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September 24, 2014

EEOC Minneapolis Area Office  
330 South Second Ave.  
Suite 720  
Minneapolis, MN 55401

Re: Charge of Discrimination  
Tyler Brandt v. Taco Johnson's of Yankton, Inc. and Taco John's International, Inc.

Dear EEOC Intake Officer:

Enclosed please find the completed Intake Questionnaire and the additional statement of charging party Tyler Brandt, who submits and requests filing of this Charge of Discrimination against Taco John's Of Yankton, Inc., and Taco John's International, Inc., for discrimination based on sex in violation of Title VII of the Civil Rights Act of 1964.

The following information is provided for the purpose of initiating Mr. Brandt's Charge of Discrimination:

**Employee**

Tyler Brandt  
3002 Douglas Avenue, #119  
Yankton, SD  
(605) 660-8791

Please contact Mr. Brandt through undersigned counsel.

**Employers**

**Franchisee:**

Taco John's of Yankton, Inc.  
1014 Broadway Avenue  
Yankton, SD 57078  
(605) 665-4114

**Franchisor:**

Taco John's International, Inc.  
808 W. 20<sup>th</sup> Street  
Cheyenne, WY 82001  
(307) 635-0101

## **Number of Employees**

Without access discovery, the total number of employees for Taco John's of Yankton, Inc. is estimated to be between 20-25 employees. For purpose of calculating the number of employees, Taco John's of Yankton, Inc. may be considered an integrated enterprise with other restaurant franchise businesses owned or operated by Michael L. Scott, including SHP Taco, Inc. and Wendy's of Yankton, Inc.

According to LinkedIn.com, the number of employees of Taco John's International, Inc. is between 200 and 500. Taco John's International, Inc., has a corporate presence in South Dakota and exercises sufficient control over its franchisees' daily operations, hiring and personnel policies to qualify as a joint employer for purposes of this charge of discrimination. For example, according to the website of Taco John's International, Inc., the corporation provides constant support and guidance with respect to legal issues, human resources, and training. Franchise Business Consultants "stop into restaurants frequently to help with daily operations . . . employee development, restaurant evaluations and benchmarking with system standards." The corporation requires franchisees and at least two managers to complete four weeks of intense training at the company's Cheyenne Franchise Support Center. Taco John's International, Inc. also has stated publicly that it requires all franchisees to following applicable nondiscrimination laws as a condition of the franchise agreement. Additional facts regarding the joint employer relationship will be developed with the benefit of discovery.

## **Description of Events**

Mr. Brandt ("Tyler") is 16 years old. He worked at Taco John's in Yankton, South Dakota from May 2014 until June 24, 2014. The owner of the Taco John's franchise in Yankton is Michael L. Scott. His son, John Scott, is the daytime manager and his grandson, Andrew Scott, is the nighttime manager. Tyler was never provided with any EEO training, an employee handbook or told whom he should contact to report discrimination.

While Tyler worked at Taco John's, Andrew Scott was Tyler's direct supervisor. Tyler was not a friend or acquaintance of any of the Scott family prior to his employment at Taco John's and his only interaction with the Scott family was during the course of his job duties. Tyler did not discuss his personal life or sexual orientation with Andrew Scott. Tyler performed the job duties he was assigned in a manner that met expectations and had not been subject to any form of complaints, discipline or performance-improvement planning during his employment. Nonetheless, Tyler became the target of repeated, offensive commentary from Andrew Scott about his assumptions and stereotypes in relationship to Tyler's masculinity and sexual orientation.

On numerous occasions in the workplace, Andrew Scott made unwanted, offensive remarks about his stereotyped views of Tyler's gender mannerisms and sexual orientation to other employees that he was supervising, including but not limited to the following remarks:

- Saying Tyler is “so weird because he’s so gay.”
- Calling Tyler a “faggot”
- Remarking that Tyler is “so gay it’s not even funny.”

On June 23, 2014, Tyler began his nighttime work shift at 4:00 p.m. Around 7:00 p.m., Andrew Scott called him into the office, picked up the name tag printer and pulled a newly made label off of it, put it on a name tag, and handed it to Tyler, saying, “Wear this.” Tyler looked at the name tag and saw that it read “GAYTARD” with little hearts on either side of the word. Tyler was offended. Because Tyler did not want to lose his job, he obeyed Mr. Scott’s instruction and put the name tag on but immediately asked, “Okay, can I take it off now?” Mr. Scott laughed and directed Tyler to leave the “GAYTARD” name tag on.

Concerned about being fired, Tyler resumed his work. This required him to be in the public areas of the Taco John’s where customers and his co-worker could also observe the offensive name tag. Every time he had to deal with a customer, Tyler tried to position himself so that the name tag was hidden by the register. Andrew Scott then started calling him “GAYTARD” loudly in front of customers all night, including: “Hey, GAYTARD, help this customer!” and “Take out the trash, GAYTARD!” Tyler was distressed and humiliated by the experience of having his personal life and mannerisms demeaned in this fashion.

After his shift was over, Tyler told Tanner Geary what happened and explained how upset he was. Tanner and Tyler found a number for and called a 24-hour hotline for Taco John’s employees. They detailed the name tag incident. The hotline representative initially thought Tyler was joking, but assured him that Taco John’s would notify its Yankton franchise to make sure the report was investigated. Tyler has never heard anything back from anyone at Taco John’s about his report.

The next day Tyler went to the Yankton Taco John’s restaurant to report the incident and tender his resignation because the work environment was unbearable and he feared for his safety in that environment. Tanner Geary accompanied him. Tyler reported Andrew Scott’s comments and behavior to John Scott, the daytime manager (who is also Andrew’s father). Tyler showed John Scott the offensive “GAYTARD” name tag. He told John Scott that he did not feel comfortable or able to remain working in the Taco John’s because of this incident. John Scott did not appear to think that Tyler’s report was a serious matter. Mr. Scott did not offer any assurances that Taco John’s would investigate or protect Tyler from further discriminatory treatment. He did not offer any objection when Tyler said he was going to quit because of the intolerable work conditions. Instead, he insisted that Tyler needed to give him the “GAYTARD” name tag or Tyler would not get his last paycheck. Tyler refused to give him the name tag.

Tyler and Tanner Geary returned to the restaurant one more time to talk to John Scott about getting Tyler’s paycheck. At that point John Scott called his father, Michael Scott, who came to the restaurant to meet with Tyler. When Michael Scott appeared, Tyler repeated his complaint. Michael Scott also failed to seriously address the incident or suggest any remedial

action. Instead, Michael Scott also insisted that Tyler return the "GAYTARD" name tag in exchange for his paycheck. Tyler responded that he would not be giving back the name tag and that he had reported the incident to Taco John's via the corporate hotline. At this point, Mr. Scott became angry and hollered "You know what? Fuck you." The Taco John's Yankton restaurant has internal video surveillance cameras that may have recorded the foregoing events of June 23-24, 2014.

On June 26, 2014, in response to media coverage of the incident, Taco John's International, Inc., posted the following statement attributed to CEO Jeff Linville on its national corporate Facebook page:

At Taco John's, we believe everyone should be treated with dignity and respect. We take any accusation of workplace harassment very seriously. If this occurred, it is deplorable. We require our independently owned and operated franchisees to operate their restaurants in compliance with the law, including equal employment and anti-discrimination laws. As you can understand, because this is an employee relations matter, the independent owner of this franchise business has been made aware of and is investigating the incident.

Despite making this statement, Taco John's International's General Counsel Patricia Hays is quoted by the Yankton Daily Press & Dakotan newspaper as follows:

The alleged incident has taken place at a franchise location, which is independently owned and operated. This is an employee matter, and as a franchisor, we are not the employer. We can't investigate the employee matter. We've contacted the independent owner and made him aware of what is alleged to have happened and requested that he do an investigation and handle it.

To the best of Tyler's knowledge, there has been no investigation or action to address Tyler's report or to prevent further discrimination or retaliation in the Taco John's workplace. Moreover, in response to questions from the media, Mr. Scott has falsely asserted that Tyler asked Andrew Scott to make the offensive name tag and to loudly call him "GAYTARD" in front of customers. In addition, a co-worker has told Tyler that she was threatened with termination by Taco John's International, Inc. because Tyler named her as a witness in his report about Andrew Scott's discriminatory treatment.

### **Violation of Title VII**

In addition to other recognized claims under South Dakota law that may be asserted against the individual and the employers, the Employers' actions here violated Title VII by creating a hostile work environment and constructively discharging Tyler because of its manager's offensive beliefs and actions in relation to Tyler's masculinity and sexual orientation. Specifically, the terms and conditions of Tyler's work place were altered by Andrew Scott's offensive expressions and actions regarding his stereotyped perceptions about Tyler's

mannerisms and sexual orientation. Andrew Scott's behavior and comments effectively permeated Tyler's workplace with discriminatory intimidation, ridicule and insult. Taco John's, as an individual store and as a franchisor, did nothing to remedy or address this blatant violation of its own anti-discrimination policies.

The overtly sexual nature of the stereotype and comments applied to Tyler is reflected by the manager's references to Tyler in the terms such as "GAYTARD" and "faggot", terms that demonstrate biases based on gender stereotype, sexual orientation and disability status. See *Lewis v. Heartland Inns of Am., L.L.C.*, 591 F.3d 1033 (8th Cir. 2010); *Couch v. Dep't of Energy*, EEOC Appeal No. 0120131136 (Aug. 14, 2013); *Baker v. Social Security Administration*, EEOC Appeal No. 0120110008 (Jan. 11, 2013); *Castello v. U.S. Postal Service*, EEOC Request No. 0520110649 (Dec. 20, 2011); *Veretto v. U.S. Postal Serv.*, EEOC Appeal No. 0120110873 (July 1, 2011). Moreover, discriminatory actions based upon gender stereotype and sexual orientation are necessarily forms of prohibited sex discrimination because they impermissibly take a person's gender into account in employment. Cf. *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012).

Please contact Mr. Block or I if you need any further information or require any additional facts in order to initiate this Charge of Discrimination. My phone number is 605-835-8391 and my email is [Johnson@gwtc.net](mailto:Johnson@gwtc.net); Mr. Block's direct phone number is 212-549-2593 and his email is [jblock@aclu.org](mailto:jblock@aclu.org). You may contact either or both of us.

Respectfully submitted,



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*Attorneys for Tyler Brandt*

Cc: Tyler Brandt