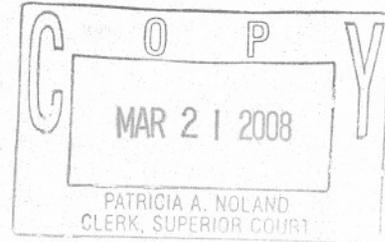


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11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12 IN AND FOR THE COUNTY OF PIMA

14 THE STATE OF ARIZONA¹ ex rel. TERRY
15 GODDARD, the Attorney General, and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

17 Plaintiff,

18 vs.

19 ASARCO, L.L.C.,

20 Defendant.

No. **C 20081860**

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

(Nonclassified Civil)

DEBORAH BERNINI

22
23 Plaintiff, the State of Arizona, ex rel. Terry Goddard, the Attorney General, and the
24 Civil Rights Division of the Arizona Department of Law (collectively the "State"), for its
25 Complaint, alleges as follows:
26

1 16. After Ms. Aguilar complained about Esquivel's treatment of her and as a result
2 thereof, Ms. Aguilar received disciplinary warnings.

3 17. After complaining about the treatment she had endured and after returning from
4 approved leave, Defendant assigned Ms. Aguilar to a supervisor known to set up employees
5 for discharge. Unbeknownst to Ms. Aguilar, after she had complained about Mr. Esquivel,
6 Defendant was discussing plans to terminate Ms. Aguilar's employment.

7 18. In addition, although temporarily assigned a different supervisor, Defendant
8 ultimately assigned Aguilar to work with Esquivel even though she had complained of his
9 treatment of her.

10 19. While employed by Defendant, Ms. Aguilar reported to Defendant that another
11 female co-worker was being harassed. The female co-worker's employment was terminated
12 immediately after Ms. Aguilar complained about Defendant's treatment of her despite the fact
13 that the co-worker's employment file contained no disciplinary warnings.

14 20. After having endured Defendant's treatment of her, having been set up to fail and
15 after having a person against whom she complained of sex discrimination reassigned to work
16 with her, Aguilar felt compelled to resign and was constructively discharged from her
17 employment with Defendant.

18 21. On or about January 22, 2007, Ms. Aguilar filed a timely charge of discrimination
19 on the basis of sex and retaliation against ASARCO, and the Civil Rights Division commenced
20 an investigation of the charge.

21 22. At the conclusion of the investigation, the Civil Right's Division determined that
22 there was reasonable cause to believe that Defendant discriminated against Ms. Aguilar
23 because of her sex and retaliated against her for complaining of discriminatory treatment.

24 23. The Civil Rights Division issued its Cause Finding on December 21, 2007, and
25 since that time, the Division, Ms. Aguilar and Defendant have not entered into a Conciliation
26

1 Agreement. The parties having thus exhausted their administrative remedies, the State is
2 authorized to file this Complaint pursuant to A.R.S. § 14-1481(D).

3
4 **STATEMENT OF CLAIMS**

5 **COUNT ONE**

6 **[Harassment in Violation of the Arizona Civil Rights Act, A.R.S. §41-1463(B)(1)]**

7 24. The State re-alleges and incorporates by reference the allegations contained in
8 paragraphs 1 through 23 of this Complaint.

9 25. Under A.R.S. § 41-1463(B)(1), it is an unlawful employment practice for an
10 employer to discriminate against any individual with respect to compensation, terms,
11 conditions, or privileges of employment because of sex.

12 26. Defendant unlawfully discriminated against Aguilar in violation of A.R.S. § 41-
13 1463(B)(1) by subjecting her to severe or pervasive conduct which changed the terms and
14 conditions of Ms. Aguilar's employment and created a hostile work environment because of
15 her sex, female.

16 27. As a result of Defendant's discrimination and plaintiff's constructive discharge,
17 Aguilar suffered monetary damages for which she should be compensated in an amount to be
18 determined at trial pursuant to A.R.S. § 41-1481(G).

19 28. The State also is entitled to injunctive relief against Defendant's actions pursuant
20 to A.R.S. § 41-1481(G).

21 **COUNT TWO**

22 **[Disparate Treatment in Violation of the Arizona Civil Rights Act, A.R.S. § 41-1463(B)(1)**

23 **Monetary Relief/ Injunctive Relief]**

24 29. Plaintiff re-alleges and incorporates by reference the allegations contained in
25 paragraphs 1 through 28 of this Complaint.

1 reasonably believed to be an unlawful employment practice under the Arizona Civil Rights
2 Act.

3 38. Defendant further disciplined Ms. Aguilar, set her up to fail in her employment
4 and assigned her to work with a supervisor against whom she had complained in retaliation for
5 her opposing what she reasonably believed to be an unlawful employment practice under the
6 Arizona Civil Rights Act.

7 39. As a result of Defendant's unlawful retaliation and plaintiff's constructive
8 discharge, Ms. Aguilar suffered monetary damages for which she should be compensated in an
9 amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

10 40. The State is entitled to injunctive relief against Defendant's actions pursuant to
11 A.R.S. § 41-1481(G).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, the State requests that this Court:

14 A. Enter judgment on behalf of the State, finding that Defendant unlawfully
15 discriminated against Ms. Aguilar because she filed a charge of discrimination in violation of
16 the Arizona Civil Rights Act.

17 B. Enjoin ASARCO, its successors, assigns and all persons in active concert or
18 participation with ASARCO, from engaging in any employment practice, including
19 discrimination on the basis of sex and retaliation, that discriminates in violation of the Arizona
20 Civil Rights Act.

21 C. Order ASARCO, its successors, assigns and all persons in active concert or
22 participation with ASARCO, to create and enforce policies, practices and programs that
23 provide equal employment opportunities for all its employees, and that eradicate the effects of
24 its present unlawful employment practices, including but not limited to, policy changes and
25 training.
26

1 D. Order ASARCO, its successors, assigns and all persons in active concert or
2 participation with ASARCO, to adopt and enforce an equal opportunity in employment policy
3 that prohibits sex discrimination and retaliation and that includes a procedure for reporting and
4 investigating allegations of retaliation as well as for sanctioning substantiated allegations of
5 retaliation.

6 E. Issue an Order authorizing the State to monitor Defendant's compliance with the
7 Arizona Civil Rights Act and order ASARCO, its successors, assigns and all persons in active
8 concert or participation with ASARCO, to pay the State a reasonable amount for such
9 monitoring.

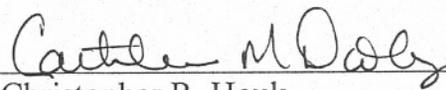
10 F. Award the State its taxable costs incurred in bringing this action.

11 G. Award monetary damages to Ms. Aguilar in an amount to be proven at trial.

12 H. Grant such other and further relief as this Court may deem just and proper in the
13 public interest.

14 Dated this 21st day of March, 2008.

15 TERRY GODDARD
16 Attorney General

17
18 By 
19 for Christopher R. Houk
20 Assistant Attorney General
21 Civil Rights Division
22 Attorneys for Plaintiff

23 167145