

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

Civil Action No. 06-cv-01935-EWN-KLM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

KELLY ALTIZER

ALBERT HOFFMAN, as Trustee for the Estate of David and Kelly Altizer, and  
JENNIFER TURNER-RIEGER

Intervenors,

v.

OUTBACK STEAKHOUSE OF FLORIDA, INC. and  
OS RESTAURANT SERVICES, INC. d/b/a Outback Steakhouse

Defendants.

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**SECOND AMENDED COMPLAINT IN INTERVENTION AND JURY DEMAND**

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The Plaintiffs/Intervenors, Kelly Altizer, Albert Hoffman as Trustee for the Estate of Debtors Kelly and David Altizer, and Jennifer Turner-Rieger, by and through their counsel, complain against the Defendants Outback Steakhouse of Florida, Inc. and OS Restaurant Services, Inc. (“Outback Steakhouse”), as follows:

## **JURISDICTION AND VENUE**

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.
2. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3).
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3) because a substantial number of the unlawful employment practices alleged herein were committed within the jurisdictional boundaries of the United States District Court for the District of Colorado and the employment records relevant to this complaint are maintained and administered in the State of Colorado.
4. Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger timely filed Charges of Discrimination with the EEOC, and all procedural prerequisites for the filing of this suit have been met.
5. On September 28, 2005, the EEOC issued its determination filing that Charging Parties and a class of females were discriminated against in violation of Title VII.

## **PARTIES**

6. Kelly Altizer (“Plaintiff/Intervenor”), is and was at all times relevant hereto, a resident of the State of Colorado.
7. Albert Hoffman (“Plaintiff/Intervenor”) is the duly appointed trustee of the estate of Debtors Kelly Hughes Altizer and David Allen Altizer, case no. 05-30282 in the United States Bankruptcy Court for the District of Colorado.

8. Jennifer Turner-Rieger (“Plaintiff/Intervenor”), is and was at all times relevant hereto, a resident of the State of Colorado.

9. At all relevant times, Defendants have continuously been and are now doing business in the State of Colorado and have continuously had at least fifteen (15) employees.

10. At all relevant times, Defendants have continuously been an employer engaged in an industry affecting commerce within the meaning of 42 U.S.C. §§ 2000e (b), (g) and (h).

11. At all relevant times, Defendants were the employer of Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger within the meaning of Title VII.

## **GENERAL ALLEGATIONS**

### **Jennifer Turner-Rieger**

12. Plaintiff/Intervenor Jennifer Turner-Rieger, who is female, worked for Outback Steakhouse for over ten (10) years.

13. Ms. Turner-Rieger began her career with Defendant as a waitress, working her way up through numerous positions. Due to her expertise, Ms. Turner-Rieger was selected to open several new Outback restaurants throughout the world, and was even responsible for training the President of the Company.

14. Each Outback restaurant has a team of three managers: the Store Proprietor, who has an ownership interest in the restaurant, the Front-of-the-House Manager, and the Kitchen Manager. The Front-of-the-House Manager position is a low-paid position that requires long hours and is seen as a training ground for the Proprietor position. Employees take the Front-of-the-House Manager position in order to be promoted to a highly-compensated Store Proprietor position.

15. In 2000, Ms. Turner-Rieger applied for the Front-of-the-House Manager position for the Westminster restaurant. Ms. Turner-Rieger was the only applicant for the position. She was interviewed for the position by Tom Flanagan, the Joint-Venture Partner, who, during the interview, inquired about whether she planned on having children. In the interview, Mr. Flanagan complained about another female employee who had “let him down” when she had a baby. It was only after Ms. Turner-Rieger assured Mr. Flanagan that she did not intend to have children that she was promoted to this management position.

16. When Ms. Turner-Rieger was promoted to Front-of-the-House Manager in 2000, she was the only female in this position. Mr. Flanagan’s region, which included 23 restaurants, had no female kitchen managers and only one female Proprietor.

17. During the summer of 2002, after she had been a manager for two years, Ms. Turner-Rieger approached Mr. Flanagan about a promotion to Store Proprietor. There were several new restaurants opening in Mr. Flanagan’s region. Despite her excellent qualifications, Defendant refused to promote Ms. Turner-Rieger to Store Proprietor and, instead, promoted and hired less-qualified males into these positions.

18. In early 2003, after it was announced that another two less-qualified males were being promoted above her, Ms. Turner-Rieger approached Mr. Flanagan again about her failure to be promoted. Mr. Flanagan responded by stating, “Women have problems delegating,” and saying “no,” and this led to his female managers failing or quitting.

19. Recognizing that she had no future with the company, Ms. Turner-Rieger was forced to resign her position on February 28, 2003.

### **Kelly Altizer**

20. Ms. Altizer, who is female, began her career with Defendants in 2000 as a waitress. Initially, Ms. Altizer was quickly promoted through the ranks, to Head Waiter and then to Key Manager, an hourly management position.

21. In 2001, Ms. Altizer sought to be promoted to a management position. Although she was qualified for the management training program in 2001, Ms. Altizer's management training was delayed until January 2002, so that a less-qualified male employee could complete the training first.

22. After completing the management training, on October 31, 2002, Ms. Altizer became a traveling manager and then was assigned the Front-of-the-House Manager position for the Thornton restaurant. While she was the Front-of-the-House Manager, Ms. Altizer reported to Ben Martinez, who was the Store Proprietor for the Thornton Restaurant.

23. Throughout her tenure as the Front-of-the-House Manager, Ms. Altizer was discriminated against on the basis of her gender. She was paid less than similarly-situated male counterparts, subjected to a hostile work environment, denied training despite her repeated requests, and denied support.

24. Ms. Altizer's manager, Mr. Martinez, continuously berated Ms. Altizer, refused to support her in her position, and continuously tried to encourage Ms. Altizer to quit.

25. Ms. Altizer complained to Mr. Martinez about his discrimination, and she complained to the Joint Venture Partner, Tom Flanagan, about Mr. Martinez' discrimination, telling him that Mr. Martinez was obstructing her career.

26. Mr. Flanagan refused to address Ms. Altizer's complaints. As a result of her complaints of discrimination, Ms. Altizer was subjected to even more hostility. Mr. Martinez regularly yelled at Ms. Altizer, unjustifiably criticized her work, withheld information she needed to do her job, and undermined her authority.

27. Due to the hostile work environment and Defendant's failure to take any action, as well as the lack of any career opportunities, Ms. Altizer was forced to terminate her employment on February 5, 2004.

**FIRST CLAIM FOR RELIEF  
(Gender Discrimination)**

28. Plaintiffs/Intervenors incorporate by reference paragraphs numbered 1 through 27.

29. By virtue of their gender, Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger belong to a protected group under Title VII.

30. Defendants discriminated against Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger in the terms and conditions of their employment, including paying Plaintiffs/Intervenors less than their similarly-situated male counterparts, subjecting Intervenor Altizer to a hostile work environment, and denying them training and promotional opportunities.

31. Defendants have created a glass ceiling for its female employees, including Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger.

32. Despite the fact that Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger were qualified, Defendants refused to promote them to the position of Store Proprietor and, instead, promoted less-qualified male employees.

33. Defendants discriminated against Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger with malice and reckless indifference to their federally protected rights, forcing them to constructively discharge their employment.

34. As a proximate result of the Defendants' retaliatory actions, Plaintiffs/Intervenors Kelly Altizer and Jennifer Turner-Rieger suffered and continue to suffer loss of wages, loss of career, loss of benefits, emotional distress, inconvenience, mental anguish, loss of enjoyment of life and other consequential damages.

**SECOND CLAIM FOR RELIEF  
(Retaliation)**

35. Plaintiffs/Intervenors incorporate by reference paragraphs numbered 1 through 34.

36. Plaintiff/Intervenor Kelly Altizer complained to her manager, Ben Martinez, and to Tom Flanagan, the Joint-Venture Partner, regarding the gender discrimination she was facing.

37. After Plaintiff/Intervenor Altizer complained of the illegal conduct, she was retaliated against.

38. Defendants intentionally retaliated against Plaintiff/Intervenor Altizer for complaining of illegal sex discrimination, forcing her to terminate her employment.

39. Defendants retaliated against Plaintiff/Intervenor Altizer with malice and reckless indifference to her federally protected rights.

40. As a proximate result of the Defendants' retaliatory actions, Plaintiff/Intervenor Altizer suffered and continues to suffer loss of wages, loss of career, loss of benefits, emotional distress, inconvenience, mental anguish, loss of enjoyment of life and other consequential damages.

**WHEREFORE**, Plaintiffs/Intervenors respectfully request the Court to grant the following relief:

1. Award Plaintiffs/Intervenors back pay and actual damages in an amount to be shown at trial to compensate them for lost wages, benefits, and employment opportunities;
2. Award Plaintiffs/Intervenors front pay in an amount to be shown at trial;
3. Award Plaintiffs/Intervenors compensatory and punitive damages;
4. Retain jurisdiction of this matter to ensure full compliance with the Orders of this Court;
5. Award Plaintiffs/Intervenors reasonable attorneys' fees and costs of this litigation as provided under Title VII;
6. Award Plaintiffs/Intervenors pre-judgment and post-judgment interest and costs of this action together with reasonable expert witness fees as provided by law;
7. Declare that the acts and practices complained of herein are in violation of Title VII and constituted intentional and/or willful conduct by Defendants;
8. Enjoin and permanently restrain these violations of Title VII; and
9. Grant such other and further relief as this Court deems necessary and proper.

**JURY TRIAL DEMAND**

Plaintiffs/Intervenors respectfully request a jury trial on all questions of fact raised by this complaint.



Dated this 10<sup>th</sup> day of September 2007.

LOHF SHAIMAN JACOBS HYMAN & FEIGER PC

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of September 2007, I electronically filed the foregoing **SECOND AMENDED COMPLAINT IN INTERVENTION AND JURY DEMAND** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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s/ Stephanie Struble