

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 SHENEFIELD, and  
BRANDI MICHAL,

Plaintiff/Interveners,

v.

COLORADO HAMBURGER COMPANY, INC.,

FARMINGTON HAMBURGER COMPANY, INC., and

JOBEC, INC.,

Defendants.

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**SECOND AMENDED COMPLAINT and JURY TRIAL DEMAND**

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Comes now, Plaintiff, Equal Employment Opportunity Commission, and pursuant to the Court's Order permitting the amendment of pleadings and joinder of parties (Doc. 27), and hereby submits this Second Amended Complaint.

**NATURE OF THE ACTION**

This is a public enforcement action to correct the unlawful employment practice of maintaining 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. This action seeks to provide appropriate relief to

Charging Parties and similarly situated individuals adversely affected by such practice. Plaintiff, the U.S. Equal Employment Opportunity Commission (“EEOC”), contends that Defendants, as an integrated enterprise, have discriminated against Charging Parties and a class of similarly situated individuals, including but not limited to, at least Laura Loose Thompson, because of their gender, female, by subjecting them to sexual harassment, including, a hostile work environment and by failing to take prompt remedial action intended to prevent or eliminate the sexual harassment.

### **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), 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-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, for the District of Colorado.

### **PARTIES**

3. 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).

4. 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 and has continuously had at least fifteen (15) employees.

5. 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 and has continuously had at least fifteen (15) employees.

6. 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.

7. At all relevant times, the Defendants have been an integrated enterprise doing business together as McDonalds 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, Inc. is an indispensable party pursuant to Rule 19(a) Fed. R. Civ. Pro., in whose absence, complete relief cannot be accorded among those already parties, and who has an interest in the subject of this action.

8. At all relevant times, 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).

9. The female employees who filed charges of discrimination with the EEOC will be hereafter referred to as “Shenefield” and Michal.”

#### **STATEMENT OF CLAIMS**

10. More than thirty days prior to the institution of this lawsuit, Tiawna Shenefield and Brandi Michal, female former employees of Defendants filed charges of discrimination with the EEOC alleging violations of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. Since at least 2002, Defendants have engaged in unlawful employment practices at the facility located at 201 W. College in Durango, Colorado, 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 Shenefield, Michal, and other female employees, including but not limited to, at least Laura Loose Thompson. This harassment altered the terms and conditions of employment and created a hostile work environment for Shenefield, Michal and other female employees, including but not limited to, at least Laura Loose Thompson.

12. The unlawful sexual harassment was partially physical in nature.

13. The physical sexual harassment included, but was not limited to, the following acts:

- (a) groping the inner thigh and buttocks of female employees;
- (b) lifting the shirts of female employees and biting their 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.

15. The verbal harassment included, but was not limited to, the following acts:

- (a) offering keys, credit cards, and a wallet in exchange for sex;
- (b) telling female employees that 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.”

16. The offensive sexual conduct was sufficiently severe or pervasive as to alter the terms and conditions of employment for employees subjected to the conduct.

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

18. The sexual harassment in the work place created a hostile work environment based on gender.

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

20. 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.

21. 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 their sexual harassment policies and procedures, has been to deprive Shenefield and Michal and other similarly situated female employees of equal employment opportunities.

22. The unlawful employment practices described above were intentional.

23. The unlawful employment practices described above were done with malice or with reckless indifference to the federally protected rights of Shenefield and Michal and other similarly situated female employees, including but not limited to, at least Laura Loose Thompson.

**PRAYER FOR RELIEF**

WHEREFORE, THE Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants their officers, successors, assigns, and all persons in active concert or participation with them, 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 Defendants 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;

C. Order Defendants to make whole Charging Parties and other similarly situated female employees, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above;

D. Order Defendants to make whole Charging Parties and other similarly situated female employees, including but not limited to, at least Laura Loose Thompson, by providing compensation for past and future non-pecuniary losses, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and humiliation;

E. Order Defendants to pay Charging Parties and other similarly situated female employees, including but not limited to, at least Laura Loose Thompson, punitive damages for its malicious and/or reckless conduct described above, in amounts to be determined at trial;

F. Order Defendants and their successors to provide training to its offices, managers and employees regarding discriminatory harassment and retaliation in the workplace;

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

H. 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 13, 2007

Respectfully submitted,

RONALD S. COOPER  
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