

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

Civil Action No. 06-CV-01871-MSK-CBS

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

and

TIAWNA JACOBSON  
(f/k/a TIAWNA SHENEFIELD) and BRANDI MICHAL,  
Intervening Plaintiffs,

v.

COLORADO HAMBURGER COMPANY, INC.,  
FARMINGTON HAMBURGER COMPANY, INC., and  
JOBEC, INC.,

Defendants.

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**AMENDED COMPLAINT OF INTERVENING PLAINTIFFS**

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Intervening Plaintiffs Tiawna Jacobson f/k/a Tiawna Shenefield (“Jacobson”) and Brandi Michal (“Michal”), through their counsel, The Law Office of Lynne Sholler, state as their amended complaint as follows:

**JURISDICTION, VENUE AND NATURE OF CASE**

1. The Equal Employment Opportunity Commission (“EEOC”) has brought suit against Defendants, which operate McDonald’s franchises in Colorado and New Mexico as an integrated enterprise, for discrimination against Jacobson and Michal, and a class of similarly situated individuals because of gender, by subjecting them to sexual harassment and a hostile work environment, and by failing to take prompt remedial action intended to eliminate the sexual harassment, 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. Jacobson and Michal are the charging parties referred to in the EEOC’s complaint and are the persons who filed charges of discrimination with the EEOC.

2. Jurisdiction of this court is proper under 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. Venue is proper here, because the employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court, District of Colorado.

3. All conditions precedent to the filing of this lawsuit have been satisfied.

#### **PARTIES**

4. Intervenor Jacobson and Michal are individuals, who, at the time of all matters relevant to the complaint, were minor employees employed by Defendants McDonald’s restaurant in Durango, CO. Intervenor Tiawna Jacobson was formerly known as, and originally brought her charge of discrimination, under the name Tiawna Shenefield.

5. Intervenor Jacobson and Michal filed charges of discrimination with Plaintiff EEOC, an agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII. Plaintiff EEOC brought a complaint against Defendants pursuant to Sections 706(f)(1) and 706(f)(3) of Title VII, 42 U.S.C. §§2000e-2(a), 2000e-5(f)(1) and (3) of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

6. At all relevant times, Defendant Colorado Hamburger Company, Inc. a Colorado corporation, has continuously been, and is now doing business in, the State of Colorado while continuously employing at least fifteen (15) employees.

7. At all relevant times, Defendant Farmington Hamburger Company, Inc., a New Mexico corporation has continuously been, and is now doing business in the State of New Mexico while

continuously employing at least fifteen (15) employees.

8. At all relevant times, Defendant JOBEC, Inc., a Colorado corporation has been a management company that provides management services to both Defendant Colorado Hamburger Company, Inc., and Defendant Farmington Hamburger Company, Inc.

9. At all relevant times, the Defendants have been an integrated enterprise doing business together as McDonald's franchise restaurants in both Colorado and northwest New Mexico. At all relevant times, JOBEC, Inc., has been part of an integrated enterprise with Defendants that is liable for relief under Title VII and JOBEC is an indispensable party pursuant to Rule 19(a) Fed. R. Civ. Pro. in whose absence, complete relief cannot be accorded.

10. At all times relevant to the complaint, Defendants have 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).

**FIRST CLAIM FOR RELIEF  
(SEXUAL HARASSMENT)**

11. Jacobson and Michal incorporate all allegations previously asserted.

12. Since at least 2002, Defendants have engaged in unlawful employment practices at its 201 W. College location in Durango, CO in violation of Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), by allowing its employees, including but not limited to management-level officials, to sexually harass Jacobson and Michal. This harassment altered the terms and condition of employment and created a hostile work environment for Jacobson, Michal and other female employees.

13. The unlawful sexual harassment was partially physical in nature, which included, but was not limited to, the following acts:

A. Groping the inner thigh and buttocks;

- B. Lifting shirts and biting breasts;
- C. Spying on female employees while they were changing into their uniforms; and
- D. Pulling female employees onto males' laps and placing their arms around their waists and shoulders.

14. The unlawful sexual harassment was partially verbal in nature, including, but not limited to, the following acts:

- A. Offering keys, credit cards and a wallet in exchange for sex;
- B. Telling female employees they had a "nice ass" and that their "breasts had gotten larger";
- C. Ridiculing female employees' attempts to resist inappropriate physical harassment in the workplace by making comments such as "do that some more" and "that turns me on."

15. The offensive sexual conduct was sufficiently severe or pervasive to alter the terms and conditions of employment for Jacobson and Michal.

16. The offensive sexual conduct in the workplace initiated and/or participated in by Defendants' employees, including but not limited to managers, constitutes sexual harassment.

17. The sexual harassment in the workplace created a hostile work environment based on gender.

18. Defendants were aware of the sexual harassment, both because some employees complained to management, and because some managers participated in the harassment.

19. Defendants failed to take reasonable measures to prevent and promptly correct sexual harassment in the workplace. Defendants violated their own sexual harassment policy by their inaction.

20. The effect of the events described above, including the sexual harassment by managers and

Defendants failure to promptly and adequately respond to employee complaints of sexual harassment pursuant to its sexual harassment policies and procedures, has been to deprive Jacobson and Michal of equal employment opportunities.

21. The unlawful employment practices described above were intentional.

22. The unlawful employment practices described above were done with malice or with reckless indifference to the federally protected rights of Jacobson and Michal.

**SECOND CLAIM FOR RELIEF  
(RETALIATION)**

23. Jacobson and Michal incorporate all allegations previously asserted.

24. Jacobson and Michal complained about and opposed the sexual harassment discrimination of themselves and other female employees.

25. After Jacobson and Michal complained about and opposed the sexual harassment discrimination of themselves and other female employees, Defendants took retaliatory and adverse employment actions against them.

26. Defendants retaliatory and adverse employment actions taken against Jacobson included, but were not limited to:

- a. Reducing her scheduled work hours;
- b. Creating a false disciplinary reprimand for improper touching that was placed in her personnel file and was not given to her;
- c. Falsely accusing her of not returning phone calls about her work schedule following a fire in the Durango McDonald's premises;
- d. Discharging her following an incident where she was the victim of harassment by two other employees;

e. Falsely accusing her of whitening out a work schedule; and

f. Constant surveillance for the purpose of making regular performance complaints about any minor policy infraction, for which other employees were not similarly reprimanded.

27. Defendants retaliatory and adverse employment actions taken against Michal included, but were not limited to:

a. Refusing to allow her to take time off for a family emergency (the hospitalization of her step-mother) until she located her own replacement;

b. Refusing to allow her to take time off for a school function unless she found her own replacement, in violation of company policy; and

c. Constant surveillance for the purpose of making regular performance complaints about any minor policy infraction, for which other employees were not similarly reprimanded.

28. The retaliatory employment practices described above were intentional.

29. The retaliatory employment practices described above were done with malice or with reckless indifference to the federally protected rights of Jacobson and Michal

WHEREFORE, Jacobson and Michal respectfully request that this Court order:

A. Defendants to make Jacobson and Michal whole by providing compensation for past and future monetary losses resulting from the conduct described in this complaint, in amounts to be established at trial;

B. Defendants to make Jacobson and Michal whole by providing compensation for past and future non-monetary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and humiliation, resulting from the conduct described in this complaint, in amounts to be established at trial;

C. Defendants to pay punitive damages for its malicious and/or reckless conduct described

in this complaint, in amounts to be established at trial;

D. Defendants and its successors, assigns and all persons in active concert or participation with it, be permanently enjoined from engaging in any employment policy or practice which creates a sexually hostile work environment or otherwise discriminates on the basis or gender, and from retaliating against employees who complain about, or corroborate the discrimination;

E. Defendants to institute and enforce policies, practices, and programs which provide equal employment opportunities for women, and which eradicate the effects of its past unlawful employment practices;

F. Defendants to provide training to its officers, managers, and employees regarding discriminatory harassment and retaliation in the workplace;

G. Award Jacobson and Michal pre and post judgment interest at the maximum rate allowable by law;

H. Order that Jacobson and Michal be awarded their costs and attorney's fees, including expert witness fees, as permitted under Title VII or otherwise, to the fullest extent allowed by law;

I. Award Jacobson and Michal costs and attorney's fees incurred to collect on the judgment from the date it is entered until the judgment is paid in full; and

J. For such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted on September 14, 2007.

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s/Lynne Sholler

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### **CERTIFICATE OF SERVICE**

I certify that on September 14, 2007, I electronically filed this AMENDED COMPLAINT OF INTERVENING PLAINTIFFS with the Clerk of the Court using the CM/ECF System, which will send notification of such filing of the following e-mail addresses:

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s/Lynne Sholler