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DISTRICT COURT

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DISTRICT OF UTAH

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Equal Employment Opportunity Commission,)	
)	
Plaintiff,)	COMPLAINT AND JURY TRIAL DEMAND
vs.)	
)	
Body Firm Aerobics, Inc., d/b/a Gold's Gym,)	Judge J. Thomas Greene
)	DECK TYPE: Civil
)	DATE STAMP: 09/29/2003 @ 10:50:00
Defendant.)	CASE NUMBER: 2:03CV00846 JTG
)	

NATURE OF 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 on the bases of sex, pregnancy and retaliation and to provide appropriate relief to Andrea Liender and a class of females who were adversely affected by such practices. Ms. Liender and other female employees were discriminated against by Defendant when they were sexually harassed and subjected to gender-based harassment. In addition, Ms. Liender was retaliated against because she

opposed the harassment and as a result, the conditions of her employment were made so intolerable that she was forced to resign. The Commission also alleges that Defendant discriminated against another female employee because of her sex and pregnancy by demoting her and subjecting her to adverse terms and conditions of employment because of her pregnancy. As a result of the discrimination, the conditions of employment were made so intolerable, this employee was forced to resign.

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 Sections 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 District of Utah, Central Division.

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 Sections 706(f)(1) and (3) and 707 of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and 2000e-6.

4. At all relevant times, defendant Body Firm Aerobics, Inc., d/b/a Gold's Gym (Defendant or Gold's Gym) has continuously been a Utah corporation doing business in the State of Utah and the city of Orem and has continuously had at least 15 employees.

5. At all relevant times, Defendant 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, Andrea Liender filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least November 1999, Defendant has engaged in unlawful employment practices at its Orem, Utah facility, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), subjecting Ms. Liender and a class of female employees to a hostile work environment due to sexual harassment and gender-based harassment. The sexual and gender-based harassment included but is not limited to:

a. referring to the female employees as "little girl", "bitch" or "super hot

chicks”

- b. making provocative comments about female employees' clothing,
- c. telling female employees they should wear more revealing clothing to make more sales (“show more cleavage”) and
- d. making sexual comments about female employees' and customers' bodies (“if she'd diet, she'd have a really nice ass”, “hot babes” and references to “boobs”and “tits”).

8. Since at least February 2001, Defendant has engaged in unlawful retaliatory practices in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a). Defendant's retaliatory conduct included but was not limited to finding fault with Ms. Liender's work performance and telling other employees to stay away from her. This retaliation resulted in making the conditions of employment so intolerable that a reasonable person in Ms. Liender's place would have felt compelled to resign her employment. Ms. Liender was compelled to resign, resulting in a constructive discharge.

9. Since at least May 2001, Defendant has engaged in unlawful employment practices at its Orem, Utah facility, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), by discriminating against a female employee because of her pregnancy by demoting her, cutting her pay and hours and subjecting her to adverse terms and conditions of employment. These conditions of employment

were so intolerable that a reasonable person in that employee's position would have felt compelled to resign her employment. This employee was compelled to resign, resulting in a constructive discharge.

10. The effect of the practices complained of in paragraphs 7-9 above has been to deprive Ms. Liender and a class of females of equal employment opportunities and otherwise adversely affect their status as employees because of their sex and in retaliation for opposing practices made unlawful by Title VII.

11. The unlawful employment practices complained of in paragraphs 7-9 above were and are intentional.

12. The unlawful employment practices complained of in paragraphs 7-9 were done with malice or with reckless indifference to the federally protected rights of Ms. Liender and a class of females.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

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

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for women and those

who oppose unlawful employment discrimination, and which eradicate the effects of their past and present unlawful employment practices.

C. Order Defendant to make whole Ms. Liender and a class of females by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of their unlawful employment practices including, but not limited to, their rightful place reinstatement.

D. Order Defendant to make whole Ms. Liender and a class of females, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, in amounts to be determined at trial.

E. Order Defendant to make whole Ms. Liender and a class of females by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 7-9 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation, in amounts to be determined at trial.

F. Order Defendant to pay Ms. Liender and a class of females punitive damages for their malicious and/or reckless conduct, described in paragraphs 7-9 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.

JURY TRIAL DEMAND

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

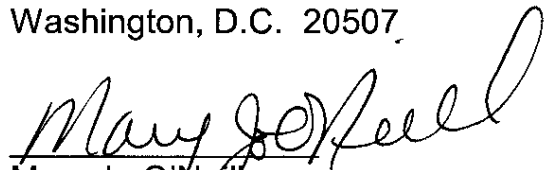
RESPECTFULLY SUBMITTED this 26th day of September, 3003.

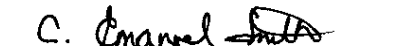
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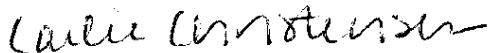
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