

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JACOB BROWN, JOSE CORA,
and ROLANDO MARTINEZ,

Plaintiffs,

vs.

FIVE GUYS OPERATIONS,
L.L.C.,

Defendant.

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NO. 4:17cv412

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Jacob Brown, Jose Cora, and Rolando Martinez file this Complaint against Defendant Five Guys Operations, L.L.C.

Parties

1. Plaintiff Jacob Brown is an individual residing in Texas.
2. Plaintiff Jose Cora is an individual residing in Texas.
3. Plaintiff Rolando Martinez is an individual residing in Texas.
4. Defendant Five Guys Operations, L.L.C. (“Five Guys”) is Delaware limited liability company with its principal place of business in Virginia. Five Guys may be served with process through its registered agent, CT Corporation System, Inc., 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136.

Jurisdiction and Venue

5. The Court has federal question jurisdiction over this case because the case arises under the Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981. The Court also has diversity jurisdiction because the parties are citizens of different states.

5. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Plaintiffs reside in this District and because a substantial part of the events or omissions giving rise to the claim occurred in this District.

Claim for Relief

6. Five Guys operates a chain of hamburger restaurants. Five Guys employs more than 15 persons and is an employer for purposes of Title VII and Chapter 21 of the Texas Labor Code.

7. At the time of the events in question, Mr. Cora was the general manager of the Fry Road location for Five Guys.

8. At the time of the events in question, Mr. Martinez was the general manager of the Spring Cypress location for Five Guys.

9. At the time of the events in question, Mr. Brown was a shift manager at the Fry Road location for Five Guys.

10. On December 10, 2014, Five Guys held a meeting of assistant managers and shift managers at the Bunker Hill location. There were about 30 employees present. During the meeting, an employees named Jackie asked about speaking other languages in the workplace. Thomas Rogers, who was a district manager, launched into a racially offensive tirade, stating that speaking Spanish was not permitted, that everyone needed to remember what country we live in, that anyone who does not speak English should not be here, that the best that they could hope for was a promotion to secret shopper, and that 99% of the time when employees speak in Spanish, they are talking about you. Amazingly enough, the local HR manager, Kim Knight, expressed her agreement with all of these statements.

11. Multiple employees were offended by this and complained to Mr. Cora and Mr. Martinez. Many of these employees were Hispanic or had Hispanic family members. Mr. Cora and Mr. Martinez are Hispanic, and they were personally offended by Mr. Rogers' racist statements. Mr. Brown, who is not Hispanic, also complained.

12. On December 11, 2014, Mr. Martinez reported these complaints to Matthew Lewis, who was the district manager for the territory that included the Fry Road and Spring Cypress locations.

13. In the case of Mr. Brown, Mr. Cora told him to call Ms. Knight about it, which he did. Ms. Knight told him that she knew that Mr. Rogers' comments had been wrong.

14. On December 12, 2014, Five Guys Operations conducted a conference call with all of the general managers in the area. During the conference call, Mr. Cora raised the subject of Mr. Rogers' tirade. Ms. Knight told Mr. Cora and the other managers to get statements together, and that she would investigate (even though she had actually been a participant in the meeting).

15. Ms. Knight came to Houston in mid- to late-December 2014 to interview various shift leaders and assistant managers. She acknowledged to several employees, including Mr. Brown (a shift manager), that Mr. Rogers' comments had been wrong. Ms. Knight also talked to Mr. Cora and Mr. Martinez. They told her that they were personally offended by Mr. Rogers' comments.

16. On or about January 16, 2015, Matt Lewis was fired as district manager for unrelated reasons. Mr. Martinez and Mr. Cora were told to send all e-mails to Mr. Rogers. This came as a surprise, because Mr. Rogers' territory did not include the Fry Road and

Spring Cypress locations. The company had apparently decided to transfer those two stores to Mr. Rogers' territory.

17. Mr. Rogers moved quickly to purge his new territory of Mr. Cora and Mr. Martinez, who had complained about his racist rant and who, in any event, would have been the only Hispanic managers in his territory. On January 21, 2015, the final paychecks were cut for Mr. Cora and Mr. Martinez, and these checks were forwarded to Mr. Rogers.

18. On January 23, 2015, Mr. Rogers officially became the district manager for Mr. Cora and Mr. Martinez's stores. On the same day, Mr. Cora and Mr. Martinez were both terminated. In the case of Mr. Cora, the excuse was a supposed violation of the fraternization policy, even though he had not actually violated the policy and even though Ms. Knight had previously told him and other employees that he was not in any trouble. The company gave no reason for Mr. Martinez's termination.

19. Leslie Lathan, who is not Hispanic, replaced Mr. Cora as general manager. Mr. Brown immediately began to encounter hostility from Ms. Lathan.

20. Mr. Brown was shocked that Mr. Cora had been fired. He felt that this was wrong and that it was due to his race and his complaints about Mr. Rogers' comments. Mr. Brown called Ms. Knight and told her this, pointing out that Mr. Cora had been fired and that nothing had been done to Mr. Rogers. She said "That's enough" and refused to discuss the matter any further. Mr. Brown then called the head of HR for the company, but no one returned his call. A few days later, Ms. Knight called him and told him that he was to go through her exclusively. Mr. Brown was then called to a meeting with Mr. Rogers, Ms. Knight, and an assistant manager named Paul. Mr. Rogers fired him.

21. Mr. Cora, Mr. Martinez, and Mr. Brown filed charges of discrimination with the EEOC and the Texas Workforce Commission. The EEOC issued right to sue letters in December 2016.

22. All conditions precedent have occurred or been satisfied.

23. Five Guys violated Title VII, section 1981, and Chapter 21 of the Texas Labor Code by discharging Mr. Cora and Mr. Martinez because of their race and by discharging Mr. Cora, Mr. Martinez, and Mr. Brown in retaliation for their complaints about racial discrimination.

24. Five Guys is therefore liable to Mr. Cora, Mr. Martinez, and Mr. Brown for back pay, reinstatement and/or front pay, compensatory damages including punitive damages, reasonable attorneys' fees, pre- and post-judgment interest as provided by law, and all costs of court.

Plaintiffs request that Defendant be cited to appear and answer, and that on final hearing the Court award the following relief to Plaintiffs and against Defendant:

- (a) back pay;
- (b) reinstatement and/or front pay;
- (c) compensatory damages including punitive damages;
- (d) reasonable attorneys' fees;
- (e) pre- and post-judgment interest as provided by law;
- (f) all costs of court; and
- (g) any other relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ David C. Holmes

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