

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**UNITED STATES EQUAL)
EMPLOYMENT OPPORTUNITY)
COMMISSION,)
Plaintiff,)**

v.) CASE NO.: 8:04-cv-01863-JSM-MAP

**SAND KEY ASSOCIATES, LTD.,)
d/b/a SHERATON SAND KEY)
RESORT, and RICK MITCHUM,)
individually,)
Defendants.)**

MOTION TO INTERVENE

COMES NOW, ROBERT WEIR (hereinafter "WEIR"), by and through his undersigned counsel, pursuant to Fed. R. Civ. P. 24(a)(1) and (b)(1), and moves the Court for leave to intervene as a matter of right under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(f)(1), or alternatively, seeks permissive intervention in the above referenced action for the purpose of joining WEIR in the prosecution of his claims against the Defendants SAND KEY ASSOCIATES, LTD., d/b/a SHERATON SAND KEY RESORT, and RICK MITCHUM, individually. A pleading setting forth the claims for which intervention is sought is attached as Exhibit A hereto.

The intervenor's interest is direct and immediate and the intervenor's rights stand to be affected by a judgment in the case at bar. The intervenor is the aggrieved employee whose rights are being litigated.

Dated this 31st day of August 2004.

Respectfully submitted,

s/ Randall V. Shanafelt
Randall V. Shanafelt, Esquire
Florida Bar Number: 0052426
Sharon A. Wey, Esquire
Florida Bar Number: 0048010
Attorneys for Robert Weir
THE SHANAFELT LAW FIRM, P.A.
803 Turner Street
Clearwater, Florida 33756
Telephone: (727) 441-8533
Facsimile: (727) 441- 8541
[RVS@,ShanafeltLaw.com](mailto:RVS@ShanafeltLaw.com)

CERTIFICATE OF SERVICE

I hereby certify that on August 31- 2004, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Kenneth Gillespie, Esquire, Equal Employment Opportunity Commission, Miami District Office, kenneth.gillespie@eeoc.gov, One Biscayne Tower, Suite 2700, Two South Biscayne Boulevard, Miami, Florida 33131. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: Sand Key Associates, Ltd., d/b/a Sheraton Sand Key Resort, c/o Russell A. Kimball, Jr. registered agent, 1160 Gulf Boulevard, Clearwater, Florida 34640.

s/ Randall V. Shanafelt
Randall V. Shanafelt, Esquire
Florida Bar Number: 0052426
Sharon A. Wey, Esquire
Florida Bar Number: 0048010
Attorneys for Robert Weir
THE SHANAFELT LAW FIRM, P.A.
803 Turner Street
Clearwater, Florida 33756
Telephone: (727) 441-8533
Facsimile: (727) 441- 8541
[RVS@,ShanafeltLaw.com](mailto:RVS@ShanafeltLaw.com)

EXHIBIT A

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
Plaintiff,)	
and)	
ROBERT D. WEIR,)	
Plaintiff-in-Intervention)	
v.)	CASE NO.: 8:04-ev-01863-JSM-MAP
SAND KEY ASSOCIATES, LTD.,)	
d/b/a SHERATON SAND KEY)	
RESORT, and RICK MITCHUM,)	
individually,)	
Defendants.)	

COMPLAINT OF INTERVENTION AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ROBERT D. WEIR (hereinafter "WEIR" or "Plaintiff") by and through his undersigned counsel, and sues Defendant SHERATON SAND KEY ASSOCIATES, LTD., d/b/a SHERATON SAND KEY RESORT (hereinafter "SHERATON"), alleging unlawful employment practices, and RICK MITCHUM (hereinafter "MITCHUM"), individually for battery, and demands a trial by jury of all issues so triable. In support of his claims for relief, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This is an action for damages brought pursuant to Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. §2000e, *et seq.* (hereinafter "Title VII"), the Florida Whistleblower Act, *Fla. Stat.* §448.102, *et seq.* (hereinafter "Whistleblower Act") and various torts that arise from the same nucleus of operative facts as the federal claims alleged herein.
2. Plaintiff invokes the federal question and civil rights jurisdiction of this Court under 28 U.S.C. §§1331 and 1343(a)(4). Plaintiff also invokes this Court's supplemental and pendent jurisdiction over Plaintiffs state law claims, which arise out of the same nucleus of operative facts as the federal claims alleged herein.
3. Venue for this action lies in the Middle District of Florida pursuant to 42 U.S.C. §2000e, *et seq.*, and 28 U.S.C. § 1391.

THE PARTIES

4. Plaintiff WEIR is a male resident of Clearwater, Pinellas County, Florida.
5. Defendant SHERATON is a resident corporation doing business in the State of Florida, Pinellas County, and the Middle District of Florida.
6. Defendant SHERATON is engaged in an industry affecting commerce.
7. Defendant SHERATON has in excess of fifteen (15) employees and is an employer within the meaning of Title VII, and the Whistleblower Act.
8. Defendant MITCHUM is a male resident of Pinellas County, Florida.
9. Defendant MITCHUM is employed by Defendant SHERATION in a supervisory capacity.

PROCEDURAL BACKGROUND

10. Plaintiff WEIR filed a Charge of Discrimination with the EEOC and the Pinellas County Office of Human Rights on or about April 23, 2003.
11. On or about January 9, 2004, a Cause Determination was issued by the Pinellas County Office of Human Rights.
12. On or about April 20, 2004, the EEOC issued a Letter of Determination finding reasonable cause to believe that a violation of Title VII had occurred.
13. On or about August 12, 2004, the EEOC filed suit against Defendant SHERATON alleging unlawful employment practices.
14. Plaintiff has complied with all administrative prerequisites and conditions precedent prior to the institution of this lawsuit.

FACTS

15. In or about October, 2000, Plaintiff was employed by Defendant SHERATON as a Preparation Cook.
16. Defendant MITCHUM was and is a managerial employee of Defendant SHERATON.
17. At all times relevant hereto, Defendant MITCHUM was in a supervisory position over Plaintiff.
18. During his employment with Defendant SHERATON, Plaintiff was subjected to ongoing, unwelcome and sexually offensive conduct by Defendant MITCHUM.
19. Defendant MITCHUM'S conduct was sufficiently severe and pervasive to create an intimidating and hostile work environment for Plaintiff.

20. Defendant MITCHUM repeatedly touched Plaintiff in a sexual manner, which caused Plaintiff to feel uncomfortable and threatened.
21. In or about October 2000, Defendant MITCHUM began offensive and unwelcome contact with Plaintiff, including but not limited to, pinching and slapping Plaintiff on the buttocks, rubbing Plaintiff's legs, grabbing Plaintiff's genitals, blowing in Plaintiff's ear, and attempting to kiss Plaintiff's neck.
22. While Plaintiff was working in the kitchen, Defendant MITCHUM would repeatedly approach Plaintiff from behind and touch his buttocks and attempt to fondle his genitals.
23. When Plaintiff took breaks Defendant MITCHUM would approach him and attempt to rub his legs, kiss Plaintiff, and fondle his genitals.
24. Defendant MITCHUM subjected other male co-workers to unwanted sexual touching.
25. Plaintiff informed Defendant MITCHUM that his behavior was inappropriate, unwelcome and requested that he stop.
26. Plaintiff complained to Sous Chef, Stephan Kuggler about Defendant MITCHUM'S sexual harassment.
27. Plaintiff complained to Executive Sous Chef, Duffy Dougherty about Defendant MITCHUM'S sexual harassment.
28. Plaintiff complained to Assistant Manager, John Agliano about Defendant MITCHUM'S sexual harassment.
29. Plaintiff complained to Manager, John Harris about Defendant MITCHUM'S sexual harassment.

30. Kuggler, Dougherty, Agliano, and Harris took no action to correct or prevent Defendant MITCHUM' S sexually offensive conduct.
31. Defendant SHERATON failed to take any prompt or remedial action to correct or prevent Defendant MITCHUM'S sexually offensive conduct.
32. In fact, Manager, John Harris spread Plaintiffs complaints about Defendant MITCHUM throughout the company and downplayed the seriousness of Plaintiff's complaints. As a result, Plaintiff was subjected to scorn and ridicule from his co-workers.
33. Plaintiff performed his job duties competently at all times during his employment with Defendant SHERATON.
34. However, Plaintiff was forced to separate from employment with Defendant SHERATON as a result of the intolerable, sexually hostile and retaliatory working conditions, which Defendant SHERATON failed to prevent or correct.
35. Based on information and belief, Defendant SHERATON knew or should have known that Defendant MITCHUM had a prior history of sexually offensive conduct.

COUNT I: TITLE VII(DISCRIMINATION BASED ON SEX)
DEFENDANT SHERATON

36. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through twenty-five (25) of the Complaint.
37. Defendant SHERATON knew or should have known that Plaintiff was subjected to ongoing, unwelcome and offensive sexual conduct and failed to take prompt remedial action.

38. Defendant SHERATON condoned, ratified, authorized and perpetuated Defendant MITCHUM'S ongoing, unwelcome and offensive sexual conduct against Plaintiff by failing to take prompt remedial action.
39. Defendant SHERATON engaged in unlawful employment practices prohibited by Title VII by creating, condoning and perpetuating a sexually hostile and offensive work environment for Plaintiff.
40. Defendant SHERATON acted intentionally with malice and reckless disregard for Plaintiff's rights under Title VII.
41. As a result of Defendant SHERATON'S unlawful employment practices, Plaintiff has suffered damage, including, the loss of a career with Defendant; the loss of wages, benefits, and other compensation; harm to his personal and business reputations; emotional distress; and other pecuniary and non-pecuniary losses.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant SHERATON violated the rights of Plaintiff as protected by the laws of the United States; award Plaintiff back pay and the value of lost employment benefits; award Plaintiff front pay; award Plaintiff punitive damages; award Plaintiff compensatory damages for mental anguish, general emotional distress, humiliation, and loss of reputation; award attorney fees and costs; and grant other and further relief as this Court deems appropriate and just.

COUNT II: TITLE VII (RETALIATION)
DEFENDANT SHERATON

42. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through thirty-five (35) and thirty-seven (37) through forty-one (41).

43. Defendant SHERATON engaged in unlawful employment practices prohibited by Title VII by intentionally and willfully taking adverse employment action against Plaintiff up to and including constructive discharge in retaliation for his complaints and/or objections to unwelcome, sexually offensive and hostile conduct and discrimination.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant SHERATON violated the rights of Plaintiff as protected by the laws of the United States; award Plaintiff back pay and the value of lost employment benefits from the time of his termination; award Plaintiff front pay in lieu of reinstatement; award Plaintiff punitive damages; award Plaintiff compensatory damages for mental anguish, general emotional distress, humiliation, and loss of reputation; award attorney fees and costs; and grant other and further relief as this Court deems appropriate and just.

COUNT III: WHISTLEBLOWER ACT
DEFENDANT SHERATON

44. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through thirty-five (35), thirty-seven (37) through forty-one (41) and forty-three (43) of the Complaint.

45. Defendant SHERATON violated the Florida Whistleblower Act by taking retaliatory personnel action against Plaintiff up to and including Plaintiff's constructive discharge because of Plaintiff's objections and/or refusal to participate in Defendant SHERATON'S unlawful employment practices.

46. Defendant SHERATON acted intentionally with malice and reckless disregard for Plaintiff's rights under the Florida Whistleblower Act.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant SHERATON violated the rights of Plaintiff as protected by the laws of the State of Florida and award Plaintiff front pay in lieu of reinstatement; compensation for lost wages, benefits, and other compensatory damages allowable at law; award attorney fees, court costs, and expenses; and grant such other and further relief as the Court deems appropriate and just.

COUNT IV: NEGLIGENT HIRING

47. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through thirty-five (35) and thirty-seven (37) through forty (40), forty-three (43), forty-five (45) through forty-six (46), fifty-six (56) through fifty-nine (59) and sixty-one (61) through sixty-five (65).
48. Defendant SHERATON owed a duty to Plaintiff to exercise reasonable care in the selection of an employee to perform the duties of a supervisor.
49. Defendant SHERATON failed to make an appropriate investigation of Defendant MITCHUM.
50. An appropriate investigation would have revealed Defendant MITCHUM'S unsuitability for the duties of supervisor with apparent authority for Defendant SHERATON or for employment in general.
51. Plaintiff was harmed by the independent wrongful act of battery committed by Defendant MITCHUM upon Plaintiff.
52. The battery was of a type foreseeable by Defendant SHERATON in light of Defendant MITCHUM'S particular unsuitability for duty as supervisor.

53. Defendant SHERATON'S unreasonable failure to make an appropriate investigation of Defendant MITCHUM was a legal cause of Plaintiff's injury.

54. As a direct and proximate cause of the negligent conduct of Defendant SHERATON, Plaintiff sustained the following damages:

- a. Mental pain;
- b. Emotional distress in the form of fear, nervousness, anxiety, worry, and indignity;
- c. Embarrassment;
- d. Humiliation;
- e. Loss of dignity;
- f. Loss of the capacity for the enjoyment of life;
- g. Loss of or diminution of earnings or earning capacity;
- h. Future pay.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant SHERATON violated the rights of Plaintiff as protected by the laws of the State of Florida and award Plaintiff front pay in lieu of reinstatement; compensation for lost wages, benefits, and other compensatory damages allowable at law; award attorney fees, court costs, and expenses; and grant such other and further relief as the Court deems appropriate and just.

COUNT V: NEGLIGENT RETENTION
DEFENDANT SHERATON

55. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through thirty-five (35), thirty-seven (37) through forty (40), forty-three (43),

forty-five (45) through forty-six (46) and forty-eight (48) through fifty-four (54), and sixty-one (61) through sixty-five (65) of the Complaint.

56. Defendant SHERATON owed a duty to Plaintiff to exercise reasonable care in the retention of an employee to perform the duties of supervisor.
57. Defendant SHERATON received actual or constructive notice that Defendant MITCHUM was unfit to perform these duties.
58. Defendant SHERATON unreasonably failed to act to correct and/or prevent harm to Plaintiff.
59. Defendant SHERATON'S unreasonable failure to act to correct and/or prevent harm to Plaintiff was a legal cause of Plaintiff's injury.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant SHERATON violated the rights of Plaintiff as protected by the laws of the State of Florida and award Plaintiff front pay in lieu of reinstatement; compensation for lost wages, benefits, and other compensatory damages allowable at law; award attorney fees, court costs, and expenses; and grant such other and further relief as the Court deems appropriate and just.

COUNT VI: NEGLIGENT SUPERVISION
DEFENDANT SHERATON

60. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through thirty-five (35), thirty-seven (37) through forty (40), forty-three (43), forty-five (45) through forty-six (46), forty-five (45) through forty-six (46), forty-eight (48) through fifty-four (54), and fifty-six (56) through fifty-nine (59).
61. Notwithstanding the intentional and/or negligent acts of its employees, agents, servants and/or representatives including Defendant MITCHUM, Defendant

SHERATON negligently failed to take action to put a stop to such intentional and/or negligent conduct.

62. Defendant SHERATON knew or upon reasonably diligent investigation should have known of such acts performed by the employees, agents, servants and/or representatives of Defendant SHERATON.
63. At all times material hereto, Defendant SHERATON owed Plaintiff a duty to properly supervise Defendant MITCHUM.
64. Defendant SHERATON breached this duty by failing to monitor, supervise, discipline and/or discharge its employees, agents, servants and/or representatives in such a manner as to prevent the unlawful treatment of Plaintiff as described herein.
65. Defendant's unreasonable failure to take corrective action was a legal cause of Plaintiff's injury.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant SHERATON violated the rights of Plaintiff as protected by the laws of the State of Florida and award Plaintiff front pay in lieu of reinstatement; compensation for lost wages, benefits, and other compensatory damages allowable at law; award attorney fees, court costs, and expenses; and grant such other and further relief as the Court deems appropriate and just.

COUNT VII: BATTERY
DEFENDANT MITCHUM

66. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through thirty-five (35), fifty-one (51) and fifty-four (54) of the Complaint.

67. Defendant MITCHUM owed Plaintiff a duty to refrain from touching or otherwise contacting with the person of Plaintiff without Plaintiff's consent.

68. Defendant MITCHUM breached his duty to Plaintiff by intentionally and willfully contacting with the person of Plaintiff without his consent, in an offensive manner.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment against Defendant MITCHUM for battery and award Plaintiff compensatory damages, consequential damages, costs, interest and such other and further relief as the Court deems appropriate and just.

Dated this 31st day of August 2004.

Respectfully submitted,

s/ Randall V. Shanafelt
Randall V. Shanafelt, Esquire
Florida Bar Number: 0052426
Sharon A. Wey, Esquire
Florida Bar Number: 0048010
Attorneys for Robert Weir
THE SHANAFELT LAW FIRM, P.A.
803 Turner Street
Clearwater, Florida 33756
Telephone: (727) 441-8533
Facsimile: (727) 441- 8541
RVS@ShanafeltLaw.com

