

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

MINI MART, INC. d/b/a LOAF 'N JUG,

Defendant.

COMPLAINT and JURY TRIAL DEMAND

NATURE OF THE ACTION

This is a public enforcement action to correct (1) an unlawful employment practice of a hostile work environment based on gender in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.* (“Title VII”), and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, and (2) an unlawful employment practice of retaliating against employees for complaining about discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3. This action seeks to provide appropriate relief to Charging Parties, both former employees of Loaf ‘N Jug, and to similarly situated individuals adversely affected by such practices. Plaintiff, the U.S. Equal Employment Opportunity Commission (“EEOC”), contends Defendant, Mini Mart, Inc. d/b/a Loaf ‘N Jug (“Loaf ‘N Jug”) has discriminated against Charging Parties and similarly situated individuals, because of their gender, by subjecting them to sexual harassment and a hostile work environment, by failing to take prompt remedial action intended to eliminate the sexual harassment, and by retaliating

against them for complaining about the hostile work environment, all in violation of Title VII.

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 Sections 703(a), 704, 706(f)(1), 706(f)(3), of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2(a), 2000e-3, 2000e-5(f)(1), 2000e-5(f)(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, District of Colorado.

3. More than thirty days prior to the institution of this lawsuit, Suzanne L. Diesing and Sarah Short, two females employed in Defendant's Littleton store, filed charges of discrimination with the EEOC alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

PARTIES

4. Plaintiff EEOC 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 Sections 706(f)(1) and 706(f)(3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

5. At all relevant times, Defendant has continuously been and is now doing business in the State of Colorado and has continuously had at least fifteen (15) employees.

6. 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).

7. The female employees who filed charges of discrimination with the EEOC will be hereafter referred to as “Diesing” and “Short.”

GENERAL ALLEGATIONS

8. Diesing was hired as a store clerk in the Littleton store on September 10, 2001, and was assigned to work in the restaurant portion of the store. Short was hired as a store clerk on December 7, 2002, and was assigned to work in the restaurant portion of the store. In early February of 2003, Diesing began training as a Restaurant Manager in the restaurant.

9. On or about February 14, 2003, Steve Nelson was assigned to work as Manager at the Loaf ‘N Jug store.

10. Immediately upon assuming his position as Manager, Nelson began sexually harassing Diesing, Short, and other female employees.

11. Nelson grabbed Diesing’s crotch and rubbed against her breasts, constantly making sexual comments about her body.

12. Nelson made lewd sexual comments to Short, making comments about her buttocks and other body parts.

13. Nelson made lewd, sexual comments about both Diesing and Short to customers, and customers complained.

14. When Diesing and Short resisted Nelson’s attempts at touching them, Nelson responded with force and threatening comments.

15. On or about February 19, 2003, Short complained to Diesing regarding Nelson’s offensive conduct. Diesing, in turn, contacted the District Manager, Brian Carlson, telling him that there were problems regarding sexual harassment at the store.

16. Carlson did not respond to Diesing's complaint, and the harassment continued.

17. Because Diesing did not receive a response from management regarding the harassment, Diesing scheduled Short to be with her as often as she could so that she wouldn't be alone with Nelson. There were rumors among the employees that Nelson had similarly harassed female employees at the Evergreen location prior to coming to the Littleton location.

18. On or about February 21, 2003, Carlson came to the store and informed Diesing that the female employees would have to "deal with it" because he did not have a replacement for Nelson.

19. Unsatisfied with Carlson's response, Short then personally complained to Carlson. She asked to speak to him alone, and proceeded to detail what had occurred. She went on to tell Carlson that if the situation is not dealt with, she would contact a lawyer.

20. The harassment continued, and on or about February 26, 2003, Short warned Nelson that, if the harassment did not stop, the female employees would contact the police, pointing out that his behavior was probably captured by the store's surveillance cameras.

21. Diesing called Carlson at least twice more to ask him to take action but he did not answer either time; she left voice messages for him and he did not respond.

22. On or about February 27, 2003, *nine days* after Short first complained to Diesing, and *seven days* after they both complained to Carlson, Carlson and an unidentified female district manager came into the store and went to the back office. Short and Diesing followed them into the back office to ask about the status of their complaints. When they opened the door, they discovered the managers pulling film out of the surveillance tapes, thus destroying them.

23. Nelson left the store at 1:30 pm and was replaced by Greg Kryl. That same day,

Carlson told Diesing and Short that they were going to be fired. When Diesing responded she did nothing to warrant a discharge, Carlson told her that would be true if “she kept her mouth shut.”

24. On or about February 28, 2003, Diesing was told she had been discharged. A few days later, Short was told she had been discharged.

25. Loaf ‘N Jug failed to take reasonable measures to prevent Nelson’s sexual harassment of female employees.

26. Loaf ‘N Jug failed to take reasonable, prompt measures to eliminate Nelson’s sexual harassment of female employees.

27. Loaf ‘N Jug failed to take reasonable measures to remedy the adverse effects of Nelson’s sexual harassment of female employees.

28. Loaf ‘N Jug retaliated against Diesing and Short for complaining about the sexual harassment by discharging them from employment.

FIRST CLAIM FOR RELIEF

(Sexual Harassment)

29. Plaintiff realleges the foregoing paragraphs of this Complaint.

30. Nelson’s offensive sexual conduct in the workplace was sufficiently severe or pervasive as to alter the terms and conditions of employees subjected to the conduct.

31. Nelson’s offensive sexual conduct in the workplace constitutes sexual harassment.

32. Nelson’s sexual harassment created a hostile work environment based on gender.

33. Loaf ‘N Jug knew of Nelson’s sexual harassment.

34. Loaf ‘N Jug failed to take reasonable measures to prevent and promptly correct

sexual harassment in the workplace.

35. Loaf 'N Jug engaged in a pattern or practice of tolerating a sexually hostile work environment.

36. The effect of the events described above, including Nelson's sexual harassment and Loaf 'N Jug's failure to promptly and adequately respond to employee complaints of sexual harassment, has been to deprive Diesing, Short and other similarly situated individuals, of equal employment opportunities.

37. The unlawful employment practices described above were intentional.

38. The unlawful employment practices described above were done with malice or with reckless indifference to the federally protected rights of Diesing, Short and other similarly situated individuals.

SECOND CLAIM FOR RELIEF

(Retaliation)

39. Plaintiff realleges the foregoing paragraphs of this Complaint.

40. Plaintiff asserts that Diesing and Short had engaged in protected activities, repeatedly complaining about the sexual harassment and the hostile work environment.

41. Plaintiff asserts that, after Diesing and Short engaged in these protected activities, Loaf 'N Jug terminated their employment.

42. The effect of the practices complained of in the paragraphs above has been to deprive Diesing and Short of equal employment opportunities based on their gender.

43. The unlawful employment practices complained of in the paragraphs above were intentional.

44. The unlawful employment practices complained of herein were done with malice or with reckless indifference to the federally protected rights of Diesing and Short.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, Mini Mart, Inc. d/b/a Loaf 'N Jug, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment policy or practice which creates a sexually hostile work environment or otherwise discriminates on the basis of gender, and from retaliating against employees who complain about discrimination;

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for women, and which eradicate the effects of its past unlawful employment practices, including retaliation;

C. Order Defendant to make whole Charging Parties and similarly situated individuals, by providing appropriate back pay with pre-judgment 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 to make whole Charging Parties and other similarly situated individuals, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above;

E. Order Defendant to make whole Charging Parties and other similarly situated individuals, by providing compensation for past and future non-pecuniary losses, including emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation;

F. Order Defendant to pay Charging Parties and other similarly situated individuals punitive damages for its malicious and/or reckless conduct described above, in amounts to be determined at trial;

G. Order Defendant and its successors to provide training to its officers, managers and employees regarding discriminatory harassment and retaliation in the workplace;

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

I. Award the Commission its costs in this action.

JURY TRIAL DEMAND

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

Dated: September 28, 2005

Respectfully submitted,

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PLEASE NOTE:

**For the purposes of service upon the EEOC,
it is sufficient that pleadings, notices, and
court documents be served upon the
Trial Attorneys.**