

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

PAND ENTERPRISES, INC.,)
d/b/a McDONALD'S RESTAURANT,)

Defendant.)

CLERK-ALBUQUERQUE

No. CIV

CIV. - 05 - 204

DJS RLP

**COMPLAINT
JURY TRIAL DEMAND**

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981 against Pand Enterprises, Inc. d/b/a McDonald's Restaurant ("Defendant" or "McDonald's") to correct unlawful employment practices on the bases of sexual harassment and retaliation and to provide appropriate relief to Erick Herrera and Gerardo Reyes and class of males, including Edgar Hernandez, who were adversely affected by such practices. The Commission alleges Erick Herrera, Gerardo Reyes, Edgar Hernandez and a class of similarly situated male employees were subjected to sexual harassment by a male manager at McDonald's. The Commission further alleges that after Gerardo Reyes reported the harassment to McDonald's management officials, he was retaliated against for making the complaint.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343

and 1345. This action is authorized and instituted pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3); and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Mexico.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. Defendant Pand Enterprises, Inc., d/b/a McDonald's Restaurant (the "Employer"), a New Mexico corporation, has continuously been doing business in the State of New Mexico, and the City of Albuquerque, and has at all relevant times had at least fifteen employees.

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

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Erick Herrera and Gerardo Reyes (the Charging Parties) each filed a charge of discrimination with the Commission alleging that McDonald's violated Title VII. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Charging Party Erick Herrera began working as a crew member at the McDonald's restaurant located at 925 San Pedro Drive, N.E., in Albuquerque, New Mexico, in July, 2003, when he was 15 years old.

8. Charging Party Gerardo Reyes began working as a crew member at the McDonald's restaurant located 925 San Pedro Drive, N.E., in Albuquerque, New Mexico, in October, 2003, when he was 17 years old.

9. Class Member Edgar Hernandez began working as a crew member at the McDonald's restaurant located at 925 San Pedro Drive, N.E., in Albuquerque, New Mexico, in November, 2003 when he was 17 years old.

10. Since approximately April, 2003, Defendant McDonald's has engaged in unlawful employment practices at its Albuquerque, New Mexico restaurant in violation of Section 703 (a) of Title VII, 42 U.S.C. § 2000e-2(a), including subjecting Erick Herrera and Gerardo Reyes and a class of male employees, including Edgar Hernandez, to a hostile work environment due to sexual harassment!

11. The sexual harassment to which Defendant McDonald's subjected Erick Herrera and Gerardo Reyes and a class of male employees, including Edgar Hernandez, includes, but is not limited to:

- A) Unwelcome and inappropriate physical contact, including touching the young employees on their face, back, stomach, hands, and groin area;
- B) Unwelcome and inappropriate remarks of a sexual nature, that included the manager offering the young male employees money for oral sex, asking

young employees to expose their genitals and asking young employees about their genitals.

12. Since at least March, 2004, Defendant McDonald's has engaged in unlawful retaliatory conduct practices in violation of Section 704(a) and Title VII, 42 U.S.C. § 2000e-3(a) when it reduced Gerardo Reyes' work hours after he reported the unlawful sexual harassment by his supervisor to management officials.

13. The effect of the practices complained of in paragraphs 10 through 12 above has been to deprive Erick Herrera and Gerardo Reyes and a class of similarly situated male employees of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, male, and because Gerardo Reyes complained about the sexual harassment .

14. The unlawful employment practices complained of in paragraphs 10 through 12 above were intentional.

15. The unlawful employment practices complained of in paragraphs 10 through 12 above were done with malice or with reckless indifference to the federally protected rights of Erick Herrera and Gerardo Reyes and a class of male employees, including Edgar Hernandez.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant McDonald's, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in discrimination on the bases of sex or retaliation.

B. Order Defendant McDonald's to institute and carry out policies, practices, and programs which provide equal employment opportunities for males and anyone who complains about

sexual harassment, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant McDonald's to make whole Gerardo Reyes by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.

D. Order Defendant McDonald's to make whole Erick Herrera and Gerardo Reyes and a class of similarly situated males, including Edgar Hernandez, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above in amounts to be determined at trial.

E. Order Defendant McDonald's to make whole Erick Herrera and Gerardo Reyes and a class of similarly situated males, including Edgar Hernandez, by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices described in paragraphs 10-12 above, including emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.

F. Order Defendant McDonald's to pay Erick Herrera and Gerardo Reyes and a class of similarly situated males, including Edgar Hernandez, punitive damages for its malicious and/or reckless conduct described in paragraphs 10-12 above in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY DEMAND

The Commission requests a trial by jury on all questions of fact raised by its complaint.

DATED this 24th day of February, 2005.

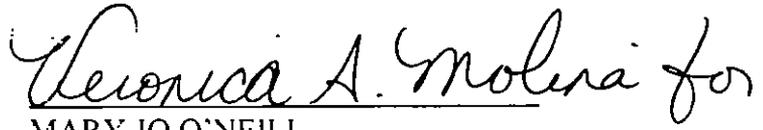
Respectfully submitted,

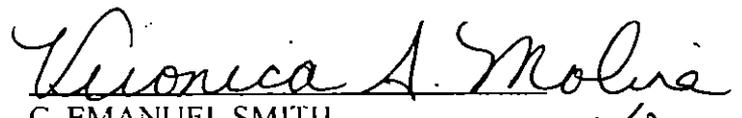
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