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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 U.S. EQUAL EMPLOYMENT
18 OPPORTUNITY COMMISSION,

19 Plaintiff,

20 vs.

21 Bay Club Fairbanks Ranch, LLC d/b/a
22 Fairbanks Ranch Country Club, Fairbanks
23 Ranch Country Club, Inc. and DOES 1-10,
24 inclusive,

25 Defendants.

Case No.: **'18CV1853 W BLM**

COMPLAINT – TITLE VII

- **Sexual Harassment**
- **Retaliation**
- **Constructive Discharge**

JURY TRIAL DEMAND

26 **NATURE OF THE ACTION**

27 This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil
28 Rights Act of 1991 to correct unlawful employment practices based on sex and to provide
appropriate relief to Charging Party Sidney Scott Charging Party and a class of individuals
(collectively, “adversely affected employees”) who were adversely affected by such practices.

1 As set forth in greater detail in the foregoing paragraphs of this Complaint, Plaintiff United
2 States Equal Employment Opportunity Commission (“Plaintiff” or “Commission”) alleges that
3 Defendants Bay Club Fairbanks, LLC (“Bay Club”), Fairbanks Ranch Country Club, Inc.
4 (“Fairbanks”), and DOES 1-10 (collectively, “Defendants”) subjected Charging Party Sidney
5 Scott (“Charging Party”) and other adversely affected employees to sexual harassment during
6 their employment with Defendants. Specifically, Plaintiff alleges that Defendants both created a
7 hostile work environment and that Defendants subjected Charging Party and other adversely
8 affected employees to *quid pro quo* harassment, by conditioning favorable terms and conditions
9 of employment, including pay, shifts, hours, and continued employment, upon engagement in, or
10 acquiesce to, sexual interactions or relationships. Plaintiff further alleges that Defendants
11 subjected Charging Party and other adversely affected employees to retaliation for engaging in
12 protected activity regarding such unlawful practices, resulting in constructive discharge and/or
13 less favorable terms and conditions of employment.

14 **JURISDICTION AND VENUE**

15 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,
16 1343 and 1345. This action is authorized and instituted pursuant to §§ 706(f)(1) and (3) of Title
17 VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”)
18 and §102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

19 2. The employment practices alleged to be unlawful were and are now being
20 committed at Defendants’ Fairbanks Ranch Country Club facility, which is located in Rancho
21 Santa Fe, within the jurisdiction of the United States District Court for the Southern District of
22 California.

23 **PARTIES**

24 3. Plaintiff is an agency of the United States of America charged with the
25 administration, interpretation and enforcement of Title VII, and is expressly authorized to bring
26 this action by §§ 706(f)(1) and (3), Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

27 4. Prior to July 2016, Defendant Fairbanks Ranch Country Club, Inc. (“Fairbanks”),
28 operated Fairbanks Country Club, a self-described “premier resort-style property,” with golf,

1 tennis, restaurant and bar in the City of Rancho Santa Fe, California, within San Diego County.

2 5. In or around July 2016, Defendant Bay Club Fairbanks Ranch, LLC d/b/a
3 Fairbanks Ranch Country Club (“Bay Club”) acquired the Fairbanks Country Club from
4 Defendant Fairbanks and became a successor to Defendant Fairbanks.

5 6. Even prior to the acquisition, Defendant Bay Club operated and managed the
6 Fairbanks Ranch Country Club. Documents provided to Charging Party and other employees,
7 including employment applications and handbook, included the name Bay Club or listed Bay
8 Club as the employer. Defendant Bay Club’s employee were also responsible for hiring the
9 Fairbanks Ranch Country Club’s General Manager.

10 7. After the acquisition, Defendant Bay Club continued operations at Fairbanks
11 Ranch Country Club and retained the same employees, notifying employees in May 2016 that
12 club operations would proceed uninterrupted despite the sale.

13 8. Defendant Bay Club had notice through its Regional Manager of the allegations
14 of sexual harassment as the charge of discrimination filed with the EEOC by Sidney Scott was
15 addressed to the Regional Manager.

16 9. Defendant Fairbanks Ranch Country Club, Inc. is a predecessor entity that has
17 dissolved as of January 2017.

18 10. At all relevant times, Defendant Bay Club has continuously been a corporation
19 doing business in the State of California, and has continuously had at least 15 employees.

20 11. At relevant times until its dissolution in around January 2017, Defendant
21 Fairbanks continuously had at least 15 employees and was continuously a corporation doing
22 business in the State of California.

23 12. At all relevant times, Defendant Bay Club has continuously been an employer
24 engaged in an industry affecting commerce within the meaning of Sections 701(b), (g), and (h)
25 of Title VII, 42 U.S.C. §§ 2000e(b), (g), and (h).

26 13. At relevant times until its dissolution in around January 2017, Defendant
27 Fairbanks was continuously an employer engage in an industry affecting commerce within the
28 meaning of Sections 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g), and (h).

1 14. All acts and failures to act alleged herein were duly performed by and attributable
2 to all Defendants, each acting as a successor, agent, alter ego, employee, indirect employer, joint
3 employer, integrated enterprise and/or or under the direction and control of the others, except as
4 specifically alleged otherwise. Said acts and failures to act were within the scope of such agency
5 and/or employment, and each Defendant participated in, approved and/or ratified the unlawful
6 acts and omissions by the other Defendants complained of herein. Whenever and wherever
7 reference is made in this Complaint to any act by a Defendant or Defendants, such allegations
8 and reference shall also be deemed to mean the acts and failures to act of each Defendant acting
9 individually, jointly, and/or severally.

10 15. Plaintiff is ignorant of the true names and capacities of each defendant sued as
11 DOES 1 through 10, inclusively, and therefore Plaintiff sues said defendants by fictitious names.
12 Plaintiff reserves the right to amend the complaint to name each DOE defendant individually or
13 corporately as it becomes known. Plaintiff alleges that each DOE defendant was in some manner
14 responsible for the acts and omissions alleged herein and Plaintiff will amend the complaint to
15 allege such responsibility when the same shall have been ascertained by Plaintiff.

16 **STATEMENT OF CLAIMS**

17 16. More than thirty days prior to the institution of this lawsuit, Charging Party
18 Sidney Scott filed a charge of discrimination with Plaintiff alleging violations of Title VII by
19 Fairbanks Ranch Country Club.

20 17. After Charging Party Sidney Scott's filing of the charge of discrimination, the
21 Commission investigated her allegations against Defendants.

22 18. On March 9, 2018, the Commission issued to all Defendants a Letter of
23 Determination finding reasonable cause to believe that Defendants had violated Title VII and
24 inviting Defendants to join with the Commission in informal methods of conciliation to endeavor
25 to eliminate the discriminatory practices and provide appropriate relief.

26 19. The Commission engaged in communications with all Defendants and provided
27 Defendants the opportunity to remedy the discriminatory practices described in the Letter of
28 Determination.

1 20. The Commission was unable to secure from all Defendants a conciliation
2 agreement acceptable to the Commission.

3 21. On June 29, 2018, the Commission issued to all Defendants a Notice of Failure of
4 Conciliation.

5 22. All conditions precedent to the institution of this lawsuit have been fulfilled.

6 23. Since at least 2016, Defendants have engaged in unlawful employment practices
7 in violation of §§ 703(a) and 704(a) of Title VII, 42 U.S.C. 2000e-2(a) and 2000e-3(a) by
8 subjecting Charging Party and a class of adversely affected employees to sexual harassment and
9 to retaliation.

10 24. At all relevant times, Defendants have owned and operated Fairbanks Ranch
11 Country Club, a self-described “premier resort-style property,” with golf, tennis, and a restaurant
12 and bar area referred to as The Grille and Lounge.

13 25. From at least 2016 to the present, Defendants have had over 100 employees at the
14 Fairbanks Ranch Country Club facility alone.

15 26. Starting no later than 2016, Charging Party and other adversely affected female
16 employees were subjected to unwelcome sexual harassment, including but not limited to the
17 following:

- 18 a. Charging Party was subjected to unwelcome conduct of a sexual nature
19 from Manager Shant Karian. This conduct includes but was not limited to
20 Karian’s touching, kicking, and firmly grabbing her buttocks. It also
21 included Karian attempting to grope Charging Party, touch her breasts,
22 and kiss her. Karian also grabbed Charging Party from behind. Karian also
23 sent Charging Party text messages requesting pictures of her “ass.” After
24 Charging Party did not provide Karian with the requested pictures of her
25 “ass,” Karian began treating Charging Party negatively, including but not
26 limited to scrutinizing her performance more and threatening to terminate
27 her for a normally insignificant issue.

- 28 b. During her employment with Defendants, Megan Fogelstrom was

1 harassed by Karian and bartender Roman Savedra. On multiple occasions
2 Karian repeatedly made sexual advances, hitting her buttocks, putting his
3 arm around her waist and choking her, and repeatedly pursuing her
4 sexually. Karian made inappropriate comments of a sexual nature to
5 Fogelstrom and other female employees in her presence, asked Fogelstrom
6 what kind of underwear she wore and told her to flash her breasts to
7 customers. Karian also told male customers in front of Fogelstrom that
8 Fogelstrom could give them “lap dances.” In addition, Savedra grabbed
9 and kissed Fogelstrom, and attempted to kiss her on other occasions.

10 c. During her employment with Defendants, Mary Charlebois was told by
11 Manager Shant Karian that she needed to wear a tighter blouse to work.
12 Karian made unwelcome comments of a sexual nature to Charlebois and
13 other female employees. Charlebois felt pressured to flirt back with
14 Karian, who did the scheduling at work. Charlebois’s hours were cut, and
15 she received a lower rate of pay, because she did not engage in a sexual
16 relationship with Karian.

17 d. Manager Shant Karian gave favorable hours or shifts and higher hourly
18 pay rates to female employees who acquiesced to his requests for sexual
19 relationships and/or flirting. Those female employees who refused or
20 ignored Karian’s requests and demands were subjected to less favorable
21 hours or shifts, received lower pay rates, and faced more strict scrutiny
22 regarding their work performance including being threatened with
23 termination for normally insignificant issues.

24 27. The harassment was sufficiently severe or pervasive to alter the conditions of
25 Charging Party and other adversely affected employees’ employment and created a hostile work
26 environment. Charging Party and other adversely affected employees reasonably perceived their
27 work environment to be sexually abusive or hostile work environment, resulting in Charging
28 Party and/or some of the adversely affected employees having no choice but to resign.

1 28. Charging Party and the other adversely affected employees did not welcome the
2 sexual harassment by Manager Shant Karian, other supervisors, and/or co-workers. Charging
3 Party and the other adversely affected employees objected to and rejected the sexually harassing
4 conduct, including but not limited to objecting to Karian about his comments, declining the
5 requests and other comments that made clear the harassing conduct was unwelcome. Charging
6 Party further filed a Charge of Discrimination with the EEOC.

7 29. Defendants knew or should have known of the sexual harassment of Charging
8 Party and the other adversely affected employees because the sexual harassment was constant,
9 conspicuous, and perpetrated by both coworkers and supervisors. The work environment was
10 inundated with sexual harassment. Furthermore, Charging Party and other adversely affected
11 employees complained and indicated their discomfort to Manager Shant Karian, to the California
12 Employment Development Department, and/or to the EEOC, which then notified Defendants
13 about the complaints.

14 30. Defendants failed to take prompt and effective remedial action reasonably
15 calculated to end the harassment, including but were not limited to failing to either investigate or
16 conducting an inadequate investigation and failing to adequately discipline harassing supervisors
17 and/or coworkers. Defendants actively deterred employees from making sexual harassment
18 complaints, including instructing employees during a staff meeting to keep quiet about the
19 allegations of sexual harassment made by Charging Party and other adversely affected
20 employees.

21 31. Defendants also retaliated against employees who engaged in activity protected
22 by Title VII including, but not limited to, rejecting and/or complaining about sexual harassment.
23 As a result of engaging in such protected activity, Charging Party and adversely affected
24 employees were subjected to adverse employment actions such as receiving lower rates of pay,
25 threats of discharge, and reduced hours or shifts.

26 32. For some employees, including Charging Party and Mary Fogelstrom, the sexual
27 harassment resulted in their constructive discharge because of the intolerable working conditions
28 created by the hostile work environment.

1 E. Order Defendants to make Charging Party Sidney Scott and other adversely
2 affected employees whole by providing compensation for non-pecuniary losses resulting from
3 the unlawful employment practices described above in amounts to be determined at trial. The
4 non-pecuniary losses include emotional pain, suffering, inconvenience, mental anguish,
5 humiliation and loss of enjoyment of life, in amounts to be determined at trial.

6 F. Order Defendants to pay Charging Party Sidney Scott and other adversely
7 affected employees punitive damages for its malicious and/or reckless conduct in an amount to
8 be determined at trial.

9 G. Award the Commission its costs of this action.

10 H. Grant such further relief as the Court deems necessary and proper in the public
11 interest.

12 **JURY TRIAL DEMAND**

13 The Commission requests a jury trial on all questions of fact raised by its Complaint.

14
15 Dated: August 8, 2018


Respectfully Submitted

16 JAMES LEE,
17 Deputy General Counsel

18 GWENDOLYN YOUNG REAMS,
19 Associate General Counsel

20 U.S. EQUAL EMPLOYMENT
21 OPPORTUNITY COMMISSION
22 131 "M" Street, N.E.
Washington, D.C. 20507

23
24 By:


25 ANNA Y. PARK,
26 Regional Attorney,
27 Los Angeles District Office
28 U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Anna Y. Park, Sue J. Noh, Rumduol Vuong, and Natalie Nardecchia EEOC, 255 E. Temple Street, 4th Floor, Los Angeles, CA 90012; 213-894-1083

DEFENDANTS

Bay Club Fairbanks Ranch, LLC, Fairbanks Ranch Country Club, Inc., and DOES 1-10, inclusive,

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV1853 W BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 2000e-2(a) and 2000e-3(a)
Brief description of cause: Employee subjected to sexual harassment and retaliation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/08/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Anna Y. Park

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE