

1 TERRY GODDARD  
2 The Attorney General  
3 Firm No. 14000

4 Ann Hobart, No. 019129  
5 Assistant Attorney General  
6 Civil Rights Division  
7 1275 West Washington Street  
8 Phoenix, AZ 85007  
9 Telephone: (602) 542-8860  
10 CivilRights@azag.gov  
11 Attorneys for Plaintiff

12  
13 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
14  
15 IN AND FOR THE COUNTY OF PIMA

16 THE STATE OF ARIZONA *ex rel.* TERRY  
17 GODDARD, the Attorney General; and THE  
18 CIVIL RIGHTS DIVISION OF THE ARIZONA  
19 DEPARTMENT OF LAW,

20 Plaintiff,

21 vs.

22 TWIN PEAKS CONSTRUCTION, INC. and  
23 DAVID BARNETT, in his official capacity as  
24 GENERAL MANAGER of TWIN PEAKS  
25 CONSTRUCTION, INC.,

26 Defendants.

No. CV ~~C2006-3610~~  
C2006-3637

**COMPLAINT**  
(Non-classified Civil)

**SARAH R. SIMMONS**

27 Plaintiff, the State of Arizona, *ex rel.*, Terry Goddard, the Attorney General, and the  
28 Civil Rights Division of the Arizona Department of Law (collectively the "State"), for its  
29 Complaint, alleges as follows:





1 consider running away with him.

2 18. On at least five occasions, Barnett told Garcia that she should allow him to  
3 perform oral sex on her because he knew more about it than guys her age.

4 19. At all relevant times, Twin Peaks had no published policy for receiving,  
5 investigating and responding to employee complaints of sexual harassment.

6 20. Garcia complained of Barnett's conduct towards her to her friend and  
7 contemporary, Kim Valencia, who at all relevant times was working as an office manager for  
8 Twin Peaks.

9 21. Mary Barnett overheard some of the sexually-charged comments that Barnett was  
10 making to Garcia within the first weeks of Garcia's employment by Twin Peaks.

11 22. Mary Barnett proposed that Garcia should stop working in the field and begin  
12 working in the office located at 5633 W. Oasis Road in Tucson to get away from Barnett.

13 23. On or about June 20, 2005, Garcia began working in the office as a receptionist.

14 24. On or about Thursday, July 14, 2005, Barnett called Garcia and Valencia into his  
15 office and once they were inside pulled both of them down onto his lap, grabbed Garcia's  
16 buttocks, and stated that he had to keep up his reputation as a dirty old man.

17 25. Following the incident in Barnett's office, Barnett insisted on going to lunch with  
18 Garcia and Valencia and rode with them to a nearby Subway. Driving to the restaurant and  
19 during lunch, Barnett made unwelcome comments to both Garcia and Valencia about oral sex.

20 26. Garcia and Valencia both complained to Mary Barnett about Barnett's behavior in  
21 his office and the things that he said to them at lunch on July 14, 2005. Mary Barnett later told  
22 Valencia that she had told Barnett about Garcia's and Valencia's complaints.

23 27. After Barnett learned from his wife that Garcia and Valencia had complained  
24 about him, he instructed Valencia to cut Garcia her last check, saying that Twin Peaks no  
25 longer needed her.

26 ///

1 28. Valencia disagreed with Barnett and said that Twin Peaks did need Garcia and that  
2 Valencia was nearly done training Garcia. Valencia told Barnett that she believed that the real  
3 reason he was firing Garcia was because she had complained about his harassment of her to  
4 Mary Barnett. In response, Barnett told Valencia that she also was fired.

5 29. Garcia learned she was fired on Monday, July 18, 2005, which was her last day of  
6 work at Twin Peaks.

7 30. On July 28, 2005, Garcia filed an administrative complaint with the State alleging  
8 that Barnett had subjected her to unwanted sexual language and touching throughout her  
9 employment by Twin Peaks and then had her employment terminated because she complained  
10 of this inappropriate conduct. The State accordingly investigated Garcia's complaint of sex-  
11 based employment discrimination as provided by the Arizona Civil Rights Act, A.R.S. § 41-  
12 1481(B).

13 31. At the conclusion of the State's investigation, the State determined that there is  
14 reasonable cause to believe that Defendants discriminated against Garcia because of her sex by  
15 subjecting her to sexual harassment as a condition of her employment, maintaining a hostile  
16 work environment, and terminating Garcia in retaliation for complaining of behavior that she  
17 reasonably believed was an unlawful employment practice in violation of the Arizona Civil  
18 Rights Act.

19 32. The State issued its Cause Finding on June 2, 2006, and since that time, the State,  
20 Garcia and Defendants have not entered into a Conciliation Agreement. The parties having  
21 thus exhausted their administrative remedies, the State is authorized to file this Complaint  
22 pursuant to A.R.S. § 14-1481(D).

### 23 STATEMENT OF CLAIMS

#### 24 **COUNT ONE**

25 **[Sexual Harassment in Violation of the Arizona Civil Rights Act, A.R.S. §41-1461 et seq.]**

26 33. The State re-alleges and incorporates by reference the allegations contained in

1 paragraphs 1 through 32 of this Complaint.

2 34. Under A.R.S. § 41-1463(B)(1), it is an unlawful employment practice for an  
3 employer to discriminate against any individual with respect to compensation, terms,  
4 conditions, or privileges of employment because of gender.

5 35. Defendants have unlawfully discriminated against Garcia in violation of A.R.S. §  
6 41-1463(B)(1) by making acceptance of unwelcome sexual conduct and language a condition  
7 of her employment, subjecting her to a hostile work environment, and terminating her, all  
8 because of her sex, female.

9 36. As a result of Defendants' discrimination, upon information and belief, Garcia  
10 suffered lost wages for which she should be compensated in an amount to be determined at  
11 trial pursuant to A.R.S. § 41-1481(G).

12 37. The State also is entitled to injunctive relief against Defendants' actions pursuant  
13 to A.R.S. § 41-1481(G).

14 **COUNT TWO**

15 **[Retaliation in Violation of the Arizona Civil Rights Act, A.R.S. §41-1464(A)]**

16 38. The State re-alleges and incorporates by reference the allegations contained in  
17 paragraphs 1 through 37 of this Complaint.

18 39. A.R.S. § 41-1464(A) states that it is an unlawful employment practice for an  
19 employer to discriminate against any of its employees because the employee opposed any  
20 practice which is an unlawful employment practice.

21 40. Defendants have unlawfully discriminated against Garcia in violation of A.R.S. §  
22 41-1464(A) by terminating her in retaliation for opposing Barnett's sexual harassment,  
23 conduct that Garcia reasonably believed was an unlawful employment practice in violation of  
24 the Arizona Civil Rights Act.

25 41. As a result of Defendants' discrimination, upon information and belief, Garcia  
26 suffered lost wages for which she should be compensated in an amount to be determined at

1 trial pursuant to A.R.S. § 41-1481(G).

2 42. The State also is entitled to injunctive relief against Defendants' actions pursuant  
3 to A.R.S. § 41-1481(G).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the State requests that this Court:

6 A. Enter judgment on behalf of the State, finding that Defendants unlawfully  
7 discriminated against Garcia because of her sex, in violation of the Arizona Civil Rights Act.

8 B. Enjoin Twin Peaks, its successors, assigns and all persons in active concert or  
9 participation with Twin Peaks, from engaging in any employment practice, including sexual  
10 harassment of employees, that discriminates in violation of the Arizona Civil Rights Act.

11 C. Enjoin Barnett from engaging in any employment practice, including sexual  
12 harassment of employees, that discriminates in violation of the Arizona Civil Rights Act.

13 D. Order Twin Peaks to make Garcia whole and award Garcia back wages  
14 calculated from the date of her termination on July 18, 2005 in amounts to be determined at  
15 trial.

16 E. Order Twin Peaks, its successors, assigns and all persons in active concert or  
17 participation with Twin Peaks, to create and enforce policies, practices and programs that  
18 provide equal employment opportunities for all its employees, and that eradicate the effects of  
19 its present unlawful employment practices, including but not limited to, policy changes and  
20 training.

21 F. Order Twin Peaks, its successors, assigns and all persons in active concert or  
22 participation with Twin Peaks, to adopt and enforce an equal opportunity in employment  
23 policy that prohibits sexual harassment and that includes a procedure for reporting and  
24 investigating allegations of sexual harassment as well as for sanctioning substantiated  
25 allegations of sexual harassment.

26 G. Issue an Order authorizing the State to monitor Defendants' compliance with the

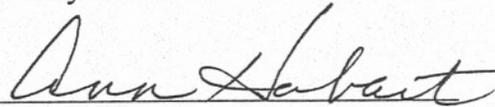
1 Arizona Civil Rights Act and order Twin Peaks, its successors, assigns and all persons in  
2 active concert or participation with Twin Peaks, to pay the State a reasonable amount for such  
3 monitoring.

4 H. Award the State its taxable costs incurred in bringing this action.

5 I. Grant such other and further relief as this Court may deem just and proper in the  
6 public interest.

7  
8 Dated this 3rd day of July, 2006.

9 TERRY GODDARD  
10 Attorney General

11 By 

12 Ann Hobart  
13 Assistant Attorney General  
14 Arizona Attorney General's Office  
15 Civil Rights Division  
16 1275 W. Washington Street  
17 Phoenix, Arizona 85007

18  
19  
20  
21  
22  
23  
24  
25 300106  
26