

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

3 Don Awerkamp (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 Leticia Menchaca,
12 Plaintiff,

13 vs.

14 Pima Community College District, Lee
15 Lambert, in his personal capacity and Zelema
Harris, in her personal capacity.

16 Defendants.
17

No.

COMPLAINT

(Jury Trial Requested)

18 For her Complaint, Plaintiff, Leticia Menchaca, 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
22 national origin, and retaliation for having opposed discrimination, in violation of Title VII
23 of the Civil 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 June 6, 2014, Plaintiff filed a timely Notice of Claim of her state law
10 claims.

11 5. Plaintiff filed a Charge of Discrimination with the Arizona Office of the
12 Attorney General, Civil Rights Division ("ACRD"), alleging discrimination and retaliation
13 on the basis of national origin, disability and retaliation on June 9, 2014.

14 6. Plaintiff's Charge of Discrimination was also filed with the U.S. Equal
15 Employment Opportunity Commission ("EEOC").

16 7. On January 13, 2014, the EEOC issued Ms. Menchaca a Notice of Right to
17 Sue.

18 **PARTIES**

19 8. Plaintiff, Leticia Menchaca, is, and at all relevant times has been, a resident of
20 Pima County, Arizona.

21 9. Ms. Menchaca's national origin is Mexican.

22 10. Defendant, Pima Community College District ("PCC"), employed Ms.
23 Menchaca in Pima County and it is a government community college, which has more than
24 15 employees affecting commerce so as to be an "employer" within the meaning of Title
25 VII.

26

1 24. On January 14, 2014, Ms. Menchaca told a PCC Board Member, Marty
2 Cortez, that her contract was not being renewed and that she felt the environment at PCC
3 was not good for Mexicans.

4 25. On January 15, 2014, Provost Harris called Ms. Menchaca to a meeting and
5 told Ms. Menchaca that she had reliable sources telling her that Ms. Menchaca said that
6 Provost Harris hates Mexicans. Ms. Menchaca told Provost Harris that she had not said that,
7 but Provost Harris demanded that Ms. Menchaca stop saying that Provost Harris hates
8 Mexicans.

9 26. On January 23, 2014, Ms. Menchaca was called to a meeting with PCC's
10 General Counsel, Jeff Silvyn, Vice Chancellor of Human Resources, Mark Ziska, and
11 Provost Harris.

12 27. At the meeting on January 23, 2014, Ms. Menchaca was told that January 23,
13 2014, would be her last day of employment at PCC.

14 28. Mr. Ziska told Ms. Menchaca that she should retire.

15 29. Ms. Menchaca asked whether there were any performance issues and she was
16 told that it was not about her performance.

17 30. As she was leaving the meeting, Ms. Menchaca was handed a prepared form
18 for her signature, by which she would agree to retire.

19 31. When Ms. Menchaca returned to her office, her connection to the PCC server
20 and access to her e-mails had been terminated.

21 32. PCC terminated Ms. Menchaca before the end of her contract year without
22 giving her the opportunity to be heard.

23 33. The decision to terminate Ms. Menchaca was made by the then Provost
24 Zelema Harris and Chancellor Lee Lambert.

25 34. Prior to deciding to terminate Ms. Menchaca, Provost Zelema Harris and
26 Chancellor Lee Lambert did not give Ms. Menchaca notice and an opportunity to be heard.

SECOND CAUSE OF ACTION

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

1
2
3 44. Ms. Menchaca had a contract for employment with PCC through June 30,
4 2014.

5 45. Ms. Menchaca had a contract and property right to be employed by PCC
6 through June 30, 2014.

7 46. PCC terminated Ms. Menchaca before the end of her contract year and
8 without giving her notice and an opportunity to be heard.

9 47. PCC, Chancellor Lee Lambert and former Provost Zelema Harris deprived
10 Ms. Menchaca of her constitutional right to continued employment without due process.

11 48. PCC and Chancellor Lee Lambert have engaged and continue engaging in a
12 pattern and practice of terminating employees before the end of their contracts without
13 giving them notice and an opportunity to be heard depriving the employees of their
14 constitutional right to due process.

15 49. The termination of Ms. Menchaca by PCC, Chancellor Lee Lambert and
16 Provost Zelema Harris before the end of their contract year and the deprivation of her
17 constitutional right to due process was done recklessly and/or callously indifferently to her
18 federally protected rights.

19 50. The termination of Ms. Menchaca before the end of her contract year without
20 the opportunity for her to be heard is a violation of her due process rights pursuant to 42
21 U.S.C. § 1983.

22 51. Ms. Menchaca has suffered excessive damages, including punitive damages,
23 as a result of PCC's violation of her due process rights.
24
25
26

1 **THIRD CAUSE OF ACTION**

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

3 52. PCC terminated Ms. Menchaca because of her national origin, Mexican, and
4 in retaliation for her having opposed such discrimination.

5 53. PCC discriminated against Ms. Menchaca because of her national origin.

6 54. PCC's termination of Ms. Menchaca because of her national origin and in
7 retaliation for having opposed discrimination is a violation of Title VII of the Civil Rights
8 Act of 1964, as amended, 42 U.S.C. § 2000e-2.

9 55. As a direct result of the conduct of PCC, Ms. Menchaca has suffered, and will
10 continue to suffer, lost income, diminished earning capacity, reduced retirement benefits,
11 emotional distress and punitive damages.

12 **REQUEST FOR JURY**

13 56. Plaintiff requests a trial by jury to the fullest extent permitted by law.

14 **RELIEF SOUGHT**

15 WHEREFORE, Plaintiff Leticia Menchaca requests judgment against Defendant
16 PCC awarding her the following:

- 17 (a) Compensatory damages for breach of contract;
- 18 (b) Compensatory damages for damage to professional reputation, lost
19 income, diminished earning capacity, lower retirement income, harm to reputation and
20 emotional distress;
- 21 (c) Punitive damages
- 22 (d) Attorneys' fees and costs incurred in this lawsuit; and
- 23 (e) Any other equitable relief this Court deems appropriate and just.
- 24
- 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

RESPECTFULLY SUBMITTED this 13th day of January, 2015.

AWERKAMP & BONILLA, PLC

By /s/ Ivelisse Bonilla
Don Averkamp
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): **Leticia Menchaca**

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

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
Averkamp & Bonilla, PLC
6891 N. Oracle Road, Suite 155
Tucson, Arizona 85704
520-798-5282**

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 and 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**

Signature: Ivelisse Bonilla

Date: 1-13-15

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