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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

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS**

Plaintiff, Kimberly Fisher, hereby responds to Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) of the Fed. R. Civ. P. Defendant's arguments are misplaced and often based on a misapplication of California and other jurisdiction's case law to Arizona statutes. Moreover, if Defendants were to prevail in their arguments Plaintiffs whom are required to first file with the Equal Employment Opportunity Commission would ultimately have no remedy in Arizona. Therefore, Defendant's Motion to Dismiss should thus be denied. If there are any deficiencies found in Plaintiff's First Amended Complaint then this court should provide Plaintiff with the opportunity to amend and correct her complaint. This response is supported by the following Memorandum of Points and Authorities and previous and subsequent filings.

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1 DATED this 19th day of January, 2015.

2 **BURGUAN CLARKE LAW OFFICE, PLLC**

3
4 By /s/ Brian M. Strickman
5 Brian M. Strickman
6 Jessica J. Burguan
7 *Attorneys for Plaintiff Kimberly Fisher*

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. LEGAL AUTHORITY AND ARGUMENT**

10 **a. The 9th Circuit Standard to Evaluate a Motion to Dismiss Pursuant to**
11 **Rule 12(b)(6)**

12 A Complaint is pled with particularity, when a plaintiff's complaint sets forth
13 allegations that are merely plausible; the allegations do not have to prove that the plaintiff
14 will win. *Eclectic Props. E., LLC v. Marcus & Millchap Co.* (9th Cir., 2014). The 9th
15 Circuit has applied the Supreme Court of the United States' holdings from *Ashcroft v.*
16 *Iqbal*, 129 S.Ct. 1937 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) to
17 furnish the following rule:

18 First, to be entitled to the presumption of truth, allegations in a complaint or
19 counterclaim may not simply recite the elements of a cause of action, but must
20 contain sufficient allegations of underlying facts to give fair notice and to enable the
21 opposing party to defend itself effectively. Second, the factual allegations that are
22 taken as true must plausibly suggest an entitlement to relief, such that it is not unfair
23 to require the opposing party to be subjected to the expense of discovery and
24 continued litigation.

25 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). Since Defendant completely fails
to allege any grounds as to why Plaintiff's First Amended complaint fails to state a claim

1 in Section II of their Motion to Dismiss there is no argument for Plaintiff to respond to.
 2 (Doc. 17). Thus, the court should find the complaint is well pled.

3 **b. Plaintiff has fully and completely complied with Arizona’s Mandatory**
 4 **Notice of Claim Statute; therefore, Defendant’s Motion to Dismiss**
 5 **must be Denied as to Counts 1, 2, 3, 4, and 5 of Plaintiff’s First**
 6 **Amended Complaint**

7 Pursuant to A.R.S. § 12-821.01 a plaintiff must provide a notice of claim to a
 8 public entity for state law claims against that entity within 180 days after the cause of
 9 action accrues. A cause of action does not accrue until after administrative remedies have
 10 been exhausted. *See Third & Catalina Associates v. City of Phoenix*, 895 P.2d 115, 118,
 11 182 Ariz. 2003 (Ariz. App. Div. 1, 1994). “A claim against a public entity or public
 12 employee filed pursuant to this section is deemed denied sixty days after the filing of the
 13 claim unless the claimant is advised of the denial in writing before the expiration of the
 14 sixty days.” A.R.S. § 12-821.01 (E). Defendant claims, absent citation to any law or
 15 statute, that “Only after the claim is denied, either through notice or the passage of 60
 16 days, may the claimant proceed to litigation.” (Doc.17 at p. 2). Defendant then accurately
 17 states “compliance with the notice provision of § 12-821.01(A) is a mandatory and
 18 essential prerequisite to such an action, and a plaintiff’s failure to comply bars any
 19 claim.” *Salerno v. Espinoza*, 210 Ariz. 586, 588, 115 P.3d 623, 628 (Ct. App. 2005)
 20 (internal quotation marks and citations omitted). In other words, the analysis does not
 21 preclude a Plaintiff from filing a complaint and subsequently serving an amended
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1 complaint on the Defendant after the 60 day notice period has been complied with. There
2 is absolutely no case law that Defendant cites, or can cite that stands for the proposition
3 that Plaintiff did not comply with the Notice of Claim Statute.

4 The purpose of the 60 day notice period is to allow the public entity to
5 perform a “meaningful[] investigat[ion] and assess a claim, and determine whether to
6 settle and possibly avoid litigation altogether.” *Deer Valley Unified Sch. Dist. No. 97 v.*
7 *Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007). Here, Plaintiff served her notice
8 of claim on September 15, 2014. The Defendant had a full and complete 60 days to
9 investigate and to avoid litigation. If the matter had settled, Defendant would have never
10 been served the amended complaint. Plaintiff would have dismissed her complaint, and
11 Defendant would have “avoid[ed] litigation altogether.” Defendant chose to arrogantly
12 ignore Plaintiff’s Notice of Claim and no response was received from the school district.
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14 Moreover, Defendant’s argument would lead to the absurd result of prohibiting
15 Plaintiffs with EEOC complaints from meeting all filing deadlines. Plaintiffs have 90
16 days from receipt of their right to sue letter to file a complaint; however, they have 180
17 days from the date their cause of action accrues to file a notice of claim. The plaintiff’s
18 cause of action does not accrue until their receipt of a right to sue letter. *See Third &*
19 *Catalina Associates v. City of Phoenix* at 182. A plaintiff is not afforded the full 180
20 days, because of the 90 day restriction. In this case, Plaintiff filed her initial complaint
21 within 90 days, served her Notice of Claim within 180 days of the accrual of her cause of
22 action, and adequately provided Defendant with 60 days to investigate and attempt to
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1 settle in order to avoid litigation. Therefore, Plaintiff has fully complied with Arizona's
2 Notice of Claim Statute.

3 **c. Plaintiff can and has Alleged a Valid Claim under the Arizona Civil**
4 **Rights Act ("ACRA")**

5 Under the doctrine of equitable tolling Plaintiff's claims were not brought in
6 contravention of A.R.S. § 41-1481(D). *See Kyles v. Contractors/Engineers Supply, Inc.*,
7 949 P.2d 63, 66, 190 Ariz. 403 (Ariz. App. Div. 2, 1997). Arizona will apply the doctrine
8 of equitable tolling when an unrepresented Plaintiff files a charge with the EEOC, and
9 due to actions taken by the EEOC that Plaintiff could not have known they needed to file
10 their civil cause of action within the guidelines of A.R.S. § 41-1481 . *See id.*

11 Plaintiff's lawsuit was brought within the 90 day period stated in her right to sue
12 letter. At the time of filing her EEOC charge, Plaintiff was unrepresented by counsel and
13 had to rely upon information provided to her by the EEOC. No reasonable party should
14 figure that the mandatory filing of an EEOC complaint could ultimately result in the party
15 losing their opportunity to sue. This result is again, absurd. This result would effectively
16 deprive a Plaintiff of the procedural due process they are entitled to under the Fourteenth
17 Amendment to the Constitution of the United States.

18 **d. Plaintiff's Title VII Claim (Count II) is Plausible**

19 Plaintiff filed a claim of discrimination alleging race, age, and discrimination.
20 (Doc. 9 ¶ 30). However, Plaintiff's claim did reference her original claim with the EEOC
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1 that included a complaint for gender discrimination.¹ In order for a Plaintiff to exhaust
2 her administrative remedies the scope of the EEOC's investigation must include all of the
3 Title VII claims that Plaintiff wished to include in her Complaint. If the "allegations of
4 discrimination" are within the EEOC's investigation then Plaintiff has exhausted her
5 administrative remedies as requires. *See B.K.B v. Maui Police Dep't*, 276 F.3d 1091,
6 1099 (9th Cir. 2002). In this case the gender discrimination claim was within the scope of
7 the EEOC's investigation as Plaintiff's original EEOC complaint was referenced in her
8 second EEOC complaint. (*Plaintiffs EEOC complaints are attached as Exhibit A and B,*
9 *respectively*). The standard for whether a claim falls within the scope of an EEOC
10 investigation is "the charge must at least describe the facts and legal theory with
11 sufficient clarity to notify the agency that employment discrimination is claimed."
12 *Cooper v. Bell*, 628 F.2d 1208, 11 (9th Cir. 1980). In this case, by incorporating Plaintiff's
13 first EEOC claim by reference, Plaintiff has brought her gender discrimination claim
14 within the scope of the EEOC investigation. Therefore, Plaintiff has, in fact, exhausted
15 her administrative remedies as required.

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18 Plaintiff states a claim for racial discrimination. The discrimination perpetrated by
19 Defendant was not "discrete discriminatory acts," it was in fact continuing unlawful acts
20 part of the same discriminatory conduct. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536
21 U.S. 101, 117 (2002). In the event that a collection of acts become an "unlawful
22 employment practice," the victim of those acts has 300 days after that practice occurred.

23
24 ¹ If the court deems it necessary to state a claim Plaintiff hereby requests leave to amend
25 her pleading to include the content of her second EEOC complaint,

1 *See id.* (Internal citations omitted). Since the discrimination against Plaintiff continued to
 2 occur after November 15, 2012, Plaintiff filed her EEOC complaint within the required
 3 300 days. (Doc. 9 ¶¶ 20 - 28). All of the acts including lack of consideration for the job of
 4 Coordinator for Classified, and the withdrawal of the opportunity to work with the
 5 District's wellness program that occurred prior to November 15, 2014, were still a part of
 6 the single discriminatory act. (Doc. 9 ¶¶ 14-18). Since Defendant's actions were a part of
 7 a single discriminatory act of racial discrimination all of Plaintiff's well-pled allegations
 8 regarding racial discrimination must be accepted as true, and Defendant cannot prevail as
 9 to their motion to dismiss. *See Nat'l R.R. Passenger Corp. v. Morgan* at 117.

11 Furthermore, Plaintiff adequately alleges that she was discriminated against
 12 because she was not "Hispanic enough." (Doc. 9 ¶ 54). Plaintiff pleads sufficient facts to
 13 support her claim as set forth in her First Amended Complaint. *Id.* at ¶¶ 14-18, 53-58).
 14 Plaintiff was not considered for Coordinator for Classified, and Plaintiff had the
 15 opportunity to take the position with the wellness program taken from her, because she
 16 was not Hispanic enough. Moreover, if the court finds that Plaintiff has not detailed
 17 enough facts to support her claim of discrimination, Plaintiff hereby requests leave to file
 18 an amended complaint.²

21 **e. The Arizona Employment Protection Act Does Apply to Plaintiff**

23 ² The party ultimately hired for the position of Coordinator for Classified had less
 24 education and experience, but was Hispanic and looked more Hispanic than Plaintiff.
 25 Plaintiff can include this language in a subsequent amended complaint if given leave to
 amend by the court.

Defendant completely misstates Plaintiff's First Amended Complaint by alleging that Plaintiff refers to no facts that support retaliation against her outside of the false disclosure of information. Plaintiff alleges "On or about January 30th, Plaintiff's supervisor Mr. Rick Conrad instructed Plaintiff that she was required to attend meetings that would require district to pay Plaintiff overtime, except that District would not pay Plaintiff overtime." (Doc. 9 ¶ 24). "On or about December 14, 2012, District administration offered to dismiss its disciplinary action against Plaintiff, if Plaintiff would dismiss her EEOC Complaint." *Id. at* ¶ 21. Both of these actions are unlawful and clearly alleged in Plaintiff's complaint. Neither allegation is subject to the remedies proscribed in A.R.S. § 38-532. Therefore, Defendant's argument fails and Plaintiff can proceed with her claim of retaliation in violation of the Arizona Employment Protection Act.

f. The Statute of Limitations Does Not Bar Count 4

Plaintiff's cause of action for wrongful termination did not accrue until she received her right to sue letter from the EEOC. A cause of action does not accrue until after administrative remedies have been exhausted. *See Third & Catalina Associates v. City of Phoenix*, 895 P.2d 115, 118, 182 Ariz. 2003 (Ariz. App. Div. 1, 1994). Defendant's citation of *Daniels v. Fesco Div. of Cities Serv. Co.* is entirely erroneous as the court expressly states they are applying California law. *Daniels v. Fesco Div. of Cities Serv. Co.* 733 F.2d 622, 622-23 (9th Cir. 1984). Plaintiff's complaint was filed within one

1 year after her cause of action accrued on either June 30, 2014 or July 8, 2014. (Doc. 9 ¶
 2 31).

3 **g. Plaintiff met the Statutory Prerequisites for a Constructive Discharge**
 4 **Claim**

5 As set forth in her First Amended Complaint, Plaintiff adequately provided her
 6 employer an opportunity to “address the issues[s].” *Barth v. Cochise Cnty.*, 213 Ariz. 59,
 7 36, 138 P.3d 1186, 1190 (Ct. App. 2006). Moreover, even if she did not provide that
 8 opportunity to her employer, pursuant to A.R.S. § 23-1502(A)(2), 23-1502(B) she did
 9 not have a duty to do so because the notice requirement is not applied to A.R.S. § 23-
 10 1502(A)(2). A.R.S. § 23-1502(B)

11 Evidence of outrageous conduct by the employer or a managing agent of the
 12 employer, including sexual assault, threats of violence directed at the employee, a
 13 continuous pattern of discriminatory harassment by the employer or by a
 14 managing agent of the employer or other similar kinds of conduct, if the conduct
 15 would cause a reasonable employee to feel compelled to resign.

16 A.R.S. § 23-1502(A)(2). First Plaintiff provided the requisite notice via her
 17 resignation letter on February 1, 2013, a full 20 days prior to her last day of work. (Doc. 9
 18 ¶¶ 27-28). Second the well-pled facts of Plaintiff’s First Amended complaint when taken
 19 as true indicate a “continuous pattern of discriminatory harassment by the employer or by
 20 a managing agent of the employer...[that] would cause a reasonable employee to feel
 21 compelled to resign.” A.R.S. § 23-1502(A)(2). Thus, Plaintiff was under absolutely no
 22 obligation to provide Defendant with the notice that Defendant alleges.
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h. Plaintiff's First Amended Complaint sets forth Well-Pled Facts that Indicate Defendant's Conduct Towards Plaintiff was Extreme, Outrageous, and Intended to Cause Emotional Distress

Plaintiff sets forth a valid claim for intentional infliction of emotional distress because she filed a Notice of Claim with Defendant within 180 days of her cause of action accruing and she pled sufficient facts to establish a claim for intentional infliction of emotional distress. *See Third & Catalina Associates v. City of Phoenix*, at 118. Since her cause of action did not actually accrue until either June 30, 2014 or July 8, 2014 and her Notice of Claim was filed September 15, 2014, her claim for intentional infliction of emotional distress is within the scope of her Notice of Claim. Nowhere does A.R.S. § 12-821.01(A) prohibit Plaintiff from seeking a claim for Intentional Infliction of Emotional Distress that occurred before March 19, 2014. Defendant's extreme and outrageous conduct is sufficiently pled in Plaintiff's First Amended Complaint. Pervasive and continuous discrimination against Plaintiff dating from April 2012 through January of 2013 that must be accepted as true for purposes of a Motion to Dismiss clearly establishes Plaintiff's claim for Intentional Infliction of Emotional Distress. (Doc. 9 ¶¶ 13 – 27, 48-52).

i. Plaintiff's § 1981 Claim Does not Fail because Plaintiff's First Amended Complaint Identifies Defendant's Specific Custom or Policy of Discrimination against Women

Plaintiff has alleged a pattern of discrimination against women. “On or about the middle of 2011, Plaintiff became aware that District was engaging in discriminatory practices against female candidates for the position of Director of Finance Purchasing and Director of Maintenance Operations.” (Doc. 9 ¶ 10). Plaintiff was then denied consideration for the position of Coordinator for Classified even though her credentials satisfied the requirements. *Id. at* ¶ 14-15. These allegations indicate that the Defendant has a policy or custom of discrimination against women, because such practices demonstrate the Defendant’s continuous discriminatory acts. This is sufficient to demonstrate the “ ‘policy or custom’ requirement in suits against state actors.” *See Fed’n of African Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1215 (9th Cir. 1996). If necessary Plaintiff seeks leave to amend her complaint to clarify the allegations as to an existence of a policy or custom of discrimination against women.

II. Conclusion

Plaintiff has stated viable causes of action in her First Amended Complaint. However, if the court finds any deficiencies in Plaintiff’s First Amended Complaint, Plaintiff can cure any deficiencies with leave from the court to file a Second Amended Complaint.

DATED this 19th day of January, 2015.

BURGUAN CLARKE LAW OFFICE, PLLC

By /s/Brian M. Strickman

Brian M. Strickman

Jessica J. Burguan

Attorneys for Plaintiff Kimberly Fisher


CERTIFICATE OF FILING

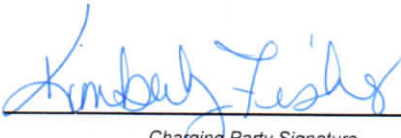
I hereby certify that on January 19, 2015, I electronically transmitted Plaintiff's Response to Defendant's Motion to Dismiss to the Clerk's Office using the CM/ECF System for filing with electronic transmittal to the following:

Robert D. Haws
Shelby M. Lile
Gust Rosenfeld, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553

/s/Carrie Foote

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: _____ Agency(ies) Charge No(s): _____ <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 540-2012-03195	
Arizona Attorney General's Office, Civil Rights Division and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) Ms. Kimberly K. Fisher		Home Phone (Incl. Area Code) (602) 620-2359	Date of Birth 10-09-1968
Street Address City, State and ZIP Code 2745 W. Villa Rita Dr., Phoenix, AZ 85053			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name GLENDALE ELEMENTARY SCHOOL DISTRICT		No. Employees, Members 500 or More	Phone No. (Include Area Code) (623) 237-4000
Street Address City, State and ZIP Code 7301 North 58th Avenue, Glendale, AZ 85310			
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify) _____		DATE(S) DISCRIMINATION TOOK PLACE Earliest _____ Latest 09-05-2012 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I work for the company as an Administrative Assistant. I complained on behalf of two employees based on age and gender discrimination in or around November, 2011. I was retaliated against by not being considered for a position I applied for. I applied for the position of Coordinator for Classified in or around April 2012 for which I was qualified. Shortly after my supervisor had provided an opportunity to work on the wellness program. The opportunity was removed without justification. I informed my supervisor that I was going to complain to the EEOC due to the negatively impacting actions. As a result, I was further retaliated against by being subjected to an investigation; for which I was not told the allegations against me.</p> <p>I believe I was retaliated against in violation of Title VII of the Civil Rights Act and 1964, as amended and the Age Discrimination in Employment Act of 1967, as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY – When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> 10/11/12 Date </div> <div style="text-align: center;">  Charging Party Signature </div> </div>		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> <div style="text-align: right;"> 540-2013-01627 </div> </div>	
Arizona Attorney General's Office, Civil Rights Division and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) Ms. Kimberly K. Fisher		Home Phone (Incl. Area Code) (602) 620-2359	Date of Birth 10-09-1968
Street Address City, State and ZIP Code 2745 W. Villa Rita Dr., Phoenix, AZ 85053			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name GLENDALE ELEMENTARY SCHOOL DISTRICT		No. Employees, Members 500 or More	Phone No. (Include Area Code) (623) 842-8100
Street Address City, State and ZIP Code 7301 N. 58th Ave., Glendale, AZ 85301			
Name 		No. Employees, Members 	Phone No. (Include Area Code)
Street Address City, State and ZIP Code 			
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap;"> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> GENETIC INFORMATION</div> <div><input type="checkbox"/> OTHER (Specify)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE <div style="display: flex; justify-content: space-between;"> <div> Earliest 01-01-2012 </div> <div> Latest 02-21-2013 </div> </div> <div style="text-align: center; margin-top: 10px;"> <input type="checkbox"/> CONTINUING ACTION </div>	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>I was hired by the Respondent in or around January 2011 as an administrative assistant for Business Services. I have performed all of the essential functions of my job satisfactorily. I filed a previous EEOC claim in 2012.</p> <p>Subsequent to filing my previous EEOC claim, additional actions were taken against me and were partly included in the first claim. The day after receipt of the right to sue notice I was offered to have any discipline against me regarding the investigation during the first EEOC go away if I would drop my claim. I refused the offer and was reluctantly given a letter of reprimand by my supervisor as he was leaving the organization. I was additionally denied the remainder of the appeal process as stated in the beginning of the investigation following my first filing. At that time I received information from the EEOC first claim, information that I was on a list of individuals to get rid of, and information that the recruitment denial from the first EEOC was due to my being "not Hispanic enough" rather than because of my defending employees being discriminated against.</p> <p style="text-align: center;">***Continued below***</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY – When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
<div style="display: flex; justify-content: space-between;"> <div> Sep 10, 2013 Date </div> <div>  Charging Party Signature </div> </div>		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**540-2013-01627****Arizona Attorney General's Office, Civil Rights Division**

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I submitted a public records request for the HR Coordinator recruitment to file suit on the first claim. Due to false information that had been provided by the employer this was what was needed to resolve the initial issue (this still has not been honored). Once my supervisor left, administration brought in a temporary for his position and I attempted to work with him to make the transition time smooth but additional actions were taken against me. Upon returning after the winter break, all Business Services work was removed from my desk, my new interim supervisor first verbally assaulted me then refused to communicate with me in any form, and other actions were taken to make it difficult to come to work. After seeking advice from Human Resources and trying to resolve issues, I submitted a three week notice of intent to resign due to constructive discharge to give administration the opportunity to resolve issues. Once this was submitted the problems increased exponentially. The district hired a temporary employee and put her in another office to complete my duties and kept me on display with only the minimal work I could get from Risk Management or find to do. On many occasions I attempted to continue to do my job to no avail and was kept on display as a message to others who would consider future EEOC filings. The day before my final work day HR finally met with me and simply stated they disagreed that the conditions were impossible. I responded in writing that I was being forced to resign by constructive discharge. Due to the working conditions I felt I had no choice but to discontinue my employment with the Respondent and file this claim to resolve all the discriminatory actions:

Race

Age

Retaliation

Denial of due process

Constructive Discharge

I believe I have been discriminated and retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

I have provided significant evidence and recordings for consideration not attached here.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

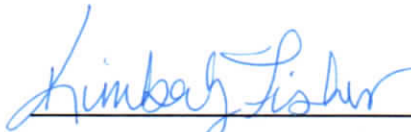
NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Sep 10, 2013

Date



Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)