

COURT
NORTH DISTRICT OF TEXAS
TEXAS

FILED

APR - 8 2006

CLERK, U.S. DISTRICT COURT

By _____
Deputy

DEFENDANTS.

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5. Defendants deny that all conditions precedent to this institution of this lawsuit have been fulfilled, as alleged in paragraph III(1) of the Complaint in Intervention.

6. Paragraphs IV(A)(1) and (2) of the Complaint in Intervention incorporate other paragraphs and pleadings, and Defendants would refer Intervenors to their answers to those specific paragraphs and pleadings in response thereto.

7. Defendants admit the allegations in paragraph IV(B)(1) of the Complaint in Intervention; and deny the allegations in paragraphs IV(B)(2) through (14) of the Complaint in Intervention.

8. Defendants admit the allegations in paragraph IV(C)(1) of the Complaint in Intervention; and deny the allegations in paragraphs IV(C)(2) through (14) of the Complaint in Intervention.

9. Defendants admit the allegations in paragraph IV(D)(1) of the Complaint in Intervention; and deny the allegations in paragraphs IV(D)(2) through (15) of the Complaint in Intervention.

10. Defendants admit the allegations in paragraph IV(E)(1) of the Complaint in Intervention; and deny the allegations in paragraphs IV(E)(2) through (15) of the Complaint in Intervention.

11. Defendants deny the allegations in paragraphs V(1) through (10) of the Complaint in Intervention.

12. Defendants deny Intervenors are entitled to the damages listed by them in section VI of the Complaint in Intervention.

13. Defendants affirmatively defend on the ground that Intervenorors are estopped from making the claims they are making in this suit by their failure to use Defendants' grievance procedure.

14. Defendants affirmatively defend on the ground that Intervenorors have waived any rights they may have had to make the claims they are making in this suit by their failure to use Defendants' grievance procedure.

15. Defendants affirmatively defend on the ground that Intervenorors have contractually agreed to arbitrate any employment disputes they may have with Defendants.

16. Defendants would show that Intervenorors cannot recover upon the claims asserted in the Complaint in Intervention in that the alleged harassment identified in the Complaint did not culminate in a tangible employment action against any of the individuals identified.

17. Defendants would further show that Intervenorors cannot recover upon the claims asserted in the Complaint in Intervention in that Defendants exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and that Intervenorors unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendants or to avoid harm otherwise.

18. Defendants would further show that Intervenorors cannot recover upon the claims asserted in the Complaint in Intervention in that the conduct described was not severe and pervasive enough to create a hostile work environment under Title VII of the Civil Rights Act of 1964.

19. Defendants would further show that Intervenorors cannot recover upon the claims asserted in the Complaint in Intervention in that the Intervenorors were not subjected to unwelcome harassment of a sexual nature which was based upon sex, nor did the alleged harassment affect a term, condition or privilege of employment for any of said individuals.

20. Defendants would further show that Intervenors cannot recover upon the claims asserted in the Complaint in Intervention in that there was no retaliation, pursuant to Title VII of the Civil Rights Act of 1964, against them.

21. Defendants would further show that Intervenors cannot recover upon the claims asserted in the Complaint in Intervention in that there was no constructive discharge.

22. Defendants would further show that Intervenors cannot recover upon the claims asserted in the Complaint in Intervention in that Defendants committed no egregious act, nor did Defendants show malice or reckless indifference to the rights of Intervenors. Specifically, Defendants would show that Defendants maintained good faith efforts to comply with Title VII of the Civil Rights Act and cannot be held liable for any decisions made by employees of Defendants contrary to these good faith intentions and efforts.

23. Defendants would further show that Intervenors cannot recover upon the claims asserted in their Original Complaint in Intervention in that the Intervenors failed to timely file their Charges of Discrimination in accordance with 42 U.S.C. §2000e, *et seq.* and thus the claims asserted on behalf of these aggrieved individuals are barred.

F.R.C.P. 12(b) Defenses

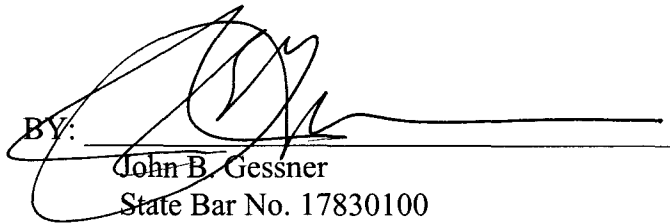
24. Defendants affirmatively defend under Fed. R. Civ. P. 12(b)(1) on the ground that this Court lacks jurisdiction over the subject matter of this suit based upon Intervenors' agreement to arbitrate employment related disputes with Defendants. True and correct copies of these agreements are attached as Exhibits "A-1" through "A-4" to the Affidavit of Terry Rabe attached hereto, and are incorporated herein by reference.

25. Defendants affirmatively defend under Fed. R. Civ. P. 12(b)(2) on the ground that this Court lacks jurisdiction over the Defendants with respect to the Intervention filed in this suit based upon the agreement between Defendants and Intervenor to arbitrate employment related disputes.

26. Defendants affirmatively defend under Fed. R. Civ. P. 12(b)(6) on the ground that Intervenor has failed to state a claim upon which this Court can grant relief, as they have contractually agreed to arbitrate employment related disputes with Defendants.

WHEREFORE, PREMISES CONSIDERED, Defendants Hooters Arlington Venture I, TWI IV, Inc., and Texas Wings, Inc. respectfully pray that this Court grant a take nothing judgment in their favor and against Intervenor; that they be granted their costs of Court; and that the Court grant them such other and further relief, both at law and in equity, as is just and proper.

Respectfully submitted,

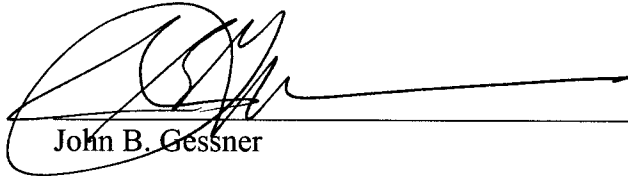
BY: 
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on the 7th day of April, 2003, a true and correct copy of the above and foregoing Defendants' First Amended Answer to Complaint in Intervention has been sent via certified mail, return receipt requested to John Schutza, attorney for Intervenor, at Kondos & Kondos, 1595 North Central Expressway, Richardson, Texas 75080; and to William C. Backhaus, Equal Employment Commission, Dallas District Office, 207 S. Houston Street, 3rd Floor, Dallas, Texas 75202.



John B. Gessner