

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

SHACK SHEDRICK,
JEROME MITCHELL, MILTON DAVIS,
JOHN WILLIAMS on behalf of
themselves and all those
similarly situated,

Plaintiffs,

v.

DISTRICT BOARD OF TRUSTEES
OF MIAMI-DADE COLLEGE,

Defendant.

CASE NO. 1:11 CV 21457

CLASS ACTION

JURY TRIAL DEMANDED

(Assigned to Honorable
Judge Martinez)

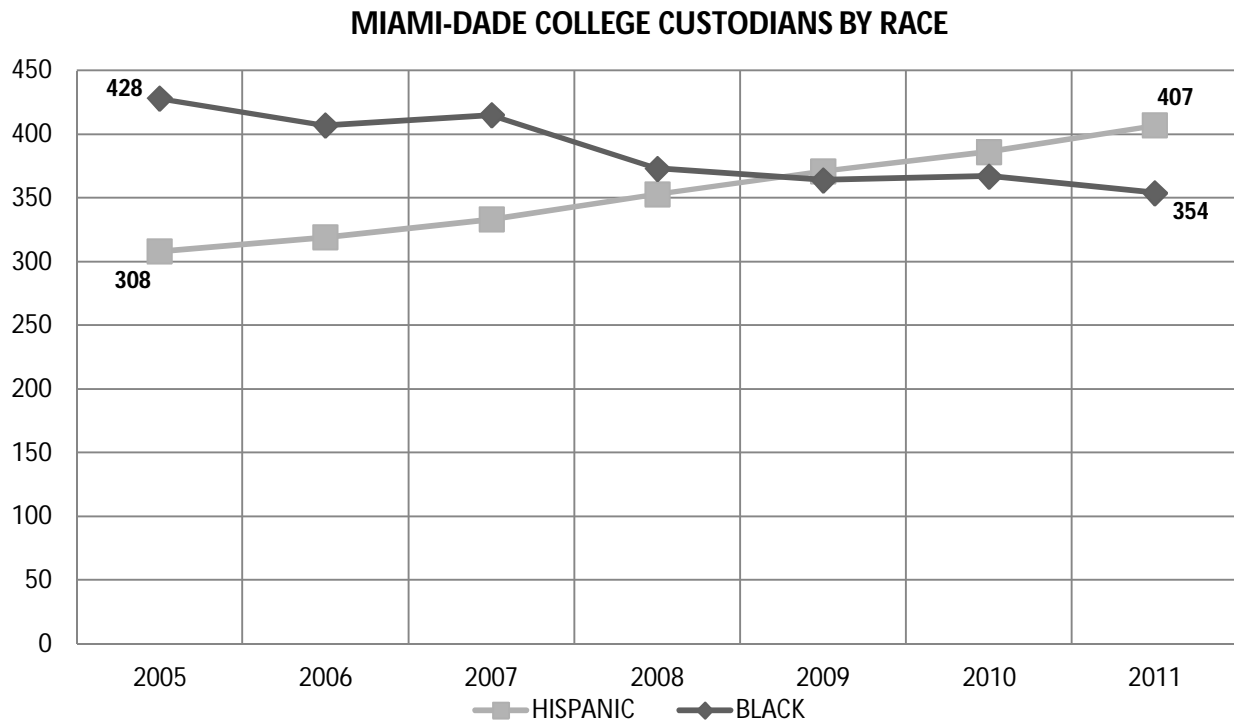
FIRST AMENDED COMPLAINT¹

NATURE OF THE ACTION

1) This is a class action brought by Plaintiffs SHACK SHEDRICK, JEROME MITCHELL, MILTON DAVIS, and JOHN WILLIAMS, (hereinafter referred to collectively as "Plaintiffs"), on behalf of themselves and other similarly situated individuals against THE DISTRICT BOARD OF TRUSTEES OF MIAMI-DADE COLLEGE, FLORIDA ("MDC" "Defendant"). Plaintiffs seek declaratory, injunctive and other equitable relief, and compensatory and punitive damages, based on Defendant's continuing deprivation of rights accorded to the named Plaintiffs and members of a class of black employees (as defined herein) under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, 42 USC Sec. 1981, and the Florida Civil Rights Act of 1992 *Fla. Stat. 760.01 et. seq.*

¹ The Complaint was originally filed on 4/25/11.

2) Plaintiffs bring this class action because of Miami-Dade College *Kendall Campus'* widespread pattern and practice of racial discrimination against its black custodians. Miami-Dade College, through the intentional discriminatory conduct of its Administrative Services Division, has managed to reduce the amount of black custodians by an alarming 11 percent in just six (6) years. Simultaneously, the amount of Hispanic custodians increased by 11 percent. The below graph represents the data already obtained to corroborate these facts:



Further, it should be noted that these numbers are not mere coincidence—these are not isolated incidents; this is a pattern of intentional discrimination.

JURISDICTION AND VENUE

3) This Court has federal question jurisdiction over the Title VII claims pursuant to 42 U.S.C. §2000e-5 and 28 U.S.C. §1331 and 1343(a) and supplemental jurisdiction over Florida claims pursuant to 28 U.S.C. §1367.

4) Venue is proper under 28 U.S.C. § 1391(a) because the Defendant resides in Miami-Dade County, Miami, Florida and because the actions alleged by Plaintiffs and the Class they seek to represent in this Complaint occurred at Defendant's Kendall Campus located in Miami-Dade County, Miami, Florida.

5) Plaintiffs SHACK SHEDRICK, JEROME MITCHELL, and JOHN WILLIAMS have fulfilled all conditions precedent to the institution of this action and have obtained Notices of Right to Sue from the Equal Employment Opportunity Commission ("EEOC"). See Exhibits 1 , 2, and 3 attached hereto.

6) Plaintiff MILTON DAVIS is currently making efforts to obtain an expedited Notice of Right to Sue and expects his Right to Sue to be available soon, before the Defendant will have to provide an Answer or Response to this Complaint. He will file his Right to Sue as soon as it is ready.

PARTIES

I. PLAINTIFFS

7) Plaintiff, SHACK SHEDRICK, is a black male citizen of the United States, a resident of Miami-Dade County, Florida, and a former custodian at Miami-Dade College's Kendall Campus.

8) Plaintiff, JEROME MITCHELL, is a black male citizen of the United States, a resident of Miami-Dade County, Florida, and a former custodian at Miami-Dade College's Kendall Campus.

9) Plaintiff, MILTON DAVIS is a black male citizen of the United States, a resident of Miami-Dade County, Florida, and a former custodian at Miami-Dade College's Kendall Campus.

10) Plaintiff, JOHN WILLIAMS is a black male citizen of the United States, a resident of Miami-Dade County, Florida, and a former custodian at Miami-Dade College's Kendall Campus.

II. DEFENDANT

11) MIAMI-DADE COLLEGE is a community college as defined by Fla. Stat, § 1000.21 and receives Federal financial assistance and is subject to Title VII.

A. MIAMI-DADE COLLEGE'S KENDALL CAMPUS

12) MIAMI-DADE COLLEGE'S KENDALL CAMPUS is the largest of all eight (8) campuses.

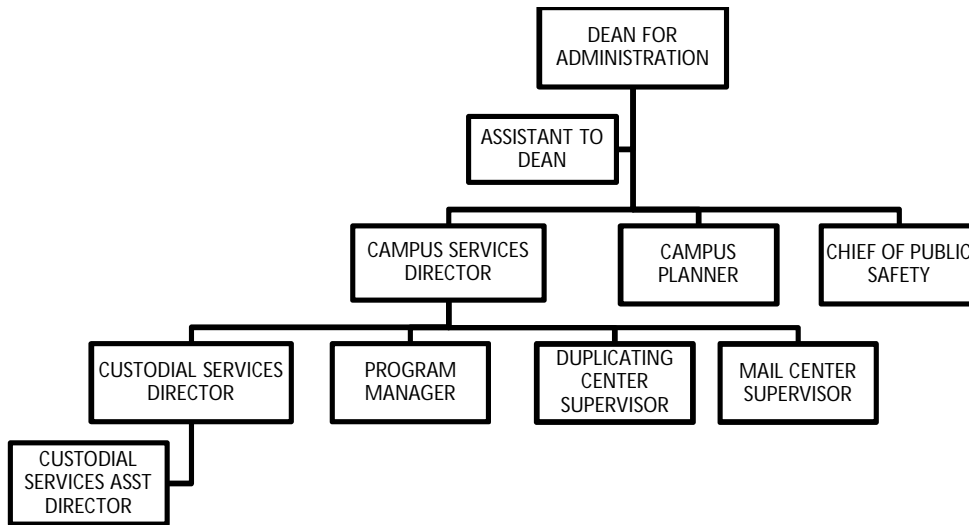
13) The KENDALL CAMPUS is divided into different departments or divisions that are responsible for other sub-divisions or "areas."

i. ADMINISTRATIVE SERVICES DIVISION

14) The Administrative Services Division ("ASD"), commanded by Dean Gloria Baez, is responsible for the areas of custodial services, public safety, mailing services, duplicating services, on-campus events, facilities rental, and campus planning.

15) The ASD chain of command is comprised of supervisory personnel, managers and directors who ultimately answer to the Dean as shown below²:

² This organizational chart is updated as of 2009 from Miami-Dade College's Website and is for demonstrative purposes and should not serve to limit the Plaintiffs in any way.



16) Defendant, THE DISTRICT BOARD OF TRUSTEES OF MIAMI-DADE COLLEGE, (hereinafter referred to as “MDC” or “Defendant”) is the duly constituted board of this state charged with the governance of Miami-Dade College, a public body corporate, with all the powers and duties of a body corporate including, the power to contract or be contracted with, to sue or be sued, and to plead or be impleaded in all courts of law or equity under Fla. Stat. § 1001.63.

CLASS ACTION ALLEGATIONS

17) Paragraphs one (1) through thirteen (17) above are incorporated herein by reference.

18) Plaintiffs bring this action on their own behalf, and on behalf of a class of persons under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

19) The named Plaintiffs seek to represent a class of:

All persons who are black and who were, or are, employed by Miami-Dade College’s *Kendall* Campus as custodians from November 2005, through the date of the final disposition of this Action (hereinafter “the Class”).

Plaintiffs reserve the right to amend the definition of the Class following discovery.

20) The Class is so numerous that joinder of all members is impractical. As of October 25, 2010, the Class consisted of an estimated 451 present and former black custodians at Miami-Dade College.

21) There are questions of law and fact common to the Class that predominate over any questions affecting only individuals including, but not limited to:

- a. Whether MDC's actions violate federal and/or state civil rights laws under Title VII and/or the Florida Civil Rights Act;
- b. Whether MDC maintains unwritten policies and/or practices for performing evaluations that discriminate against the Class on the basis of race;
- c. Whether there are statistically significant disparities between the termination, constructive discharge and/or "voluntary resignation" of black custodians and the termination, constructive discharge and/or "voluntary resignation" of similarly-situated Hispanic or Latino custodians, sufficient to permit an inference of intentional discrimination;
- d. Whether MDC maintains unwritten policies and/or practices for determining promotions that discriminate against the Class on the basis of race;
- e. If discrimination is found, whether injunctive relief, including changes to Company-wide written and unwritten policies and practices, is needed to adequately remedy past and present discrimination against the Class and prevent future discrimination against the Class;

- f. Whether MDC's conduct constitutes a pattern and practice of discrimination against the Class justifying an award of lost wages, benefits or other similar relief to individual members of the Class;
 - g. Whether MDC's conduct constitutes a pattern and practice of discrimination against the Class justifying an award of compensatory and punitive damages to individual members of the Class;
- 22) The claims of the representative parties are typical of the claims of the class.
- 23) Plaintiff SHACK is a member of the Class and the claims of Plaintiff SHACK are typical of the claims of the Class.
- 24) Plaintiff SHACK will fairly and adequately protect the interest of the members of the Class. Plaintiff SHACK has no interests that are adverse to other members of the Class. Additionally, Plaintiff SHACK has retained counsel who is competent and experienced in the prosecution of employment and complex class action litigation having participated in the prosecution of class actions netting nearly 100 million dollars to the plaintiffs. Plaintiff SHACK will vigorously prosecute this case on behalf of the Class.
- 25) Plaintiff JEROME is a member of the Class and the claims of Plaintiff SHACK are typical of the claims of the Class.
- 26) Plaintiff JEROME will fairly and adequately protect the interest of the members of the Class. Plaintiff JEROME has no interests that are adverse to other members of the Class. Additionally, Plaintiff JEROME has retained counsel who is competent and experienced in the prosecution of employment and complex class action

litigation having participated in the prosecution of class actions netting nearly 100 million dollars to the plaintiffs. Plaintiff JEROME will vigorously prosecute this case on behalf of the Class.

27) Plaintiff MILTON is a member of the Class and the claims of Plaintiff MILTON are typical of the claims of the Class.

28) Plaintiff MILTON will fairly and adequately protect the interest of the members of the Class. Plaintiff MILTON has no interests that are adverse to other members of the Class. Additionally, Plaintiff MILTON has retained counsel who is competent and experienced in the prosecution of employment and complex class action litigation having participated in the prosecution of class actions netting nearly 100 million dollars to the plaintiffs. Plaintiff MILTON will vigorously prosecute this case on behalf of the Class.

29) Plaintiff JOHN WILLIAMS is a member of the Class and the claims of Plaintiff JOHN WILLIAMS are typical of the claims of the Class.

30) Plaintiff JOHN WILLIAMS will fairly and adequately protect the interest of the members of the Class. Plaintiff JOHN WILLIAMS has no interests that are adverse to other members of the Class. Additionally, Plaintiff JOHN WILLIAMS has retained counsel who is competent and experienced in the prosecution of employment and complex class action litigation having participated in the prosecution of class actions netting nearly 100 million dollars to the plaintiffs. Plaintiff JOHN WILLIAMS will vigorously prosecute this case on behalf of the Class.

31) Class certification is appropriate under Rule 23(b)(3). The common issues of law and fact presented in this First Amended Complaint predominate over any

individual issues. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. The expense and burden of individual litigation makes it impractical for the members of the Class to pursue individual litigation to vindicate their rights.

32) Class Certification is also appropriate under Rule 23(b)(2) because the Defendant has acted or refused to act on grounds generally applicable to the Class, as described below, making final injunctive or declaratory relief appropriate.

33) Plaintiffs are not aware of any problems that would militate against maintenance of this action as a class action.

ALLEGATIONS OF CLASSWIDE DISCRIMINATION

34) Defendant MDC has engaged in, and continues to engage in, a systemic pattern and practice of racial discrimination against the black custodians employed or formerly employed at its Kendall Campus since November 2005.

35) MDC discriminates against black employees by maintaining excessively subjective unwritten policies and practices for conducting evaluations of the work performance of its custodians at the Kendall Campus.

36) MDC discriminates against black custodial employees by failing to monitor and oversee employment and human resources practices and failing to provide adequate training and oversight of supervisors to ensure that MDC policies are applied consistently and in a nondiscriminatory manner.

37) MDC discriminates against black custodial employees by maintaining written and unwritten policies and practices for determining compensation that rely on

unduly discretionary decisions, resulting in unequal compensation of black employees throughout the Kendall Campus Custodial Services.

38) MDC discriminates against black custodial employees by erecting an artificial "*glass ceiling*" and artificial "*glass walls*" that prevent the advancement of qualified black custodial employees and channel them to less influential roles within the Administrative Services Division.

39) MDC discriminates against black custodial employees by denying them equal training, mentoring, and work assignments, preventing them from advancing within the Administrative Services Division, and otherwise discriminating against them in the terms and conditions of their employment.

40) Upon information and belief, Eduardo Padilla, former Custodial Services Assistant Director at the Kendall Campus told many custodians that the blacks "would all be gone soon."

41) Upon information and belief, current Head Custodian at the Kendall Campus, Omaira Gil, told black custodial employees that they were going to be replaced with Hispanic employees.

42) Personnel at the highest levels of MDC are aware of the discrimination against black custodians within the Administrative Services Division at the Kendall Campus.

I. DISCRIMINATION IN TERMS AND CONDITIONS OF EMPLOYMENT

43) The Administrative Services Division has unfettered discretion to give "write-ups" to custodians. These write-ups are informal letters or personal accounts of

supposed misconduct. Human Resources give it the “rubber stamp” and place these excessively subjective “write-ups” in the employee’s personnel file.

44) Custodians are allowed to submit rebuttals to the “write-ups” but this proved on all occasions to be a futile waste of energy for black custodians—Human Resources “rubber-stamp” those too.

45) As a result of this unchecked system and lack of meaningful oversight, MDC allowed the discriminatory views of supervisors, directors, and the Dean within the Administrative Services Division, to blemish the personnel files of black custodians while creating “paper-trails” to fall back on if their decisions were ever questioned.

46) Directors could choose whether to punish or submit write-ups for employee misconduct which results in unfair and disparate disciplinary procedures. On one occasion, Head Custodian, Roy Augustus, a black employee, wrote-up four Hispanic custodians for a multitude of conduct violations. When Assistant Director at the time, Eduardo Padilla heard about this, Padilla reprimanded Roy and said “I take care of *my* people” and then proceeded to destroy the documents. (*see Copies of Destroyed Misconduct Reports attached as Exhibit 4*).

47) MDC’s failure to monitor and oversee the misconduct of the Administrative Services Division and Human Resources is evidenced allows higher level employees to access and manipulate custodial personnel files. For example, Plaintiff MILTON DAVIS’ personnel file contained a “voluntary resignation” different from the one he actually submitted—they even signed his name. (*see Milton Davis’ Actual Resignation attached as Exhibit 5 and MDC’s Fraudulent Resignation attached as Exhibit 6*).

II. DISCRIMINATION IN ADVERSE EMPLOYMENT DECISIONS

48) Dean Baez and the Administrative Services Division of MDC's Kendall Campus used a "Reduction in Force" as a means to a discriminatory end.

49) Dean Baez admitted to making "suggestions" to Human Resources as to which employees were terminated in this supposed Reduction in Force; she essentially handpicked which custodians got fired.

50) After selecting which custodians to terminate, Dean Baez identified Human Resources as being the final decision-maker when her "suggestions" were questioned.

51) Dean Baez said that her "suggestions" to terminate specific employees were based on their personnel files—the same personnel files injected with the discrimination and fraud as alleged in paragraphs 43 through 47 above.

52) MDC failed to provide independent investigations regarding adverse employment actions taken against black custodians by Hispanic or Latino supervisors and/or managers and the Dean for Administration, Gloria Baez.

53) MDC failed to fully and adequately investigate complaints of discrimination and harassment made by black custodians against Hispanic or Latino supervisors and/or managers and the Dean for Administration, Gloria Baez.

54) MDC failed to provide black custodians with any meaningful grievance procedures.

55) MDC's failure allowed the discriminatory motives and biases of its Hispanic or Latino supervisors and managers in the Administrative Services Division to influence Human Resources in its decision-making capacity to administer suspensions, probations, terminations, and "voluntary resignations" against black custodians.

III. DISCRIMINATION IN JOB ASSIGNMENTS

56) MDC's failure to oversee the operations of the Administrative Services Department allowed higher level personnel to discriminate against black custodians in allocating job duties and assignments.

57) Black custodians were assigned to clean classrooms with dangerous chemicals with no ventilation or protective gear.

58) Black custodians were told by their supervisors to assist Hispanic employees with their duties after completing their own—black custodians never received help from the Hispanic custodians.

59) Supervisors would announce daily assignments to custodians in Spanish and refused to interpret instructions to English for black custodians.

60) Plaintiffs, along with other black custodians' complaints of discrimination with MDC's Employee Relations Department and/or Human Resources were repeatedly ignored.

61) MDC retaliated against Plaintiffs and other black custodians for complaining about racial discrimination.

62) Plaintiffs were retaliated against in the form of various adverse employment actions that affected the rights, terms and conditions of their employment.

63) Ultimately, Plaintiffs were terminated or forced to resign because they sought their federally protected rights to be free of racial discrimination in their employment at MDC.

I. DEFENDANT'S FAILURE TO PREVENT AND REMEDY DISCRIMINATION

64) Defendant MDC maintains a pattern and practice of allowing supervisors to discriminate against black custodial employees in the terms and conditions of employment, and fails to respond to complaints of unequal treatment, and fails to provide sufficient oversight or training of supervisors. MDC has not taken appropriate steps to ensure the effective and consistent implementation of nondiscriminatory employment and human resources practices.

65) MDC has failed to place a premium on compliance with federal Equal Employment Opportunity ("EEO") requirements. Although the MDC has a policy requiring managers to be evaluated on their EEO performance, in practice, MDC frequently fails to perform this critical evaluation. There is inadequate EEO training for supervisors, thus the current discriminatory practices are likely to continue into the future.

66) MDC's practices and procedures for handling complaints of discrimination do not adequately ensure that complaints are investigated fairly, that prompt remedial action is taken in response to discrimination, that incidents of discrimination are prevented, and that all managers and supervisors are aware that race discrimination is taken seriously at all levels of MDC.

67) MDC fails to provide sufficient monitoring, training, oversight or accountability to ensure that employees are treated in a nondiscriminatory manner in terms of compensation, evaluations, promotions and other conditions of employment.

ALLEGATIONS OF THE INDIVIDUAL NAMED PLAINTIFFS

I. ALLEGATIONS OF PLAINTIFF SHACK

68) Plaintiff, SHACK SHEDRICK, started working as a custodian for MDC in September, 1991.

69) SHACK, throughout his employment for MDC, received numerous awards for his performance as well as recommendations that attest to his hard work ethic.

70) In November 2005, Gloria Baez came to MDC's Kendall Campus as Director of Campus Support Services—in 2006 she was serving as the Director of Custodial Services as well.

71) SHACK started to notice that he and the other black custodians were being treated differently than the Latino custodians.

72) SHACK's supervisor, Assistant Director of Custodial Services, Eduardo Padilla (who is Latino) and manager, Omaira Gil (who is also Latino), were overheard saying comments indicating efforts to remove all black custodians.

73) Throughout 2006-2009, SHACK was subjected to different standards and disciplinary procedures than Latino custodians.

74) SHACK was told by Padilla to violate protocol and because SHACK refused, Padilla shoved him and wrote him up.

75) SHACK contacted Tina wood, Director of Campus Support Services who acknowledged that SHACK was correct about the protocol and told him that Padilla would be spoken to about using physical force against SHACK.

76) SHACK was then suspended a few days later for alleged "insubordination."

77) SHACK and other black custodians responsible for using chemicals during the night shift repeatedly sought appropriate ventilation as stated by the MDC safety department.

78) Gloria Baez, Dean of Administration, Mark Mills, Director of Custodial Services, Tina Woods, and Padilla ignored requests for proper ventilation and safety materials subjecting them to serious health risks and unbearable working conditions.

79) Padilla and Mark Mills both lied about SHACK's ability to return to work after leave from his injury. Padilla and Mills told other employees that he could work with chemicals per doctor's orders when in fact SHACK's doctor had said no such thing.

80) Instructions would be given in Spanish to the custodians and were not translated to English for the English speaking black custodians – even after requests to do so.

81) Padilla and Omaira Gil would follow the black custodians around and would write them up for anything they could conjure up but would not treat the Latino custodians this way.

82) In fact, four (4) Latino custodians were reprimanded by supervisor Roy Augustus for a multitude of infractions, including "insubordination" but Padilla had those write ups destroyed and made Mr. Augustus apologize to the Latino custodians.

83) SHACK complained about the racial discrimination verbally, and in writing to Dean Baez, Human Resources, and Employee Relations but offered no assistance and ignored SHACK.

84) Dean Baez was not going to question Padilla or Omaira, the Dean's close friend, and even said that any insult against Omaira is taken as an insult to her.

85) In June 2008, SHACK made a formal complaint to Director of Employee Relations, Dr. Joy Ruff about the racial discrimination occurring in the custodial department, which was never responded to, and included Mark Mills name along with other higher authority personnel.

86) In August 2008, Mark Mills suspended SHACK for 30 days for calling in less than 10 minutes late to MDC the day after tropical storm Fay hit Miami; Mills added that he didn't show up fast enough after SHACK called into work even though that was not the case.

87) SHACK knew this treatment was because of his complaint to HR about the discrimination.

88) Then in November 2008, SHACK was told to request vacation leave on certain days by Tina Woods for her convenience and the vacation time was approved.

89) SHACK went on his approved vacation leave only to be interrupted with accusations and lies by Padilla, Tina Woods, and Dean Baez and was told he never had permission, his file indicating the approval was changed to display contrary information and they made him return to work.

90) Then on December 19 2008, SHACK called in sick because his asthma was severely bothering him.

91) Later that day his asthma attacks subsided and he went to MDC to pick up his check and go to financial aid to submit his tuition waiver.

92) SHACK received a call from a friend at the MDC holiday party in Kendall Hammocks park and went to extend his holiday wishes and goodbyes to fellow employees.

93) While extending his holiday wishes, Tina Woods approached him smelling of alcohol and asked if he called in sick. SHACK said he did and Tina Woods said "We will discuss that."

94) Tina Woods took it upon herself, after her alcohol induced observation of SHACK the day he called in sick, to put him on Administrative leave on January 5, 2009, pending an "investigation".

95) On January 7, 2009, Human Resources received an explanation from SHACK of the events surrounding December 19.

96) January 9, 2009 SHACK made a written allegation to Employee Relations Officer, Clive Bridges that Tina Woods herself was in violation of MDC procedure because she drank multiple alcoholic beverages and returned to Campus for work intoxicated.

97) SHACK was fired from MDC January 9, 2009 by Tina Woods.

ALLEGATIONS OF PLAINTIFF JEROME

98) Plaintiff, JEROME MITCHELL, worked as a custodian for MDC's Kendall campus since 1999.

99) JEROME, throughout his employment for MDC, received commendations for his professionalism in doing assigned tasks, and received the College President's Recognition of Excellence Award in 2004 and 2005 for his "ethics and performance," "dedication and commitment" and was acknowledge to be a benefit to the Kendall Campus.

100) At the end of 2005, after Dean Baez' joined MDC's Kendall Campus is when JEROME started to experience harassment and noticed that black custodians were being treated unfairly.

101) JEROME, along with other black custodians, was constantly harassed by Omaira Gil, his supervisor, Eduardo Padilla, and Dean Baez.

102) Black custodians were written up for infractions and Latino or Hispanic custodians were not written up for committing the same if not more severe infractions.

103) Padilla would make Latino custodians' reprimands disappear and Human Resources along with Dean Baez would cover up his tracks.

104) Roy Augustus, a black custodian and supervisor, wrote up 4 Latino employees for numerous infractions, and Padilla went to Roy Augustus and took the write ups, threw them away, and said to Roy "I take care of *my* people."

105) JEROME and three other black custodians were responsible for working with chemicals along with SHACK and for years their requests for proper safety equipment and ventilation were ignored even after resulting injuries.

106) JEROME and SHACK worked the night shift and were told to each do two rooms but only made the two Latino custodians clean one room and then Padilla made JEROME and SHACK help the Latinos with their rooms.

107) Black custodians were written up and fired for calling in sick a few minutes late where Latino custodians would not show up for work without reason and received no repercussions.

108) Omaira Gil and Eduardo Padilla, his supervisors, were never questioned with respect to write ups and reprimands against black custodians because Dean Baez brought Padilla in to work for her and Omaira is her very close friend.

109) In fact, JEROME, along with the other black custodians, were never given an opportunity to use the Grievance Procedure as set forth in the MDC so any rebuttals or disputes against disciplinary actions were improperly investigated.

110) In March 2007, Omaira Gil made a false report that JEROME left work without permission when this was not the truth; and several witnesses contradicted Gil's report because they saw her tell JEROME to "Go home and don't stop to talk to anyone."

111) However, JEROME's rebuttal with names of witnesses that supported his claims was never given consideration by anyone in HR or Employee Relations; in fact, his witnesses were never contacted.

112) JEROME made a racial discrimination and harassment complaint in 2008 to Employee Relations/Equal Opportunity against Dean Baez and Eduardo Padilla but not a single concern of his was addressed or responded to in a competent manner.

113) After making his discrimination complaint, Padilla, Omaira and Dean Baez began retaliating against JEROME just like they did with SHACK after he filed his discrimination complaint.

114) On February 16, 2009, out of nowhere Mills placed JEROME on probation for 60 days for "excessive absenteeism."

115) Mills' report said that JEROME was absent for 60 days during the span of over one year; of those days, 17 days were unpaid leave and that MDC was in receipt of 44 doctors notes that support the rest of his absences.

116) JEROME knew that he and the other black custodians were being treated unfairly; JEROME met with Mills and asked him "what is really going on here" with all the write ups against the black custodians and the constant harassment. Mills told JEROME "their screwing you" and said that his hands were tied because he didn't want to lose his job.

117) As the black custodians started getting fired left and right, JEROME knew it was only a matter of time before Dean Baez came up with a reason to fire him too.

118) May 12, 2009 JEROME requested FMLA leave to begin on May 26, 2009 because his mother is ill and needed care.

119) JEROME was told in a chain of emails to obtain proof that his mother was in the hospital and other FMLA documentation and to submit the documents to Human Resources.

120) Once JEROME obtained all the paperwork, he submitted to Human Resources; however, as May 26th approached, Human Resources had not responded; JEROME knew Dean Baez was stalling because she wanted to fire him.

121) On May 28th, two days after his leave was to begin, Dean Baez fired JEROME and said it was due to a "reduction in force" and that the budget didn't allow MDC to keep him.

122) JEROME spoke to 2 Latina custodians during the supposed "reduction in force." These Latina custodians had been hired only 9 months before and were being

paid more money than JEROME who had been with MDC for nearly a decade and was dispensed of under the guise of a “reduction in force.”

123) In reality, Dean Baez with the help of Eduardo Padilla and Omaira Gil were systematically getting rid of as many black custodians as possible.

ALLEGATIONS OF PLAINTIFF MILTON

124) Plaintiff, MILTON DAVIS, worked at MDC for 25 years as a custodian.

125) Prior to Dean Baez and Eduardo Padilla joining the Custodial Services Department, MILTON never received a reprimand.

126) MILTON, like all the other black custodians, was subjected to discrimination and harassment by Eduardo Padilla and Dean Baez.

127) In February of 2008, MILTON emailed Dean Baez to see if he could take a course at MDC that would require him to be an hour late two (2) nights out of the week.

128) Dean Baez told MILTON he would have to resign from his job and refused to talk with him in person.

129) MILTON tried to talk with Dean Baez but she refused and told him to speak with Tina Wood about it.

130) MILTON went right over to Tina Wood and Dean Baez had already told Wood that MILTON was to resign and that there was no other option for him.

131) MILTON went to Human Resources because Latino custodians were allowed to take classes while on the clock; HR already knew about the situation when MILTON arrived and backed up Dean Baez.

132) MILTON reluctantly signed a “voluntary resignation” with his reason being “to Attend Class.”

133) However, someone replaced MILTON's resignation with a fraudulent resignation, fraudulently signed his name and fraudulently stated the reason he resigned was "Dean Baez gave me an opportunity to stay after I had quit due to personal reasons, I will return within 30 days from today."

134) This fraudulent resignation was placed in MILTON's personnel file to cover up for Dean Baez' discrimination against the black custodians and for forcing MILTON to resign after 25 years for wanting to attend class.

ALLEGATIONS OF PLAINTIFF JOHN WILLIAMS

135) Plaintiff JOHN WILLIAMS worked as a custodian for Miami-Dade College's Kendall Campus for twenty (20) years.

136) During his tenure as a custodian, John performed the duties of his job and received positive performance evaluations.

137) JOHN never had any problems at the school until 2005 when Dean Baez came to work there.

138) Omaira Gil would follow John and other black custodians around the school but never did this to Hispanic custodians.

139) John witnessed approximately 18 black custodians get terminated and replaced with Hispanic custodians.

140) John continued working as usual but as he saw his black co-workers disappear around him, he knew it was only a matter of time before Dean Baez would make up a reason to fire him too—John was right.

141) Upon his return from the hospital, John was told that he did not call in sick; However, John informed his supervisor that he was ill and needed to go to the hospital

but Human Resources and Dean Baez refused to listen or allow him to corroborate his story.

142) John then explained that he was in the hospital and that he could not lift anything over 50 pounds per doctor's order.

143) Despite notifying his supervisor and despite the fact that he was legitimately sick in the hospital—John was terminated.

**COUNT I
DISCRIMINATION AGAINST THE NAMED PLAINTIFFS AND THE CLASS
IN VIOLATION OF TITLE VII**

144) Paragraphs 1 - 143 above are incorporated herein by reference.

145) Plaintiffs repeat and re-allege each and every allegation above as if set forth herein in full.

146) Plaintiffs and the Class were subjected to discrimination and harassment on the basis of their race by Defendant, MDC in violation of Title VII of the Civil Rights Act of 1964, as amended, *42 U.S.C. § 2000e*.

147) Defendant's supervisors and other agents have engaged in the course of conduct described in the allegations of this complaint while acting in the course, scope and furtherance of their agency and employment relationship with Defendant.

148) MDC's agents and employees with supervisory authority were not monitored by MDC to ensure enforcement of MDC's Equal Employment policies and this allowed discriminatory employment practices to be committed against the Plaintiffs and the Class at MDC's Kendall Campus.

149) MDC's agents and employees with supervisory authority over Plaintiffs and the Class, specifically, Dean Baez, Eduardo Padilla and Omaira Gil, engaged in

discriminatory employment practices against Plaintiffs and the Class and facilitated the systemic pattern or practice of MDC's Kendall Campus' discrimination against black custodians.

150) The Defendant has engaged in a pattern and practice of discriminating against its black employees, specifically the Plaintiffs, with respect to wages, promotions, job assignments, discipline, discharge and other terms, conditions and privileges of their employment.

151) The Plaintiffs have been deprived of the opportunity of working in an environment free of racial discrimination and the opportunity to be supervised and work with persons who would not have discriminated against them.

152) The unlawful actions of the Defendant as set forth above constitutes a practice, pattern and custom or policy of the Defendant for allowing acts of racial discrimination and/or retaliation in violation of its employees' federally protected rights.

153) The Defendant knew, or should have known, of the racial discrimination and retaliation of the Plaintiffs.

154) The Defendant failed to take and promote any effective action reasonably calculated to result in the prevention of and/or remedy of the racial discrimination and retaliation of the Plaintiffs.

155) The actions of the Defendant violate Title VII.

156) As a result of the actions of the Defendant, the Plaintiffs and the Class have been and continue to be injured, suffering distress, humiliation, loss of prestige, mental anguish, emotional pain and suffering, and monetary and economic losses.

157) MDC is vicariously liable for the intentional discriminatory employment practices committed by Dean Baez, Eduardo Padilla and Omaira Gil against Plaintiffs and the Class in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e.

WHEREFORE, Plaintiffs demand judgment against the Defendant and ask for the following relief:

(a) A declaratory judgment that the Defendant's employment practices challenged herein are illegal and in violation of Title VII; and

(b) Award Plaintiffs back pay, prejudgment interest, and damages for all employment benefits they would have received but for the discriminatory and retaliatory conduct;

(c) Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and

(d) Awarding Plaintiffs front pay in lieu of reinstatement; and

(e) Award of nominal, compensatory and punitive damages for all legal relief sought in this complaint; and

(f) Prejudgment interest; and

(g) Award reasonable attorneys' fees and costs incurred in this action under 42 U.S.C. 1988; and

(h) Order any other relief this Court deems to be just and appropriate.

COUNT II
DISCRIMINATION TITLE VII
RETALIATION

158) Paragraphs 1 - 143 above are incorporated herein by reference.

159) Plaintiffs repeat and re-allege each and every allegation above as if set forth herein in full.

160) Plaintiffs, after complaining about the discrimination against black custodians by MDC were all retaliated against with disciplinary write ups in their personnel files, suspended or placed on probation, and ultimately forced to resign (a constructive termination) or terminated.

161) As set out in detail above, in retaliation for the Plaintiffs' good faith opposition to the racial discrimination, the Defendant has retaliated against them.

162) The Defendant's conduct was retaliation based, at least in part, on the Plaintiffs' protected activities of opposing racial discrimination and harassment.

163) As a result of the actions of the Defendant, the Plaintiffs have been injured and have suffered damages.

WHEREFORE, Plaintiffs demand judgment against the Defendant and ask for the following relief:

(a) A declaratory judgment that the Defendant's employment practices challenged herein are illegal and in violation of Title VII; and

(b) Award Plaintiffs back pay, prejudgment interest, and damages for all employment benefits they would have received but for the discriminatory and retaliatory conduct;

- (c) Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- (d) Awarding Plaintiffs front pay in lieu of reinstatement; and
- (e) Award of nominal, compensatory and punitive damages for all legal relief sought in this complaint; and
- (f) Prejudgment interest; and
- (g) Award reasonable attorneys' fees and costs incurred in this action under 42 U.S.C. 1988; and
- (h) Order any other relief this Court deems to be just and appropriate.

COUNT III
Claims of Race Discrimination and Retaliation in Violation of
42 USC 1981

164) Paragraphs 1 - 143 above are incorporated herein by reference.

165) Plaintiffs repeat and re-allege each and every allegation above as if set forth herein in full.

166) As set forth in detail above, the Defendant intentionally and maliciously discriminated against the Plaintiffs and the Class in the terms, conditions and benefit of their employment, including termination, at least, in part, on the basis of their race.

167) Plaintiffs were retaliated against and terminated (constructive or directly) at least in part for complaining of racism.

168) The Defendant failed to adequately promulgate, disseminate, and enforce a racial harassment and/or discrimination policy with regard to Plaintiffs and the Class.

169) The Defendant condoned and/or otherwise ratified the unlawful, racially discriminatory action against Plaintiffs and the Class.

170) The Defendant thus, as outlined above, has violated the proscriptions against race discrimination and retaliation under 42 USC Sec. 1981.

171) The Plaintiffs and the Class have suffered damages as a proximate result of these violations, which were caused by Defendant's policy or custom and/or a failure to adequately train caused by deliberate indifference to the Plaintiffs' and the Class' federally protected rights and/or by deliberate indifference to those violations.

172) The unlawful conduct of the Defendant, as described above, constitute a custom or policy of the Defendant for allowing acts of racial harassment, racial discrimination and/or retaliation in violation of its employees' federally protected rights.

173) The Defendant knew or should have known, of the racial discrimination, racial harassment and retaliation of the Plaintiffs and the Class.

174) The Defendant engaged in the practices complained of herein with malice and/or with reckless indifference to the Plaintiffs' and the Class' federally protected rights.

175) As the result of Defendant's conduct, Plaintiffs and the Class were deprived of income and other benefits due them. Plaintiffs also suffered embarrassment, emotional distress, mental anguish, loss of enjoyment of life, inconvenience, and humiliation. The unwelcome racial harassment, discrimination and retaliation created an intimidating, oppressive, hostile and offensive work environment that interfered with Plaintiffs' and the Class' emotional and physical well-being and their ability to do their work.

176) Plaintiffs and the Class have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for back-pay, injunctive relief,

compensatory and punitive damages and a declaratory judgment is their only means of securing adequate relief.

177) The Plaintiffs and the Class are now suffering and will continue to suffer irreparable injury from the Defendants' unlawful conduct as set forth herein unless enjoined by this Court.

WHEREFORE, Plaintiffs demand judgment against the Defendant and ask for the following relief:

(a) A declaratory judgment that the Defendant's employment practices challenged herein are illegal and in violation of 42 USC Sec. 1981

(b) Awarding Plaintiffs back pay, prejudgment interest, and damages for all employment benefits they would have received but for the discriminatory and retaliatory conduct;

(c) Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and

(d) Awarding Plaintiffs front pay in lieu of reinstatement; and

(e) Award of nominal, compensatory and punitive damages for all legal relief sought in this complaint;

(f) Prejudgment interest

(g) Awarding reasonable attorneys' fees and costs incurred in this action;

(h) Ordering any other relief this Court deems to be just and appropriate.

**COUNT IV
RACIAL DISCRIMINATION VIOLATION OF
FLORIDA CIVIL RIGHTS ACT OF 1992
FLA. STAT. 760.01 et. seq.**

178) Paragraphs 1 - 143 above are incorporated herein by reference.

179) There are more than 500 people employed by the Defendant and it is covered under the Florida Civil Right Act.

180) The Plaintiffs and the Class are covered employees under the FCRA.

181) The Defendant constructively discharged, discharged and/or otherwise discriminated against the Plaintiffs with respect to their terms, conditions, and privileges of employment because of their race and color.

182) The Defendant deprived the Plaintiffs of employment opportunities or otherwise adversely affected their status as employees because of their race and color.

183) As a result the Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs demand judgment against the Defendant and ask for the following relief:

(a) A declaratory judgment that the Defendant's employment practices challenged herein are illegal and in violation of the Florida Civil Right Act.

(b) Awarding Plaintiffs back pay, prejudgment interest, and damages for all employment benefits they would have received but for the discriminatory and retaliatory conduct;

(c) Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and

(d) Awarding Plaintiffs front pay in lieu of reinstatement; and

- (e) Award of nominal, compensatory and punitive damages for all legal relief sought in this complaint;
- (f) Prejudgment interest
- (g) Awarding reasonable attorneys' fees and costs incurred in this action;
- (h) Ordering any other relief this Court deems to be just and appropriate.

COUNT V - RETALIATION
VIOLATION OF FLORIDA CIVIL RIGHTS ACT
FLA. STAT 760. et.seq.

184) Paragraphs 1 - 143 above are incorporated herein by reference.

185) The Defendant retaliated against the Plaintiffs because they opposed the unlawful discriminatory employment practices.

186) As a result of these actions the Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs demand judgment against the Defendant and ask for the following relief:

(a) A declaratory judgment that the Defendant engaged in, and continues to engage in, a pattern or practice of discrimination against black custodians at Miami-Dade College's *Kendall Campus*.

(b) Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and

(c) Awarding Plaintiffs' incidental monetary relief in the form of back pay, prejudgment interest, damages for all employment benefits, front pay in lieu of reinstatement; and

(d) Award of nominal, compensatory and punitive damages incidental

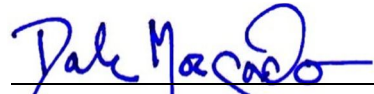
(e) Prejudgment interest

- (f) Awarding reasonable attorneys' fees and costs incurred in this action;
- (g) Ordering any other relief this Court deems to be just and appropriate.

DEMAND FOR JURY TRIAL

The Plaintiffs demand a trial by jury for all issues so triable.

Respectfully filed this 24th, day of June, 2011 by:



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