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ATTORNEYS FOR PLAINTIFF EEOC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

RUBY TUESDAY, INC.,

Defendant.

CIVIL ACTION NO.

COMPLAINT

Title VII Action

DEMAND FOR JURY TRIAL

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Charging Party Andrew Herrera (“Mr. Herrera”), and Class Member Joshua Bell, and other similarly situated individuals who were also adversely affected by such practices.

The Equal Employment Opportunity Commission alleges that defendant Ruby Tuesday, Inc.

(“Ruby Tuesday”) categorically deprived male employees of the opportunity to apply for temporary server or bartender positions at its Park City, Utah location in 2013. Mr. Herrera was an employee of Ruby Tuesday in Corvallis, Oregon who was available to be reassigned to Park City in 2013 but was denied the opportunity because of his sex (male). Plaintiff seeks monetary relief, including pecuniary and nonpecuniary compensatory and punitive damages, and injunctive relief, on behalf of Mr. Herrera, Mr. Bell, and a class of other similarly situated individuals.

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”), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful in Mr. Herrera’s charge were committed within the jurisdiction of the United States District Court for the District of Oregon and within the jurisdictions of United States District Courts in Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah.

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) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, defendant Ruby Tuesday 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).

5. At all relevant times, defendant Ruby Tuesday has been a corporation continuously doing business in the states of Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, and has continuously had at least 15 employees.

CONDITIONS PRECEDENT

6. More than thirty (30) days prior to the institution of this lawsuit, Mr. Herrera filed a charge with the Commission alleging violations of Title VII by Defendant Ruby Tuesday.

7. The EEOC issued to Defendant a Letter of Determination dated August 14, 2014, notifying Defendant that the EEOC found reasonable cause to believe that Defendant had discriminated against Charging Party based on his sex (male) and a class of similarly situated male employees, when Defendant only considered female employees for temporary reassignment to the Park City, Utah restaurant in the summer of 2013 in violation of Title VII.

8. The conciliation efforts required by law have occurred and were unsuccessful.

a. The EEOC issued to Defendant a Letter of Determination dated August 14, 2014, inviting Defendant to participate in conciliation.

b. The EEOC issued to Defendant a letter dated January 7, 2015, advising Defendant that the EEOC was not able to secure an agreement, and efforts to conciliate the case were unsuccessful.

9. All conditions precedent to the institution of this lawsuit have been fulfilled.

STATEMENT OF CLAIMS

10. Since at least March 2013, Defendant Ruby Tuesday engaged in unlawful employment practices within the nine-state region covered by its Senior Regional Partner in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a)(2). This nine-state region included Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada, and Utah. The practices include limiting, segregating, or classifying internal applicants for employment in a way that deprived individuals of employment opportunities and otherwise adversely affected their status as internal applicants because of such individual's sex when Ruby Tuesday advertised temporary positions at the Park City, Utah Ruby Tuesday location with an explicit and exclusive preference for female applicants. Ruby Tuesday then selected seven (7) females from other Ruby Tuesday restaurants for these temporary positions at the Park City, Utah restaurant for the summer of 2013. Ruby Tuesday did not select any male for a temporary position at the Park City, Utah restaurant for the summer of 2013.

11. Since at least March 2013, Defendant Ruby Tuesday has published internal advertisements for temporary reassignment at its restaurants in Oregon, Arizona, Colorado, Iowa, Minnesota, Missouri, Nebraska, Nevada and Utah, indicating a preference, specification, or limitation based on sex, in violation of Section 704(b) of Title VII, 42 U.S.C. § 2000e-3(b).

12. Mr. Herrera, who worked at the Corvallis, Oregon Ruby Tuesday, was denied the opportunity to earn more money and gain valuable work experience while on temporary assignment to Park City, Utah for the summer of 2013 because of his sex (male). Mr. Herrera would also have saved on rent and other expenses if Ruby Tuesday had allowed him to work at the Park City, Utah restaurant because Ruby Tuesday would have provided housing free of charge.

13. Mr. Bell, who worked at the Republic, Missouri Ruby Tuesday, learned of the possibility of the Park City, Utah temporary assignment in 2013 through an internal advertisement posted at his restaurant. Mr. Bell was denied the opportunity to earn more money and gain valuable work experience while on temporary assignment to Park City, Utah for the summer of 2013 because of his sex (male). Mr. Bell would also have saved on rent and other expenses if Ruby Tuesday had allowed him to work at the Park City, Utah restaurant because Ruby Tuesday would have provided housing free of charge.

14. The effect of the practices complained of in paragraphs 10, 11, 12 and 13 above has been to deprive Messrs. Herrera and Bell, and other similarly situated males of equal employment opportunities and otherwise adversely affect their status as internal applicants for employment, because of their sex.

15. The unlawful employment practices complained of in paragraphs 10, 11, 12 and 13 above were intentional.

16. The unlawful employment practices complained of in paragraphs 10, 11, 12 and 13 above were done with malice or with reckless indifference to the federally protected rights of Messrs. Herrera, Bell, and other similarly situated males.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining defendant Ruby Tuesday, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in limiting, segregating, or classifying applicants for employment in a way

that deprives individuals of employment opportunities and otherwise adversely affects their status as applicants because of such individual's sex.

B. Order defendant Ruby Tuesday to institute and carry out policies, practices, and programs which provide equal employment opportunities for all employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order defendant Ruby Tuesday to make whole Messrs. Herrera and Bell, and other similarly situated individuals, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices described in paragraphs 10, 11, 12 and 13 above in amounts to be determined at trial.

D. Grant a permanent injunction enjoining defendant Ruby Tuesday from publishing advertisements related to employment indicating a preference, specification, or limitation based on sex, in violation of Section 704(b) of Title VII, 42 U.S.C. § 2000e-3(b).

E. Order defendant Ruby Tuesday to make whole Messrs. Herrera and Bell, and other similarly situated individuals, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 10, 11, 12 and 13 above, including past and future out-of-pocket expenses, in amounts to be determined at trial.

F. Order Defendant Ruby Tuesday to make whole Messrs. Herrera and Bell, and other similarly situated individuals by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 10, 11, 12 and 13 above, including without limitation emotional pain, suffering, inconvenience and loss of enjoyment of life, in amounts to be determined at trial.

G. Order Defendant Ruby Tuesday to pay Messrs. Herrera and Bell, and other similarly situated individuals punitive damages for its malicious and reckless conduct described in paragraphs 10, 11, 12 and 13 above, in amounts to be determined at trial.

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

I. Award the Commission its costs of this action.

JURY TRIAL DEMAND

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

DATED this 22nd day of January, 2015.

WILLIAM R. TAMAYO
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JAMES L. LEE
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BY: s/ William R. Tamayo

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Attorneys for Plaintiff EEOC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and sub-categories with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Civil Action No.

Defendant(s)

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SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: