

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JEREMY PAIGE,)	CASE NO.: 2:20-cv-04255-BHH-MGB
)	
)	
PLAINTIFF,)	
)	
vs.)	
)	COMPLAINT
)	(JURY TRIAL REQUESTED)
PINK CACTUS, LLC and BROOKE)	
WARDEN individually,)	
)	
DEFENDANTS.)	

The Plaintiff, complaining of the above-named Defendants would respectfully show this court:

JURISDICTION AND VENUE

1. This action arises under Title VII of the 1964 Civil Rights Act and 42 U.S.C. § 2000(e) *et seq.*, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000(e) *et seq.*, as amended, and 42 U.S.C. § 1988 (b) for violation of Plaintiff’s civil rights. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, over Plaintiff’s Title VII action, as set forth herein.

2. Venue is proper in the Charleston Division, District of South Carolina, pursuant to 28 U.S.C. § 1391.

3. The Plaintiff has exhausted all of his requisite administrative remedies and has filed this Complaint within ninety (90) days of his receipt of the Notice of Right to Sue from the Equal Employment Opportunity Commission (“EEOC”).

PARTIES

4. Plaintiff is currently a resident of California. At all times pertinent to this Complaint, Plaintiff was employed in South Carolina by Defendant pursuant to an employment contract with Pink Cactus, LLC dated August 1, 2018.

5. At all times herein, Plaintiff has been a “person” within the meaning of 42 U.S.C. §2000(e).

6. Defendant Pink Cactus, LLC (Defendant Restaurant) is a restaurant serving Mexican food, doing business in the State of South Carolina. Defendant Restaurant employs more than fifteen (15) employees and is engaged in an industry affecting commerce. At all times material herein, Defendant was an “employer” within the meaning of 42 U.S.C. §2000(e).

7. Defendant Warden is the owner of Defendant Restaurant, a resident of Charleston, and she was Plaintiff’s supervisor.

FACTS

8. Plaintiff worked as a Head Chef for Defendant Restaurant in Charleston, South Carolina.

9. Plaintiff is an American, born in the United States, but he specializes as a Chef in Mexican cuisine.

10. Plaintiff was wrongfully terminated on March 19, 2019.

11. Plaintiff faithfully and industriously worked for several months to prepare Defendant Restaurant for its opening.

12. Prior to Defendant Restaurant’s opening, Defendant Warden told Plaintiff in texts that he was everything she ever wanted in a chef and she was lucky to have him.

13. However, a few days after opening, Defendant Warden told two employees that she wanted a Chef “with a more ethnic feel” and so Defendant Restaurant would have a more “authentic image.”

14. Defendant Warden had previously asked Plaintiff to ask a Mexican employee to parade through the dining room for “optics” and the worker was so embarrassed, the Mexican employee quit.

15. A kitchen employee who had never cooked Mexican food before Plaintiff hired and trained him, and who was too inexperienced to be promoted Sous Chef, was suddenly made Head Chef by Defendant Warden because he had been born in Mexico; Defendant Warden then abruptly fired Plaintiff.

16. Defendant Warden fired Plaintiff because he was not Mexican.

17. Thereafter, several Defendant Restaurant employees quit as they were so disgusted with her Defendant Warden’s actions towards Plaintiff.

18. After Plaintiff hired a lawyer to complain about his treatment, Defendant Warden created a false summary of Plaintiff’s performance (a fictitious written warning created after-the-fact) to justify her wrongful termination of Plaintiff.

19. Defendant Restaurant’s Bar Manager at the time saw Defendant Warden creating this document and he took a picture of the false document because he knew this alleged “warning” document was false and prepared after the fact to justify her termination of Plaintiff.

20. Defendant Warden falsely stated in this document that she was preparing for a fire inspection on Tuesday March 5th and accused Plaintiff of leaving when there were tasks that had to be completed but the Fire Inspection was on Monday the 4th and Defendant Warden told

Plaintiff that while the inspection was occurring, he should use his wife's car to bring much of the décor to Defendant Restaurant.

21. On March 14th, Defendant Warden falsely accused Plaintiff of taking several trips away from Pink Cactus without informing her, but the texts from that day indicate Defendant Warden was the person who went to the store and she and Plaintiff were sharing work responsibilities with no problems.

22. Plaintiff moved to California with his wife after Defendant Warden fired him to find new employment.

23. Plaintiff filed a Charge of Discrimination before he moved.

24. Shortly after Plaintiff provided the names of his witnesses to the South Carolina Human Affairs Investigator, on December 21, 2019 Defendant Warden posted a surveillance video of someone vandalizing a cactus plant outside of Defendant Restaurant in the middle of the night. The picture makes it appear someone took a machete and chopped some of the leaves off.

25. The following day, Zach Kartchner, a former employee of Defendant Restaurant and one of the witnesses Plaintiff had named, called Plaintiff in California and told him that Defendant Warden had retaliated against them for statements made by Plaintiff in his Charge of Discrimination by going to Xiao Bao Biscuit Restaurant (Plaintiff's former employer and Zach Kartchner's current employer) and demanding to talk to the owner.

26. Zach Kartchner told Plaintiff that Defendant Warden reported to the owner of Xiao Bao Biscuit Restaurant that she knew Zach Kartchner and Plaintiff were responsible for the vandalism and that she had video proof.

27. The owner of Xiao Bao Biscuit Restaurant told Defendant Warden that Plaintiff had moved to California two months earlier so he could not have done what she accused him of.

28. Defendant Warden told the owner she knew Mr. Paige was in town for the holidays and that he orchestrated the vandalism.

29. Defendant Warden's statement was a lie; Plaintiff was in California with his family over the holidays and has pictures with geo-tags to prove it.

30. The comments Defendant Warden made about her cactus plant on Instagram were false; Defendant Warden wrote, "I brought these rare variety of cactus back from Mexico when I was conceptualizing Pink Cactus." In fact, Plaintiff received and retained text messages from Defendant Warden telling him she purchased the cacti in Texas and Defendant Warden sent Plaintiff pictures of the cacti she purchased in Texas.

31. Defendant Warden then filed a false police report and named Plaintiff and Zach Kartchner as vandals in her report.

32. Defendant Warden also falsely reported to the police that Plaintiff had been bullying her Instagram account and making derogatory comments about Defendant Restaurant.

33. This was another lie as Defendant Warden had blocked Plaintiff and his wife months earlier from her Instagram account so he could not access her account.

34. The police called Plaintiff and Zach Kartchner and after speaking with them, cleared them of any and all wrong doing.

35. The police reported to Plaintiff that they might charge Defendant Warden with filing a false police report.

FIRST CAUSE OF ACTION
TITLE VII DISCRIMINATION)

36. Plaintiff incorporates all prior allegations, where not inconsistent, as if fully set forth herein.

37. Defendant Restaurant discriminated against Plaintiff based on his national origin.

38. Plaintiff was qualified for the position of Head Chef he held with Defendant Restaurant.

39. Plaintiff's job performance was excellent.

40. Plaintiff was given no reason for his termination and told by Defendant he was eligible for unemployment benefits.

41. Plaintiff was terminated because his national origin was not Mexican.

42. The discriminatory actions, omissions and decisions by Defendant Restaurant against Plaintiff were designed to cause and will continue to cause Plaintiff to lose wages, compensation, entitlements and other rights. In addition, Plaintiff has suffered humiliation and harm to his reputation, emotional and mental injuries, pain and suffering, financial and other adverse consequences for which he seeks full damages and make- whole relief.

SECOND CAUSE OF ACTION
(TITLE VII RETALIATION)

43. Plaintiff incorporates all prior allegations, where not inconsistent, as if fully set forth herein.

44. Defendant Restaurant has retaliated against Plaintiff for the exercise of his rights under law in violation of the Civil Rights Act of 1964, U.S.C. §2000(e) *et seq.*, as amended. Defendant engaged in actions, omissions and decisions which were retaliatory after Plaintiff filed a charge of discrimination to Defendant.

45. Defendant Restaurant's failure to protect Plaintiff from national origin discrimination, and its subsequent retaliatory actions, omissions and decisions are false and pre-textual.

46. Any reasonable employee would have found that the Defendant Restaurant's retaliatory actions were materially adverse and that Defendant Restaurant's actions would have dissuaded a reasonable worker from making or supporting a charge of discrimination.

47. Such unlawful actions, omissions and decisions on the part of Defendant were done in a knowing, willful, wanton, reckless and bad faith manner, and violate clearly established legal rights and privileges of which a reasonable person would have been aware.

48. The retaliatory actions, omissions and decisions by Defendant Restaurant against Plaintiff were designed to cause and will continue to cause Plaintiff to lose wages, compensation, entitlements and other rights. In addition, Plaintiff has suffered humiliation and harm to his reputation, emotional and mental injuries, pain and suffering, financial and other adverse consequences for which he seeks full damages and make- whole relief.

THIRD CAUSE OF ACTION
(SLANDER/DEFAMATION AGAINST DEFENDANT WARDEN ONLY)

49. Plaintiff incorporates all prior allegations, where not inconsistent, as if fully set forth herein.

50. Defendant Warden has made false and defamatory verbal and written statements about Plaintiff to his former co-workers and employer. Specifically, Defendant Warden contacted Plaintiff's former employer and told him Plaintiff committed the crime of vandalism; she filed a false police report, and she published false statements about Plaintiff on her Instagram account.

51. Defendant Warden's statements and actions regarding Plaintiff allege Plaintiff acted unlawfully.

52. Defendant Warden's statements and actions, coupled with his termination, infer Plaintiff committed a crime and constitute slander *per se*.

53. The publication and re-publication of these false statements by Defendant Warden have caused Plaintiff to suffer general damages, and special damages including pain and mental anguish, and damage to his professional reputation.

WHEREFORE, having fully stated its claims against the Defendants, Plaintiff prays for lost back and future wages, lost income and benefits, severe psychological harm, emotional distress, anxiety, pain and suffering, inconvenience, mental anguish, embarrassment, humiliation, physical injuries, and further seeks costs of this action and pre and post judgment interest, and such other and further legal and equitable relief as this Court deems just and proper.

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