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7 Attorneys for Plaintiff
8 REBECCA DALTON

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE
12

13 Assigned for all purposes

14 Judge Gregory H. Lewis

15 REBECCA DALTON,
16 Plaintiff,

17 v.

18 STUBRIK'S STEAKHOUSE; DENNIS
RAINEY; CRAIG VOORTING;
19 DOES I through X, inclusive,
20 Defendants.

)
) CASE NO. 30-2021-01177894-CU-OE-CJC
)
) COMPLAINT FOR SEXUAL HARASSMENT
) (GOV. CODE, § 12940(i) AND (j));
) FAILURE TO PROVIDE MEAL AND REST
) PERIODS (LABOR CODE, §§ 512(a)
) AND 226.7); FAILURE TO PAY
) EXPENSE REIMBURSEMENTS (LABOR
) CODE, § 2802); VIOLATION OF
) BUSINESS & PROFESSIONS CODE,
) § 17200; VIOLATION OF LABOR CODE,
) § 202, ET SEQ.; JURY TRIAL DEMAND

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22 Plaintiff alleges:

23 SUMMARY OF CLAIMS

24 1. This is an action for damages by plaintiff against her former
25 employer, its owner and her manager for multiple statutory claims
26 arising out of an outrageous and bad faith course of conduct.

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28 COMPLAINT FOR SEXUAL HARASSMENT (GOV. CODE, § 12940(i) AND (j)); FAILURE TO PROVIDE
MEAL AND REST PERIODS (LABOR CODE, §§ 512(a) AND 226.7); FAILURE TO PAY EXPENSE
REIMBURSEMENTS (LABOR CODE, § 2802); VIOLATION OF BUSINESS & PROFESSIONS CODE, §
17200; VIOLATION OF LABOR CODE, § 202, ET SEQ.; JURY TRIAL DEMAND

1 Plaintiff claims that she was denied meal and rest periods, was not
2 reimbursed for all business expenses which were wrongfully debited
3 from her own pay, and was not paid all accrued wages and vacation pay
4 in a timely manner following her resignation. Plaintiff also claims
5 that her manager and her employer are both jointly liable for sexual
6 harassment and the creation of a hostile work environment. Plaintiff
7 further claims that her employer's Labor Code violations constituted
8 violations of the Unfair Competition Law. Plaintiff seeks
9 compensatory damages, including economic damages for past and future
10 loss of earnings and benefits, unpaid meal and rest period
11 compensation, unpaid business expense reimbursements, and accrued
12 vacation; general damages for emotional distress; statutory penalties;
13 prejudgment interest; punitive damages; and statutory attorneys' fees.

14 PARTIES

15 2. At all times herein mentioned plaintiff REBECCA DALTON
16 (hereinafter "plaintiff") was a resident of the County of Los Angeles,
17 State of California. Plaintiff recently moved to Tennessee where she
18 currently resides.

19 3. Plaintiff is informed and believes and based on such
20 information and belief alleges that at all times herein mentioned
21 defendant STUBRIK'S STEAKHOUSE (hereinafter "STUBRIK'S") was and is a
22 restaurant located in the City of Fullerton, County of Orange, State
23 of California.

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1 4. Plaintiff is further informed and believes and based on such
2 information and belief alleges that at all times herein mentioned
3 defendant DENNIS RAINEY (hereinafter "RAINEY") was and is a resident
4 of the County of Riverside, State of California.

5 5. Plaintiff is further informed and believes and based on such
6 information and belief alleges that at all times herein mentioned
7 defendant CRAIG VOORTING (hereinafter "VOORTING") was and is the owner
8 of defendant STUBRIK'S and a resident of the County of Orange, State
9 of California.

10 6. Plaintiff is unaware of the true names and capacities, whether
11 corporate, associate, individual, or otherwise, of defendants named as
12 DOES I through X, inclusive. Pursuant to Code of Civil Procedure
13 Section 474, plaintiff will seek leave of court to amend this
14 complaint to state said defendants' true names and capacities when the
15 same have been ascertained. Plaintiff is informed and believes and
16 based upon such information and belief alleges that said fictitiously-
17 named defendants are responsible in some manner for the injury and
18 damages to plaintiff as further hereinafter alleged.

19 AGENCY

20 7. Plaintiff is informed and believes and upon such information
21 and belief alleges that defendants, and each of them, at all times
22 herein mentioned were the agents, employees, servants, joint
23 venturers, and/or co-conspirators of the remaining defendants, and
24 were acting in the course and scope of such agency, employment, joint
25 venture, and/or conspiracy; that defendants, and each of them, were
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1 doing the things herein alleged, were the actual and/or ostensible
2 agents of the remaining defendants and were acting within the course
3 and scope of said agency; and that each and every defendant, as
4 aforesaid, when acting as a principal, was negligent in selecting,
5 hiring, supervising and continuing the employment of each and every
6 defendant as an agent, employee or joint venturer; and/or that said
7 defendants approved, supported, participated in, authorized, and/or
8 ratified the acts and/or omissions of said employees, agents,
9 servants, conspirators, and/or joint venturers.

10 FACTS

11 Plaintiff's Long Tenure of Competent Performance for Defendant
12 STUBRIK'S:

13 8. Plaintiff is currently 37 years of age, and is engaged to be
14 married. Throughout her employment with defendant STUBRIK'S, she was
15 single and dependent on her own earnings for her sustenance.
16 Plaintiff commenced employment with defendant STUBRIK'S in March of
17 2006 as a Hostess. Within one year, she was promoted to Cocktail
18 Server and the next year she was promoted to Server. Because of her
19 good performance, she was promoted to Bartender/Manager in or about
20 2010. Thereafter plaintiff remained continuously employed with
21 defendant STUBRIK'S through November of 2020.

22 9. In late November of 2013, because a customer disputed a credit
23 card charge, defendant VOORTING, owner of defendant STUBRIK'S, accused
24 plaintiff of not encrypting the card and debited the credit card
25 charge from her own pay. When plaintiff inquired as to why there was
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1 no employee handbook setting forth such requirement, she was demoted
2 from Bartender/Manager back to Server and was no longer allowed to
3 work one of her shifts.

4 10. Thereafter plaintiff continued to perform her job
5 responsibilities competently and conscientiously, and with dedication
6 and loyalty to defendant STUBRIK'S.

7 Defendant STUBRIK'S Unlawful Practice of Requiring Employees to
8 Pay for Customer Losses:

9 11. Throughout plaintiff's employment, she as well as other
10 employees, on occasion were required to reimburse defendant STUBRIK'S
11 from their own pay for any disputed credit card charges. In addition,
12 plaintiff and other employees were periodically required to reimburse
13 defendant STUBRIK'S from their own pay for one-half of any meals when
14 they mistakenly ordered the wrong food item.

15 Defendant STUBRIK'S Practice of Falsifying Employee Time Records:

16 12. Throughout plaintiff's employment, defendants RAINEY and
17 VOORTING, individually and in their respective managerial and owner
18 capacities on behalf of defendant STUBRIK'S, violated Labor Code, §
19 206.5, a misdemeanor, by requiring plaintiff and other employees to
20 sign a document professing to be a waiver of their right to take a 30
21 minute meal period after five hours as required by Labor Code, §
22 512(a), and then directing plaintiff and other employees to push a
23 button on a computer screen showing that they had taken an unpaid meal
24 period each day. If plaintiff and other employees forgot to hit the
25 button, they were directed to clock back in after clocking out so that

1 an adjustment could be made. Plaintiff and other employees were
2 therefore denied their legally required 30 minute meal periods, and
3 were not compensated for any such meal periods not taken, in violation
4 of Labor Code, §§ 512(a) and 226.7.

5 Defendant RAINEY's Sexual Harassment of Plaintiff:

6 13. Throughout her employment plaintiff was subject to unwelcome
7 and offensive words and touching by her manager, defendant RAINEY,
8 which created a hostile work environment for plaintiff. This conduct
9 included, but was not limited to the following:

10 a) Asking plaintiff if plaintiff wished to "go to the kitchen and
11 watch pornography;"

12 b) Masturbating in plaintiff's presence in the kitchen;

13 c) Repeatedly telling plaintiff that she "had the nicest ass of
14 all the girls;"

15 d) Telling plaintiff, "I want to see you naked in an ice bath;"

16 e) Telling plaintiff that another manager had "invited a female
17 customer into the liquor room and fingered her butt;"

18 f) Kicking plaintiff in the rear end with his foot while she was
19 standing at the salad bar;

20 g) Asking plaintiff in the presence of another employee while
21 plaintiff was drinking a green smoothie, "are you drinking Shrek's
22 cum?;" and,

23 h) Routinely using the "F" word and other profanities while
24 working in plaintiff's presence.

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1 14. Plaintiff never complained regarding defendants' unreasonable
2 and unlawful work directives or defendant RAINEY's inappropriate
3 conduct for fear of retaliation as she was dependent on her employment
4 to make ends meet financially. On one recent occasion, plaintiff and
5 Melinda Renz ("Renz") did complain to defendant VOORTING that "Dennis'
6 behavior is out of control and servers feel the need to tip toe around
7 him." Defendant VOORTING responded by stating, "yes, he's become quite
8 the bear in the last year or so." However, defendant VOORTING failed
9 to take any effective remedial action regarding the complaints by
10 plaintiff and Renz.

11 15. Due to the intolerable working conditions caused by
12 defendants, on November 10, 2020 plaintiff gave defendant STUBRIK'S
13 two weeks notice of her resignation.

14 16. Plaintiff experienced depression and anxiety as a result of
15 defendant RAINEY's harassing conduct and defendant STUBRIK'S unlawful
16 practices that prevented plaintiff from taking meal or rest periods.

17 EXHAUSTION OF ADMINISTRATIVE REMEDIES

18 17. On January 5, 2021, plaintiff filed a Complaint against
19 defendants RAINEY and STUBRIK'S with the Department of Fair Employment
20 and Housing ("DFEH"). A copy thereof is attached hereto as **Exhibit A**.
21 Thereafter on January 5, 2021, the DFEH issued a "right to sue"
22 letter. A copy thereof is attached hereto as **Exhibit B**. Plaintiff
23 has therefore exhausted her administrative remedies as a precondition
24 to filing this action.

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FIRST CAUSE OF ACTION

(Sexual Harassment (Gov. Code, § 12940 (i) and (j))
Against Defendants RAINEY and STUBRIK'S)

18. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 17 as if set forth in full.

19. By virtue of the conduct described in paragraphs 13(a) through (h) above, defendant RAINEY, individually and in his managerial capacity on behalf of defendant STUBRIK'S, subjected plaintiff and otherwise aided and abetted in subjecting plaintiff to an unwanted and offensive "hostile work environment" based on sex, in violation of Government Code, § 12940(j).

20. As a direct and proximate result of said sexual harassment, plaintiff was compelled to resign and thereby sustained economic damages for past and future loss of earnings and benefits, according to proof.

21. As a further direct and proximate result of said sexual harassment, plaintiff sustained general damages for severe mental and emotional distress.

22. Defendant RAINEY, individually and in his managerial capacity on behalf of defendant STUBRIK'S, acted with malice and oppression toward plaintiff and with conscious and wanton disregard of plaintiff's rights, and defendants RAINEY and STUBRIK'S should therefore be assessed punitive and exemplary damages in sums sufficient to punish them and set an example in view of their respective financial conditions.

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1 23. Plaintiff is further entitled to an award of statutory
2 attorneys' fees pursuant to Government Code, § 12965(b).

3 SECOND CAUSE OF ACTION

4 (Failure to Provide Meal and Rest Periods
5 (Labor Code, §§ 512(a) and 226.7)
6 Against Defendants RAINEY, VOORTING and STUBRIK'S)

7 24. Plaintiff hereby realleges and incorporates by reference
8 paragraphs 1 through 17 as if set forth in full.

9 25. Throughout plaintiff's employment with defendant STUBRIK'S,
10 defendants RAINEY and VOORTING, individually and in their respective
11 managerial and owner capacities on behalf of defendant STUBRIK'S,
12 failed to provide plaintiff with meal and rest periods and failed to
13 compensate plaintiff for each such failure, in violation of Labor
14 Code, §§ 512(a) and 226.7, as well as Wage Order 5, Sections 11 and
15 12.

16 26. As a direct and proximate result of said failure to provide
17 meal periods, plaintiff is entitled to payment of one hour of premium
18 pay at plaintiff's regular rate of compensation for each workday that
19 a statutory meal period was not provided to plaintiff, pursuant to
20 Labor Code, § 226.7(c);

21 27. As a direct and proximate result of said failure to provide
22 rest periods, plaintiff is entitled to payment of one hour of premium
23 pay at plaintiff's regular rate of compensation for each workday that
24 a statutory rest period was not provided to plaintiff, pursuant to
25 Labor Code, § 226.7(c);

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1 28. Plaintiff is further entitled to statutory attorneys' fees
2 pursuant to Labor Code, § 1021.5, and interest at 10% per annum on all
3 accrued and unpaid premium pay.

4 THIRD CAUSE OF ACTION

5 (Failure to Pay Expense Reimbursements (Labor Code, § 2802)
6 Against Defendants VOORTING and STUBRIK'S)

7 29. Plaintiff hereby realleges and incorporates by reference
8 paragraphs 1 through 17 as if set forth in full.

9 30. Labor Code, § 2802 provides in pertinent part: "(a) An
10 employer shall indemnify his or her employee for all necessary
11 expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties" By virtue of the
13 conduct described at paragraph 11 above, plaintiff is entitled to
14 reimbursement of all business expenses which were wrongfully debited
15 from her pay by defendant VOORTING, individually and in his capacity
16 as owner of defendant STUBRIK'S.

17 31. As a direct and proximate result of said statutory violation,
18 defendants VOORTING and STUBRIK'S are jointly obligated to reimburse
19 plaintiff for all business expenses which were wrongfully debited from
20 her pay, in an amount that will be demonstrated according to proof.

21 32. Plaintiff is further entitled to an award of statutory
22 attorneys' fees pursuant to Labor Code, § 2802(c).

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1 FIFTH CAUSE OF ACTION

2 (Violation of Labor Code, § 202, Et Seq.
3 Against Defendant STUBRIK'S)

4 38. Plaintiff hereby realleges and incorporates by reference
5 paragraphs 1 through 17 as if set forth in full.

6 39. Plaintiff was not paid all accrued wages and vacation pay due
7 within 72 hours of her resignation, in violation of Labor Code, § 202(a).

8 40. As a direct and proximate result of said statutory violation,
9 plaintiff sustained economic damages for all accrued wages and vacation
10 pay, according to proof.

11 41. As a further result of said statutory violation, plaintiff is
12 entitled to statutory penalties for up to 30 days unpaid wages as a
13 result of defendant STUBRIK'S failure to pay plaintiff all accrued wages
14 and vacation pay due within 72 hours of her resignation pursuant to Labor
15 Code, § 203.

16 42. Plaintiff is further entitled to statutory attorneys' fees
17 pursuant to Labor Code, § 218.5.

18 PRAYER

19 WHEREFORE plaintiff prays judgment against defendants as follows:

20 As to the First Cause of Action:

- 21 1. For economic damages for past and future loss of earnings and
22 benefits, according to proof;
23 2. For general damages, according to proof;
24 3. For punitive damages, according to proof;
25 4. For statutory attorneys' fees pursuant to Government Code, §
26 12965(b).

1 As to the Second Cause of Action:

- 2 1. For payment of one hour of premium pay at plaintiff's
3 regular rate of compensation for each workday that a
4 statutory meal period was not provided to plaintiff,
5 pursuant to Labor Code, § 226.7(c);
- 6 2. For payment of one hour of premium pay at plaintiff's
7 regular rate of compensation for each workday that a
8 statutory rest period was not provided to plaintiff,
9 pursuant to Labor Code, § 226.7(c);
- 10 3. For statutory attorneys' fees pursuant to Labor Code, §
11 1021.5.
- 12 4. For interest at 10% per annum on all accrued and unpaid
13 premium pay.

14 As to the Third Cause of Action:

- 15 1. For reimbursement of all business expenses which were
16 wrongfully debited from plaintiff's pay, according to proof.
- 17 2. For statutory attorneys' fees pursuant to Labor Code, §
18 2802(c).

19 As to the Fourth Cause of Action:

- 20 1. For restitution of all sums due and owing to plaintiff,
21 pursuant to the Unfair Competition Law, for a period of four
22 years preceding the filing of this complaint pursuant to
23 Business and Professions Code, § 17206;
- 24 2. For injunctive relief to prevent future violations of the
25 Unfair Competition Law by defendant STUBRIK'S;

3. For other appropriate injunctive relief;
4. For statutory attorneys' fees as allowed by law.

As to the Fifth Cause of Action:

1. For economic damages for all unpaid accrued wages and vacation pay, according to proof;
2. For statutory penalties pursuant to Labor Code, § 203;
3. For statutory attorneys' fees pursuant to Labor Code, § 218.5.

As to All Causes of Action:

1. For costs of suit incurred;
2. For prejudgment interest as provided by law;
3. For such further relief as Court deems proper.

Dated: January 8, 2021


WILLIAM M. CROSBY
MAURICE MANDEL II
Attorneys for Plaintiff
REBECCA DALTON

JURY TRIAL DEMAND

Plaintiff REBECCA DALTON hereby demands trial by jury of the above cause.

Dated: January 8, 2021


WILLIAM M. CROSBY
MAURICE MANDEL II
Attorneys for Plaintiff
REBECCA DALTON

EXHIBIT A

TO COMPLAINT

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
 (Gov. Code, § 12900 et seq.)

5 **In the Matter of the Complaint of**

Rebecca Dalton

DFEH No. 202012-12034209

6 Complainant,

7 vs.

8 Stubrik's Steakhouse
9 118 E. Commonwealth Ave.
 Fullerton, California 92832

10 Dennis Rainey
11 118 E. Commonwealth Ave.
 Fullerton, California 92832

12 Respondents

13 _____
14 1. Respondent **Stubrik's Steakhouse** is an employer **Stubrik's Steakhouse** subject to suit
15 under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

16 2. Complainant is naming **Dennis Rainey** as individual Co-Respondent(s).

17 3. Complainant **Rebecca Dalton**, resides in the City of **Old Hickory**, State of **Tennessee**.

18 4. Complainant alleges that on or about **November 23, 2020**, respondent took the
19 following adverse actions:

20 **Complainant was harassed** because of complainant's sex/gender, sexual harassment-
21 hostile environment.

22 **Complainant was discriminated against** because of complainant's sex/gender, sexual
23 harassment- hostile environment and as a result of the discrimination was reprimanded,
24 asked impermissible non-job-related questions, other.

25 **Additional Complaint Details:**
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1 VERIFICATION

2 I, **William M. Crosby**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On January 5, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Tustin, California**
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EXHIBIT B
TO COMPLAINT



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

January 5, 2021

Rebecca Dalton
4832 Cascade Dr.
Old Hickory, Tennessee 37138

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202012-12034209
Right to Sue: Dalton / Stubrik's Steakhouse et al.

Dear Rebecca Dalton:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 5, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
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Department of Fair Employment and Housing