

1 TERRY GODDARD  
2 The Attorney General  
3 Firm No. 14000

4 Phyllis A. Roestenberg, No. 022666  
5 Assistant Attorney General  
6 Civil Rights Division  
7 1275 West Washington Street  
8 Phoenix, AZ 85007  
9 Telephone: (602) 542.7777  
10 Facsimile: (602) 542.8899  
11 CivilRights@azag.gov

12 Attorneys for Plaintiff

13  
14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
15 IN AND FOR THE COUNTY OF PIMA

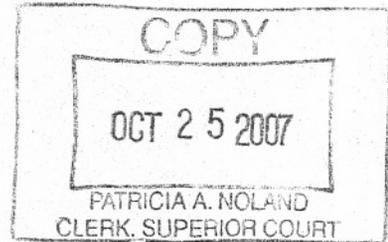
16 THE STATE OF ARIZONA *ex rel.* TERRY  
17 GODDARD, the Attorney General; and THE  
18 CIVIL RIGHTS DIVISION OF THE ARIZONA  
19 DEPARTMENT OF LAW,

20 Plaintiff,

21 vs.

22 ZIMBOW ENTERPRISES, INC., d/b/a  
23 FAMOUS SAM'S, an Arizona Corporation.

24 Defendant.



25 No. CV  
26 **20076222**  
COMPLAINT  
(Non-classified Civil)

**MICHAEL MILLER**

27 Plaintiff, the State of Arizona, ex rel., Terry Goddard, the Attorney General, and the  
28 Civil Rights Division of the Arizona Department of Law (collectively the "State"), for its  
29 Complaint, alleges as follows:



1 **BACKGROUND**

2 9. This action arises from a Charge of Employment Discrimination filed by Ms.  
3 Munoz against Defendant on October 26, 2006 wherein she alleges that she was subjected to  
4 sexual harassment and then retaliation in the forms of work reduction and termination. The  
5 specific events giving rise to the Charge and the resultant Reasonable Cause Determination  
6 issued by the Civil Rights Division of the Attorney General's Office on October 3, 2007 are as  
7 follows.

8 10. On June 13, 2006, Defendant hired Ms. Munoz to work as a full-time bartender in  
9 its restaurant-bar located at 4801 East 29<sup>th</sup> Street in Tucson, Arizona. Ms. Munoz generally  
10 worked 36-40 hours a week, from 9:00 a.m. until 5:00 p.m. At all times relevant, Toney Smith  
11 was Ms. Munoz's supervisor.

12 11. Upon information and belief, Mr. Smith began sexually harassing Ms. Munoz in  
13 August 2006 after learning that her boyfriend had moved out of state. "You're free game; now  
14 you're mine," he reportedly told her. Thereafter, he subjected her to unwelcome touching and  
15 comments on a daily basis. He would slap her buttocks; put his hands around her waist;  
16 massage her shoulders and back. Though Ms. Munoz expressly directed him to refrain from  
17 touching her, Mr. Smith continued. He would invite her to his house, so he could "take care of  
18 [her]." He would refer to her as his "girl" and his "chica." He would instruct other male co-  
19 workers to leave her alone because she was his. Mr. Smith's inappropriate, sexually charged  
20 conduct was witnessed by at least one person other than Ms. Munoz.

21 12. On or about September 14, 2006, Ms. Munoz met with Defendant's Operation  
22 Manager, Evelyn Lieuwen, to complain about Mr. Smith's inappropriate comments and  
23 conduct. She informed Ms. Lieuwen that Mr. Smith would touch her buttocks, grab and  
24 squeeze her waist and massage her back and shoulders.

25 13. Defendant did not review a videotape that would have corroborated Ms. Munoz's  
26 complaints, nor otherwise investigate the matter of her concern. Instead, it reduced the  
number of shifts to which she was assigned from five to three and then terminated her five  
days later on September 19, 2006.

1 14. Following an investigation, the Civil Rights Division found reasonable cause to  
2 believe that Ms. Munoz had been subjected to unlawful sexual harassment in violation of  
3 A.R.S. §41-1463(B); that such harassment was sufficiently severe and pervasive as to change  
4 the terms and conditions of Ms. Munoz's employment in violation of Arizona's anti-  
5 discrimination laws; and that the Defendant acted in contravention of A.R.S. §41-1464(A)  
6 when it retaliated against Ms. Munoz for opposing her supervisor's unlawful conduct.

7 15. A timely attempt to conciliate this matter in accordance with A.R.S. § 14-1481(D)  
8 was unsuccessful. Consequently, the State brings this Complaint pursuant to A.R.S. § 14-  
9 1481(D).

10 **STATEMENT OF CLAIMS**

11 **COUNT ONE**

12 **[Sexual Harassment in Violation of the Arizona Civil Rights Act, A.R.S. §41-1461 *et seq.*]**

13 16. The State re-alleges and incorporates by reference the allegations contained in  
14 paragraphs 1 through 15 of this Complaint.

15 17. Arizona Revised Statutes § 41-1463(B)(1) prohibits an employer from  
16 discriminating against any individual with respect to compensation, terms, conditions, or  
17 privileges of employment because of gender.

18 18. Defendant acted in contravention of A.R.S. § 41-1463(B)(1) when it required its  
19 employee, Ms. Munoz, to accept unwelcome sexual conduct and language as a condition of  
20 her employment and otherwise subjected her to a hostile work environment for reasons of  
21 gender.

22 19. As a result of Defendants' discrimination, Ms. Munoz suffered lost wages for  
23 which she should be compensated in an amount to be determined at trial in accordance with  
24 A.R.S. § 41-1481(G); and the State is entitled to injunctive relief against Defendant pursuant  
25 to A.R.S. § 41-1481(G).  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**COUNT TWO**

**[Retaliation in Violation of the Arizona Civil Rights Act, A.R.S. §41-1464(A)]**

20. The State re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 15 of this Complaint.

21. Arizona Revised Statutes § 41-1464(A) provides that it is an unlawful employment practice for an employer to discriminate against any employee because that employee has opposed any practice which is unlawful.

22. Upon information and belief, Defendant unlawfully discriminated against Ms. Munoz in violation of A.R.S. § 41-1464(A) by reducing her work hours and then terminating her in retaliation for opposing her supervisor's sexual harassment.

23. As a result of Defendants' discrimination, Ms. Munoz suffered lost wages for which she should be compensated in an amount to be determined at trial in accordance with A.R.S. § 41-1481(G); and the State is entitled to injunctive relief against Defendant pursuant to A.R.S. § 41-1481(G).

**PRAYER FOR RELIEF**

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendant unlawfully discriminated against Ms. Munoz because of her gender in violation of the Arizona Civil Rights Act.

B. Enjoin Zimbrow, its successors, assigns and all persons in active concert or participation with the corporation, from engaging in any employment practice, including sexual harassment of employees that discriminates in violation of the Arizona Civil Rights Act.

C. Order Zimbrow to make Ms. Munoz whole and award back wages retroactive from the date of her termination on September 19, 2006 in an amount to be determined at trial.

D. Order Zimbrow, its successors, assigns and all persons in active concert or participation with Zimbrow, to create and enforce policies, practices and programs that provide

1 equal employment opportunities for all its employees; and to eradicate the effects of its present  
2 unlawful employment practices, including but not limited to, policy changes and training.

3 E. Order Zimbow, its successors, assigns and all persons in active concert or  
4 participation with Zimbow, to adopt and enforce an equal opportunity in employment policy  
5 that prohibits sexual harassment and that includes a procedure for reporting and investigating  
6 allegations of sexual harassment as well as for sanctioning substantiated allegations of sexual  
7 harassment.

8 F. Issue an Order authorizing the State to monitor Zimbow's compliance with the  
9 Arizona Civil Rights Act at the corporation's expense.

10 G. Award the State its taxable costs incurred in bringing this action.

11 H. Grant such other and further relief as this Court may deem just and proper in the  
12 public interest.

13  
14 Dated this 25<sup>th</sup> day of October, 2007.

15 TERRY GODDARD  
16 Attorney General

17 By \_\_\_\_\_

18 Phyllis A. Roestenberg  
19 Assistant Attorney General  
20 Arizona Attorney General's Office  
21 Civil Rights Division  
22 1275 W. Washington Street  
23 Phoenix, Arizona 85007  
24  
25  
26

#77310