

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED  
SEP 27 2004  
Michael N. Milby, Clerk

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

GILBERT PLUMBING COMPANY, INC.,

Defendant.

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**H-04-3866**  
COMPLAINT

CIVIL ACTION NO.

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended by Title I of the Civil Rights Act of 1991, to correct unlawful employment discrimination on the basis of national origin, Hispanic and to provide appropriate relief to Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees, who were adversely affected by the unlawful practices. While employed by Defendant Gilbert Plumbing Company, Inc. ("Defendant"), Mr. Rolin, Mr. Amaya and a class of Hispanic employees were subjected to discriminatory terms, conditions and privileges of employment because of their national origin, Hispanic. The discriminatory treatment included being repeatedly called racial slurs by non-Hispanic supervisors. The slurs included comments such as "wetbacks," "stupid mojado," (stupid wetback), "pinche mojado" (f.....g wetback), "wetbacks, go home, don't want you here," and "motherf.....g mojado." Despite complaints about the conduct from the Hispanic employees, Defendant failed to take remedial action. The discrimination also included being forced to work in the rain, being denied wages for work performed and being denied sick

leave. Defendant has subjected its Hispanic employees to this discrimination since at least January 2001 and continuing to date.

### JURISDICTION AND VENUE

2. Pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345, the United States District Court has jurisdiction over the subject matter of this civil action. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3. The unlawful employment practices alleged in this complaint were committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division. Venue is appropriate in this court.

### PARTIES

4. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the 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 Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

5. Gilbert Plumbing Company, Inc. is an Texas corporation doing business (and has continuously been doing business) in the State of Texas, Harris County, and the City of Houston, and has continuously had more than 15 employees at all times relevant to this cause of action.

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

## STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Edwin Rolin and Manuel D. Amaya filed with the Commission charges of discrimination alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled, including the filing of timely charges of employment discrimination, and attempts to conciliate the claims.

8. Since at least January 2001 and continuing to date, Defendant has engaged in unlawful employment policies and practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1).

9. Defendant has since at least January 2001 subjected Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees to a hostile working environment because of their national origin, Hispanic. The racially hostile working environment included being repeatedly called racial slurs. In addition, Defendant has since at least January 2001 forced Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees to work in the rain, has them denied wages for work performed and has denied them sick leave because of their national origin, Hispanic.

10. The effect of the practices complained of above has been to deprive Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees of equal employment opportunities and otherwise adversely affect their status as employees because of their national origin, Hispanic.

11. The unlawful employment practices of which the Commission complains in the preceding paragraphs were intentional.

12. The unlawful employment practices complained of in the preceding paragraphs were done with malice or with reckless indifference to the federally protected rights of Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees.

PRAYER FOR RELIEF

13. Wherefore, the Commission respectfully requests that this Court:
- A. Grant a permanent injunction enjoining Defendant Gilbert Plumbing Company, Inc. its officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice which discriminates on the basis of national origin;
  - B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for applicants and employees regardless of their national origin, (Hispanic), and which eradicate the effects of its past and present unlawful employment practices;
  - C. Order Defendant to make whole Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees by providing appropriate backpay, including all bonuses; and by providing compensation for any other pecuniary losses, past and future, including out-of-pocket such as job search expenses and insurance expenses in amounts to be proved at trial;
  - D. Order Defendant to provide Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, in amounts to determined at trial;
  - E. Order other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices;

- F. Order Defendant to pay punitive damages, in amounts to be determined at trial, for its malicious and reckless conduct;
- G. Award pre-judgment interest and post-judgment interest on all amounts recovered;
- H. Grant such further relief as the Court deems necessary and proper in the public interest;
- I. Award the Commission its costs of this action.

JURY DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

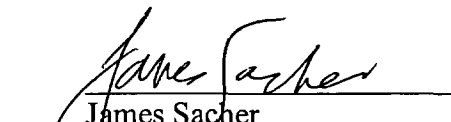
Respectfully submitted,

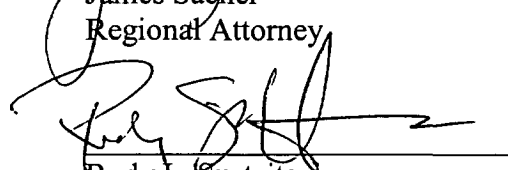
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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I(a) PLAINTIFFS**  
**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Rudy Sustaita, Senior Trial Attorney  
 EEOC-Houston District Office  
 1919 Smith Street, 7th Floor  
 Houston, Texas 77002  
 (713) 209-3400

**DEFENDANTS**  
**GILBERT PLUMBING COMPANY, INC.**

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**ATTORNEYS (IF KNOWN)**

United States Court  
 Southern District of Texas  
 FILED  
 SEP 27 2004  
 Michael N. Milby, Clerk

**04-3866**

**II. BASIS OF JURISDICTION** (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- PTF DEF PTF DEF  
 Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4  
 Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5  
 Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Gilbert Plumbing Company, Inc. engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C. §§ 2000e-2 (a)(1). The practice include unlawful employment discrimination on the basis of national origin and not providing appropriate relief to Edwin Rolin, Manuel D. Amaya and a class of Hispanic employees because of repeatedly called racial slur by non-Hispanic supervisors.

**V. NATURE OF SUIT** (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Co <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury--Med Malpractice <input type="checkbox"/> 365 Personal Injury--Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

**VI. ORIGIN** (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION ☐

**DEMAND \$**

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

**VIII. RELATED CASE(S) IF ANY** (See instructions)

JUDGE

DOCKET NUMBER

DATE

9/27/04

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

UNITED STATES DISTRICT COURT