

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 HARMAN - CHIU, INC., d/b/a/
15 KFC/ TACO BELL and HARMAN-
MANAGEMENT CORPORATION,)

16 Defendants.)
17

Civil Action No. CV-05-3615-JF

FIRST AMENDED COMPLAINT

Civil Rights - Employment
Discrimination

DEMAND FOR JURY TRIAL

18 NATURE OF THE ACTION
19

20 This action is brought pursuant to Title VII of the Civil Rights Act of 1964 ("Title
21 VII") and Title I of the Civil Rights Act of 1991 to correct unlawful employment
22 practices on the basis of sex and retaliation and to provide appropriate relief to
23 Charging Party Sandra Vargas ("Charging Party Vargas") and other similarly situated
24 female employees who were adversely affected by such practices. Defendants Harman
25 - Chiu, Inc., d/b/a KFC/Taco Bell ("Harman - Chiu") and Harman-Management
26 Corporation (collectively "Defendant Employers") subjected the Charging Party and
27 similarly situated female employees to unlawful harassment based on their sex, created
28 a hostile work environment based on their sex, and subjected them to retaliation for
engaging in protected activity under Title VII, which caused the constructive discharge

1 of many of these females.

2 **JURISDICTION AND VENUE**

3 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331,
4 1337, 1343 and 1345. This action is authorized and instituted pursuant to §706(f)(1) and
5 (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1) and
6 (3) ("Title VII") and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

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

10 **INTRADISTRICT ASSIGNMENT**

11 3. This action is appropriate for assignment to San Jose because the unlawful
12 employment practices alleged were and are being committed within Santa Clara
13 County, the employment record relevant to the unlawful practices are located in Santa
14 Clara County, and because Defendant's principal place of business is in Santa Clara
15 County.

16 **PARTIES**

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

21 5. Defendant Harman - Chiu is a California company, doing business in the
22 State of California, in the County of San Joaquin, and has continuously had at least 15
23 employees.

24 6. At all relevant times, Defendant Harman - Chiu has continuously been an
25 employer engaged in an industry affecting commerce, within the meaning of Section
26 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000-e(b), (g) and (h).

27 7. At all relevant times, Defendant Harman - Chiu was the joint employer of
28 Charging Party and similarly situated female employees for purposes of Title VII

1 liability.

2 8. Defendant Harman-Management is a Utah company, doing business in
3 the State of California, in the County of San Joaquin, and has continuously had at least
4 15 employees.

5 9. At all relevant times, Defendant Harman-Management has continuously
6 been an employer engaged in an industry affecting commerce, within the meaning of
7 Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000-e(b), (g) and (h).

8 10. At all relevant times, Defendant Harman-Management was the joint
9 employer of Charging Party and similarly situated female employees for purposes of
10 Title VII liability.

11 **STATEMENT OF CLAIMS**

12 **CLAIM FOR RELIEF**

13
14 **Violation of Title VII of Civil Rights Act : Sex Discrimination, Sexual Harassment**

15 11. More than thirty days prior to the institution of this lawsuit, Charging
16 Party filed her charge with Plaintiff Commission alleging violations of Title VII by
17 Defendant Employers. All conditions precedent to the institution of this lawsuit have
18 been fulfilled.

19 12. Since at least August 2002, Defendant Employers have engaged in
20 unlawful practices of sex discrimination in violation §703(a) of Title VII, 42 U.S.C.
21 §2000e-2(a) by subjecting the Charging Party and similarly situated female employees
22 to a sexually hostile, abusive, intimidating and offensive work environment which
23 culminated in tangible employment actions.

24 13. The effect of the actions complained of in Paragraph 12 above has been to
25 deprive the Charging Party and similarly situated female employees of equal
26 employment opportunities and otherwise adversely affect their status as employees
27 because of their sex.

28 14. The unlawful employment practices complained of in Paragraph 12 above

1 were intentional.

2 15. The unlawful employment practices complained of in Paragraph 12 above
3 were done with malice or with reckless indifference to the federally protected rights of
4 the Charging Party and similarly situated female employees.

5 **Violation of Title VII of Civil Rights Act : Retaliation**

6 16. More than thirty days prior to the institution of this lawsuit, Charging
7 Party filed her charge with Plaintiff Commission, alleging violations of Title VII by
8 Defendant. All conditions precedent to the institution of this lawsuit have been
9 fulfilled.

10 17. Since at least September, 2002 Defendant has engaged in unlawful
11 practices of retaliation, in violation §704(a) of Title VII, 42 U.S.C. §2000e-3(a), by
12 subjecting Charging Party and similarly situated female employees to adverse actions
13 for engaging in protected activity, including reducing their work hours and ultimately
14 wrongfully discharging them.

15 18. The effect of the actions complained of in Paragraph 17 above has been to
16 deprive the Charging Party and similarly situated female employees of equal
17 employment opportunities and has otherwise adversely affected their status as
18 employees because of their protected activity.

19 19. The unlawful employment practices complained of in Paragraph 17 above
20 were intentional.

21 20. The unlawful employment practices complained of in Paragraph 17 above
22 were done with malice or with reckless indifference to the federally protected rights of
23 the Charging Party and similarly situated female employees.

24 **PRAYER FOR RELIEF**

25 Wherefore, the Commission respectfully requests that this Court:

26 A. Grant a permanent injunction enjoining Defendant Employers, its officers,
27 successors, assigns, and all persons acting in concert or participation with Defendant
28 Employers, from engaging in discrimination against its employees including

1 harassment based on sex and retaliation.

2 B. Order Defendant Employers to institute and carry out policies, practices,
3 and programs which prohibit harassment based on sex and retaliation and which
4 eradicate the effects of its unlawful employment practices.

5 C. Order Defendant Employers to make whole Charging Party and similarly
6 situated female employees by providing appropriate back pay and benefits with
7 prejudgment interest, and other affirmative relief necessary to eradicate the effects of its
8 unlawful employment practices, including but not limited to reinstatement and/or
9 front pay and other appropriate relief to be determined at trial.

10 D. Order Defendant Employers to make whole Charging Party and similarly
11 situated female employees harmed by providing compensation for past and future
12 pecuniary losses resulting from the unlawful employment practices complained of
13 above, including but not limited to such out-of-pocket expenses as medical care
14 necessitated by Defendant's unlawful conduct, in amounts to be determined at trial.

15 E. Order Defendant Employers to make whole Charging Party and similarly
16 situated female employees harmed by providing compensation for past and future
17 nonpecuniary losses resulting from the unlawful practices complained of above
18 including, but not limited to emotional pain and suffering, inconvenience, loss of
19 enjoyment of life and humiliation, in amounts to be determined at trial.

20 F. Order Defendant Employers to pay Charging Party and similarly situated
21 female employees harmed by providing punitive damages for the malicious and
22 reckless conduct described above, in amounts to be determined at trial.

23 G. Grant such further relief as the Court may deem just and proper in the
24 public interest.

25 H. Award the Commission its costs of this action.

26 **DEMAND FOR JURY TRIAL**

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

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

James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel

**Equal Employment Opportunity
Commission**
1801 L Street, N.W.
Washington, DC 20507

Date: February 18, 2006

_____/s/ William R. Tamayo_____
WILLIAM R. TAMAYO
Regional Attorney

Date: February 18, 2006

_____/s/ Jonathan T. Peck_____
JONATHAN T. PECK
Supervisory Trial Attorney

Date: February 18, 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