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Tubandt, Henry, Brazle and Grubbs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Equal Employment Opportunity
Commission,

Plaintiffs,

vs.

GLC Restaurants, Inc. d/b/a McDonald's
Restaurant, an Arizona corporation,

Defendant.

Jessica J. Tubandt, Amanda Henry, Tiara
M. Brazle, and Tamara A. Grubbs,

Plaintiffs/Interveners

vs.

GLC Restaurants, Inc. d/b/a McDonald's
Restaurant, an Arizona corporation;
Steven Alan Ehresman and Shari Louise
Ehresman, husband and wife; Cindy
Keppel and John Doe Keppel, wife and
husband,

Defendants.

No. CV05-618 PCT-DGC

**AMENDED COMPLAINT OF
PLAINTIFFS/INTERVENERS TUBANDT,
HENRY, BRAZLE AND GRUBBS**

1 Plaintiffs Jessica J. Tubandt, Amanda Henry, Tiara M. Brazle and Tamara A. Grubbs,
2 for their causes of action against Defendant, allege as follows:

3 **PARTIES**

4 1. Jessica J. Tubandt is a single woman and is a resident of Yavapai County,
5 Arizona.

6 2. Amanda Henry is a single woman and is a resident of Yavapai County, Arizona.

7 3. Tiara M. Brazle is a single woman and is a resident of Maricopa County, Arizona.

8 4. Tamara A. Grubbs is a single woman and is a resident of Yavapai County,
9 Arizona.

10 5. Defendant GLC Restaurants, Inc., d/b/a McDonald's Restaurant (hereinafter
11 "McDonald's"), is an Arizona corporation authorized to and doing business in the state of
12 Arizona.

13 6. Defendants Steven A. Ehresman and Shari Louise Ehresman are husband and
14 wife and are residents of Yavapai County, Arizona.

15 7. All acts and/or obligations of Defendant, Steven A. Ehresman, hereinafter set
16 forth, were committed and/or incurred on behalf of the marital community of Steven A.
17 Ehresman and Shari Louise Ehresman, which is, therefore, responsible for same.

18 8. Defendants Cindy Keppel and John Doe Keppel are wife and husband and are
19 residents of Yavapai County, Arizona.

20 9. All acts and/or obligations of Defendant Cindy Keppel hereinafter set forth, were
21 committed and/or incurred on behalf of the marital community of Cindy Keppel and John Doe
22 Keppel, which is, therefore, responsible for same.

23 **JURISDICTION AND VENUE**

24 10. This Court has jurisdiction over Plaintiffs' Title VII claims against Defendant
25 McDonald's pursuant to 28 U.S.C. §§ 1331, 1337, 1343 and 1345 and 42 U.S.C. §§ 2000e
26 *et seq.*

1 21. All actions of Defendant Steven A. Ehresman alleged herein, were in furtherance
2 of, on behalf of the interest of and within the scope of his employment with his employer
3 Defendant McDonald's.

4 22. Defendant Cindy Keppel at all material times hereto was employed as a Manager
5 by Defendant McDonald's.

6 23. In her capacity as Manager, Defendant Cindy Keppel had supervisory
7 responsibility over Plaintiffs, Defendant Steven A. Ehresman and others. In her capacity as
8 manager, Defendant Cindy Keppel was responsible for the assignment of job functions for
9 Defendant Steven A. Ehresman.

10 24. Beginning in the latter part of 2001, and continuing through September, 2002,
11 Defendant Steven A. Ehresman, in his capacity as Assistant Manager for Defendant
12 McDonald's, engaged in constant illegal, inappropriate, and/or offensive conduct toward
13 Plaintiffs, and others, which included, but was not limited to, the following acts:

14 (a) placing his hand and arm over Plaintiff Tiara M. Brazle's right shoulder and
15 groping her right breast;

16 (b) standing close to Plaintiff Tiara M. Brazle so that his leg and/or body rubbed
17 against her leg and/or body;

18 (c) grabbing and rubbing Plaintiff Tiara M. Brazle's hands while she made change
19 for the cash register;

20 (d) massaging and rubbing the shoulders of Plaintiff Amanda Henry;

21 (e) slapping the thighs of Plaintiff Amanda Henry;

22 (f) rubbing the belly of Plaintiff Amanda Henry;

23 (g) placing his hands in the pants pocket of Plaintiff Tamara A. Grubbs;

24 (h) grabbing the hands of Plaintiff Tamara A. Grubbs;

25 (i) grabbing the hands of Plaintiff Jessica J. Tubandt;

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- 1 (j) touching Plaintiff Jessica J. Tubandt around her waist;
- 2 (k) rubbing the stomach of Plaintiff Jessica J. Tubandt;
- 3 (l) rubbing the sides of Plaintiff Jessica J. Tubandt; and
- 4 (m) massaging the shoulders of Plaintiff Jessica J. Tubandt.

5 25. From late 2001 to September 2002, Defendant Steven A. Ehresman, in his
6 capacity as an assistant manager of Defendant McDonald's, engaged in illegal, inappropriate
7 and/or offensive verbal communications directed at Plaintiffs which included, but was not
8 limited to:

- 9 (a) a statement to Plaintiff Tamara A. Grubbs when she pulled out her pants pocket,
10 that Mr. Ehresman wanted to "lick between the bunny ears";
- 11 (b) a statement to Plaintiff Tamara A. Grubbs that she had "beautiful hands";
- 12 (c) repeated questions to Plaintiff Amanda Henry asking whether she had a
13 boyfriend;
- 14 (d) comments by Steven A. Ehresman to Plaintiff Tiara M. Brazle that she had
15 "pretty hair";
- 16 (e) statements to Plaintiff Jessica J. Tubandt that Steven A. Ehresman wanted to
17 "bend her over and spank her";
- 18 (f) a statement to Plaintiff Jessica J. Tubandt that Steven A. Ehresman "liked her";
- 19 (g) a statement to Plaintiff Jessica J. Tubandt that Steven A. Ehresman wanted to
20 "lay her down and spread her legs open".

21 26. In late 2001 to September 2002, Steven A. Ehresman, in his capacity as an
22 assistant manager of Defendant McDonald's, engaged in illegal, inappropriate and offensive
23 physical and verbal conduct involving those other than Plaintiffs, some in Plaintiffs' presence,
24 which included, but was not limited to:

- 25 (a) regular incidents of hugging of co-employees;

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- 1 (b) regular incidents of kissing of co-employees;
2 (c) whispering in the ears of female co-employees;
3 (d) constant “dirty” talking and/or telling dirty jokes loud enough for other employees,
4 including Plaintiffs, and even customers to hear;
5 (e) placing his hands in the pockets of the shirts and pants of other female co-
6 employees;
7 (f) numerous references to oral sex;
8 (g) rubbing/holding hands of other female co-employees;
9 (h) a statement made to a female co-employee, in the presence of a customer, that
10 he wanted the employee to jump up on the counter so he could have her for lunch.

11 27. Plaintiffs and/or Plaintiffs’ parents reported to Plaintiffs’ supervisors, including
12 Defendant Cindy Keppel, illegal, inappropriate and/or offensive conduct of Defendant Steven
13 A. Ehresman directed toward Plaintiffs and others. Defendants McDonald’s and Cindy Keppel
14 did nothing in response and assisted and allowed the actions to continue.

15 28. At least one customer complained of the inappropriate verbal conduct of
16 Defendant Steven A. Ehresman. This complaint was referred to an assistant manager of
17 Defendant McDonald’s, and this customer’s complaint was referred by this assistant manager
18 to supervisors including Defendant Cindy Keppel. Defendants McDonald’s and Cindy Keppel
19 did nothing in response and assisted and allowed the actions to continue.

20 29. Based upon the nature and frequency of the illegal, inappropriate and/or
21 offensive conduct of Defendant Steven A. Ehresman, and/or based upon reports to
22 Defendants McDonald’s and Cindy Keppel, Defendants McDonald’s and Cindy Keppel were
23 actually aware of and/or should have been aware of the illegal, inappropriate and/or offensive
24 conduct of Defendant Steven A. Ehresman.

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1 37. Plaintiffs timely filed charges with the United States Equal Employment
2 Opportunities Commission (“EEOC”) on or about March 17, 2003.

3 38. The actions of Steven A. Ehresman alleged herein were severe, pervasive,
4 created an abusive and hostile work environment, and constituted sexual harassment in
5 violation of 42 U.S.C. §§ 2000e *et seq.* for which Defendant McDonald’s is responsible.

6 39. Defendant McDonald’s actually knew and/or should have known of the illegal,
7 inappropriate and/or offensive conduct of Steven A. Ehresman failed to warn Plaintiffs, and
8 others similarly situated, failed to take any steps to prevent that conduct and, in fact, knowingly
9 allowed that conduct to continue in violation of 42 U.S.C. §§ 2000e *et seq.*

10 40. In failing to warn Plaintiffs and failing to take appropriate steps to prevent the
11 conduct of Steven A. Ehresman, and in knowingly allowing that conduct to continue,
12 Defendant McDonald’s was negligent, and grossly so, and this negligence is a violation of 42
13 U.S.C. §§ 2000e, *et seq.*

14 41. Defendant McDonald’s failed to investigate reports of Steven A. Ehresman ‘s
15 illegal, inappropriate and offensive conduct toward Plaintiffs, failed to disseminate and enforce
16 an appropriate anti-harassment policy and complaint procedure and, in fact, ignored the
17 complaints of Plaintiffs and others, and failed to take appropriate action against Steven A.
18 Ehresman after receiving reports of his illegal, inappropriate and offensive conduct toward
19 Plaintiffs and this is a violation of 42 U.S.C. §§ 2000e, *et seq.*

20 42. The unlawful employment practices complained of above were and are intentional
21 and done with malice or with reckless indifference to the federally protected rights of Jessica
22 Tubandt, Amanda Henry, Tiara Brazle and Tamara Grubbs and support an award of punitive
23 damages.

24 43. As a direct and proximate result of the wrongful acts of Defendant, Plaintiffs have
25 suffered injuries to their persons, causing physical and mental pain and suffering, mental
26 anguish, diminished quality of life, and a loss of past and future earnings and income.

1 Because of the wrongful acts of Defendant, Plaintiff Tiara Brazle was forced to resign her
2 employment and was constructively discharged.

3 **COUNT 2**

4 44. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth
5 herein.

6 45. Defendant McDonald's knew or reasonable should have known of Defendant
7 Steven A. Ehresman's dangerous and exploitive propensities and/or that Defendant Steven
8 A. Ehresman was an unfit agent and, despite such knowledge, Defendant McDonald's
9 negligently employed, retained, failed to properly supervise and/or failed to monitor Defendant
10 Steven A. Ehresman and failed to provide adequate warning to Plaintiffs or their families and,
11 therefore, allowed Defendant Steven A. Ehresman to commit the wrongful acts against
12 Plaintiffs and others alleged above.

13 **COUNT 3**

14 46. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth
15 herein.

16 47. The action and inaction of Defendant McDonald's and Defendant McDonald's
17 agents, knowing of the dangerous propensities and unfitness of Defendant Steven A.
18 Ehresman, was both extreme and outrageous.

19 48. Defendant McDonald's acted in reckless disregard of the near certainty that
20 physical injury and emotional distress would result to Plaintiffs and others by ignoring the clear
21 risk of harm to Plaintiffs and others, ignoring the complaints of Plaintiffs and others and
22 thereby allowed Defendant Steven A. Ehresman to continue his illegal, inappropriate and
23 offensive conduct toward Plaintiffs and others thereby intentionally inflicting emotional distress
24 upon Plaintiffs.

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COUNT 4

49. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

50. In engaging in the acts earlier described and others, Defendant Steven A. Ehresman committed the tort of intentional infliction of emotional distress as against all Plaintiffs.

COUNT 5

51. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

52. McDonald's is vicariously liable for the acts of Defendant Steven A. Ehresman in committing the tort of intentional infliction of emotional distress as against all Plaintiffs.

COUNT 6

53. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

54. In engaging in the acts earlier described and others, Defendant Steven A. Ehresman committed the tort of assault as against all Plaintiffs.

COUNT 7

55. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

56. Defendant McDonald's is vicariously liable for the acts of Defendant Steven A. Ehresman in committing the tort of assault as against all Plaintiffs.

COUNT 8

57. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

58. In engaging in the acts earlier described and others, Defendant Steven A. Ehresman committed the tort of battery as against all Plaintiffs.

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COUNT 9

59. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

60. Defendant McDonald's is vicariously liable for the acts of Defendant Steven A. Ehresman in committing the tort of battery as against all Plaintiffs.

COUNT 10

61. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

62. In engaging in the acts earlier described and others, Defendant Steven A. Ehresman tortiously interfered with Plaintiffs' contractual employment rights as against all Plaintiffs.

COUNT 11

63. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

64. In engaging in the acts earlier described and others, Defendant Cindy Keppel is liable for tortiously interfering with Plaintiffs' contractual employment rights as against all Plaintiffs.

COUNT 12

65. Plaintiffs incorporate all paragraphs of this Complaint as though fully set forth herein.

66. In engaging in the acts earlier described and others, Defendant Cindy Keppel tortiously aided and abetted and/or acted in concert with Defendant Steven A. Ehresman with respect to his wrongful conduct and is responsible therefor as against all Plaintiffs.

WHEREFORE, Plaintiffs request judgment against Defendant McDonald's as follows:

A. For their statutorily allowed damages at the maximum limit allowed by 42 U.S.C. §§ 2000e, *et seq.*;

1 B. For a fair and reasonable amount as determined by the trier of fact to
2 compensate Plaintiffs for their respective general and special damages;

3 C. For punitive damages against Defendant, to prevent similar future conduct and
4 to make an example of Defendant;

5 D. For the reasonable costs incurred herein;

6 E. For their attorneys' fees incurred herein; and

7 F. For such other and further relief as the Court deems just and proper.

8 **JURY TRIAL DEMAND**

9 Plaintiffs request a jury trial on all questions of fact raised by their Complaint.

10 MURPHY, LUTEY SCHMITT & FUCHS, P.L.L.C.

11
12 By s/ Milton W. Hathaway, Jr.

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