

**Pro Publica LLP**  
Attorneys in the Public Interest  
5488 SW Alger Avenue | Suite I-9  
Beaverton, OR 97005

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*Partners:* Lee C. Dudley | Shanti Lewallen | Benjamin Cullen-Kearney | Heather Joy | Julia Yoshimoto | C.J. Graves

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September 5, 2011

**Via Certified Mail No. 7007 0710 0003 6271 7488**  
**Return Receipt Requested**

Medford Financial Services, Inc.  
650 Main Street  
Medford, OR 97501  
Attorney: Melody Salter

**Re: Unlawful Discrimination**  
**Our File No.: 090511.RGV**

Dear Ms. Salter:

This firm represents Mr. Roberto Garcia-Vallejos for all claims arising from the discriminatory actions taken by his employer which have adversely affected his employment status. The following is a summary of the facts of this claim as it pertains to you. A settlement demand is included at the conclusion of this letter. This information is submitted in good faith for negotiating this matter without litigation. This letter is an offer of compromise as defined in the Federal Rules of Evidence § 408. The contents of this letter shall not be admissible in any subsequent litigation.

**I. Facts**

Mr. Garcia-Vallejos is a fourteen-year employee of Medford Financial Services. He was born in Nicaragua, speaks English fluently, with only a slightly detectable Spanish accent.

Mr. Garcia-Vallejos began with Medford Financial in data entry and worked diligently. He received positive evaluations for his work and was encouraged to apply for the Customer Relations Manager position by Jean Gillies, Office Manager at Medford Financial Services. In November 2005, Mr. Garcia-Vallejos was promoted to Customer Relations Manager of the firm which raised his pay to \$49,500 annually with full benefits. He successfully worked in this position and continued to receive positive work evaluations from his supervisor, Jean Gillies. Mr. Garcia-Vallejos reported a good working relationship with Ms. Gillies and was never treated in an inappropriate manner by her.

When Mr. Garcia-Vallejos began to report to a new supervisor, Carl Landry, everything changed. Mr. Garcia-Vallejos was uncomfortable with Landry. Another

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employee, Jeanette Steager, overheard Landry speak to the Human Resources Director, Amy Nelson. He said to Nelson, “Why do we have a foreigner working the front desk, for Christ’s sake? Customers are going to associate us with outsourcing, as if we’re some low-rent business like all those customer service centers in India!”

On June 1, 2011 Mr. Garcia-Vallejos received an emergency phone call at work from his mother in Nicaragua. Mr. Garcia-Vallejos’s mother only speaks Spanish. He quickly spoke with his mother about the family emergency and went back to work. The same day, Landry verbally reprimanded Mr. Garcia-Vallejos for speaking Spanish while at work. Three witnesses, James Larsen, Catherine Nealy, and Stephen Leeds, heard Landry’s statement:

We simply cannot tolerate this -- I don’t care what the emergency was -- if you’re in this office, you speak English. That’s the language we speak in this country. Those clients probably think that the next thing they know all their affairs and money will be in Pakistan, handled by people working for a dollar a day. Please do not ever speak Spanish in this office again.

A mere two days later, on June 3, 2011, Landry demoted Mr. Garcia-Vallejos without providing any paperwork explaining why. Landry reassigned him to the lower position of Collections Assistant. When informed by HR of his reassignment, the reasons given Mr. Garcia-Vallejos were that it was for ‘performance issues’ and that he was “better suited” to the Collections Assistant position. This demotion reduced his annual salary to \$29,000 with full benefits; a reduction in pay of \$20,500 annually. Mr. Garcia-Vallejos’s replacement was a white female.

The offensive and racially-charged comments made by Landry to the HR Director, the verbal reprimand for speaking Spanish, and the demotion with its significant reduction in pay all took a substantial toll on Mr. Garcia-Vallejos.

He finds it difficult to adjust to a \$20,500 reduction in pay. The comments Landry made and which went uncontested by the HR Director bring Mr. Garcia-Vallejos feelings of shame for who he is; associating his race and ethnicity with “low-rent” and people who earn only “a dollar a day.” He feels stigmatized for being Nicaraguan by birth and for having a slight Spanish accent. Furthermore, he feels that speaking Spanish -- regardless of any legitimate reason -- can result in costs no person should have to bear. He feels his race and ethnicity trap him in a low-paying position which no amount of hard work can overcome. Mr. Garcia-Vallejos has lost much of his ambition and drive and feels he cannot succeed in his work environment, which is now racially charged because of Landry’s actions and statements.

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Mr. Garcia-Vallejos sought relief by filing for a “right to sue” letter from the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964. He filed his complaint with the EEOC on June 8, 2011 and received a “right to sue” letter on August 23.

### II. Legal Analysis

Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-2(a) (1982), states:

- (a) Employer practices
- (b) It shall be an unlawful employment practice for an employer -
  - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
  - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

The case law is clear. “[A] plaintiff must first establish a *prima facie* case of discrimination. If the plaintiff establishes a *prima facie* case, the burden then shifts to the defendant to articulate the legitimate nondiscriminatory reason for its employment decision. Then, in order to prevail, the plaintiff must demonstrate that the employer’s alleged reason for the adverse employment decision is a pretext for another motive which is discriminatory.” *Lowe v. City of Monrovia*, 775 F.2d 998 (9th Cir. 1985), *amended*, 784 F.2d 1407 (9th Cir. 1986).

Within this general framework, the specifics to establish a *prima facie* case are delineated in the four-point *McDonnell* test. The *International Brotherhood of Teamsters* case provides an alternative for establishing a *prima facie* case when the facts do not fit the *McDonnell* elements. We will take each of these sections in turn and apply the facts of this case to the law: the *prima facie* case under *McDonnell*, the *prima facie* case under *International Brotherhood of Teamsters*, and the burden-shifting arguments relating to pretext with a final note on summary judgment.

#### II a. The *prima facie* case under *McDonnell*

In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) a four point test was established by which a plaintiff can show a *prima facie* case of discrimination. The plaintiff must show:

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1. the plaintiff belongs to a class protected by Title VII;
2. the plaintiff was qualified for his position;
3. the plaintiff, despite being qualified, was rejected; plaintiff experienced an adverse employment action;
4. similarly situated individuals outside his protected class were treated more favorably, or other circumstances surrounding the adverse employment action give rise to an inference of discrimination.

The facts of this case easily fit this four-point test, enabling Mr. Garcia-Vallejos to show a prima facie case of discrimination. First, under Title VII, discrimination based on race, color, or national origin are all prohibited. He falls within each of these protected classes as he is Nicaraguan by birth, of dark-skin tone, and is a non-native English-speaker.

Second, the facts show that he was qualified for his position. He received positive work evaluations as a data entry clerk and was encouraged to apply for the Customer Relations Manager position. Upon his promotion to the Customer Relations Manager position he, again, received positive work evaluations from his supervisor. He worked in this position for 5 ½ years before being demoted by a new manager within mere months of the new manager taking over. It has never been disputed in the record that Mr. Garcia-Vallejos was qualified for his position. Nor has any reason been proffered for his demotion beyond being told that he was reassigned for “performance issues.” These issues were never identified.

Third, he suffered an adverse employment action when Landry demoted him after being verbally reprimanded for speaking Spanish at work. In addition, the reprimand was in the form of racially denigrating and inflammatory language. This demotion resulted in a substantial reduction in his annual salary.

Fourth, the circumstances surrounding this demotion and the subsequent hiring of a white, native English speaker give rise to the inference that his adverse employment action was discriminatory. This is especially true in light of the fact that only three non-white employees work for Medford Financial Services. All of this is compounded by the statements made to Mr. Garcia-Vallejos and the statements overheard by other employees at Medford Financial. Each of these in total create a clear inference of racially motivated animus and discriminatory impulse on the part of Landry and Medford Financial.

## **II b. The prima facie case under *International Brotherhood of Teamsters***

While it is clear that Mr. Garcia-Vallejos has a case fitting the *McDonnell* test, we wish to show that his case also fits the test set out in another case. A plaintiff can also establish a prima facie case of discriminatory treatment without satisfying the *McDonnell* test if the plaintiff provides evidence suggesting that the “employment decision was based on a discriminatory criterion illegal under the [Civil Rights] Act.” *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977).

Mr. Garcia-Vallejos offers direct evidence of discriminatory criteria. By alleging that Landry made racially charged remarks to the HR Director, by reprimanding him in front of other employees in a way that implied his use of Spanish disparaged the firm, and then following these remarks with a demotion, an ample showing has been made sufficient to establish a prima facie case under *International Brotherhood*. As stated in *Cordova v. State Farm Insurance Companies*, 124 F.3d 1145 (1997), “Such derogatory comments can create an inference of discriminatory motive.”

Whether under *McDonnell* or *International Brotherhood* Mr. Garcia-Vallejos has made a prima facie showing of discrimination which places the burden on Medford Financial Services to show a non-discriminatory reason for their actions.

## **II c. The burden-shifting arguments**

Under the framework set out in *Lowe*, Medford Financial must provide a reason which is legitimate and nondiscriminatory for the adverse employment action Mr. Garcia-Vallejos suffered. If Medford does this, then Mr. Garcia-Vallejos must show that the reason given is pretext for a prohibited reason.

To date, Medford and Landry have provided no reason for the adverse actions taken against Mr. Garcia-Vallejos. Rather, the court will have a hard time finding anything but a classic case of employment discrimination. First, the comments made during Mr. Garcia-Vallejos’ reprimand in the break room were followed within 72 hours with a demotion. No paperwork explaining or justifying this decision was ever provided. Most damning of all, Jeanette Steager’s report of what she heard Landry say to the HR Director, Amy Nelson, is inferential that the corporate culture was deferential to managers who had racially and ethnically discriminatory viewpoints. Steager did not report that the HR Director responded negatively to the comments Landry made. And given that he subsequently made the comments already noted to Mr. Garcia-Vallejos in the break room, it is unlikely he was ever discouraged from saying such things or dissuaded from acting on his racially discriminatory impulses.

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Finally, it is important to remind Medford Financial that any motion for summary judgment given these facts is unlikely to survive. As stated in *Wallis v. J.R. Simplot Co.*, 26 F.3d 885 (9th Cir. 1994), “The requisite degree of proof necessary to establish a prima facie case for Title VII ... on summary judgment is minimal and does not even need to rise to the level of a preponderance of the evidence.” The facts, as stated, are more than the minimum necessary under the standard articulated in *Wallis*.

In the end, Medford Financial Services discriminated against Mr. Garcia-Vallejos when it allowed the actions of Carl Landry. In making racially discriminatory statements and then demoting Mr. Garcia-Vallejos, Medford Financial engaged in illegal behavior.

### III. Damages

Mr. Roberto Garcia-Vallejos has lost a great deal because of the statements and actions of Carl Landry. He has labored under a \$20,500 reduction in pay. The comments Landry made bring Mr. Garcia-Vallejos feelings of shame for who he is. He feels stigmatized for being Latino and speaking Spanish. He has lost much of his ambition and drive and feels he cannot succeed in his work environment, which is now racially charged because of Landry’s actions and statements.

It is difficult for immigrants to this country to adjust and succeed. But Mr. Garcia-Vallejos succeeded and built a career at Medford Financial - until the arrival of Carl Landry. Immediately upon hearing the first comments uttered by Landry, the HR Director should have immediately counseled him against making such comments and against managing in a racially discriminatory fashion.

Mr. Garcia-Vallejos is prepared to settle this matter before litigation and will accept the following terms and conditions:

1. Medford Financial Services, Inc. shall cease and desist from engaging in discriminatory practices as prohibited under Title VII and all other applicable U.S. law.
2. Reinstate Mr. Garcia-Vallejos as Manager of Customer Relations.
3. Reinstate Mr. Garcia-Vallejos’ previous salary of \$49,500 with full benefits.
4. Place Mr. Garcia-Vallejos under a different supervisor.
5. Pay Mr. Garcia-Vallejos back wages of \$5,125 ( $20,500 / 12 = \$1708.33 * 3 = \$5,125$ ) and attorney’s fees.
6. Pay Mr. Garcia-Vallejos pain & suffering and emotional distress damages in the amount of \$25,000.
7. Pay Mr. Garcia-Vallejos punitive damages of \$50,000 or provide an employment contract with a termination provision only for just-cause or in the event of the

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dissolution of Medford Financial Services, Inc. The specific just-cause terms will be negotiated and determined if such a contract is offered.

8. Medford Financial Services will create an explicit anti-discrimination policy which will be printed in the employment manual.
9. Medford Financial Services will conduct mandatory training on their anti-discrimination policy and relevant U.S. law with all supervisory and management personnel.

This settlement offer expires on September 26, 2011. If I do not hear from you by October 4, 2011, Mr. Garcia-Vallejos will pursue all legal remedies available.

Once you have an opportunity to review this offer, please contact me so we can discuss a resolution to this situation.

Sincerely,

Lee C. Dudley

LCD: ld

Enclosures

cc: Roberto Garcia-Vallejos