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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

13 U.S. EQUAL EMPLOYMENT
14 OPPORTUNITY COMMISSION,
15
16 Plaintiff,
17
18 vs.
19 SIMON PROPERTY GROUP, INC.
20 and Does 1 – 10 Inclusive,
21
22 Defendants.

Case No.:

COMPLAINT—TITLE VII

- **National Origin Harassment**

JURY TRIAL DEMAND

23 **NATURE OF THE ACTION**

24 This is an employment discrimination action brought by the United States Equal
25 Employment Opportunity Commission (“EEOC” or “Commission”) under Title VII of the Civil
26 Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment
27 practices on the basis of national origin, and to provide appropriate relief to Enrique Bautista,
28 Hugo Erives, Jose Gutierrez, Rigoberto Gutierrez, and other similarly situated individuals who

1 were adversely affected by such practices. The Commission alleges that Defendant Simon
2 Property Group, Inc. and Does 1-10 (collectively “Defendant” or “Defendant Employer”)
3 subjected claimants and others to harassment creating a hostile work environment based on their
4 national origin (Hispanic/Latino).

5 **JURISDICTION AND VENUE**

6 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,
7 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) and
8 Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1)
9 and (3), § 2000e-6 (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C.
10 § 1981a.

11 2. The employment practices alleged to be unlawful were and are now being
12 committed within the jurisdiction of the United States District Court for the District of Nevada.

13 **PARTIES**

14 3. Plaintiff, the U.S Equal Employment Opportunity Commission, is the agency of
15 the United States of America charged with the administration, interpretation and enforcement of
16 Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) and
17 Section 707 of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3) and § 2000e-6.

18 4. At all relevant times, Defendant Simon Property Group, Inc. (“Defendant” or
19 “Defendant Employer”) has continuously been an employer engaged in an industry affecting
20 commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C.
21 §§ 2000e(b), (g) and (h).

22 5. At all relevant times, Defendant Employer has continuously been doing business
23 in the State of Nevada and the City of Las Vegas, and has continuously had at least fifteen (15)
24 employees. At all relevant times, Defendant Employer has continuously been an employer
25 engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of
26 Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

27 6. All of the acts and failures to act alleged herein were duly performed by and
28 attributable to all Defendants, including Defendants DOES 1 to 10, each acting as a successor,

1 agent, alter ego, employee, indirect employer, joint employer, integrated enterprise and/or or
2 under the direction and control of the others, except as specifically alleged otherwise. Said acts
3 and failures to act were within the scope of such agency and/or employment, and each Defendant
4 participated in, approved and/or ratified the unlawful acts and omissions by the other Defendants
5 complained of herein. Whenever and wherever reference is made in this Complaint to any act by
6 a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts
7 and failures to act of each Defendant acting individually, jointly, and/or severally.

8 7. Plaintiff is ignorant of the true names and capacities of each Defendant sued as
9 DOES 1 through 10, inclusively, and therefore Plaintiff Commission sues said defendant(s) by
10 fictitious names. Plaintiff reserves the right to amend the complaint to name each DOE
11 defendant individually or collectively as they become known. Plaintiff alleges that each DOE
12 defendant was in some manner responsible for the acts and omissions alleged herein and Plaintiff
13 will amend the complaint to allege such responsibility when the same shall have been ascertained
14 by Plaintiff.

15
16 **STATEMENT OF CLAIMS**

17 8. More than thirty days prior to the institution of this lawsuit, Enrique Bautista,
18 Hugo Erives, Jose Gutierrez, Rigoberto Gutierrez (“Charging Parties”) each filed a charge with
19 the Commission alleging violations of Title VII by Defendants. After an investigation, the
20 Commission issued a Letter of Determination finding that the Charging Party and similarly
21 situated individuals were subjected to unlawful employment discrimination based upon their
22 national origin, Hispanic/Latino, of harassment in violation of Title VII. Prior to instituting this
23 lawsuit, the EEOC attempted to eliminate the unlawful employment practices herein alleged and
24 to effect voluntary compliance with Title VII through informal methods of conciliation,
25 conference, and persuasion within the meaning of Section 706(b) of Title VII, 42 U.S.C.
26 Sections 2000e-5(b). All conditions precedent to the institution of this lawsuit have been
27 fulfilled.

28 9. Since at least early 2005, Defendants have engaged in unlawful employment

1 practices and/or in a pattern or practice of such unlawful acts in violation of and as enforced
2 through Section 703, 706, and 707 of Title VII, 42 U.S.C. §§ 2000e-2, 2000e-5, and 2000e-6.
3 Defendants subjected Charging Parties and a class of other similarly situated employees to
4 harassment resulting in a hostile work environment based on their national origin (Hispanic /
5 Latino). The unlawful employment and discriminatory practices include but are not limited to
6 physical intimidation and verbal harassment of the Charging Parties and similarly situated
7 individuals by repeated use of the term “wetback” and other derogatory comments directed
8 against them based on their national origin (Hispanic / Latino). Despite having notice of such
9 harassment, Defendants failed to take prompt and effective remedial measures.

10 10. The effect of the practices complained of in paragraph 9 above has been to
11 deprive the Charging Parties and similarly situated individuals of equal employment
12 opportunities and otherwise adversely affect their status as employees, because of their national
13 origin.

14 11. The unlawful employment practices complained of in paragraph 9 above were and
15 are intentional within the meaning of § 706(g)(1) of Title VII, 42 U.S.C., §§ 2000e-5(g)(1).

16 12. The unlawful employment practices complained of in paragraph 9 above were and
17 are intentional and caused Charging Parties and similarly situated individuals to suffer emotional
18 distress.

19 13. The unlawful employment practices complained of in paragraph 9 above were and
20 are done with malice or with reckless indifference to the federally protected rights of Charging
21 Parties and similarly situated individuals.

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23 **PRAYER FOR RELIEF**

24 Wherefore, the Commission respectfully requests that this Court:

25 A. Grant a permanent injunction enjoining Defendants, their officers, successors,
26 assigns, and all persons in active concert or participation with it, from engaging in national origin
27 harassment and any other employment practice which discriminates on the basis of national
28 origin.

1 B. Order Defendants to institute and carry out policies, practices, and programs
2 which provide equal employment opportunities for women, and which eradicate the effects of its
3 past and present unlawful employment practices.

4 C. Order Defendants to make whole Charging Parties and similarly situated
5 individuals in amounts to be determined at trial, and other affirmative relief necessary to
6 eradicate the effects of its unlawful employment practices.

7 D. Order Defendants to make whole Charging Parties and similarly situated
8 individuals by providing compensation for past and future pecuniary losses resulting from the
9 unlawful employment practices described in paragraph 9 above, in amounts to be determined at
10 trial.

11 E. Order Defendants to make whole Charging Parties and similarly situated
12 individuals by providing compensation for past and future nonpecuniary losses resulting from the
13 unlawful practices complained of in paragraph 9 above, in amounts to be determined at trial.

14 F. Order Defendants to pay Charging Parties and similarly situated individuals
15 punitive damages for its malicious and reckless conduct described in paragraph 9 above, in
16 amounts to be determined at trial.

17 G. Grant such further relief as the Court deems necessary and proper in the public
18 interest.

19 H. Award the Commission its costs of this action.

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JURY TRIAL DEMAND

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

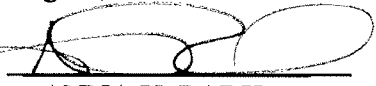
Dated: June 30, 2009

Respectfully Submitted

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