## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

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SOUTHERN DISTRICT OF TEXAS

JUN 2 2 2006

MINISTRICT OF TEXAS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

iaintiii,

SHIPLEY DONUT FLOUR & SUPPLY CO., INC., D/B/A SHIPLEY DO-NUTS

v.

Defendant.

**COMPLAINT** 

CIVIL ACTION NO.

H-06-2106

### NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 <u>as amended</u> by Title I of the Civil Rights Act of 1991 ("Title VII") to correct unlawful employment discrimination on the basis of filing a discrimination charge (retaliation) and to provide appropriate relief to Gerardo Guzman, who was adversely affected by the unlawful practices. While employed by Defendant Shipley Donut Flour & Supply Co., Inc., d/b/a Shipley Do-Nuts ("Defendant"), Mr. Guzman was subjected to discriminatory treatment because he filed a charge of discrimination on or about March 3, 2005. The discriminatory treatment included being discharged on or about May 13, 2005.

# 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) ("Title VII"). This action is also authorized and instituted pursuant to Section 102 of Title I of the Civil Rights Act of

1991, 42 U.S.C. § 1981a.

2. The unlawful employment practices alleged in this complaint were committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division. Venue is appropriate in this court.

#### **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. At all relevant times, Defendant Shipley Donut Flour & Supply Co., Inc., d/b/a Shipley Do-Nuts, ("Defendant"), a Texas corporation, has continuously been doing business in the State of Texas and the City of Houston and has continuously had at least 15 employees.
- 5. At all relevant times, Defendant has continuously been 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).

#### STATEMENT OF TITLE VII CLAIMS

- 8. More than thirty days prior to the institution of this lawsuit, Gerardo Guzman filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.
- 9. Since at least March 3, 2005, Defendant has engaged in unlawful employment practices at its Houston, Texas facility, in violation of §704(a) of Title VII, 42 U.S.C. § 2000e-3(a). On or about March 3, 2005, Gerardo Guzman filed a charge of discrimination alleging that he and

other Hispanic employees were subjected to discriminatory terms and conditions of employment, including being extorted, threatened with violence and repeatedly called "wetback" by a company official. Mr. Guzman, who had been employed with Defendant for approximately six (6) years, subsequently had his work closely scrutinized, was followed at the behest of the Defendant and received three disciplinary notices in the span of a few weeks. On or about May 13, 2005, he was discharged by Lawrence Shipley III, one of Respondent's agents and owners, in retaliation for having filed a charge of discrimination against the company in March.

- 10. The effect of the practice(s) complained of above has been to deprive Gerardo Guzman of equal employment opportunities and otherwise adversely affect his status as an employee because he filed a charge of discrimination.
  - 11. The unlawful employment practices complained of above were and are intentional.
- 12. The unlawful employment practices complained of above were and are done with malice or with reckless indifference to the federally protected rights of Gerardo Guzman.

#### PRAYER FOR RELIEF

Wherefore, the Commission requests that this Court:

- A. Grant a permanent injunction enjoining the Defendant its officers, successors, assigns and all persons in active concert or participation with it, from engaging in an employment practice which discriminates on the basis of filing a charge of discrimination.
- B. Order Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for all its employees, and which eradicate the effects of its past and present unlawful employment practices.
  - C. Order Defendant to make whole Gerardo Guzman by providing appropriate backpay

with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to backpay and frontpay, with interest.

- D. Order Defendant to make whole Gerardo Guzman by providing compensation for past and future pecuniary losses resulting from the unlawful practices described above, including out-ofpocket expenses such as job search expenses and insurance expenses in amounts to be proved at trial.
- E. Order Defendant to make whole Gerardo Guzman by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.
- F. Order Defendant to pay Gerardo Guzman punitive damages for its malicious and/or reckless conduct described above, in an amount to be determined at trial.
- Grant such further relief as this Court deems necessary and proper in the public G. interest.
  - H. Award the Commission its costs of this action.

## JURY DEMAND

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

Respectfully submitted,

James L. Lee Deputy General Counsel

Gwendolyn Young Reams

### Associate General Counsel

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UNITED STATES DISTRICT COURT

		replace nor supplement the filing and		rs as required by law, except as prov	f 1 ided by local rules of court. This form, NSTRUCTIONS ON THE REVERSE
I(a) PLAINTIFFS UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)			DEFENDANTS SHIPLEY DONUT FLOUR & SUPPLY CO., INC., D/B/A SHIPLEY DO-NUTS  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Harris (IN U.S. PLAINTIFF CASES ONLY)		
			NOTE, IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  TRACT OF LAND INVOLVED  UNITED STATES COURTS		
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Rudy Sustaita, Senior Trial Attorney EEOC-Houston District Office 1919 Smith Street, 7th Floor Houston, Texas 77002 (713) 209-3400  H - 06 - 21 0					
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)			III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX		
[x] 1 U.S. Government Plaintiff (U.S. Government Not a Party)  [] 2 U.S. Government Defendant (Indicate Citizenship of Parties in Item III)			(For Diversity Cases Only)  PTF DEF  Citizen of This State [] 1 [] 1 Incorporated or Principal Place [] 4 [] 4  of Business in This State  Citizen of Another State [] 2 [] 2 Incorporated and Principal Place [] 5 [] 5  of Business in Another State  Citizen or Subject of a [] 3 [] 3 Foreign Nation [] 6 [] 6  Foreign Country		
IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)  Defendant has engaged in unlawful employment practices in violation of Section 704 of Title VII, 42 U.S.C. Section 2000e-3 Defendant subjected Gerardo Guzman to retaliation when it discharged Guzman because he had filed a charge of discrimination with the EEOC.  V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)					
CONTRACT			FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[] 110 Insurance [] 120 Marine [] 130 Miller Act [] 130 Miller Act [] 140 Negotiable Instrument [] 150 Recovery of Overpayment & Enforcement of Judgment [] 151 Medicare Act [] 152 Recovery of Defaulted Student Loans (Excl. Veterans) [] 153 Recovery of Overpayment of Veteran's Benefits [] 160 Stockholders' Suits [] 190 Other Contract [] 195 Contract Product Liability REAL PROPERTY  210 Land Condemnation [] 220 Forcelosure [] 230 Rent Lease & Ejectment [] 240 Torts to Land [] 245 Tort Product Liability [] 290 All Other Real Property	PERSONAL INJURY  [] 310 Aurplane 315 Aurplane Product Liability 320 Assault, Libel & Stander 330 Federal Employers' Liability [] 340 Marine 345 Manne Product Liability [] 350 Motor Vehicle Product Liability [] 360 Other Personal Injury  CIVIL RIGHTS:  [] 441 Voting [X] 442 Employment 443 Housing/Accommodations 444 Welfare [] 440 Other Civil Rights	PERSONAL INJURY  [] 362 Personal Injury— Med Malpractice  [] 365 Personal Injury—Product Lability  [] 368 Asbestos Personal Injury— Product Lability  PERSONAL PROPERTY  [] 370 Other Fraud  [] 371 Truth in Lending  [] 380 Other Personal Property Damage  [] 385 Property Damage Product Liability  PRISONER PETITIONS  []  510 Motions to Vacate Sentence Habeas Corpus  [] 530 General  [] 535 Death Penalty  [] 540 Mandamus & Other  [] 550 Other	[] 610 Agnoulture [] 620 Other Food & Drug [] 625 Drug Related Seizure of Property 21 USC 881 [] 630 Liquor Lawa [] 640 R R & Truck [] 650 Arrime Regs [] 660 Occupational Safety/Health [] 690 Other  LABOR  [] 710 Fair Labor Standards Act [] 720 Labor/Mgmt. Relations [] 730 Labor/Mgmt. Reporting [] 740 Railway Labor Act [] 740 Railway Labor Act [] 790 Other Labor Litigation [] 791 Empl Ret. Inc. Security	422 Appeal 28 USC 158   423 Withdrawal 28 USC 157   423 Withdrawal 28 USC 157   423 Withdrawal 28 USC 157   424 Withdrawal 28 USC 157   425	400 State Resportsomment   410 Anstrust   430 Banks and Banking   450 Commerce/ICC Rates/etc   460 Deportation   470 Racketeer Influenced and Corrupt   470 Racketeer Influenced and Corrupt   810 Selective Service   850 Securities/Commodities/Exchange   875 Customer Challenge   12 USC 3410   891 Agricultural Acts   892 Feconomic Stabilization Act   893 Environmental Matters   894 Energy Allocation Act   895 Freedom of Information Act   900 Appeal of Fee Determination Under Equal Access to Justice   950 Constitutionality of State Statutes   890 Other Statutory Actions
VI. ORIGIN  (PLACE AN x IN ONE BOX ONLY)  Transferred from  Appeal to District  [x] 1 Original  [] 2 Removed from  Proceeding  State Court  Appellate Court  Reopened  (specify)  Litigation  Magistrate Judgment					
VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION DEMAND \$ Check YES only if demanded in complaint:  COMPLAINT: [] UNDER FR C P 23  JURY DEMAND: [X] YES [] NO					
VIII. RELATED CASE(S) IF ANY (See unstructions)  JUDGE DOCKET NUMBER					
DATE SIGNATURE OF PROPRIES OF RECORD  06/22/2006					