

Freney Anita

CAUSE NO. DC-15-06209

TABITHA HANDY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	_____ JUDICIAL DISTRICT
	§	
WAFFLE HOUSE, INC. and KAREN	§	
WHITING, Individually,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

Plaintiff Tabitha Handy hereby files this Original Petition against Defendant Waffle House, Inc. and Defendant Karen Whiting (collectively referred to as “Defendants”), for violating state law. The causes of action and summary of claims relating thereto are addressed below:

I. DISCOVERY CONTROL PLAN

1. At this time, Plaintiff requests that discovery be conducted under Level III, and that this matter be placed on the non-expedited docket as it involves damages exceeding \$100,000, and other non-wage damages such as equitable/injunctive relief.

II. PARTIES, JURISDICTION AND VENUE

2. Plaintiff Tabitha Handy (“Plaintiff”) is currently a citizen and resident of Dallas County, Texas.

3. Defendant Waffle House, Inc. (“Waffle House”) is a foreign corporation authorized to do and is doing business in the State of Texas. Waffle House can be served through its registered agent of service is located at CSC-Lawyers Incorporating Service Company, located at 211 E. 7th Street, Suite 620, Austin Texas 78701.

4. Defendant Karen Whiting is a resident of the state of Texas, and can be served at the Waffle House, 1613 W. Hebron Pkwy or wherever she may be found.

5. Venue is proper in this Court pursuant to the Texas Civil Practice and Remedies Code §15.002(a), and this Court has jurisdiction in that Plaintiff's damages are within its jurisdictional limits.

6. Plaintiff filed a "Charge of Discrimination" with the Texas Workforce Commission—Civil Rights Division ("TWC"), alleging sex (pregnancy) discrimination. This action is being commenced within the required time limits of the Texas Commission on Human Rights Act ("TCHRA"), TEX. LABOR CODE. §§ 21.001 *et. seq.*, in that (a) the charge was filed with the TWC within 180 days of the actions being complained of in this lawsuit, and (b) this action is being filed more than 180 days after the charge was filed with the TWC.

III. FACTUAL BACKGROUND

7. Plaintiff was employed with Waffle House as a Manager in Training. In September 2014, Plaintiff found out she was pregnant and told our Training Unit Manager. The Training Unit Manager told Plaintiff that he was not aware of other persons working for Waffle House that were pregnant in her situation, he still however, informed Plaintiff that she needed to tell upper management.

8. When Plaintiff told upper management about her pregnancy, she was asked, "You're pregnant again? Don't you already have three kids?" Plaintiff assured this manager that her pregnancy would not hinder her work performance, but was told that it was believed Plaintiff could not handle the job because she would "move too slow."

9. Shortly thereafter, Kevin Whiting, the Division Manager, came to the store and pretended to evaluate Plaintiff's performance. Prior to that time Plaintiff had received positive reviews on her work, but thereafter, Ms. Whiting began to make up untruths about Plaintiff's performance to justify termination. Soon thereafter Plaintiff was terminated by Ms. Whiting, who stated, "We don't need you here at Waffle House anymore. If you need a reference for a job you can give them my number. I have worked with you for five weeks and I know you are dependable and reliable." The reason(s) given by Defendants for termination were pretext, as Plaintiff was terminated because of her pregnancy.

IV. CAUSES OF ACTION

VIOLATION OF TEXAS COMMISSION ON HUMAN RIGHTS ACT **(by Waffle House)**

10. Plaintiff re-alleges and incorporates the allegations contained in Paragraphs 1 through 7 as if fully stated herein.

11. Plaintiff has satisfied all jurisdictional prerequisites in connection with her claim under the TCHRA.

12. Waffle House is considered an "employer" or "agent" as defined by the TCHRA.

13. Plaintiff is an "employee" as defined by the TCHRA.

14. During the time that Plaintiff was employed by Waffle House, Waffle House subjected Plaintiff to gender discrimination, (based on her pregnancy). These acts affected the terms and conditions of Plaintiff's employment, and ultimately led to Plaintiff's termination by Waffle House.

15. Waffle House did not have adequate policies or procedures in place to address the discrimination, nor did it implement prompt remedial measures.

16. As described above, Waffle House intentionally and willfully violated the TCHRA by discriminating against Plaintiff in violation of the TCHRA because of her pregnancy. In illegally discriminating against Plaintiff, Waffle House acted with malice and/or reckless indifference to the statutory-protected rights of Plaintiff. As a result, Plaintiff has suffered actual damages in the form of lost wages and benefits (past and future). As a result of these willful violations of the TCHRA, Plaintiff requests that she be awarded all compensatory and punitive damages, to which she is entitled, equitable and/or injunctive relief, and attorney fees and costs.

DEFAMATION & DEFAMATION *PER SE*
(Both Defendants)

17. Plaintiff realleges and incorporates the allegations contained in Paragraph 1 through 16 as if fully stated herein.

18. Karen Whiting maliciously published false, slanderous statements about Plaintiff that (a) injured her reputation, (b) potentially exposed her to public hatred, contempt, and financial injury, and (c) impeached Plaintiff's honesty and integrity. In addition, these false statements adversely reflected on Plaintiff's job fitness. These false communications were made both in Ms. Whiting's official capacity as an employee of Waffle House, and outside those boundaries. In addition, Waffle House perpetuated and ratified these actions. Defendants' actions constitute both defamation and defamation *per se*.

19. As a result of this willful and intentional violation of Texas' common law, Plaintiff requests that she be awarded all compensatory and punitive damages to which she is entitled, as well as any equitable relief and costs.

V. REQUESTS FOR DISCLOSURE TO DEFENDANT

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose to Plaintiff, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (k), to be produced at the office of Lee & Brazier, L.L.P., 1801 N. Lamar, Suite 325, Dallas, Texas 75202.

VI. JURY DEMAND

Plaintiff requests trial by jury on all claims.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff have judgment against Defendants as follows:

- a. Judgment against Defendants for Plaintiff's actual damages, including lost wages and benefits (both back pay and front pay), the sum to be determined at time of trial;
- b. Judgment against Defendants for all compensatory and exemplary damages for the maximum amount allowed by law, including mental anguish and loss of enjoyment of life;
- c. An order that Defendants take such other and further actions as may be necessary to redress Defendants' violation;
- d. Pre-judgment and post-judgment interest at the maximum amount allowed by law;
- e. Costs of suit, including attorney's fees; and
- f. The award of such other and further relief, both at law and in equity, including injunctive relief and reinstatement (or front pay), to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Robert (Bobby) Lee

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