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FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAR 07 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

MICHELLE JARAMILLO,

Applicant in Intervention,

vs.

ANTIGUA, INC., d/b/a MIKI'S COFFEE
SHOP and d/b/a THE BUTCHER SHOP,

Defendant.

No. CIV - 01 861 M/KBM

COMPLAINT IN
INTERVENTION

PARTIES, JURISDICTION & VENUE

1. Plaintiff Michelle Jaramillo, hereinafter referred to as Jaramillo, is presently a resident of Bernalillo County, New Mexico. At all times relevant to this action, she was a resident of Gallup, New Mexico and an employee of Defendant.

2. Plaintiff Equal Employment Opportunity Commission, hereinafter referred to as the Commission, is an agency of the United States of America, charged with the administration, interpretation and enforcement of Title VII.

3. At all times relevant to this action, Defendant Antigua, Inc., d/b/a Miki's Coffee Shop and d/b/a The Butcher Shop, hereinafter referred to as Antigua, has continuously been doing business in the State of New Mexico in the City of Gallup and is an employer of 15 or more employees, as defined by Title VII of the Civil Rights Act (42 U.S.C. §2000-e et seq.) as amended.

4. This Court has jurisdiction pursuant to 28 U.S.C. §1331 et seq., and 42 U.S.C. §2000-e et seq.

1 5. This action arises under the Civil Rights Act of 1964, as amended by
2 the Civil Rights Act of 1991 (Title VII), 42 U.S.C. §2000-e, et seq.

3 6. The unlawful employment practices and other acts which give rise to
4 this Complaint were committed in Gallup, New Mexico and are within the jurisdiction
5 and venue of the United States District Court for the District of New Mexico.

6 7. Jaramillo timely filed charges of discrimination with the Equal
7 Employment Opportunity Commission and has satisfied all conditions precedent to the
8 filing of this action.

9 8. On June 6, 2001, upon completion of its investigation of Jaramillo's
10 charges, the Commission issued a Determination that there was cause to conclude that
11 Antigua had unlawfully discriminated against Jaramillo based on sex, a true and
12 correct copy of which is attached hereto as Exhibit A.

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14 **ALLEGATIONS COMMON TO ALL CLAIMS**

15 9. Jaramillo was employed by Antigua from March 7, 1999 through
16 April 27, 1999 as a waitress at Miki's Coffee Shop.

17 10. At all times relevant to this Complaint, Jaramillo was a 15 year old,
18 tenth grade high school student who was employed for the first time.

19 11. At all times relevant to this Complaint, Jaramillo was under the direct
20 supervision and control of Antigua's assistant manager, Camarino Sanchez,
21 hereinafter referred to as Sanchez.

22 12. Shortly after Jaramillo began her employment, she was subjected to
23 repeated sexually inappropriate comments, suggestions and touching by Sanchez,
24 culminating in the rape of Jaramillo by Sanchez on April 25, 1999.

25 13. Sanchez had sexually harassed former female employees of Antigua
26 and created a hostile work environment, such that said employees felt compelled to
27 resign.

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COUNT II

(Negligent Infliction of Emotional Distress)

24. Jaramillo incorporates each and every allegation of this Complaint as if fully set forth herein.

25. Antigua's employee, Sanchez, negligently inflicted severe emotional distress upon Jaramillo by the outrageous conduct described above.

26. The actions of Antigua's assistant manager, Sanchez, were done within the course and scope of his employment with Antigua.

27. Sanchez' actions toward Jaramillo were malicious, willful and done with a wanton and reckless disregard of Jaramillo.

28. Antigua is vicariously liable for Sanchez' actions under the doctrine of *respondeat superior*.

29. Antigua knew that Sanchez engaged in sexually harassing behavior towards its female employees.

30. Antigua failed to take reasonable action to protect Jaramillo from the sexually harassing behavior of Sanchez.

31. As a direct and proximate result of Antigua's failure to take reasonable steps to either protect Jaramillo or discipline Sanchez, Antigua negligently inflicted emotional distress on Jaramillo.

32. As a result of the negligent infliction of emotional distress, Jaramillo suffered severe emotional distress and physical injury.

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COUNT III

(Intentional Infliction of Emotional Distress)

33. Jaramillo incorporates each and every allegation of this Complaint as if fully set forth herein.

34. Antigua's employee, Sanchez, intentionally inflicted severe emotional

1 distress upon Jaramillo by the outrageous conduct described above.

2 35. The actions of Antigua's assistant manager, Sanchez, were malicious,
3 willful and done with a wanton and reckless disregard of Jaramillo.

4 36. The actions of Antigua's assistant manager, Sanchez, were done
5 within the course and scope of his employment with Antigua.

6 37. Antigua is vicariously liable for the actions of its assistant manager
7 under the doctrine of *respondeat superior*.

8 38. Antigua knew of Sanchez' sexual harassment of its female employees,
9 including Jaramillo, and intentionally allowed the harassment to continue.

10 39. As a direct and proximate result of Antigua's allowance of sexually
11 harassing behavior in the workplace, Antigua intentionally inflicted emotional distress
12 on Jaramillo.

13 40. Antigua's actions were malicious, willful and done with a wanton and
14 reckless disregard of Jaramillo.

15 41. As a result of this intentional infliction of emotional distress, Jaramillo
16 suffered severe emotional distress and physical injury.

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18 **COUNT IV**

19 **(Negligent Supervision)**

20 42. Jaramillo incorporates each and every allegation of this Complaint as
21 if fully set forth herein.

22 43. Antigua had a duty to properly supervise all of its employees,
23 including its assistant manager, Sanchez.

24 44. By the outrageous conduct described above, Antigua breached this
25 duty of care.

26 45. Antigua's actions were malicious, willful and done with disregard of
27 Jaramillo.

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1 emotional distress.

2 56. The actions of Sanchez were malicious, willful and intentional.

3 57. As a direct and proximate result of Sanchez' assault and battery of
4 Jaramillo, she suffered extreme emotional distress and physical injuries.

5 58. Antigua is vicariously liable for Sanchez' action under the doctrine of
6 *respondeat superior*.

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PRAYER FOR RELIEF

10 Based on the foregoing, Plaintiffs respectfully request the Court to award
11 Jaramillo the following relief against Antigua:

12 A. Issue a declaratory judgment declaring that Antigua's conduct violated
13 Plaintiffs' rights under the Civil Rights Act of 1964, 42 U.S.C. §2000em as
14 amended by the Civil Rights Act of 1991, 42 U.S.C. §1981a;

15 B. Issue a permanent injunction enjoining Antigua from engaging in
16 sexual discrimination;

17 C. Issue a permanent injunction against Antigua to implement and enforce
18 policies which provide equal employment opportunities for its employees
19 and which eradicate the effects of its past discriminatory practices;

20 D. Issue Plaintiff an award of back pay and front pay against Antigua;

21 E. Compensatory damages against Antigua for physical and emotional
22 damages;

23 F. Punitive damages against Antigua in an amount sufficient to deter the
24 type of tortious and statutorily prohibited conduct complained of herein; and

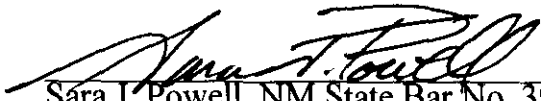
25 G. Award Plaintiff all other relief that is just, equitable and appropriate
26 under the circumstances.

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1 RESPECTFULLY SUBMITTED this 8th day of February, 2002.

2 LAW OFFICE OF SARA J. POWELL

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6 8170 North 86th Place, Suite 102
7 Scottsdale, Arizona 85258-4308
8 Telephone : (480) 596-8822
9 Attorney for Intervening Plaintiff

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Original Complaint mailed to
Clerk of the District Court this
4th day of March, 2002.

COPY of the foregoing Complaint
mailed this 4th day of March,
2002, to:

Sandra Padegimas
Acting Supervisory Trial Attorney
for the Plaintiff EEOC
Phoenix District Office
3300 N. Central Ave., Ste. 690
Phoenix, AZ 85012

Veronica Molina
Trial Attorney for the Plaintiff EEOC
505 Marquette NW, Ste 900
Albuquerque, NM 87102

Mario and Mary Morales
11662 Desert Hills
Sun City, AZ 85351

S. Munsick



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Albuquerque District Office

505 Marquette, N.W., Suite 900
Albuquerque, NM 87102
(505) 248-5201
TTY (505) 248-5240
FAX (505) 248-5233

Charge Number: 390A00429

Michelle L. Jaramillo
1716 Boulder Road
Gallup, NM 87301

Charging Party

v.

Antigua, Inc.,
d/b/a/ Miki's Coffee shop and
d/b/a The Butcher Shop
2003 West Highway 66
Gallup, NM 87301

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. Seq. (Title VII).

Respondent is an employer as defined by Title VII. All requirements for coverage have been met.

The Charging Party filed a charge of discrimination with the Equal Employment Opportunity Commission on February 7, 2000, alleging she was discriminated against because of her sex, female in violation of Title VII of the Civil Rights Act of 1964, as amended. In her charge, Charging Party alleged she had been sexually harassed by her supervisor. Charging Party further alleged that as a result of the sexual harassment, she was forced to leave her employment.

The Commission's investigation revealed that Charging Party was subjected to verbal and physical conduct by her supervisor because of her sex. This conduct created a hostile work environment for the Charging Party. As a result of the environment, Charging Party was forced to resign her position.

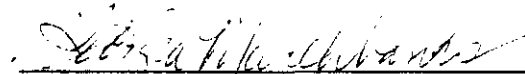
Based on this analysis I have determined that there is reasonable cause to believe that the Respondent violated Section 703 of Title VII when it subjected Charging Party to harassment because of her sex and constructively discharged her.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the office Enforcement Manager is not obtained, the Enforcement Manager will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

On behalf of the Commission:

6/6/11
Date


Georgia Marchbanks
Enforcement Manager

Copy to:

Nicholas R. Gentry, L.L.C.
902 Roma NW
Albuquerque, NM 87102

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Attorney at Law
11801 North Tatum Blvd.
Suite 247
Phoenix, AZ 85028