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Idaho Human Rights Commission

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

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION and )  
IDAHO HUMAN RIGHTS COMMISSION )  
on behalf of AUDREY POWERS )  
 )  
Plaintiffs, )  
v. )  
 )  
THE BURRITO SHOPPE LLC dba )  
SQUEEZERS GIANT BURGERS and )  
ALLIED FOODSERVICE INC. dba SQUEEZERS )  
Defendants. )  
\_\_\_\_\_ )

Case No. 1:05-cv-00329-LMB

**AMENDED  
COMPLAINT OF PLAINTIFF  
BY INTERVENTION AND  
DEMAND FOR JURY TRIAL**

Plaintiff by intervention, the State of Idaho, by the Idaho Human Rights Commission,  
and on behalf of Audrey Powers, complains as follows:

## **JURISDICTION AND PARTIES**

1. This is a civil action in which the Idaho Human Rights Commission, an agency of the State of Idaho, claims a violation of the Idaho Human Rights Act (IHRA), Idaho Code §§ 67-5901-5910.

2. The jurisdiction of the Court is invoked under 28 U.S.C. § 1367.

3. Venue is proper in the District of Idaho under 28 U.S.C. § 1391(b) because the events or omissions giving rise to this action occurred in the District of Idaho.

4. Plaintiff by Intervention, Idaho Human Rights Commission (“Commission”), is a duly created and acting governmental agency of the State of Idaho, created by Idaho Code § 67-5903, with an office in the City of Boise, County of Ada, having certain powers and duties as specified in Idaho Code §§ 67-5902 to 67-5912, and rules and regulations promulgated thereunder.

5. Audrey Powers is an individual with a residence in Nampa, Idaho.

6. Defendant, The Burrito Shoppe LLC, is an Idaho company doing business as Squeezers Giant Burgers in the City of Nampa, County of Canyon, State of Idaho.

7. Defendant, The Burrito Shoppe LLC dba Squeezers Giant Burgers, has employed at least five (5) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year whose services are partially or wholly performed in the State of Idaho.

8. On or about August 25, 2004, Audrey Powers filed an administrative complaint with the Commission, alleging that Defendant, The Burrito Shoppe LLC dba Squeezers Giant Burgers, had discriminated against her based on her sex. That matter became known as Idaho Human Rights Commission Complaint No. E-0804-088. Audrey Powers also requested that her charge of discrimination be filed with the Equal Employment Opportunity Commission

("EEOC") which was accomplished and which became known as EEOC Charge No. 38CA500084.

9. On or about February 18, 2005, the Commission issued a determination of probable cause to believe that illegal discrimination based on sex and constructive discharge had been established in Audrey Powers's case.

10. The Commission has fulfilled all conditions precedent to the institution of this lawsuit as required by Idaho Code § 67-5907.

11. The second named Defendant is Allied Foodservice Inc., an Idaho company doing business as Squeezers in the City of Nampa, County of Canyon, State of Idaho.

**FACTS AS TO THE FIRST DEFENDANT**  
The Burrito Shoppe LLC dba Squeezers Giant Burgers

12. Audrey Powers worked at Squeezers Giant Burgers as a cook, cashier and food server from August 2003 until late July 2004. Audrey Powers was 17 years of age from the beginning of her employment with Defendant, The Burrito Shoppe LLC dba Squeezers Giant Burgers, until July 15, 2004.

13. While working for Defendant, Audrey Powers was subjected to a work environment permeated with unwelcome sexual conduct. That sexual conduct included but was not limited to the following. Audrey Powers was called names of a sexual nature (e.g. "prude" and a "great titty fuck"). She heard talk of a sexual nature. She was touched on her breasts and buttocks. She was pressured to expose herself to others in the workplace. She saw other employees expose themselves as part of games in the workplace. She saw James Dorsey, who was her supervisor and who is a principal of Defendant, expose his penis, in the workplace.

14. Audrey Powers was subjected to unwelcome, offensive and intimidating sexual conduct at Defendant's place of business while she was employed by Defendant. That

unwelcome, offensive and intimidating sexual conduct was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment.

15. Audrey Powers quit her job at Squeezers Giant Burgers in late July 2004. The unwelcome, offensive and intimidating sexual conduct had rendered her work environment intolerable, and she felt forced to quit.

### **FACTS AS TO THE SECOND DEFENDANT**

Allied Foodservice Inc. dba Squeezers

16. In March 2006, James Dorsey, the sole member of Defendant, The Burrito Shoppe LLC, dissolved the limited liability company, and acting as the incorporator, formed the second Defendant, Allied Foodservice Inc. Mr. Dorsey changed the corporate form of the restaurant business from a limited liability company to an S corporation on the advice of an accountant.

17. In March 2006, Mr. Dorsey acting on behalf of Defendant, The Burrito Shoppe LLC, cancelled its Certificate of Assumed Business Name for Squeezers Giant Burgers. Mr. Dorsey acting on behalf of Defendant, Allied Foodservice Inc., filed a Certificate of Assumed Business Name for Squeezers.

18. Defendant, Allied Foodservice Inc. dba Squeezers, is the continuation of the business previously operated by Defendant, The Burrito Shoppe LLC dba Squeezers Giant Burgers, at the same locations, with the substantially the same employees, equipment and supervisors, performing substantially the same jobs, in same line of work, fast food restaurant.

**COUNT ONE**  
**SEX DISCRIMINATION AGAINST AUDREY POWERS IN VIOLATION OF**  
**THE IDAHO HUMAN RIGHTS ACT**

19. Plaintiff realleges each and every allegation contained in paragraphs 1 through 15, inclusive, as if fully set forth herein.

20. At the time of the sexual harassment, Audrey Powers was an employee of Defendant, The Burrito Shoppe LLC dba Squeezers Giant Burgers, entitled to the protections of the Idaho Human Rights Act, Idaho Code § 67-5901 et seq.

21. Defendant, The Burrito Shoppe LLC dba Squeezers Giant Burgers, discriminated against Audrey Powers in the terms and conditions of her employment based on sex and violated the Idaho Human Rights Act in that she was sexually harassed and the sexual harassment created an intolerable and discriminatory work environment from which she was forced to resign.

22. As a result of the discrimination, Audrey Powers suffered lost wages and benefits, emotional distress, humiliation, stress, anxiety and other damages to be proven at trial. Furthermore, Plaintiff has incurred additional costs and expenses due to the discrimination including, but not limited to, the attorney fees and costs required to bring and prosecute this action.

23. The discriminatory acts were intentional and were committed with malice or reckless indifference to the rights of Audrey Powers.

**COUNT TWO**  
**SEX DISCRIMINATION AGAINST AUDREY POWERS IN VIOLATION OF**  
**THE IDAHO HUMAN RIGHTS ACT**

24. Plaintiff realleges each and every allegation contained in paragraphs 1 through 23, inclusive, as if fully set forth herein.

25. Defendant, Allied Foodservice Inc. dba Squeezers, is the successor employer and as such, is liable for the sex discrimination suffered by Audrey Powers.

**WHEREFORE**, Plaintiff by Intervention, the Idaho Human Rights Commission on behalf of Audrey Powers, prays for damages and equitable relief as follows:

A. An order of this Court directing The Burrito Shoppe LLC dba Squeezers Giant Burgers and/or Allied Foodservice Inc. dba Squeezers to develop and utilize a written policy prohibiting discrimination in employment consistent with the Idaho Human Rights Act, Idaho Code § 67-5901 et seq.;

B. An order of this Court directing The Burrito Shoppe LLC dba Squeezers Giant Burgers and/or Allied Foodservice Inc. dba Squeezers to participate, with all of its employees, officers and directors, in training on the prevention and correction of discrimination in employment;

C. An order of this Court making Audrey Powers whole by awarding her all damages that she has suffered (such amount including punitive damages satisfies the jurisdictional amount of this Court), as shall be proven at trial;

D. An order of this Court awarding punitive damages because of the willful nature of the discriminatory conduct, as allowed by Idaho Code § 67-5908(3).

E. An award of all costs and attorney fees reasonably incurred in the prosecution of this action and in all related preliminary and administrative proceedings; and

F. Such other and further relief as this Court deems just and equitable.

DATED this 11th day of September, 2006.

on IDAHO

HUMAN RIGHTS COMMISSION  
behalf of AUDREY POWERS

JO-ANN  
Deputy

/s/ Jo-Ann L. Bowen

L. BOWEN  
Attorney General