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Scott M. McNair  
Phoenix, Arizona

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

SCOTT M. MCNAIR  
Plaintiff,  
  
V.  
  
County of Maricopa, et al,  
Defendants,

No. CV-03-2119-PHX-NVW

**PLAINTIFF’S REPLY TO PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT**

Assigned to the Hon. Neil V. Wake

**I. PLEA FOR LENIENCY AND WAIVER OF FORMAL REQUIREMENTS**

In that the Plaintiff (McNair) is neither represented by counsel nor had any formal legal training, he does hereby request leniency from the Court for the form and content of this pleading, and does request the Court to waive and/or modify any formal procedural requirements in order to insure McNair due process and equitable justice, and to insure that a fair and just determination can be made. Moreover, as McNair is a pro se litigant and not an attorney, his pleadings must be considered without technicality. (“*Pro se litigants’ pleadings are not to be held to the same high standards of perfection as lawyers.*”<sup>1</sup>)

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<sup>1</sup> Haines V. Kerner, 92 S.Ct. 594; Jenkins V. McKeithen, 395 US 411, 421 (1969); Picking V. Penna. Rwy. Co. 151 F.2d 240; Puckett V. Cox, 456 F.2d 233.)

1 **II. SUMMARY JUDGMENT STANDARD**

2 Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and  
3 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any  
4 material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P.  
5 56(c). *Simms v. Okla. ex rel. Dep't of Mental Health & Substance Abuse Servs.*, 165 F.3d 1321, 1326  
6 (10th Cir. ), cert. denied, 528 U.S. 815 (1999).

7 Further, "[w]here the record, *taken as a whole*, could not lead a rational trier of fact to find for  
8 the non-moving party, there is no genuine issue for trial." *Anderson*, 477 U.S. at 248; see *City of*  
9 *Nederland*, 101 F.3d at 1099.

10 **III. MEMORANDUM AND POINTS OF AUTHORITY**

11 **A. Defendants refused to renew Plaintiff's contract as an unlawful act of retaliation.**

12 A plaintiff may establish a prima facie case of retaliation by showing that (1) [plaintiff] was  
13 engaged in a protected activity under Title VII, (2) suffered an adverse employment decision, and (3)  
14 there was a causal link between the protected activity and the adverse employment decision." See  
15 *Tarin v. County of Los Angeles*, 123 F.3d 1259, 1264 (9th Cir. 1997), *Yartzoff v. Thomas*, 809 F.2d  
16 1371, 1375 (1987), citing *Ruggles v. California Polytechnic State Univ.*, 797 F.2d 782, 785 (9th Cir.  
17 1986), *Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 731 (9th Cir. 1986) and *Cohen v. Fred Meyer,*  
18 *Inc.*, 686 F.2d 793, 796 (9th Cir. 1982).

19 **1) Plaintiff was engaged in a protected activity under Title VII.**

20 Title VII makes it an unlawful employment practice for an employer to retaliate against an  
21 employee "because he has opposed any practice made an unlawful employment practice by this  
22 subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an  
23 investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). Such is further  
24 emphasized in that, "[A]s long as an employee **complains** to his or her employer" or participates in

1 an employer's informal grievance procedure in an orderly and nondisruptive manner, the employee's  
2 activities are entitled to protection under [the] opposition clause." *Laughlin v. Metropolitan Wash.*  
3 *Airports Auth.*, 149 F.3d 253, 260 (4th Cir. 1998). See also *Hopkins v. Baltimore Gas & Elec., Co.*,  
4 77 F.3d 745, 754 (4th Cir.1996)

5 Since it is undisputed, and verified by defendants, that plaintiff complained to defendant  
6 Peterson in December 2001 of Ramsey's unwelcome sexual innuendos, overt sexual behavior, and  
7 hostile behavior against for rebuffing such, plaintiff's complaint against Ramsey constitutes  
8 "protected activity" under Title VII, and the first element is therefore satisfied.

9 **2) Plaintiff suffered an adverse employment decision.**

10 The second element is satisfied in defendants' deliberate refusal to renew plaintiff's contract.

11 Employers who choose to retaliate against an employee will invariably attempt to find legitimate  
12 reasons for doing so. Even assuming the existence of legitimate reasons, however, those reasons do  
13 not immunize the employer. See *Allison v. Housing Authority of City of Seattle*, 118 Wn.2d 79, 96,  
14 821 P.2d 34 (1991). *Allison* speaks volumes regarding defendants' actions against plaintiff. In their  
15 attempt to "legitimize" their termination of plaintiff, defendants propose no less than three separate  
16 yet conflicting premises for refusing to renew plaintiff's contract. Rather than stand behind any one  
17 premise (which would be rejected by even the village idiot), defendants instead insult this court with  
18 three conflicting premises, each more absurd than its predecessor. This self-contradicting shotgun  
19 approach merely emphasizes defendants' premeditated intent to dispose of plaintiff, and, his  
20 complaint against Ramsey (the "Boss's Girl" of defendant Medlin<sup>2</sup>)

21 **i. Defendants "expired" Plaintiff's contract.**

22 At different times during this case, where convenient, defendants have claimed plaintiff's

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<sup>2</sup> See exhibit 1 at 55

1 contract was “*allowed*” to expire. Later they assert that it “*automatically*” expired<sup>3</sup>. Either claim  
2 points to the undisputed fact that defendants “*expired*” plaintiff’s contract, against his wishes.  
3 During which time, defendants not only renewed contracts for other positions within the same  
4 department (for those that did not complaint about Ramsey [the “*Boss’s Girl*”]), but also created  
5 *new* contract positions within the same department.<sup>4</sup> (The Court should take special note that counsel  
6 for defendants bold face *lied to this* court in its responsive pleading by stating, “*Espy Gamez was*  
7 *hired by a department other than MCDOT, her employment status is not relevant to this matter.*”<sup>5</sup>)  
8 When in fact Ms. Gamez’s testimony specifically states she was hired a contract employee for  
9 MCDOT.)

10 Defendants response, Defendants later self-contradict this “*expiration*” argument by their own  
11 statement that, “*Prior to expiration of McNair’s [Plaintiff’s] contract on June 29 2002, Terry*  
12 *Peterson...offered the position to McNair for a third year...*”<sup>6</sup> Defendants fail to provide any  
13 evidence to support this conflicting and perjurous statement, including failing to provide a copy of  
14 the non-existent third year offer. If defendants had offered to renew plaintiff’s contract for a third  
15 year, this case would not exist.

16 **ii. A fictitious budgetary council ordered the elimination of *only* plaintiff’s contract**  
17 **positions.**

18 Lest the village idiot not be swayed by the “*expiration*” argument, defendants attempt to confuse  
19 him with the claim that a fictitious budgetary council ordered defendants Peterson and Medlin to

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<sup>3</sup> See Defendants Maricopa County, Medlin, Peterson, Ramsey's Response To Plaintiff's Motion For Partial Summary Judgment, pg. 3, ln. 11, 22

<sup>4</sup> See Exhibit 2, pg. 11, ln. 17-19

<sup>5</sup> See Defendants Maricopa County, Medlin, Peterson, Ramsey's Response To Plaintiff's Motion For Partial Summary Judgment, ph. 5, ln.17

<sup>6</sup> Defendants Maricopa County, Medlin, Peterson, and Ramsey Proposed Case Management Plan, filed March 9 2004, pg. 2, ln. 18-22.

1 “eliminate” only plaintiff’s contract position.<sup>7</sup> Though plaintiff has repeatedly requested a full  
2 disclosure of any and all documentation concerning this budgetary council and a copy of the actual  
3 order to “eliminate” plaintiff’s contract, defendants refuse to produce anything. Instead, defendants  
4 contradict themselves with the perjurious statement; “*Prior to expiration of McNair’s [Plaintiff’s]  
5 contract on June 29 2002, Terry Peterson...offered the position to McNair for a third year...*”

6 In their ongoing deceptive practices against this court, defendants entice one of its own  
7 subordinate employees to lie about its workforce, the existence of open programming positions, and  
8 available candidates. At defendants’ behest, Jim Nelson stated, “*MCDOT had to choose between  
9 Weisletten and McNair contracts. Weisletten is the only visual basic programmer MCDOT has and  
10 there are very few in the workforce.*”<sup>8</sup> The Court will of course recognize first that Mr. Nelson  
11 himself is a Visual Basic Programmer (for MCDOT), secondly, that defendant Ramsey is also Visual  
12 Basic programmer, and most importantly, the Plaintiff is a Visual Basic programmer! As plaintiff is  
13 both a Visual Basic programmer and a database administrator, logic would dictate that defendants  
14 should have retained the person with the greater skill set, the Plaintiff.

15 The Court should note defendants Medlin and Peterson originally attempted to deceive plaintiff  
16 by claiming that MCDOT would not be renewing anyone’s contract when they told plaintiff, “*there  
17 will be ZERO consulting dollars for out department in the next budget.*”<sup>9</sup>

18 Defendants further contradict and nullify this mandate to eliminate contract positions, by their  
19 own admission that after terminating plaintiff, defendants issued **new** contracts to others (that did not  
20 complaint about Ramsey [the “*Boss’s Girl*”]).

21 Furthermore, *if* plaintiff’s position had been “*eliminated*” (months prior to his complaint against  
22 Ramsey in 2001), how could Peterson have “*offered the position to McNair for a third year...* [in

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<sup>7</sup> See Defendants' Statement Of Facts In Support Of Defendants' motion For Summary Judgment, pg. 3, ln. 13-14

<sup>8</sup> See Exhibit 3 at ln. 207

<sup>9</sup> See Exhibit 5, para. 2

1 June of 2002]?” Clearly the defendants have committed perjury before this esteemed court. Either  
2 defendants lied about the existence of the budgetary council and its order to reduce contract  
3 employees, or Peterson lied about offering the position to plaintiff for a third year.

4 **iii. There were no open positions for *other* contract employees**

5 Realizing that even our hero (the village idiot) would question why *only* plaintiff’s contract had  
6 to be eliminated, defendants again perjure themselves by claiming that there were no open positions  
7 for the department’s *other* contract employee.<sup>10</sup> Unfortunately for defendants, the evidence shows  
8 that such a position was open and available at the time in question.<sup>11</sup> The only difference between  
9 plaintiff and Weisletten is that Weisletten never filed a complaint against Ramsey (the “*Boss’s*  
10 *Girl*”).

11 **3) There was a causal link between the protected activity and the adverse employment**  
12 **decision.**

13 "Causation sufficient to establish the third element of the prima facie case may be inferred from  
14 circumstantial evidence, such as the employer’s knowledge that the plaintiff engaged in protected  
15 activities and the proximity in time between the protected action and the allegedly retaliatory  
16 employment decision." *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (1987), citing *Miller v. Fairchild*  
17 *Indus., Inc.*, 797 F.2d 727, 731 (9th Cir. 1986) and *Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 796  
18 (9th Cir. 1982) (used employer’s awareness to show a causal link). In this regard, by defendants  
19 acknowledgment of plaintiff’s complaint against Ramsey in December 2001, we not only have such  
20 "knowledge", but we have other evidence such as that shown by the statements and documents of the  
21 Defendants themselves.

22 In this instance, there exists far more than a “*casual link*” between plaintiff’s complaint and

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<sup>10</sup> It is unknown as to actually how many “*contract positions*” existed within the department as the defendants have refused all discovery and disclosure on the subject.

<sup>11</sup> See Exhibit 4, MCDOT Visual Basic Programmer open position posting.

1 defendants' refusal to renew his contract. In fact, defendants' actions show a premeditated pattern of  
2 retaliation, culminating in their ultimate goal of quietly disposing of plaintiff and his complaint  
3 against Ramsey (the "Boss's Girl"):

- 4 • Plaintiff files complaint against Ramsey in December 2001,
- 5 • While *on the phone* making his complaint to Peterson, plaintiff is put on administrative  
6 leave by Peterson,
- 7 • When plaintiff returns to work, Peterson makes vague threats of retaliation to plaintiff if  
8 attempts to pursue his complaint against Ramsey further,
- 9 • Plaintiff is then ostracized by his coworkers,
- 10 • Defendants then "*eliminate*", "*expire*", and *lie* about the possibility of plaintiff's  
11 contract renewal, while renewing and creating *new contracts* for those that did not  
12 complain about Ramsey (the "Boss's Girl")

#### 13 **4) Summary and Conclusion.**

14 As stated by the court in *Fuentes v. Perskie*, 32 F.3d 759 (3d Cir. 1994), a plaintiff satisfies the  
15 requisite quantum of proof to rebut a defendant's stated "*legitimate*" business reason when the  
16 plaintiff produces evidence which: (1) casts sufficient doubt upon each of the legitimate reasons  
17 proffered by the defendant so that a fact finder could reasonably conclude that each reason was a  
18 fabrication, **or**, (2) allows the fact finder to infer that discrimination was more likely than not a  
19 motivating or determinative cause of the adverse employment action *Id.* at 762 (emphasis added).  
20 *Fuentes* also allows a plaintiff to more generally submit evidence raising an inference of  
21 discrimination.

22 *Hicks* teaches . . . that rejection of the employer's proffered nondiscriminatory reason will permit  
23 the trier of fact to infer the ultimate fact of intentional discrimination. In other words, "[t]he fact  
24 finder's disbelief of the reasons put forward by the [employer] . . . may, together with the elements of

1 the [employee's] prima facie case, suffice to show intentional discrimination.'" *Seman*, 26 F.3d at  
2 433 (quoting *Hicks*, U.S. at 113 S. Ct. at 2749 n.4) As clearly shown herein, plaintiff has satisfied all  
3 prongs of the *prima facie* test for retaliation established in *Tarin*, *Yartzoff*, *Ruggles*, and *Cohen*. As  
4 such, "once a plaintiff establishes a prima facie case, the law creates a presumption of unlawful  
5 discrimination." See *Seman v. Coplay Cement Co.*, 26 F.3d 428, 432 (3d Cir. 1994).

6 Therefore, this honorable court is compelled to grant summary judgment against defendants.

7 **B. Defendants denied Plaintiff proper consideration for employment as regular employee as**  
8 **an act of retaliation.**

9 To establish a cause of action for disparate treatment based upon circumstantial proof, the  
10 charging party must show:

- 11 1) That he was a member of a group protected by Title VII;
- 12 2) That he was qualified for his position, or for a position for which he was applying;
- 13 3) That despite his qualifications he was rejected;
- 14 4) That after the rejection, the position remained available, **or**, was filled by someone who was  
15 not a member of a protected class.

16 These principles were established in decisions by the United States Supreme Court in *McDonnell*  
17 *Douglas Corp. v. Green*, 411 U.S. 792 (1973) and *Texas Dept. of Community Affairs v. Burdine*, 450  
18 U.S. 248 (1981)). Once the above elements have been established, a prima facie case discrimination  
19 exists. Id. See also *Fowle v. C & C Cola*, 868 F.2d 59, 61 (3d Cir. 1989) (citations omitted).

20 **1) Plaintiff was engaged in a protected activity under Title VII.**

21 Title VII makes it an unlawful employment practice for an employer to retaliate against an  
22 employee "because he has opposed any practice made an unlawful employment practice by this  
23 subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an  
24 investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). Courts have

1 further stated that acceptable forms of protected activity under Title VII's opposition clause include  
2 formal charges of discrimination "as well as *informal* protests of discriminatory employment  
3 practices, including making complaints to management, *Sumner v. United States Postal Serv.*, 899  
4 F.2d 203, 209 (2d Cir. 1990)

5 Since it is undisputed (and verified by defendants) that plaintiff complained to defendant  
6 Peterson in December 2001 of Ramsey's unwelcome sexual innuendos, overt sexual behavior, and  
7 hostile behavior against plaintiff for rebuffing such, plaintiff's complaint against Ramsey constitutes  
8 "*protected activity*" under Title VII, and the first element of *McDonnell* is therefore satisfied.

9 **2) Plaintiff was qualified for the position, but deterred by defendants from applying.**

10 Defendants have never disputed or argued against the fact that plaintiff was qualified for the  
11 newly opened position. Such argument would be mooted by the fact that he held the same position  
12 for the previous four years as an "*at-will*" employee. Had plaintiff not been qualified, defendants  
13 had four years to dismiss him for any reason at all (good, bad, or indifferent). They did not.

14 As argument against plaintiff's qualifications would be futile, defendants instead attempt to  
15 confuse the issue by asserting that they have no record of plaintiff applying for the position.

16 After "*eliminating*" plaintiff's contract position with a menagerie of self-contradictory premises,  
17 clearly intended to convey their intent to dispose of plaintiff (and his complaint against Ramsey),  
18 defendants then convert the contract position into a permanent one and begin a campaign intended to  
19 deter him from applying and instilling upon him the fact that he would never get the job, and any  
20 attempt by plaintiff to obtain such would be futile.

21 Again, defendants own actions (along with court precedence) nullify this argument this argument  
22 that plaintiff failed to "apply" for the position.

23 In plaintiff's complaint to defendants' human resources department, he clearly states his attempts  
24 to show interest in and apply for the position were rebuffed in Peterson's statement to plaintiff that

1 he didn't want to "insult" the plaintiff with the low pay of the position. Defendants have done little  
2 to refute this. In fact, it is defendants' own evidence and statements that show both Peterson and  
3 Medlin sought to prevent plaintiff from applying when they lied to plaintiff about the availability of  
4 the open position. In defendants response, they attest to their treachery against plaintiff with  
5 "Plaintiff was told sometime in May by Peterson 'the recruitment period for the position had  
6 already closed. I told McNair that the recruitment had closed...' " <sup>12</sup> Defendants then compound this  
7 with, "Plaintiff then went to Medlin and asked to be hired into the position, but was refused for the  
8 same reason." Id at 13. As further evidence of defendants continued (unabated) perjury in this  
9 court, their own documents show that the position(s) in question were "open until FILLED".<sup>13</sup>  
10 According to defendants' own statements and exhibits, the database administrator position was still  
11 vacant, and the position was not "filled" until July 17 2002, almost three weeks after plaintiff was  
12 terminated.

13 Defendants' attempt to muddy this issue is further exasperated by defendants' own human  
14 resources manager giving testimony that Peterson and Medlin were required to offer the position to  
15 plaintiff with first right of refusal,<sup>14</sup> but, never has any such written offer been found or submitted  
16 into the record.

17 In opposition to defendants verbal assertions, the only written evidence pertaining to plaintiff's  
18 interest in the *new* position, is an email from plaintiff, to defendants Medlin, Peterson, and other  
19 members of the candidate selection panel, in which plaintiff clearly states that he wished to accept  
20 the currently OPEN position.<sup>15</sup> Defendants' *immediate* response was to order plaintiff to perform a  
21 "knowledge transfer" to another employee. Inferring to him that any attempt to apply for the

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<sup>12</sup> See Defendants Maricopa County, Medlin, Peterson, Ramsey's Response To Plaintiff's Motion For Partial Summary Judgment, pg 5 at 6.

<sup>13</sup> See Exhibit 8, Database Administrator job posting

<sup>14</sup> See Exhibit 6, pg. 2, ln. 16-23

<sup>15</sup> See Exhibit 7

1 position would be futile.

2 Several Courts of Appeals have held in Title VII cases that a nonapplicant can be a victim of  
3 unlawful discrimination entitled to make-whole relief when an application would have been a  
4 useless act serving only to confirm a discriminatee's knowledge that the job he wanted was  
5 unavailable to him. *Acha v. Beame*, 531 F.2d 648, 656 (CA2); *Hairston v. McLean Trucking Co.*,  
6 520 F.2d 226, 231-233 (CA4); *Bing v. Roadway Express, Inc.*, 485 F.2d 441, 451 (CA5); *United*  
7 *States v. N. L. Industries, Inc.*, 479 F.2d 354, 369 (CA8).

8 In *Teamsters V. United States*, 431 U.S. 324 (1977) our Supreme Court recognized that  
9 employers bent on discrimination and retaliation could not escape prosecution merely by deterring  
10 applicants by making the application process an obvious exercise in futility.

11 This prong of the *McDonnell* test is therefore satisfied. Defendants' actions show not only that  
12 they attempted to deter plaintiff from applying, but by their failure to respond to plaintiff's email  
13 proclaiming his desire to accept the position, they proved that any implied or expressed attempt by  
14 plaintiff would have been utterly futile. Since plaintiff had the audacity to even *attempt* a complaint  
15 against Ramsey (the "*Boss's Girl*"), the position would to *anyone OTHER than plaintiff*.

16 As shown herein, after plaintiff filed his complaint against Ramsey, defendants first threatened  
17 him with retaliation, then "*eliminated*", "*expired*", refused to renew, plaintiff's contract. Defendants  
18 then converted the position to that of a regular employee, all the while giving plaintiff the run-  
19 around when he expressed interest in such. Due to defendants' devious strategy to "*legitimize*" their  
20 unlawful actions by preventing a paper trail, the only written record on this subject is plaintiff's  
21 email, clearly stating that he wished to accept the position.

22 Plaintiff therefore satisfies the second element of the *McDonnell* test.

23 **3) Despite his qualifications Plaintiff was rejected.**

24 Should the simple fact that plaintiff was not hired for the position (which he had previously held

1 for over FOUR YEARS) not be enough for the trier, one need only look to defendants Peterson's  
2 and Medlin's direct refusal to consider him while they bold face lied about the position being  
3 "closed".<sup>16</sup>

4 Plaintiff therefore satisfies the third element of the *McDonnell* test.

5 **4) After the rejection, the position remained available, or, was filled by someone who**  
6 **was not a member of a protected class.**

7 Of all the prongs imposed by *McDonnell*, this is the easiest for Plaintiff to satisfy. Plaintiff's  
8 email to defendants clearly shows that defendants were *in the process of interviewing candidates*  
9 *while* plaintiff was proclaiming his desire to accept the position.<sup>17</sup>

10 Furthermore, as plaintiff's email was sent in May 20<sup>th</sup> of 2002, defendants' exhibit shows that  
11 the position was not "*filled*" until July 17<sup>th</sup> 2002. The position not only remained *available* and  
12 unfilled over 50 days *after* defendants rejected plaintiff, but, in defendants' continuing effort to  
13 "*legitimize*" their unlawful acts, defendants waited until almost three weeks *after* plaintiff was *gone*  
14 to fill such.

15 Plaintiff therefore satisfies the fourth and final element of the *McDonnell* test.

## 16 **5) Summary and Conclusion**

17 When suing under discriminatory impact theory, no allegation of improper motive need be  
18 shown. *Washington v. Davis*, 426 U.S. 229, 246-47, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976),  
19 *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 422, 95 S. Ct. 2362, 45 L. Ed. 2d 280 (1975), *Griggs*  
20 *v. Duke Power Co.*, 401 U.S. 424, 432, 91 S. Ct. 849, 28 L. Ed. 2d 158 (1971). Nor does one in a  
21 disparate impact claim need to show that the employer intended to discriminate. *International*  
22 *Brotherhood of Teamsters v. United States*, 451 U.S. 324, 335 n. 15, 97 S. Ct. 1843, 1845 n. 15, 52

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<sup>16</sup> See Exhibit 8, MCDOT Database Administrator position posting.

<sup>17</sup> See Exhibit 7

1 L. Ed. 2d 396 (1977). As show herein, plaintiff was (disparately) impacted by defendants in their  
2 refusal to rehire him. While he is not required to show the employer *intended* to discriminate, the  
3 fact remains that he was qualified and denied the position *after* he filed *attempted* to file a complaint  
4 against Ramsey (the self-proclaimed “*Boss’s Girl*”).

5 According to *Dimaranan v. Pomona Valley Hospital Medical Center*, 775 F. Supp. 338 (C.D.  
6 Cal. 1991), the Court explained that in order:

7 "To prevail under [the Title VII Disparate Treatment] theory, plaintiff must prove that [the  
8 Defendant] intended to discriminate against a protected group. This may be done in two ways: (1) by  
9 offering direct evidence of discriminatory intent (*Transworld Airlines v. Thurston*, 469 U.S. 111, 105  
10 S.Ct. 613, 83 L. Ed. 2d 523 (1985)); **or** (2) by showing proof of discriminatory animus based on  
11 circumstantial evidence (*McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L.  
12 Ed. 2d 668 (1973)).

13 Plaintiff succeeds in both ways, directly through the (limited) documents and testimony  
14 produced by defendants themselves, and, circumstantially by defendants’ pattern of actions to  
15 “*quietly dispose*” of both plaintiff and his complaint against Ramsey.

16 Defendants had no intention of hiring plaintiff, and were/are willing to commit any act, including  
17 blatant perjury, to prevent him from *ever* holding *any* position within Maricopa County. As their  
18 defense, defendants first gather together select employees (Sarah Simpson) willing to assert that  
19 they heard plaintiff refuse the job. Yet according to defendants so called “investigation”, Ms.  
20 Simpson did not actually witness this in person, but rather had “heard” such from some unidentified  
21 source (Defendants perhaps). <sup>18</sup> Ms. Simpson’s comments are nothing more than hearsay at best, at  
22 worst, they stand as example of how defendants are willing to coerce current employees into false  
23 testimony in order to keep their jobs. Either way, it’s inadmissible.

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<sup>18</sup> See Exhibit 1, at 65

1 Just in case our hero the village idiot was able to see the forest through the trees, defendant  
2 Peterson provides example of his mystical powers by claiming, "...sometime around November 1 to  
3 December 1, 2001, Peterson told Plaintiff that he could apply for the DBA position..."<sup>19</sup> One (such  
4 as this Court) must wonder, if Peterson is able to see the future so clearly that he can offer plaintiff a  
5 job the won't even exist for another six months, aren't Peterson's soothsaying talents being wasted at  
6 the department of transportation? Wouldn't he be of more use to the department of defense, or Wall  
7 Street? Clearly defendants have credibility issues before this court.

8 *McDonnell* sets forth a clear and concise test for proving Title VII Disparate Treatment. By the  
9 points and authority contained herein, plaintiff has clearly and unequivocally satisfied each and  
10 every element of *McDonnell* test. The trier is therefore compelled to grant plaintiff judgment against  
11 defendants for their discriminatory and retaliatory denial of reemployment as a regular, fulltime  
12 employee.

13 **C. Defendants Medlin and Peterson violated the non-retaliation clauses of Title VII of the**  
14 **Civil Rights Act, and, Defendant Maricopa County's own non-retaliation policy.**

15 Courts have stated that acceptable forms of protected activity under Title VII's opposition clause  
16 include formal charges of discrimination "as well as *informal* protests of discriminatory  
17 employment practices, including making complaints to management, *Sumner v. United States*  
18 *Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990)

19 It is undisputed, and verified by defendants, that plaintiff attempted to file complaints against  
20 Ramsey with Peterson and Medlin, such was rebuffed, and plaintiff was immediately threatened  
21 with retaliation should he attempt to formally pursue such. As shown herein, by the undisputed fact  
22 that Medlin and Peterson repeatedly denied plaintiff employment, they carried out those threats by

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<sup>19</sup> See Defendants Maricopa County, Medlin, Peterson, Ramsey's Response To Plaintiff's Motion For Partial Summary Judgment, pg. 3 ln. 22

1 refusing to renew his contract and denying him proper consideration for re-employment.

2 According to defendants' own written policy,<sup>20</sup> they supposedly have "zero tolerance" toward  
3 such prohibited activity. Under this same policy, any violation of said policy, including failure to  
4 record or document such a violation, is grounds for immediate dismissal.

5 As shown herein, defendants Medlin and Peterson deliberately violated said policy in that:

- 6 1) Defendant Peterson failed to document Plaintiff's complaint against Ramsey.
- 7 2) Defendant Peterson retaliated against Plaintiff by placing him on "*administrative leave*"  
8 after Plaintiff complained about Ramsey.
- 9 3) Defendant Medlin failed to document plaintiff's complaint against Ramsey.
- 10 4) Defendants Medlin & Peterson failed to renew plaintiff's contract in retaliation for his  
11 complaint.
- 12 5) Defendants Medlin & Peterson denied plaintiff employment as a regular employee in  
13 retaliation for his complaint.

14 Any one of these acts is a violation of either or both County policy or Title VII of the Civil  
15 Rights Act, and according to the County's own policy is grounds for immediate dismissal, and as  
16 shown, defendants Medlin and Peterson not only violated them separately, but they conspired  
17 together to violate them as a team. With, Maricopa County's blessing.

#### 18 **IV. SUMMARY**

19 In retaliation for Plaintiff filing a complaint against Ramsey (the self-proclaimed "untouchable  
20 *Boss's Girl*"), defendants Medlin and Peterson threatened him into silence, then eliminated his  
21 position under false, contradicting, and unsubstantiated pretenses, then refused him proper  
22 consideration for a replacement position in which he had been performing the same duties for the  
23 previous four years. All the while dangling the vague possibility of future (non-existent) contracts in

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<sup>20</sup> See generally Exhibit 10, Maricopa County Work Place Professionalism Avoiding Discrimination and Harassment

1 front of plaintiff as enticement to continue his silence. Unable to resist one final slap in the face to  
2 plaintiff, defendants handed him a plaque proclaiming how valuable he was to MCDOT as they  
3 booted him out the door (with a smile). Not satisfied with this level of retaliation, defendants then  
4 sought to permanently inflict financial ruin upon plaintiff by driving him into bankruptcy during the  
5 greatest housing market in almost 100 years. Thus destroying plaintiff's credit reputation and hope  
6 any of purchasing a home, while also inhibiting his future ability to gain employment elsewhere.

7 Once plaintiff filed a summary complaint with County officials, defendants first refused to even  
8 accept the complaint (claiming that as a contract employee he had no right to complain in *any*  
9 forum), then ignored it completely until. Though his initial summary complaint includes accusations  
10 against defendants of criminal activity, on-the-job drug abuse, and government fraud and waste,  
11 nowhere is there any evidence that any of these accusations were investigated either administratively  
12 or criminally. This refusal to investigate *all* of plaintiff's allegations is itself a violation of the  
13 defendants' policies.<sup>21</sup>

14 It was not until plaintiff filed a detailed, forty plus page sexual harassment complaint with the  
15 EEOC (and defendants), that defendants took any action. Rather than hold an *unbiased* inquiry in  
16 which plaintiff (or his counsel) would be allowed to attend and address perspective witnesses,  
17 defendants held a closed-door, one-sided, "Character Assassination Contest" against plaintiff and  
18 labeled it an "*internal investigation*". During this so-called "*investigation*", the defendants  
19 themselves were allowed to refuse to answer questions without any disciplinary repercussions. When  
20 evaluating the credibility (or lack thereof) of this so-called "*investigation*", the trier should take note  
21 that none of those interviewed were under oath, the interviews were untranscribed, it is unknown as  
22 to whether or not *all* the department's employees were interviewed, and it is unknown as to the

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<sup>21</sup> See Exhibit 10, Maricopa County Policy on Work Place Professionalism: Avoiding discrimination and Harassment, pg. 8, last paragraph.

1 conditions the interviews where conducted in. More importantly, the trier will immediately  
2 recognize that rather than submit the actual testimony of the interviewees, defendants summarized  
3 and reworded the statements of *selected* employees to fit their goal of discrediting plaintiff. Clearly  
4 this “investigation” is pretextual.

5 To compound the lack of credence in defendants’ character assassination contest, is the fact that  
6 when plaintiff requested the full names, addresses, and phone numbers of their interviewees so that  
7 he could interview such, defendants first ignored the request, and are now fighting plaintiff ‘s motion  
8 to compel them to disclose same. The court must wonder what possible reason could defendants  
9 have for such interference other than the discovery that the investigation was nothing more than a  
10 self-serving sham.

11 The pretextual nature of defendants’ investigation, and case as a whole, is further exemplified by  
12 the numerous interviewee statements that plaintiff was “*difficult, obstinate, rude, belligerent,*  
13 *vindictive, uncooperative, etc., etc.*”, yet, there is no record of any disciplinary action against  
14 plaintiff, nor can defendants explain why they kept such an undesirable “at will” employee around  
15 for FOUR YEARS. Nor can they explain why they would award a plaque bearing the words,  
16 “*Thanks for all your hard work*” to an employee with such disagreeable traits. Defendants not only  
17 retained him for over four years, but claim they offered him future positions. Why?

18 As shown herein, Defendants’ only defenses to plaintiff’s charges are numerous self-  
19 contradicting, perjurous, and nonsensical attempts to legitimize their retaliation *after the fact.*  
20 Clearly the court will recognize that defendants waited until *after* plaintiff filed his motions for  
21 summary judgment to submit explanations for their actions, including the perjurous affidavits of  
22 Peterson and Ramsey.

23 As observed in *Purkett v. Elem*, 115 S. Ct. 1769 (1995), impossible, fantastic, silly or  
24 superstitious justifications may and probably will be found pretextual. *Id.* at 1771. To this, plaintiff

1 directs the court to Peterson's claim that in November of 2001 offered plaintiff a position that would  
2 not exist until April of 2002.

3 In defendants' attempt to "*legitimize*" their unlawful actions against plaintiff, they went to great  
4 lengths to prevent a paper trail. Unfortunately, this became their downfall. For they have proposed to  
5 the court that some fictitious "*budget panel*" mandated that plaintiff's contract position be  
6 eliminated. Yet, when asked to produce *any* proof of this panel or its' mandates, defendants are at a  
7 loss to do so. As such, a trier may infer that testimony or evidence is unfavorable if the party who  
8 has the power to produce it fails to do so. See *Graves v. United States*, 150 U.S. 118, 121 (1893).

9 Unmistakable to the court, and undeniable to defendants, are the two simple facts that 1)  
10 Plaintiff's statements have never varied, changed, or wavered, 2) Defendants' "story" continually  
11 changes to meet their current need or whim, constantly contradicts itself, and is nothing more than a  
12 pretextual attempt to legitimize its retaliation against the plaintiff. If there is conflicting testimony,  
13 the court generally must disregard the testimony favoring the employer. See *Wilkerson v. McCarthy*,  
14 336 U.S. 53, 57-60 (1949).

15 *Burdine* teaches us: "[The plaintiff] may succeed either directly by persuading the court that a  
16 discriminatory reason more likely motivated the employer or indirectly by showing that the  
17 employer's proffered explanation is *unworthy of credence*. See *McDonnell Douglas*, 411 U.S., at 804  
18 -805." *Ibid*. If evidence is susceptible to two interpretations, the court must reject the interpretation  
19 favorable to the employer and instead accept the interpretation that supports the employee. See  
20 *Continental Ore Co.*, 370 U.S. at 701.

21 "As a matter of both common sense and federal law, an employer's submission of a discredited  
22 explanation for firing a member of a protected class is itself evidence which may persuade the finder  
23 of fact that such unlawful discrimination actually occurred." *MacDissi v. Valmont Indus., Inc.*, 856  
24 F.2d 1054, 1059 (8th Cir. 1988). It is reasonable to conclude that an employer who gives a false

1 explanation for conduct that has been challenged as discriminatory is dissembling to cover up the  
2 discrimination. See *Hicks*, 509 U.S. at 511, 517; 5 *Leonard B. Sand et al., Modern Federal Jury*  
3 *Instructions* ¶ 87.01, at 87-86 (1999) (Instruction 87-27).

4 That reasoning accords with the more general principle that a fact finder may infer consciousness  
5 of guilt when a party acts dishonestly about facts material to litigation. For example, a jury may  
6 (although it is not compelled to) infer that a criminal defendant who makes a false exculpatory  
7 statement believes he is guilty and thus probably is guilty. See *Wright v. West*, 505 U.S. 277, 296  
8 (1992); 1 Edward J. Devitt et al., *Federal Jury Practice and Instructions* § 14.06, at 423-424 (1992); 1  
9 *Sand*, supra, ¶ 6.05, at 6-37 (Instruction 6-11).<sup>4</sup> A similar inference is permitted in civil cases. See 2  
10 John H. Wigmore, *Evidence in Trials at Common Law* § 278(2), at 133 (Chadbourn rev. 1979) ("a  
11 party's falsehood \* \* \* in the preparation and presentation of his cause \* \* \* is receivable against  
12 him as an indication of his consciousness that his case is a weak or unfounded one").

13 If the plaintiff raised an inference of discrimination through his or her prima facie case and the  
14 fact-finder disbelieves the defendant's explanation for the adverse action taken against the plaintiff,  
15 the fact finder justifiably may conclude that the logical explanation for the action was the unlawful  
16 discrimination. Syl. Pt. 5, *Skaggs v. Elk Run Coal Co., Inc.*, 198 W.Va. 51, 479 S.E.2d 561 (1996)  
17 Thus, a plaintiff who can offer sufficient circumstantial evidence on intentional discrimination may  
18 prevail, just as in any other civil case where the plaintiff meets his or her burden of proof. Syl. Pt. 7,  
19 *Skaggs v. Elk Run Coal Co., Inc.*, 198 W.Va. 51, 479 S.E.2d 561 (1996)

## 20 V. CONCLUSION

21 Plaintiff has satisfied all relevant tests as specified in *McDonnel*, *Hicks*, *Tarin*, and *Cohen*.

22 As shown herein, defendants defense is based upon pretextual reasoning, and, as stated in *Hicks*,  
23 "once plaintiff proved defendants' proffered reasons for the adverse employment actions to be  
24 pretextual, plaintiff is entitled to judgment as a matter of law. . . No additional proof of

1 discrimination is required." *Hicks v. St. Mary's Honor Center*, 970 F.2d 487, 492-93 (8th Cir.  
2 1992). Thus, as the court of appeals directed the district court to enter judgment in favor of the  
3 plaintiff in *Hicks* (Id. at 493) this district court must do so for this plaintiff now.

#### 4 VI. DAMAGES

5 The Court of Appeals has held that an employer is absolutely liable for sexual harassment [and  
6 retaliation] practiced by supervisory personnel, whether or not the employer knew or should have  
7 known about the misconduct. The court relied chiefly on Title VII's definition of "employer" to  
8 include "any agent of such a person," 42 U.S.C. 2000e(b), as well as on the EEOC Guidelines. The  
9 court held that a supervisor is an "agent" of his employer for Title VII purposes, even if he lacks  
10 authority to hire, fire, or promote, since "the mere existence - or even the appearance - of a  
11 significant degree of influence in vital job decisions gives any supervisor the opportunity to impose  
12 on employees." 243 U.S. App. D.C., at 332, 753 F.2d, at 150.

13 As defendants Peterson and Medlin were plaintiff's direct supervisor and department director,  
14 and since Maricopa County [Department of Transportation] was their and plaintiff's employer,  
15 defendants Maricopa County is therefore liable for Medlin and Peterson's retaliatory and  
16 discriminatory actions. As Plaintiff is entitled to "make whole" compensatory damages under Title  
17 VII, which can be calculated directly by this court, he requests that the court an award a treble  
18 amount for each of the above counts.

19 Furthermore, in keeping with defendants' own "zero tolerance" for such unlawful activity, the  
20 Court should issue an order directing that defendant Maricopa County immediately, permanently,  
21 and retroactively, terminate defendants Peterson and Medlin effective December 31 2001 the date of  
22 plaintiff original attempt to file a complaint against Ramsey.

23 But, plaintiff respectfully requests that any punitive damages be under Title VII, 42 USC 1983,  
24 or any other statute, be reserved for the discretion of the jury.

1  
2 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of SEPTEMBER 2005.

3  
4 By \_\_\_\_\_

5 Scott M. McNair, Plaintiff Pro Per

6  
7  
8 ORIGINAL and COPY FILED with:

9 Clerk of the Court  
10 United States District Court  
11 District of Arizona  
12 Sandra Day O'Connor U.S. Courthouse  
13 401 W. Washington Street, Suite 130  
14 Phoenix, AZ 85003-2118

15 COPY of the forgoing HAND-DELIVERED to:

16 Office of the Maricopa County Attorney  
17 Attn: Dan Brenden  
18 222 North Central Avenue, Suite 1100  
19 Phoenix, Arizona 85004  
20 (Counsel for Defendants: Maricopa County, Medlin, Peterson, & Ramsey)

21 COPY of the forgoing MAILED to

22 Jones, Skelton & Hochuli, P.L.C.  
23 Attn: Eileen Dennis GilBride  
24 2901 N. Central Avenue, Suite 800,  
Phoenix, Arizona 85012,