

**5 CITS ESERVE
JURY DEMAND**

DC-22-15062

Cause No. _____

ERIN NORMAN,

Plaintiff,

v.

**FUZZY’S TACO HOLDINGS, LLC,
FUZZY’S TACO OPPORTUNITY, LLC,
FUZZY’S TACO RETAIL, LLC,
3GT LITTLE ELM, LLC, and
EARNEST WAYNE ASHBURN,
individually,**

Defendants.

§ **IN THE DISTRICT COURT**

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68th

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_____**JUDICIAL DISTRICT**

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DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

Plaintiff Erin Norman files this Original Petition against Defendant Fuzzy’s Taco Holdings, LLC, Fuzzy’s Taco Opportunity, LLC, Fuzzy’s Taco Retail, LLC, 3GT Little Elm, LLC, and Earnie Ashburn, individually. Plaintiff requests damages, interest, attorneys’ fees, and costs for Defendants’ unlawful acts.

I. DISCOVERY CONTROL PLAN

1. Plaintiff intends that discovery be conducted under Level 2 of Texas Rule of Civil Procedure 190.3.

2. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff seeks monetary relief over \$250,000 but not more than \$1,000,000.

II. PARTIES AND SERVICE

3. Plaintiff Erin Norman is a resident of Collin County, Texas.

4. Defendant Fuzzy’s Taco Holdings, LLC (“Holdings”) is a Domestic Limited Liability Company headquartered in Irving, Texas. Holdings may be served via its registered agent,

National Registered Agents, Inc., 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever it may be found.

5. Defendant Fuzzy's Taco Opportunity, LLC ("Opportunity") is a Domestic Limited Liability Company headquartered in Irving, Texas. Holding's may be served via its registered agent, National Registered Agents, Inc., 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever it may be found.

6. Defendant Fuzzy's Taco Retail, LLC ("Retail") is a Domestic Limited Liability Company headquartered in Irving, Texas. Holding's may be served via its registered agent, National Registered Agents, Inc., 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever it may be found.

7. Defendant 3GT Little Elm, LLC ("3GT") is a Domestic Limited Liability Company headquartered in Celina, Texas. 3GT may be served via its registered agent, David Lynn Gosdin, at 110 Friar Tuck Circle, Denton, Texas 76209, or wherever he may be found.

8. Defendant Earnest Wayne Ashburn, ("Ashburn") is an individual residing in Grayson County, Texas. He may be served at 119 Northridge Road, Van Alstyne, Texas 75495, or wherever he may be found.

9. Defendants Holdings, Opportunity, Retail, and 3GT (collectively "the Fuzzy's Defendants") share common ownership, management, administrative services, personnel policies, and employment practices. Defendants Holdings, Opportunity, and Retail also share a headquarters located at 4200 Regent Blvd Ste. C-210, Irving, Texas 75063.

10. The Fuzzy's Defendants are connected such that they can be considered a single, integrated enterprise or joint employer with respect to Plaintiff.

III. VENUE & JURISDICTION

11. Venue in Dallas County is proper under Tex. Civ. Prac. & Rem. Code §§ 15.002(a)(3) and 15.005 because three of the Fuzzy's Defendants all have their principal office in this state in Dallas County.

12. On January 20, 2021, Plaintiff timely filed a "Charge of Discrimination" with the Texas Workforce Commission ("TWC") alleging discrimination on the basis of her gender and in retaliation for rejecting the sexual advances of Ashburn. On August 25, 2022, Plaintiff received the TWC's Notice of Dismissal and Right to File Civil Action (the "TWC Right to Sue Letter"). This lawsuit is being filed within sixty (60) days of Plaintiff's receipt of the TWC Right to Sue Letter. Thus, all administrative and jurisdictional prerequisites have been met or have expired.

13. This controversy is within the jurisdictional limits of this Court.

IV. FACTUAL SUMMARY

14. When Plaintiff worked for Defendants, she was an "employee" as defined by the TCHRA.

15. Pleading in the alternative, if such be necessary, when Plaintiff applied to work for Defendants, she was an "individual" and/or an "applicant" within the meaning of the TCHRA.

16. At all times relevant, Defendants were each an "employer" as defined by the TCHRA.

17. The Fuzzy's Defendants employed more than 500 employees who were employed for each of 20 or more calendar weeks in 2020.

18. On October 18, 2020, Plaintiff, at the suggestion of a mutual friend, reached out to Defendant Ashburn to inquire about working at the Fuzzy's Taco Shop restaurant located at 407 W. Eldorado Parkway, Little Elm, Texas 75068 ("Fuzzy's Little Elm"). Ashburn, holding himself out as the store's Front of House General Manager, showed immediate interest and began the hiring

process with Plaintiff. Ashburn represented to Plaintiff that, as Front of House General Manager, he managed all customer-facing staff, including bartenders and waitstaff, at multiple Fuzzy's Taco locations, including Fuzzy's Little Elm.

19. On October 21, 2020, Ashburn sent Plaintiff a job application and assured her that she would be hired, stating that the application was just a formality to enter her information into the Fuzzy's system. Ashburn further assured Plaintiff that he would meet with Plaintiff at one of the Fuzzy's Taco locations near Fuzzy's Little Elm to complete Plaintiff's onboarding paperwork.

20. On October 24, 2020, in reliance of the promises of employment made by Ashburn, Plaintiff completed the renewal of her TABC license.

21. On October 29, 2020, Plaintiff travelled to the Fuzzy's Little Elm to meet with Ashburn. However, Ashburn was not at the location when Plaintiff arrived. Plaintiff texted Ashburn, who apologized, stating that he "forgot" that they were meeting that day. Plaintiff asked for clarification on her the status of her hiring, and Ashburn again assured plaintiff that she was hired, stating "Yes 100%!!!!!" and "I'm firing the other chick..."

22. On November 1, 2020, Plaintiff and Ashburn met at another Fuzzy's Taco location and filled out all the necessary paperwork to complete her hiring, including tax and payroll forms. Ashburn scheduled Plaintiff's orientation for November 5, 2020.

23. On November 3, 2020, Ashburn began sending Plaintiff lewd and harassing text messages of a sexual nature. Specifically, Ashburn told Plaintiff that he wanted to see her breasts, stated that he would "get in trouble" with Plaintiff working at his location, and sent several images of his erect genitalia. Plaintiff repeatedly rejected his advances, told Ashburn to "quit it," and ultimately, when it became apparent that Ashburn would not stop, ceased responding to Ashburn's unwanted and sexually explicit text messages.

24. On November 5, 2020, Ashburn told Plaintiff not to come in for her scheduled orientation, and stated that she should “take the week off” while he sorted out some alleged staffing issues.

25. On November 6, 2020, Plaintiff asked Ashburn if she could speak to anyone else at the company about her employment, specifically asking if anyone else knew she had been hired. Ashburn dismissed Plaintiff’s concerns.

26. Plaintiff proceeded to call the General Manager of the Back of House of Fuzzy’s Little Elm, Miguel [last name unknown]. Plaintiff was made aware of Miguel through her conversations with Ashburn prior to Ashburn’s sending sexually explicit messages to Plaintiff. Miguel stated he was aware of Plaintiff’s hire and that he was excited to have her onboard. Plaintiff inquired when she could come in to start the weekend shift that Ashburn had promised her. Miguel stated that he was confused because the weekend shift was not available, and that the only available shift was on Monday.

27. After the phone call with Miguel, Plaintiff again texted Ashburn to ask why he had promised her a shift that was not available. Ashburn became irate that Plaintiff contacted Miguel and refused to provide a substantive answer to her question.

28. On November 9, 2020, after not hearing from Ashburn or anyone employed by the Fuzzy’s Defendants, Plaintiff again texted Ashburn to inquire about her start date. Neither Ashburn, nor anyone at Fuzzy’s responded, effectively terminating Plaintiff’s employment.

29. At the time Plaintiff’s employment with Fuzzy’s Defendants ended, she possessed all certifications, degrees, and licenses required for her position.

30. Fuzzy’s Defendants terminated Plaintiff on the basis of her sex and/or gender, and in retaliation for refusing to acquiesce to Ashburn’s sexual advances.

31. Pleading in the alternative, if such be necessary, Fuzzy's Defendants failed to hire Plaintiff on the basis of her sex, and in retaliation for refusing to acquiesce to Ashburn's sexual advances.

32. All conditions precedent have been met or have expired.

V. CAUSES OF ACTION

COUNT ONE: SEXUAL HARASSMENT IN VIOLATION OF THE TCHRA AGAINST ALL DEFENDANTS

33. Plaintiff re-alleges the foregoing allegations as if fully set forth herein.

34. Plaintiff has satisfied all jurisdictional prerequisites in connection with his/her claim under the Texas Commission on Human Rights Act, TEXAS LABOR CODE Ch. 21 (the "TCHRA").

35. At all times relevant, the Fuzzy's Defendants each were an "employer" as defined by the TCHRA. The Fuzzy's Defendants employed 15 or more employees for each working day in each of 20 or more calendar weeks in the current and preceding years.

36. At all times relevant, Ashburn was an "employer" as defined by the TCHRA. In his capacity as a General Manager, Ashburn was an agent of the Fuzzy's Defendants who acted directly in the interests of the Fuzzy's Defendants in relation to Plaintiff.

37. When Plaintiff worked for Defendants she was an "employee" as defined by the TCHRA.

38. Ashburn intentionally and knowingly subjected Plaintiff to sexual harassment by sending Plaintiff unwanted and sexually explicit text messages without Plaintiff's consent.

39. The Fuzzy's Defendants' agents and/or supervisors knew or should have known that the conduct constituting sexual harassment was occurring and failed to take immediate and appropriate corrective action.

40. Defendants therefore discriminated against Plaintiff because of her sex, and subjected Plaintiff to a hostile work environment and conditioned her employment on her submission to Ashburn's advances.

41. When Plaintiff refused Ashburn's advances, he altered the terms of her employment. Ashburn's sending of unwanted and sexually explicit text messages, fostered by the Fuzzy's Defendants failures to restrain or discipline Ashburn, permeated the workplace with discriminatory intimidation and sexual coercion, and was sufficiently severe and pervasive to alter the conditions of Plaintiff's employment and create a hostile or abusive work environment.

42. Defendants' actions violated the TCHRA, entitling Plaintiff to recover compensatory damages, as well as pre- and post-judgment interest, attorney's fees, and costs.

43. Defendants' actions were malicious or made with reckless indifference to her state-protected rights, entitling Plaintiff to recover punitive damages from Defendants.

44. Plaintiff seeks all available remedies under the TCHRA, including mental anguish, emotional distress, inconvenience, humiliation, loss of enjoyment of life, and other pecuniary and non-pecuniary compensatory damages in the past and in the future.

**COUNT TWO: WRONGFUL DISCHARGE IN VIOLATION OF THE TCHRA
AGAINST THE FUZZY'S DEFENDANTS**

43. Plaintiff re-alleges the foregoing allegations as if fully set forth herein.

44. When Plaintiff worked for Defendants she was an "employee" as defined by the TCHRA.

45. Pleading in the alternative, if such be necessary, Plaintiff was an "individual" and/or an "applicant" within the meaning of the TCHRA.

46. The Fuzzy's Defendants terminated or, alternatively, failed and/or refused to hire Plaintiff on the basis of her gender and/or sex in violation of the TCHRA.

47. Plaintiff's termination or the failure to hire Plaintiff was malicious or made with reckless indifference to her state-protected rights.

48. As a direct and proximate consequence of the Fuzzy's Defendants' violation, Plaintiff has suffered damages.

49. Plaintiff's damages include lost wages, past and future mental anguish, inconvenience, and loss of enjoyment of life.

50. Plaintiff seeks equitable relief, compensatory and exemplary damages, pre- and post-judgment interest, attorneys' fees, and costs.

**COUNT THREE: RETALIATORY DISCHARGE IN VIOLATION OF THE TCHRA
AGAINST THE FUZZY'S DEFENDANTS**

51. Plaintiff re-alleges the foregoing allegations as if fully set forth herein.

52. After Plaintiff refused the sexual advances of Ashburn, the Fuzzy's Defendants retaliated against Plaintiff by terminating Plaintiff's employment, or, in the alternative, by failing to hire Plaintiff.

53. Plaintiff's termination or the failure to hire Plaintiff was on the basis of her refusal to acquiesce to the sexual advances of Ashburn in violation of the TCHRA.

54. Plaintiff's termination and/or the failure to hire Plaintiff was malicious or made with reckless indifference to her state-protected rights.

55. As a direct and proximate consequence of Fuzzy's Defendants' violation, Plaintiff has suffered damages.

56. Plaintiff's damages include lost wages, past and future mental anguish, inconvenience, and loss of enjoyment of life.

57. Plaintiff seeks equitable relief, compensatory and exemplary damages, pre- and post-judgment interest, attorneys' fees, and costs.

**COUNT FOUR: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST ASHBURN**

64. Pleading in the alternative, if such be necessary, Ashburn is liable to Plaintiff for Intentional Infliction of Emotional Distress.

65. Plaintiff re-alleges the foregoing allegations as if fully set forth herein.

66. Ashburn's actions were committed intentionally or recklessly, and were so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

67. As a direct and proximate result of Ashburn's actions as alleged above, Plaintiff suffered and continues to suffer severe emotional distress, mental anguish, and other damages.

68. Plaintiff's damages include, but are not limited to, past and future mental emotional pain and suffering, past and future mental anguish, and past and future medical expenses.

69. Plaintiff seeks actual, consequential, and exemplary damages, pre- and post-judgment interest, and costs.

VI. JURY DEMAND

70. Plaintiff demands a jury trial and has tendered the appropriate fee.

VII. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Issue citation for Defendants Fuzzy's Taco Holdings, LLC, Fuzzy's Taco Opportunity, LLC, Fuzzy's Taco Retail, LLC, 3GT Little Elm, LLC, and Earnest "Earnie" Ashburn to appear and answer;
- B. Award to Plaintiff a judgment against Defendant Fuzzy's Taco Holdings, LLC, Fuzzy's Taco Opportunity, LLC, Fuzzy's Taco Retail, LLC, 3GT Little Elm, LLC, and Earnest "Earnie" Ashburn for:

1. Equitable relief, including but not limited to the following injunctive and other equitable relief:
 - a. Prohibiting Defendants from engaging in unlawful discrimination;
 - b. Requiring Defendants to enact policies and procedures that require adequate training of their employees with respect to discrimination, harassment, and retaliation;
 - c. Requiring Defendants to enact policies and procedures that require adequate training of their executive, managerial, supervisory, and human resources personnel to lawfully handle reports of discrimination, harassment, and retaliation in a prompt and sensitive manner; and
 - d. Reporting to the Court the manner of Defendants' compliance with the terms of a final order issued by the Court;
2. Past lost wages and benefits and either reinstatement or future lost wages and benefits;
3. Compensatory and exemplary damages in the maximum amount permitted by law;
4. Pre- and post-judgment interest;
5. Attorneys' fees;
6. Expert witness fees and other litigation expenses; and
7. Costs.

Plaintiff further requests such other relief to which she is entitled in law or in equity.

Respectfully Submitted,

/s/ Jennifer J. Spencer

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