

1 WILLIAM R. TAMAYO - #084965 (CA)  
JONATHAN T. PECK -- #12303 (VA)  
2 EVANGELINA FIERRO HERNANDEZ -- #168879 (CA)  
EQUAL EMPLOYMENT OPPORTUNITY  
3 COMMISSION  
San Francisco District Office  
4 350 The Embarcadero, Suite 500  
San Francisco, California 94105  
5 Telephone: (415) 625-5622  
Facsimile: (415) 625-5657

6 Attorneys for Plaintiff Equal Employment Opportunity Commission  
7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 **EQUAL EMPLOYMENT OPPORTUNITY** )  
**COMMISSION,** )

12 Plaintiff,

13 v.

14 **J.A. SUTHERLAND, INC., d/b/a**  
15 **TACO BELL,**

16 Defendant.  
17

Civil Action No. 3:06-cv-4705-THE

**FIRST AMENDED COMPLAINT**

Civil Rights - Employment  
Discrimination

DEMAND FOR JURY TRIAL

18 **NATURE OF THE ACTION**

19 This action is brought pursuant to Title VII of the Civil Rights Act of 1964 and  
20 Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the  
21 basis of sex and to provide appropriate relief to Charging Party Amanda Manning  
22 (“Charging Party Manning”) who was adversely affected by such practices. Defendant  
23 J.A. Sutherland Inc., d/b/a Taco Bell (“Sutherland”), subjected the Charging Party to  
24 unlawful harassment based on her sex.

25 **JURISDICTION AND VENUE**

26 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331,  
27 1337, 1343 and 1345. This action is authorized and instituted pursuant to §706(f)(1) and  
28 (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1) and

1 (3) ("Title VII") and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2 2. The employment practices alleged to be unlawful were and are now being  
3 committed within the jurisdiction of the United States District Court for the Northern  
4 District of California, San Francisco division.

5 **INTRADISTRICT ASSIGNMENT**

6 3. This action is appropriate for assignment to San Francisco because the  
7 unlawful employment practices alleged were and are being committed within Lake  
8 County, the employment records relevant to the unlawful practices are located in Lake  
9 County, and because Defendant's principal place of business is in Lake County.

10 **PARTIES**

11 4. Plaintiff, the Equal Employment Opportunity Commission  
12 ("Commission") is the agency of the United States of America charged with the  
13 administration, interpretation and enforcement of Title VII, and is expressly authorized  
14 to bring this action by §706(f)(1) and (3) of Title VII, §2000-e5(f)(1) and (3).

15 5. Defendant Sutherland is a California company, doing business in the State  
16 of California, in the County of Lake, and has continuously had at least 15 employees.

17 6. At all relevant times, Defendant Sutherland has continuously been an  
18 employer engaged in an industry affecting commerce, within the meaning of Section  
19 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000-e5(b), (g) and (h).

20 9. At all relevant times, Defendant Sutherland was the sole employer of  
21 Charging Party for purposes of Title VII liability.

22 **STATEMENT OF CLAIMS**  
23 **CLAIM FOR RELIEF**

24 **Violation of Title VII of Civil Rights Act : Sex Discrimination, Sexual Harassment  
Tangible Action, Constructive Discharge.**

25 10. More than 30 days prior to the institution fo this lawsuit, Charging Party  
26 filed her charge with Plaintiff Commission, alleging violations of Title VII by  
27 Defendant. All conditions precedent to the institution of this lawsuit have been  
28 fulfilled.

1 11. Since December, 2003, when Charging Party was hired as an Area Coach  
2 in Training/RGM Trainer, Defendant has engaged in unlawful employment practices at  
3 its Ukiah and Clearlake, California, locations in violation of Section 703(a)(1). These  
4 practices include, but not limited to, employees at the Clearlake franchise subjecting  
5 Charging Party to sexual and gender harassment creating a hostile, abusive and  
6 intimidating work environment by, among other things, calling her sexually derogatory  
7 names, sexually harassing other female employees and customers, taunting and  
8 physically intimidating Charging Party and subjecting Charging Party to pornographic  
9 pictures. Despite Charging Party's efforts to complain to management about the  
10 harassment the conduct continued and no prompt or effective action was taken to end  
11 the harassment, leading to the tangible employment action of constructive discharge in  
12 March 2004.

13 12. The effect of the actions complained of in Paragraph 11 above has been to  
14 deprive the Charging Party of equal employment opportunities and has otherwise  
15 adversely affected her status as an employee because of her sex.

16 13. The unlawful employment practices complained of in Paragraph 11 above  
17 were intentional.

18 14. The unlawful employment practices complained of in Paragraph 11 above  
19 were done with malice or with reckless indifference to the federally protected rights of  
20 the Charging Party.

21 **PRAYER FOR RELIEF**

22 Wherefore, the Commission respectfully requests that this Court:

23 A. Grant a permanent injunction enjoining Defendant, its officers, successors,  
24 assigns, and all persons acting in concert or participation with Defendant, from  
25 engaging in discrimination against its employees, including harassment based on sex.

26 B. Order Defendant to institute and carry out policies, practices, and  
27 programs which prohibit harassment based on sex and which serve to eradicate the  
28 effects of their unlawful employment practices.

1 C. Order Defendant to make whole Charging Party harmed by providing  
2 compensation for past and future pecuniary losses resulting from the unlawful  
3 employment practices complained of above, including, but not limited to, out-of-pocket  
4 expenses such as medical care necessitated by Defendant's unlawful conduct, in  
5 amounts to be determined at trial.

6 D. Order Defendant to make whole Charging Party by providing  
7 compensation for past and future nonpecuniary losses resulting from the unlawful  
8 practices complained of above, including, but not limited to, emotional pain and  
9 suffering, inconvenience, loss of enjoyment of life and humiliation, in amounts to be  
10 determined at trial.

11 E. Order Defendant to pay Charging Party by providing punitive damages  
12 for the malicious and reckless conduct described above, in amounts to be determined at  
13 trial.

14 F. Grant such further relief as the Court may deem just and proper in the  
15 public interest.

16 G. Award the Commission its costs of this action.

17 **DEMAND FOR JURY TRIAL**

18 Pursuant to the provisions of Federal Rule of Civil Procedure 38(b), Plaintiff  
19 hereby demands a jury trial.

20 Ronald S. Cooper  
21 General Counsel

22 Gwendolyn Young Reams  
23 Associate General Counsel

24 **Equal Employment Opportunity**  
25 **Commission**  
26 1801 L Street, N.W.  
27 Washington, DC 20507

28 Date: \_\_\_October 30\_\_\_\_\_, 2006

\_\_\_\_\_/s/ William R. Tamayo\_\_\_\_\_  
WILLIAM R. TAMAYO  
Regional Attorney

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Date: \_\_\_October 30\_\_\_\_\_, 2006

\_\_\_/s/ Jonathan T. Peck\_\_\_\_\_  
JONATHAN T. PECK  
Supervisory Trial Attorney

Date: \_\_\_October 30\_\_\_\_\_, 2006

\_\_\_/s/ Evangelina Fierro Hernandez\_\_\_\_\_  
EVANGELINA FIERRO HERNANDEZ  
Senior Trial Attorney

**Equal Employment Opportunity  
Commission**  
San Francisco District Office  
350 The Embarcadero, Suite 500  
San Francisco, California 94105