

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

EQUAL EMPLOYMENT )  
OPPORTUNITY COMMISSION, )  
AND MARY E. JAMES, )

Plaintiff, )

vs. )

Case No.2:05-CV-2043-VEH

FAROOQI ENTERPRISES, INC. )  
d/b/a HARDEE’S, et al., )

**JURY TRIAL DEMANDED**

Defendants. )

**AMENDED AND RESTATED COMPLAINT OF  
PLAINTIFF-INTERVENOR MARY E. JAMES**

COME NOW Plaintiff-Intervenor Mary E. James, by and through her undersigned attorneys, and for her cause of action against the Defendants states as follows:

**PARTIES**

1. Plaintiff-Intervenor Mary E. James (hereinafter, “Plaintiff”) is a resident of the State of Alabama, residing in Fairfield, Alabama and is a citizen of the United States.

2. Plaintiff Equal Employment Opportunity Commission (hereinafter "EEOC"), the federal agency charged with the administration, interpretation and

enforcement of Title VII, brought the initial action pursuant to § 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3).

3. Defendant Farooqi Enterprises, Inc. d/b/a Hardee's (hereinafter "Farooqi"), is an Alabama corporation doing business in Jefferson County, Alabama.

4. Defendant Johnell Myers (hereinafter "Myers") is a resident of Jefferson County, A and is being sued in his individual capacity, and as an agent for Farooqi Enterprises, Inc.

### **JURISDICTION AND VENUE**

5. Plaintiff brings her cause of action pursuant to § 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3)("Title VII"), and § 102(d) of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. Plaintiff has the statutory right to intervene in the instant action pursuant to § 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). The Court has jurisdiction over Plaintiff's pendent state claims pursuant to 28 U.S.C. § 1367.

6. Farooqi is an employer engaged within the meaning of Title VII, § 701(b), (g) and (h), 42 U.S.C. § 2000e-5(b),(g) and (h).

7. Plaintiff timely filed her charge of sexual harassment with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the last discriminatory act. ("Exhibit A"). Plaintiff further states that she received a determination on the merits of her charge ("Exhibit B"), and EEOC brought the instant action on behalf of Plaintiff and two other individuals pursuant to § 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) on or about September 28, 2005.

8. Plaintiff was employed in the State of Alabama by Farooqi.

9. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5 and 28 U.S.C. § 1391(b) in that Farooqi is registered with the State of Alabama under the name Farooqi Enterprises, Inc. and conducts business in the State of Alabama, and that a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

### **STATEMENTS OF RELEVANT FACTS**

10. Plaintiff was transferred from the Tutwiler Penitentiary to the Birmingham Work Release Center. The Department of Corrections contracts with private employers to employ individuals at the Birmingham Work Release center to work a full-time job as a condition of being a part of that program. Farooqi was one of these employers who hired individuals on work release. Farooqi employed

Plaintiff in their Hardee's store in Vestavia Hills, Alabama as a crew member/cook.

11. Myers was, at all relevant times, authorized by Farooqi to be a store manager and was assigned by Farooqi to the Hardee's in Vestavia Hills, Alabama.

12. Beginning on or about approximately January 1, 2004, and continuing through April 18, 2004, Myers engaged in acts of sexual harassment directed at Plaintiff, and restrained Plaintiff against her will by not allowing her to move about freely through his constant vigil and attention.

13. Beginning on or about January 1, 2004, and continuing through April 18, 2004, Myers engaged in acts of sexual harassment directed at Plaintiff, including numerous sexually-oriented comments and unwanted physical touchings.

14. The unlawful conduct alleged above was unwelcome and offensive to Plaintiff and would be found by a reasonable person to be unwelcome and offensive.

15. The unlawful conduct alleged above was sufficiently severe or pervasive to create a hostile working environment for Plaintiff which altered the terms or conditions of her employment, and Farooqi failed to take adequate corrective or remedial action in response to such unlawful conduct, in violation of

Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a).

16. Farooqi constructively discharged Plaintiff on or about April 18, 2004 by creating intolerable working conditions for Plaintiff, in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a).

17. As a result of the actions alleged above, Plaintiff has suffered and will continue to suffer emotional distress, loss of enjoyment of life, loss of reputation, humiliation, prolonged incapacity to work, and inconvenience.

## **COUNTS I AND II**

### **TITLE VII - SEXUAL HARASSMENT AND CONSTRUCTIVE DISCHARGE DEFENDANT FAROOQI**

18. This claim is brought against Farooqi, as the employer of Plaintiff during the time she was sexually harassed.

19. Farooqi never provided Plaintiff with a sexual harassment policy.

20. Even if Farooqi has a sexual harassment policy, it failed to take effective means to insure that employees were not subjected to a sexually hostile work environment.

21. Plaintiff was subjected to a sexually hostile work environment by the top management official of Farooqi at its Vestavia Hills location.

22. Commencing almost immediately with Myers being hired at the Vestavia Hills location of Farooqi, Plaintiff was subjected to repeated non-consensual, offensive sexual touchings, gestures, comments, innuendoes, and extreme, severe physical gropings, and assaults.

23. Farooqi was aware through its contractual relationship with the Alabama Department of Corrections that Plaintiff was in essence a “captive” employee, unable to quit or else she would be sent back to the penitentiary. As a result, Farooqi, through its management, knew that Plaintiff could be assigned to any location it chose; any hours it chose; and given any job assignments it chose, all without risk of Plaintiff quitting.

24. Management of Farooqi knew or should have known of the sexually hostile work environment created by Myers at its Vestavia Hills location because it was open, severe, and pervasive.

25. By the unlawful acts alleged above, Farooqi has violated Title VII.

26. As a direct and proximate result of Farooqi’s unlawful acts, Plaintiff has sustained and is reasonably likely to sustain in the future irreparable harm in the form of pecuniary and nonpecuniary losses, including but not limited to, lost wages and benefits, emotional pain, suffering, inconvenience, humiliation, loss of enjoyment of life, loss of reputation, medical and counseling expenses, and

attorneys' fees and expenses.

27. Farooqi acted with malice or with reckless indifference to Plaintiff's right not to be discriminated against, thus making appropriate an award of punitive damages to punish the Farooqi and to deter Farooqi and others from like conduct. Such malice or reckless indifference is part of a pattern of conduct engaged in by Farooqi on prior, similar occasions.

WHEREFORE, Plaintiff prays that this Court enter judgment pursuant to Title VII in her favor and against Farooqi and enter an order:

- a. Declaring all acts in violation of Title VII;
- b. Enjoining and permanently restraining Farooqi from continued violations of Title VII;
- c. Directing Farooqi to take such affirmative action as is necessary to ensure that the effects of these unlawful practices are eliminated and do not continue to affect Plaintiff's employment opportunities;
- d. Requiring Farooqi to compensate, reimburse, and make whole Plaintiff for the full value of all pecuniary and nonpecuniary damages she has sustained in the past, and is reasonably certain to sustain in the future, including, but not limited to, any and all back pay and

benefits, medical and counseling expenses, offensive touching, embarrassment, humiliation, loss enjoyment of life, potential loss of reputation, and all consequent damages.

**COUNT III**

**ALABAMA LAW - ASSAULT AND BATTERY  
DEFENDANT FAROOQI AND MYERS**

28. By the unlawful acts alleged above, Myers committed assault and battery against Plaintiff which is prohibited by § 6-2-34 of the Code of Alabama 1975, in that:

- a. Myers intentionally engaged in unwanted touching and fondling of Plaintiff;
- b. Defendant Myers thereby caused a physical contact with Plaintiff that was offensive to her;
- c. Myers thereby caused Plaintiff to be in apprehension of an offensive contact or bodily harm; and
- d. Such contact would be offensive to a reasonable person.

29. By the unlawful acts alleged above, Plaintiff has suffered and will continue to suffer in the future, extreme emotional anguish, indignity, disgrace, humiliation and mortification.

30. The conduct of Myers as alleged herein was outrageous because of his



evil motive or reckless indifference to the rights of Plaintiff, making him subject to an award of punitive damages to punish the Myers and to deter the Myers and others from like conduct in the future.

31. Farooqi has ratified and condoned the actions of its agent, Myers, by failing to provide Plaintiff with a safe working environment. Farooqi further knew or should have known of the unlawful conduct of Myers, yet took no effective measures to protect Plaintiff from his continued tortious assaults.

WHEREFORE, Plaintiff prays that this Court enter a judgment in her favor and against Farooqi and Myers and enter an order:

- a. Awarding Plaintiff compensatory damages in such amount as to fairly and reasonably compensate for the damages she has suffered as a result of the conduct of the Farooqi and Myers;
- b. Awarding Plaintiff punitive damages in such sum as is appropriate to punish Farooqi and Myers and to deter Farooqi and Myers and others from like conduct in the future;
- c. Awarding Plaintiff the costs of this action, prejudgment interest and reasonable attorneys' fees; and
- d. Such further and other relief as the Court deems just and proper.

**COUNT IV**

**FALSE IMPRISONMENT**

**DEFENDANT FAROOQI AND MYERS**

32. By the unlawful acts alleged above, Myers committed false imprisonment against Plaintiff which is prohibited by § 6-5-170 of the Code of Alabama 1975, in that Myers unlawfully restrained Plaintiff against her will by not allowing her to move about freely without his constant vigil and attention.

33. As a result of the actions of Myers as alleged herein, Plaintiff has suffered, and will continue to suffer in the future, embarrassment, disgrace, humiliation, injury to her feelings and reputation and mental suffering.

34. The conduct of Myers as alleged herein was outrageous because of his evil motive or reckless indifference to the rights of Plaintiff making him subject to an award of punitive damages to punish Myers and to deter Myers and others from like conduct.

35. Farooqi has ratified and condoned the actions of its agent, Myers, by failing to provide Plaintiff with a safe working environment. Farooqi further knew or should have known of the unlawful conduct of Myers, yet took no effective measures to protect Plaintiff from his continued tortuous assaults.

WHEREFORE, Plaintiff prays that this Court enter a judgment in her

favor and against Farooqi and Myers and enter an order:

- a. Awarding Plaintiff compensatory damages in such amount as to fairly and reasonably compensate for the damages she has suffered as a result of the conduct of the Farooqi and Myers;
- b. Awarding Plaintiff punitive damages in such sum as is appropriate to punish Farooqi and Myers and to deter Farooqi and Myers and others from like conduct in the future;
- c. Awarding Plaintiff the costs of this action, prejudgment interest and reasonable attorneys' fees; and
- d. Such further and other relief as the Court deems just and proper.

**COUNT V**

**OUTRAGE**

**DEFENDANT FAROOQI AND MYERS**

36. Myers outrageously and intentionally inflicted emotional distress upon Plaintiff by subjecting her to inappropriate language, abusive and harmful touchings on several occasions.

37. Farooqi knew of Myers reputation prior to his hiring by way of Brenda Jefferson, a co-worker of Myers at a previous Hardee's located in Tarrant.

In spite of this, he was hired and placed in an unsupervised position of authority over Plaintiff and other females.

38. Myers knew these women were captive employees and took full advantage of that.

39. The conduct described above was extreme, outrageous and beyond the bounds of decency in a civilized society and caused the Plaintiff to suffer emotional distress

40. As a result of the actions of Myers as alleged herein, Plaintiff has suffered, and will continue to suffer in the future, embarrassment, disgrace, humiliation, injury to her feelings and reputation and mental suffering.

41. The conduct of Farooqi and Myers as alleged herein was outrageous because of their evil motive or reckless indifference to the rights of Plaintiff, making Farooqi and Myers subject to an award of punitive damages to punish Farooqi and Myers and to deter Farooqi and Myers and others from like conduct.

42. Farooqi has ratified and condoned the actions of its agent, Myers, by failing to provide Plaintiff with a safe working environment. Farooqi further knew or should have known of the unlawful conduct of Myers, yet took no effective measures to protect Plaintiff from his continued tortuous assaults.

WHEREFORE, Plaintiff prays that this Court enter a judgment in her

favor and against Farooqi and Myers and enter an order:

- a. Awarding Plaintiff compensatory damages in such amount as to fairly and reasonably compensate for the damages she has suffered as a result of the conduct of the Farooqi and Myers;
- b. Awarding Plaintiff punitive damages in such sum as is appropriate to punish Farooqi and Myers and to deter Farooqi and Myers and others from like conduct in the future;
- c. Awarding Plaintiff the costs of this action, prejudgment interest and reasonable attorneys' fees; and
- d. Such further and other relief as the Court deems just and proper.

## **COUNT VI**

### **INVASION OF PRIVACY**

#### **DEFENDANT FAROOQI AND MYERS**

43. Myers invaded the privacy of Plaintiff by, among other things, invading her personal space by touching and forcefully entering private places of her body and making unwelcome invasive sexual comments to her.

44. As a result of the actions of Myers as alleged herein, Plaintiff has suffered, and will continue to suffer in the future, embarrassment, disgrace,

humiliation, injury to her feelings and reputation and mental suffering.

45. The conduct of Myers as alleged herein was outrageous because of his evil motive or reckless indifference to the rights of Plaintiff, making him subject to an award of punitive damages to punish Myers and to deter Myers and others from like conduct.

46. Farooqi has ratified and condoned the actions of its agent, Myers, by failing to provide Plaintiff with a safe working environment. Farooqi further knew or should have known of the unlawful conduct of Myers, yet took no effective measures to protect Plaintiff from his continued tortuous assaults.

WHEREFORE, Plaintiff prays that this Court enter a judgment in her favor and against Farooqi and Myers and enter an order:

- a. Awarding Plaintiff compensatory damages in such amount as to fairly and reasonably compensate for the damages she has suffered as a result of the conduct of the Farooqi and Myers;
- b. Awarding Plaintiff punitive damages in such sum as is appropriate to punish Farooqi and Myers and to deter Farooqi and Myers and others from like conduct in the future;
- c. Awarding Plaintiff the costs of this action, prejudgment interest and reasonable attorneys' fees; and

d. Such further and other relief as the Court deems just and proper.

## COUNT VII

### **NEGLIGENT HIRING, SUPERVISION, AND RETENTION DEFENDANT FAROOQI**

47. Farooqi knew of Myers reputation prior to his hiring by way of Brenda Jefferson, a co-worker of Myers at a previous Hardee's located in Tarrant. In spite of this, he was hired and placed in an unsupervised position of authority over Plaintiff and other females.

48. Myers outrageously and intentionally inflicted emotional distress upon Plaintiff by subjecting her to inappropriate language, abusive and harmful touchings on several occasions.

49. Myers knew these women were captive employees and took full advantage of that.

50. The conduct described above was extreme, outrageous and beyond the bounds of decency in a civilized society and caused the Plaintiff to suffer emotional distress

51. As a result of the actions of Myers as alleged herein, Plaintiff has suffered, and will continue to suffer in the future, embarrassment, disgrace,

humiliation, injury to her feelings and reputation and mental suffering.

52. The conduct of Farooqi and Myers as alleged herein was outrageous because of their evil motive or reckless indifference to the rights of Plaintiff, making Farooqi and Myers subject to an award of punitive damages to punish Farooqi and Myers and to deter Farooqi and Myers and others from like conduct.

53. Farooqi has ratified and condoned the actions of its agent, Myers, by failing to provide Plaintiff with a safe working environment. Farooqi further knew or should have known of the unlawful conduct of Myers, yet took no effective measures to protect Plaintiff from his continued tortuous assaults.

WHEREFORE, Plaintiff prays that this Court enter a judgment in her favor and against Farooqi and Myers and enter an order:

- a. Awarding Plaintiff compensatory damages in such amount as to fairly and reasonably compensate for the damages she has suffered as a result of the conduct of Farooqi;
- b. Awarding Plaintiff punitive damages in such sum as is appropriate to punish Farooqi and to deter Farooqi from like conduct in the future;
- c. Awarding Plaintiff the costs of this action, prejudgment interest and reasonable attorneys' fees; and



d. Such further and other relief as the Court deems just and proper.

Respectfully submitted,

s/StephenD. Heninger  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of May, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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