

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

Civil Action No.

ANTHONY MENDOZA,

Plaintiff

v.

**ATLAS CONCRETE, INC.,
a Colorado corporation**

Defendant.

Complaint

COMES NOW Plaintiff Anthony Mendoza, by and through counsel, Cornish & Dell'Olio, and for his Complaint against the Defendant, alleges the following:

Introduction

1. This is an action brought pursuant to 42 U.S.C § 1981 against Atlas Concrete, Inc. for race discrimination.

Jurisdiction

2. The Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331, 1343.

Venue

3. The unlawful employment actions described below were committed in the state of Colorado. Venue is proper in the United States District Court for the District of

Colorado under 28 U.S.C. § 1391(b).

Parties

4. Anthony Mendoza is an Hispanic man who was employed by Defendant Atlas Concrete, Inc. as a carpenter and concrete finisher from March 5, 2008 until June 6, 2008 when his employment was involuntarily terminated.

5. Defendant Atlas Concrete, Inc. is a concrete contractor. It is a Colorado corporation doing business in good standing in the State of Colorado.

6. Atlas Concrete, Inc. operates in El Paso County, Colorado where it constructs concrete structures such as sidewalks, foundations, and curbs.

7. Shawn Glenn was at all times relevant to the complaint an employee of Atlas Concrete, Inc. and was Plaintiff's supervisor from March 5, 2008 through approximately June 1, 2008.

General Allegations

8. Mr. Mendoza worked for Atlas Concrete from March 5, 2008 to June 6, 2008 as a carpenter and concrete finisher.

9. For the majority of Mr. Mendoza's employment with Atlas Concrete, Inc. Shawn Glenn worked as his supervisor.

10. Although Mr. Glenn was Mr. Mendoza's supervisor, each led a small crew of workers on the construction site at Ft. Carson, Colorado, where Atlas is constructing barracks.

11. On numerous occasions, Mr. Glenn made racially hostile and discriminatory comments to or about Mr. Mendoza, who is Hispanic.

12. Examples of hostile remarks made by Mr. Glenn to Mr. Mendoza are “I don’t like Hispanics but might make an exception in your case,” “lots of Hispanics work harder than you,” and “how does it feel to be the only Hispanic on the job?”

13. In addition to making comments to Mr. Mendoza directly, Mr. Glenn made statements to third parties admitting his intent to run Mr. Mendoza off the job. Examples include “I hate that f*cking spic” and “I’ll get that Mexican off this job.”

14. Mr. Mendoza was the only Hispanic member of Mr. Glenn’s work crew.

15. Over the course of Mr. Mendoza’s employment Mr. Glenn repeatedly tried to cause Mr. Mendoza to quit his job through a series of hostile acts including but not limited to:

a. At the end of March, 2008 Mr. Mendoza was working as the only finisher for concrete being poured by Mr. Glenn. Mr. Glenn was pouring the concrete at a rapid pace and Mr. Mendoza asked him to slow down. Mr. Glenn refused to slow down. When Mr. Mendoza asked him again the exchange became heated and ended with Mr. Glenn shouting that, “If you don’t like the way I do it then you can meet me at the trailer and I’ll kick your ass.” Mr. Mendoza declined to react to Mr. Glenn’s behavior.

b. Mr. Glenn also interfered with Mr. Mendoza’s work by failing to supply Mr. Mendoza’s crew with all the supplies they needed to finish a project.

c. Mr. Glenn set unrealistic deadlines for Mr. Mendoza’s crew and sought to provoke Mr. Mendoza with harsh and hostile criticism of Mr. Mendoza’s work.

d. Mr. Glenn threatened and criticized coworkers who were friendly to Mr. Mendoza. For example stating to coworkers that "anybody who gives Tony a ride to work will be fired."

16. Mr. Mendoza repeatedly asked to be transferred out from under Mr. Glenn's supervision.

17. His requests were denied by Dwayne Heidelberg, the Project Manager.

18. Mr. Mendoza repeatedly complained to Dwayne Heidelberg about Mr. Glenn's behavior.

19. Mr. Mendoza complained to Mr. Heidelberg multiple times in person and by telephone about Mr. Glenn's harassment.

20. Mr. Heidelberg refused Mr. Mendoza's March, 2008 request for a transfer.

21. Approximately one week before his termination Mr. Mendoza and his coworker, Bill Rusnic, met again with Mr. Heidelberg in an effort to resolve the racially hostile work environment.

22. During that meeting Mr. Heidelberg admitted that he knew Mr. Glenn was racist and commented that he had run every Mexican worker he ever had off the job.

23. Soon after this meeting Mr. Glenn was nominally demoted but not removed from the worksite where Mr. Mendoza was working.

24. After his nominal demotion Mr. Glenn still drove the company truck, was in charge of supplying Mr. Mendoza's crew, and interacted with the contractor as the group foreman.

25. After his demotion Mr. Glenn's anger and harassment towards Mr. Mendoza escalated. Mr. Glenn apparently believed that Mr. Mendoza was responsible for his demotion.

26. On June 4, 2008 Mr. Mendoza complained again to Mr. Heidelberg because Mr. Glenn had not supplied his crew with the necessary supplies for the day.

27. After this complaint Mr. Glenn sat in the truck and hostilely stared at Mr. Mendoza and Mr. Rusnic as they worked.

28. Mr. Mendoza and Mr. Rusnic left the area for a short time to perform out of Mr. Glenn's sight until he left and avoid confrontation.

29. Upon information and belief, shortly thereafter Mr. Glenn reported Mr. Mendoza and Mr. Rusnic to Mr. Heidelberg for not performing their work.

30. Two days later, on June 6, 2008, Mr. Mendoza's employment was involuntarily terminated.

Cause of Action – 42 U.S.C. § 1981

31. Plaintiff incorporates paragraphs 1 through 30 herein by reference.

32. Mr. Mendoza was a racial minority protected from racial discrimination by 42 U.S.C. § 1981.

33. Mr. Mendoza suffered an adverse employment action when his employment was involuntarily terminated on June 6, 2008.

34. Mr. Mendoza received disparate and hostile treatment compared to other similarly situated, non-minority employees.

35. The disparate and hostile treatment received by Mr. Mendoza during his employment with Atlas came from his supervisor, Mr. Glenn.

36. Mr. Glenn's actions were racial or stemmed from a racial animus.

37. Mr. Glenn's actions were so pervasive and severe as to alter the terms, conditions, or privileges for Mr. Mendoza's employment.

38. Atlas Concrete, Inc.'s response to Mr. Glenn's harassment was inadequate to remedy the hostile work environment that Mr. Mendoza suffered.

39. Defendant's actions and omissions violated Plaintiff's rights secured by 42 U.S.C. § 1981.

Prayer for Relief

WHEREFORE, Plaintiff prays for the following relief, pursuant to 42 U.S.C. §§ 1981, 1988, and Fed. R. Civ. P. 54:

- a. Reinstatement and back pay, including loss of benefits and seniority, or front pay in lieu of reinstatement;
- c. Nonpecuniary and compensatory damages, including damages for emotional distress and consequential damages;
- d. Punitive damages;
- e. Pre- and post-judgment interest at the highest rate allowed by law;
- f. Costs and reasonable attorneys fees; and
- g. All other legal or equitable relief to which Plaintiff is entitled.

Jury Demand

Plaintiff requests this matter be tried by a jury.

Respectfully submitted on this 4th day of March, 2009.

CORNISH AND DELL'OLIO

/s/ Donna Dell'Olio

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