indiana Government Center North  
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Indianapolis, IN 46204-2255

**STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION**

KARA MOORE,	)	Docket No.: EMsh11040161
	)	
Complainant,	)	EEOC No.: 24F-2011-00266
	)	
vs.	)	
	)	
KING GYROS OF ANGELO'S INC.,	)	
	)	
Respondent.	)	
	)	
	)	
	)	
	)	
	)	
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**AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF  
LAW AND ORDER**

A Hearing on Damages was held in this case before Administrative Law Judge ("ALJ") Robert D. Lange ("Judge Lange") for the Indiana Civil Rights Commission ("ICRC") on September 5, 2012. Complainant, Kara A. Moore ("Moore"), appeared in person and was represented by William Mishler, Attorney at Law at MISHLER & NEWCOMB, LLP. Respondent, King Gyros of Angelo's, Inc., ("Respondent") did not appear, by counsel or otherwise.

An opening statement was waived. Moore testified on her own behalf.

After Complainant rested, the cause was taken under advisement. The ALJ ordered Complainant to submit what he suggested he enter as proposed findings of fact, conclusions of law and order on or before October 5, 2012.

On October 3, 2012, Complainant filed Complainant, Kara Moore's Proposed Findings of Fact, Conclusions of Law and Order.

Judge Lange retired from his position as ALJ from the ICRC on December 26, 2012. On July 2, 2013, the Commission appointed Noell F. Allen,

1 undersigned ALJ, as ALJ for this matter. On July 3, 2013, Judge Allen adopted  
2 Complainant's Proposed Findings of Fact, Conclusions of Law and Order.

3 Having carefully considered the foregoing and being duly advised in the  
4 premises, the ALJ proposed that the ICRC enter the following as findings of  
5 fact, conclusions of law and a final order as amended.

6  
7 **FINDINGS OF FACT**

- 8 1. Moore filed her complaint against Respondent on April 13, 2011,  
9 stating employment discrimination on the basis of sex, specifically  
10 sexual harassment.
- 11 2. On or about February 3, 2012, Respondent was served with a  
12 NOTICE OF INITIAL PRE-HEARING CONFERENCE that was scheduled for  
13 February 27, 2012 at 8:30 A.M. in Room 1 of the Conference Center on  
14 the first floor of the Indiana Government Center South at 302 West  
15 Washington Street, Indianapolis, IN. The Notice of Initial Pre-  
16 Hearing Conference advised Respondent that "a party who fails to  
17 attend or participate in a Pre-Hearing Conference, Hearing, or later  
18 stage of the proceedings may be held in default or the matter may be  
19 dismissed."
- 20 3. The Respondent did not appear or participate in the Initial Pre-  
21 Hearing Conference.
- 22 4. On July 30, 2012, the ALJ entered and served his NOTICE OF  
23 PROPOSED DEFAULT ORDER ("NPDO"). The NPDO advised Respondent that  
24 it could file a written motion requesting that the proposed default  
25 order not be imposed and stating the grounds upon which they relied  
26 within seven (7) days after service of the NPDO. The NPDO also  
27 advised that if no such motion is filed, the ALJ MUST enter the  
28 proposed default order under IC 4-21.5-3-24(c).
5. Respondent did not file a written motion requesting that the  
proposed default order not be imposed.
6. On August 14, 2012, the ALJ issued his ORDER BY DEFAULT AND  
NOTICE OF HEARING ON DAMAGES.
7. As alleged in Moore's complaint, that must be accepted as true:  
a. On March 6, 2011, Moore felt compelled to quit her job

1 b. Moore believed she had been discriminated against on the basis  
2 of her sex/sexual harassment because

3 i. On March 6, 2011, Moore quit her job due to a hostile  
4 work environment.

5 ii. During the employment, Moore was sexually harassed by  
6 the male co-workers on a continuous basis.

7 iii. Moore complained to the owner, Wasilm Latif; however,  
8 nothing was done to correct the abuse Moore endured on a  
9 daily basis, and it left Moore afraid to go to work.

10 8. Moore earned \$6.00 per hour and worked fifty (50) hours per week  
11 for the Respondent. Therefore, Moore earned \$300.00 per week.

12 9. Moore's lost wages from the time of separation through the end  
13 of litigation was \$22,500.00.

14 10. Since separating from work, Moore obtained employment with Pro  
15 Resources and earned approximately \$3,000.00 in total gross wages.

16 11. Moore incurred expenses by way of attorney's fees and traveling  
17 expenses to participate in the pre-hearing conference.

18 **CONCLUSIONS OF LAW**

19 1. The ICRC has jurisdiction over the subject matter and the  
20 parties.

21 2. Moore and Respondent are each a "person", as that term is  
22 defined in section 3(a) of the Indiana Civil Rights Law, Ind. Code  
23 22-9-1-1 et seq. ("ICRL"); Ind. Code 22-9-1-3(a).

24 3. The Respondent is an "employer", as that term is defined in the  
25 ICRL, Ind. Code 22-9-1-3(h).

26 4. The ICRC's Rule 6.1 (1) provides, in material part, that "[w]hen  
27 a party has failed to appear for a public hearing after proper  
28 notice", that party is in default. 910 IAC 1-6-1(2).

5. Default is appropriate under 910 IAC 1-6-1(2).

6. The ALJ was required to conduct further proceedings after  
default without the participation of Respondents. IC 4-21.5-3-  
24(d).

7. The effects of an order by default include that the allegations  
of the complaint are deemed admitted.

- 1           8.       What constitutes as discriminatory practice is set out in the  
2           following subsection of the ICRL:
- 3           9.                "Discriminatory practice" means: (1) the exclusion of  
4           a person from equal opportunities because of ... sex ... Ind. Code 22-9-  
5           1-3(1)(1).
- 6           10.       "The United States Supreme Court has held that a plaintiff may  
7           establish a violation of Title VII by proving that discrimination  
8           based on sex has created a hostile or abusive work environment."  
9           *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986).
- 10          11.       The ICRL makes it a discriminatory practice to exclude a person  
11          from equal opportunities because of, among other things, sex. Ind.  
12          Code 22-9-1-3(1)(1). Every discriminatory practice related to, among  
13          other things, employment, is unlawful unless exempted by the IRCL.  
14          *Id.*
- 15          12.       If the ICRC finds that a person has committed an unlawful  
16          discriminatory practice, it shall issue an order requiring the  
17          person to cease and desist from that practice and to take further  
18          affirmative action as will effectuate the purposes of the ICRL,  
19          which may include restoring Complainant's losses incurred as a  
20          result of the discriminatory treatment. IC 22-9-1-6(k)(A).
- 21          13.       If the ICRC finds that a person has committed a  
22          discriminatory practice, it "may order the appropriate relief,  
23          including actual damages, ...and other injunctive or equitable  
24          relief." IC 22-9.5-6-15(a).
- 25          14.               10.       "Actual damages" includes compensation for emotional  
26          distress. *Indiana Civil Rights Commission v. Alder*, 714 N.E.2d 632  
27          (Ind. 1999). Three Thousand Dollars (\$3,000.00) is an appropriate  
28          amount in this case.
15.       Moore has proven that she sustained lost earnings that were the  
          proximate result of the proven unlawful discriminatory practice.
16.       The loss of the use of wages is a part of the loss that a  
          complainant incurs when those wages are lost. Thus, the awarding of  
          interest to compensate for the loss of use is within the authority  
          of the ICRC.
17.       Interest should be awarded at an annual rate of 8% compounded  
          annually. This is the rate provided for in IC 24-4.6-1-103, a  
          statute that is appropriate to consult in the absence of a more

1 applicable statute. *Indiana Insurance Company v. Sentry Insurance*  
2 *Company*, 437 N.E.2d 1381 (Ind. App.1982).

3 18. The burden of proof on the issue of mitigation of damages is on  
4 the wrongdoer. *Colonial Discount Corp. v. Berkhardt*, 435 N.E. 2d 65  
(Ind. App.1982).

5 19. Moore's lost wages of \$22,500.00 less the interim wages earned  
6 from Pre Resources for \$3,000 equals \$19,500. That amount multiplied  
by interest is \$21,060.00.

7 20. Moore is entitled to the reasonable attorney's fees for  
8 \$5,000.00.

9 21. Moore requests compensatory and putative damages as a result of  
her constructive discharge. However, the Court has long held that  
10 putative damages (awards to punish the Respondent) are not within  
11 the authority of the Commission to award. *Indiana Civil Rights*  
*Comm'n v. Alder*, 714 N.E.2d 632, 638 (Ind. App. 1999).

12 22. Administrative review of this proposed decision may be obtained  
13 by any interested and affected person who is not in default by the  
14 filing of a writing specifying with reasonable particularity each  
15 basis for each objection within 15 days after service of this  
proposed decision. IC 4-21.5-23-29(d).

16 23. Any Finding of Fact that should have been deemed a Conclusion of  
17 Law is hereby adopted as such.

18 **ORDER**

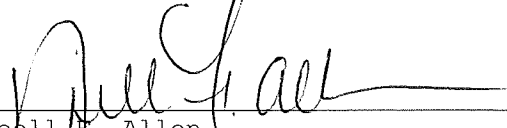
19  
20 1. Respondent shall cease and desist from creating a hostile work  
21 environment for all employees.

22 2. Respondent shall deliver to the ICRC one or more cashier's  
23 checks payable to the ICRC, as escrow agent for Moore, in amounts  
24 adding up to \$29,060.00 less appropriate employee withholding  
25 taxes from lost wages (\$19,500.00).

26 3. This Order shall take effect immediately after it is  
27 approved and signed by a majority of the members of ICRC, unless  
28 it is modified by ICRC pursuant to IC 4-21.5-3-31(a), stayed by

1 ICRC under 4-21.5-3-31(b), or stayed by a court of competent  
2 jurisdiction.

3  
4  
5 Dated this 25<sup>th</sup> day of July, 2013

6  
7   
8 Noell H. Allen  
Administrative Law Judge

9 To be served by first class mail on the following parties and attorneys  
10 of record:

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19 and to be personally served on the following attorney:

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