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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

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| EQUAL EMPLOYMENT OPPORTUNITY |) | |
| COMMISSION, |) | Case No.: |
| Plaintiff, |) | COMPLAINT |
| vs. |) | (JURY TRIAL DEMANDED) |
| LUMPY LLC, doing business as CHILLY |) | |
| BOMBERS BAR & GRILL, |) | |
| Defendant |) | |

NATURE OF THE ACTION

This is an action under the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, and Title I of the Civil Rights Act of 1991 to restrain the unlawful payment of wages to male employees at rates less than the rates paid to female employees, to correct unlawful employment practices on the basis of sex, female and pregnancy, and to provide appropriate relief due to Christine Sedita as a result of such unlawful practices. The Commission alleges that Lumpy LLC (hereinafter "Defendant Employer") paid manager Christine Sedita (hereinafter "Ms. Sedita") at a wage rate less than the rates paid to its male managers performing substantially equal work, and otherwise discriminated against her because she was pregnant. As alleged with greater particularity in paragraph

1 9 below, Defendant Employer paid Ms. Sedita less than it paid her male predecessor and
2 a male assistant manager. In addition, because of Ms. Sedita's pregnancy and her sex,
3 female, Defendant Employer refused to pay Ms. Sedita a salaried wage, rather than an
4 hourly wage.

5 **JURISDICTION AND VENUE**

6 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,
7 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 16(c)
8 and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§
9 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as
10 Section 6(d) of the FLSA, 29 U.S.C. § 206(d), and pursuant to Section 706(f)(1) and (3)
11 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and
12 (3) ("Title VII") and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §
13 1981a.

14 2. The employment practices alleged to be unlawful were committed within
15 the jurisdiction of the United States District Court for the District of Arizona, Phoenix
16 Division.

17 **PARTIES**

18 3. Plaintiff, the Equal Employment Opportunity Commission (the
19 "Commission"), is the agency of the United States of America charged with the
20 administration, interpretation and enforcement of the Equal Pay Act and Title VII, and is
21 expressly authorized to bring this action by Sections 16(c) and 17 of the FLSA, 29 U.S.C.
22 §§ 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92
23 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705; and by Section 706(f)(1) and
24 (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

25 4. At all relevant times, Defendant, Lumpy LLC (the "Employer"), has
26 continuously been an Arizona limited liability corporation doing business in the State of
27 Arizona and the City of Phoenix, and has continuously had at least 15 employees.

28

1 5. At all relevant times, Defendant Employer has continuously been an
2 employer engaged in an industry affecting commerce within the meaning of Sections
3 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

4 6. At all relevant times, Defendant Employer has acted directly or indirectly
5 as an employer in relation to employees and has continuously been an employer within
6 the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7 7. At all relevant times, Defendant Employer has continuously employed
8 employees engaged in commerce or in the production of goods for commerce within the
9 meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§ 203(b), (i) and (j) and
10 has continuously been an enterprise engaged in commerce or in the production of goods
11 for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§
12 203(r) and (s), in that said enterprise has continuously been an enterprise whose annual
13 gross volume of sales made or business done is not less than \$500,000.

14 **STATEMENT OF TITLE VII CLAIMS**

15 8. More than thirty days prior to the institution of this lawsuit, Christine
16 Sedita filed a charge with the Commission alleging violations of Title VII by Defendant
17 Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

18 9. Since at least March 2004, Defendant Employer has engaged in unlawful
19 employment practices at its Phoenix, Arizona restaurant known as Chilly Bombers Bar
20 and Grill, in violation of Section 703(a)(1) and (h) of Title VII, 42 U.S.C. § 2000e-2(a)(1)
21 and (h). These unlawful employment practices include, but are not limited to:

22 a. Because of her sex, female, and her pregnancy, female, Defendant
23 Employer failed to offer Ms. Sedita a salaried position, and instead kept her
24 as an hourly employee.

25 b. Because of her sex, female, and her pregnancy, Defendant Employer
26 paid Ms. Sedita at a lesser rate than it had paid her male predecessor and a
27 male assistant manager.
28

1 10. The effect of the practice(s) complained of in paragraph 9 above has been
2 to deprive Christine Sedita of equal employment opportunities and otherwise adversely
3 affect her status as an employee, because of her sex, female, and pregnancy.

4 11. The unlawful employment practices complained of in paragraph 9 above
5 were intentional.

6 12. The unlawful employment practices complained of in paragraph 9 above
7 were done with malice or with reckless indifference to the federally protected rights of
8 Christine Sedita.

9 **STATEMENT OF EPA CLAIMS**

10 13. Since at least March 2004, Defendant Employer has violated Sections
11 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying
12 wages to Christine Sedita, a female managerial employee at its Chilly Bombers Bar &
13 Grill location, at rates less than the rates paid to male managerial employees in the same
14 establishment for substantially equal work on jobs the performance of which requires
15 equal skill, effort, and responsibility, and which are performed under similar working
16 conditions. Defendant Employer paid Ms. Sedita, a female, at a rate less than the rate
17 paid to her male predecessor and a male assistant night manager. Ms. Sedita and the two
18 male managers performed, under similar working conditions, substantially equal work
19 requiring equal skill, effort, and responsibility.

20 14. As a result of the acts complained of above, Defendant Employer
21 unlawfully has withheld and is continuing to withhold the payment of wages due to
22 Christine Sedita.

23 **PRAYER FOR RELIEF**

24 Wherefore, the Commission requests that this Court:

25 A. Grant a permanent injunction enjoining the Defendant Employer, its
26 officers, successors, assigns and all persons in active concert or participation with it, from
27 engaging in wage discrimination and in any other employment practice which
28 discriminates on the basis of sex and pregnancy.

1 B. Grant a permanent injunction enjoining the Defendant Employer, its
2 officers, successors, assigns and all persons in active concert or participation with it, from
3 discriminating within any of its establishments between employees on the basis of sex, by
4 paying wages to employees of one sex at rates less than the rates at which it pays wages
5 to employees of the opposite sex for substantially equal work on jobs the performance of
6 which requires equal skill, effort, and responsibility, and which are performed under
7 similar working conditions.

8 C. Order Defendant Employer to institute and carry out policies, practices and
9 programs which provide equal employment opportunities for women, including pregnant
10 women, and which eradicate the effects of its past and present unlawful employment
11 practices.

12 D. Order Defendant Employer to make whole Christine Sedita, by providing
13 appropriate backpay with prejudgment interest, in amounts to be proved at trial, and other
14 affirmative relief necessary to eradicate the effects of its unlawful employment practices.

15 E. Pursuant to 42 U.S.C. § 1981a(b), order Defendant Employer to make
16 whole Christine Sedita by providing compensation for past and future pecuniary losses
17 resulting from the unlawful practices described in paragraph 9 above, including but not
18 limited to job search expenses, in amounts to be determined at trial.

19 F. Pursuant to 42 U.S.C. § 1981a(b), order Defendant Employer to make
20 whole Christine Sedita by providing compensation for past and future nonpecuniary
21 losses resulting from the unlawful practices complained of in paragraph 9 above,
22 including but not limited to emotional pain, suffering, inconvenience, mental anguish,
23 and loss of enjoyment of life, in amounts to be determined at trial.

24 G. Order Defendant Employer to pay Christine Sedita punitive damages for its
25 malicious and/or reckless conduct described in paragraph 9 above, in an amount to be
26 determined at trial.

27 H. Grant a judgment requiring Defendant Employer to pay appropriate back
28 wages in amounts to be determined at trial, an equal sum as liquidated damages, and

1 prejudgment interest to Christine Sedita, whose wages are being unlawfully withheld as a
2 result of the acts complained of above.

3 I. Grant such further relief as this Court deems necessary and proper in the
4 public interest.

5 J. Award the Commission its costs of this action.

6 **JURY TRIAL DEMAND**

7 The Commission requests a jury trial on all questions of fact raised by its
8 complaint.

9 Respectfully submitted this 22nd day of March, 2006.

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Deputy General Counsel

12 GWENDOLYN YOUNG REAMS
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