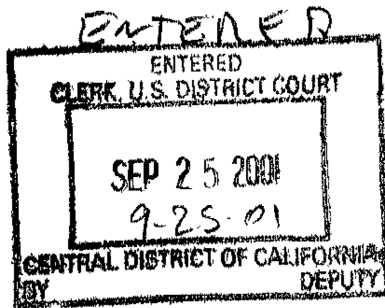

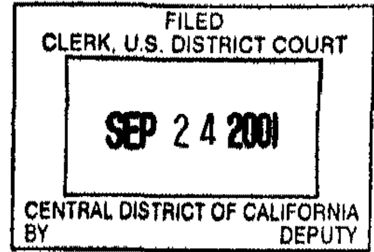

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, vs. ROBERT L. REEVES AND ASSOCIATES, A PROFESSIONAL CORPORATION, Defendants.	CASE NO. CV 00-10515 DT (RZx) ORDER **GRANTING** DEFENDANT ROBERT L. REEVES AND ASSOCIATES, A PROFESSIONAL CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO CLAIMANTS CATUIRA AND PRECIADO

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I. Background

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A. Factual Summary

22 This action is brought by Plaintiff U.S. Equal Employment Opportunity
23 Commission ("EEOC") against Defendant Robert L. Reeves and Associates, a
24 Professional Corporation ("Defendant") under Title VII of the Civil Rights Act of 1964,
25 as amended, the Pregnancy Discrimination Act of 1978 and Title I of the Civil Rights Act
26 of 1991 to correct alleged unlawful employment practices on the basis of sex, and to
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provide appropriate relief to certain females who were adversely affected by such practices ("Claimants").

The following facts are undisputed and relevant to the issues currently before this Court:

This matter began on August 11, 1997, when Judith Quilaton filed a charge of Discrimination with the EEOC on the grounds that she was terminated because she was pregnant. On June 20, 2000, the EEOC issued a Letter of Determination finding that:

> pregnant females as a class, were terminated in violation of Title VII of the Civil Rights Act of 1964, as amended and that females as a class, were subjected to frequent harassment that was intimidating, hostile and offensive and unreasonably interfered with work performance in violation of Title VII of the Civil Rights Act of 1964, as amended.

After "conciliation" failed, the EEOC filed this lawsuit against Defendant. In an interrogatory dated February 2, 2001, Defendant asked, "State the name of all persons you allege comprise the 'Class of Female' employees indicated in paragraph 8(b) of your complaint." The EEOC answered: "Investigation continues. At present, Plaintiff alleges that all current former employees of Defendant who are female are potential members of this class, and that the following persons have been identified to date: Clarissa (Fang) Liao, Nikki Mehrpoo Jacobson, Lisa Wilkerson, Joyce Wang, Jeanette Catuira, Miwa Arai, Elizabeth Babida, Margaret Eum, Nadia Preciado. EEOC will timely supplement all discovery responses."[1]

The facts with respect to the Claimants at issue in this motion, Jeanette Catuira and Nadia Preciado, are discussed within the analysis portion of this order.

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[1] The EEOC will not be pursuing the claims of Arai and Babida.

1 **B. Procedural Summary**

2 On September 29, 2000, the EEOC filed the Complaint for Civil Rights
3 Employment Discrimination in the United States District Court for the Central District of
4 California, which was assigned to District Judge Dickran Tevrizian as Case No. CV 00-
5 10515 DT (RZx).

6 On December 5, 2000, Defendant filed an Answer to the Unverified
7 Complaint.

8 On June 11, 2001, Defendant filed a Motion for Leave to Amend Answer,
9 which this Court granted on July 9, 2001.

10 On June 26, 2001, the EEOC filed a Motion for Review and
11 Reconsideration of Magistrate Judge's Order on Plaintiff's Motion to Compel, which this
12 Court denied on July 27, 2001 and further ordered a clarification of the Magistrate
13 Judge's protective order.

14 On August 31, 2001, the EEOC filed a Motion for Partial Summary
15 Judgment as to Claimants Catuira and Preciado, which is currently before this Court.

16 **II. Discussion**

17 **A. Standard**

18 Under the Federal Rules of Civil Procedure, summary judgment is proper
19 only where "the pleadings, depositions, answers to interrogatories, and admissions on file,
20 together with the affidavits, if any, show that there is no genuine issue as to any material
21 fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ.
22 P. 56(c). The moving party has the burden of demonstrating the absence of a genuine
23 issue of fact for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct.
24 2505, 2514 (1986). If the moving party satisfies the burden, the party opposing the
25 motion must set forth specific facts showing that there remains a genuine issue for trial.
26 See id.; Fed. R. Civ. P. 56(e).

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A non-moving party who bears the burden of proof at trial to an element essential to its case must make a showing sufficient to establish a genuine dispute of fact with respect to the existence of that element of the case or be subject to summary judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Such an issue of fact is a genuine issue if it reasonably can be resolved in favor of either party. See Anderson, 477 U.S. at 250-51, 106 S. Ct. at 2511. The non-movant's burden to demonstrate a genuine issue of material fact increases when the factual context renders her claim implausible. See Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986). Thus, mere disagreement or the bald assertion that a genuine issue of material fact exists no longer precludes the use of summary judgment. See Harper v. Wallingford, 877 F.2d 728 (9th Cir. 1989); California Architectural Building Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987).

If the moving party seeks summary judgment on a claim or defense on which it bears the burden of proof at trial, it must satisfy its burden by showing affirmative, admissible evidence.

Unauthenticated documents cannot be considered on a motion for summary judgment. See Hal Roach Studios v. Richard Feiner and Co., 896 F.2d 1542, 1550 (9th Cir. 1990).

On a motion for summary judgment, admissible declarations or affidavits must be based on personal knowledge, must set forth facts that would be admissible evidence at trial, and must show that the declarant or affiant is competent to testify as to the facts at issue. See Fed. R. Civ. P. 56(e). Declarations on "information and belief" are inappropriate to demonstrate a genuine issue of fact. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

1 **B. Analysis**

2 Defendant brings this motion with respect to two of the sexual harassment
3 Claimants: Nadia Preciado ("Preciado") and Jeanette Catuira ("Catuira"). It argues that
4 neither of these Claimants was subjected to severe and sexual harassment as a matter of
5 law. It further argues that there was no adverse job action, that Defendant maintained a
6 valid, anti-harassment policy and that none of the claimants availed themselves of this
7 policy.

8 The Supreme Court has held that sexual harassment constitutes sex
9 discrimination in violation of Title VII. Meritor Savings Bank v. Vinson, 477 U.S. 57,
10 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986). Courts recognize different forms of sexual
11 harassment. Here, Claimants allege "hostile environment" sexual harassment - that they
12 work in offensive or abusive environments. The Ninth Circuit has held that hostile
13 environment exists when an employee can show: (1) that she was subjected to sexual
14 advances, requests for sexual favors, or other verbal or physical conduct of a sexual
15 nature; (2) that this conduct was unwelcome; and (3) that the conduct was sufficiently
16 severe or pervasive to alter the conditions of the victim's employment and create an
17 abusive working environment. See Ellison v. Brady, 924 F.2d 872, 876 (9th Cir. 1991).

18 Here, Defendant challenges factor #3 and argues that no reasonable person
19 could believe that the incidents alleged by Catuira and Preciado meet the requirement of
20 severe or pervasive conduct.

21 **1. The EEOC cannot establish a establish a prima facie case of**
22 **sexual harassment with respect to Claimant Jeanette Catuira**

23 The following incidents form the basis of the EEOC's claim with respect to
24 Catuira. Catuira was employed by Defendant as a legal secretary in Defendant's civil
25 litigation department from March of 1997 through January of 1998. Catuira specifically
26 recalls that she was using the photocopy machine and Robert Reeves ("Reeves") came up
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1 from behind her and "said something to the extent of, oh, this is why I put the photocopy
2 machine here, so we can do some body bumping. And he proceeded to walk behind me."
3 (See Catuira Depo., p. 19.) In walking behind her, Reeves rubbed up against her for
4 about 5 seconds. (See id. at p. 20.) Catuira felt uncomfortable and was offended. (See
5 id. at p. 21.) Reeves looked at Catuira inappropriately between 5 and 20 times during her
6 employment, as if he were "checking me out." (See id. at pp. 21-22, 53.) Reeves made
7 inappropriate jokes or comments to other girls. (See id. at p. 31.) A co-worker, Jennifer
8 Latman, told her that Reeves, while looking at the co-worker's chest, commented, "You
9 look healthy today." (See id. at pp. 32-34.) Catuira also overheard Reeves inquire of
10 another co-worker, Allan Favish, whether "anything sexual happened" on Favish's date.
11 (See id. at pp. 34-35.)

12 This Court concludes that Reeves's conduct toward Catuira was not
13 sufficiently severe and pervasive to alter the conditions of her employment and create an
14 abusive environment. The required showing of severity or seriousness of the harassing
15 conduct varies inversely with the pervasiveness or frequency of the conduct. See Ellison,
16 924 F.2d at 878. "Conduct must be extreme to amount to a change in the terms and
17 conditions of employment." Montero v. AGCO Corp., 192 F.3d 856, 860 (9th Cir. 1999)
18 (quoting Faragher v. City of Boca Raton, 524 U.S. 775 (1998)). A sexually objectionable
19 environment must be viewed both subjectively and objectively. See id. In other words,
20 the environment must be one that the victim perceived to be hostile or abusive and that a
21 reasonable person would find hostile or abusive. See id.

22 With respect to the jokes, Catuira testified that she did not find the jokes to
23 be offensive. (See Catuira Depo., pp. 36-36.) Furthermore, Catuira could not remember
24 any of them. (See id. at pp. 31-32.) As such, without knowing the content of the jokes, a
25 fact finder could not objectively determine whether these jokes were such that a
26 reasonable woman would find it sexual harassment. With respect to Reeves's
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1 conversation with Mr. Favish, Catuira admits that this conversation was only overheard
2 by her, and she cannot recall the conversation specifically. (See id. at pp. 34-35.) With
3 respect to the comment made to Ms. Latman, again, Catuira was not present at the time
4 this alleged comment was made. (See id. at p. 33.) Furthermore, the EEOC does not
5 assert a claim on behalf of Ms. Latman, the "victim" of this alleged comment, despite the
6 fact that she was the one who was allegedly "grossed out" by it.

7 Thus, Catuira's claim rests on the 5 second bump and the stares. However,
8 the EEOC offers no evidence that Catuira subjectively perceived these incidents to be
9 abusive. A review of Catuira's deposition testimony shows that she felt "uncomfortable":

10 Q: Do you believe, Ms. Catuira, that you've been damaged in some fashion for
11 having worked at the Reeves Law Firm?

12 A: What do you mean by damaged?

13 Q: emotional distress or anything like that from - - -

14 A: No.

15 Q: - having worked there.

16 A: Now?

17 Q: Yeah, do you believe now that you suffered damage or injury when you
18 worked there?

19 Mulligan: I believe the question is does she believe it now or is she
20 experiencing distress now? Is that what you - -

21 A: Right. I don't know what you mean. Do I feel the damage now or did I feel
22 it then?

23 Q: Well, let's take it one at a time. Do you feel damage now, emotional
24 distress now for having worked there?

25 A: No.

26 Q: Did you feel it then?

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1 A: Yes.

2 Q: How?

3 A: I was uncomfortable. I never - I tried to avoid Mr. Reeves as much as
4 possible.

5 Q: And did you seek any type of treatment or counseling for that?

6 A: No.

7 (Catuira Depo., pp. 43-44.) In addition, Catuira admits that she did not object to this
8 incident to Reeves or tell him not to repeat the conduct. (See id. at p. 21.) When Catuira
9 left Defendant, she states that it was to go to school. (See id. at p. 16.) "[I]f the victim
10 does not subjectively perceive the environment to be abusive, the conduct has not actually
11 altered the conditions of the victim's employment, and there is no Title VII violation."
12 Harris v. Forklift Systems, Inc., 510 U.S. 17, 21, 114 S.Ct. 367, 370, 126 L.Ed.2d 295
13 (1993). Thus, the EEOC has failed to carry its burden of showing that a triable issue of
14 fact exists as to whether Catuira subjectively felt she worked in an abusive environment.

15 Furthermore, even assuming that the EEOC could show that Catuira
16 subjectively believed she endured a hostile or abusive environment, which it has not, the
17 EEOC cannot meet the objective element of Catuira's claim. With respect to the
18 objective element, the Ninth Circuit's opinion in Brooks v. City of San Mateo, 229 F.3d
19 217 (9th Cir. 2000), is helpful. In Brooks, a co-worker approached the plaintiff, placed his
20 hand on her stomach and commented on its softness and sexiness; the plaintiff told him to
21 stop touching her and then forcefully pushed him away; the co-worker later positioned
22 himself behind the plaintiff's chair, boxing her in against the communications console,
23 forced his hand underneath her sweater and bra to fondle her bare breast; the plaintiff
24 removed his hand again and told him that he had "crossed the line;" to this, the co-worker
25 responded "you don't have to worry about cheating [on your husband], I'll do
26 everything." See id. at p. 921. The district court held that this incident was not severe
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1 enough to give rise to a hostile work environment claim and granted summary judgment
2 in favor of the defendant. The Ninth Circuit affirmed, and while it found the incident to
3 be "highly offensive," it stated as follows: "Utilizing the Harris factors of frequency,
4 severity and intensity of interference with working conditions, we cannot say that a
5 reasonable woman in [the plaintiff's] position would consider the terms and conditions of
6 her employment altered by [the co-worker's] actions." Id. at 926. Thus, if the actions in
7 Brooks do not objectively constitute a hostile environment, then the conduct at issue here
8 certainly does not even come close.

9 The EEOC argues that "the Ninth Circuit has held that sexual harassment
10 may be found to exist on similar or less egregious facts." In support, it relies on the case
11 of Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991). A review of the Ellison case, however,
12 shows that the EEOC's reliance is misplaced. As the Ninth Circuit has subsequently
13 described Ellison:

> 14 Ellison alleged a sustained campaign of harassing conduct
> 15 directed at her. See Ellison, 924 F.2d at 873-75 (recounting
> 16 alleged harassment including love letters and date requests
> 17 after plaintiff made it known that advances were unwelcome).
> 18 Additionally, the course of conduct alleged by Ellison became
> 19 more intense over time. Gray, the harasser, started by asking
> 20 Ellison out a few times. He then sent her a brief love note
> 21 followed by two letters. One of these comprised three single-
> 22 spaced typed pages, and the other was sent after Gray had
> 23 been told by his supervisors to cease his behavior. See id.
> 24 Because Gray had continually ratcheted up the intensity of his
> 25 advances, a reasonable woman could fear that this pattern

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would continue for as long as they were working in the same office.

Brooks, 229 F.3d at 927. The evidence here does not even come close to a "sustained campaign" by Reeves or remotely show that Reeves "continually ratcheted up the intensity of his advances." Thus, this Court concludes that no reasonable juror could find that the conduct alleged toward Catuira was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment as a matter of law.

2. The EEOC cannot establish a prima facie case of sexual harassment with respect to Claimant Nadia Preciado

The EEOC sets forth the following bases of Preciado's claim. Preciado worked for Reeves & Hanlon/Defendant from August of 1998 to August of 1999, first as a file clerk and then as a receptionist. Reeves stared at her and would grin "[o]nce a day maybe." (See Preciado Depo., pp. 195-96.) He looked at her in a way which she took as sexual. (See id. at pp. 43-44.) Preciado also saw Reeves staring at clients and other women in the same office in the same manner. (See id. at pp. 147-47, 270-71.) Reeves asked her personal questions such as whether her children had the same father. (See id. at p. 141.) Reeves told her dirty jokes. (See id. at pp. 193, 222.) Another co-worker, Nikki Mehrpoo, told her that Reeves looked down Ms. Mehrpoo's shirt and that he told Ms. Mehrpoo that the new conference table would be nice to have sex on. (See id. at pp. 232-34.) The other receptionist, Shirley Lamb, told her that Reeves had said she (Lamb) had nice legs. (See id. at p. 277.)

This Court concludes that Reeves's conduct toward Preciado was not sufficiently severe and pervasive to alter the conditions of her employment and create an abusive environment. Addressing the subjective element, Preciado herself testified that she did not consider most of Reeves's conduct to be sexual. With respect to her

testimony that Reeves stared at her in a sexual way, Preciado previously testified that while Reeves looked at her in ways she did not like, she did not consider it to be sexual. Specifically, Preciado testified in a prior deposition in litigation between Defendant and Daniel Hanlon and Colin Greene.[2] With respect to this prior testimony, she stated:

Q: In February of 2000, you testified in response to questions from Mr. Causey that Mr. Reeves did not look at you in a sexual manner, is that correct?

A: Yes, it is.

Q: Furthermore, and I will direct your attention to page 93, line 17, Paul Causey asked you: "Did Mr. Reeves ever look at you in a manner that you considered to be inappropriate?" He then asked you at line 19: "Do you understand the question?" And you asked: "What do you mean?" Mr. Causey then explained that to you by stating, and I quote, at line 21 of page 93: "Well, like he's sexually interested in you, or something like that?" And at line 23, your answer is: "No, I wouldn't say looking at me sexually, but looking at me like he had a problem with me." Is that how the document reads?

A: Yes.

Q: Earlier this morning you testified that Mr. Reeves was looking at you in a sexual manner. Is that true?

A: In a sexual manner, is that what I said?

Q: Something of that substance. That might not be your exact word but - But I can go back into the record, but you stated something of a sexual nature.

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[2] According to Defendant, Hanlon and Greene were attorneys who worked for Reeves. Greene was Defendants' in-house counsel with respect to Quilaton's EEOC charge. On June 20, 1999, they abruptly left Defendant's employ, taking Defendant's property with them. These actions led to extensive litigation which resulted in a judgment against Hanlon and Greene, jointly and severally with their corporation, Hanlon & Greene, of nearly $200,000.00.

1 A: I stated that he stared at me.
2 Q: Okay. And was that stare sexual in your mind?
3 A: I wouldn't say it was sexual. It was inappropriate, though, the way he
4 would look.
5 Q: Earlier today you stated it was sexual, did you not?
6 A: Like I said, I don't think I said sexual.
7 (Id. at pp. 117-119.) With respect to the questions Reeves asked her which she claims
8 constitute sexual harassment - such as whether her kids had the same father, Preciado
9 later testified that she did not consider the asking of these questions to be sexual
10 harassment:
11 Q: I'll ask you the question again. In Mr. Reeves asking you who you lived
12 with, do you consider that to be sexual harassment?
13 A: No.
14 Q: In asking you the question who bought you a car, if he did in fact ask you
15 that question, do you consider that question to be sexual harassment?
16 A: No.
17 Q: In asking you if your children have the same father, assuming that that
18 question was asked, do you consider that to be sexual harassment?
19 A: I don't consider it sexual harassment, but I think it's inappropriate.
20 (Id. at pp. 143-44.) With respect to the statements made to Preciado by co-workers Lamb
21 and Latman, it is questionable how these statements affected Preciado. Indeed, the EEOC
22 makes no claim on behalf of these individuals themselves. With respect to the jokes,
23 Preciado testified that Reeves told between one and five jokes during the year which she
24 worked for Defendant:
25 Q: You stated that Mr. Reeves told you jokes, right?
26 A: Not just me. He told everyone jokes.
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1 Q: I'm most concerned with you, okay? did he ever tell you a joke?
2 A: Yes.
3 Q: How many times did he tell you a joke?
4 A: More than once, but I don't really remember all of them.
5 Q: More than five times?
6 A: No.
7 Q: More than once but - -
8 A: It could have been, yeah. Could have been less than five.
9 Q: So between one and five; is that fair?
10 A: That's fair.
11 (Id. at p. 210.) While Preciado cannot recall any of the jokes (see id. at p. 213), thereby
12 precluding an objective evaluation, Preciado admitted that the jokes did not affect her
13 work or cause her stress:
14 Q: Did the jokes ever affect your work?
15 A: Affect my work? No, they just made me feel uncomfortable.
16 (See id. at p. 256.)
17 While the EEOC is correct that the actions at issue do not have to be sexual
18 but rather because of sex, the third element remains that the victim must have perceived
19 the environment to be hostile or abusive, and to be actionable under Title VII, the
20 environment must be evaluated subjectively . Based on Preciado's own testimony, this
21 Court concludes that no reasonable juror could find that Preciado believed that Reeves's
22 conduct toward her was sufficiently severe and pervasive to alter the conditions of her
23 employment and create an abusive working environment. Preciado's own testimony
24 belies an allegation that she considered Reeves's conduct to be severe or pervasive. In
25 addition, Preciado testified that she interviewed for other jobs, received an offer, but
26 didn't accept this other job. (See Preciado Depo., pp. 159-160.)
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Even if the EEOC were able to offer evidence that met the subjective element of Preciado's claim, which it has not, the evidence does not support an objectively offensive environment as a matter of law. This is especially true when evaluated in light of the aforementioned cases, Brooks and Ellison.[3] The "inappropriate" stares, a few "personal" questions, only of which she is sure about, "dirty" jokes which she cannot recall and two statements told to her by other non-claimants are not pervasive or severe and intense such that a reasonable person would consider the terms of her employment altered. In sum, the conduct toward Preciado is not "physically threatening or humiliating;" rather, it falls in the category of "mere offensive utterances." See Faragher, 118 S.Ct. at 2283.

In making the determinations with respect to Catuira and Preciado, this Court is mindful of the Supreme Court's statement that "[w]e have never held that workplace harassment, even harassment between men and women, is automatically discrimination because of sex, merely because the words used have sexual content or

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[3] Defendant states that other conduct is at issue and specifically, that Reeves made a comment about her clothes. However, the EEOC does not mention this conduct in its opposition. Nonetheless, Preciado's testimony about this incident reveals that objectively it doesn't rise to the level of hostile or abusive:

Q: Okay. Can you give me an exact date of when you remembered that your were harassed?

* * *

A: I could tell you a lot of stuff that he's done to me, but I can't give you an exact date.

Q: Ok. That's a good idea, Ms. Preciado. Tell me a lot of things that he's done to you.

* * *

A: Picking on my clothes. They weren't good enough for him.

***

Q: Picking on my clothes. What do you mean by that ?

A: Him. They weren't good enough for him. They weren't professional like for his office.

(See Preciado Depo., p. 126.)

1 connotations." Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80, 118 S.Ct.
2 998, 140 L.Ed.2d 201 (1998). In addition, the Supreme Court recently repeated that "a
3 recurring point in our opinions is that simple teasing, offhand comments, and isolated
4 incidents (unless extremely serious) will not amount to discriminatory changes in the
5 'terms and conditions of employment.'" Clark County School Dist. v. Breeden, ___ U.S.
6 ___, 121 S.Ct. 1508, 1510, 149 L.Ed.2d 509, 513-14 (2001) (quoting Faragher v. Boca
7 Raton, 524 U.S. 775, 788 (1998)).

8 **3. The claims by the other Claimants are not relevant if Catuira**
9 **and Preciado were not aware of them**

10 The EEOC argues that the claims by the other claimants should be
11 considered in determining the existence of a hostile environment based upon the totality
12 of the circumstances. It cites to Heyne v. Caruso, 69 F.3d 1475 (9th Cir. 1998), and
13 asserts that evidence of an employer's conduct tending to demonstrate hostility towards a
14 certain group generally is both relevant and admissible to a plaintiff's individual claim of
15 discrimination. However, in Heyne, the plaintiff sued her employer alleging quid pro quo
16 sexual harassment in violation of Title VII in connection with her termination. The Ninth
17 Circuit held that evidence of employer's sexual harassment of other female employees
18 could be used to prove his motive or intent in discharging plaintiff in a quid pro quo
19 sexual harassment case. See id. at1480. Here, Plaintiff's claims are for hostile
20 environment sexual harassment, and the motive or intent of the harasser is not relevant.
21 The EEOC, citing to the case of Madison v. IBP, Inc., 257 F.3d 780 (8th Cir. 2001),
22 attempts to argue that the principle of Heyne is applicable to the sexual harassment
23 context. However, in Madison, the Eighth Circuit noted that the district court correctly
24 instructed the jury on the limited purposes for which the evidence relating to other
25 employees was offered. See id. at 794. Specifically, the court instructed the jury that
26 "you may consider conduct towards her co-workers, so long as she was aware of that
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conduct and her own well-being was affected by that conduct." See id. at n. 10.[4] Moreover, in Brooks, the Ninth Circuit enunciated this principle. It found that "[h]arassment directed towards others of which an employee is unaware can, naturally, have no bearing on whether she reasonably considered her working environment abusive." Brooks, 229 F.3d at 924. Thus, this Court can only consider conduct towards co-workers which the particular claimant is aware of and is affected by, and this Court has addressed such conduct with respect to Catuira and Preciado. Contrary to the EEOC's arguments, this Court cannot find a genuine issue of material fact by viewing the conduct "as a whole."

4. A continuance under Rule 56(f) is not warranted

The EEOC requests that this court continue this motion pursuant to Federal Rule of Civil Procedure 56(f). It states that it has been diligently pursuing discovery in this matter and that the discovery cut-off is not until December 31, 2001. It states that required depositions have not been completed and that evidence exists which will corroborate the testimony of Claimants.

This Court seriously considers requests to continue under Rule 56(f), and this is especially true when the discovery cut-off date is four months away. However, in this instance, this Court finds that further discovery would not affect this Court's determination. Specifically, this Court has concluded that Preciado and Catuira cannot make a claim for sexual harassment. This conclusion is primarily based on these claimants' own testimony. Thus, any corroborative testimony would not be helpful because the problem is not one of credibility but of a failure to make a prima facie case as a matter of law. In other words, any discovery the EEOC claims it needs would not

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[4] The court also instructed the jury that it may consider harassment that the plaintiff was unaware of in determining intent and whether the harassment was a part of the pattern and practice of harassment against her; however, the plaintiff brought additional claims of sex and race discrimination, retaliation and constructive demotion.

1 pertain to the issues currently before this Court. Indeed, this Court has reviewed the
2 Declaration of Gregory McClinton which sets forth the witnesses to be deposed, their
3 anticipated testimony and evidence to be discovered. While this further discovery may be
4 pertinent to the EEOC's remaining claims, it is not pertinent to these Claimants' prima
5 facie cases. Indeed, as stated above, other incidents of alleged harassment have no
6 bearing on the present Claimants if they are unaware of, and unaffected by, such
7 harassment, and the EEOC makes no claim that these particular Claimants were aware of
8 these alleged incidents of harassment.[5] As such, this Court finds that a continuance
9 pursuant to Rule 56(f) is not warranted.

10 **C. Conclusion**

11 There is no question that Reeves's conduct at issue should be construed and
12 interpreted as offensive and reprehensible. Indeed, this Court's conclusion should not be
13 interpreted to condone such behavior. However, "not all workplace conduct that may be
14 described as harassment affects a term, condition or privilege of employment within the
15 meaning of Title VII." Meritor Sav. Bank v. Vinson, 477 U.S. 57, 67, 106 S.Ct. 2399, 91
16 L.Ed.2d 49 (1986)(internal quotation marks and citation omitted). In sum, this Court
17 concludes that no triable issue exists about whether the conduct was frequent, severe or
18 abusive enough to interfere unreasonably with Catuira and Preciado's employment. As
19 such, the EEOC has failed to establish a prima facie case of hostile work environment
20 with respect to these specific claimants.[6] Defendant is thereby entitled to summary
21 judgment with respect to these claimants.

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24 [5] As stated herein, any incidents of which these Claimants were aware have been discussed.

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26 [6] Based on this conclusion, this Court does not address Defendant's affirmative defense and further argument that Catuira and Preciado failed to avail themselves of
27 Defendant's anti-harassment policy.

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1 Accordingly, this Court **grants** Defendant Robert L. Reeves & Associates,
2 a Professional Law Corporation's, Motion for Partial Summary Judgment as to Claimants
3 Catuira and Preciado.
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5 IT IS SO ORDERED.
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7 DATED: 9/24/01 DICKRAN TEVRIZIAN
8 Dickran Tevrizian, Judge
United States District Court
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