

1 **WILLIAM J. SMITH #056116**
2 **SHELLEY G. BRYANT #222925**
3 **W. J. SMITH & ASSOCIATES**
4 2350 West Shaw Avenue, Suite 132
5 Fresno, California 93711
6 (559) 432-0986 Telephone
7 (559) 432-4871 Facsimile

8 Attorney for Plaintiff-Intervenor, ANA-BERTA RUBIO

9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 EQUAL EMPLOYMENT OPPORTUNITY) **Case No. CIV-F-06-00561 AWI-DLB**
13 COMMISSION,)
14 Plaintiff, and) **COMPLAINT IN INTERVENTION -**
15 ANA-BERTA RUBIO,) **CIVIL RIGHTS**
16 Plaintiff-Intervenor,) **(DEMAND FOR JURY TRIAL)**
17 v.)
18 GRIMMWAY ENTERPRISES, INC. d/b/a)
19 GRIMMWAY FARMS, ESPARZA)
20 ENTERPRISES, INC., and FRANCISCO)
21 HERNANDEZ,)
22 Defendants.)

23 **PRELIMINARY STATEMENT**

24 1. Plaintiff-Intervenor, ANA-BERTA RUBIO, (hereinafter "Plaintiff-Intervenor") brings
25 this action for damages resulting from Defendant's violation of her civil rights, as secured under the
26 Constitution and the laws of the United States and the State of California, by its maintenance of
27 unlawful practices which had the purpose or effect of discriminating against her on the basis of her
28 sex, and retaliation.

JURY DEMAND

2. Plaintiff-Intervenor hereby demands a jury trial as provided by Rule 38(a) of the
Federal Rules of Civil Procedure.

1 **JURISDICTION**

2 3. This action is brought to redress violations of Plaintiff-Intervenor’s rights as guaranteed
3 by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., as amended, California
4 Government Code §12900, et seq., and Article I, Section 8 of the California Constitution, to secure
5 protection against and to redress deprivation of her right to be free of sex harassment, retaliation, and
6 discrimination in employment. The jurisdiction of this court is invoked pursuant to 28 U.S.C.
7 §1343(4) to secure the above-specified rights. This court also has jurisdiction over the subject matter
8 pursuant to 28 U.S.C. §1331 in that this civil action arises in part under the Constitution or laws of
9 the United States of America. Plaintiff-Intervenor requests that the court exercise jurisdiction over
10 her state law claims pursuant to 28 U.S.C. §1367(a).

11 **PARTIES**

12 4. Plaintiff-Intervenor is a Hispanic female who was sexually harassed and retaliated
13 against by Defendant employers, GRIMMWAY ENTERPRISES, INC. doing business as
14 GRIMMWAY FARMS (hereinafter “Grimmway”), and ESPARZA ENTERPRISES, INC.,
15 (hereinafter “Esparza”) and Defendant, FRANCISCO HERNANDEZ (hereinafter “Hernandez”), a
16 supervisor for Grimmway and Esparza and Plaintiff-Intervenor’s direct supervisor, creating a hostile
17 work environment and quid pro quo, in Kern County, California, at the time of the acts giving rise to
18 this action.

19 5. Plaintiff, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, (hereinafter
20 “Plaintiff”) is an agency of the United States of America charged with the administrative enforcement
21 and interpretation of Title VII of the Civil Rights Act of 1964.

22 6. Defendant, Grimmway, was an employer at all times relevant herein, and is a California
23 corporation, qualified and doing business in the State of California, and has continuously had and does
24 now have at least fifteen employees. Defendant, Grimmway, is an enterprise engaged in commerce
25 within the meaning of 42 U.S.C. §2000e(b).

26 7. Defendant, Esparza, was an employer at all times relevant herein, and is a California
27 corporation, qualified and doing business in the State of California, and has continuously had and does
28 now have at least fifteen employees. Defendant, Esparza, is an enterprise engaged in commerce within

1 the meaning of 42 U.S.C. §2000e(b).

2 8. At all times relevant herein Defendant, Hernandez, was an employee and agent of and
3 supervisor for Defendants, Grimmway and Esparza, within the meaning of California Government
4 Code §12926(r).

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 9. On or about November 11, 2004, Plaintiff-Intervenor filed a charge with Plaintiff
7 against Defendant, Grimmway, alleging discrimination, sex harassment, and retaliation. On
8 November 16, 2005, Plaintiff issued a Determination finding that Defendant violated Title VII of the
9 Civil Rights Act of 1964 by sexually harassing and retaliating against Plaintiff-Intervenor because of
10 her sex, female.

11 10. On or about April 3, 2005, Plaintiff-Intervenor filed a charge with Plaintiff against
12 Defendant, Esparza, alleging discrimination, sex harassment, and retaliation. On December 1, 2005,
13 Plaintiff issued a Determination finding that Defendant violated Title VII of the Civil Rights Act of
14 1964 by sexually harassing and retaliating against Plaintiff-Intervenor because of her sex, female.

15 **FIRST CLAIM FOR RELIEF: TITLE VII**

16 11. More than thirty (30) days prior to the institution of this lawsuit, Plaintiff-Intervenor
17 filed a charge with the Commission alleging violations of Title VII by Defendants, Grimmway and
18 Esparza. All conditions precedent to the institution of this lawsuit have been fulfilled.

19 12. Since at least July 2003, Defendants, Grimmway and Esparza, have engaged in
20 unlawful employment practices in violation of §703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a)(1).
21 These practices include subjecting Plaintiff-Intervenor to a sexually hostile, abusive, intimidating and
22 offensive work environment, which culminated in a tangible employment action.

23 13. Since at least September 2004, Defendants subjected Plaintiff-Intervenor to adverse
24 employment actions in retaliation for her opposition to and rejection of the sexual harassment in
25 violation of §704(a) of Title VII, 42 U.S.C. §2000e-3(a). These practices include but are not limited
26 to isolation from other employees, continued harassment, and, ultimately, termination of her
27 employment on or about September 24, 2004.

28 14. The effect of the practices complained of above has been to adversely affect Plaintiff-

1 Intervenor's employment status because of the sexual harassment and on account of retaliation.

2 15. The unlawful employment practices complained of above were and are intentional.

3 16. The unlawful employment practices complained of above were done with malice
4 and/or reckless indifference to the State of California federally protected rights of Plaintiff-Intervenor.

5 **SECOND CLAIM FOR RELIEF: CALIFORNIA GOVERNMENT**

6 **CODE §12900, ET SEQ.**

7 17. Plaintiff-Intervenor re-alleges and incorporates by reference herein each and every
8 allegation stated in Paragraphs 1 through 16, above, as though fully stated herein.

9 18. Plaintiff-Intervenor is informed and believes and thereon alleges that a substantial or
10 motivating factor in Defendant's discrimination, sexual harassment, and retaliation, was her sex,
11 female, in violation of California Government Code §12900, et seq.

12 19. Under California Government Code §12940(k), Defendants, Grimmway and Esparza,
13 had a duty to prevent discrimination, sexual harassment and retaliation against Plaintiff-Intervenor
14 and to provide her with a workplace which was free of discrimination and harassment. Defendants
15 failed to take reasonable steps to prevent discrimination against and harassment of Plaintiff-Intervenor
16 on the basis of her sex.

17 20. As a proximate result of the Defendants' acts of harassment and retaliation, Plaintiff-
18 Intervenor has suffered and continues to suffer substantial economic losses and interest thereon,
19 incurred in seeking and performing substitute employment and earnings, bonuses, deferred
20 compensation and other employment benefits which Plaintiff-Intervenor would have received. She
21 has suffered and continues to suffer both physical and non-physical injuries, including severe
22 emotional distress, humiliation, embarrassment and mental anguish all to her damage in an amount
23 to be proven at trial.

24 21. In doing the acts and/or failing to do the acts alleged herein above, the Defendants, and
25 each of them, engaged in discriminatory acts and conduct with malice towards Plaintiff-Intervenor
26 and/or a reckless indifference to her statutorily protected rights and in conscious disregard of the
27 rights, both statutory and common law guaranteed Plaintiff-Intervenor by the State of California. As
28 such, Defendants are guilty of oppression and malice for which Plaintiff-Intervenor is entitled to

1 punitive damages, in an amount to be proven at trial.

2 22. California Code of Civil Procedure §1021 provides that attorneys' fees are recoverable
3 in an action for which they are specifically provided by statute. California Government Code
4 §12965(b) provides that reasonable attorneys' fees and costs are recoverable herein by the prevailing
5 party, within the discretion of the court. Plaintiff-Intervenor has retained attorneys for the prosecution
6 of this action. As a result, Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs
7 herein incurred.

8 **THIRD CLAIM FOR RELIEF: CALIFORNIA CIVIL CODE §1708.5**

9 23. Plaintiff-Intervenor re-alleges and incorporates by reference herein each and every
10 allegation stated in paragraphs 1 through 16 and paragraphs 18 through 22 above, as though fully
11 stated herein.

12 24. Defendants, Grimmway, Esparza and Hernandez, subjected Plaintiff-Intervenor to
13 unlawful sexual battery in the workplace in violation of California Civil Code §1708.5. From July
14 2003 through September 2004, Defendant, Francisco Hernandez, who was Plaintiff-Intervenor's
15 direct supervisor, repeatedly acted with intent to cause harmful or offensive contact with an intimate
16 part of Plaintiff-Intervenor's body, and sexually offensive contact with Plaintiff-Intervenor resulted.
17 Defendant, Hernandez also repeatedly acted with intent to cause harmful or offensive contact with
18 Plaintiff-Intervenor by use of his intimate part, and sexually offensive contact with Plaintiff-
19 Intervenor resulted.

20 25. Defendant, Hernandez, was at all times relevant hereto, the agent and employee of
21 Defendants, Grimmway and Esparza, and Defendant, Hernandez, was acting, at least in part, within
22 the course and scope of his employment and agency, with the express and implied permission, consent
23 and knowledge, approval and/or ratification of Defendants, Grimmway and Esparza. Defendants,
24 Grimmway and Esparza, aided, abetted, condoned, permitted, approved, authorized and/or ratified
25 the unlawful acts of Defendant, Hernandez, in violating California Civil Code §1708.5

26 26. The statute of limitations regarding Plaintiff-Intervenor's claim under California Civil
27 Code §1708.5 was equitably tolled during the pendency of the administrative proceeding conducted
28 by the Equal Employment Opportunity Commission/California Department of Fair Employment and

1 Housing. Defendants had timely notice of Plaintiff-Intervenor's claim for sexual harassment and
2 were not prejudiced in gathering evidence to defend themselves against Plaintiff-Intervenor's claim
3 based on sexual battery. Plaintiff-Intervenor has acted in good faith and engaged in reasonable
4 conduct in filing this claim.

5 **PRAYER**

6 WHEREFORE, Plaintiff-Intervenor prays this Court for the relief set forth below:

- 7 1. For back pay and employment benefits in order to make Plaintiff-Intervenor whole for
8 injuries sustained on account of Defendants' acts;
- 9 2. For front pay to compensate Plaintiff-Intervenor for the future losses occasioned by
10 Defendants' acts;
- 11 3. For emotional distress damages;
- 12 4. For compensatory damages according to proof at trial;
- 13 5. For punitive damages according to proof at trial;
- 14 6. For interest on all back pay and employment benefits awarded to make Plaintiff-
15 Intervenor whole and to deter Defendants from engaging in discriminatory activities in the future;
- 16 7. For reasonable attorney fees, costs and disbursements occasioned by this litigation;
17 and
- 18 8. For injunctive relief and for such other and further relief as the Court may deem
19 proper.

20 DATED: May 18, 2007

21 W. J. SMITH & ASSOCIATES

22
23 /s/ WILLIAM J. SMITH
24 WILLIAM J. SMITH, Attorney for
25 Plaintiff-Intervenor, ANA-BERTA RUBIO
26
27
28