

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

AUG 31 2010

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: *[Signature]*
DEP. CLERK

BRIGITTE RANEY

PLAINTIFF

VS.

NO. 4 • 10 - CV - 118 BSM ■ ■ ■

OK APPLE, INC., APPLE GOLD, INC.
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

NOTICE OF REMOVAL BY DEFENDANTS OK APPLE, INC., APPLE GOLD, INC.,
AND ALEX GARLINGTON

TO: James W. McCormack
402 U. S. Post Offices and Courthouse
600 W. Capitol Avenue
Little Rock, AR 72201

This case assigned to District Judge *Miller*
and to Magistrate Judge *Ray*

Doug Kidd
Circuit Clerk
Saline County Circuit Court
113 Courthouse
200 N. Main Street
Benton, AR 72015

Please take notice that the captioned case, filed as Case No. CV-2010-680-3 in the Circuit Court of Saline County, Arkansas has been hereby removed by Defendants, OK Apple, Inc., Apple Gold, Inc., and Alex Garlington ("Defendants") to the United States District Court for the Eastern District of Arkansas, Western Division. Defendants file this Notice of Removal and states as grounds for removal, the following:

1. On July 23, 2010, Plaintiff, Brigitte Raney ("Plaintiff"), commenced the above-styled action by filing a Complaint in the Circuit Court of Saline County, Arkansas, Case No. CV-2010-680-3. In the original Complaint, Plaintiff stated claims against the Defendants based upon alleged violations of the Arkansas Civil Rights Act of 1993.

2. This Notice of Removal is being filed within thirty (30) days after Defendants' receipt of the Complaint, and is therefore timely under 28 U.S.C. § 1446(b). A copy of all the Summons, Affidavit of Service and Complaint which constitute all process, pleadings and orders that have been filed or received in such action to the date of this Notice of Removal, are attached to this Notice.

3. This action is one for which a federal district court has original jurisdiction under 28 U.S.C. § 1332, in that it involves diversity of citizenship and the amount in controversy exceeds \$75,000.

4. Specifically, Plaintiff's Complaint alleges she is a resident of Jefferson County, Arkansas and that the amount in controversy exceeds that required for diversity jurisdiction. Compl. ¶ 1. She also alleges therein that Apple Gold, Inc. and OK Apple, Inc. are foreign corporations doing business in Arkansas. *Id.* Although Plaintiff brings suit against two individual employees who reside in Arkansas, her filing suit against these individuals under the ACRA is a fraudulent joinder of non-diverse parties in an effort to defeat diversity jurisdiction. Individual supervisors are not liable for sexual harassment under the ACRA. *See Morrow v. City of Jacksonville, Arkansas*, 941 F. Supp. 816, 820 (E.D. Ark. 1996).

5. This action is removable under 28 U.S.C. § 1441(a), pursuant to the procedures set forth in 28 U.S.C. §1446.

6. Counsel for removing Defendants are authorized to state that Defendant David Schoemaker (improperly spelled "Shumaker") consents to removal to federal court.

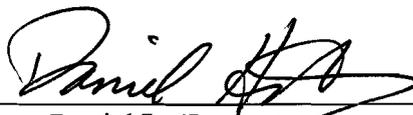
7. Removing Defendants has given written notice of this removal to federal district court by filing copies of this Notice of Removal with the Circuit Court of Saline County, Arkansas and by delivering copies of same to Plaintiff's attorney.

WHEREFORE, Defendants give notice that this case has been removed from the Circuit Court of Saline County, Arkansas to the Federal District Court for the Eastern District of Arkansas, Western Division.

Respectfully submitted,

Daniel L. Herrington (95166)
FRIDAY, ELDREDGE & CLARK
400 W. Capitol, Suite 2000
Little Rock, Arkansas 72201
501/370-1571
herrington@fridayfirm.com

Attorneys for Separate Defendants
*OK Apple, Inc., Apple Gold, Inc., and
Alex Garlington*

By: 
Daniel L. Herrington

Of Counsel:

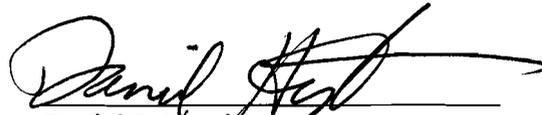
Charles E. Johnson
Sarah A. Coble
ROBINSON, BRADSHAW & HINSON
101 North Tryon Street, Suite 1900
Charlotte, NC 28246

CERTIFICATE OF SERVICE

I, Daniel L. Herrington, do hereby certify that a true and correct copy of the foregoing Notice of Removal has been served upon following counsel of record via U.S. Mail postage prepaid:

Lucien Gillham
HARRILL & SUTTER, P.L.L.C.
Post Office Box 2012
Benton, AR 72018

on this the 31st day of August 2010.


Daniel L. Herrington

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CW2010-1080-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

THE STATE OF ARKANSAS TO DEFENDANT: **Apple Gold, Inc.**
AFS: Robert M. Stolz
170 Wind Chime Ct., Raleigh, NC 27615

SUMMONS

NOTICE OF LAWSUIT

1. You are hereby notified that a lawsuit has been filed against you by the above-named Plaintiff(s). The relief asked is stated in the attached Complaint.

2. The attached Complaint will be considered admitted by you and a judgment by default may be entered against you for the relief sought in the Complaint unless you file a written response or answer and thereafter appear and present your defense. Your pleading must meet the following requirements.

- A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.
- B. It must be filed in the Pulaski County Circuit Clerk's office within TWENTY (20) days from the day you were served with this summons if you are a resident of this state; OR within THIRTY (30) days if you are a non-resident of this state OR within SIXTY (60) days if you are a person incarcerated in any jail, penitentiary, or other correctional facility in this state.
- C. A copy of your response or answer must be delivered or mailed to the Plaintiff(s) or the Plaintiff(s) attorney.

3. If you desire to be represented by an attorney, you should immediately contact your attorney so that a response or answer can be filed for you in the time allowed.

4. Additional Notices: None

WITNESS MY HAND, AND SEAL OF THE COURT ON THIS, THE 23 DAY OF JULY 2010.

Address of Clerk's Office

DOUG KIDD, Circuit Court Clerk

Saline County Circuit Court Clerk
200 North Mains Street
Benton, Arkansas 72015

BY: Dana Matting
Deputy Clerk

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CW2010-680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

THE STATE OF ARKANSAS TO DEFENDANT: **OK Apple, Inc.**
AFS: The Corporation Company

SUMMONS

NOTICE OF LAWSUIT

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3. If you desire to be represented by an attorney, you should immediately contact your attorney so that a response or answer can be filed for you in the time allowed.
4. Additional Notices: None

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DOUG KIDD, Circuit Court Clerk

Saline County Circuit Court Clerk
200 North Mains Street
Benton, Arkansas 72015

BY:

Dana Matting
Deputy Clerk

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CV2010-680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

THE STATE OF ARKANSAS TO DEFENDANT: **David Shumaker**

SUMMONS

NOTICE OF LAWSUIT

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 - C. A copy of your response or answer must be delivered or mailed to the Plaintiff(s) or the Plaintiff(s) attorney.
3. If you desire to be represented by an attorney, you should immediately contact your attorney so that a response or answer can be filed for you in the time allowed.
4. Additional Notices: **None**

WITNESS MY HAND, AND SEAL OF THE COURT ON THIS, THE 23 DAY OF JULY 2010.

Address of Clerk's Office:

DOUG KIDD, Circuit Court Clerk

Saline County Circuit Court Clerk
200 North Mains Street
Benton, Arkansas 72015

BY: *Dana Mattingly*
Deputy Clerk

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CV2010 - 680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

THE STATE OF ARKANSAS TO DEFENDANT: Alex Garlington

SUMMONS

NOTICE OF LAWSUIT

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- C. A copy of your response or answer must be delivered or mailed to the Plaintiff(s) or the Plaintiff(s) attorney.

3. If you desire to be represented by an attorney, you should immediately contact your attorney so that a response or answer can be filed for you in the time allowed.

4. Additional Notices: None

WITNESS MY HAND, AND SEAL OF THE COURT ON THIS, THE 23 DAY OF JULY 2010.

Address of Clerk's Office:

DOUG KIDD, Circuit Court Clerk

Saline County Circuit Court Clerk
200 North Mains Street
Benton, Arkansas 72015

BY: Dana Matthews
Deputy Clerk

7

SALINE COUNTY
CIRCUIT CLERK

2010 JUL 23 PM 2:14

BY: [Signature]

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS

**NOTICE OF RIGHT TO CONSENT
TO DISPOSITION OF CASE BY A PILOT STATE DISTRICT COURT JUDGE**

In accordance with the provisions of Act 663 of 2007 and Administrative Order Number 18, you are hereby notified that upon the consent of all the parties in a case, a Pilot State District Court Judge may be authorized to conduct all proceedings, including trial of the case and entry of a final judgment. Copies of appropriate consent forms are available from the Circuit Clerk.

You should be aware that your decision to consent or not to consent to the disposition of your case before a Pilot State District Court Judge is entirely voluntary, and by consenting to the reference of this matter to a Pilot State District Court Judge, the parties waive their right to a jury trial and a verbatim record of the proceedings, and any appeal in the case shall be taken directly to the Arkansas Supreme Court or Court of Appeals as authorized by law.

You should communicate your consent by completing the Form – CONSENT TO PROCEED BEFORE A PILOT STATE DISTRICT COURT JUDGE – and return to the Circuit Clerk.

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS

SALINE COUNTY
CIRCUIT CLERK

2010 AUG 19 AM 9:27

BY: PLAINTIFF

KH

BRIGITTE RANEY

vs.

CASE NO. CV 2010-680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

STATE OF ARKANSAS)

) ss:

AFFIDAVIT OF SERVICE

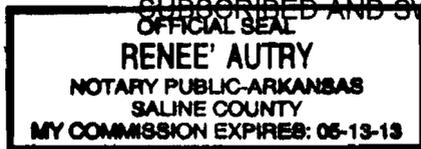
COUNTY OF SALINE)

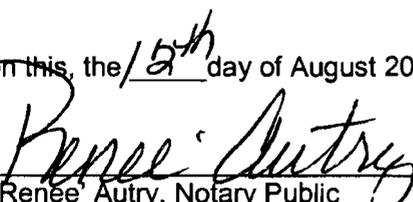
I, Lucien Gillham, of HARRILL & SUTTER, P.L.L.C., Attorneys for the Plaintiff in the above-captioned matter, state on oath that copies of Summons and Complaint were mailed certified mail, return receipt requested, in accordance with the Rules of Civil Procedure. This service of Summons and Complaint was made upon Defendants, OK Apple, Inc. and Apple Gold, Inc., via the Registered Agent for Service, as verified by the attached copies of the receipts for certified mail. Copies of the return receipt cards with signature are also attached, verifying that service was perfected August 2, 2010.



Lucien Gillham, Ark. Bar No. 99199

SUBSCRIBED AND SWORN to before me on this, the 15th day of August 2010.





Renee' Autry, Notary Public
My Commission Expires: 05-13-13

COPY

HARRILL & SUTTER, P.L.L.C.

Attorneys at Law

P.O. Box 2012 □ Benton, Arkansas 72018

310 West Conway Street □ Benton, Arkansas 72015

Telephone 501/315-1910 □ Facsimile 501/315-1916

Raymond Harrill, P.A.

Luther Oneal Sutter, P.A.

Lucien R. Gillham, P.A.

July 29, 2010

OK Apple, Inc.
AFS: The Corporation Company
124 West Capitol Avenue, Suite 1900
Little Rock, Arkansas 72201

Via Certified Mail
Return Receipt Requested

RE: Brigitte Raney vs. OK Apple, Inc., et al
Case Number: CV 2010-680-3

Dear Sir:

Enclosed are Summons and Complaint, which are forwarded to you as the Registered Agent for Service of OK Apple, Inc., a defendant named in the above-referenced lawsuit.

Sincerely,

Kenneth Baswell
Kenneth Baswell
Legal Assistant

Enclosure(s)

g:\doc\raney, bridget\serv-okapple.doc

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee		2.80
Return Receipt Fee (Endorsement Required)		2.30
Restricted Delivery Fee (Endorsement Required)		
Total Postage and Fees		5.10

Sent To
Street, Apt. or PO Box
City, State

OK Apple, Inc.
AFS: The Corporation Company
124 West Capitol, Suite 1900
Little Rock, AR 72201

PS Form 3811, February 2004

2. Article Number (Transfer from service label)
PS Form 3811, February 2004

Domestic Return Receipt

102595-02-41-1540

7007 0220 0002 0345 7568
OK Apple, Inc.
AFS: The Corporation Company
124 West Capitol, Suite 1900
Little Rock, AR 72201

3. Service Type
 Certified Mail
 Registered
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 C.O.D.
 4. Restricted Delivery? (Extra Fee)
 Yes

1. Article Addressed to:
 ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
 B. Received by (Printed Name)
 C. Date of Delivery
 D. Is delivery address different from item 1? If YES, enter delivery address below:

TANIA MATERY 8/2/10

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

9752 54ED 2000 0220 2007

HARRILL & SUTTER, P.L.L.C.
Attorneys at Law
P.O. Box 2012 □ Benton, Arkansas 72018
310 West Conway Street □ Benton, Arkansas 72015
Telephone 501/315-1910 □ Facsimile 501/315-1916

COPIE

Raymond Harrill, P.A. Luther Oneal Sutter, P.A. Lucien R. Gillham, P.A.

July 29, 2010

Apple Gold, Inc.
 AFS: Robert M. Stolz
 170 Wind Chime Ct.
 Raleigh, NC 27615

Via Certified Mail
Return Receipt Requested
Restricted Delivery

RE: Brigitte Raney vs. OK Apple, Inc., et al
Case Number: CV 2010-680-3

Dear Sir:

Enclosed are Summons and Complaint, which are forwarded to you as the Registered Agent for Service of Apple Gold, Inc., a defendant named in the above-referenced lawsuit.

Sincerely,

Renee Baswell
 Renee Baswell
 Legal Assistant

Enclosure(s)

g:\doc\raney, bridget\serv-applegold.doc

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Postage	1.61
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.90
Restricted Delivery Fee (Endorsement Required)	4.50
Total Postage & Fees	10.21

7-28-10
 RB

Sent to
 Street or PO
 City, State
 PS Form 3811, February 2004

Apple Gold, Inc.
 AFS: Robert M. Stolz
 170 Wind Chime Ct.
 Raleigh, NC 27615

7552 5430 2000 0220 2007

2. Article Number: 7007 0220 0002 0345 7551
 (Transfer from service label)
 PS Form 3811, February 2004
 Domestic Return Receipt
 102595-02-M-1540

Apple Gold, Inc.
 AFS: Robert M. Stolz
 170 Wind Chime Ct.
 Raleigh, NC 27615

- SENDER: COMPLETE THIS SECTION**
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 - Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.
1. Article Addressed to:

3. Service Type
- Certified Mail
 - Registered
 - Insured Mail
 - Express Mail
 - Return Receipt for Merchandise
 - G.O.D.
 - Restricted Delivery (Extra Fee)

COMPLETE THIS SECTION ON DELIVERY

A. Signature
Robert M. Stolz

B. Received by (Printed Name)
Robert M. Stolz

C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

Agent
 Addressee



[Home](#) | [Help](#) | [Sign In](#)

[Track & Confirm](#) [FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: **7007 0220 0002 0345 7551**

Service(s): **Certified Mail™**

Status: **Delivered**

Your item was delivered at 12:39 pm on August 02, 2010 in RALEIGH, NC 27615.

Track & Confirm

Enter Label/Receipt Number.

[Go >](#)

Detailed Results:

- **Delivered, August 02, 2010, 12:39 pm, RALEIGH, NC 27615**
- **Arrival at Unit, August 02, 2010, 9:16 am, RALEIGH, NC 27615**

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)

[Site Map](#) [Customer Service](#) [Forms](#) [Gov't Services](#) [Careers](#) [Privacy Policy](#) [Terms of Use](#) [Business Customer Gateway](#)

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No FEAR Act EEO Data

FOIA

Postal Regulatory Commission

Postal Service

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CV 2010-680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

**THE STATE OF ARKANSAS TO DEFENDANT: OK Apple, Inc.
AFS: The Corporation Company**

ALIAS SUMMONS

NOTICE OF LAWSUIT

1. You are hereby notified that a lawsuit has been filed against you by the above-named Plaintiff(s). The relief asked is stated in the attached Complaint.
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3. If you desire to be represented by an attorney, you should immediately contact your attorney so that a response or answer can be filed for you in the time allowed.
4. Additional Notices: None

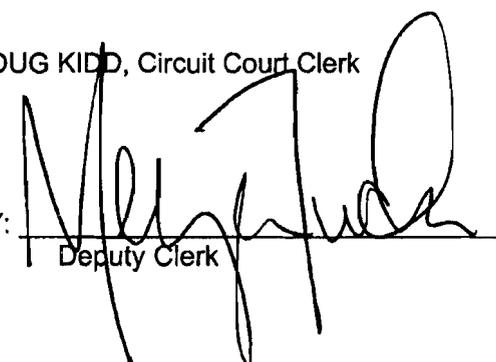
WITNESS MY HAND, AND SEAL OF THE COURT ON THIS, THE 23 DAY OF AUGUST 2010.

Address of Clerk's Office:

Saline County Circuit Court Clerk
200 North Mains Street
Benton, Arkansas 72015



DOUG KIDD, Circuit Court Clerk

BY: 
Deputy Clerk

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CV 2010-680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

THE STATE OF ARKANSAS TO DEFENDANT: Apple Gold, Inc.

ALIAS SUMMONS

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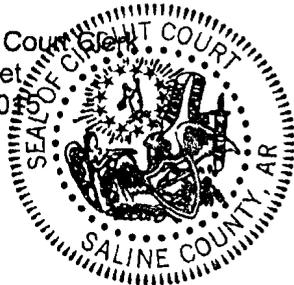
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4. Additional Notices: None

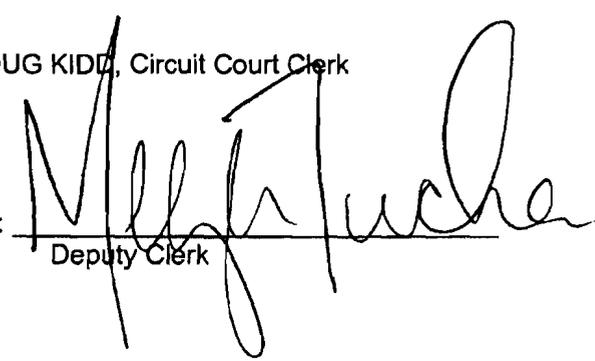
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Saline County Circuit Court Clerk
200 North Mains Street
Benton, Arkansas 72015



DOUG KIDD, Circuit Court Clerk

BY: 

Deputy Clerk

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CV 2010-680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

THE STATE OF ARKANSAS TO DEFENDANT: Alex Garlington

ALIAS SUMMONS

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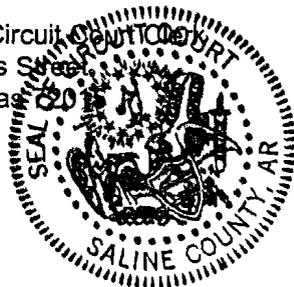
4. Additional Notices: None

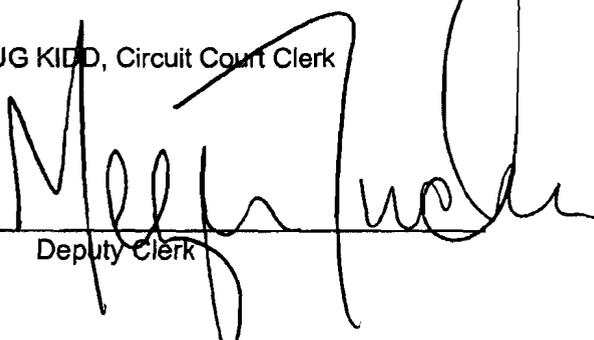
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DOUG KIDD, Circuit Court Clerk

Saline County Circuit Court
200 North Mains Street
Benton, Arkansas 72015



BY: 
Deputy Clerk

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
CIVIL DIVISION

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CV 2010-680-3

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

THE STATE OF ARKANSAS TO DEFENDANT: David Shumaker

ALIAS SUMMONS

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2. The attached Complaint will be considered admitted by you and a judgment by default may be entered against you for the relief sought in the Complaint unless you file a written response or answer and thereafter appear and present your defense. Your pleading must meet the following requirements.

- A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.
- B. It must be filed in the Saline County Circuit Clerk's office within TWENTY (20) days from the day you were served with this summons if you are a resident of this state; OR within THIRTY (30) days if you are a non-resident of this state OR within SIXTY (60) days if you are a person incarcerated in any jail, penitentiary, or other correctional facility in this state.
- C. A copy of your response or answer must be delivered or mailed to the Plaintiff(s) or the Plaintiff(s) attorney.

3. If you desire to be represented by an attorney, you should immediately contact your attorney so that a response or answer can be filed for you in the time allowed.

4. Additional Notices: None

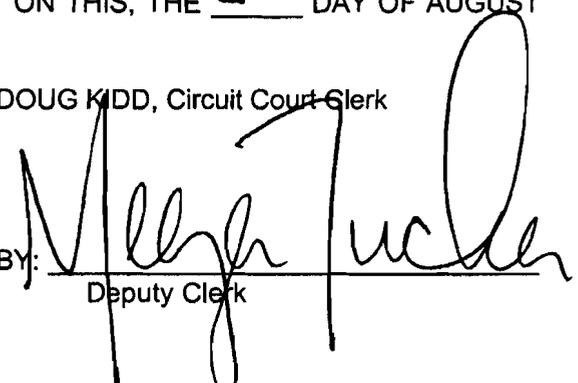
WITNESS MY HAND, AND SEAL OF THE COURT ON THIS, THE 23 DAY OF AUGUST 2010.

Address of Clerk's Office:

Saline County Circuit Court Clerk
200 North Mains Street
Benton, Arkansas 72015



DOUG KIDD, Circuit Court Clerk

BY: 

Deputy Clerk

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS

SALINE COUNTY
CIRCUIT COURT

2010 JUL 23 PM 2:14

BRIGITTE RANEY

PLAINTIFF

vs.

CASE NO. CN 2010-680-3

BY: [Signature]

OK APPLE, INC., APPLE GOLD, INC.,
DAVID SHUMAKER, AND ALEX GARLINGTON

DEFENDANTS

AFS: Apple Gold, Inc. c/o
Robert M. Stolz
170 Wind Chime Ct.
Raleigh, NC 27615

OK Apple, Inc. c/o
The Corporation Company
124 W. Capitol Ave.
Ste. 1900
Little Rock, AR 72201

COMPLAINT

COMES NOW the Plaintiff, by and through counsel, Harrill & Sutter P.L.L.C., and for this Complaint, states:

PARTIES AND JURISDICTION

1. Brigitte Raney (Plaintiff) is a resident of Jefferson County, Arkansas, who was employed by Defendants in Pulaski County, Arkansas and the events leading to this lawsuit took place in Pulaski County. This action is brought under the Arkansas Civil Rights Act of 1993 (ACRA) for an amount exceeding that required for diversity jurisdiction. Accordingly, venue is proper, and this court has personal and subject matter jurisdiction. Defendant Shumaker lived and resided in Saline County and Defendant Applebee's operated a restaurant in Benton, Arkansas. Alex Garlington is an Arkansas resident and citizen. Apple Gold, Inc. and OK Apple, Inc. are foreign corporations doing business in Arkansas, in a business substantially impacting interstate commerce.

GENERAL ALLEGATIONS OF FACT

2. Plaintiff is a female who had worked for Defendant Applebee's from in Spring 2009 as a hostess, while she was still a minor.

3. At all times relevant hereto, Plaintiff performed her job satisfactorily.

4. Plaintiff was subjected to gender discrimination and retaliation by managers and employees for Defendant

5. Within days, Defendant David Shumaker, the General Manager (in his mid-30s) of the store began sexually harassing Plaintiff by coming up to her, rubbing her back, touching her hair, and calling her 'baby' and 'pumpkin.'

6. He started texting her a great deal. There were in excess of 90 text messages in a 3 to 4 day period. Some of these texts were sexual.

7. The GM would call her to try to arrange rendezvous where he offered to get her drinks.

8. The GM would ask her to stay at his house after work and to take her to work the next morning.

9. The GM would instruct her to go in the bathroom and he would be in there to see her in a minute.

10. He would follow her around on breaks and during work, including following her into the freezer and shutting the door behind them.

11. He would try to undo her garments to reveal her body. He would tell her to take her pants off.

12. The GM would slap her behind.

13. This environment encouraged sexual harassment from others. It was so obvious that Mexican cooks who could not speak English would come up and wrap their arms around and dirty dance or kiss her neck. A morning server, Defendant Alex Garlington, (in his 20s) chased her for weeks, coming up behind her hugging her in a way that held down her arms so

that he could kiss her. He would ask her out repeatedly. He followed her at the mall. He suggested she take her clothes off. When his girlfriend found out he accused Plaintiff of disclosing his behavior and yelled and cursed at her. He called her a liar on this issue to numerous persons in the store.

14. The GM would harass other women, doing things such as frisking them and putting his finger in their pants.

15. The GM would ask what Plaintiff's favorite sexual position was and who she would have sex with.

16. This conduct was unwelcome.

17. Plaintiff was not given an employee manual or any training on sexual harassment.

18. Plaintiff complained to a manager, but nothing was done.

19. Accordingly, Plaintiff quit her job because the environment was so hostile that it was causing her mental distress and no reasonable woman in the Plaintiff's position would have remained in it. She then filed an EEOC charge.

20. The type of harassment above was done to other women by the GM and others..

21. In 2007 and 2008 Defendant employed more than 501 persons during more than twenty weeks of the year in Arkansas.

22. In 2007 and 2008 Defendant employed more than 301 persons during more than twenty weeks of the year in Arkansas.

23. In 2007 and 2008 Defendant employed more than 101 persons during more than twenty weeks of the year in Arkansas.

24. In 2007 and 2008 Defendant employed more than 15 persons during more than twenty weeks of the year in Arkansas.

COUNT I – ACRA

25. Plaintiff realleges the foregoing as if fully set out herein.

26. Based on the foregoing, Defendant Applebee's has violated Plaintiff's rights under the Arkansas Civil Rights Act of 1993 by creating a hostile work environment and constructive discharge based on gender, and all Defendants have violated her rights by retaliating in response to her complaint of discrimination.

27. As a direct and proximate cause of Defendants' acts or omissions, Plaintiff has suffered severe mental and emotional distress, lost wages, lost fringe benefits, lost earning capacity, and has incurred medical expenses which would not otherwise have been incurred.

28. Defendants' acts have been in willful, intentional, and malicious violation of the law and are so egregious so as to warrant the imposition of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief: back pay, front pay or reinstatement, compensatory damages, punitive damages, for a jury trial of all issues so triable, for an injunction requiring Defendants to remove all adverse employment information from her personnel file, designating her as rehirable, and for a positive employment recommendation, for a declaratory judgment that Defendant's acts and omissions have violated the the ACRA, for an injunction requiring Defendant to comply with the the ACRA, for a requirement that this lawsuit be posted and that it be posted that Defendant has violated the law, for investigation and disciplinary action against the appropriate individuals for committing discrimination, for a requirement that Defendant retain all complaints of discrimination for seven years, for a requirement that Defendant establish a hotline for complaints of discrimination, for a requirement of an independent monitor, for a requirement of training sessions for all personnel and management regarding discrimination and the handling of such complaints, for her reasonable attorney's fees and costs, and for all other proper relief.

Respectfully Submitted,

HARRILL & SUTTER, P.L.L.C.
Attorneys at Law
Post Office Box 2012
Benton, Arkansas 72018
(501) 315-1910; FAX (501) 315-1916
Attorneys for the Plaintiff(s)

By: _____

Lucien Gillham

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