

Roger H. Hoole 5089
Heather E. Morrison 6945
HOOLE & KING, L.C.
4276 South Highland Drive
Salt Lake City, Utah 84124
Telephone: (801) 272-7556

FILED
U.S. DISTRICT COURT
16 APR 01 PM 4:43
DISTRICT OF UTAH
BY: *[Signature]*
DEPUTY CLERK

Attorneys for Plaintiff in Intervention, Crystle Collins

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

SBARRO'S ITALIAN EATERY and TRI-
SPUR INVESTMENTS, INC.,

Defendants.

VERIFIED COMPLAINT
IN INTERVENTION

CRYSTLE COLLINS,

Plaintiff in Intervention,

vs.

SBARRO'S ITALIAN EATERY and TRI-
SPUR INVESTMENT COMPANY, INC.,
a.k.a. TRI-SPUR INVESTMENTS, INC.,

Defendants.

Civil No. 2:00CV00774B

Judge Dee V. Benson

Plaintiff, Crystle Collins, hereby complains, alleges and demands of Defendants Sbarro's
Italian Eatery and Tri-Spur Investment Company, Inc., a.k.a. Tri-Spur Investments, Inc., as follows.

32

PARTIES

1. At all times material hereto, Crystal Collins (hereinafter "Miss Collins"), was a 16 year old female citizen of the United States of America and a resident of Salt Lake County, State of Utah.

2. Tri-Spur Investment Company, Inc., a.k.a. Tri-Spur Investments, Inc., is a corporation organized in a state other than Utah, and is authorized to and is doing business in Utah through various names, including but not limited to Sbarro's Italian Eatery. (Sbarro's Italian Eatery and Tri-Spur Investment Company, Inc., a.k.a. Tri-Spur Investments, Inc., are referred to hereinafter as "Tri-Spur".)

3. At all times material hereto, Tri-Spur was an "employer" subject to suit under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et seq.* (hereinafter "Title VII"), in that Tri-Spur was engaged in an industry affecting commerce and had 15 or more employees for each working day of 20 or more calendar weeks in the year of, or preceding, the filing of this Complaint, and had been continuously engaged in an industry affecting commerce within the meaning of Title VII.

4. At all times material hereto, Felipe, a.k.a. Felipe Sanchez, a.k.a. Felipe Lisceno (hereinafter "Mr. Sanchez"), was an employee of Tri-Spur working at one or more of its Sbarro's restaurants, including the Sbarro's restaurant where Miss Collins worked located at the Fashion Place Mall in Murray, Utah.

5. At times material hereto, Jose, a.k.a. Jose Soto, a.k.a. Jose Gonzalez (hereinafter "Mr. Soto") was a Co-Manager and Chief Trainer working in various Sbarro's restaurants, including the

restaurant located at the Fashion Place Mall where Mr. Sanchez and Miss Collins worked. At times material hereto, Mr. Soto was Mr. Sanchez's and Miss Collins' immediate supervisor with immediate or successively higher supervisory authority to make or influence employment decisions regarding Mr. Sanchez and Miss Collins, and particularly the terms and conditions of their employment, including whether to hire and fire them.

6. At times material hereto, Kelly Schaeffer (hereinafter "Mr. Schaeffer") was the Co-Manager of the Sbarro's restaurant located at the Fashion Place Mall where Mr. Sanchez and Miss Collins worked. Mr. Schaeffer was an immediate supervisor of Mr. Sanchez and Miss Collins, with immediate or successively higher supervisory authority to make or influence employment decisions regarding Mr. Sanchez and Miss Collins, and particularly the terms and conditions of Mr. Sanchez's and Miss Collins' employment, including whether to hire and fire Mr. Sanchez and Miss Collins.

7. At all times material hereto, Tonya Thompson (hereinafter "Ms. Thompson") was the Co-Manager of the Sbarro's restaurant located in the Fashion Place Mall where Mr. Sanchez and Miss Collins worked. Ms. Thompson was Mr. Sanchez's and Miss Collins' immediate supervisor with immediate or successively higher supervisory authority to make or influence employment decisions regarding Mr. Sanchez and Miss Collins, and particularly the terms and conditions of Mr. Sanchez's and Miss Collins' employment, including whether to hire and fire Mr. Sanchez and Miss Collins.

8. At all times material hereto, Mr. Sanchez, Mr. Soto, Mr. Schaeffer and Ms. Thompson were agents, employees and servants of Tri-Spur, acting within the course and scope of such agency and employment, and with the permission, consent and ratification of Tri-Spur.

JURISDICTION AND VENUE

9. Jurisdiction of the subject matter of this Action is established in this Court under Title VII, 42 U.S.C. §2000e-5(f)(3).

10. Venue for this Action is proper in this Court because a substantial part of the unlawful employment practices alleged herein were committed in Salt Lake County, Utah and within this Court's judicial district.

11. On or about January 28, 1998, Miss Collins timely filed a Charge of Discrimination with the Utah Anti-Discrimination and Labor Division and the United States Equal Employment Opportunity Commission (hereinafter "EEOC"). On April 13, 2000, the EEOC issued a For Cause Determination on the merits of Miss Collins' Charge of Discrimination. Copies of Miss Collins' Charge of Discrimination and the EEOC's For Cause Determination are respectively attached hereto as Exhibits "A" and "B", and incorporated herein by this reference.

FACTS

12. In July, 1997, Miss Collins became employed by Tri-Spur as a prep cook, server, cashier and dishwasher in its Sbarro's restaurant located at the Fashion Place Mall.

13. Shortly after Miss Collins became employed by Tri-Spur, Mr. Sanchez began to subject her to unwelcome and offensive comments of an explicit sexual nature, in both English and Spanish. For example, using English and/or Spanish, Mr. Sanchez frequently:

- a. Propositioned Miss Collins for sex;
- b. Told her the different places where he and she could "fuck", such as her car, his car or at Sbarro's, etc.;

- c. Told Miss Collins to “suck my dick” and to “suck me”;
- d. Called Miss Collins a “hoe”, a “bitch”, a “slut”, a “fucker”, a “fucking bitch”, and a “fucking slut”, etc;
- e. Told Miss Collins that he could “fuck” her “real good”;
- f. Told Miss Collins that he had dreams about them having sex;
- g. Told Miss Collins that he had “wet dreams” about her;
- h. Told Miss Collins that he wanted to rape her because she would not have sex with him;
- i. Told Miss Collins that she had nice “tits”;
- j. Told Miss Collins that she needed a “boob job” because her “boobs” were too little to satisfy him;
- k. Whispered grunting sounds of a sexual nature to Miss Collins as she worked; and
- l. Made other comments to her of an offensive sexual nature.

14. Mr. Sanchez often called Miss Collins names in Spanish, such as “puta madre”, which means “mother fucker”. He gave her the nickname “Pendeja” which means “slut” in Spanish, and as a result, some other Tri-Spur employees also called her that. Miss Collins, who speaks Spanish like many other Tri-Spur employees, found these comments and nicknames offensive, humiliating and embarrassing.

15. Mr. Sanchez made Miss Collins look at 2 photographs of a naked girl lying in sexual positions. Mr. Sanchez bragged to Miss Collins that he had “fucked her” in Mexico. Later, he told

Miss Collins that although the girl in the pictures had not wanted to have sex with him, he had forced her to and that he wished she had been Miss Collins instead.

16. Although Miss Collins did not know if Mr. Sanchez had actually raped the girl, his claims frightened and intimidated her.

17. Mr. Sanchez's also engaged in sexually explicit conduct which involved Miss Collins physically. For example, Mr. Sanchez:

- a. Touched and fondled Miss Collins' breasts;
- b. Rubbed his crotch against Miss Collins;
- c. Rubbed his hands and other parts of his body against Miss Collins' crotch;
- d. Grabbed Miss Collins' buttocks as she worked in the front of the restaurant;
- e. Licked Miss Collins' face and neck;
- f. Stuck his tongue in Miss Collins' ear;
- g. Kissed Miss Collins;
- h. Tried to hug Miss Collins;
- i. Snapped towels at Miss Collins' buttocks; and
- j. Engaged in other offensive sexually explicit physical conduct.

18. On one occasion, Mr. Sanchez pinched Miss Collins' arm hard enough that it started to bleed.

19. Another time Mr. Sanchez threw water on her blouse, apparently so that her wet (and therefore somewhat transparent) white blouse would stick to her breasts.

20. Miss Collins considered Mr. Sanchez's comments and conduct to be highly offensive and derogatory, and objected verbally and/or physically to him when he harassed her.

21. Tri-Spur knew or should have known of Mr. Sanchez's practice of sexually harassing other female employees in the workplace before and while he perpetrated his harassment on Miss Collins.

22. Miss Collins, who was 16 years old and employed for the first time, received no training from Tri-Spur relating to sexual harassment and no instruction regarding its sexual harassment policy. In fact, when she was hired, Miss Collins was not even afforded a reasonable opportunity to read its policy, and was never provided a copy of it. Moreover, during Miss Collins' employment, Tri-Spur never even posted any kind of a notice to employees in the restaurant in which she worked, advising them what sexual harassment is, that sexual harassment is against the law and what they should do if they were victims of it or aware of it.

23. Even if Miss Collins had received training and instruction on Tri-Spur's sexual harassment policy, it would have been futile for her to complain because Tri-Spur had no serious intention of preventing and/or correcting sexual harassment in its workplace. As alleged below, Tri-Spur's response to complaints of sexual harassment was to fire the victims.

24. Accordingly, no Tri-Spur employee, including Mr. Sanchez, and its managerial employees, were, to Miss Collins' knowledge, afforded any effective sexual harassment training during their employment which could have prevented improper conduct and enabled managers to promptly and effectively respond to sexual harassment if it did occur.

25. It was within this absence of effective training and instruction that Ms. Thompson, one of Miss Collins' managers, witnessed Mr. Sanchez subjecting Miss Collins to obviously unwelcome and offensive comments and conduct of a sexual nature. For example, on at least one occasion, Ms. Thompson overheard Mr. Sanchez say "ponocha", which she understood meant

“vagina” in Spanish, to Miss Collins. On another occasion, Ms. Thompson saw Mr. Sanchez grab Miss Collins’ buttocks.

26. Although Ms. Thompson verbally reprimanded Mr. Sanchez for the first incident, and in response to the second incident told him “Hey—leave my girls alone,” she failed to prevent him from continuing to engage in further inappropriate verbal and physical conduct directed towards Miss Collins.

27. Other than as indicated in paragraph 26, Tri-Spur made no further effort to discipline Mr. Sanchez or prevent him from engaging in his frequent barrage of unwelcomed and offensive sexually explicit conduct and comments.

28. Although Miss Collins knew of no effective process at Tri-Spur for stopping Mr. Sanchez’s unwelcome and offensive sexual comments and conduct, in mid-August, she complained to Mr. Soto, one of Tri-Spur’s Co-Managers and Trainers, while he was at the Sbarro’s restaurant where Miss Collins worked. During her conversation with Mr. Soto, Miss Collins complained to him about Mr. Sanchez’s sexually offensive physical and verbal conduct.

29. In response, Mr. Soto seemed indifferent to Miss Collins’ complaints, but did tell her that he would talk to Mr. Sanchez.

30. Although Miss Collins does not know whether Mr. Soto ever confronted Mr. Sanchez about her complaints, Mr. Sanchez’s behavior was somewhat improved for two or three days afterwards.

31. However, despite Ms. Thompson’s knowledge that Miss Collins was being sexually harassed by Mr. Sanchez and Miss Collins’ complaints to Mr. Soto, and despite the company’s knowledge that Mr. Sanchez was sexually harassing Miss Collins and other female employees, Tri-

Spur failed to promptly and effectively respond to and stop Mr. Sanchez's unwelcomed and offensive sexual comments and conduct.

32. Moreover, despite Tri-Spur's knowledge of Mr. Sanchez's on-going harassment, it allowed him to remain employed as Miss Collins' co-worker.

33. Subsequent to Miss Collins' complaints, Mr. Sanchez, while working with her, followed Miss Collins into a walk-in refrigerator, backed her into a corner and began to kiss her and lick her face; he also tried to stick his tongue in her mouth and ear. She tried to push him away, but Mr. Sanchez said, "Come on—I'm fucking horny" and "Let's fuck," and began to rub his erect penis against her crotch. Miss Collins began crying and continued to try to push him away. Mr. Sanchez tried to pick her up and she kicked him. When a co-worker opened the door to the walk-in refrigerator, Mr. Sanchez released Miss Collins and walked out. The co-worker asked Miss Collins if she was okay and then left. She remained in the refrigerator until she could stop crying. This encounter left her shaking for hours, extremely embarrassed and terrified of Mr. Sanchez.

34. Later, on another occasion, after her shift was over and the mall had closed for the night, Mr. Sanchez followed Miss Collins to her car. Although he did not try to touch her or speak to her, the fact that he followed her to her car was extremely frightening to Miss Collins.

35. Another incident occurred days later while Miss Collins was washing dishes in the back room at Sbarro's. Mr. Sanchez brought her a stack of dishes to wash, and while she had her back to him, he grabbed her by her ponytail and turned her head around. He put his hands around her neck, and she believed that he would choke her if she tried to scream. Then, he kissed and licked her face, and tried to put his tongue down her throat. This time, Miss Collins was too afraid to push

him away or scream because she thought he would choke her. Mr. Sanchez said, "Look at me bitch. You're a slut. You better watch out or I'll rape you!" He then released her and walked away, leaving Miss Collins terrified.

36. Although Miss Collins continued to complain to Mr. Sanchez about his offensive, unwelcome and sexually derogatory conduct, her complaints to him were futile. Moreover, as Mr. Sanchez continued to engage in further sexually offensive and unwelcomed conduct, it began to become apparent to Miss Collins that Tri-Spur was disinterested in and willing to overlook his actions.

37. Having never received any kind of sexual harassment training, having received virtually no help from Tri-Spur in response to her complaints, and being fearful that she would lose her first job, Miss Collins did not know what to do and was so embarrassed and emotionally paralyzed that she was unable even to tell her parents what had been happening.

38. Finally, during approximately the third week of August, 1997, Miss Collins was by herself in the back room cleaning up after Sbarro's had closed for the night. After the other employees, including Mr. Sanchez, had left, Mr. Sanchez returned to Sbarro's and went into the back of the restaurant where Miss Collins was working, claiming that he had not clocked out and had left his keys. He asked her if she needed help cleaning up. Miss Collins was frightened to be alone with him and told him that she didn't need any help and that she just wanted to hurry up and go home.

39. Without warning, Mr. Sanchez grabbed Miss Collins and again kissed her, licked her face and stuck his tongue in her mouth. He also began to rub his crotch against her. She tried to push him away but he pushed her back, hard against a desk. As a result, she hit her back and fell to

the ground. He was immediately on top of her, saying in Spanish, "I'm going to fuck you, you little bitch—I'm finally going to rape you." He also called her a slut and threatened to kill her if she said anything about what he was doing to her.

40. By this time, Mr. Sanchez had a hold of her bangs, and was pulling her hair hard, throwing her head from side to side and banging it against the floor. Mr. Sanchez opened her shirt, ripping off a button, pulled down her bra and began grabbing her breasts. His weight made it difficult for her to breath and she thought she was going to pass out. His pants were open, and she could feel his erect penis through her clothes and was terrified.

41. Suddenly, there was a loud sound from out in front of the restaurant, and Mr. Sanchez got up and left quickly. Miss Collins laid there for what seemed like hours, crying and shaking. Humiliated and terrified, she left Sbarro's, found someone whom she thought was a mall security guard and asked him to walk her to her car. He told her that he could not leave the mall, but agreed to watch her from inside while she walked to her car. She drove home in tears, not knowing what to do or think. The next morning, still shaken from the attack, she found dried blood on the hairline of her forehead.

42. Mr. Sanchez's assault and attempted rape of Miss Collins left her physically battered and emotionally devastated. It was particularly terrifying and paralyzing to her because Mr. Sanchez had bragged about raping the girl in Mexico.

43. Miss Collins was not scheduled to work the day after this assault. However, when she returned to work a day or so later, Mr. Sanchez told her, "Remember what I said to you." Miss

Collins understood that he was referring to his threat to kill her if she told anyone about what had happened. He also stated to her, "Next time I will rape you."

44. Within a few days of the attempted rape, Pam Bowen, one of Tri-Spur's owners, met with Ms. Thompson at the Sbarro's where Miss Collins worked. Cynthia Frampton, a Tri-Spur employee from another Sbarro's location, arrived apparently in an effort to talk with Mrs. Bowen about Mr. Sanchez's sexual harassment of her at the location where she worked. Mrs. Frampton, Mrs. Bowen and Ms. Thompson met together out in front of the restaurant. After the meeting, Mrs. Bowen and Ms. Thompson came into the back where Miss Collins was working. Mrs. Bowen appeared very angry and, in Miss Collins's presence, told Ms. Thompson that "Cindy doesn't know what she is talking about "; "She doesn't know what harassment is "; and "Cindy is just that kind of girl." These comments, and Mrs. Bowen's reaction to the complaints about Mr. Sanchez's sexual harassment, upset Miss Collins a great deal. After her shift, Miss Collins went home in tears.

45. When Miss Collins arrived home crying, her mother demanded to know what was going on at work. Miss Collins then told her mother about the attempted rape and the frequent barrage of sexual comments and conduct to which Mr. Sanchez continued to subject her. Mrs. Collins insisted on meeting immediately with Ms. Thompson, so she, together with Mr. Collins and their daughter, Miss Collins, returned to Tri-Spur and confronted Ms. Thompson with what was happening.

46. In response, Ms. Thompson told Miss Collins to write out a formal complaint, and that she would contact Tri-Spur's owners, John and Pam Bowen, to tell them about the on-going sexual harassment involving Miss Collins.

47. Ms. Thompson also reported Miss Collins' complaints to John and Pam Bowen. In response, Mrs. Bowen told Ms. Thompson that "Crystle hasn't worked here long enough and is too young to know what harassment is." She did not question Ms. Thompson about what had happened, but did say, in effect, "I know what you do in these situations—You fire the complainer." She then instructed Ms. Thompson to fire Miss Collins. She also stated that they would transfer Mr. Sanchez to another Tri-Spur location. Ms. Thompson protested that firing Miss Collins was an inappropriate way to respond to her complaints of sexual harassment and she refused to fire Miss Collins.

48. The next day, Miss Collins attempted to give Ms. Thompson her written summary of what had been going on with Mr. Sanchez, but Ms. Thompson told her that she could not accept it.

49. Miss Collins tried to work for a few hours that day, but was too emotionally upset to do so. Ms. Thompson told her that Tri-Spur would keep her on the schedule, but that she should go home early. Miss Collins returned to the restaurant and was able to work the next day.

50. However, on the following day, when the next week's work schedule was posted, Miss Collins found that she was not on it. Ms. Thompson told her that she could come in to work when she was able. Miss Collins told her that she thought she was up to working and asked her to put her back on the schedule. Ms. Thompson assured her that she would.

51. On approximately August 30, 1997, Miss Collins came into the restaurant to see when Ms. Thompson had her scheduled for the following week, but Ms. Thompson was not there. However, Kelly Schaeffer, Tri-Spur's Co-Manager, told her that her services would no longer be required and terminated her employment without further explanation. Shortly thereafter, Tri-Spur also fired Ms. Thompson and Ms. Frampton.

52. Upon information and belief, Mr. Sanchez, Mr. Soto and Mr. Schaeffer remain employed by Tri-Spur.

FIRST CAUSE OF ACTION
(Violation of Title VII—Sexual Harassment)

53. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 52 of this Complaint.

54. The sexually explicit conduct and comments of Mr. Sanchez, as alleged herein, were unwelcome, pervasive, frequent, humiliating, severe and changed the terms and conditions of her employment, and were both subjectively offensive to Miss Collins and objectively offensive to the average reasonable person.

55. Tri-Spur knew or should have known of Mr. Sanchez's sexual harassment of Miss Collins and other employees, and despite that knowledge, failed to take prompt and effective remedial action.

56. Tri-Spur also failed to effectively train Mr. Sanchez to refrain from sexual harassment, failed to implement and enforce a fair and effective sexual harassment policy and complaint procedure, and failed to act reasonably to prevent and promptly correct the sexual harassment of Miss Collins.

57. Not only did Tri-Spur fail to exercise reasonable care to prevent and promptly correct Mr. Sanchez's sexually harassing behavior, it intentionally condoned, furthered and ratified his conduct as its own, as alleged more fully herein.

58. As a direct and proximate result of the aforesaid violations of her rights under Title VII, Miss Collins was deprived of a work place free from a sexually hostile environment, causing

her to sustain a loss of income and benefits, incur expenses and suffer emotional, mental and physical injury, for which Tri-Spur is liable.

WHEREFORE, Plaintiff seeks damages as hereinafter set forth.

**SECOND CAUSE OF ACTION
(Violation of Title VII–Retaliation)**

59. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 58 of this Complaint.

60. Miss Collins' objections to being subjected to sexual harassment and her complaints to Tri-Spur's managers, as alleged herein, constituted protected opposition to unlawful discrimination and resulted in retaliatory discrimination against her by Tri-Spur.

61. As the result of Tri-Spur's retaliation, Miss Collins suffered adverse employment action subsequent to and contemporaneous with engaging in protected activity.

62. As a direct and proximate result of the violations of her rights under Title VII, Miss Collins was subjected to unlawful retaliatory discrimination, the termination of her employment, a loss of income and benefits, and emotional, mental and physical injury, for which Tri-Spur is liable.

WHEREFORE, Plaintiff seeks damages as hereinafter set forth.

DECLARATORY AND INJUNCTIVE RELIEF

63. If this Court finds that Tri-Spur has intentionally engaged in unlawful employment practices as alleged herein, Miss Collins is entitled to declaratory relief or an order of the Court enjoining Tri-Spur from engaging in unlawful employment practices, together with such affirmative relief as may be appropriate.

PUNITIVE DAMAGES

Tri-Spur's violations of Title VII were with malice or with reckless indifference to the federally protected rights of Miss Collins for which she is entitled to punitive damages pursuant to 42 U.S.C. §1981a(b)(1).

REQUEST FOR ATTORNEY'S FEES AND COSTS

Miss Collins has had to retain counsel and therefore is entitled to reasonable attorney's fees and costs pursuant to 42 U.S.C. §2000e-5(k).

DEMAND FOR A JURY TRIAL

Miss Collins is entitled to, and hereby demands, a jury pursuant to 42 U.S.C. §1981a *et seq.*

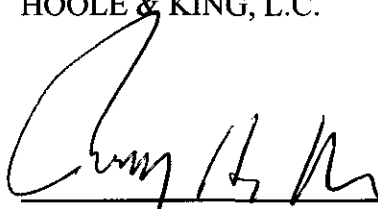
PRAYER FOR RELIEF

WHEREFORE, Miss Collins prays for judgment against Tri-Spur as follows:

1. For actual, special, compensatory and punitive damages against in amounts to be awarded at trial, together with declaratory and injunctive relief;
2. For Plaintiff's costs in this Action, including reasonable attorneys' fees; and
3. For prejudgment interest on items of actual and special damage, together with such other and further relief as the Court deems just.

DATED this 0th day of April, 2001.

HOOLE & KING, L.C.



Roger H. Hoole
Heather B. Morrison
Attorneys for Plaintiff in Intervention, Crystle Collins

VERIFICATION

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

Crystle Collins, having been duly sworn upon oath, deposes and states as follows:

1. I am the Plaintiff in Intervention in this Action.

2. I have read this Verified Complaint in Intervention.

3. As to the paragraphs containing factual information concerning myself, I have first-hand information regarding the same and verify that they are correct to the best of my knowledge and belief.

4. As to the paragraphs bearing on matters as to which I do not have first-hand information, legal theories, or legal claims, I verify only that this is my Verified Complaint in Intervention.

Crystle Collins
Plaintiff in Intervention

SUBSCRIBED AND SWORN before me this ____ day of April, 2001.

Notary Public

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.
