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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10  
11 U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

12 Plaintiff,

13 v.

14  
15 SCOLARI WAREHOUSE  
MARKETS, INCORPORATED, A  
16 NEVADA CORPORATION, D/B/A  
SCOLARI'S FOOD AND DRUG;  
17 AND DOES 1-10 INCLUSIVE,

18 Defendants.

) CASE NO.: CV-N-04-0229-LRH-RAM

) **FIRST AMENDED COMPLAINT**  
**CIVIL RIGHTS**

- SEX HARASSMENT
- RETALIATION

) (42 U.S.C. §§ 2000e, et seq.; )

) **DEMAND FOR JURY TRIAL**

19  
20 **NATURE OF THE ACTION**

21 This is a sexual harassment and retaliation action brought by the United  
22 States Equal Employment Opportunity Commission, ("the Commission") under  
23 Title VII of the Civil Rights Act of 1964, as amended, to correct unlawful  
24 employment pattern and practices on the basis of sex and to provide appropriate  
25 relief to the Charging Party, Jennifer Gould (" Ms. Gould") and a class of  
26 similarly situated individuals who were adversely affected by such pattern and  
27

ORIGINAL

5

1 practices. The Commission alleges Ms. Gould and other similarly situated  
2 individuals were sexually harassed or subjected to sex based harassment or  
3 unlawful pattern and practices during their employment with Defendant, Scolari  
4 Warehouse Markets, Inc., A Nevada Corporation and d/b/a Scolari Food & Drug  
5 Company ("Defendant Employers"). Charging Party, Ms. Gould, and other  
6 similarly situated individuals were subjected to a hostile work environment  
7 perpetuated by Defendant supervisor(s).

8 The Commission also alleges Ms. Gould and other similarly situated  
9 individuals who had complained of the harassment by supervisors were subjected  
10 to retaliation in the form of demotion, loss of wages, further harassment,  
11 discipline or discharge.

#### 12 JURISDICTION AND VENUE

13 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sections  
14 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted  
15 pursuant to section §§706(f)(1)and (3); and §§707 of Title VII of the Civil Rights  
16 Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1) and (3) and pursuant to § 102  
17 of the Civil Rights Act of 1991, 42 U.S.C. §§1981A.

18 2. The employment practices alleged herein to be unlawful were  
19 committed within the jurisdiction of the United States District Court for the State  
20 of Nevada.

21 3. Prior to institution of this lawsuit, the Commission's representatives  
22 attempted to eliminate the unlawful employment pattern and practices alleged  
23 below and to effect voluntary compliance with Title VII through informal  
24 methods of conciliation, conference and persuasion within the meaning of section  
25 §§706(f)(1) and (3) of Title VII, 42 U.S. C., §§2000e-5(f)(1) and (3). All  
26 conditions precedent to the institution of this lawsuit have been fulfilled.

1 PARTIES

2 4. Plaintiff Commission is an agency of the United States of America  
3 charged with the administration, interpretation and enforcement of Title VII, and  
4 is expressly authorized to bring this action under §§706(f)(1) and (3) of Title VII,  
5 42 U.S.C., §§ 2000e-5(f)(1) and (3).

6 5. At all relevant times, "Defendant Employers," have continuously been  
7 and are now doing business in the State of Nevada, County of Washoe, and City  
8 of Reno, Nevada.

9 6. Plaintiff is ignorant of the true names and capacities of "Defendant  
10 Employers," sued as DOES 1 through 10, inclusively, and therefore Plaintiff sue  
11 said "Defendant Employers" by such fictitious names. Plaintiff reserves the right  
12 to amend the complaint to name the DOE "Defendant Employers" individually or  
13 corporately as they become known. Plaintiff alleges that each of the "Defendant  
14 Employers" named as DOES was in some manner responsible for the acts and  
15 omissions alleged herein and Plaintiff will amend the complaint to allege such  
16 responsibility when same shall have been ascertained by Plaintiff.

17 7. It is further alleged on information and belief that the named and  
18 unnamed defendants in the complaint are mere alter egos of the "Defendant  
19 Employer". The remaining defendants are properly named in the complaint.

20 8. All of the acts and failures to act alleged herein were duly performed by  
21 and attributable to "Defendant Employer", each acting as a successor, agent,  
22 employee or under the direction and control of the others, except as specifically  
23 alleged otherwise. Said acts and failures to act were within the scope of such  
24 agency and/or employment, and each "Defendant Employer" participated in,  
25 approved and/or ratified the unlawful acts and omissions by other "Defendant  
26 Employer" complained of herein. Whenever and wherever reference to any act in  
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1 this Complaint to any act by a defendant employer or "Defendant Employer",  
2 such allegations and reference shall also be deemed to mean the acts and failures  
3 to act of each "Defendant Employers" acting individually, jointly and/or  
4 severally.

5 9. At all relevant times, "Defendant Employers" has continuously been  
6 an employer engaged in an industry affecting commerce within the meaning of §§  
7 701 (b), (g) and (h) of Title VII, 42 U.S.C., §§ 2000e-1(b), (g) and (h) and §§  
8 11(b), (g), and (h).

#### 9 STATEMENT OF CLAIMS

10 10. Since on or about October 2002, "Defendant Employers" has  
11 engaged in a pattern and practice of unlawful employment practices at its facility  
12 in Reno, Nevada in violation of §§706(f)(1) and (3) and §§707 of Title VII, 42  
13 U.S. C., §§2000e-5(f)(1) and (3). The "Defendant Employers" caused verbal  
14 harassment to be directed at Ms. Gould and other similarly situated individual  
15 women that impacted the terms and conditions of their employment and created a  
16 hostile working environment at "Defendant Employers." These practices also  
17 included the retaliation against and termination of Ms. Gould and other similarly  
18 situated individuals for having complained about the work environment. Once  
19 "Defendant Employers" became aware of the unlawful sexual harassment and sex  
20 based harassment it failed to take prompt remedial action intended to eliminate  
21 the harassment, a violation of §§706 and §§707 of Title VII, 42 U.S.C. §2000e-  
22 2e-5(f)(1) and (3).

23 11. The impact of the aforementioned conduct deprived Ms. Gould and  
24 other similarly situated individuals of equal employment opportunities and to  
25 otherwise adversely impacted their employment status because of their sex and  
26 also in retaliation for opposing discriminatory practices or engaging in a protected  
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1 activity that resulted in adverse employment action.

2 12. The unlawful employment practices complained of above were and  
3 are willful within the meaning of §§706(f)(1) and (3) and §§707 of Title VII, 42  
4 U.S. C., §§2000e-5(f)(1) and (3).

5 13. The unlawful employment pattern and practices complained of above  
6 were intentional and caused Ms. Gould and other similarly situated individuals to  
7 suffer emotional distress.

8 14. "Defendant Employers" has acted with malice or reckless indifference  
9 to the federally protected rights of Ms. Gould and other similarly situated  
10 individuals by subjecting them to harassment consisting of sexually charged  
11 conduct, derogatory statements, obscene and vulgar language. Women were  
12 openly asked by supervisor(s) to "show [them] their tits," and to "suck some  
13 cock" as well as subjected to other derogatory and obscene statements. When  
14 Charging party complained to "Defendant Employer" about the harassment she  
15 and other similar situated individuals were being subjected to, she was  
16 terminated. The Charging party and other similarly situated individuals were also  
17 subject to retaliation for opposing discrimination or engaging in a protected  
18 activity resulting in an adverse employment action that harmed them.

19 PRAYER FOR RELIEF

20 Wherefore, the Commission respectfully requests that this Court:

21 A. Grant a permanent injunction enjoining "Defendant Employer," its  
22 officers, successors, assigns and all persons in active concert or participation with  
23 them, from engaging in any employment practices that discriminate on the basis  
24 of sex or from engaging in unlawful retaliation;

25 B. Grant a permanent injunction enjoining "Defendant Employer," their  
26 officers, successors, assigns and all persons in active concert or participation with  
27

1 them, from engaging in any employment practice which discriminates on the  
2 basis of sex;

3 C. Order "Defendant Employer" to institute and carry out policies,  
4 practices and programs which provide equal employment opportunities for  
5 females which eradicate the effects of their past and present unlawful  
6 employment practices;

7 D. Grant a judgment requiring "Defendant Employer" to pay Ms. Gould  
8 and other similarly situated individuals appropriate back pay, front pay,  
9 compensatory damages and benefits in an amount to be determined at trial  
10 including prejudgment interest;

11 E. Order "Defendant Employer" to make Ms. Gould and other similarly  
12 situated individuals whole by providing affirmative relief necessary to eradicate  
13 the effects of its unlawful practices including, but not limited to, payment of  
14 compensatory damages to Ms. Gould and other similarly situated individuals  
15 and/or rightful place employment;

16 F. Order "Defendant Employer" to pay Ms. Gould and other similarly  
17 situated individuals punitive damages in an amount to be determined at trial;

18 G. Award the Commission its costs in this action; and

19 H. Grant such further relief as the Court deems necessary and proper in  
20 the public interest.

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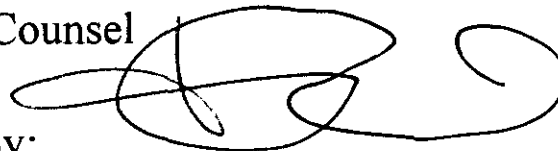
JURY DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Respectfully Submitted By:

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1801 "L" Street, N.W.  
Washington, D.C. 20507

Eric S. Dreiband, General Counsel  
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June 30, 2004

By:  
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Los Angeles, California 90012  
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**DECLARATION OF MAILING**

I am, and was at the time the herein mentioned mailing and facsimile transmission took place, a citizen of the United States, over the age of eighteen (18) years and not a party to the above-entitled cause.

I am employed in the Legal Unit of the Los Angeles District Office of the United States Equal Employment Opportunity Commission.

My business address is Equal Employment Opportunity Commission, Los Angeles District Office, 255 E. Temple Street, Fourth Floor, Los Angeles, CA 90012.


On the date that this declaration was executed, as shown below, I served the foregoing **FIRST AMENDED COMPLAINT - CIVIL RIGHTS - SEX HARASSMENT and RETALIATION** by facsimile and by regular mail at Los Angeles, County of Los Angeles, State of California to:

Ray Artiano  
STUTZ, ARTIANO, SHINOFF & HOLTZ  
401 West "A" Street, 15<sup>th</sup> Floor  
San Diego, CA 92101-7906

Telephone: (619) 232-3122  
Facsimile: (619) 232-3264

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2004 at Los Angeles, California.

  
\_\_\_\_\_  
Brian A. Woodard