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DISTRICT OF ARIZONA  
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

**C.V.'04 2510 PHX EHC**  
No. CV-

DAVID M. RODRIGUEZ, JUDY  
GONZALES POGGI, JOSE  
MENDOZA, FRANK RIVERA,  
MARIO QUEZADA, and ESTHER  
ANAYA-GARCIA, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

MARICOPA COUNTY COMMUNITY  
COLLEGE DISTRICT, THE  
GOVERNING BOARD OF THE  
MARICOPA COUNTY COMMUNITY  
COLLEGE DISTRICT, RUFUS  
GLASPER, in his official and individual  
capacity, and PHILLIP RANDOLPH, in  
his official and individual capacity,

Defendants.

**CLASS COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF  
AND DAMAGES FOR  
VIOLATION OF TITLE VII  
OF THE CIVIL RIGHTS ACT  
OF 1964, 42 U.S.C. § 2000E;  
42 U.S.C. § 1981; and 42 U.S.C. §  
1983**

**DEMAND FOR JURY TRIAL**

1 Individual and Representative Plaintiffs David Rodriguez, Judy Gonzales  
2 Poggi, Jose Mendoza, Frank Rivera, Mario Quezada, and Esther Anaya-Garcia  
3 (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated,  
4 allege as follows:

5 **JURISDICTION, VENUE, AND EXHAUSTION OF**  
6 **ADMINISTRATIVE REMEDIES**

7 1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331  
8 and 1343, as well as Title VII of the Civil Rights Act of 1964, as amended, 42  
9 U.S.C. § 2000e-5(f)(3).

10 2. Venue is proper in this District under 28 U.S.C. § 1391(b). All of the  
11 Individual Plaintiffs reside in this District, and Maricopa County Community  
12 College District ("MCCCD"), a Defendant in this action, is also located within this  
13 District. The acts complained of occurred in this District and gave rise to the  
14 claims alleged.

15 3. Each representative Plaintiff has exhausted his or her administrative  
16 remedies by timely filing a charge of discrimination with the Equal Employment  
17 Opportunity Commission ("EEOC"). On or about January 9, 2004, David  
18 Rodriguez, Judy Gonzales Poggi, Jose Mendoza, Frank Rivera, Mario Quezada,  
19 and Esther Anaya-Garcia filed charges of discrimination with the EEOC. After  
20 investigation, the EEOC issued each Plaintiff a Letter of Determination finding that  
21 there exists "reasonable cause to believe that [MCCCD] violated Title VII by  
22 harassing Charging Party and a class of employees, because of their national origin,  
23 race, religion, and sex." A copy of the EEOC Letter of Determination issued to  
24 Plaintiff Judy Gonzales Poggi is attached as Exhibit A and incorporated by  
25 reference. On or about August 18, 2004, the EEOC issued to each Plaintiff a  
26 notice of right to sue.

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1 PARTIES

2 4. Plaintiff David Rodriguez is a resident of Phoenix, Arizona and a  
3 Librarian at Glendale Community College. He has been employed by Defendant  
4 MCCCCD for approximately 18 years. Mr. Rodriguez, who is Latino, has been  
5 subjected by his employer to a hostile work environment on account of his race,  
6 color, and/or national origin.

7 5. Plaintiff Judy Gonzales Poggi is a resident of Glendale, Arizona and a  
8 faculty member in the Early Childhood and Family Studies Department at Glendale  
9 Community College, which is within the MCCCCD. She has been employed by  
10 Defendant MCCCCD for approximately 6 years. Ms. Poggi, who is Latina, has been  
11 subjected by her employer to a hostile work environment on account of her race,  
12 color, and/or national origin.

13 6. Plaintiff Jose Mendoza is a resident of Peoria, Arizona and  
14 Coordinator for Multicultural Affairs at Glendale Community College. He has  
15 been employed by Defendant MCCCCD for approximately 27 years. Mr. Mendoza,  
16 who is Latino, has been subjected by his employer to a hostile work environment  
17 on account of his race, color, and/or national origin.

18 7. Plaintiff Frank Rivera is a resident of Glendale, Arizona and a faculty  
19 member in the Mathematics Department at Glendale Community College. He has  
20 been employed by Defendant MCCCCD for approximately 10 years. Mr. Rivera,  
21 who is Latino, has been subjected by his employer to a hostile work environment  
22 on account of his race, color, and/or national origin.

23 8. Plaintiff Mario Quezada is a resident of Phoenix, Arizona and a  
24 Custodian at Glendale Community College. He has been employed by Defendant  
25 MCCCCD for approximately 15 years. Mr. Quezada, who is Latino, has been  
26 subjected by his employer to a hostile work environment on account of his race,  
27 color, and/or national origin.

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1 Defendant MCCCCD – specifically, through a “listserv” maintained by Defendant  
2 MCCCCD for use by its employees and for the purpose of communicating business  
3 and educational needs.

4 17. The e-mails transmitted by Mr. Kehowski have, among other things,  
5 denounced “multiculturalism” and “d-d-d-diversity,” and encouraged recipients to  
6 “acknowledge and celebrate the superiority of Western Civilization.” These e-mails  
7 also contained excerpts from and links to articles denigrating Latinos, immigrants,  
8 and other minority groups, with such titles as “California’s Being Invaded, Too –  
9 By Hispanic Holidays,” and “On Columbus Day, Celebrate Western Civilization,  
10 Not Multiculturalism.”

11 18. Defendant MCCCCD’s internet web page also links to a web page  
12 maintained by Mr. Kehowski and containing links to material disparaging Latinos  
13 and immigrants, and extolling the superiority of “Western civilization.” The EEOC,  
14 in the Letter of Determination it issued to each representative Plaintiff, described  
15 Mr. Kehowski’s website as containing “hundreds of e-mails links relating to racial  
16 hatred, intimidation, and supremacy. Titles of some links include: Mexicans Think  
17 U.S. Belongs to Them!, Mexican Double Standard, and American Patrol (Scourge  
18 of Mecha).”

19 19. Plaintiffs, students, and other employees complained directly to  
20 officials at Defendant MCCCCD, including Defendants Glasper and Randolph,  
21 regarding the disparaging emails, links, and webpage. Plaintiffs informed MCCCCD  
22 officials that Mr. Kehowski had transmitted material that was disparaging to  
23 Latinos, that Plaintiffs perceived the communications as abusive and threatening,  
24 and that the material was contributing to a racially charged employment atmosphere.

25 20. Defendant MCCCCD, Defendant Board of Governors, Defendant  
26 Glasper, and Defendant Randolph failed to take immediate or appropriate steps to  
27 prevent Mr. Kehowski from sending Plaintiffs harassing e-mails and to cease

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1 maintaining a link to his webpage on the MCCCCD website. Indeed, Defendants  
2 permitted the racial harassment to continue despite notice of the circumstances.

3 21. The EEOC, in its Letter of Determination to Plaintiffs, found that  
4 Defendant MCCCCD “was fully aware that the e-mail, along with its own website,  
5 were the avenues used by the white staff member to make disparaging comments  
6 against Hispanics. The website also contained many links and references to  
7 religious, racial and sex-based hatred, intimidation, and supremacy that are patently  
8 offensive. Moreover, after [MCCCCD] received complaints from employees  
9 regarding the offensive e-mail and website, it failed to take appropriate action and  
10 the hostile work environment continued.”

#### 11 CLASS ACTION ALLEGATIONS

12 22. Plaintiffs bring this Class Action under Fed. R.Civ.P. 23(a),  
13 (b)(2), and (b)(3) on behalf of a class of all past, present, and future Latino  
14 employees of MCCCCD who have been, continue to be, or in the future may be  
15 subjected to a hostile work environment on account of their race, color, and/or  
16 national origin.

17 23. Plaintiffs are members of the class they seek to represent.

18 24. The members of the proposed class are so numerous that joinder of all  
19 members is impracticable. The number of class members is currently  
20 indeterminate, but certainly larger than can feasibly be addressed by joinder.

21 25. There are questions of law and fact common to the class, and these  
22 questions predominate over any questions affecting only individual members.  
23 Common questions include, among others, 1) whether the disparaging comments  
24 and e-mails directed toward Plaintiff class, and Defendants’ willingness to permit  
25 that harassment continue, constitute a hostile work environment; 2) whether  
26 Defendant MCCCCD’s and Defendant Board of Governors’ conduct violates Title  
27 VII; 3) whether Defendants’ conduct violates 42 U.S.C. § 1981; 4) whether  
28 Defendants’ conduct violates 42 U.S.C. § 1983; and 5) whether compensatory and

1 punitive damages, injunctive relief, and other equitable remedies for the class are  
2 warranted.

3 26. The representative Plaintiffs' claims are typical of the claims of the  
4 class.

5 27. The representative Plaintiffs will fairly and adequately represent and  
6 protect the interests of the members of the class. Plaintiffs have retained counsel  
7 competent and experienced in class actions and in employment discrimination  
8 litigation.

9 28. Class certification is appropriate under Fed.R.Civ.P. 23(b)(2)  
10 because Defendants have acted and/or refused to act on grounds generally  
11 applicable to the class, making appropriate declaratory and injunctive relief with  
12 respect to the Plaintiffs and the class as a whole.

13 29. Class certification is also appropriate under Fed.R.Civ.P.  
14 23(b)(3) because common questions of law and fact predominate over any  
15 questions affecting only individual members of the class, and because a class  
16 action is superior to other available methods for the fair and efficient adjudication  
17 of this dispute.

18 **FIRST CLAIM FOR RELIEF**  
19 **(42 U.S.C. § 2000E *et seq.*)**

20 30. Plaintiffs incorporate paragraphs 1 through 29 as alleged above.

21 31. This claim is brought by all representative Plaintiffs on  
22 behalf of themselves and the Class they represent.

23 32. The conduct to which Plaintiffs have been subjected is sufficiently  
24 pervasive and severe as to alter conditions of employment and to create a hostile or  
25 abusive work environment.

26 33. Despite having notice of the harassment to which Plaintiffs have been  
27 subjected, Defendant MCCCCD and Defendant Board of Governors have not taken  
28 appropriate steps to prevent the hostile work environment from persisting.





**EXHIBIT "A"**



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Phoenix District Office

3300 N. Central Avenue, Suite 690  
Phoenix, AZ 85012-2504  
(602) 640-5000  
TTY (602) 640-5072  
FAX (602) 640-5071

Charge No. 350-2004-01278

Ms. Judy G. Poggi  
4434 W. Fallen Leaf Lane  
Glendale, AZ 85310

Charging Party

Maricopa Community College District  
2411 W. 14<sup>th</sup>. Street  
Tempe, AZ 85281

Respondent

DETERMINATION

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e, *et seq.* Timeliness and all other requirements for coverage have been met.

Charging Party alleged that over the last several months she was repeatedly subjected to unlawful harassment by a white co-worker. The behavior included both inappropriate comments and email. Also, that after complaints were made to management in October 2003, regarding the inappropriate conduct, no action was taken and the hostile work environment continued.

Respondent contends that it was required to allow the white faculty member to exercise his right to free expression on an email system that has become a limited open forum, but that Respondent has properly reflected its disagreement with both how the faculty member uses its email and his position.

Evidence reveals the following. In October 2003, a white faculty member of the math department sent to all district employees email which contained disparaging comments and internet links regarding Hispanics and other protected groups. In its response to staff complaints, Respondent informed employees that while the major purpose of its email system is for communication related to business and educational needs, the openness of the system also allows individuals to express opinions on almost any subject. Evidence further shows that Respondent's internet web page allows a connection to the white faculty member's web page which contains hundreds of internet links relating to racial hatred, intimidation, and supremacy. Titles of some links include; Mexicans Think U.S. Belongs to Them!, Mexican Double Standard, and American Patrol (Scourge of Mecha).

Like and related, and growing out of the Commission's investigation, the evidence also shows that the internet links that were referenced in the email were links that could also be connected from Respondent's website. These links included commentary and titles which would reasonably be offensive to females, as well as a persons race or religion. Links titled; Why Islam Hates Democracy, Islam's Threat to the West, Why White (and other) Women Can't Jump A Facelift for Title IX, Multiracialist chickens come home—but not to roost, and Segregation Now, Segregation Tomorrow, Segregation Forever.

The Commission has previously determined that national origin harassment violates Title VII when it is so severe or pervasive that the individual being harassed reasonably finds the work environment to be hostile or abusive. Harassment based on national origin includes offensive conduct directed towards an employee's birthplace, ethnicity, or culture. Factors in creating a hostile work environment may include whether the conduct was physically threatening or intimidating, whether the conduct was hostile and/or patently offensive, and whether management responded appropriately when it learned of the harassment. In this case, Respondent was fully aware that the email, along with its own website, were the avenues used by the white staff member to make disparaging comments against Hispanics. The website also contained many links and references to religious, racial, and sex based hatred, intimidation and supremacy that are patently offensive. Moreover, after Respondent received complaints from employee's regarding the offensive email and website, it failed to take appropriate action and the hostile work environment continued.

Accordingly, I find reasonable cause to believe that Respondent violated Title VII by harassing Charging Party and a class of employees, because of their national origin, race, religion, and sex.


Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Title VII and Commission Regulation apply to information obtained during conciliation.

If the respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission:

APR 28 2004

Date

  
Susan L. Grace  
Acting District Director