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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Kimberly Fisher, an individual,

Plaintiff,

vs.

Glendale Elementary School District,

Defendant.

No.

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 Governing Board of District.

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, 2014.¹

24 ¹ Plaintiff will subsequently amend her complaint after District has been afforded the 60-
25 days to respond to her notice of claim, as required by law.

**COUNT ONE
(Violation of Arizona Civil Rights Act)**

33. Plaintiff incorporates all of the foregoing allegations as if set forth fully herein.

34. The aforementioned actions by Defendant constitute, among other things, a violation of the Arizona Civil Rights Act, A.R.S. § 41-1463, *et seq.*

35. Defendant's actions are the direct and proximate cause of Plaintiff's damages, an amount which will be determined at trial.

**COUNT TWO
(Violation of Title VII of the Civil Rights Act of 1964)**

35. Plaintiff incorporates all of the foregoing allegations as if set forth fully herein.

36. Defendant's actions intentionally discriminated against Plaintiff on account of her race and gender, in violation of Title VII of the Civil Rights Act of 1964, by denying her equal terms, conditions and privileges of employment, including but not limited to, denying her an opportunity to be considered for positions as Coordinator for Classified, and with District's wellness program.

37. The discrimination and retaliation was severe and pervasive and interfered with Plaintiff's ability to perform her job.

38. As a direct and proximate result of Defendant's actions, Plaintiff suffered and continues to suffer damages in amount to be proved at trial, including but not limited to loss wages, embarrassment, pain and suffering, mental distress, ordeal, humiliation and emotional distress.

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

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

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

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

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

11
12 **COUNT FOUR**
13 **(Constructive Discharge)**

14 42. Plaintiff incorporates all of the foregoing allegations as if set forth fully
15 herein.

16 43. Plaintiff provided sufficient notice to Defendant of the unpleasant working
17 conditions.

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

20 45. The patter of discriminatory harassment against Plaintiff was so severe that
21 any reasonable employee would have felt compelled to resign.

22 46. Defendant's conduct towards Plaintiff effected a constructive discharge
23 pursuant to A.R.S. §§ 23-1502 (A)(1) and (2).
24
25

1 47. Plaintiff has been damaged as a direct and proximate result of defendant's
2 conduct in an amount to be proven at trial.

3
4 **COUNT FIVE**
5 **(Intentional Infliction of Emotional Distress)**

6 48. Plaintiff incorporates all of the foregoing allegations as if set forth fully
7 herein.

8 49. Defendant's conduct towards Plaintiff was extreme and outrageous.

9 50. Defendant's conduct was intended to cause severe emotional distress to
10 Plaintiff.

11 51. Plaintiff sustained severe emotional distress as a result of the Defendant's
12 conduct.

13 52. Plaintiff's severe emotional distress has resulted in damages to Plaintiff, for
14 which she is entitled to damages from Defendant, in an amount to be proven at trial.

15 **COUNT SIX**
16 **(Violation of 42 U.S.C. § 1981)**

17 53. Plaintiff incorporates all of the foregoing allegations as if set forth fully
18 herein.

19 54. As is set forth about, Plaintiff was denied due to her race and/or appearance
20 (Hispanic) the same right to enjoy the benefits, privileges, terms and conditions of her
21 contractual relationship with District as other employees, including but not limited to, the
22 manner and method of evaluation, promotion, and the ability to work in an environment
23 free of racially motivated harassment by other staff members, and administration.
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1 55. Plaintiff has been retaliated against for having complained about such
2 discrimination in numerous ways, including but not limited to, the manner and method of
3 her evaluations, and the job duties she was assigned.

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

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

9 58. In addition to all the relief which Plaintiff may be entitled, Plaintiff is
10 entitled to an award of attorney's fees and costs in this matter pursuant to 42 U.S.C. §
11 1988(b) and requests that the Court award the same.
12

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14 **DEMAND FOR JURY TRIAL**

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

16 WHEREFORE, Plaintiff requests judgment as follows:

- 17 (A) Awarding judgment in an amount to be proven at trial in Plaintiff's
18 favor and against Defendant for all damages provided for under
19 applicable law, including but not limited to compensatory damages,
20 punitive damages, front pay, and back pay, statutory and liquidated
21 damages;
- 22 (B) Awarding Plaintiff interest as provided for by law;
- 23 (C) Awarding Plaintiff her costs and attorneys' fees as provided for by
24 law pursuant to 42 U.S.C. § 1988(b), A.R.S. §§ 12-34.1 and 12-
25 341.01, 41-1481(J); and

1 (D) Awarding Plaintiff such further relief as this Court deems just and
2 proper.

3 DATED this 19th day of September, 2014.

4 **BURGUAN CLARKE LAW OFFICE, PLLC**

5
6 By /s/ Jessica J. Burguan
7 Jessica J. Burguan
8 *Attorney for Plaintiff Kimberly Fisher*

9 By /s/ Brian M. Strickman
10 Brian M. Strickman
11 *Attorney for Plaintiff Kimberly Fisher*

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CERTIFICATE OF FILING

I hereby certify that on September 19, 2014, I electronically transmitted Plaintiff's Complaint using the CM/ECF System for filing.

/s/Carrie Foote