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

12	EQUAL EMPLOYMENT OPPORTUNITY)	CIVIL ACTION NO.
13	COMMISSION,)	
14	Plaintiff,)	C-03-01522 (RMW) HRL
15	MASUMEH ZANGANEH,)	
16	Plaintiff/Intervenor,)	AMENDED COMPLAINT IN
17	v.)	INTERVENTION FOR DAMAGES AND
18)	INJUNCTIVE RELIEF
19	ROWTOWN, INC. D/B/A)	<u>JURY TRIAL DEMAND</u>
20	THE FISH HOPPER RESTAURANT,)	
21	Defendant.)	

22
23 Intervenor Masumeh Zanganeh complains and alleges as follows:

24
25 **PARTIES**

26 1. At all material times, Intervenor Masumeh Zanganeh was a resident of the State of
27 California. At all material times, Intervenor Masumeh Zanganeh worked for Rowtown, Inc.

1 d/b/a The Fish Hopper Restaurant (hereafter “Defendant Fish Hopper”) in the State of California.

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

6 **JURISDICTION AND VENUE AS TO FIRST CAUSE OF ACTION**

7 3. Jurisdiction of this court is invoked pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343
8 and 1345.

9 4. The unlawful employment practices alleged herein were committed in Monterey County,
10 within the jurisdiction of the United States District Court for the Northern District of California.
11

12 **JURISDICTION AND VENUE AS TO REMAINING**
13 **CAUSES OF ACTION OTHER THAN FIRST CAUSE OF ACTION**

14 5. This is an action for sexual harassment based on state law pursuant to California
15 Government Code Section 12940 *et seq.*, and the court should exercise jurisdiction over this
16 action pursuant to section 1367 of Title 28 of the United States Code, for the following reasons:
17 (1) the action for the Title VII federal claim which is alleged in the First Cause of Action of this
18 Complaint arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*
19 and Title I of the Civil Rights Act of 1991, 42 U.S.C. Section 1981(a), and the jurisdiction of the
20 action is conferred upon the court pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343 and
21 1345; (2) as more clearly appears below, the remaining causes of action based on California
22 Government Code Section 12940 *et seq.*, and California State Law are so related to the claim in
23 the action alleged in the First Cause of Action that all Causes of Action form part of the same
24 case or controversy under Article III of the United States Constitution; (3) the actions for sexual
25 harassment based on state law pursuant to California Government Code Section 12940 *et seq.*,
26 which are based on California State Law neither raise a novel or complex issue of state law, nor
27 substantially predominate over the federal claim which is alleged in the First Cause of Action of
28 this Complaint; and (4) there are no other compelling reasons for the court to decline jurisdiction

1 over the Second through Fourth (inclusive) causes of action for sexual harassment based on state
2 law pursuant to California Government Code Section 12940 *et seq.* and California State Law.

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

6
7 **INTRA-DISTRICT ASSIGNMENT**

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

11
12 **ADMINISTRATIVE PROCEEDINGS**

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

15 9. Ms. Zanganeh concurrently filed with the Equal Employment Opportunity Commission
16 (EEOC) and the California Department of Fair Employment and Housing (DFEH) a charge of
17 discrimination in a timely manner **and** the DFEH issued a right-to-sue letter in conjunction with
18 a decision to defer its investigation of the charge to the EEOC.

19 10. On April 10, 2003, EEOC filed this lawsuit on behalf of all female employees in
20 Defendant’s restaurant, including Ms. Zanganeh. All conditions precedent to the institution of
21 this lawsuit have been fulfilled.

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

25
26 **FACTUAL BACKGROUND**

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

1 13. From the onset of employment, Dennis Bybee, the executive chef of Defendant Fish
2 Hopper, Jimmy Ugaz, another server at Defendant Fish Hopper, Chris Shake, owner of
3 Defendant Fish Hopper, and/or the restaurant cooks and bussers, began subjecting Intervenor
4 Masumeh Zanganeh to a pattern of offensive and unwanted sexual behavior at work, including,
5 but not limited to:
6

- 7 A. Walking up behind Intervenor and giving her non-consensual shoulder
8 massages;
- 9 B. Walking up and putting their arms around her;
- 10 C. Touching Intervenor on her back and shoulders;
- 11 D. Kissing her forehead;
- 12 E. Giving Intervenor nonconsensual hugs;
- 13 F. Making statements about Intervenor's body parts;
- 14 G. Continually staring at Intervenor's buttocks;
- 15 H. Slapping Intervenor on her buttocks;
- 16 I. Grabbing Intervenor's breasts;
- 17 J. Touching Intervenor by purposely bumping into her and brushing up against
18 her;
- 19 K. Whistling at Intervenor when she walked back to the kitchen;
- 20 L. Asking inappropriate questions regarding Intervenor's sex life such as, "How
21 many times a day do you have sex?", "How old were you the first time you
22 had sex?", "Do you moan or do you scream in bed?" and "Do you like it soft
23 or hard?";
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1 M. Making lewd sexual statements to Intervenor such as, “If you were my
2 girlfriend, I would do you five (5) times a day.”; and

3 N. When Intervenor would ask for anything extra for her tickets, the cooks would
4 make statements such as, “What am I going to get for it?”.

5
6 14. The above conduct occurred almost every time Intervenor was scheduled to work
7 between the months of September 1997 and January 1998. Dennis Bybee and Jimmy Ugaz
8 gradually increased the frequency and the explicitness of the above listed sexual comments and
9 actions. The kitchen crew even stated unanimously that if they all had it their way again, they
10 would all choose to lose their virginity to Intervenor.
11

12 15. Since the first week Intervenor was employed, Intervenor was sexually harassed.
13 Intervenor brought these complaints to the attention of, among others, Jeanne David, a manager
14 of Defendant Fish Hopper. Each time Intervenor complained, she was assured by management
15 that “it” would be taken care of. However, the harassment never ceased and continued to
16 worsen. Despite management’s assurances, Defendant Fish Hopper did nothing to stop the
17 harassment. Jeanne David later stated to Intervenor that she was getting all the attention because
18 she was pretty. Defendant Fish Hopper did nothing to rectify the problems of which Intervenor
19 complained nor did it prevent future problems from reoccurring. Instead, management began to
20 retaliate against Intervenor for complaining by “writing her up” for things she had done weeks
21 prior and assigning Intervenor to economically less lucrative tables. Management specifically
22 targeted Intervenor for “write-ups” and failed to “write-up” others similarly situated. Intervenor
23 never encouraged the sexual behavior nor indicated in any way that it was welcome. When
24 Intervenor told Arlene Shake, another manager of Defendant Fish Hopper, that she did not feel
25 that she was being treated right, Arlene Shake stated to Intervenor, “it’s all up to you”.
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1 16. On or about January 13, 1998, Intervenor was working the soup station when Jimmy
2 Ugaz came up from behind her and grabbed her breasts and kissed her cheek. Intervenor was so
3 startled that she spilled onto her hand the cup of soup she was holding. Intervenor then screamed
4 for Jimmy Ugaz to get off her. Jimmy Ugaz then said to Intervenor "don't get so emotional."
5 Intervenor looked around and saw that the entire kitchen crew was staring at her because she was
6 screaming. Dennis Bybee was present, saw the entire incident and did nothing. Intervenor was
7 left embarrassed, violated, angry and humiliated.
8

9 17. Intervenor tried to fight back her tears but she could not. She had been violated in front
10 of the entire kitchen staff, Dennis Bybee, as well as others seated nearby. Intervenor ran to
11 inform Jeanne David, a manager of Defendant Fish Hopper, of how Jimmy Ugaz grabbed her
12 breasts. Instead of immediately addressing the egregious conduct of Jimmy Ugaz and
13 investigating the matter by questioning those who witnessed the event, Jeanne David dismissed
14 the situation as "just another incident" and instructed Intervenor to resume working. It was not
15 until two hours later that Intervenor was able to fully describe to management the battery that
16 had taken place. Jeanne David and Defendant Fish Hopper failed to fully investigate the severity
17 and continuous nature of this matter throughout the term of Intervenor's employment with the
18 Fish Hopper, failed to acknowledge the severe psychological reaction to the assaults and
19 batteries Intervenor had experienced, failed to adequately discipline or warn Dennis Bybee,
20 Jimmy Ugaz and the other harassers about their behavior, and indicated in various ways that
21 Intervenor was responsible for the assaults and batteries inflicted upon her and the other sexual
22 behavior. In addition to the above-mentioned incidents, Intervenor was subjected daily to verbal
23 harassment and a hostile work environment.
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1 18. After reporting the incidents of sexual harassment, Intervenor eventually began to be
2 the subject of retaliation by Defendant Fish Hopper and its agents in the form of being
3 unnecessarily “written-up”, reassigned to the back tables of the restaurant where the tips were
4 not nearly as lucrative and being subjected to hostility by management. Intervenor was forced to
5 quit her employment on or about January 19, 1998 because of Defendant Fish Hopper’s failure to
6 take immediate or appropriate corrective action in response to her numerous complaints of
7 harassment and her complaints of Defendant Fish Hoppers’ supervisors’ retaliation in being
8 written-up unfairly and reassigned to economically less lucrative tables.
9
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11 19. Several Fish Hopper employees, who were not involved in the incident, were told by
12 Jeanne David, manager, about the sexual assaults and batteries inflicted upon Intervenor, and that
13 Intervenor had overreacted. These communications resulted in further anguish and emotional
14 distress to Intervenor.
15

16 20. On or about December 31, 1997, Intervenor went to the back of the kitchen. Chris
17 Shake, owner of Defendant Fish Hopper, was in the back of the kitchen and Intervenor stopped
18 to inquire as to how business was faring. When he responded that business was “great”,
19 Intervenor attempted to give Chris Shake a “high-five”. Instead of doing the same, Chris Shake
20 wrapped his arms around Intervenor pressing her breasts against his chest. Intervenor pulled
21 away from Chris Shake and pushed him off her.
22

23
24 **FIRST CAUSE OF ACTION**
25 **(Sex Discrimination/Sexual Harassment)**
26 **(Title VII)**

27 21. The allegations of paragraphs 1 through 20 and 45 are realleged and incorporated herein
28 by reference. This cause of action is pleaded against defendant.

1 22. This is an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000
2 *et seq.* and Title I of the Civil Rights Act of 1991, 42 U.S.C. Section 1981(a) to correct unlawful
3 employment practices on the basis of sex, retaliation and constructive discharge and to provide
4 appropriate relief to Ms. Masumeh Zanganeh (“Intervenor”). As alleged below, Defendant
5 unlawfully subjected Intervenor to sexual harassment and a hostile work environment.
6 Intervenor also alleges that Defendant subjected her to retaliation and constructive discharge
7 because she engaged in a protected activity.

8 23. Intervenor was employed as a server and hostess in Defendant’s restaurant located in the
9 City of Monterey, California.

10 24. During her employment, Intervenor had been subjected to sexual harassment from her co-
11 workers, supervisors and managers in the form of statements and inappropriate touching.

12 25. Intervenor complained repeatedly to the managers about the conduct of the co-workers,
13 supervisors and managers; however Defendant Fish Hopper took no corrective action and
14 ignored Intervenor’s complaints.

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

17 27. Because Intervenor could no longer tolerate the discriminatory conduct toward her, she
18 was forced to terminate her employment with Defendant Fish Hopper.

19 28. The effect of Defendant Fish Hopper’s practices complained of above has deprived
20 Intervenor of equal employment opportunities and otherwise adversely affected her employment
21 status because of her sex and on account of retaliation and constructive discharge.

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

24 30. Said conduct exceeded the inherent risks of employment and was not the sort of conduct
25 normally expected to occur in the workplace.

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1 37. As a proximate result of defendant's conduct, Intervenor has suffered, and continues to
2 suffer, substantial losses incurred in seeking and performing substitute employment and in
3 earnings, and other employment benefits she would have received had defendant not taken such
4 adverse employment actions against her.
5

6 38. As a proximate result of defendant's conduct, Intervenor has suffered, and continues to
7 suffer, embarrassment, anxiety, humiliation, and emotional distress, all to her damage in an
8 amount according to proof.
9

10 39. Defendant committed the acts alleged herein maliciously, fraudulently, and
11 oppressively, in bad faith, with the wrongful intention of injuring Intervenor, from an improper
12 and evil motive amounting to malice, and in conscious disregard of Intervenor's rights.
13 Intervenor, thus, is entitled to recover punitive damages from defendant in an amount according
14 to proof.
15

16 40. As a result of defendant's discriminatory acts as alleged herein, Intervenor has no plain,
17 adequate, or complete remedy at law, and defendant continues to engage in said wrongful
18 practices. Therefore, Intervenor requests:

19 (a) That she be made whole and afforded all benefits attendant thereto that would have
20 been afforded Intervenor but for said discrimination; and
21

22 (b) that defendant, their agents, successors, employees, and those acting in concert with
23 them be enjoined permanently from engaging in each of the unlawful practices,
24 policies, usages and customs set forth herein, and that they be required to develop
25 posting policies, grievance procedures, and training regarding sexual harassment.
26

27 ///
28 ///

1 41. As a result of defendants' discriminatory acts as alleged herein, Intervenor is entitled to
2 reasonable attorney fees and costs of suit as provided by California Government Code §12965

3 (b).

4
5 WHEREFORE, Intervenor requests relief as hereinafter provided.

6
7 **THIRD CAUSE OF ACTION**
8 **(Failure to Maintain Environment Free from Harassment)**
9 **(California Government Code §12940 (i))**

10 42. The allegations of paragraphs 1 through 20, 22 through 30, 32 through 41, are realleged
11 and incorporated herein by reference. This cause of action is pleaded against Defendant Fish
12 Hopper.

13 43. Defendant failed to take all reasonable steps to prevent discrimination and harassment
14 against Intervenor from occurring, and to take immediate and appropriate corrective action to
15 remedy the harassment, in violation of California Government Code §12940 (i), by engaging in
16 the course of conduct set forth in paragraphs 12 through 20, among other things.

17 44. Specifically, Defendant Fish Hopper failed to take adequate disciplinary action against
18 their employees, supervisors and/or managers, such as issuing a formal warning, providing
19 counseling, or imposing probation, suspension, or termination upon the above named
20 transgressors.

21
22 45. Intervenor is informed and believes that defendant Fish Hopper never had a written
23 policy about sexual harassment, never conducted any sexual harassment training, never gave
24 Intervenor information regarding sexual harassment and never posted any sexual harassment
25 policies for its employees, supervisors or managers in a conspicuous place as required by law
26 during her term of employment.
27
28

1 WHEREFORE, Intervenor requests relief as hereinafter provided.

2
3 **FOURTH CAUSE OF ACTION**
4 **(Retaliation–California Government Code §12940 (f))**

5 46. The allegations of paragraphs 1 through 20, 22 through 30, 32 through 41 and 43
6 through 45 are realleged and incorporated herein by reference. This cause of action is pleaded
7 against defendant Fish Hopper.

8 47. Defendant retaliated against Intervenor in violation of Government Code §12940(f), by
9 engaging in a course of retaliatory conduct, including, among other things, the conduct set forth
10 in paragraphs 12 through 20 above, when she complained about sexual harassment and hostility
11 and conduct based on sex discrimination. This retaliation continued until Intervenor's
12 constructive discharge which was carried out by supervisors and managers of Defendant Fish
13 Hopper, as well as, employees acting within the course and scope of their employment.

14
15 WHEREFORE, Intervenor requests relief as hereinafter provided.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Intervenor request relief as follows:

- 19
20 1. For special and economic damages, including back pay and front pay, for all Causes
21 of Action.
- 22 2. For general and noneconomic damages for all Causes of Action;
- 23 3. For punitive damages according to proof for all Causes of Action;
- 24 4. For prejudgment interest at the prevailing legal rate;
- 25 5. For injunctive relief including requiring defendants to adopt reasonable postings and
26 changes in personnel policies and procedures regarding sexual harassment and retaliations,
27
28

1 requiring training about sexual harassment for all employees, for a permanent injunction
2 enjoining defendants, their agents, successors, employees, and those acting in concert with them
3 from engaging in each unlawful practice, policy, usage, and custom set forth hereinabove, and
4 for such other injunctive relief as the Court may deem proper;
5

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

7 7. For such other and further relief as the Court may deem proper.
8

9 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

10 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
11 named parties, there is no such interest to report.
12

13 Date: February 5, 2004

LAW OFFICES OF CHOW & LOSINSKI

14 By: _____

15 Matthew T. Losinski, Esq.
16 Attorney for Intervenor

17 By: _____

18 Dorothy K. Chow, Esq.
19 Attorney for Intervenor

20 **JURY DEMANDS**

21 Intervenor demands trial by jury in this action.

22 Date: February 5, 2004

LAW OFFICES OF CHOW & LOSINSKI

23 By: _____

24 Matthew T. Losinski, Esq.
25 Attorney for Intervenor

26 By: _____

27 Dorothy K. Chow, Esq.
28 Attorney for Intervenor