

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

and

**ALBA HERNANDEZ, EVA
RODRIGUEZ, and SANTA LOPEZ,**

Plaintiffs in Intervention,

v.

OGLETHORPE UNIVERSITY,

Defendant.

Civil Action No.: 1:06-CV-0711

JURY TRIAL DEMANDED

COMPLAINT IN INTERVENTION

PRELIMINARY STATEMENT

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e ("Title VII") and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of national origin and to provide appropriate relief for Plaintiffs Alba Hernandez ("Hernandez"), Eva Rodriguez ("Rodriguez"), Santa Lopez ("Lopez," and together with Hernandez and Rodriguez, the "Plaintiffs"), and a class of other similarly situated employees affected by such unlawful practices.

JURISDICTION, VENUE AND PREREQUISITES TO SUIT

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 451, 1331, 1337 and 1343. This action is authorized and instituted pursuant to § 706(f)(1) and (3) of Title VII and Section 102 of the Civil Rights Act of 1969, 42 U.S.C. § 1981A.

3. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b), 42 U.S.C. §2000e-5(f)(3) and LR 3.1 (B)(3). The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Northern District of Georgia.

5. Title VII's procedural prerequisites to suit have been met by the filing of charges with the Equal Employment Opportunity Commission (hereinafter the "Commission").

JURY DEMAND

6. Plaintiffs demand trial by jury in this action on each and every one of its claims, and on all issues triable to a jury.

PARTIES

7. Plaintiff, the Commission, is an agency of the United States of America charged with the administration, interpretation and enforcement of Title

VII and is expressly authorized to bring this action by 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

8. Plaintiff Hernandez is Latina, resides in the United States and was employed by Defendant at all times relevant hereto.

9. Plaintiff Rodriguez is Latina, resides in the United States and was employed by Defendant at all times relevant hereto.

10. Plaintiff Lopez is Latina, resides in the United States and was employed by Defendant at all times relevant hereto.

11. Defendant Oglethorpe University ("Defendant" or "Oglethorpe"), is a domestic non-profit corporation. At all relevant times, Oglethorpe has continuously been doing business in the State of Georgia and the City of Atlanta and has continuously had at least fifteen employees.

12. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of §701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e-(b), (g) and (h).

FACTUAL ALLEGATIONS

Defendant's Policies or Practices of Discrimination

13. Oglethorpe has implemented, enforced, encouraged and sanctioned policies and employment practices that discriminate on the basis of national origin and are in violation of §§ 703 and 704 of Title VII, 42 U.S.C. §§ 2000e-2 and

2000e-3. The policies and practices include: (1) imposing English-only and English-proficiency policies on Plaintiffs and other Latina housekeepers not proficient in English; (2) harassing Plaintiffs in the course of purporting to enforce these policies; (3) retaliating against Plaintiff Hernandez for filing EEOC charges; and (4) constructively and / or wrongfully discharging Plaintiffs.

14. Oglethorpe's English-only and English-proficiency policies and employment practices have had an adverse, disproportionate impact on Plaintiffs based on their national origin.

15. Oglethorpe's manner of enforcing their English-only and English-proficiency policies reveals a discriminatory intent. On information and belief, Asian and European housekeepers were not given an ultimatum to learn English within 60 days or be terminated. Likewise, they were not asked to sign acknowledgments certifying that they need to be 40-50% proficient in English to perform their housekeeping duties.

Factual Allegations Pertaining To All Three Individual Plaintiffs

16. The Plaintiffs are monolingual Spanish speakers not proficient in English.

17. Each of the three Plaintiffs interviewed with Manuel Bonilla (hereinafter "Bonilla"), Housekeeper Supervisor, for their housekeeping positions with Oglethorpe. Bonilla was aware that Plaintiffs were not proficient in English.

Bonilla, who is Latino and speaks fluent Spanish, conducted each interview in Spanish and helped each Plaintiff complete her job application which was in English. At no time during the interviews did Bonilla mention an English-only policy or a 40-50% English proficiency policy to qualify for the housekeeping position.

18. While employed at Oglethorpe, each Plaintiff performed the essential tasks of her job satisfactorily without being proficient in English.

19. Before August 2003, it was standard practice for Bonilla to communicate with Plaintiffs in Spanish. In August 2003, Bonilla told Plaintiffs they had to learn English within 60 days or they would be terminated. Bonilla informed Plaintiffs that this new English-only policy originated from his supervisor.

20. Under this new English-only policy, Plaintiffs were required to speak to and receive instructions from Bonilla and other supervisors only in English. Bonilla also required Plaintiffs to speak only English in performing job tasks, speaking to co-workers, while requesting vacation and medical leave, and in performing non-job related tasks.

21. Starting in August 2003, Bonilla refused to speak Spanish to Plaintiffs in public and would pretend not to understand them when they spoke in Spanish. Bonilla ridiculed Plaintiffs in front of, and alienated Plaintiffs from, their co-

workers because of their national origin, and even disallowed interpreters to assist Plaintiffs while at Oglethorpe.

22. Moreover, and as specifically set forth below in each individual Plaintiff's factual allegations, several months after Plaintiffs were hired and were already performing their duties satisfactorily, Bonilla forced Plaintiffs to sign an acknowledgement stating they knew that they were required to speak and understand a minimum of 40-50% English to be qualified as a housekeeper.

23. Defendant asked Plaintiffs to take English classes after work to keep their jobs and recommended they take classes from their supervisor, Bonilla, or the wife of another supervisor, for \$12 to \$20 an hour. Each Plaintiff at that time was paid approximately \$7.25 an hour.

24. On September 23, 2003, Plaintiffs filed EEOC Charges against Defendant Oglethorpe University for implementing and enforcing English-only and English-proficiency policies in violation of Title VII.

25. Oglethorpe received formal notice of Plaintiffs' charges on October 2, 2003.

26. Sometime after Defendant was informed of Plaintiffs' EEOC charges, Bonilla began pressuring Plaintiffs to clean faster and better, watching and scrutinizing Plaintiffs' work more closely, and negatively changing or adding to

their regularly scheduled work which worsened their working conditions and jeopardized Plaintiffs' health and physical safety.

27. On numerous occasions, Bonilla improperly docked Plaintiffs' work time and pay, and refused to properly account for or authorize vacation and sick time.

28. Upon information and belief, Bonilla's supervisors and other management personnel at Oglethorpe were aware and approved of these discriminatory employment policies and practices.

Specific Factual Allegations of Alba Hernandez

29. On August 1, 2001 Hernandez began employment with Defendant as a housekeeper in charge of cleaning the University.

30. Two years later, in August 2003, Ms. Hernandez was notified that she had 60 days to learn English or she would be terminated.

31. In August 2003, Ms. Hernandez discovered that she had signed a written acknowledgement stating that she knew that she was required to speak and understand a minimum of 40-50% English to be qualified as a housekeeper. Although the acknowledgement is in Spanish, Ms. Hernandez only recalled being forced to sign something similar in English, of which she did not understand its content.

32. Ms. Hernandez was sent home twice without pay sometime during the pay periods of August 17, 2003 and August 31, 2003 for not being able to speak English. Ms. Hernandez was temporarily fired on one of those occasions, and at that time went with an interpreter to notify Linda Bucki, general supervisor, that she was being fired for not being able to speak English. Ms. Bucki, through the interpreter, told Hernandez that Oglethorpe did indeed have an English-only policy and an English-proficiency policy and that Ms. Hernandez had to learn English or would be terminated. Ms. Bucki, however, allowed Ms. Hernandez to return to work the next day because she was a hard worker.

33. After filing her EEOC charge, Ms. Hernandez was subjected to discriminatory and retaliatory actions, including but not limited to the following:

- On more than one occasion, Ms. Hernandez was not allowed to use cleaning machines which she had previously used and which made cleaning quicker and easier, but was instead forced to clean areas manually.
- On more than one occasion, Bonilla harassed and threatened to send Ms. Hernandez home because she could not speak English.
- In October 2003, Bonilla requested in English that Mmes. Hernandez and Rodriguez provide him with work authorization, although Mmes. Hernandez and Rodriguez had previously tendered their work

authorization and were not legally required to tender it again. When they did not understand what he was asking for in English, he gave them a written paper in English and a Spanish-English dictionary and derisively told them to look up the meaning of his note. Upon information and belief, other housekeeping employees were not asked for their immigration documents.

- On or about January 20, 2004, Ms. Hernandez was sent home for using a Spanish-English dictionary to fill out a work order in English, even though she was attempting to address Bonilla's previous reprimands regarding submission of work orders in Spanish when no translator was available.
- On January 23, 2004, Bonilla demanded Ms. Hernandez use concentrated bleach to remove a stain in a toilet that would not come out with other cleaning products. Despite Ms. Hernandez' pleas, Bonilla refused to allow her to retrieve and use work gloves which would have protected her hands from the bleach product. Ms. Hernandez suffered breathing problems and sustained chemicals burns to her hands as a result of her prolonged exposure to the bleach, and had to seek immediate medical treatment.

34. Ms. Hernandez was fired on February 10, 2004 without a verifiable reason. Bonilla informed her in Spanish that she was being fired for allegedly stealing, selling drugs to Oglethorpe students and falsifying documents, although Bonilla's false accusations were without any corroboration or evidence. Before firing Ms. Hernandez, Bonilla stated in Spanish that she "was a threat to him and the University."

35. While being terminated on February 10, 2004 for the above-mentioned reasons, Ms. Hernandez was also handed a letter dated February 5, 2004, which warned her that she would be fired for any future alleged acts of insubordination. This was the first time Ms. Hernandez had seen this letter, although it was dated five days earlier. Moreover, on February 19, 2004, MALDEF received a letter from Oglethorpe's counsel, King & Spalding, LLP, which claimed that on the date of Ms. Hernandez' alleged termination she had received a letter dated February 10, 2004, with substantially similar information to the February 5, 2004 letter. Ms. Hernandez was never presented with this February 10th letter from Defendant.

Specific Factual Allegations of Eva Rodriguez

36. On January 2001, Ms. Rodriguez began employment with Defendant as a housekeeper in charge of cleaning the University.

37. Two and a half years later, in August 2003, Ms. Rodriguez was notified that she had 60 days to learn English or she would be terminated.

38. In August 2003, Ms. Rodriguez discovered that she had signed a written acknowledgement stating that she knew that she was required to speak and understand a minimum of 40-50% English to be qualified as a housekeeper. Although the acknowledgement is in Spanish, Ms. Rodriguez only recalled being forced to sign something similar in English, of which she did not understand its content.

39. As a result of the English-only and English-proficiency policies, Ms. Rodriguez was denied better cleaning assignments commensurate with her job seniority. Bonilla threatened in Spanish to take away Ms. Rodriguez' regularly assigned building and reassign her to another building with more bathrooms to clean because she was not proficient in English. Bonilla gave no explanation for why English proficiency was required for the better job assignments.

40. Sometime during the Fall of 2003, Bonilla received a call from Ms. Rodriguez's doctor. Bonilla told Ms. Rodriguez the doctor's message in English, and when she could not understand and asked Bonilla to translate the message into Spanish, he replied in Spanish that she had to learn English and told her to go home. Fearing that being sent home was tantamount to being fired, Ms. Rodriguez refused to go home and finished out her work day.

41. Ms. Rodriguez suffered physical injuries, as well as extreme emotional distress and diabetes-related illnesses because of the discrimination she suffered at work. On August 4, 2004, Ms. Rodriguez was sent to the hospital because she was shaking uncontrollably at work. The doctor recommended she take an unspecified leave of absence from work because of her severe exposure to stress causing intense anxiety. Ms. Rodriguez was compelled to resign from Oglethorpe after the doctor's visit because she feared her health would further deteriorate due to the discrimination she was experiencing at work.

Specific Factual Allegations of Santa Lopez

42. On January 30, 2003, Ms. Lopez began employment with Defendant as a housekeeper in charge of cleaning the University.

43. Around August 2003, Bonilla threatened Ms. Lopez with a requirement that she sign a written acknowledgment stating that she knew that she was required to speak and understand a minimum of 40-50% English to be qualified as a housekeeper.

44. Ms. Lopez was notified in July or August 2003 that she had 60 days to learn English or she would be terminated.

45. After Ms. Lopez filed her EEOC charges, Bonilla began to consistently increase her workload. On August 30, 2004, Bonilla assigned Ms. Lopez and another co-worker the task of cleaning a three-story building in one and

a half hours. Ms. Lopez was required to carry heavy garbage bags and equipment up and down three flights of stairs, and owing to the extreme time constraints imposed, Ms. Lopez injured her leg while walking down the stairs. Ms. Lopez was not able to return to work for a few weeks, but notified Bonilla each day she was absent and even presented a doctor's note. When Ms. Lopez presented herself to work on September 20, Bonilla informed her she was no longer employed at Oglethorpe.

LEGAL CLAIMS / CAUSES OF ACTION

First Claim for Relief

Violations of Title VII / Unlawful Policies and Practices Against Ms. Hernandez

46. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

47. Defendant was Ms. Hernandez' "employer" within the meaning of Title VII.

48. Ms. Hernandez is Latina and a monolingual Spanish speaker not proficient in English.

49. Oglethorpe's English-only and English-proficiency policies and employment practices constitute unlawful employment practices in violation of §§ 703 and 704, of Title VII, 42 U.S.C. §§ 2000e-2 and 2000e-3.

50. Defendant's conduct caused Ms. Hernandez damages.

Second Claim for Relief

Violations of Title VII / Hostile Work Environment Against Ms. Hernandez

51. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

52. Defendant was Ms. Hernandez' "employer" within the meaning of Title VII.

53. Ms. Hernandez is Latina and a monolingual Spanish speaker not proficient in English.

54. Ms. Hernandez was subjected to harassment by Defendant by words and/or actions based on national origin.

55. The harassment was sufficiently severe or pervasive to alter the terms and conditions of employment to create an objectively intimidating, hostile, and/or abusive work environment.

56. Defendant is responsible for the abusive work environment and engaged in this discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Hernandez' federally protected rights.

57. Defendant's conduct caused Ms. Hernandez damages.

Third Claim for Relief

Violations of Title VII / Retaliation Against Ms. Hernandez

58. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

59. Ms. Hernandez engaged in a statutorily protected activity, namely, filing a charge of discrimination with the Commission.

60. Defendant took adverse employment actions against Ms. Hernandez.

61. A casual link existed between the protected activity and the adverse action.

62. Defendant engaged in this discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Hernandez' federally protected rights.

63. Defendant's conduct caused Ms. Hernandez damages.

Fourth Claim for Relief

Violations of Title VII / Wrongful Discharge of Ms. Hernandez

64. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

65. Defendant terminated Ms. Hernandez' employment because of employment practices and policies related to her national origin.

66. Defendant engaged in this discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Hernandez' federally protected rights.

67. Defendant's conduct caused Ms. Hernandez damages.

Fifth Claim for Relief

Violations of Title VII / Unlawful Policies and Practices Against Ms. Rodriguez

68. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

69. Defendant was Ms. Rodriguez' "employer" within the meaning of Title VII.

70. Ms. Rodriguez is Latina and a monolingual Spanish speaker not proficient in English.

71. Oglethorpe's English-only and English-proficiency policies and employment practices constitute unlawful employment practices in violation of §§ 703 and 704, of Title VII, 42 U.S.C. §§ 2000e-2 and 2000e-3.

72. Defendant's conduct caused Ms. Rodriguez damages.

Sixth Claim for Relief

Violations of Title VII / Hostile Work Environment Against Ms. Rodriguez

73. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

74. Defendant was Ms. Rodriguez' "employer" within the meaning of Title VII.

75. Ms. Rodriguez is Latina and a monolingual Spanish speaker not proficient in English.

76. Ms. Rodriguez was subjected to harassment by Defendant by words and/or actions based on national origin.

77. The harassment was sufficiently severe or pervasive to alter the terms and conditions of employment to create an objectively intimidating, hostile, and/or abusive work environment.

78. Defendant is responsible for the abusive work environment and engaged in this discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Rodriguez' federally protected rights.

79. Defendant's conduct caused Ms. Rodriguez damages.

Seventh Claim for Relief

Violations of Title VII / Constructive Discharge of Ms. Rodriguez

80. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

81. Defendant engaged in discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Rodriguez' federally protected rights.

82. Ms. Rodriguez' working conditions at Oglethorpe were so intolerable that a reasonable person in Ms. Rodriguez' shoes would have felt compelled to resign.

83. Ms. Rodriguez resigned in reasonable response to Oglethorpe's adverse action of officially changing her employment situation, including a transfer and reassignment of additional duties in which Ms. Rodriguez faced unbearable working conditions.

84. Defendant's conduct caused Ms. Rodriguez damages.

Eighth Claim for Relief

Violations of Title VII / Unlawful Policies and Practices Against Ms. Lopez

85. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

86. Defendant was Ms. Lopez's "employer" within the meaning of Title VII.

87. Ms. Lopez is Latina and a monolingual Spanish speaker not proficient in English.

88. Oglethorpe's English-only and English-proficiency policies and employment practices constitute unlawful employment practices in violation of §§ 703 and 704, of Title VII, 42 U.S.C. §§ 2000e-2 and 2000e-3.

89. Defendant's conduct caused Ms. Lopez damages.

Ninth Claim for Relief

Violations of Title VII / Hostile Work Environment Against Ms. Lopez

90. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

91. Defendant was Ms. Lopez's "employer" within the meaning of Title VII.

92. Ms. Lopez is Latina and a monolingual Spanish speaker not proficient in English.

93. Ms. Lopez was subjected to harassment by Defendant by words and/or actions based on national origin.

94. The harassment was sufficiently severe or pervasive to alter the terms and conditions of employment to create an objectively intimidating, hostile, and/or abusive work environment.

95. Defendant is responsible for the abusive work environment and engaged in this discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Lopez' federally protected rights.

96. Defendant's conduct caused Ms. Lopez damages.

Tenth Claim for Relief

Violations of Title VII / Wrongful Discharge of Ms. Lopez

97. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

98. Defendant terminated Ms. Lopez' employment because of employment practices and policies related to her national origin.

99. Defendant engaged in this discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Lopez' federally protected rights.

100. Defendant's conduct caused Ms. Lopez damages.

Eleventh Claim for Relief

Violations of Title VII / Constructive Discharge of Ms. Lopez (in the alternative)

101. Plaintiffs repeat and reallege the allegations of all previous paragraphs as if fully set forth herein.

102. Defendant engaged in discriminatory conduct intentionally, with malice and/or with reckless indifference to Ms. Lopez' federally protected rights.

103. Ms. Lopez' working conditions at Oglethorpe were so intolerable that a reasonable person in Ms. Lopez' shoes would have felt compelled to resign.

104. Alternatively, Ms. Lopez resigned in reasonable response to Oglethorpe's adverse action of officially changing her employment situation, including a transfer and reassignment of additional duties in which Ms. Lopez faced unbearable working conditions.

PRAYER

WHEREFORE, the Plaintiffs respectfully pray that this Court will:

1. Issue a judgment declaring that (a) Defendant's English-only and English-proficiency policies as enforced constitute national origin discrimination in violation of Title VII, (b) Defendant created an abusive and hostile work environment for Plaintiffs, (c) Defendant retaliated against Ms. Rodriguez for filing EEOC charges and (d) Defendant constructively and / or wrongfully discharged Plaintiffs;

2. Issue an order enjoining the Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from continuing or engaging in each of the unlawful policies, practices, customs and usages set forth herein;

3. Issue an order requiring Defendant to institute new appropriate policies, practices, and programs to rectify its current policies, practices and/or customs and ensure that the constitutional violations do not continue, and to notify and train all its employees and supervisors regarding the same;

4. Issue an order requiring Defendant to expunge all adverse employment actions or records of Plaintiffs Hernandez, Rodriguez and Lopez relating to the English-only and English-proficiency policies;

5. Award named Plaintiffs Hernandez, Rodriguez and Lopez compensatory damages in amounts that are fair, just and reasonable, including compensation for unpaid overtime and any unlawfully subtracted sick and vacation pay earned;

6. Award named Plaintiffs Hernandez, Rodriguez and Lopez front-pay and back-pay (including interest and benefits) in amounts that are fair, just and reasonable;

7. Award all damages sustained as a result of Defendant's conduct, including damages for emotional distress, humiliation, embarrassment, and anguish, according to proof;

8. Award named Plaintiffs Hernandez, Rodriguez and Lopez punitive and exemplary damages in an amount commensurate with Defendant's ability to pay and to deter future conduct;

9. Award all Plaintiffs, reasonable attorneys' fees and costs;

10. Award pre-judgment and post-judgment interest, as provided by law; and

11. Award such other and further legal and equitable relief as this Court deems necessary, just and proper.

Respectfully submitted this 12th day of April, 2006,

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

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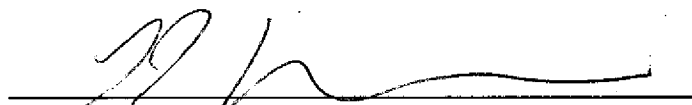
CERTIFICATE OF SERVICE

A copy of the foregoing Complaint in Intervention was placed this day in the United States mail, postage prepaid and addressed to:

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Signed this 12th day of April, 2006



Tisha R. Tallman