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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR )  
HUMAN RIGHTS, PAULA M. )  
HALEY, EXECUTIVE DIRECTOR, )  
*ex rel.* ASHLEY GARVER, )  
 )  
Complainant, )  
 )  
v. )  
 )  
RED ROBIN ALASKA, INC., )  
 )  
Respondent. )  
\_\_\_\_\_ )

ASCHR No. J-07-196

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Ashley Garver, hereby alleges the following against Respondent Red Robin Alaska, Inc.:

1. Respondent Red Robin Alaska, Inc. ("Red Robin"), is an Alaska corporation that owns and operates restaurants in Anchorage and Wasilla.
2. On May 13, 2007, Red Robin hired Ashley Garver to work in its restaurant located in the Northway Mall in Anchorage. During her employment, she worked as a busser and a line cook.
3. Approximately one month after Ms. Garver's employment at Red Robin began, one of Red Robin's managers, Thomas Clay Hurt, started sending text messages containing sexual content to Ms. Garver's cellular phone during Ms. Garver's shift. Ms. Garver had not given Mr. Hurt her telephone number or given Mr. Hurt any indication that such messages were welcome.

1           4.       Mr. Hurt commonly sent flirtatious and sexually explicit text messages to  
2 Ms. Garver during her work shifts, sometimes numerous times per shift. Mr. Hurt also  
3 sent flirtatious and sexually explicit text messages to Ms. Garver during non-working  
4 hours.  
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6           5.       In early July, 2007, Mr. Hurt invited Ms. Garver, who was then nineteen  
7 years old, to come to his home and drink tequila shots with him. Ms. Garver declined.  
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9           6.       Beginning in early July, 2007, and every time Ms. Garver worked with  
10 Mr. Hurt, Mr. Hurt would make a growling noise at Ms. Garver every time he walked  
11 past her.  
12

13           7.       Several times during August 2007, Mr. Hurt reached his hand down Ms.  
14 Garver's shirt or massaged her back or arms. He also used his body to rub up against her  
15 buttocks when he was near her. Ms. Garver did not invite this conduct or indicate that it  
16 was welcome.  
17

18           8.       On many occasions during her employment, Mr. Hurt asked Ms. Garver  
19 to have sexual relations with him.  
20

21           9.       All of Mr. Hurt's comments and conduct toward Ms. Garver were  
22 unwelcome.  
23

24           10.       During her employment, Ms. Garver also witnessed and knew about Mr.  
25 Hurt's sexually inappropriate comments and conduct toward other female Red Robin  
26 employees, including at least one who was under the age of eighteen.  
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Alaska, Inc., ASCHR No. J-07-196*

1           11.     Every time Ms. Garver worked a shift at Red Robin during which Mr.  
2           Hurt was present, Mr. Hurt's conduct and comments toward her and the other female  
3           staff caused her to feel uncomfortable, upset, pressured, trapped, and afraid, and she  
4           dreaded coming to work.  
5

6           12.     Mr. Hurt's rampant, sexually inappropriate behavior and harassment  
7           toward female employees at Red Robin was common knowledge among the Red Robin  
8           staff.  
9

10          13.     Ms. Garver felt afraid to formally complain about Mr. Hurt's conduct  
11          because his conduct was common knowledge and no one had taken any corrective  
12          action.  
13

14          14.     On August 10, 2007, three months after Ms. Garver began her  
15          employment at Red Robin, Mr. Hurt entered the kitchen where Ms. Garver was  
16          working. He put his hands on her back, then grabbed her buttocks. Mr. Hurt's conduct  
17          made Ms. Garver very upset.  
18

19          15.     That same night, Ms. Garver informed Ernest Mueller, her immediate  
20          supervisor, about Mr. Hurt's behavior.  
21

22          16.     The next day, Ms. Garver informed Shannon Nelson, a female manager,  
23          about Mr. Hurt's ongoing, and escalating, comments and conduct.  
24

25          17.     Ms. Garver felt so upset and frightened about Mr. Hurt's escalating,  
26          sexually assaultive comments and behavior, and so fearful that Red Robin would not  
27          address Mr. Hurt's behavior, which was commonly known by Red Robin staff, that she  
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1 had no choice but to resign. On August 10-11, 2007, she told Mr. Mueller, her  
2 supervisor, and Ms. Nelson, a manager, that her final work day would be August 19,  
3 2007.  
4

5 18. Red Robin took no action during the remainder of Ms. Garver's  
6 employment to stop Mr. Hurt's behavior after Ms. Garver's complaint and Mr. Hurt  
7 continued to sexually harass the female staff.  
8

9 **FIRST CAUSE OF ACTION:**  
10 **DISCRIMINATION BECAUSE OF SEX,**  
11 **A VIOLATION OF AS 18.80.220(a)(1)**

12 19. Paragraphs 1-18 above are realleged and incorporated herein.

13 20. Mr. Hurt is one of Respondent's managers and supervises other  
14 employees at Red Robin.  
15

16 21. When their shifts overlapped, which was several times a week, Mr. Hurt  
17 supervised Ms. Garver.

18 22. Beginning in July 2007, and on every shift that she and Mr. Hurt worked  
19 together, Mr. Hurt made sexual comments to, and/or made sexually suggestive noises  
20 toward, Ms. Garver, and/or he touched or massaged her arms, hands, back, chest,  
21 shoulders, and/or buttocks with his hands or other body parts. She also knew that he was  
22 sexually harassing other female staff.  
23

24 23. Ms. Garver did not welcome Mr. Hurt's comments and conduct.  
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26 24. Mr. Hurt's comments and conduct were objectively and subjectively  
27 offensive, and did in fact offend Ms. Garver.  
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**PRAYER FOR RELIEF**

Wherefore the Executive Director asks for the following relief:

1. That the Commission issue an order declaring that Respondent Red Robin Alsaka, Inc. violated AS 18.80.220 by discriminating against Ashley Garver because of her sex.

2. That the Commission issue an order declaring that Respondent constructively violated AS 18.80.220 by creating working conditions for Ms. Garver that were so intolerable that she was forced to resign.

3. That the Commission order Respondent to adopt, disseminate, and post in a conspicuous place a policy of nondiscrimination under the Alaska Human Rights Law that includes a policy prohibiting discrimination against employees on the basis of sex.

4. That the Commission order Respondent to obtain training for its managers, supervisors, and employees on the provisions of the Alaska Human Rights Law that prohibit discrimination in employment, with an emphasis on the prohibition against discrimination based on sex.

5. That the Commission order Respondent to eliminate from Ms. Garver's personnel records all documents and entries relating to the facts and circumstances that led to her filing of the above-captioned charge of discrimination and the related events occurring thereafter, and that Respondent shall not notify any other employer or potential employer of Ms. Garver of the facts or circumstances involved in this case.

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6. That the Commission order Respondent to pay back wages to, and other out of pocket expenses incurred by, Ms. Garver because of Respondent's discrimination, plus interest at the applicable legal rate, the exact amount of which will be proven at hearing.

Dated this 9th day of March 2011 at Anchorage, Alaska.

ALASKA STATE COMMISSION  
FOR HUMAN RIGHTS

\_\_\_\_\_  
/s/  
Lauri J Owen  
Human Rights Attorney  
Alaska Bar No. 0705032