

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR MACOMB COUNTY

CASSANDRA MARIE SMITH,

Plaintiff,

HOOTERS OF ROSEVILLE, Inc.

Defendant, Jointly and
Severally.

HOOTERS OF AMERICA, Inc.

Defendant, Jointly and
Severally.

Dawid & Gatti, PLLC
By: Michael Gatti (P-43820)
Robert Dawid (P-71852)
Attorneys for Plaintiff
214 S. Main St, Ste 204
Ann Arbor, MI 48104
(734) 761-1113

Laurence H. Margolis P.C.
By: Laurence H. Margolis (P-69635)
Attorney for Plaintiff
214 S. Main St., Ste. 202
Ann Arbor, MI 48104
(734) 994-9590

The Sam Bernstein Law Firm
By: Mark J. Bernstein (P-56528)
Richard H. Bernstein (P-58551)
Attorneys for Plaintiff
31731 Northwestern Highway
Farmington Hills, MI 48334
(248) 737-8400

10-2213-CD

Case No. CD

MACERONI

P-16922
COMPLAINT

FILED
MAY 24 11:38

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a Judge in this Court

VENUE AND JURISDICTION

1. HOOTERS OF ROSEVILLE, Inc. is a Georgia Corporation and "public accommodation" having its principal place of business at 32976 Gratiot, City of Roseville, Macomb County, Michigan 48066.
2. HOOTERS OF AMERICA, Inc. is the Atlanta, Georgia-based operator and franchisor of over 455 Hooters locations worldwide.
3. Hooters of America, Inc. operates in 44 states, and employs, in either it's corporate or franchise locations, over 17,000 "Hooters Girls." This Defendant is a "public accommodation" and regularly conducts business in the State of Michigan.
4. On Information and belief, Hooters of Roseville, Inc. is a franchisee and/or a wholly owned subsidiary of Hooters of America, Inc.

5. Both of the named defendants are subject to the jurisdiction of this Court and venue is properly laid in Macomb County, Michigan.
6. The transaction or occurrence that is the subject matter of this suit took place in Macomb County Michigan.
7. Plaintiff resides in the city of Roseville, located in Macomb County Michigan.
8. The amount in controversy exceeds \$25,000.00 and jurisdiction is also proper under MCLA 32.2101 et seq.

FACTUAL ALLEGATIONS

8. Plaintiff began her employment at Hooters of Roseville in 2008.
9. Plaintiff was recruited for employment with Hooters of Roseville while dining at the Roseville restaurant.
10. At the time she was recruited to work at Hooters, Plaintiff weighed close to 145 lbs.
11. Throughout the subsequent two years of her employment, Plaintiff received high marks on her performance evaluations and was promoted to Shift Leader.

12. The role of Shift Leader consisted of supervisory duties over employees and is the entry position in the management track.
13. At Plaintiff's last performance evaluation, on or about May 14, 2010, she was, for the first time, admonished, disciplined and counseled by Hooters supervisors, including Assistant Manager Phil Petrella and General Manager of Roseville Robert Rice, and two representatives from Hooters' corporate offices, Human Resource Manger Patricia Kellner, and Coordinator La Tosha Robinson.
14. During the evaluation, Plaintiff was counseled about the fit of her uniform and advised to join a gym in order to lose weight and improve her looks so that she would fit better into the extra small-size uniform she was required to wear.
15. At the end of the evaluation, Defendants required Plaintiff to sign an agreement placing her on 30 day "weight probation" as a condition of retaining her employment.
16. The only sizes of uniforms for Hooters waitresses are Extra Extra Small (double X-small), Extra Small (X-small) and Small.

17. None of the Defendants employees or representatives had any medical training or medical or other health information upon which to base their decision to place Plaintiff on "weight probation."
18. Plaintiff was never asked, nor given the opportunity, to consult with a Doctor, dietician or other health care professional before, prior to being put on "weight probation."
19. During the course of her May 14,2010 performance evaluation where Plaintiff was put on "weight probation," she was told by Kellner and Robinson to call them personally if she had trouble making her uniform fit, and also that they would understand if she could not succeed and, therefore, wanted to quit her job.
20. The Hooters' supervisory and human resources employees and representative who met with and evaluated Plaintiff provided no explanation to as to what constitutes correct or proper fit of the Hooters' uniform, nor what degree of thinness would satisfy them relative to the Plaintiff.
21. At the time of her May 2010 performance evaluation Plaintiff was 5' 8" tall and weighed 132.5 lbs.

22. After being admonished, counseled and placed on "weight probation", Plaintiff received a call from a co-worker as well as a customer asking her why she had been put on "weight probation."
23. The disclosure of her "weight probation" status by Defendants to her co-workers and other individuals produced an intensely humiliating, deeply offensive, untenable employment environment; indeed Defendants recognized this fact as they granted Plaintiff the remainder of the day off after placing her on "weight probation."
24. On or near May 14, 2010, Plaintiff was constructively discharged because she was unable to meet the Hooters' discriminatory and illegal requirements of a "Hooters Girl."

Count I. VIOLATION OF MICHIGAN ELLIOT LARSEN CIVIL RIGHTS ACT, MCLA 37.2202 (WEIGHT DISCRIMINATION)

25. Plaintiff incorporates the preceding paragraphs by reference herein.
26. Defendants are both employers as defined by the Elliot-Larsen CRA.
27. Plaintiff is an employee as defined by Elliot-Larsen CRA.

28. Plaintiff was disciplined and put on notice that she would lose her job because she was not the correct weight as defined by Defendants' requirements for being a "Hooters Girl."
29. Defendants' weight requirements constitute per se weight discrimination.
30. Defendants' policy and practice of requiring its "Hooters Girls" to be at or maintain a particular weight constitutes a violation of the Elliot-Larsen CRA.
31. As a consequence of Defendants' discriminatory and illegal conduct Plaintiff has suffered loss of wages, humiliation and emotional distress.

Count II. VIOLATION OF MICHIGAN ELLIOT LARSEN CIVIL RIGHTS ACT, MCLA 37.2202 (GENDER DISCRIMINATION)

32. Plaintiff incorporates the preceding paragraphs by reference herein.
33. Plaintiff was disciplined and put on notice that she would lose her job because she did not meet Defendants' definition of what constitutes a "Hooters Girl."
34. This disciplinary action was taken by Defendants even though Plaintiff's weight is well within the medically acceptable range.

35. Defendants' weight requirement for female employees constitutes per se gender discrimination.
36. Defendants' policy and practice of requiring its "Hooters Girls" to be at or maintain a particular weight constitutes a violation of the Elliot-Larsen CRA.
37. As a consequence of Defendants' discriminatory and illegal conduct Plaintiff has suffered loss of wages, humiliation and emotional distress.

COUNT III. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

38. Plaintiff incorporates the preceding paragraphs by reference herein.
39. Plaintiff is a twenty (20) year old woman recruited by Defendant Hooters of Roseville's Management to work at their establishment two years ago.
40. Plaintiff has been an exemplary employee. Plaintiff's weight is within the medically acceptable range for a person of her height and age.
41. Defendants, both in person and over the telephone, subjected Plaintiff to humiliation by asserting information that they knew or should have known to be false, malicious and/or unreasonable and then giving

Plaintiff an ultimatum to change her appearance and weight in an unrealistic manner.

42. Defendants intentionally acted in a manner calculated to cause Plaintiff emotional distress.

43. Plaintiff suffered emotional distress as of Defendant's willful, wanton and deliberate actions.

44. Wherefore, Plaintiff is entitled to damages for Defendants' intentional infliction of emotional distress.

RELIEF REQUESTED

WHEREFORE Plaintiff prays for a judgment against Defendants enjoining it from its unlawful business practices and for an award damages in excess of \$25,000.00 together with costs, interest and attorneys fees as follows:

FILED
MAY 29 AM 11:38

- A. Lost wages,
- B. Emotional distress,
- C. Exemplary damages,
- D. Any other relief the court deems just and equitable.

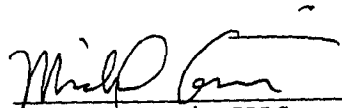
JURY DEMAND

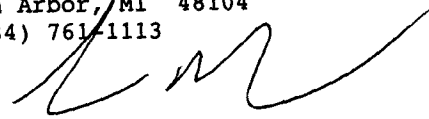
PLAINTIFF demands a jury trial on all issues so triable by right.

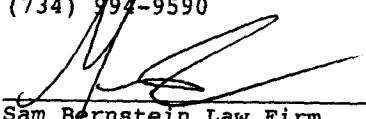
Respectfully Submitted,

Dated: 5/24/10

By:


 Dawid & Gatti, PLLC
 Attorneys for Plaintiff
 By: Robert Dawid (P-71862)
 Michael Gatti (P-43820)
 214 S. Main St., Ste. 204
 Ann Arbor, MI 48104
 (734) 761-1113


 Laurence H. Margolis, P.C.
 Attorneys for Plaintiff
 By: Laurence H.
 Margolis (P-69635)
 214 S. Main St., Ste. 202
 Ann Arbor, MI 48104
 (734) 994-9590


 Sam Bernstein Law Firm
 Attorneys for Plaintiff
 By: Mark J. Bernstein (P-56528)
 Richard H. Bernstein (P-58551)
 31731 Northwestern Highway
 Farmington Hills, MI 48334
 (248) 737-8400