

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

<p>MARY FEUERHELM, individually and as mother of KENNEDY FEUERHELM and SYDNEY FEUERHELM,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>W. WEST INVESTMENTS, L.L.C. d/b/a WELLMAN'S PUB AND ROOFTOP; THOMAS BALDWIN; ZACHARY BALDWIN; and STEPHANIE SMITH,</p> <p>Defendants.</p>	<p>Case No. <u>LACL139902</u></p> <p>PETITION and JURY DEMAND</p>
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COMES NOW the Plaintiff, Mary Feuerhelm, individually and as mother of Kennedy Feuerhelm and Sydney Feuerhelm, and for her cause of action hereby states the following:

INTRODUCTION

1. This is an employment discrimination action challenging Defendants' sexual harassment, sex discrimination, and retaliation against Plaintiff's daughters, in violation of the Iowa Civil Rights Act.
2. Plaintiff Mary Feuerhelm is a citizen and resident of Polk County, Iowa and the natural mother of the minor children Kennedy Feuerhelm and Sydney Feuerhelm.
3. Defendant W. West Investments, L.L.C. is an Iowa corporation, doing business in Dallas County, Iowa as "Wellman's Pub and Rooftop," near West Glen Town Center in West Des Moines.
4. Defendant Thomas Baldwin is a citizen and resident of Polk County, Iowa.
5. Defendant Zachary Baldwin is a citizen and resident of Polk County, Iowa.
6. Defendant Stephanie Smith is a citizen and resident of Polk County, Iowa.

7. The acts of which Plaintiff complains occurred in Polk County and Dallas County, Iowa.

PROCEDURAL REQUIREMENTS

8. On approximately March 24, 2017, within 300 days of the acts of which she complain, Plaintiffs filed charges of employment discrimination against Defendants with the Iowa Civil Rights Commission and Equal Employment Opportunity Commission.

9. On approximately September 29, 2017, less than 90 days prior to the filing of this Petition, the Iowa Civil Rights Commission issued an Administrative Release with respect to Plaintiff's charges against Defendants.

10. On approximately October 4, 2017, less than 90 days prior to the filing of her Petition, the Iowa Civil Rights Commission issued an Administrative Release with respect to Plaintiff's charges against Defendants.

FACTUAL BACKGROUND

11. Kennedy and Sydney Feuerhelm are female, protected by law from discriminatory practices.

12. On approximately August 26, 2016, Defendants hired Kennedy as a Food Runner at Wellman's Pub and Rooftop ("Wellman's").

13. On approximately September 28, 2016, Defendants hired Sydney as a Food Runner at Wellman's.

14. Both girls had recently turned 16 years old and this was their very first job.

15. Defendants failed to provide Sydney or Kennedy with any employee handbook.

16. Defendants failed to provide Sydney or Kennedy with any sexual harassment policy.

17. Defendants failed to provide Sydney or Kennedy with any training or instructions about sexual harassment or retaliation.

18. Henry Gutierrez (“Gutierrez”) was a 19-year-old cook who was also employed by Defendants and worked at Wellman’s in West Des Moines.

19. Gutierrez would wink at Kennedy and make kissy faces at her.

20. In approximately mid-September, Gutierrez followed Kennedy into the walk-in cooler and turned out the lights. He tried to grab Kennedy’s chest, but she ran past him.

21. When Kennedy was working at a counter in the kitchen, Gutierrez repeatedly slapped and grabbed her rear end.

22. Gutierrez repeatedly rubbed his pelvis against Kennedy’s rear end.

23. Gutierrez repeatedly pinned Kennedy against the counter with his body while he grabbed her breasts or her rear end.

24. Kennedy first complained about Gutierrez’s sexual harassment to Manager Stephanie Smith in approximately September.

25. Smith promised Kennedy she would talk to Gutierrez and tell him he was to never speak to Kennedy again.

26. Gutierrez continued to sexually harass Kennedy.

27. Throughout their employment, both Kennedy and Sydney continued to complain to Smith about sexual harassment.

28. In late October, Gutierrez began sending Kennedy messages through Facebook.

29. Gutierrez’s messages were in Spanish and broken English and indicated his personal interest in Kennedy.

30. Over the next few months, Gutierrez sent Kennedy approximately 300 unrequited messages on Facebook.

31. On approximately November 10, Gutierrez shut Sydney in the walk-in cooler and shut off the lights. She ran out of the cooler screaming. The other cooks laughed hysterically.

32. Stephanie Smith witnessed the incident, but did not do or say anything to protect Sydney.

33. Gutierrez continued to shut Sydney in the walk-in cooler.

34. Gutierrez's older brother Yakston was also a cook at Wellman's.

35. Yakston often hit on Sydney, pretended that he and Sydney were dating, and referred to her as "mi amore," which means "my love" in Spanish.

36. On approximately December 15, Yakston grabbed Sydney's rear end as he walked by her.

37. Eric Albaugh was a Manager at Wellman's and a friend of the Feuerhelm family.

38. On several occasions between September 2016 and January 2017, Mary Feuerhelm told Albaugh about some of the incidents of sexual harassment and retaliation her daughters were experiencing at Wellman's.

39. Albaugh responded by excusing the cooks' behavior and blaming it on "their culture."

40. In early November 2016, Smith told Gutierrez not to talk to any food runners, to stop hugging Kennedy, and to stop touching coworkers.

41. Gutierrez did not stop sexually harassing Kennedy.

42. On approximately December 23, 2016, Gutierrez grabbed Kennedy, pinned her against a wall, and kissed her neck. Kennedy struggled to get away.

43. Two waitresses walked in, saw Gutierrez attacking Kennedy, and screamed at him to stop.

44. Sydney walked in and also screamed at Gutierrez to stop touching her sister.

45. Stephanie Smith and General Manager Zachary Baldwin came into the kitchen, and Kennedy, Sydney, and the waitresses told them what had happened.

46. Smith and Zachary Baldwin told Gutierrez this was his “last chance.”

47. When Mary Feuerhelm picked up her daughters at work, Sydney and Kennedy told her what Gutierrez had done to Kennedy.

48. The next day, Mary went to Wellman’s to confront Zachary Baldwin.

49. Mary told Zachary she wanted to know what happened the day before and what he was going to do about it.

50. Zachary first acted like he did not know what she was talking about, but later admitted that he knew about Gutierrez’s behavior and claimed that Kennedy said it was “fine.” Zachary also suggested that he believed Kennedy and Gutierrez were “dating.”

51. Mary told Zachary that Kennedy was not interested in Gutierrez. Mary offered to show Zachary the deluge of Facebook messages Gutierrez was sending Kennedy, but Zachary declined to look at them.

52. Zachary promised Mary he would speak to Gutierrez.

53. After that, Gutierrez stopped talking to Kennedy for approximately two weeks, then he began treating her very badly.

54. Gutierrez repeatedly called Kennedy “puta,” which is Spanish for “whore.” He told other employees she was a bad worker. He was rude to Kennedy, rolling his eyes and loudly sighing when he saw her. told her to get out of his way.

55. When Kennedy asked Gutierrez three times for some french fries for a customer’s order, but he refused to give them to her.

56. Kennedy reported Gutierrez’s refusal provide her with the french fries. Zachary responded by asking Gutierrez for the french fries himself.

57. After Mary complained to Zachary Baldwin about the sexual harassment, Defendants began scheduling Kennedy and Sydney for fewer and fewer shifts.

58. After Mary complained to Zachary Baldwin about the sexual harassment, Defendants decreased the customer tips to which Kennedy and Sydney would ordinarily have been entitled.

59. Other cooks began badmouthing Kennedy and threatening that if she did not drop her sexual harassment complaint, Gutierrez would lose his job and be deported back to Honduras.

60. On March 7, 2017, Plaintiff's attorney wrote to Defendant Thomas Baldwin regarding the sexual harassment and retaliation Kennedy and Sydney suffered at Wellman's, and asked that he transfer Kennedy and Sydney to another of his restaurants to protect them from further assaults and threats.

61. Thomas Baldwin agreed to transfer Kennedy and Sydney to Magnolia Wine Kitchen, another restaurant he owned.

62. When Kennedy and Sydney arrived to work at Magnolia, employees there had no idea they were coming and required them to fill out employment applications.

63. Although Kennedy and Sydney worked at Magnolia Wine Kitchen for several weeks, there was essentially nothing for them to do there; they were scheduled for very few hours; and they were often sent home after working only a few hours.

64. Kennedy and Sydney were actually or constructively discharged from their employment at Wellman's and at Magnolia Wine Kitchen.

65. Henry Gutierrez was an employee and agent of W. West Investments, L.L.C., acting at all material times in the scope of his employment and agency.

66. Stephanie Smith was an employee and agent of W. West Investments, L.L.C., acting at all material times in the scope of her employment and agency.

67. Eric Albaugh was an employee and agent of W. West Investments, L.L.C., acting at all material times in the scope of his employment and agency.

68. Zachary Baldwin was an employee and agent of W. West Investments, L.L.C., acting at all material times in the scope of his employment and agency.

69. Thomas Baldwin was an employee and agent of W. West Investments, L.L.C., acting at all material times in the scope of his employment and agency.

COUNT I
VIOLATION OF THE IOWA CIVIL RIGHTS ACT
SEXUAL HARASSMENT, SEX DISCRIMINATION, AND RETALIATION

70. Plaintiffs reallage paragraphs 1 through 69 as if fully set forth herein.

71. Defendants subjected Kennedy and Sydney to harassing and discriminatory conduct.

72. The girls' gender was a motivating factor in the harassment and discrimination.

73. Plaintiffs complained to Defendants about the harassment and discrimination
Kennedy and Sydney suffered and otherwise opposed practices made unlawful by the Iowa Civil Rights Act.

74. Defendants retaliated against Kennedy and Sydney by making their working conditions intolerable, threatening them, reducing their hours, and discharging them from employment, constructively or actually.

75. Plaintiffs' sex and protected activity were motivating factors in the retaliation against them.

76. As a result of Defendants' acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages including, but not limited to, lost wages and benefits, emotional distress, medical expenses, fear, anguish, humiliation, intimidation, embarrassment, and lost enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount which will fully and fairly compensate her for her injuries and damages, for appropriate equitable and injunctive relief, for prejudgment and postjudgment interest, for attorney fees and

litigation expenses, for the costs of this action, for medical expenses, and for such other relief as may be just in the circumstances and consistent with the purpose of the Iowa Civil Rights Act.

JURY DEMAND

COMES NOW the Plaintiff and hereby requests a trial by jury.

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