

United States Equal Employment Opportunity Commission  
Philadelphia District Office  
21 S. 5<sup>th</sup> Street, Suite 400  
Philadelphia, PA 19106  
Iris Santiago-Flores, Trial Attorney  
IASF-9222

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>EQUAL EMPLOYMENT OPPORTUNITY</b>	)	
<b>COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO.</b>
<b>v.</b>	)	
	)	
<b>RED ROBIN DINER,</b>	)	<b>COMPLAINT</b>
	)	<b><u>JURY TRIAL DEMAND</u></b>
	)	
<b>Defendant.</b>	)	
_____	)	

**NATURE OF THE ACTION**

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices that discriminate on the basis of sex and to provide appropriate relief to Bonnie Hopwood, Catherine Mileski, and a class of female employees who were adversely affected by such practices. The Commission alleges that Ms. Hopwood, Ms. Mileski, as well as other female employees were subjected to sexual harassment through regular, sexually explicit, insulting, and derogatory comments and conduct which created a sexually hostile and offensive work environment for them as females. The Commission alleges that although complaints about such offensive conduct were brought to Defendant's attention, no remedial action was undertaken to stop the sexual harassment. As a result of the sexually hostile work environment, and Defendant's lack of response, Ms. Hopwood was constructively discharged. Consequently, Ms. Hopwood, Ms. Mileski, and a class of female employees suffered severe

emotional distress and damages.

### JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to § 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)" ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

### PARTIES

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

4. At all relevant times, Defendant Employer, Red Robin Diner, has continuously been and is now doing business in Philadelphia, Pennsylvania and has continuously had at least fifteen (15) employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

### STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, the Charging Parties, Ms.

Hopwood and Ms. Mileski, filed charges of employment discrimination with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least April, 2000, Defendant Employer has engaged in unlawful employment practices at its Philadelphia, Pennsylvania facility in violation of Section 703(a) (1) of Title VII, 42 U.S.C. § 2000e-2(a) (1), by subjecting the Charging Parties, Ms. Hopwood and Ms. Mileski, as well as a class of female employees to a sexually hostile and abusive work environment. Specifically, Defendant's Owner and Defendant's Manager/Cook engaged in a continuing pattern of sexual harassment against a class of female employees which was widespread, unwelcome, and uninvited. The offensive conduct includes, but is not limited to (1) inappropriate and unwelcome touching; (2) inappropriate sexually-oriented remarks, name-calling and/or jokes; and (3) demeaning and hostile conduct toward the female employees, as follows:

(A) Bonnie Hopwood was hired as a Waitress by Defendant on or about April 5, 2000. On or about October 21, 2000, CP Hopwood voluntarily left Defendant's employment. In November 2000, Ms. Hopwood was re-employed by Defendant and worked the same shift on Fridays and Saturdays. She remained employed until May 26, 2001, when she was constructively discharged.

(B) Catherine Mileski was hired as a Waitress by Defendant on or about April 19, 2000 and remained employed with Defendant until May 26, 2001.

(C) Defendant's dress code for waitresses mandated that they wear a black skirt, a white blouse, a reversible red/black vest, a red tie, and black stockings. On a consistent basis, when the waitresses reported to work wearing pants instead of the required uniform skirt, Defendant's Owner would grab or pat the waitresses on the buttocks or hips and ask, "where is your skirt?."

Defendant's Owner would demand that Waitresses wear their skirts so they could "show their legs" to get "more tips." Regularly, Defendant's Owner would tell the waitresses "Don't you know you're supposed to wear a skirt? I need to see your legs."

(D) On one occasion, while Ms. Hopwood was walking towards the dining room to hang up her coat, Defendant's Owner grabbed her by the shoulder, pushed her against the wall, and forced a kiss on her lips. Ms. Hopwood objected and quickly pushed him away, yelling "what are you doing?".... "don't touch me." In response, Defendant's Owner stated, "I don't like you anyway. I like your sister better."

(E) On another occasion, Defendant's Owner intentionally rubbed against Ms. Hopwood's frontal area while he passed by her. While passing her, he placed his hands on her hips and said, "This will probably fit." Defendant's Owner also grabbed Ms. Mileski's hand, pulled her close to him, and forced a kiss on her lips. On another occasion, Defendant's Owner approached Ms. Mileski from behind, lifted her skirt and placed his hands on her thighs. On another occasion, Defendant's Owner grabbed Ms. Mileski's left breast without any warning.

(F) A class of female employees have been similarly subjected to inappropriate and unwelcome touching, grabbing, and/or kissing by Defendant Owner on a regular basis.

(G) In addition to the above, Ms. Hopwood, Ms. Mileski, and a class of female employees have been subjected to verbal abuse, hostility, and derogatory comments by Defendant because of their sex, female. Defendant's Manager/ Cook regularly cursed at and humiliated female employees. On a regular basis, Defendant's Manager/Cook would whistle, hiss, and/or make "farm animal" noises to get the attention of the waitresses, and called them "stupid," "worthless," "mules," "bitches," and "assholes." In addition, Defendant's Manager/Cook persistently told sexually-

oriented jokes in the presence of female employees and encouraged the male staff to treat the female employees in a degrading and hostile manner.

(H) Complaints about this offensive conduct were brought to the attention of Defendant's Management. However, no corrective action was ever attempted, and Defendant's managers responded with disbelief, inaction, or acts of reprisal.

(I) Defendant has no sexual harassment policy or complaint procedure.

8. As a direct consequence of the sexually hostile work environment, and Defendant's failure to take any corrective action, Ms. Hopwood was constructively discharged on May 26, 2001.

9. The effect of the practices complained of in paragraphs 7 and 8 above has been to deprive Ms. Hopwood, Ms. Mileski, and a class of female employees of equal employment opportunities and otherwise adversely affect their status as employees because of their sex (female).

12. The acts complained of in paragraphs 7 and 8 above were intentional.

13. The unlawful employment practices complained of in paragraphs 7 and 8 above were done with malice or with reckless indifference to the federally protected rights of the Charging Parties, and the class of female employees.

#### PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in sexual harassment, constructive discharge, and any other employment practice which discriminates on the basis of sex.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for women, which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to make whole Ms. Hopwood, Ms. Mileski, and a class of affected female employees by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful-place reinstatement.

D. Order Defendant Employer to make whole Ms. Hopwood, Ms. Mileski, and a class of affected female employees by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 7 and 8 above, including but not limited to out-of-pocket losses in amounts to be determined at trial.

E. Order Defendant Employer to make whole Ms. Hopwood, Ms. Mileski, and a class of affected female employees by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 7 and 8 above, including pain and suffering, humiliation, embarrassment, and loss of life's pleasures, in amounts to be determined at trial.

F. Order Defendant Employer to pay Ms. Hopwood, Ms. Mileski, and a class of female employees, punitive damages for its malicious and reckless conduct described in paragraphs 7 and 8 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

