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9 MASUMEH ZANGANEH

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 EQUAL EMPLOYMENT OPPORTUNITY) **CIVIL ACTION NO. C0301522 HRL**
14 COMMISSION,)
15) **COMPLAINT IN INTERVENTION**
16 Plaintiff,) **FOR DAMAGES AND INJUNCTIVE**
17) **RELIEF**
18 v) **JURY TRIAL DEMAND**
19)
20 ROWTOWN, INC. D/B/A)
21 THE FISH HOPPER RESTAURANT,)
22 and DOES 1 THROUGH 50,)
23 Defendants,)
24 MASUMEH ZANGANEH, individual,)
25 Intervenor.)
26)
27)
28)

Intervenor Masumeh Zanganeh complains and alleges as follows:

PARTIES

1. At all material times, Intervenor Masumeh Zanganeh was a resident of the State of California. The employment contract on which she sues herein was made in and was to be

1 performed in the State of California. At all material times, Intervenor Masumeh Zanganeh
2 worked for Rowtown, Inc. d/b/a The Fish Hopper Restaurant (hereafter “Defendant” or “Fish
3 Hopper”) in the State of California.
4

5 2. Intervenor Masumeh Zanganeh is informed and believes that defendant Rowtown, Inc.
6 d/b/a The Fish Hopper Restaurant is a California corporation with its principal place of business
7 in the State of California.

8 3. The true names and capacities of the defendants named herein as Does 1 through 50,
9 inclusive, whether individual, corporate, associate, or otherwise, are unknown to Intervenor who
10 therefore sues such defendants by fictitious names under California Code of Civil Procedure
11 §474. Intervenor is informed and believes that Doe defendants are California residents.

12 Intervenor will amend this Complaint to show such true names and capacities when they have
13 been determined. Each defendant was an agent of the other defendants and ratified the conduct
14 of the other defendants.
15

16
17 **JURISDICTION AND VENUE AS TO FIRST CAUSE OF ACTION**

18 4. Jurisdiction of this court is invoked pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343
19 and 1345.

20 5. The unlawful employment practices alleged herein were committed in Monterey County,
21 within the jurisdiction of the United States District Court for the Northern District of California.

22 **JURISDICTION AND VENUE AS TO REMAINING**
23 **CAUSES OF ACTION OTHER THAN FIRST CAUSE OF ACTION**

24 6. This is an action for sexual harassment based on state law pursuant to California
25 Government Code Section 12940 et seq., and the court should exercise jurisdiction over this
26 action pursuant to section 1367 of Title 28 of the United States Code, for the following reasons:
27 (1) the action for the Title VII federal claim which is alleged in the First Cause of Action of this
28 Complaint arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*

1 and Title I of the Civil Rights Act of 1991, 42 U.S.C. Section 1981(a), and the jurisdiction of the
2 action is conferred upon the court pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343 and
3 1345; (2) as more clearly appears below, the remaining causes of action based on California
4 Government Code Section 12940 et seq., and California State Law are so related to the claim in
5 the action alleged in the First Cause of Action that all Causes of Action form part of the same
6 case or controversy under Article III of the United States Constitution; (3) the action for sexual
7 harassment based on state law pursuant to California Government Code Section 12940 et seq.,
8 and the remaining causes of action, which is based on California State Law neither raise a novel
9 or complex issue of state law, nor substantially predominate over the federal claim which is
10 alleged in the First Cause of Action of this Complaint; and 4) there are no other compelling
11 reasons for the court to decline jurisdiction over the Second through Tenth (inclusive) causes of
12 action for sexual harassment based on state law pursuant to California Government Code Section
13 12940 et seq. and California State Law.

14 7. The unlawful employment practices alleged herein were committed in Monterey
15 County, within the jurisdiction of the United States District Court for the Northern District of
16 California.

17 **INTRA-DISTRICT ASSIGNMENT**

18 8. This action is appropriate for assignment to the San Jose division because the unlawful
19 employment practices alleged were committed in Monterey County, within the jurisdiction of the
20 United States District Court for the Northern District of California.

21 **ADMINISTRATIVE PROCEEDINGS**

22 9. Prior to filing of this action, Ms. Zanganeh filed a charge with the Equal Employment
23 Opportunity Commission (“EEOC”), the Intervenor in this action.

24 10. Ms. Zanganeh concurrently filed with the Equal Employment Opportunity Commission
25 (EEOC) and the California Department of Fair Employment and Housing (DFEH) a charge of
26 discrimination in a timely manner **and** the DFEH issued a right-to-sue letter in conjunction with
27 a decision to defer its investigation of the charge to the EEOC.
28

1 11. On April 10, 2003, EEOC filed this lawsuit on behalf of all female employees in
2 Defendant's restaurant, including Ms. Zanganeh. All conditions precedent to the institution of
3 this lawsuit have been fulfilled.

4 12. Ms. Zanganeh hereby files a Motion to Intervene as a Plaintiff under Rule 24(a)(1) of Fed. R.
5 Civ. P. because, as an "aggrieved person", she has an unconditional right to intervene in a civil action
6 brought by the EEOC as provided in 42 U.S.C. Section 2000e-5(f)(1).

7 **FACTUAL BACKGROUND**

8 13. On or about September 28, 1997, Intervenor Masumeh Zanganeh began employment at
9 The Fish Hopper Restaurant as an AM server and hostess.

10 14. From the onset of employment, Defendant Doe 1, the executive chief, Defendant Doe 2,
11 another server, Defendant Doe 5, owner, as well the restaurant cooks and bussers, began
12 subjecting Intervenor Masumeh Zanganeh to a pattern of offensive and unwanted sexual
13 behavior at work, including, but not limited to:
14

- 15 A. Walking up behind Intervenor and giving her a non-concensual shoulder
16 massage;
- 17 B. Walking up and putting their arms around her;
- 18 C. Touching Intervenor on her back and shoulders;
- 19 D. Kissing her forehead and nonconsensual hugs;
- 20 E. Making statements about Intervenor's body parts;
- 21 F. Continually staring at Intervenor's buttocks;
- 22 G. Touching Intervenor by purposely bumping into her and bushing up against
23 her;
- 24 H. Whistling at Intervenor when she walked back to the kitchen;
- 25
- 26
- 27
- 28

- 1 I. Asking inappropriate questions regarding Intervenor’s sex life such as, “How
2 many times a day does she have sex?”, “How old was she the first time she
3 had sex?”, “Did she moan or did she scream in bed?” and “Did she like it soft
4 or hard?”;
- 5
- 6 J. Making lewd sexual statements to Intervenor such as, “If she were my
7 girlfriend, I would do her five (5) times a day.”,
- 8
- 9 K. When Intervenor would ask for anything extra for her tickets, the cooks would
10 make statements such as, “What am I going to get for it?”
- 11
- 12 L. The above conduct occurred every time I was scheduled to work between the
13 months of September 1997 and January 1998. Defendants’ gradually
14 increased the frequency and the explicitness of the above listed sexual
15 comments and actions. They even stated unanimously that if they all had it
16 their way again, they would all choose to lose their virginity to Intervenor.

17 15. Since the first week Intervenor was employed, she brought these complaints to the
18 attention of Defendant Doe 3, manager. Defendant Doe 3 did nothing to stop the harassment and
19 instead stated to Intervenor that she was getting all the attention because she was pretty.
20 Defendant Doe 3 did nothing to rectify the problems Intervenor complained of nor prevented
21 future problems from reoccurring. Instead, management began to retaliate against Intervenor for
22 complaining by “writing her up” for things she had done a week prior. Management specifically
23 targeted Intervenor for “write-ups” and nobody else as another employee who was also late for
24 work was not written up. Intervenor never encouraged the sexual behavior nor indicated in any
25 way that it was welcome. In fact, Intervenor’s attire was that of a long black skirt. Since
26 management did not do anything to stop the harassment, Intervenor began telling Defendant Doe
27
28

1 1, the executive chef, to stop his harassing behavior. He just laughed. When Intervenor told
2 Defendant Doe 4, another manager, that she did not feel that she was being treated right,
3 Defendant Doe 4 stated to Intervenor that “it is all up to you.” After that statement by Defendant
4 Doe 4, Intervenor knew that the harassment was not going to stop.
5

6 16. On or about January 13, 1998, Intervenor was working the soup station when
7 Defendant Doe 2 came up from behind her and grabbed her breasts and kissed her cheek.
8 Intervenor was startled and spilled a cup of soup on her hand. She then turned around and
9 screamed for him to get off her. Defendant Doe 2 then told Intervenor not to get so emotional.
10 Intervenor looked around and saw that the entire kitchen crew was staring at her because she was
11 yelling. Defendant Doe 1 saw the entire incident and did nothing. Intervenor was left
12 embarrassed, angry and humiliated.
13

14 17. Intervenor fought back her tears and went to inform Defendant Doe 3, a manager, of
15 what had happened. Intervenor was not able to inform Defendant Doe 3 of what had occurred
16 until about two hours later. When Intervenor was finally able to tell Defendant Doe 3 of what
17 had happened, her response was, “Didn’t we already talk to him about this last time?” Defendant
18 Doe 3 then failed to fully investigate the matter, failed to acknowledge the severe psychological
19 reaction to the assault Intervenor had experienced, failed to discipline or warn Defendant Doe 2
20 about his behavior, and indicated in various ways that Intervenor was responsible for the assault
21 and other sexual behavior.
22

23 18. After each report by Intervenor of Defendant Doe 2’s behavior, Intervenor was either
24 “written-up” for things she had done a week ago, reassigned to the back tables of the restaurant
25 where the tips were not nearly as lucrative and management acted in a hostile manner toward
26 her. Another server stated to Intervenor that, “they were probably trying to get her out since she
27
28

1 is a threat to the company.” Intervenor was forced to quit her employment on or about January
2 19, 1998 because of the Fish Hopper’s failure to take immediate or appropriate corrective action
3 in response to her complaints of harassment and her complaints of the supervisors’ retaliation in
4 being written-up unfairly and reassigned to an economically less lucrative assignment.
5

6 19. Several Fish Hopper employees with no need to know were told by Defendant Doe 3,
7 manager, about the sexual behavior and assault Intervenor had experienced, and that she had
8 overreacted. These communications resulted in further anguish and emotional distress to
9 Intervenor.
10

11 20. On or about December 31, 1997, Intervenor went to the back of the kitchen to retrieve
12 some of her belongings. Defendant Doe 5, owner, was in the back of the kitchen and Intervenor
13 stopped to inquire as to how business was fairing. When he responded that business was “great”,
14 Intervenor attempted to give Defendant Doe 5 a “high-five”. Instead of doing same, Defendant
15 Doe 5 wrapped his arms around Intervenor giving her a hug. Intervenor pulled away from
16 Defendant Doe 5 and pushed him off her.
17

18 **FIRST CAUSE OF ACTION**
19 **(Sex Discrimination/Sexual Harassment)**
20 **(Title VII)**

21 21. The allegations of paragraphs 1 through 20 and 44 are realleged and incorporated herein
22 by reference. This cause of action is pleaded against all defendants.

23 22. This is an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000
24 *et seq.* and Title I of the Civil Rights Act of 1991, 42 U.S.C. Section 1981(a) to correct unlawful
25 employment practices on the basis of sex, retaliation and constructive discharge and to provide
26 appropriate relief to Ms. Masumeh Zanganeh (“Intervenor”). As alleged below, Defendants
27 unlawfully subjected Intervenor to sexual harassment and a hostile work environment.
28 Intervenor also alleges that Defendants subjected her to retaliation and constructive discharge

1 because she engaged in a protected activity.

2 23. Intervenor was employed as a server and hostess in Defendant's restaurant located in the
3 City of Monterey, California.

4 24. During her employment, Intervenor had been subjected to sexual harassment from both
5 her co-workers and her supervisor in the form of statements and inappropriate touching.

6 25. Intervenor complained repeatedly to the Managers about the conduct of the co-workers
7 and the supervisor; however the Managers took no corrective action and ignored Intervenor's
8 complaints.

9 26. Further, Defendant Fish Hopper and its Managers subjected Intervenor to adverse
10 employment actions in retaliation for her opposition to and rejection of the sexual harassment.

11 27. Because Intervenor could no longer tolerate the discriminatory conduct toward her, she
12 voluntarily terminated her employment.

13 28. The effect of Defendants' practices complained of above has deprived Intervenor of equal
14 employment opportunities and otherwise adversely affected her employment status because of
15 her sex and on account of retaliation and constructive discharge.

16 29. The unlawful employment practices complained of above were intentional and were done
17 with malice and/or reckless disregard to the federally protected rights of Intervenor.

18 **SECOND CAUSE OF ACTION**
19 **(Sex Discrimination/Sexual Harassment)**
20 **(Cal. Government Code §12940)**

21 30. The allegations of paragraphs 1 through 20, 22 through 29, and 44 are realleged and
22 incorporated herein by reference. This cause of action is pleaded against all defendants.

23 31. Defendant Fish Hopper was at all material times an employer within the meaning of
24 California Government Code §12926(d) and, as such, barred from discrimination or retaliating in
25 employment decisions on the basis of sex as set forth in California Government code §12940.

26 32. Intervenor was at all material times an employee covered by California Government
27 Code §12940 prohibiting discrimination or retaliation in employment on the basis of sex.
28

1 33. Defendants and each of them engaged in a pattern and practice of discrimination
2 against female employees, including Intervenor, on the basis of sex in violation of California
3 Government Code §12940 by engaging in a course of conduct that included subjecting
4 Intervenor to sexual harassment and hostility because of her sex. This behavior continued until
5 Intervenor was constructively terminated.
6

7 34. Further, Doe defendants and each of them, aided and abetted defendant Fish Hopper in
8 engaging in illegal discrimination on the basis of sex against female employees, including
9 subjecting Intervenor to sexual harassment and hostility because of her sex, in violation of
10 California Government Code §12940 (g).
11

12 35. Intervenor concurrently filed a timely charge of sex discrimination and retaliation with
13 the California Department of Fair Employment & Housing and the United States Equal
14 Employment Opportunity Commission and has received a right-to-sue letter. Thus, she has
15 exhausted her administrative remedies.
16

17 36. As a proximate result of defendants' conduct, Intervenor has suffered and continues to
18 suffer substantial losses incurred in seeking and performing substitute employment and in
19 earnings, and other employment benefits she would have received had defendants not taken such
20 adverse employment actions against her.
21

22 37. As a proximate result of defendants' conduct, Intervenor has suffered and continues to
23 suffer embarrassment, anxiety, humiliation, and emotional distress, all to her damage in an
24 amount according to proof.
25

26 38. Defendants committed the acts alleged herein maliciously, fraudulently, and
27 oppressively, in bad faith, with the wrongful intention of injuring Intervenor, from an improper
28 and evil motive amounting to malice, and in conscious disregard of Intervenor's rights.

1 Intervenor thus is entitled to recover punitive damages from defendants in an amount according
2 to proof.

3 39. As a result of defendants' discriminatory acts as alleged herein, Intervenor has no plain,
4 adequate, or complete remedy at law, and defendants continue to engage in said wrongful
5 practices. Therefore, Intervenor requests:
6

7 (a) That she be made whole and afforded all benefits attendant thereto that would have
8 been afforded Intervenor but for said discrimination; and

9 (b) that defendants, their agents, successors, employees, and those acting in concert
10 with them be enjoined permanently from engaging in each of the unlawful practices,
11 policies, usages and customs set forth herein, and that they be required to develop
12 posting policies, grievance procedures, and training regarding sexual harassment.
13

14 40. As a result of defendants' discriminatory acts as alleged herein, Intervenor is entitled to
15 reasonable attorney fees and costs of suit as provided by California Government Code §12965
16 (b).
17

18 WHEREFORE, Intervenor requests relief as hereinafter provided.

19 **THIRD CAUSE OF ACTION**
20 **(Failure to Maintain Environment Free from Harassment)**
21 **(California Government Code §12940 (i))**

22 41. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40 and 44, are
23 realleged and incorporated herein by reference. This cause of action is pleaded against
24 Defendant Fish Hopper.

25 42. Defendants failed to take all reasonable steps to prevent discrimination and harassment
26 against Intervenor from occurring, and to take immediate and appropriate corrective action to
27
28

1 remedy the harassment, in violation of California Government Code §12940 (i), by engaging in
2 the course of conduct set forth in paragraphs 12 through 18, among other things.

3 43. Specifically, defendant Fish Hopper failed to take any disciplinary action against their
4 employees, such as issuing a formal warning, providing counseling, or imposing probation,
5 suspension, or termination.
6

7 44. Intervenor is informed and believes that defendant Fish Hopper has never had a written
8 policy about sexual harassment, has never conducted any sexual harassment training, and has
9 never posted any sexual harassment policies for its supervisors or employees in a conspicuous
10 place as required by law.
11

12 WHEREFORE, Intervenor requests relief as hereinafter provided.

13 **FOURTH CAUSE OF ACTION**
14 **(Retaliation–California Government Code §12940 (f))**

15 45. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40 and 42
16 through 44 are realleged and incorporated herein by reference. This cause of action is pleaded
17 against all defendants.
18

19 46. Defendants and each of them have retaliated against the Intervenor in violation of
20 Government Code §12940(f), by engaging in a course of retaliatory conduct, including, among
21 other things, the conduct set forth in paragraphs 12 through 18 above, when she complained
22 about sexual harassment and hostility and conduct based on sex discrimination. This retaliation
23 continued until Intervenor’s constructive discharge which was carried out by managers of
24 defendant Fish Hopper and employees acting within the course and scope of their employment.
25

26 WHEREFORE, Intervenor requests relief as hereinafter provided.

27 ///

1 **FIFTH CAUSE OF ACTION**
2 **(Intentional infliction of Emotional Distress)**

3 47. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40 and 42 through
4 44 are realleged and incorporated herein by reference. This cause of action is pleaded against all
5 defendants.

6 48. The conduct set forth hereinabove was extreme and outrageous and an abuse of the
7 authority and position of defendants and each of them. Said conduct was intended to cause
8 severe emotional distress, or was done in a conscious disregard of the probability of causing such
9 distress. Said conduct exceeded the inherent risks of employment and was not the sort of
10 conduct normally expected to occur in the work place. Defendants and each of them abused
11 their position of authority toward Intervenor, and engaged in conduct intended to humiliate
12 Intervenor and to convey the message that she was powerless to defend her rights. Defendant
13 Fish Hopper abused its authority and directly injured Intervenor by its ratification of its
14 employees' acts and by its managers' actions in failing to protect and violating the privacy of
15 Intervenor.

16 49. The foregoing conduct did in fact cause Intervenor to suffer extreme emotional distress.
17 As a proximate result of said conduct, Intervenor suffered embarrassment, anxiety, humiliation,
18 and emotional distress, and will continue to suffer emotional distress in the future in an amount
19 according to proof.

20
21
22
23 THEREFORE, Intervenor requests relief as hereinafter provided.

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1 **SIXTH CAUSE OF ACTION**
2 **(Invasion of Privacy)**

3 50. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40, 42 through
4 44, 48 and 49 are realleged and incorporated herein by reference. This cause of action is pleaded
5 against all defendants.

6 51. Defendant Doe 2, without Intervenor's consent, repeatedly intruded into Intervenor's
7 privacy by the conduct set forth above.

8 52. Defendant Fish Hopper ratified Defendant Doe 2's conduct invading Intervenor's
9 privacy and directly violated Intervenor's privacy by communicating private information to other
10 employees about Intervenor who had no need to know the information.
11

12 53. The intrusions described above were offensive and objectionable to Intervenor and to a
13 reasonable person of ordinary sensibilities. The intrusions were into aspects of Intervenor's life
14 that were private and were entitled to remain private.
15

16 WHEREFORE, Intervenor requests relief as hereinafter provided.

17 **SEVENTH CAUSE OF ACTION**
18 **(Sexual Battery-Civil Code §1708.5)**

19 54. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40, 42 through
20 44, 48, 49 and 51 through 53 are realleged and incorporated herein by reference. This cause of
21 action is pleaded against all defendants.
22

23 55. The above conduct by Defendant Doe 2 is a violation of Civil Code §1708.5 in that
24 Defendant Doe 2 acted with the intent to cause a harmful or offensive contact with an intimate
25 part of Intervenor, and a sexually offensive contact with Intervenor directly occurred. Defendant
26 Doe 2's conduct also caused Intervenor to suffer imminent apprehension of such a contact
27
28

1 occurring. Defendant Fish Hopper failed to take corrective action and thereby ratified the
2 conduct of Defendant Doe 2 and is therefore liable under the doctrine of respondent superior.

3 WHEREFORE, Intervenor requests relief as hereinafter provided.
4

5 **EIGHTH CAUSE OF ACTION**
6 **(Negligent Infliction of Emotional Distress)**

7 56. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40, 42 through
8 44, 48, 49, 51 through 53 and 55 are realleged and incorporated herein by reference. This cause
9 of action is pleaded against all defendants

10 57. In carrying out the above conduct, defendants breached a duty owed to Intervenor to
11 provide a workplace free from unfair treatment, discrimination, and retaliation, and abused their
12 positions of authority toward her. Said conduct exceeded the inherent risks of employment and
13 was not the sort of conduct normally expected to occur in the workplace. The Fish Hopper
14 violated said duty directly by ratifying the employees' and managers' conduct.
15

16 58. Defendants and each of them knew, or should have known, that said conduct would cause
17 Intervenor extreme emotional distress. As a proximate result of defendants' negligent conduct,
18 Intervenor suffered and will continue to suffer extreme humiliation, embarrassment, mental
19 anguish, and emotional distress in an amount according to proof.
20

21 WHEREFORE, Intervenor requests relief as hereinafter provided.

22 **NINTH CAUSE OF ACTION**
23 **(Breach of Implied-in-Fact Contract)**

24 59. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40, 42 through 44,
25 48, 49, 51 through 53, 55, 57 and 58 are realleged and incorporated herein by reference. This
26 cause of action is pleaded against Defendant Fish Hopper.
27
28

1 60. During the entire course of Intervenor's employment with the Fish Hopper, an
2 employment agreement existed between Intervenor and the Fish Hopper, which included, but
3 was not limited to, the following terms and conditions:
4

5 (a) Intervenor would be able to continue her employment with the Fish Hopper
6 indefinitely as long as she carried out her duties in a proper and competent manner;

7 (b) Intervenor would not be denied fair treatment or be compelled to resign for other than
8 good cause;

9 (c) the Fish Hopper would not discriminate against Intervenor on the basis of sex or allow
10 her to be sexually harassed or retaliated against.
11

12 61. This total employment agreement was evidenced by oral representations to Intervenor by
13 the Fish Hopper's agents and employees, and the parties' entire course of conduct, including the
14 following:
15

16 (a) There is an established policy within the Fish Hopper known to Intervenor and relied
17 on by her, that employees such as Intervenor, who had performed services as good and faithful
18 employees, would be treated fairly, would not have employment decisions made about them
19 without good cause, and would not be subjected to discrimination or retaliation; and
20

21 (b) Intervenor's employment history at the Fish Hopper was excellent during the three
22 and a half months that she worked there. She received no indication that her performance was
23 lacking and she was initially assigned to economically lucrative tables.;

24 62. As a result of the above representations, Intervenor came reasonably to expect and to
25 rely on the promise of job security and fair treatment. Such statements and acts of the Fish
26 Hopper communicated to Intervenor the idea that she had performed satisfactorily and that job
27
28

1 opportunities would be available. Intervenor in good faith relied upon these representations and
2 believed them to be true.

3 63. Intervenor's reliance on and belief in and acceptance in good faith of all the assurances,
4 promises
5 and representations as listed in paragraphs 59, led Intervenor throughout her employment with
6 Defendant Fish Hopper to reasonably believe that her employment was secure and that there
7 existed thereby a contract of continuous employment with the Fish Hopper. As independent
8 consideration for this contract of continuing employment, and as evidence of Intervenor's
9 reliance thereon, in addition to performing her regular duties as an employee of defendant Fish
10 Hopper, Intervenor gave up and refrained from seeking other employment opportunities.
11
12

13 64. Intervenor undertook and continued employment and duly performed all conditions of
14 the agreement to be performed by her. Intervenor has at all times been ready, willing, and able
15 to perform and has offered to perform all conditions of this agreement to be performed by her.
16

17 65. Despite the representations made to Intervenor and the reliance she placed on them, the
18 Fish Hopper failed to carry out its responsibilities under, and breached the terms of, the
19 employment agreement by, among other things, the following conduct:
20

21 (a) By failing to provide Intervenor with a work environment free from harassment,
22 discrimination and retaliation;

23 (b) By denying Intervenor fair treatment, a promotion, and work opportunities
24 comparable to those of other employees; and

25 (c) By retaliating against and constructively discharging Intervenor when she
26 complained of unfair treatment.
27
28

1 66. At all times material hereto, Intervenor performed her job in a satisfactory and
2 trustworthy manner.

3 67. The Fish Hopper breached the aforementioned total employment agreement by the
4 conduct set forth above without regard to or in compliance with the requirements of the aforesaid
5 agreement, and for reasons that were pretextual and untrue. Despite complaints to management
6 regarding the harassment by all defendants, it was never stopped. In fact, Intervenor's
7 unwillingness to accept the harassment resulted in increased harassment and other retaliatory
8 behavior.
9
10

11 WHEREFORE, Intervenor requests relief as hereinafter provided.

12 **TENTH CAUSE OF ACTION**
13 **(Breach of the Covenant of Good Faith and Fair Dealing)**

14 68. The allegations of paragraphs 1 through 20, 22 through 29, 31 through 40, 42 through
15 44, 48, 49, 51 through 53, 55, 57, 58 and 60 through 67 are realleged and incorporated herein by
16 reference. This cause of actions is pleaded against Defendant Fish Hopper.

17 69. The aforementioned employment agreement contained an implied covenant of good and
18 fair dealing by which the Fish Hopper promised to give full cooperation to Intervenor and her
19 performance under the employment agreement and to refrain from doing any act that would
20 prevent to impede Intervenor from performing all the conditions of the agreement to be
21 performed by her or any act that would prevent or impede Intervenor's enjoyment of the fruits of
22 said agreement. Specifically, said covenant of good faith and fair dealing required defendants to
23 fairly, honestly, and reasonably perform the terms and conditions of said agreement.
24
25

26 70. Defendant Fish Hopper breached said implied covenant of good faith and fair dealing by
27 denying Intervenor a work environment free from harassment, discriminations and retaliation.
28 Defendant Fish Hopper further breached said implied covenant of good faith and fair dealing by

1 denying Intervenor fair treatment, and compelling her resignations. Such actions were taken at a
2 time when Intervenor was fully capable of and was in fact performing her job in a fully
3 satisfactory manner. Such actions by Defendant Fish Hopper were not taken because of
4 unsatisfactory job performance by Intervenor; they were taken at least in part because of
5 Intervenor's complaints of harassment and retaliation.
6

7 71. Intervenor is informed and believes that defendant Fish Hopper breached its contract
8 with Intervenor without conducting any reasonable investigation concerning its obligations under
9 said contract, without good or sufficient cause, for reasons extraneous to the contract, and for the
10 purpose of frustrating Intervenor's enjoyment of the benefits of the contract.
11

12 WHEREFORE, Intervenor requests relief as hereinafter provide.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Intervenor request relief as follows:

- 15 1. For special and economic damages, including back pay and front pay, for all Causes
16 of Action.
17
- 18 2. For general and noneconomic damages for all Causes of Action except the Ninth and
19 Tenth;
20
- 21 3. For punitive damages according to proof for all Causes of Action except the Eighth,
22 Ninth, and Tenth;
23
- 24 4. For prejudgment interest at the prevailing legal rate;
25
- 26 5. For injunctive relief including requiring defendants to adopt reasonable postings and
27 changes in personnel policies and procedures regarding sexual harassment and retaliations,
28 requiring training about sexual harassment for all employees, for a permanent injunction
enjoining defendants, their agents, successors, employees, and those acting in concert with them

1 from engaging in each unlawful practice, policy, usage, and custom set forth hereinabove, and
2 for such other injunctive relief as the Court may deem proper;

3 6. For costs of the suit, including reasonable attorney fees; and

4
5 7. For such other and further relief as the Court may deem proper.

6 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

7 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
8 named parties, there is no such interest to report.

9
10 Date: June 17, 2003

LAW OFFICES OF CHOW & LOSINSKI

11
12 By: _____

13 Matthew T. Losinski, Esq.
14 Attorneys for Intervenor

15 **JURY DEMANDS**

16 Intervenor demands trial by jury in this action.

17 Date: June 17, 2003

LAW OFFICES OF CHOW & LOSINSKI

18
19 By: _____

20 Matthew T. Losinski, Esq.
21 Attorneys for Intervenor