

1 AWERKAMP & BONILLA, PLC
6891 N. Oracle Rd., Suite 155
2 Tucson, AZ 85704-4287
(520) 798-5282

3 Don Averkamp (SBN 007572)
4 da@abdilaw.com
Ivelisse Bonilla, SBn 023594
5 ib@abdilaw.com
Shannon Giles (SBN 018786)
6 sg@abdilaw.com

7 *Attorneys for Plaintiff*

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Imelda Cuyugan,
12 Plaintiff,
13 vs.
14 Pima Community College District, Lee
15 Lambert, in his personal capacity,
16 Defendants.

No.

COMPLAINT

(Jury Trial Requested)

17
18 For her Complaint, Plaintiff, Imelda Cuyugan, alleges as follows:

19 **NATURE OF THE CASE**

20 1. Plaintiff seeks damages arising from breach of contract, violation of her due
21 process rights under 42 U.S.C. § 1983, employment discrimination on the basis of gender,
22 and retaliation for having opposed discrimination, in violation of Title VII of the Civil
23 Rights Act of 1964, as amended, and the Civil Rights Act of 1991.

24
25
26

JURISDICTION AND VENUE

1
2 1. This Court has original subject matter jurisdiction over the Federal claims in
3 this action pursuant to 28 U.S.C. §§ 1331 and 1343, because the claims arise under the laws
4 of the United States and are brought to recover damages for deprivation of equal rights.

5 2. This Court has supplemental jurisdiction over all related claims pursuant to
6 28 U.S.C. § 1367.

7 3. Venue is proper in this District under 28 U.S.C. § 1391(b) because all of the
8 events giving rise to Plaintiff's claims occurred in this District, specifically in Pima County.

9 4. On September 9, 2014, Ms. Cuyugan's counsel filed a timely Notice of Claim
10 pursuant to A.R.S. § 12-821.01.

11 5. Plaintiff filed a Charge of Discrimination with the U.S. Equal Employment
12 Opportunity Commission ("EEOC") on October 10, 2014, alleging discrimination on the
13 basis of gender and retaliation for engaging in a protected activity.

14 6. On December 16, 2014, Ms. Cuyugan requested that the EEOC issue her
15 Notice of Right to Sue.

16 7. On June 12, 2015, the EEOC issued Ms. Cuyugan a Notice of Right to Sue.

17 **PARTIES**

18 8. Plaintiff, Imelda Cuyugan, is, and at all relevant times has been, a resident of
19 Pima County, Arizona.

20 9. Ms. Cuyugan is female.

21 10. Defendant, PCC, employed Ms. Cuyugan in Pima County and has more than
22 15 employees affecting commerce so as to be an "employer" within the meaning of Title
23 VII.

24 11. Lee Lambert is the Chancellor of PCC and is being sued in his personal
25 capacity for, under color of state law, depriving Ms. Cuyugan of her constitutional right to
26 due process.

STATEMENT OF FACTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

12. PCC is a college serving the greater Tucson metropolitan area.

13. PCC hired Ms. Cuyugan on March 7, 2005, as the Director of Grants.

14. Ms. Cuyugan was successful in bringing in \$26 million in grants for PCC and was promoted several times.

15. In July of 2010, Ms. Cuyugan was promoted to the position of Assistant Vice Chancellor for Government Relations.

16. In 2007 and 2011, Ms. Cuyugan was subjected to unlawful sexual harassment by the Chancellor at the time, Roy Flores.

17. On or about August 14, 2007, on a business trip, Mr. Flores made sexual advances toward Ms. Cuyugan. When she refused, Chancellor Flores asked her not to tell anyone.

18. After she refused Chancellor Flores's advances, Ms. Cuyugan's office was relocated and she was demoted.

19. On or about July 8, 2011, Ms. Cuyugan was again required to go on a business trip with Chancellor Flores, and he, again, made unwelcome, unlawful sexual advances toward Ms. Cuyugan.

20. After Ms. Cuyugan again refused Chancellor Flores's sexual advances, she was denied the opportunity for a promotion, which was given to a less-qualified male with less experience.

21. On or about April 30, 2011, Ms. Cuyugan filed a Charge of Discrimination, Charge No. 540-2012-01934, with the EEOC alleging gender discrimination and retaliation for objecting to Chancellor Flores's advances.

22. After Ms. Cuyugan filed her charge in 2011, her work environment became so hostile that she had to transfer to a staff classification position within PCC as Campus

1 Director of Administrative Services for the Northwest Campus, which position was three
2 levels lower than the Assistant Vice Chancellor administrator position.

3 23. On October 1, 2012, Ms. Cuyugan reached a settlement agreement with PCC.
4 As part of that agreement, she was placed back in the position of Assistant Vice Chancellor
5 for State Government Relations, among other consideration.

6 24. As part of an EEOC Mediation Agreement, PCC agreed not to retaliate
7 against Ms. Cuyugan for filing Charge No. 540-2012-01934.

8 25. Shortly after being returned to the Assistant Vice Chancellor position, Ms.
9 Cuyugan was accused of violating the agreement.

10 26. At her first meeting with the new Chancellor, Lee Lambert, on August 16,
11 2013, Chancellor Lambert was adversarial with Ms. Cuyugan, and accused her of being a
12 problem.

13 27. On August 22, 2013, Ms. Cuyugan complained to Board Member Sylvia Lee
14 about Chancellor Lambert's treatment of her.

15 28. Ms. Cuyugan was rated as performing an excellent job in her position as
16 Assistant Vice Chancellor for State Governmental Relations.

17 29. In Ms. Cuyugan's performance evaluation, Ms. Cuyugan's supervisor,
18 Zelema Harris, agreed that Ms. Cuyugan was doing an excellent job.

19 30. PCC policy in June of 2014, Section II (D)(1) of PCC's Administrative
20 Personnel Policy Statement FY 2013/2014 states the following:

21 **Offer of New Contract**

22 An administrator and/or executive administrator (other than the position of
23 Chancellor) will be offered a new contract for the ensuing fiscal year unless
24 he/she is otherwise notified in writing on or before February 15.

25 31. Ms. Cuyugan did not receive notice in writing or verbally that her contract for
26 academic year 2014-2015 would not be renewed prior to February 15, 2014.

1 32. On March 12, 2014, the Board of Governors approved the renewal of Ms.
2 Cuyugan's employment contract for academic year 2014-2015.

3 33. Notwithstanding Ms. Cuyugan's superior performance, and the Board's
4 renewal of her contract until June 2015, on June 13, 2014, Provost Harris notified Ms.
5 Cuyugan that her contract for academic year 2014/2015 would not be renewed.

6 34. Ms. Cuyugan was not given notice and an opportunity to be heard on the
7 issue of the termination of her contract for academic year 2014/2015.

8 35. On June 20, 2014, four months past the required notification date, Chancellor
9 Lambert notified Ms. Cuyugan that her position was being eliminated, that he was going to
10 offer her a three-month contract beginning July 1, 2014, and that she could compete for open
11 positions.

12 36. Ms. Cuyugan had an approved employment contract until June 30, 2015 and
13 Chancellor Lambert terminated Ms. Cuyugan's employment contract without giving her
14 notice and an opportunity to be heard.

15 37. On July 2, 2014, Chancellor Lambert directed Ms. Cuyugan to report in
16 person to his assistant every day at 8:00 a.m. for the remainder of her contract.

17 38. Chancellor Lambert did not require others similarly situated employees in his
18 Cabinet to report personally to his assistant every day at 8:00am.

19 39. Chancellor Lambert decided to contract outside lobbyists to do the job Ms.
20 Cuyugan had been doing and eliminated the department she headed.

21 40. Chancellor Lambert, however, retained the only male employee in Ms.
22 Cuyugan's department.

23 41. Chancellor Lambert eliminated other positions, such as the positions of C.J.
24 Karamargin and Rachelle Howell, but these individuals were offered a one-year contract and
25 were reassigned without having to compete or apply for other positions. These individuals
26 also retained their salary.

1 42. Upon information and belief, the decision to terminate Ms. Cuyugan’s
2 employment was made by Chancellor Lee Lambert.

3 43. Prior to terminating Ms. Cuyugan’s contract until June of 2015, Chancellor
4 Lambert did not give Ms. Cuyugan notice and an opportunity to be heard.

5 44. Chancellor Lee Lambert deprived Ms. Cuyugan of her constitutional right to
6 continued employment without due process.

7 45. PCC and Chancellor Lee Lambert have engaged and continue engaging in the
8 pattern and practice of terminating employees before the end of their contracts without
9 giving them notice and an opportunity to be heard, and before deciding to deprive the
10 employees of their property interest in their employment.

11 46. The termination of Ms. Cuyugan by PCC and Chancellor Lambert before the
12 end of her contract year and the deprivation of her constitutional right to due process was
13 done recklessly and/or callously indifferently to her federally protected rights.

14 47. Ms. Cuyugan was terminated because of her gender, female, and in retaliation
15 for engaging in a protected activity.

16 **FIRST CAUSE OF ACTION**

17 **(Breach of Contract)**

18 48. Ms. Cuyugan had a contract for employment with PCC through June of 2015
19 approved by the PCC Board of Governors.

20 49. Ms. Cuyugan had a contract and property right to be employed by PCC
21 through at least June of 2015.

22 50. PCC terminated Ms. Cuyugan before the end of her contract without giving
23 her notice and the right to be heard.

24 51. PCC’s termination of Ms. Cuyugan before the end of her contract constitutes
25 a breach of the contract.

26

1 52. Ms. Cuyugan has suffered damages as a result of PCC's breach of her
2 contract.

3 53. Because this matter arises out of a contract, Ms. Cuyugan is entitled to an
4 award of attorneys' fees pursuant to A.R.S. § 12-341.01

5 **SECOND CAUSE OF ACTION**

6 **(Violation of Due Process Under 42 U.S.C. § 1983)**

7 54. Ms. Cuyugan had an expectation of continued employment through at least
8 June of 2015.

9 55. Ms. Cuyugan had a contract and property right to be employed by PCC
10 through June of 2015.

11 56. PCC and Chancellor Lambert terminated Ms. Cuyugan before the end of her
12 contract without giving her notice and the right to be heard.

13 57. PCC and Chancellor Lambert deprived Ms. Cuyugan deprived Ms. Cuyugan
14 of her constitutional right to continued employment without due process.

15 58. PCC and Chancellor Lee Lambert have engaged and continue engaging in the
16 pattern and practice of terminating employees before the end of their contracts without
17 giving them notice and an opportunity to be heard depriving the employees of their
18 constitutional right to due process.

19 59. The termination of Ms. Cuyugan by PCC and Chancellor Lambert before the
20 end of her contract year and the deprivation of her constitutional right to due process was
21 done recklessly and/or callously indifferently to her federally protected rights.

22 60. The termination of Ms. Cuyugan by PCC and Chancellor Lambert before the
23 end of her contract without notice and the opportunity for her to be heard is a violation of her
24 due process rights pursuant to 42 U.S.C. § 1983.

25 61. Ms. Cuyugan has suffered excessive damages, including punitive damages, as
26 a result of PCC's violation of her due process rights.

1 **THIRD CAUSE OF ACTION**

2 **(Intentional Infliction of Emotional Distress)**

3 62. PCC's and Chancellor Lambert's actions were extreme and outrageous and
4 caused Ms. Cuyugan severe emotional distress.

5 63. Ms. Cuyugan had to take short term disability because of the severe
6 emotional distress she has suffered due to her termination.

7 64. PCC and Chancellor Lambert intended to cause Ms. Cuyugan emotional
8 distress or acted with reckless disregard of the near certainty that emotional distress would
9 result from their conduct.

10 65. As a proximate result of PCC's and Chancellor Lambert's actions, Ms.
11 Cuyugan has suffered excessive damages.

12 **FOURTH CAUSE OF ACTION**

13 **(Discrimination and Retaliation in Violation of Title VII)**

14 66. PCC terminated Ms. Cuyugan because of her gender, female, and in
15 retaliation for engaging in a protective activity.

16 67. PCC discriminated against Ms. Cuyugan because of her gender.

17 68. PCC's termination of Ms. Cuyugan because of her gender and in retaliation
18 for having opposed discrimination is a violation of Title VII of the Civil Rights Act of 1964,
19 as amended, 42 U.S.C. § 2000e-2.

20 69. As a direct result of the conduct of PCC, Ms. Cuyugan has suffered, and will
21 continue to suffer, lost income, diminished earning capacity, emotional distress and punitive
22 damages.

23 **REQUEST FOR JURY**

24 70. Plaintiff requests a trial by jury to the fullest extent permitted by law.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RELIEF SOUGHT

WHEREFORE, Plaintiff Imelda Cuyugan requests judgment against Defendant PCC awarding her the following:

- a. Compensatory damages for breach of contract;
- b. Compensatory damages for damage to professional reputation, lost income, diminished earning capacity, harm to reputation and emotional distress;
- c. Punitive Damages;
- d. Attorneys’ fees and costs incurred in this lawsuit; and
- e. Any other equitable relief this Court deems appropriate and just.

RESPECTFULLY SUBMITTED this 15th of June, 2015.

AWERKAMP & BONILLA, PLC

By /s/ Ivelisse Bonilla _____
Don Awerkamp
Ivelisse Bonilla
Shannon Giles
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Imelda Cuyugan

**Defendant(s): Pima Community College District ;
Lee Lambert**

County of Residence: Pima

County of Residence: Pima

County Where Claim For Relief Arose: Pima

Plaintiff's Atty(s):

Defendant's Atty(s):

**Ivelisse Bonilla
Awerkamp & Bonilla**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **442 Employment**

VI.Cause of Action: **42 U.S.C 1983; Title VII of the Civil Rights Act of 1964, as amended,
and the Civil Rights Act of 1991**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: Ivelisse Bonilla

Date: June 15, 2015

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014