

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
and)
)
BROOKES A. STANLEY,)
)
Plaintiff-In-Intervention,)
)
v.)
)
TACO BELL OF AMERICA, INC.,)
f/k/a TACO BELL CORPORATION,)
d/b/a TACO BELL)
)
Defendant.)
_____)

Case No.:
8:06-cv-01792-JSM-MAP

SECOND AMENDED COMPLAINT OF INTERVENTION AND DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff BROOKES A. STANLEY (hereinafter “Stanley” or “Plaintiff”) by and through his undersigned counsel, and sues Defendant TACO BELL OF AMERICA INC., f/k/a TACO BELL CORPORATION, d/b/a TACO BELL (hereinafter “Taco Bell” or “Defendant”), alleging unlawful employment practices and demands a trial by jury of all issues so triable. In support of his claims for relief, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This is an action for damages brought pursuant to 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”), the Florida Civil Rights Act, Fla. Stat. §760.01, *et seq.* (hereinafter “FCRA”), and the Florida Whistleblower Act, Fla. Stat. §448.102, *et seq.* (hereinafter “Whistleblower Act”).

2. Plaintiff invokes the federal question and civil rights jurisdiction of this Court under 28 U.S.C. §§1331 and 1343(a)(4).
3. Plaintiff invokes this Court’s supplemental and pendent jurisdiction over Plaintiff’s FCRA and Whistleblower Act claims against Defendant, which arise out of the same nucleus of operative facts as the federal claims alleged herein.
4. Venue for this action lies in the Middle District of Florida, Tampa Division, pursuant to Title VII and 28 U.S.C. §1391.

THE PARTIES

5. Plaintiff Stanley is a male resident of Spring Hill, Pasco County, Florida.
6. Prior to July 20, 2006, Taco Bell Corporation was continuously 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). Subsequent to July 20, 2006 Taco Bell Corporation became Taco Bell of America Inc., and is 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). Taco Bell of America Inc., is doing business within the State of Florida as Taco Bell.
7. At all relevant times, Defendant Taco Bell, has continuously been a foreign corporation doing business in the State of Florida and the cities of Lakeland and Mulberry, and has continuously had at least 15 employees.

8. Defendant Taco Bell is an employer within the meaning of Title VII, the FCRA and the Whistleblower Act.

PROCEDURAL BACKGROUND

9. Plaintiff Stanley filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (hereinafter "EEOC") and the Florida Commission of Human Relations (hereinafter "FCHR") on or about January 6, 2005.
10. On or about June 26, 2006, the EEOC issued a Letter of Determination finding reasonable cause to believe that a violation of Title VII had occurred.
11. On or about September 29, 2006, the EEOC filed suit against Defendant Taco Bell alleging unlawful employment practices.
12. Plaintiff has complied with all administrative prerequisites and conditions precedent prior to the institution of this lawsuit.

FACTS

13. In or about March of 2004, Plaintiff was employed by Defendant as an hourly non-managerial employee.
14. During his employment with Defendant, Plaintiff was subjected to ongoing, unwelcome and sexually offensive conduct by his female supervisor.
15. The conduct was sufficiently severe and pervasive to create an intimidating and hostile work environment for Plaintiff.
16. The sexual harassment to which Plaintiff was subjected by his supervisor included rubbing up against Plaintiff; telling Plaintiff that she wanted to "blow" him; rubbing Plaintiff's shoulders; leering at Plaintiff in a sexual manner; telling

Plaintiff that she wanted to show him her “fat pussy;” and expressing to co-workers that she wanted to have Plaintiff’s baby.

17. Plaintiff made repeated complaints to members of management regarding the sexual harassment. However, management failed to take Plaintiff’s complaints seriously and even made jokes about Plaintiff’s complaints.
18. Plaintiff was retaliated against based on his complaints of sexual harassment.
19. Plaintiff’s work was scrutinized more closely following his complaints and he was verbally disciplined for complaining.
20. The sexual harassment continued despite Plaintiff’s complaints.
21. Plaintiff was forced to resign his position with Defendant Taco Bell in or about August of 2004, based on the continued sexual harassment and retaliation.

COUNT I: TITLE VII AND FCRA (DISCRIMINATION BASED ON SEX)

22. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through seventeen (17), twenty (20) and twenty-one (21) of the Complaint.
23. Defendant Taco Bell knew or should have known that Plaintiff was subjected to ongoing, unwelcome and offensive sexual conduct and failed to take prompt remedial action.
24. Defendant Taco Bell condoned, ratified, authorized and perpetuated Plaintiff’s supervisor’s ongoing, unwelcome and offensive sexual conduct by failing to take prompt remedial action.
25. Defendant Taco Bell engaged in unlawful employment practices prohibited by Title VII and the FCRA by creating, condoning and perpetuating a sexually hostile and offensive work environment for Plaintiff.

26. Defendant Taco Bell acted intentionally and with malice and reckless disregard for Plaintiff's rights under Title VII and the FCRA.

27. As a result of Defendant Taco Bell's unlawful employment practices, Plaintiff has suffered damages including, the loss of a career with Defendant, the loss of wages, benefits, and other compensation; harm to his reputation; emotional distress; and other pecuniary and non-pecuniary losses.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant Taco Bell violated the rights of Plaintiff as protected by the laws of the United States and the State of Florida; award Plaintiff back pay and the value of lost employment benefits; award Plaintiff front pay; award Plaintiff punitive damages; award Plaintiff compensatory damages for mental anguish, general emotional distress, humiliation, and the loss of reputation; award attorney fees and costs; and grant other and further relief as this Court deems appropriate and just.

COUNT II: TITLE VII AND FCRA (RETALIATION)

28. Plaintiff repeats, realleges and incorporates by reference paragraphs one (1) through twenty-one (21) of the Complaint.

29. Defendant Taco Bell acted intentionally and with malice and reckless disregard for Plaintiff's rights under Title VII and the FCRA.

30. Defendant Taco Bell engaged in unlawful employment practices prohibited by Title VII and the FCRA by intentionally and willfully taking adverse employment action against Plaintiff up to and including constructive discharge in retaliation for his complaints and/or objections to unwelcome, sexually offensive and hostile and discriminatory conduct.

31. As a result of Defendant Taco Bell's unlawful employment practices, Plaintiff has suffered damages including, the loss of a career with Defendant, the loss of wages, benefits, and other compensation; harm to his reputation; emotional distress; and other pecuniary and non-pecuniary losses.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court declare that Defendant Taco Bell violated the rights of Plaintiff as protected by the laws of the United States and the State of Florida; award Plaintiff back pay and the value of lost employment benefits; award Plaintiff front pay; award Plaintiff punitive damages; award Plaintiff compensatory damages for mental anguish, general emotional distress, humiliation, and the loss of reputation; award attorney fees and costs; and grant other and further relief as this Court deems appropriate and just.

Dated this 28th day of November 2006.

Respectfully submitted,

s/ Randall V. Shanafelt

Randall V. Shanafelt, Esquire

Florida Bar Number: 0052426

Sharon A. Wey, Esquire

Florida Bar Number: 0048010

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 28th, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to Carla Von Greiff, Esquire, Attorney for U.S. Equal Employment Opportunity Commission, Tampa Field Office, 501 East Polk Street, Room 1000, Tampa, FL 33602, carla.vongreiff@eeoc.gov; and served the foregoing by U.S. Mail on F. Robert Radel, II, Butler, Pappas, Weihmuller, Katz, Craig LLP, One Harbour Place, 777 S. Harbour Island Blvd., Suite 500, Tampa, FL 33602, counsel for Defendant.

/s/ Randall V. Shanafelt

Randall V. Shanafelt, Esquire