

FILED _____ LODGED _____
RECEIVED _____ COPY _____
APR 25 2002
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jose B. Vasquez,
Plaintiff,
vs.
Atrium, Inc.,
Defendant.

No. CIV 00 - 1265 PHX LOA

ORDER

This matter arises on Defendant Atrium, Inc.'s¹ Motion For Summary Judgment etc. (doc. #27), filed on January 10, 2002. The Court has reviewed and considered the subject motion; Defendant's Statement of Facts and supporting documents; Plaintiff Jose B. Vasquez' Response, Statement of Facts and supporting documents in opposition thereto; and Defendant's Reply. The Court concludes that because genuine issues of material fact exist for jury determination, Defendant is not entitled to summary judgment.

BACKGROUND

In the Complaint, Plaintiff claims that Defendant, his former employer, engaged in racial and national origin discrimination which created a racially hostile work environment and led to Plaintiff's constructive discharge in violation of Title VII of the Civil Rights Act

¹ The Court notes that the parties are now using a different name for Defendant. The caption may be changed by stipulation or formal motion. If the parties agree, the correct name for Defendant and the caption herein may be amended and addressed at the Final Pretrial Conference.

62

1 of 1964, 42 U.S.C. §2000e-2(a)(1),² and the Civil Rights Act of 1991, 42 U.S.C. §1981³.
2 Defendant denies any wrongdoing and asserts that Plaintiff voluntarily resigned for reasons
3 totally unrelated to his claims of discrimination. Alternatively, Defendant urges the Court
4 to grant summary judgment on Plaintiff's claim for punitive damages.

5 Plaintiff, a native of Mexico lawfully living in the United States as a permanent
6 resident alien, claims that his former supervisor and the plant manager, Don Dezonias, a
7 Caucasian, frequently called Plaintiff and other Hispanic employees "wet backs," "spics,"
8 "beaners," or "braceros" in their workplace from August, 1998 to July, 1999. Plaintiff
9 testified he asked Dezonias many times⁴ not to use this offensive language in addressing
10 Plaintiff but that Dezonias continued to use the racial slurs in discussing the business of the
11 company. Moreover, Plaintiff avers that on December 14, 1998, he complained of the
12 offensive and "not-funny" language directly to Defendant's general manager, Fred Bengtson,
13 after threatening to quit because of it. Bengtson confronted Dezonias with Plaintiff's
14 allegations but Dezonias denied them and claimed Plaintiff was lying. According to Plaintiff,
15 Bengtson, a personal friend and neighbor of Dezonias, did not investigate the allegations, did
16 not intervene to stop the name-calling, did not direct Dezonias to discontinue the name-

17
18 ² 2000e-2. Unlawful employment practices

19 (a) Employer practices

20 It shall be an unlawful employment practice for an employer--

21 (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate
22 against any individual with respect to his compensation, terms, conditions, or privileges of
23 employment, because of such individual's race, color, religion, sex, or national origin;

24 ³ Where there are allegations that discrimination against Hispanics is of a racial
25 character, a cause of action under §1981 has been recognized. Gonzalez v. Stanford Applied
26 Engineering, Inc., 597 F.2d 1298, 1300 (9th Cir.1979)(dismissal of § 1981 claim brought by
27 a Mexican-American was improper because "prejudice towards those of Mexican descent
28 having a skin color not characteristically Caucasian must be said to be racial prejudice under
§1981").

⁴ See, pages 87, 92, Plaintiff's deposition taken on July 9, 2001, Exhibit A to
Plaintiff's Statement of Facts (doc. #53).

1 calling, and issued no oral or written warning or business policy that, if there were any racial
2 slurs and name-calling in the future, there would be disciplinary consequences to the
3 offending employee. Per Plaintiff, the only comments made by Bengtson were that he told
4 the two employees that they need to work together and that he hates people who claim they
5 are going to quit. After a two week lull in the name-calling after Plaintiff complained to the
6 Defendant's general manager, Plaintiff contends that Dezonias continued to call him a "spic"
7 in the workplace. Plaintiff testified that upon the realization that Dezonias had not changed,
8 on July 29, 1999 Plaintiff resigned from his \$70,000.00-a-year job as plant foreman for the
9 sole reason that Dezonias called him a "spic."

10 Defendant, however, contends there was neither a constructive discharge nor is
11 there sufficient evidence to justify a claim for punitive damages. Specifically, Defendant
12 asserts that Plaintiff resigned because he was going through many personal problems
13 unrelated to his job or any alleged discrimination, i.e., he had separated from his wife and
14 was having issues with his two sons, coupled with his long work hours and a personality
15 conflict with his immediate supervisor, Dezonias. Defendant alleges that Plaintiff quit because
16 these issues collectively became too great a burden for Plaintiff. Regarding the personality
17 conflict, Defendant claims that Plaintiff did not like Dezonias because he was a stern
18 taskmaster who expected each employee to produce and carry his own weight. Plaintiff's
19 former supervisor, Bud Stots, had been less stern. Dezonias became the plant manager in
20 August, 1998. Additionally, while Defendant admits that there were occasionally jokingly-
21 made references in the workplace to Hispanics as "wetbacks," it contends that Plaintiff called
22 Caucasians "white trash" and "gringos." Furthermore, it alleges that no one, including
23 Plaintiff or the other minority employees, took personal offense to these comments or
24 considered them insulting. Defendant argues that Plaintiff's use of racial slurs supports its
25 position that Plaintiff did not consider this kind of name-calling offensive or abusive. The
26 Court is also provided the affidavit of Fred Bengtson, which indicates, among other things,
27 that at no time did Plaintiff ever relate to him any ethnic or racial comments that Dezonias
28

1 ever made to or about Plaintiff. Defendant argues, therefore, that the facts do not support
2 intolerable working conditions due to an absence of aggravating factors to create a factual
3 question for the jury. Finally, Defendant contends that Plaintiff cannot show either malice
4 or reckless indifference to his federally-protected rights and, thus, Defendant is entitled to
5 judgment as a matter of law on Plaintiff's claim for punitive damages. Other than a poster
6 that encouraged employees to communicate to management if a working condition exists that
7 the employee believes is objectively intolerable,⁵ the Court has been provided no evidence
8 of any written policies prohibiting discrimination in the workplace.

9 LAW ON SUMMARY JUDGMENT

10 A Court must grant summary judgment if the pleadings and supporting
11 documents, viewed in the light most favorable to the nonmoving party, "show that there is
12 no genuine issue as to any material fact and that the moving party is entitled to judgment as
13 a matter of law." Rule 56(c), FRCvP ; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106
14 S.Ct. 2548, 2552 (1986); Jesinger v. Nevada Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir.
15 1994). Substantive law determines which facts are material. Anderson v. Liberty Lobby,
16 Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986); Jesinger, 24 F.3d. at 1130. In addition,
17 "[o]nly disputes over facts that might affect the outcome of the suit under the governing law
18 will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248, 106
19 S.Ct. at 2510. The dispute must be genuine, that is, "the evidence is such that a reasonable
20 jury could return a verdict for the nonmoving party." Id.

21 A principal purpose of summary judgment is "to isolate and dispose of factually
22 unsupported claims." Celotex, 477 U.S. at 323-24, 106 S. Ct. at 2553. Summary judgment
23 is appropriate against a party who "fails to make a showing sufficient to establish the
24 existence of an element essential to that party's case, and on which that party will bear the
25 burden of proof at trial." Id. at 322, 106 S.Ct. at 2553; Citadel Holding Corp. v. Roven, 26
26

27 _____
28 ⁵ See, Exhibit C to witness Elizabeth Laytong's affidavit filed on January 10, 2002.

1 F.3d 960, 964 (9th Cir. 1994). The moving party need not disprove matters on which the
2 opponent has the burden of proof at trial. Celotex, 477 U.S. at 323, 106 S.Ct. at 2552.

3 The party opposing summary judgment “may not rest upon the mere allegations
4 or denials of [the party’s] pleadings, but. . . must set forth specific facts showing that there
5 is a genuine issue for trial.” Rule 56(e), FRCvP; Matsushita Elec. Indus. Co., Ltd. v. Zenith
6 Radio Corp., 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356 (1986). Brinson v. Lind Rose Joint
7 Venture, 53 F.3d 1044, 1049 (9th Cir. 1995). There is no issue for trial unless there is
8 sufficient evidence favoring the nonmoving party. If the evidence is merely colorable or is
9 not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249-
10 50, 106 S.Ct. at 2511. However, “[t]he evidence of the non-movant is to be believed, and
11 all justifiable inferences are to be drawn in his [or her] favor.” Id. at 255, 106 S.Ct. at 2513
12 [citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59, 90 S.Ct. 1598,
13 1608-1609 (1970)].

14 Whatever facts which may establish a genuine issue of fact must *both* be in the
15 district court’s file and set forth in the response. Carmen v. San Francisco Unified School
16 District, 237 F.3d 1026, 1029 (9th Cir. 2001). The trial court:

17 “may determine whether there is a genuine issue of fact, on summary judgment,
18 based on the papers submitted on the motion and such other papers as may be on
19 file and specifically referred to and facts therein set forth in the motion papers.
20 Though the court has discretion in appropriate circumstances to consider other
21 materials, it need not do so. The district court need not examine the entire file for
22 evidence establishing a genuine issue of fact, where the evidence is not set forth
23 in the opposing papers with adequate references so that it could conveniently be
24 found.”

25 Id. at 1031.

26 The Ninth Circuit has set a high standard for the granting of summary judgment
27 in employment discrimination cases.

28 “[W]e require very little evidence to survive summary judgment” in a
discrimination case, “because the ultimate question is one that can only be
resolved through a ‘searching inquiry’--one that is most appropriately conducted
by the factfinder, upon a full record.” Lam v. University of Hawaii, 40 F.3d
1551, 1563 (9th Cir.1994) (quoting Sischo-Nownejad v. Merced Community
College Dist., 934 F.2d 1104, 1111 (9th Cir.1991)).

1 Schmidrig v. Columbia Machine, Inc., 80 F.3d 1406, 1410 (9th Cir. 1996), cert. denied, 519
2 U.S. 927, 117 S.Ct. 295, 136 L.Ed.2d214 (1996).

3
4 **HOSTILE WORK ENVIRONMENT AND CONSTRUCTIVE DISCHARGE**

5 Title VII prohibits employment discrimination based on "race, color, religion,
6 sex, or national origin." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21, 114 S.Ct. 367, 126
7 L.Ed.2d 295 (1993) (quoting 42 U.S.C. S 2000e-2(a)(1)). Harassing an employee on
8 account of race is, conceptually, the same as refusing to hire on account of race, or paying
9 less for the same work, or imposing more onerous duties for the same pay. In each such
10 case, the employer violates Title VII by offering terms and conditions to employees of one
11 race that are less favorable than those it offers to employees of any other race. Racial slurs
12 in the workplace, if committed or tolerated by the employer, becomes a new and onerous
13 term of employment and may constitute a hostile work environment. Erebia v. Chrysler
14 Plastic Products Corporation, 772 F.2d 1250 (6th Cir. 1985), cert. denied, 475 U.S. 1015, 106
15 S.Ct. 1197, 89 L.Ed.2d 311 (1986)(substantial evidence supported jury verdict of hostile
16 work environment due to racial slurs against Mexican-American employee).

17 The cause of action for hostile work environment was first recognized in Rogers
18 v. EEOC, 454 F.2d 234 (5th Cir.1971), cert. denied, 406 U.S. 957, 92 S.Ct. 2058, 32 L.Ed.2d
19 343 (1972). That case, like many cases following it, was decided under Section 703 of Title
20 VII, 42 U.S.C. §2000e-2(a), which makes it unlawful to discriminate with respect to terms,
21 conditions, or privileges of employment.

22 In order to prevail on his hostile work environment claim, Plaintiff must show
23 that his "workplace [was] permeated with discriminatory intimidation ... that [was]
24 sufficiently severe or pervasive to alter the conditions of [his] employment and create an
25 abusive working environment." Harris, 510 U.S. at 21, 114 S.Ct. 367 (internal quotation
26 marks and citations omitted); Brooks v. City of San Mateo, 229 F.3d 917, 923 (9th Cir.2000).
27 The working environment must both subjectively and objectively be perceived as abusive."
28

1 Fuller v. City of Oakland, 47 F.3d 1522, 1527 (9th Cir.1995)(citing Harris, 510 U.S. at
2 21-22, 114 S.Ct. 367). Harris lists frequency, severity and level of interference with work
3 performance among the factors particularly relevant to the inquiry. When assessing the
4 objective portion of a Plaintiff's claim, the Court assumes the perspective of the reasonable
5 victim.

6 The law in the Ninth Circuit is well settled on a claim of constructive discharge.

7 A constructive discharge occurs when, looking at the totality of
8 circumstances, "a reasonable person in [the employee's] position would have felt
9 that he was forced to quit because of intolerable and discriminatory working
10 conditions." Satterwhite v. Smith, 744 F.2d 1380, 1381 (9th Cir.1984); Nolan v.
11 Cleland, 686 F.2d 806, 812 (9th Cir.1982). This test establishes an objective
standard; the plaintiff need not show that the employer subjectively intended to
force the employee to resign. See Satterwhite, 744 F.2d at 1383; Nolan, 686
F.2d at 814 n. 17. "As a result, the answer turns on the facts of each case."
Satterwhite, 744 F.2d at 1382.

12 The determination whether conditions were so intolerable and discriminatory
13 as to justify a reasonable employee's decision to resign is normally a factual
14 question left to the trier of fact. See Lojek v. Thomas, 716 F.2d 675, 677, 680
15 (9th Cir.1983). However, we have noted that, in general, a "single isolated
16 instance" of employment discrimination is insufficient as a matter of law to
17 support a finding of constructive discharge. Nolan, 686 F.2d at 813; see
Satterwhite, 744 F.2d at 1381- 82; Heagney v. University of Wash., 642 F.2d
1157, 1166 (9th Cir.1981). This lower limit is predicated on the notion that Title
VII policies are best served when the parties, if possible, attack discrimination
within the context of their existing employment relationships. Thorne v. City of
El Segundo, 802 F.2d 1131, 1134 (9th Cir.1986); Heagney, 642 F.2d at 1166.

18 Hence, a plaintiff alleging a constructive discharge must show some
19 "aggravating factors, such as a "continuous pattern of discriminatory treatment."
Satterwhite, 744 F.2d at 1382 (emphasis added) (quoting Clark v. Marsh, 665
20 F.2d 1168, 1174 (D.C.Cir.1981)). We have upheld factual findings of
constructive discharge when the plaintiff was subjected to incidents of
21 differential treatment over a period of months or years. See Wakefield v. NLRB,
779 F.2d 1437, 1439 (9th Cir.1986); Satterwhite, 744 F.2d at 1383; see also
22 Goss v. Exxon Office Sys. Co., 747 F.2d 885, 887-89 (3d Cir.1984); Real v.
Continental Group, Inc., 627 F.Supp. 434, 443-44 (N.D.Cal.1986). Similarly,
23 in Nolan, we held that a showing of four incidents of differential treatment over
a period of two years was sufficient to create a genuine issue of fact for trial.
24 Nolan, 686 F.2d at 813-14.

25 Watson v. Nationwide Insurance Co., 823 F.2d 360, 361 (9th Cir. 1987).

26 THE STANDARD FOR PUNITIVE DAMAGES UNDER TITLE VII

27 In 1999, the Supreme Court resolved a circuit split over the appropriate standard
28

1 for determining the availability of punitive damages under Title VII by establishing a three-
2 part inquiry to address when the evidence supports a punitive damages verdict. Kolstand v.
3 American Dental Association, 527 U.S. 526, 119 S.Ct. 2118, 144 L.Ed.2d 494 (1999).

4 In the first step, the Supreme Court clarified the requisite mental state of
5 employers, the only step of the standard upon which Defendant seeks summary judgment.
6 Under Title VII, the jury may award punitive damages if the moving party demonstrates that
7 “the [defendant] engaged in a discriminatory practice or discriminatory practices with malice
8 or with reckless indifference to the federal protected rights of an aggrieved individual.” 42
9 U.S.C. §1981 a(b)(1). Interpreting this section, the Supreme Court concluded that Congress
10 intended to impose a heightened standard of liability for the award of punitive damages, but
11 rejected the argument that the heightened standard requires that an employer’s behavior be
12 “egregious.” Kolstad, 527 U.S. at 534-35. Instead, the Court concluded that Congress
13 intended for punitive damages to apply in intentional discrimination cases where the plaintiff
14 can show that the employer knowingly or recklessly acted in violation of federal law. Id. at
15 535; Hemmings v. Tidyman’s Inc., ___ F.3d ___, 2002 WL 537689 (9th Cir., April 11,
16 2002). The Supreme Court found that the questions of malice and reckless indifference are
17 subjective questions concerning the employer’s motive or intent, rather than an objective
18 inquiry into whether the employer’s behavior is “egregious.” A defendant is appropriately
19 subject to punitive damages if it acts “in the face of a perceived risk that its actions will
20 violate federal law.” Kolstad, 527 U.S. at 536. The Supreme Court explained that although
21 egregious conduct could be evidence of an intentional violation of the law, it was not a
22 necessary element or required to establish punitive damages liability. Id. at 535 (holding that
23 egregious behavior provides “one means” of satisfying plaintiff’s burden of proof for
24 punitive damages). Thus, in general, intentional discrimination is enough to establish
25 punitive damages. Passantino v. Johnson & Johnson Consumer Products, Inc., 212 F.3d 493,
26 515 (9th Cir. 2000).

1 "Pollock," "faggot," or "cripple," by a supervisor to an employee for nearly a year would not
2 be considered offensive and intolerable to a reasonable victim? The Court thinks not and
3 neither may a reasonable juror.

4 Little discussion by the Court is necessary on Defendant's argument that Plaintiff
5 cannot show a nexus between the purportedly disparaging remarks and Plaintiff's
6 resignation. While it may be true that the only or primary reason Plaintiff resigned from his
7 employment was for personal reasons other than the name-calling by his boss, this is a issue
8 for a jury, not a judge, to decide. Plaintiff's testimony is that "the sole and only reason" that
9 he quit was because Dezonias called him a "spic."⁷ Moreover, questions of causation are
10 usually reserved for the trier of fact. Leaf v. United States, 588 F.2d 733, 736 (9th Cir.
11 1978)("The district court erred in deciding the proximate-cause question on a motion for
12 summary judgment. Generally, proximate cause is a question of fact."). On his constructive
13 discharge claim, Plaintiff has created a jury question whether a reasonable person in the
14 employee's position would have felt that he was forced to quit because of intolerable and
15 discriminatory working conditions.

16 Contrary to Defendant's argument, aggravating factors do exist to create a jury
17 question on Plaintiff's claim of constructive discharge. The name-calling was not a single
18 isolated event nor even a frequent occurrence that suddenly ended in the workplace when the
19 employee asked his boss to stop it. It persisted for seven more months after the employee,
20 following the recommended procedure of the Defendant's constructive discharge poster,
21 complained to the company's highest management person, its general manager.

22
23 ⁷ Q. So you quit because he [Dezonias] used profanity with you; is that your testimony?

A. He forced me to. He forced me to, to quit.

24 Q. How did he force you to quit?

A. Speaking to me with racial words.

25 Q. Well, did you interpret the word "fuck" to be a racial word?

A. No. "Spic."

26 Q. So the sole and only reason you left was that he used the word "spic" again?
That's why you decided to quit?

27 A. Well, yes. He used it for a long time.

28 See, pages 97-98 to Plaintiff's deposition taken on July 9, 2001.

1 Additionally, the general manager, a personal friend who socialized with Dezonias, did
2 literally nothing to investigate the merits of the complaint, did not reprimand Dezonias or
3 initiate efforts to ensure that name-calling in the workplace would not occur in the future.
4 While it may be true that Defendant was an "equal opportunity" employer which did not
5 discriminate against qualified minorities, like Plaintiff and others, in other areas from
6 climbing the corporate ladder to higher paying jobs like Plaintiff's, partial compliance with
7 federal anti-discrimination laws does not, and should not, license an employer to engage in
8 racial name-calling with impunity. For summary judgment purposes, a genuine dispute has
9 been established that aggravating circumstances do exist, i.e., a continuous pattern of
10 discriminatory treatment due to racial slurs, which created a hostile work environment.
11 Viewing the totality of the circumstances, including the frequency, severity and level of
12 interference the name-calling played in altering Plaintiff's conditions of employment, issues
13 of material fact exist for jury resolution on Plaintiff's claims of hostile work environment.

14 The issue of Defendant's entitlement to summary judgment on the issue of
15 Plaintiff's claim for an award punitive damages is a closer question. Since Defendant limits
16 its argument to only the dearth of evidence on malice or reckless indifference to Plaintiff's
17 federally-protected rights, the first step in Kolstad's three-part analysis, the Court will not
18 address steps two and three. Furthermore, Defendant provides the Court with conclusory
19 arguments, and no case law whatsoever,⁸ that the discovered "facts are insufficient for an
20 award of punitive damages." Defendant's argument that since Plaintiff cannot show any
21 aggravating circumstances or a continuous pattern of discrimination, the Court can not permit
22 the jury to award punitive damages, provides the Court with nothing of substance. Obviously,
23 if summary judgment were granted on Plaintiff's claims of racially hostile work environment
24 and constructive discharge, the issue of punitive damages would be moot because the case

25
26

27 ⁸ Local Rule 1.10(b) requires counsel to set forth in the memorandum the authorities
28 relied upon in the motion.

1 would be over. The Court's findings, however, that jury questions do exist on Plaintiff's
2 underlying claims requires a deeper analysis of the issue of punitive damages.

3 The Supreme Court and subsequent Ninth Circuit cases have clarified that the
4 questions of malice and reckless indifference are subjective questions concerning the
5 employer's motive or intent, rather than an objective inquiry into whether the employers's
6 behavior is "egregious." It is a rare case if direct evidence existed of the employer's intent
7 to violate an employee's civil rights and none appears in the record before the Court in this
8 case. Therefore, as in most cases, Plaintiff must rely on circumstantial evidence, if any, to
9 prove motive or intent.

10 The Court concludes that circumstantial evidence does exist to show that
11 Defendant's supervisory employees, Dezonias and Bengtson, were recklessly indifferent to
12 Plaintiff's federally-protected rights. In addition to the facts as previously set forth in the
13 Court's discussion of the underlying claims, Dezonias was not merely indifferent, he had no
14 concerns at all for Plaintiff's right to be free from racial name-calling in the workplace.
15 Fairly read, the evidence is that after the December 14, 1998 meeting with the company
16 general manager wherein Plaintiff allegedly complained of the name-calling, Dezonias
17 continued to frequently call Plaintiff and other Hispanics a "spic."⁹ In late July, 1999, over
18 seven months later, Plaintiff gave the following scenario that may best describe Dezonias's
19 attitude towards Plaintiff's rights:

20 Q. So you decided after those comments [by Dezonias] that you were quitting?

21 A. Yes.

22 Q. Because you thought he was imposing too many hours of work upon you?

23 [Objections and comments of both counsel omitted]

24 Q. Give me an answer to my question, please.

25
26
27
28 ⁹ See, pages 93-98, Plaintiff's deposition.

1 A. Well, that's why I left, because I saw that he had not changed. He told me,
2 "It's your problem, spic. It's your fucking problem."¹⁰
3 Additionally, the Court must presume under summary judgment's rules of construction that
4 Dezonia lied to Bengtson, and that Bengtson has now lied in his affidavit, when they denied
5 Dezonia had used racial slurs prior to the December 14, 1998 meeting with Plaintiff and,
6 instead of admitting it, Dezonia accused Plaintiff of lying. Lying to cover up a supervisor's
7 discriminatory conduct, however, was found to be a relevant factor to justify, among others,
8 an award of punitive damages in Passantino v. Johnson & Johnson Consumer Products, Inc.,
9 212 F.3d 493, 516 (9th Cir. 2000)("These actions [lying and others] are sufficient to permit
10 a jury to conclude that [the employer] could not have reasonably believed that its conduct
11 was lawful.").

12 This is also a company which apparently had no written anti-discrimination
13 policies or directives other than the aforementioned poster either before or after Plaintiff's
14 complaint of racial slurs to the general manager. If Plaintiff's testimony is to be believed,
15 Bengtson's failure to initiate written policies and directives designed to eliminate or curb
16 racial name-calling at the Defendant's workplace and his failure to reprimand Dezonia for
17 his verbal misconduct raises the inference that Defendant had little or no regard for Plaintiff's
18 civil rights. The Court concludes that, for purposes of summary judgment only and
19 considering the totality of circumstances, Plaintiff has created a question of fact for jury
20 resolution whether Defendant engaged in a discriminatory practice with reckless indifference
21 to Plaintiff's federally-protected rights. Defendant's motion as to punitive damages is
22 denied.

23 Accordingly,
24 **IT IS ORDERED** that Defendant Atrium, Inc.'s Motion For Summary Judgment
25 etc. (doc. #27) is **DENIED**.

26 /

27 _____
28 ¹⁰ See, pages 97-98, Plaintiff's deposition.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that Plaintiff's Motion to Strike Paragraphs Forty and Forty-one etc. (doc. #57) is **DENIED** as moot.

DATED this 24th day of April, 2002.



Lawrence O. Anderson
United States Magistrate Judge