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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Kimberly Fisher, an individual,
Plaintiff,
vs.
Glendale Elementary School District,
Defendant.

No. 2:14-cv-02083-ESW
FIRST AMENDED COMPLAINT

Plaintiff Kimberly Fisher, for her claims for relief against Defendant alleges:

PARTIES AND JURISDICTION

1. Plaintiff, Kimberly Fisher, is a resident of Maricopa County, Arizona.

2. Upon information and belief, Defendant, Glendale Elementary School District (“District”), is a political subdivision of the State of Arizona and operates within Maricopa County, Arizona.

3. Defendant caused events to occur and committed acts in Arizona, which form the basis of this Complaint.

4. This court has personal jurisdiction because the acts of which Plaintiff complains of occurred while Plaintiff was a resident of Maricopa County, Arizona, and Defendant continuously transacted business in Maricopa County, Arizona acting in the

1 capacity as employer of Plaintiff. Therefore, this court has personal jurisdiction over the
2 parties.

3 5. Upon information and belief, Defendant is an employer who employs
4 fifteen or more employees for twenty or more calendar weeks and is thus, subject to 42
5 U.S.C. § 2000(e) et seq. commonly known as Title VII of the Civil Rights Act of 1964.

6 6. This court has subject matter jurisdiction to render relief for the claim of
7 unlawful employment discrimination pursuant to 28 U.S.C.A. § 1331, 42 U.S.C. §
8 2000(e) et. seq., and 42 U.S.C. § 1981.

9 7. Venue is proper in this Court because a substantial part of the events and
10 omissions giving rise to the claim occurred within this jurisdictional district.

11 **General Allegations**

12 8. Plaintiff re-alleges and incorporates by reference the statements and
13 allegations of the prior paragraphs of this complaint as if fully set forth herein.

14 9. Plaintiff was hired by Defendant on January 6, 2011; Plaintiff's position
15 was an hourly non-exempt position.

16 10. On or about the middle of 2011, Plaintiff became aware that District was
17 engaging in discriminatory practices against female candidates for the position of
18 Director of Finance Purchasing and Director of Maintenance Operations.

19 11. On or about the middle of 2011, Plaintiff made her concerns known to the
20 President of the Governing Board of District; she was instructed to make her concerns
21 known in writing.

22 12. On or about November 17, 2011, Plaintiff delivered her concerns in writing
23 to the sitting board president's office.
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1 13. Based on information and belief, District continued its discriminatory
2 practices, and Plaintiff continued to voice her concerns between on or about November of
3 2011 and April 2012.

4 14. On or about April 12, 2014, Plaintiff applied for the position of Coordinator
5 for Classified.

6 15. Plaintiff was not considered for the position, even though her credentials
7 satisfied the requirements for the position.

8 16. On or about the week of May 27th, 2012, Plaintiff's supervisor Kevin
9 Hegarty asked Plaintiff whether she would be interested in doing District's wellness
10 program.

11 17. Mr. Hegarty and Plaintiff completed preliminary paperwork for the
12 wellness program position.

13 18. On or about June 21, 2014, Plaintiff was informed that the wellness
14 program opportunity had been removed.

15 19. On or about October 11, 2012, Plaintiff filed a charge of discrimination
16 with the EEOC for violation of Title VII of the Civil Rights Act, and the Age
17 Discrimination in Employment Act

18 20. In November and December of 2012, Plaintiff was subjected to unfounded,
19 baseless disciplinary actions, including a letter of reprimand and recommendations that
20 Plaintiff be transferred.

21 21. On or about December 14, 2012, District administration offered to dismiss
22 its disciplinary action against Plaintiff, if Plaintiff would dismiss her EEOC complaint.

1 22. On or about January 30, 2013, Plaintiff observed that District had provided
2 false information to the EEOC, and Plaintiff submitted a public records request for that
3 information.

4 23. During this time frame between when Plaintiff filed her EEOC complaint
5 and January 30, 2013, Plaintiff's supervisor made the completion of Plaintiff's work tasks
6 extremely difficult.

7 24. On or about January 30th, Plaintiff's supervisor Mr. Rick Conrad instructed
8 Plaintiff that she was required to attend meetings that would require district to pay
9 Plaintiff overtime, except that District would not pay Plaintiff overtime.

10 25. District's mistreatment of Plaintiff was orchestrated to force her
11 resignation.

12 26. District's treatment of Plaintiff caused Plaintiff's health to deteriorate.

13 27. Plaintiff tendered her forced resignation on or about February 1, 2013.

14 28. Plaintiff's last day of work for District was on or about February 21, 2013.

15 29. On September 11, 2013, Plaintiff filed a second EEOC complaint against
16 District.

17 30. Plaintiff's second EEOC complaint was for discrimination due to race, age,
18 retaliation, denial of due process, and constructive discharge in violation of, inter alia,
19 Title VII of the Civil Rights Act of 1964, as amended.

20 31. Plaintiff received a right to sue letter on June 30, 2014 from the EEOC, and
21 July 8, 2014 from the Arizona Attorney General's Office.

22 32. Plaintiff served all members of District's governing board with a notice of
23 claim on September 15, 2014.
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COUNT THREE

(Retaliation in violation of Arizona's Employment Protection Act)

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2 39. Plaintiff incorporates all of the foregoing allegations as if set forth fully
3 herein.

4 40. Defendant's actions for Plaintiff's refusal to engage in lawful conduct were
5 retaliatory in nature and in violation of A.R.S. §§ 23-1501(3)(c)(i) and (ii).
6

7 41. Defendant's actions were carried out intentionally and with a conscious
8 disregard to the interests of Plaintiff and specifically its own self-interests, thereby
9 exposing Defendant to liability for exemplary and punitive damages.

10 41. Plaintiff has been damaged as a direct and proximate result of Defendant's
11 conduct in an amount to be proven at trial.
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COUNT FOUR

(Constructive Discharge)

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14 42. Plaintiff incorporates all of the foregoing allegations as if set forth fully
15 herein.
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17 43. Plaintiff provided sufficient notice to Defendant of the unpleasant working
18 conditions.

19 44. The working conditions were such that any reasonable employee would
20 have been forced to resign.

21 45. The patter of discriminatory harassment against Plaintiff was so severe that
22 any reasonable employee would have felt compelled to resign.
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1 but not limited to, the manner and method of evaluation, promotion, and the ability to
2 work in an environment free of racially motivated harassment by other staff members,
3 and administration.

4 55. Plaintiff has been retaliated against for having complained about such
5 discrimination in numerous ways, including but not limited to, the manner and method of
6 her evaluations, and the job duties she was assigned.

7 56. Such discrimination and retaliation as outlined above is in violation of 42
8 U.S.C. § 1981.

9 57. As a result of such discrimination, harassment, and retaliation, Plaintiff has
10 suffered a substantial amount of severe emotional distress over the past two years,
11 causing multiple effects upon her, including anxiety and depression.

12 58. In addition to all the relief which Plaintiff may be entitled, Plaintiff is
13 entitled to an award of attorney's fees and costs in this matter pursuant to 42 U.S.C. §
14 1988(b) and requests that the Court award the same.

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17 **DEMAND FOR JURY TRIAL**

18 Plaintiff requests a jury trial with respect to all claims so triable.

19 WHEREFORE, Plaintiff requests judgment as follows:

- 20 (A) Awarding judgment in an amount to be proven at trial in Plaintiff's
21 favor and against Defendant for all damages provided for under
22 applicable law, including but not limited to compensatory damages,
23 punitive damages, front pay, and back pay, statutory and liquidated
24 damages;

- 1 (B) Awarding Plaintiff interest as provided for by law;
- 2 (C) Awarding Plaintiff her costs and attorneys' fees as provided for by
- 3 law pursuant to 42 U.S.C. § 1988(b), A.R.S. §§ 12-34,1 and 12-
- 4 341.01, 41-1481(J); and
- 5 (D) Awarding Plaintiff such further relief as this Court deems just and
- 6 proper.

7 DATED this 12th day of December, 2014.

8 **BURGUAN CLARKE LAW OFFICE, PLLC**

9

10 By /s/ Jessica J. Burguan

11 Jessica J. Burguan

12 *Attorney for Plaintiff Kimberly Fisher*

13 By /s/ Brian M. Strickman

14 Brian M. Strickman

15 *Attorney for Plaintiff Kimberly Fisher*

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CERTIFICATE OF FILING

I hereby certify that on December 12, 2014, I electronically transmitted Plaintiff's First Amended Complaint using the CM/ECF System for filing.

/s/Carrie Foote _____