

CAUSE NO. _____

KELLY GUERRERO
Plaintiff,

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IN THE DISTRICT COURT

VS.

_____ **JUDICIAL DISTRICT**

REALOGY OPERATIONS LLC
D/B/A COLDWELL BANKER REAL
ESTATE
Defendant.

BEXAR COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION & REQUESTS FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, KELLY GUERRERO, hereinafter referred to as Plaintiff, complaining of and about REALOGY OPERATIONS LLC d/b/a COLDWELL BANKER REAL ESTATE, hereinafter referred to as Defendant, and for cause of action will show unto the Court as follows:

I.
PARTIES AND SERVICE

1. Plaintiff, KELLY GUERRERO, is a citizen of the United States and the State of Texas and resides in San Antonio, Bexar County, Texas.
2. Defendant, REALOGY OPERATIONS LLC d/b/a COLDWELL BANKER REAL ESTATE, within the State of Texas and operating business in San Antonio, Bexar County, Texas.
3. Defendant, REALOGY OPERATIONS LLC d/b/a COLDWELL BANKER REAL ESTATE., may be served with process via certified mail return receipt requested by serving its Registered Agent of Service: Corporate Creations Network, Inc., at 2425 W. Loop South

200, Houston, Texas 77027 USA.

II.
JURISDICTION AND VENUE

4. This Court has jurisdiction of this action, as this case arises under Ch. 21 of the Texas Labor Code and under common law principles of defamation and damages are within the jurisdiction of this court and will continue to increase as this case proceeds to trial. Moreover, venue is proper in Bexar County, Texas, pursuant to the Texas Civil Practice and Remedies Code §15.002, as all or a substantial part of the events or omissions giving rise to this claim occurred in this county.

III.
NATURE OF ACTION

5. This is an action brought pursuant to Ch. 21 of the Texas Labor Code to correct and recover for Defendant's unlawful employment practices on the basis of Plaintiff's sex (gender) as well as Defendant's retaliation against Plaintiff's for her opposition to such discrimination. Moreover, this is an action pursuant to the common law principles of defamation arising from the Defendant's defaming statements about Plaintiff.

IV.
CONDITIONS PRECEDENT

6. All conditions precedent to jurisdiction have occurred with regard to exhaustion of administrative remedies.

V.
FACTS

7. Ms. Guerrero began working for Coldwell Banker in 1997. By mid-2002, Ms. Guerrero had learned the position of VP of Concierge Services and was reporting directly to the

COO of Coldwell Banker. However, because she was unable to agree to a mandatory job transfer to New Jersey, Ms. Guerrero was forced to resign.

8. Between 2003 and 2008, Ms. Guerrero continued to work in the mortgage industry alongside many Coldwell Banker franchisees. In December 2008, following a corporate restructure, Ms. Guerrero returned to work for Coldwell Banker as an Executive Business Consultant overseeing franchised companies in Texas. In the years following her return to Coldwell, Ms. Guerrero was repeatedly rated the #1 Business Consultant at Coldwell Banker based on franchise surveys.
9. In 2010, Ms. Guerrero was promoted to Executive Business Consultant for both Texas and Louisiana while still maintaining her top ranking. By 2012, Ms. Guerrero had been reassigned to the largest residential franchisee in the Realogy network. Moreover, by 2012, Ms. Guerrero was providing consulting services to franchised companies in Texas, Louisiana, Florida and the Carolinas. During this period, Ms. Guerrero continued to exceed expectations on her performance evaluations and continued to excel in franchisee satisfaction surveys.
10. In April of 2015, Ms. Guerrero became the Senior District Director overseeing a team of five (5) Business Consultants who worked with franchised companies in the Southwestern United States. Ms. Guerrero was the only female Senior District Manager.
11. As part of another corporate restructure in June of 2016, several similarly situated male employees were offered severance packages. However, when Ms. Guerrero also asked about a possible severance package, she was invited to resign and told that Realogy would not be offering her a severance package.

12. On or about November 10, 2017, Brand Ambassador Tami Goss informed her supervisor (Ms. Guerrero) that one of her franchise owners had passed away. After instructing Ms. Goss to send her condolences, Ms. Guerrero made an inquiry regarding the exit strategy, if any, of the franchisee. Within a few days, Ms. Goss informed Ms. Guerrero that the franchisee's daughter had expressed her intent to sell her father's assets. Moreover, Ms. Goss informed Ms. Guerrero that Ms. Goss' fiancé was considering purchasing the franchise. Knowing that such a transaction would be a conflict of interest due to Ms. Goss' access to confidential information, Ms. Guerrero instructed Ms. Goss to not get involved. In addition, Ms. Guerrero also sent the same directive to Ms. Goss via text message. In response, Ms. Goss acknowledged Ms. Goss' directive and agreed not to proceed with the transaction.
13. Afterward, the franchisee's daughter contacted Ms. Guerrero to ask that Ms. Goss not have any further contact with her deceased father's company; to which Ms. Guerrero acquiesced, communicating this directive to Ms. Goss.
14. On November 14, 2017, Ms. Guerrero received a notification from her Supervisor, VP of Field Operations, Ashley Dembowski, informing her that Franchise Sales Director, Russell Stinnett, and VP Steven Bright, has spoken with the daughter and wanted everyone to "stand down" with regards to the daughter's intent to sell the franchise. On November 17, 2017, Ms. Guerrero informed Ms. Dembowski via email that during her previous conversations, the daughter had expressed her intent to sell the business to either one of their agents or "other CB interested parties." Ms. Dembowski acknowledged this information and simply asked Ms. Guerrero to keep her informed of the situation.

15. On or about December 4, 2017, VP of Human Resources, Angie McDonald, contacted Ms. Guerrero seeking information about the franchisee issues related to the deceased broker and his daughter. Ms. Guerrero, not having access to detailed information at this time and not being made aware that she needed such information, was only able to provide some generalized responses to Ms. McDonald's inquiry.
16. On December 19, 2017, Ms. McDonald contacted Ms. Guerrero informing her that she was being terminated because she allegedly allowed Ms. Goss to proceed with making an offer on the franchise in question. In fact, Ms. Guerrero had explicitly forbidden Ms. Goss from engaging in such activity and had text messages that proved her innocence. When Ms. Guerrero rightfully protested the allegations, she was informed, "This is not debatable, and the outcome is final." Once the call was completed, Ms. Guerrero located the text messages and notified Ms. McDonald that she had messages that proved she had directed Ms. Goss not to proceed with her original intentions and her agreement not to do so. Despite this evidence, Ms. McDonald informed Ms. Guerrero that it was too late and a decision had been made.
17. Within twenty (20) minutes, Ms. Guerrero discovered that her entire United States district and its 20 ambassadors had been reassigned to her male counterparts, effectively replacing her with male Senior District Managers. For instance, peer and fellow Senior District Director (Bob Christian) worked for Coldwell Banker for only two years, yet was paid a higher salary than Ms. Guerrero, despite her 15 years of experience and her supervising of more ambassadors than Mr. Christian.
18. Despite the lack of evidence, Ms. Guerrero later discovered that the following day, her

termination was communicated to the entire broker network (more than 250 franchised companies). Even worse, Ms. Guerrero was informed that the entire corporate staff of 20+ employees were called into a meeting and told she had been terminated for “ethics violations,” completely neglecting the mendacity of such a statement.

VI.
SEX (GENDER) DISCRIMINATION
UNDER CH. 21 OF TEXAS LABOR CODE

19. Plaintiff incorporates by reference the allegations contained in paragraphs 1-18 as if fully rewritten herein.
20. Defendant intentionally engaged in unlawful employment practices against Plaintiff on the basis of her SEX (gender) in violation of Section 21.051 of the Texas Labor Code.
21. Defendant discriminated against Plaintiff in connection with the compensation, terms, conditions and privileges of employment or limited, segregated or classified Plaintiff in a manner that would deprive or tend to deprive her of an employment opportunity or adversely affect her status because of Plaintiff's SEX (gender) in violation of Section 21.051 of the Texas Labor Code.
22. Defendant discriminated against Plaintiff in the form of differential treatment with regard to offering of severance packages, her ultimate termination, and effectively replacing her with male counterparts after requesting the same severance packages offered to her male counterparts.

VII.
DEFAMATION
UNDER COMMON LAW PRINCIPLES

23. Plaintiff incorporates by reference the allegations contained in paragraphs 1-18 as if fully rewritten herein.
24. The statements and representations made by Realogy Operations d/b/a Coldwell Banker Real Estate were false and were recklessly and/or maliciously made. Realogy Operations d/b/a Coldwell Banker Real Estate had no right, privilege or justification to make the statements.
25. As noted above, the statements were defaming to KELLY GUERRERO in the conduct of her profession. Furthermore, the statements and representations were so egregious and obviously harmful as to constitute slander per se.
26. KELLY GUERRERO has been materially damaged as a direct and proximate result of the defaming statements and representations made by Realogy Operations d/b/a Coldwell Banker Real Estate. Specifically, the Plaintiff's profession has been damaged, as she has been recklessly and maliciously accused of "ethics violations" that unambiguously involve charges of dishonesty and fraud.

VIII.
DAMAGES

27. Plaintiff sustained the following damages as a result of the actions and/or omissions of Defendant described hereinabove:
 - a) Compensatory damages (including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-economic damages) allowed

under the Texas Labor Code.

- b) Economic damages in the form of lost back pay and lost fringe benefits in the past. Economic damages, in the form of lost wages and fringe benefits that will, in reasonable probability, be sustained in the future.
- c) All reasonable and necessary costs in pursuit of this suit, including attorney's fees pursuant to the Texas Labor Code.
- d) Compensation for injury to character or reputation.
- e) Punitive damages for the intentional disability discrimination, retaliation and reckless indifference to the state and federal protected rights of Kelly Guerrero.

28. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff hereby seeks monetary relief over \$200,000 but not more than \$1,000,000, including costs, expenses, pre- and post-judgment interests, and attorney's fees. Plaintiff further requests that the non-expedited rules apply in this case.

IX.
JURY DEMAND

29. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

X.
REQUEST FOR DISCLOSURE

30. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose within fifty (50) days of the service of this request the information or material described in Texas Rule of Civil Procedure 194.2.

XI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, KELLY GUERRERO, respectfully prays that Defendant, REALOGY OPERATIONS LLC d/b/a COLDWELL BANKER REAL ESTATE., be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court, together with interest as allowed by law, costs of court, and such other and further relief to which the Plaintiff may be justly entitled at law or in equity.

Respectfully Submitted,

 **kennard
miller
hernandez P.C.**



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