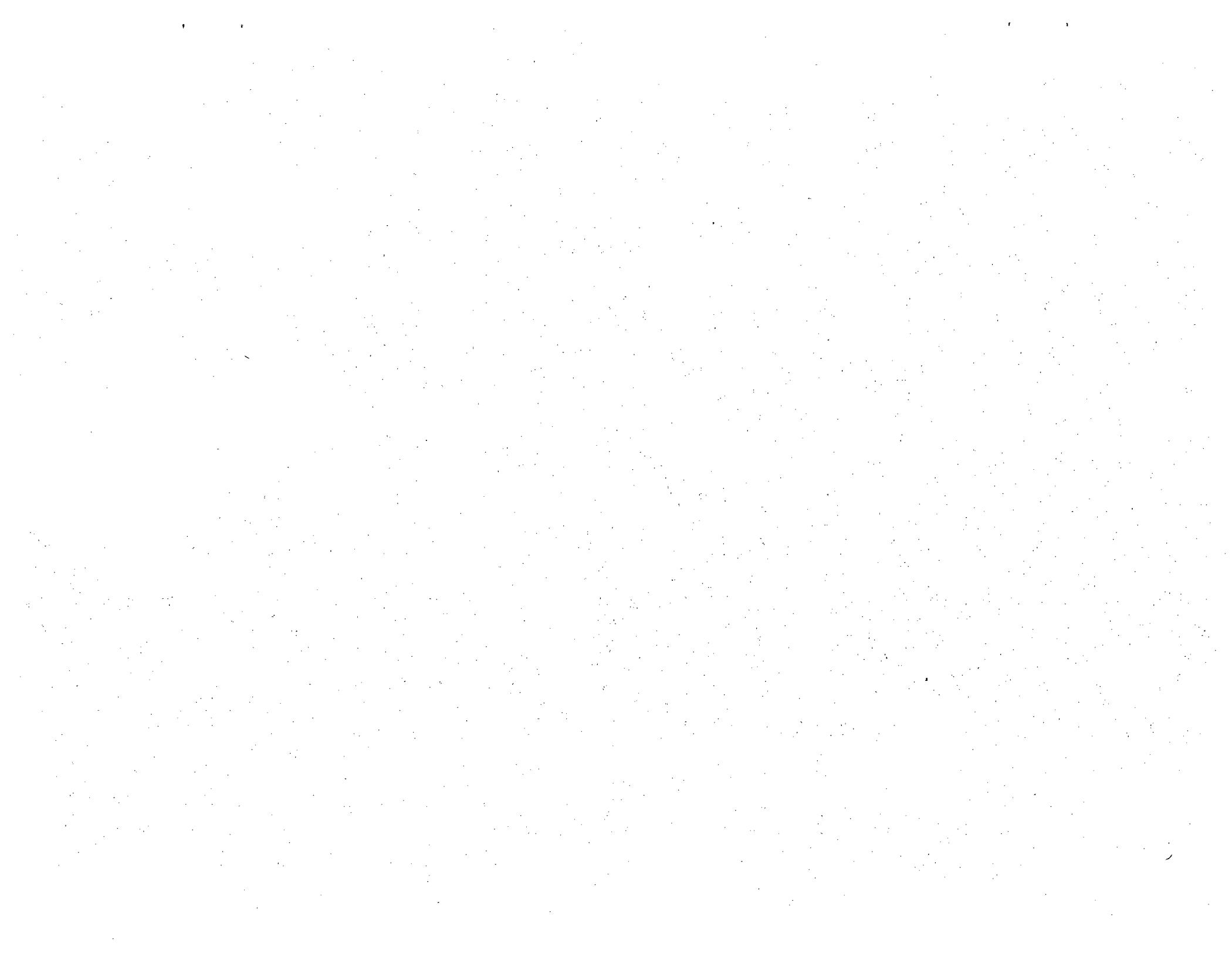


**ADDENDUM**



	Search documents in this case: <input type="text"/>		<input type="button" value="Search"/>
<b>No. 19-8174</b>			
Title:	<b>Camille T. Mata, Petitioner</b> v. <b>Massachusetts Commission Against Discrimination</b>		
Docketed:	April 3, 2020		
Lower Ct:	Appeals Court of Massachusetts		
Case Numbers:	(18-P-782)		
Decision Date:	February 14, 2019		
Discretionary Court Decision Date:	January 3, 2020		

DATE	PROCEEDINGS AND ORDERS
Mar 27 2020	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due May 4, 2020)  <b>Motion for Leave to Proceed in Forma Pauperis</b> <b>Petition</b> <b>Appendix</b> <b>Proof of Service</b>
Apr 30 2020	Waiver of right of respondent Massachusetts Commission Against Discrimination to respond filed.  <b>Main Document</b>
May 20 2020	DISTRIBUTED for Conference of 6/4/2020.
Jun 08 2020	Petition DENIED.

NAME	ADDRESS	PHONE
Attorneys for Petitioner		

Camille T. Mata	184 Plumtree Rd. Sunderland, MA 01375	(617) 515-1642
<p>camille.mata69@gmail.com</p>		
<p>Party name: Camille Mata</p>		
<p>Attorneys for Respondent</p>		
Kristen Dannay	Massachusetts Commission Against Discrimination 436 Dwight Street, Suite 220 Springfield, MA 01103	413-314-6101
<p>Kristen.Dannay@state.ma.us</p>		
<p>Party name: Massachusetts Commission Against Discrimination</p>		

Commonwealth of Massachusetts

**AFFIDAVIT OF INDIGENCE**AND REQUEST FOR WAIVER, SUBSTITUTION  
OR STATE PAYMENT OF FEES & COSTS

*(Note: If you are currently confined in a prison or jail and are not seeking immediate release under G.L. c. 248 §1, but you are suing correctional staff and wish to request court payment of "normal" fees (for initial filing and service), do not use this form. Obtain separate forms from the clerk.)*

SUPERIOR COURT, FRANKLIN CTY.

Court	Case Name and Number (if known)	
Name of applicant: <u>CAMILLE T. MATA</u>		
Address: <u>184 PLUMTREE ROAD,</u> (Street and number)	<u>SUNDERLAND, MA. 01375</u> (City or town)	<u></u> (State and Zip)

**SECTION 1:** Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows:  
**I AM INDIGENT** in that (*check only one*):

(A) I receive public assistance under (*check form of public assistance received*):

<input type="checkbox"/> Transitional Aid to Families with Dependent Children (TAFDC)	<input type="checkbox"/> Medicaid (MassHealth)
<input type="checkbox"/> Emergency Aid to Elderly, Disabled or Children (EAEDC)	<input type="checkbox"/> Supplemental Security Income (SSI)
<input type="checkbox"/> Massachusetts Veterans Benefits Programs; or	

(B) My income, less taxes deducted from my pay, is \$ 741.42 per  week  biweekly  month  year  
(*check the period that applies*) for a household of 1 persons, consisting of myself and 0 dependents;  
which income is at or below the court system's poverty level; (*Note: The court system's poverty levels for households of various sizes must be posted in this courthouse. If you cannot find it, ask the clerk or check online at: <http://www.mass.gov/courts/sjc/docs/povertyguidelines.pdf>. The court system's poverty level is updated each year.*)

(List any other available household income for the checked period on this line: \$ \_\_\_\_\_); or

*\* I work seasonally, only when UMASS-Amherst is in session*

(C) I am unable to pay the fees and costs of this proceeding, or I am unable to do so without depriving myself or my dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCE.

**SECTION 2:** *(Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)*

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or a lower cost, paid for by the state): *(Check all that apply and, in any "\$" blank, indicate your best guess as to the cost, if known.)*

Filing fee and any surcharge. \$ \_\_\_\_\_

Filing fee and any surcharge for appeal. \$ \_\_\_\_\_

Fees or costs for serving court summons, witness subpoenas or other court papers. \$ \_\_\_\_\_

Other fees or costs of \$ \_\_\_\_\_ for (specify): \_\_\_\_\_

Substitution (specify): \_\_\_\_\_

**SECTION 3:** I request that the following **EXTRA FEES AND COSTS** either be waived (not charged), substituted or paid for by the state:

Cost, \$ \_\_\_\_\_, of expert services for testing, examination, testimony or other assistance (specify): \_\_\_\_\_

Cost, \$ \_\_\_\_\_, of taking and/or transcribing a deposition of (specify name of person): \_\_\_\_\_

Cassette copies of tape recording of trial or other proceeding, needed to prepare appeal for applicant not represented by Committee for Public Counsel Services (CPCS-public defender).

Appeal bond

Cost, \$ \_\_\_\_\_, of preparing written transcript of trial or other proceeding

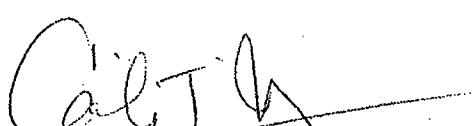
Other fees and costs, \$ \_\_\_\_\_, for (specify): \_\_\_\_\_

Substitution (specify): \_\_\_\_\_

Date signed		Signed under the penalties of perjury
12/21/2017		

**By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.**

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003.  
Fillable PDF created August 2013.

<b>CIVIL ACTION COVER SHEET</b>		DOCKET NUMBER	<b>Trial Court of Massachusetts The Superior Court</b>													
<b>PLAINTIFF(S):</b> CAMILLE T. MATA <b>ADDRESS:</b> 184 PLUMTREE ROAD <b>SUNDERLAND, MA, 01375</b>		<b>DEFENDANT(S):</b> MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION <b>COUNTY</b> Franklin <input checked="" type="checkbox"/>														
<b>ATTORNEY:</b> <b>ADDRESS:</b>		<b>ADDRESS:</b> 436 DWIGHT STREET SPRINGFIELD, MA, 01103														
<b>BBO:</b>																
<b>TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)</b>																
<b>CODE NO.</b> EO2	<b>TYPE OF ACTION (specify)</b> APPEAL FROM ADMINISTRATIVE AGENCY GI	<b>TRACK</b> <input checked="" type="checkbox"/>	<b>HAS A JURY CLAIM BEEN MADE?</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO													
<b>*If "Other" please describe:</b>																
<b>STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A</b>																
<p>The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.</p>																
<b>TORT CLAIMS</b> (attach additional sheets as necessary)																
<p>A. Documented medical expenses to date:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">1. Total hospital expenses .....</td> <td style="width: 20%; text-align: right;">\$ .....</td> </tr> <tr> <td>2. Total doctor expenses .....</td> <td style="text-align: right;">\$ .....</td> </tr> <tr> <td>3. Total chiropractic expenses .....</td> <td style="text-align: right;">\$ .....</td> </tr> <tr> <td>4. Total physical therapy expenses .....</td> <td style="text-align: right;">\$ .....</td> </tr> <tr> <td>5. Total other expenses (describe below) .....</td> <td style="text-align: right;">\$ .....</td> </tr> <tr> <td colspan="2" style="text-align: right;"><b>Subtotal (A):</b> \$ .....</td> </tr> </table>					1. Total hospital expenses .....	\$ .....	2. Total doctor expenses .....	\$ .....	3. Total chiropractic expenses .....	\$ .....	4. Total physical therapy expenses .....	\$ .....	5. Total other expenses (describe below) .....	\$ .....	<b>Subtotal (A):</b> \$ .....	
1. Total hospital expenses .....	\$ .....															
2. Total doctor expenses .....	\$ .....															
3. Total chiropractic expenses .....	\$ .....															
4. Total physical therapy expenses .....	\$ .....															
5. Total other expenses (describe below) .....	\$ .....															
<b>Subtotal (A):</b> \$ .....																
<p>B. Documented lost wages and compensation to date .....</p>																
<p>C. Documented property damages to date .....</p>																
<p>D. Reasonably anticipated future medical and hospital expenses .....</p>																
<p>E. Reasonably anticipated lost wages .....</p>																
<p>F. Other documented items of damages (describe below) .....</p>																
<p>G. Briefly describe plaintiff's injury, including the nature and extent of injury:</p>																
<b>TOTAL (A-F):\$</b> _____																
<b>CONTRACT CLAIMS</b> (attach additional sheets as necessary)																
<p>Provide a detailed description of claims(s):</p>																
<b>TOTAL: \$</b> _____																
<p><b>Signature of Attorney/Pro Se Plaintiff:</b> X  <b>Date:</b> 12/21/2017</p>																
<p><b>RELATED ACTIONS:</b> Please provide the case number, case name, and county of any related actions pending in the Superior Court.</p>																
<b>CERTIFICATION PURSUANT TO SJC RULE 1:18</b>																
<p>I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.</p>																
<p><b>Signature of Attorney of Record:</b> X <b>Date:</b> _____</p>																

**B006**  
**CIVIL ACTION COVER SHEET INSTRUCTIONS**  
**SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE**

**AC Actions Involving the State/Municipality.\***

AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)  
 AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)  
 AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)  
 AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)  
 AE1 Administrative Action involving Commonwealth, Municipality, MBTA,etc. (A)

**CN Contract/Business Cases**

A01 Services, Labor, and Materials (F)  
 A02 Goods Sold and Delivered (F)  
 A03 Commercial Paper (F)  
 A04 Employment Contract (F)  
 A06 Insurance Contract (F)  
 A08 Sale or Lease of Real Estate (F)  
 A12 Construction Dispute (A)  
 A14 Interpleader (F)  
 BA1 Governance, Conduct, Internal Affairs of Entities (A)  
 BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)  
 BB1 Shareholder Derivative (A)  
 BB2 Securities Transactions (A)  
 BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)  
 BD1 Intellectual Property (A)  
 BD2 Proprietary Information or Trade Secrets (A)  
 BG1 Financial Institutions/Funds (A)  
 BH1 Violation of Antitrust or Trade Regulation Laws (A)  
 A99 Other Contract/Business Action - Specify (F)

\* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Adminlistrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

**ER Equitable Remedies**

D01 Specific Performance of a Contract (A)  
 D02 Reach and Apply (F)  
 D03 Injunction (F)  
 D04 Reform/ Cancel Instrument (F)  
 D05 Equitable Replevin (F)  
 D06 Contribution or Indemnification (F)  
 D07 Imposition of a Trust (A)  
 D08 Minority Shareholder's Suit (A)  
 D09 Interference in Contractual Relationship (F)  
 D10 Accounting (A)  
 D11 Enforcement of Restrictive Covenant (F)  
 D12 Dissolution of a Partnership (F)  
 D13 Declaratory Judgment, G.L. c.231A (A)  
 D14 Dissolution of a Corporation (F)  
 D99 Other Equity Action (F)

**PA Civil Actions Involving Incarcerated Party.†**

PA1 Contract Action involving an Incarcerated Party (A)  
 PB1 Tortious Action Involving an Incarcerated Party (A)  
 PC1 Real Property Action involving an Incarcerated Party (F)  
 PD1 Equity Action involving an Incarcerated Party (F)  
 PE1 Administrative Action involving an Incarcerated Party (F)

**TR Torts**

B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)  
 B04 Other Negligence - Personal Injury/Property Damage (F)  
 B05 Products Liability (A)  
 B06 Malpractice - Medical / Wrongful Death (A)  
 B07 Malpractice - Other (A)  
 B08 Wrongful Death, G.L. c.229 §2A (A)  
 B15 Defamation (A)  
 B19 Asbestos (A)  
 B20 Personal Injury - Slip & Fall (F)  
 B21 Environmental (F)  
 B22 Employment Discrimination (F)  
 BE1 Fraud, Business Torts, etc. (A)  
 B99 Other Tortious Action (F)

**RP Real Property**

C01 Land Taking (F)  
 C02 Zoning Appeal, G.L. c. 40A (F)  
 C03 Dispute Concerning Title (F)  
 C04 Foreclosure of a Mortgage (X)  
 C05 Condominium Lien & Charges (X)  
 C99 Other Real Property Action (F)

**MC Miscellaneous Civil Actions**

E18 Foreign Discovery Proceeding (X)  
 E97 Prisoner Habeas Corpus (X)  
 E22 Lottery Assignment, G.L. c. 10 §28 (X)

**AB Abuse/Harassment Prevention**

E15 Abuse Prevention Petition, G.L. c. 209A (X)  
 E21 Protection from Harassment, G.L. c. 258E(X)

**AA Administrative Civil Actions**

E02 Appeal from Administrative Agency, G.L. c. 30A (X)  
 E03 Certiorari Action, G.L. c.249 §4 (X)  
 E05 Confirmation of Arbitration Awards (X)  
 E06 Mass Antitrust Act, G. L. c. 93 §9 (A)  
 E07 Mass Antitrust Act, G. L. c. 93 §8 (X)  
 E08 Appointment of a Receiver (X)  
 E09 Construction Surety Bond, G.L. c. 149 §§29, 29A (A)  
 E10 Summary Process Appeal (X)  
 E11 Worker's Compensation (X)  
 E16 Auto Surcharge Appeal (X)  
 E17 Civil Rights Act, G.L. c.12 §11H (A)  
 E24 Appeal from District Court Commitment, G.L. c.123 §9(b) (X)  
 E25 Pleural Registry (Asbestos cases) (X)  
 E94 Forfeiture, G.L. c265 §56 (X)  
 E95 Forfeiture, G.L. c.94C §47 (F)  
 E99 Other Administrative Action (X)  
 Z01 Medical Malpractice - Tribunal only, G.L. c. 231 §60B (F)  
 Z02 Appeal Bond Denial (X)

**SO Sex Offender Review**

E12 SDP Commitment, G.L. c. 123A §12 (X)  
 E14 SDP Petition, G.L. c. 123A §9(b) (X)

**RC Restricted Civil Actions**

E19 Sex Offender Registry, G.L. c.6 §178M (X)  
 E27 Minor Seeking Consent, G.L. c.112 §12S (X)

**TRANSFER YOUR SELECTION TO THE FACE SHEET**

**EXAMPLE:**

**CODE NO.**

**TYPE OF ACTION (specify)**

**TRACK**

**HAS A JURY CLAIM BEEN MADE?**

B03

Motor Vehicle Negligence-Personal Injury

F

YES

NO

**STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A**

**DUTY OF THE PLAINTIFF** - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or pro se party.**

**DUTY OF THE DEFENDANT** - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.  
 FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY  
 MAY RESULT IN DISMISSAL OF THIS ACTION.**

Superior Court of Massachusetts  
Franklin County

Camille T. MATA, Plaintiff,  
v.  
Massachusetts Commission Against Discrimination, Defendant.

December 20, 2017.

**Plaintiff's Complaint for Judicial Review Pursuant G.L. c 30A § 14**

Camille Tuason Mata, M.U.R.P; M.S.D; M.L.A., 184 Plumtree Road, Sunderland, MA. 01375, Mobile No. (413) 230-7095, camille.mata69@gmail.com.

**INTRODUCTION**

1. The plaintiff, Camille Tuason Mata ("T. MATA"), pursuant to the provisions of G.L. c. 30A, § 14, seeks judicial review of the decision by the Massachusetts Commission Against Discrimination ("MCAD") affirming the decision of the MCAD Investigator, Melvin Arocho, to dismiss her race-gender discrimination complaint (Civil Rights Act 1964, Title VI, Title IX) against the Massachusetts Institute of Technology ("MIT DUSP Complaint"), citing lack of probable cause. See Decision of the Investigating Commissioner ("Decision"), Exhibit A. This Decision was in response to the plaintiff's appeal of Investigator Melvin Arocho's ruling of lack of probable cause. See Plaintiff's appeal letter ("MCAD Appeal"), Exhibit B. See Investigator Melvin Arocho's ruling ("Arocho Ruling"), Exhibit C. As grounds therefor, the plaintiff states that this decision to affirm Investigator's Arocho's ruling is: without reasonable ground, unsupported by substantial evidence, an error in legal analysis and, therefore, arbitrary, and an abuse of discretionary powers. The Defendant also demonstrated an authority in excess of its jurisdiction.

**JURISDICTION AND VENUE**

2. The MCAD's decision is not reviewable by a direct appeal; therefore, G.L. c. 30A, § 14, authorizes judicial review in this Court. See e.g. Ceely v. Firearms Licensing Review Board, 78 Mass. App. Ct. 1125 (2011);
3. Venue is proper under G.L. c 30A § 14(1)(a);

## PARTIES

4. Camille Tuason Mata, MURP; MSD, MLA ("T. Mata") is currently employed as a food service worker at the Franklin Dining Commons at the University of Massachusetts-Amherst. She is also a qualified, professional urban planning consultant and the owner of the sole proprietor urban planning consultancy, The ECOPlanning Institute. She has additional qualifications that enable her to consult in developing countries and on special urban planning topics addressing issues of sustainability and social inequalities. See DUNS Number confirmation, Exhibit D; See Testamurs, Exhibit E; See Curriculum Vita ("CV"), Exhibit F.
5. The defendant is an agency of the Commonwealth of Massachusetts held with the responsibility of investigating discrimination complaints and derives its authority from the provisions of M.G.L. c 151B/C.

## FACTS

6. This Complaint for a Judicial Review is directly linked to the race-gender discrimination complaint filed with MCAD against the Massachusetts Institute of Technology, Department of Urban Studies and Planning ("MIT DUSP Complaint"), citing violations of Civil Rights Act 1964, Title VI and Title IX;
7. In January 2016, the plaintiff applied for admission to the competitive PhD program of the Department of Urban Studies and Planning, Massachusetts Institute of Technology ("MIT DUSP");
8. On March 8, 2016, the MIT DUSP informed the plaintiff that she had not been accepted into the doctorate program. See MIT Decision E-mail, Exhibit G;
9. On September 6, 2016, the plaintiff filed a discrimination complaint with the Defendant, citing violations of constitutional laws pertaining to race-gender discrimination. See Plaintiff's "MIT DUSP Complaint" letter, Exhibit H;
10. On November 28, 2016, the MIT DUSP filed their response to plaintiff's allegations of race-gender discrimination. See MIT DUSP Response, Exhibit I;
11. On May 31, 2017, The MCAD Investigator assigned to the MIT DUSP Complaint, Melvin Arocho, dismissed the complaint ("Arocho Ruling"), citing lack of probable cause;
12. On June 7, 2017, the plaintiff filed an appeal of the Arocho Ruling regarding her discrimination complaint against the MIT DUSP, demonstrating specific areas in which pretext for discrimination was evident, in which the MIT DUSP demonstrated discriminatory disposition, and overall a

failure by Investigator Arocho to apply the appropriate legal analysis in weighing the evidence provided by the plaintiff and MIT DUSP. See "MCAD Appeal," Exhibit B.

13. On November 22, 2017, the Defendant affirmed the Arocho Ruling and therefore denied the appeal. In the letter, the Defendant also made the claim that the Decision "is not subject to Judicial Review M.G.L. c. 30A." See Decision, Exhibit A;

14. The Defendant's decision erred in several respects, including:

- a. its failure to apply the standards of legal analysis expected of state agencies responsible for investigating discrimination complaints in scrutinizing all of the provided evidence;
- b. in reviewing the Arocho Ruling, inclusive of the rationale of Investigator Arocho, the response of MIT DUSP, the rebuttal and appeals of the plaintiff, and all of the evidence corresponding therewith, the Defendant failed: to apply the standards of "reasonable inference," see e.g. McConnell Douglas Corp. v. Green, 411 U.S. at 804 (1973), and Texas Dept. of Cnty Affairs v. Burdine, 450 U.S. 248, 255-56 (1981); to aptly scrutinize the evidence for "pretext for discrimination," see e.g. Anthony Ash et al. v. Tyson Foods, Inc. No. 05-379, Patterson v. McLean Credit Union, 491 U.S. 164, 187 (1989), and Faas v. Sears, Roebuck & Co., 532 F.3d (7<sup>th</sup> Cir.2008); to apply "preponderance of evidence" in weighing all of the evidence, see e.g. McConnell Douglas Corp. v. Green, 411 U.S. at 804 (1973), and Smith v. Lockheed-Martin Corporation, *supra*; to recognize the discriminatory disposition of MIT DUSP, see (d) this section.
- c. its failure to subject all of the evidence correlated with the Arocho Ruling to key constitutional standards, namely the Equal Protection Clause under the 14<sup>th</sup> Amendment, from which the Civil Rights Act of 1964, Title VI and Title IX spring, and in the process Defendant failed to subject itself to the same compliance standards;
- d. its failure to incorporate key evidence demonstrating biased disposition of MIT DUSP towards Plaintiff, which: exhibited gross subjectivity in the evaluation of Plaintiff's doctorate application portfolio; utilized language that alluded to age discrimination, see Fetouh Letter, March 16, 2017, Exhibit J.
- e. overall, its failure to review all of the evidence, correlating with the plaintiff's appeal of the Arocho Ruling, with a fair and balanced mind to ensure statutory fairness. See M.G.L. c. 30A, § 14(7)(a) and (d);

15. By asserting that the Decision was “not subject to a Judicial Review,” the Defendant gives evidence of overreaching its authority and jurisdiction. See M.G.L. c. 30A, § 14(7)(b), indicating a discriminatory disposition towards the plaintiff. Her race-gender identity is disclosed throughout the complaint process against MIT DUSP (“MIT DUSP Complaint”).

**COUNT I. JUDICIAL REVIEW**

16. Paragraphs 1-15 are incorporated as if fully set forth herein;
17. Disclosure of all original documents regarding race-gender discrimination complaint against MIT DUSP to be forthcoming with 9A package;
18. The Defendant committed errors in legal analysis, resulting in a decision that is without reasonable ground, unsupported by substantial evidence, arbitrary, demonstrated abuse of discretionary powers. Moreover, the Defendant demonstrated an authority in excess of its jurisdiction. These errors in legal analysis and manifestations of abuse of its power, authority, and jurisdiction are so substantial and material that a failure to correct them will result in manifest injustice to the plaintiff and will prejudice a substantial right of the plaintiff;
19. The plaintiff has no other remedy available other than judicial review under M.G.L. c. 30A, § 14;
20. The Defendant’s decision should be reversed under M.G.L. c. 30A, § 14 as a matter of law.

WHEREFORE, the Plaintiff respectfully requests that this Court:

- a. Reverse the decision of the Defendant; and
- b. Grant such other and further relief as is just and equitable.

Respectfully submitted,



CAMILLE T. MATA

184 Plumtree Road, Sunderland, MA. 01375  
Mobile: (413) 203-7095  
E-mail: camille.mata69@gmail.com

Exhibit A  
Decision of the Investigating Commissioner  
("Decision")

B012

THE COMMONWEALTH OF MASSACHUSETTS  
Commission Against Discrimination  
436 Dwight Street, Rm. 220, Springfield, MA 01103  
Phone: (413) 739-2145 fax: (413) 784-1056

Date: 11/22/2017

Camille T Mata  
184 Plumtree Road  
Sunderland, MA 01375

RE: Camille T Mata v. Massachusetts Institute of Technology  
MCAD Docket Number: 16SED02743  
EEOC/HUD Federal Charge Number:

Dear Sir/Madam;

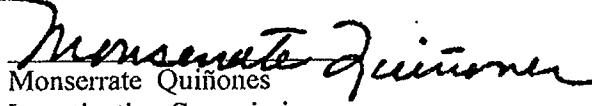
Your request to submit your preliminary hearing in writing was granted regarding the above reference complaint to consider the Complainant's appeal of the lack of probable cause finding issued in this Complaint on May 31, 2017.

Based upon the submission of the Complainant's written appeal, the response from the Respondent and a review of the evidence adduced in investigation, I have determined that the Lack of Probable Cause finding in this case is *affirmed*. This means that investigation and appeal evidence fails to establish sufficient evidence to determine an unlawful act of discrimination has been committed.

The above decision represents a final action by the Commission and no further action regarding this complaint will be considered at the Commission Against Discrimination. This final action of the Commission is not subject to Judicial Review M.G.L. c. 30A.

All employment complaints where applicable, are dual filed with the U.S. Equal Employment Opportunity Commission (EEOC). Our finding will be forwarded to its Area Office, JFK Federal Building, Boston, MA 02203. The MCAD finding will be given substantial weight by the EEOC provided that such finding are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and/or The Americans with Disabilities Act of 1990.

Very truly yours,

  
Monserrate Quiñones  
Investigating Commissioner

(GLM)

MQ/pw  
Cc:

Dahlia S. Fetouh, Esquire  
Massachusetts Institute of Technology  
77 Massachusetts Avenue  
Cambridge, MA 02139

Exhibit B  
Plaintiff's Appeal Letter  
("MCAD Appeal")

B016

Camille Tuason Mata  
184 Plumtree Road  
Sunderland, MA. 01375  
Phone: (718) 362-7646  
E-mail: camille.mata69@gmail.com

---

June 7, 2017

Massachusetts Commission Against Discrimination  
ATTN: Appeals Clerk of the Commission  
1 Ashburton Place, Suite 601  
Boston, MA 02108

**RE: Camille T. Mata vs. Massachusetts Institute of Technology**  
MCAD Docket number: 16SEDO2743

Dear Appeals Clerk of the Commission:

I received on Monday, June 5, 2017 the Investigative Disposition from the MCAD (Massachusetts Commission Against Discrimination), signed by Commissioner Jamie R. Williamson on May 31, 2017, regarding my discrimination complaint against the Massachusetts Institute of Technology Department of Urban Studies and Planning (MIT DUSP). The ruling was "lack of probable cause", which I understand to mean, as per the definition provided on the Commission's website, that "MCAD did not find sufficient evidence to support a conclusion that unlawful discrimination occurred." In support of this ruling, MCAD Investigator Melvin Arocho wrote that the Respondent had demonstrated non-discriminatory reasons for rejecting me and that there was no pretext indicating discrimination. The reason for denying me admission, he concluded, was rather simply because I was a weaker applicant compared to the other PhD applicants, who had applied for the fall semester of 2016.

Before I move forward to the reasons for this appeal, I wish to reiterate the definitions of pretext as defined by US law, and the standard by which evidence is governed by US civil law. As I understand, the MCAD Investigator and all pertinent MCAD personnel are expected and required to abide by and adhere to these standards as established in US civil law. Pretext, as defined by the US Pretext Law Legal Definition website, "generally refers to a reason for an action which is false, and offered to cover up true motives or intentions." This same website further provides the legally acceptable measurements for determining pretext by explaining that "pretext can be found based on (a) statistics, (b) comparators similarly situated, (c) written or oral statements indicating bias, or (d) just plain false reasons" (<https://definitions.uslegal.com/p/pretext/>, retrieved on June 7, 2017).

With respect to evidence, I wish to assert again, as I had in my written rebuttal dated December 7, 2016, that the legal standard of evidence accepted in civil rights cases is **preponderance of evidence**. The preponderance of evidence standard is defined as "the proof need only show that the facts are more likely to be than not so (Loschavio, JD, and Waller, PhD, no date given, retrieved from <http://www.theasca.org/files/The%20Preponderance%20of%20Evidence%20Standard.pdf> on June 7, 2017).

I am appealing this ruling for three reasons. Firstly, the ruling of insufficient evidence of pretext is not true. I had laid out in both my rebuttal and initial complaint several examples of pretext associated with the failure of the MIT DUSP admissions committee to hold my academic attributes to the same standard as the other candidates, as well as the racial privileging given to the accepted applicants by virtue of the ethnic origin and race representation of senior level professors employed in the MIT DUSP during the fall semester of 2015 and spring semester of 2016, when admission decisions for entry in the fall of 2016 were made. The examples of pretext will be reiterated in the ensuing paragraphs.

Secondly, the Respondent (MIT DUSP) has not demonstrated non-discriminatory evidence, and this failure to demonstrate non-discriminatory evidence will be, likewise, explained in the ensuing paragraphs.

Finally, in ignoring key evidence I had provided in support of my discrimination complaint, the MCAD Investigator has not demonstrated impartiality.

In the remainder of my written appeal, I shall break down the points made in MCAD Investigator Arocho's written rationale justifying his decision of lack of probable cause.

In the opening remarks of the Investigative Disposition, MCAD Investigator Arocho reinforced the quality of the MIT DUSP, noting that the department is ranked first in the country, and is also known for its concentration in international development. I do not dispute this fact; it is the reason I chose to apply to MIT DUSP. Among the few planning schools that offered a concentration in international development planning, MIT DUSP was one of two, which had the most number of planning academics who could feasibly supervise me. This was important in case any of the planning professors left the department to take up employment at other universities.

MCAD Investigator Arocho also highlighted the commitment of the MIT DUSP to diversity, even quoting the MIT DUSP website assertion that the "unique value of our student body is diversity." However, the MIT DUSP has consistently marginalized Filipina Americans from its doctorate student body. Although, as Attorney Fetouh points out in her letter dated March 16, 2017, that MIT DUSP has accepted 8 applicants from the Philippines, she fails to note that this number is in fact extremely marginal, and not all individuals representing

this ethnicity are classified as a protected class, as of this ethnic cohort, only Filipina/o-Americans and permanent residents are. As such, among this protected class of Filipina/o-Americans, specifically, the number enrolled in MIT DUSP, is likely smaller. Furthermore, Attorney Fetouh does not clearly state whether these enrolled students either from the Philippines or of Philippine ethnic descent had also achieved three master's degrees and had published nine academic materials, academic attributes that are stronger determinants of potential for graduate school success. Filipina-Americans have equally been underrepresented among the MIT DUSP. And then, in the years since 2004, a period during which I had reviewed both the faculty pages of MIT DUSP and its doctorate student body, there has been no representation of Filipina-Americans. Keep in mind that in my complaint, I alleged that I was not accepted into MIT DUSP despite exceeding the minimum standards for entry because I am Filipina American.

The absence of Filipina-American faculty in MIT DUSP turned out to be a significant factor in the admissions process, I discovered, when Attorney Dahlia Fetouh pointed to the ethnic origin and race identity representation of the entering doctorate students for fall semester 2016. She wrote that for fall semester 2016, MIT DUSP had accepted an applicant from Pakistan, one from Egypt, one from Brazil, one from Argentina, two from Korea, and one from the United States (an Asian-American). These identities can be traced to the ethnic origin and race identity of the senior level professors in MIT DUSP, who could influence the admission decision. Some professors had also worked in communities in the countries represented by the accepted doctorate students. Such links in the ethnic origin and race identity and signifies a statistical pattern of privileging certain identities. Such privileging is probable cause for denying admission. Because there were no Filipina-Americans in the faculty during the spring 2016, the year in which I applied to the doctorate program, there was no one among the faculty who could (or would) advocate for me. This alignment of the ethnic origin and race of the accepted doctorate applicants and the MIT DUSP faculty thus demonstrates that regardless of what I achieved, academically, I would not have been accepted into the doctorate program due to the nonexistence of a senior level Filipina-American professor among the MIT DUSP faculty during the spring semester 2016, the period in which my doctorate application for admission was considered. I pointed out the correlation between the ethnic origin and race identity of senior level faculty in MIT DUSP to those of the accepted doctorate applicants in my rebuttal. However, MCAD Investigator Arocho did not indicate in the Investigatory Disposition that he had investigated this correlation more deeply in order to verify its factuality. An example of a deeper investigatory action would be to obtain the employment record for the MIT DUSP faculty during the spring semester 2016 and during the fall semester 2015, and enquire about their ethnic origin/race identity and country affiliation. Although Attorney Fetouh insisted, in her letter to MCAD Investigator Arocho dated March 16, 2017, that the process was fair and unbiased because the ethnic origin and race identity of the doctorate students accepted for the fall semester 2016 were not in fact represented among that of the senior level professors employed in the MIT DUSP, at the same time, I know what I viewed on the MIT DUSP website when I reviewed the department in fall 2015 and spring 2016, and prior, to

help me decide on which schools to apply. Some of the faculty had even disclosed their ethnicity/country of origin on their faculty page. During this time of reviewing, I had noticed that some of the academics were from Egypt, Brazil, and South Korea, specifically, and that two had country affiliations with Argentina, Brazil, Egypt, and South Korea through their research. These notations were the reason the country representation of the accepted doctorate students stood out to me. Since that time, the faculty web pages have changed.

This discrimination is more pronounced in the bias exercised in the evaluation of my academic credentials and achievements. As I shall illuminate, the faculty demonstrated their prejudice in the way they put greater value on my GRE scores, while downplaying the other, more important areas of my application. MCAD Investigator Arocho ruled that I was the weaker applicant in comparison to those who were accepted into the doctorate program. The reasons for denying me admission were, therefore, due to non-discriminatory factors. He had raised the issue of my GRE scores, specifically, which were lower across the three test sections than the scores of the accepted doctorate students. The GRE test is required by MIT DUSP because it allegedly indicates an individual's potential to successfully complete a graduate program. He went so far as to include the table, provided by Attorney Fetouh in the response letter, which compared my scores to those of the accepted doctorate students. The usefulness of the test, though, for determining an individual's potential for success in a graduate program, as I had pointed out in my rebuttal, is controversial. For years, scholars have disputed its relevance to determining graduate school success (see the literature I have included with this appeal letter). The ETS, furthermore, admitted to flaws in the test and has cautioned universities against using the GRE score singly to determine admissions. The controversy surrounding the utility of the GRE score in predicting an individual's potential for successfully completing a graduate program is, therefore, unreliable.

The relevancy of the test is questioned also in the context of my having completed three master's degrees and having demonstrated a strong publishing record prior to taking the test. My publications were the result of my graduate trainings rather than from my having studied for the GRE test. Moreover, my publishing record indicates that I am already accomplishing, scholastically, what employed scholars generally accomplish. Due to these academic achievements, the GRE score is less of a predictor and would even be considered to be irrelevant in my case. And yet, in the Investigative Disposition, the MCAD Investigator did not raise this discrepancy between the value of the GRE scores with respect to the value of my other academic attributes, namely the academic preparation and evidence of scholastic publications. After all, if the GRE scores are to predict my potential to complete a graduate program, then according to this line of reasoning, my low scores relative to the accepted doctorate students would make me less likely to publish scholarly, peer-reviewed materials and, equally, be less likely to complete the doctorate program. On the contrary, I have published academically and have completed not one, but three master's degrees. The

latter is a reflection of my strong academic preparation and the former a reflection of the strength of this academic preparation.

Rather, MCAD Investigator Arocho merely parrots the assertion made by Attorney Fetouh, which is that my low GRE scores relative to the average scores of the accepted doctorate applicants was a strong enough reason to deny me admission. MCAD Investigator Arocho gave no indication in the Investigative Disposition of either questioning the relevancy of the GRE score to determining my academic success in the PhD program or the over-valuation of this score over the value granted to my other academic attributes.

Another indication of race and ethnic origin privileging as being a probable cause in the evaluation of my academic portfolio is in the failure of both Attorney Fetouh and the MCAD Investigator to draw comparisons between me and the accepted doctorate students in these other areas. As I had illuminated in my initial complaint and in my rebuttal, I earned three master's degrees. I had also published a combination of nine academic articles, book reviews, magazine articles, and a book on urban planning topics. Three of these publications came from both of my master's theses. One of the case studies in my first master's thesis was published in the MIT planning journal, Projections Volume 8, and the second master's thesis was published in entirety by the University Press of America in 2013 following the review of my submitted book proposal and three sample chapters by the publisher's acquisitions editor. This thesis was also given an honorable mention by the Graduate Mellon Fellowship program at the University of Minnesota, where I was able to present my research due to an honorarium granted to me. Although this award was already written in my CV, which I had included in my doctoral application, I submitted the award letter with my rebuttal in order to prove that the granting of this award was true and legitimate.

These publications indicate my ability to work independently, innovatively, with theory, and ultimately to contribute to the field of urban planning. Such scholastic skills are generally taught in the doctorate program, but I learned and refined them by completing three graduate degrees. I also credit my early publishing achievements to the fact that my other, two graduate degrees complemented my primary field of urban planning, both of which allowed me to expand my theoretical understanding of urban planning in two specialized fields, namely international development planning and food system planning. Any professional and academic planner would agree that the more knowledge one possesses the more effective they are as planning thinkers and practitioners. However, MCAD Investigator Arocho gives no mention of having consulted with an impartial professor about the value of attaining additional education beyond the graduate planning education. Nor does he indicate that he had consulted planning resources or knowledgeable individuals at the American Collegiate School of Planning (ACSP) that might give him insight about the significance of complementary education.

Keeping in mind these nine publications and my three graduate degrees, it is truly perplexing that the faculty reviewing my doctorate application only credited me points of 1.4, a score low enough to conclude that these stronger predictors of academic success were valued less than the GRE score. In other words, my GRE score was over-valued, while my three master's degrees and nine publications, including my book publication, were under-valued. And yet, the MCAD Investigator did not indicate in the Investigative Disposition how these other areas of my academic portfolio were weighed relative to the GRE score, and neither did he indicate that he had asked Attorney Fetouh how the MIT DUSP had weighed these other academic attributes more relevant to determining my potential for completing a doctorate program so that he would know how I was scored in these areas compared to the accepted doctorate students. The only information I received about these other applicants were examples of their achievements, such as 8 publications (though, Attorney Fetouh was unclear about whether the publications earned by this particular accepted doctorate student were co-authored or single-authored) and awards, the earning of one master's degree, professional experience, and interests that fell within the intersections of two MIT DUSP concentrations. These non-GRE achievements are pretty much equivalent to mine. As I had stated earlier, I have earned three graduate degrees, written two master's theses, single-authored nine publications (some of which I submit with this appeal letter as evidence), one of which was a book - my second master's thesis - earned an honorable mention for this master's thesis from a post-doctorate fellowship program (the Graduate Mellon Fellowship at the University of Minnesota, which I had included in my rebuttal letter with evidence), developed trainings as well as training materials, developed a business planning and development workshop, started a sole-proprietor urban planning consulting business through which I continue to bid on projects, served as a town planning advisor in sub-Saharan Africa, developed ideas for sustainability projects and written grants for them, and developed a professional certificate program intended to train employed community advocates to organize ideas for change through a focused planning methodology and through strategic planning. All of these academic and professional achievements are listed on my CV and can be verified online through my LinkedIn.com profile, which was provided on the online application and on my CV. And yet, the MIT DUSP faculty reviewers seemed to either ignore them or to choose not to see them, and then essentially deem these achievements irrelevant compared to the achievements of the accepted doctorate students. Again, they only awarded me a score of 1.4 despite these achievements, indicative of the biased position of the faculty reviewers.

Rather than clearly demonstrating the methodology employed to objectively measure each accepted doctorate student's achievement against mine, the MIT DUSP faculty used subjective language that failed to acknowledge and weigh the true value of the attributes of my academic portfolio. In her letter dated March 16, 2017, Attorney Fetouh included the comments from the faculty reviewers, which further revealed the subjectivity of their assessments. These comments are included with this appeal letter for your review. An example of this subjectivity is in the valuation of my statement of objective as having been "below average." However, this rating is not clarified by an explanation of what elements in

the statement of objective would constitute a below average ranking versus a good ranking. Another commented that my discussion about how the DUSP IDG is a right fit for me was poorly discussed. To the contrary, my statement of objective included the elements requested on the online application, specifically about how I came to planning, my current research interests, and why I want to do my doctorate degree at MIT DUSP. I essentially followed the structure of the guidelines. Because of the page limit request, and because I was applying as an outsider, not as someone with whom the MIT DUSP faculty was familiar, I had to incorporate my background (my influences), and also my previous PhD experience into my statement of objective. Because there are no professors in American planning departments who are studying, specifically, resilience theory, I opted to apply to planning departments in universities that employed professors who had interests along the same lines of adaptive capacity. I knew that MIT DUSP had engaged in projects on natural hazards in the Philippines, an area of research that has incorporated adaptive capacity, and I therefore felt that the academics involved in housing and social inequality research would be able to handle resilience theory. I specifically refrained from naming any one professor because there is always the possibility of departures for other opportunities and challenges. It was more important that the department had a breadth of professors, capable of effectively working with theory, who could take over in case of a departure. I know that I am not expected to name a definite supervisor until I complete the doctorate course work requirements and pass the comprehensive examinations.

Another stated that I was not a fit for them. In light of my interests in international development planning, social inequality, and sustainability, I am apparently a fit for MIT DUSP. As I had mentioned in my statement of objective, I wanted to explore the theoretical intersections of international development planning, socio-economic justice planning and sustainability, and these explorations can be easily accommodated by coursework. My proposed doctorate thesis likewise falls within these intersections.

Somewhat disturbing were the erroneous comments about my experience in New Zealand, where I had started a doctorate program, albeit had to leave because of abuse and discriminatory treatment from those supervisors. Though uploaded on my LinkedIn.com profile, I nevertheless include with this appeal letter for your verification the chapter milestones I had written while enrolled at both universities in order to pass and advance to the next stage. One faculty reviewer accused me of having been expelled from these schools, a comment attached to an allusion that MIT might have been sent false recommendation letters. I requested letters of recommendation from three former professors, who had given me good marks in my academic work when I was enrolled at my previous institutions in the United States. These individuals were Dr. Jon Goss, who was on my thesis committee and had contributed to my score of Satisfactory on my thesis (I published the two case studies from this thesis; one was published by Projections 8, the MIT student planning journal); Dr. Karen Umemoto, who had given me an A in the planning theory course she taught in the spring of 2001; Dr. Ralph Lutts, whose comments about my academic work can be found in my Goddard College transcript.

In another comment, I was accused of having been rejected from the University of Auckland, and was now angry about it. I was accepted by the University of Auckland and subsequently was dropped from the program without explanation even though I had completed the full research proposal as well as another chapter while enrolled there in order to satisfy my committee of two instructors. However, these two would not give me credit for either milestone. I include all of these documentations with this appeal for your review. These chapter milestone achievements are also uploaded on my professional LinkedIn.com profile.

Another comment was a judgment about my having been out of school for too long, a subjective observation that sounds like ageism. This individual, however, did not acknowledge that I had worked in the planning profession, did not consider the possibility of other reasons for my challenging job search, such as the recession that began in 2008, which forced me to look for and accept jobs for which I was overqualified (e.g. deck hand, farm laborer) in order to earn an income that I needed to pay for my school loans and other bills. This comment also failed to notice that I had started a sole proprietor urban planning consulting business as a response to the vacuum of jobs that resulted from the recession, and also due to a discriminatory urban planning labor market that hired individuals without a planning education, yet thought it fit to reject my applications for planning employment. This labor discrimination resulted in rejections from virtually all the planning jobs to which I had applied despite my credentials. This labor discrimination is evident in my checkered work history and is the reason I have a checkered work history. To compensate for the few jobs in planning that I have been offered, I chose to publish and have continued to do so in order to stay abreast of planning knowledge. I noticed that the faculty reviewers failed to notice this relationship in their assessment of my PhD application portfolio.

These subjective, erroneous comments do not clearly and objectively explain how I am the weaker candidate. The comments of "below average" are not followed by an objective standard that explains what "below average" constitutes. I would add that these comments do not disclose the amount of graduate training the accepted doctorate students had received relative to me or how many peer-reviewed articles and/or books these same students had published relative to me. Apart from pointing out that each accepted doctorate student had completed at least a master's degree in urban planning, there was no mention of additional graduate trainings received by the accepted doctorate students that would augment the depth and scope of their planning knowledge that would generally support innovative thinking. In terms of other attributes in my background, they were just about on par with those of the accepted doctorate students. I have reiterated these achievements mainly because they have been ignored. Yet, the MIT DUSP faculty reviewers maintained their view that I was the weaker candidate. Without clearly drawing an objective comparison between me and the accepted doctorate students in these areas of

academic achievements, the MIT DUSP professors do not objectively delineate how I am the weaker candidate.

Another observation I have made about these comments is that the credit given to the academic and scholastic achievements of the accepted doctorate students was not consistent with the way I was credited for the same achievements. As such, it defied objectivity. I was not appropriately credit for my academic preparation, scholastic achievements, and professional experience, and yet, MCAD Investigator Arocho did not indicate in the Investigative Disposition that he had enquired about these differences in crediting. Certainly, he asked for an explanation about how the scores were calculated, but he does not ask why I was not credited equally for my three graduate degrees and nine publications. Nor did he verify with me the accurateness of the assumptions made by the faculty reviewers about the University of Auckland and the expulsion and the rejection. Neither assumption is true and should have been fairly obvious since I had included the official transcripts with my application as was required. Instead, rather than seeing the pretext underlying these so-called non-discriminatory reasons, MCAD Investigator Arocho was content to simply agree with Attorney Fetouh's rationale. The discrimination in the comments from the MIT DUSP faculty is in the assumptions made about my experience in New Zealand, but failed to demonstrate that they had made any attempt to verify the truthfulness of these assumptions. Evidently, they had simply chosen to ignore the truth about my achievements; if they had bothered to read through my application, they would have seen that copies of official transcripts from both Massey University and the University of Auckland were included. I had also requested from both schools that they send official copies to MIT DUSP, directly. As the University of Auckland transcript reveals, I was not expelled and was not rejected. It also turned out to my detriment that the MIT DUSP faculty reviewers had failed to see the chapter milestones I had achieved while matriculating at both universities. I had met them all. If they had reviewed my LinkedIn.com profile, which I had included on my MIT DUSP doctoral online application as requested, they would have seen the chapters uploaded as projects under the title, "Doctoral Candidate," University of Auckland.

MCAD Investigator Arocho and Attorney Fetouh had stated that other applicants with publishing records were denied admission, but do not explain the reasons behind these denials. Similarly, my academic publications have been consistently under-valued and have been deemed irrelevant by the MIT DUSP faculty reviewers. In comparison, the publications and awards of the two accepted doctorate students mentioned in Attorney Fetouh's March 16, 2017 letter were. I noticed that both had graduate from MIT, and indicates that the legacy privilege more than likely gave them an edge over me and the others, who had also published, but were denied admission. Legacy, however, is not a constitutionally protected group. Though it might influence decisions, legally legacy is not a constitutionally protected right.

MCAD Investigator Arocho unquestioningly accepted another reason given by Attorney Fetouh to explain why I was denied admission: the fit of the department's concentrations and the faculty's intellectual and research interests with my cognitive and research interests. He classified this reason as non-discriminatory, but as I had explained in the early paragraphs of this appeal, I applied to MIT DUSP because of its offering in international development planning, and for the number of professors possessing interests in social inequality and sustainability. As such, the strengths of the MIT DUSP align very neatly with my research interests in poverty alleviation planning in the Philippines, in particular the social phenomena that create inequalities across regions, between people residing within regions, and other social inequality planning issues. My academic career goal is to conduct research on poverty alleviation in the Philippines, a developing country. I had explained these particular research and cognate stream interests in my statement of purpose, and therefore the faculty reviewing my application understood this quite well at the time of review. The fact that 40 professors comprised MIT DUSP was a plus for me, as I would be able to find at least three professors from the department, who could potentially serve on my PhD Committee. The fact that there is an alignment of my interest in poverty alleviation planning research and international development planning with the core emphasis of the department and topical interest of social inequality of several of the professors, and yet allusions are made to the viewpoint that there is little fit between my interests and the department's specialization and interest in inequality, it is equally clear that this so-called non-discriminatory reason is simply an excuse for denying me admission. Because it does not apply in my case, the viewpoint that the MIT DUSP is not a fit for my research interests, whether implied or otherwise, is thereby not a legitimate reason.

### Conclusion and Summary

In the letter from Attorney Fetouh dated March 16, 2017 and the Investigative Disposition from MCAD Investigator Arocho, reasons were provided to explain why I was denied admission from the doctorate program in Urban Studies and Planning by the MIT DUSP. Both individuals attempted to demonstrate that the reasons for this denial were based on non-discriminatory evidence. The reasons, however, while seemingly non-discriminatory, are filled with discrepancies and erroneous assumptions that it is difficult to not conclude that race discrimination was not the motivating factor, influenced by country and ethnic origin and race identity affiliation. I note here that Attorney Fetouh insisted that there is no affiliation between the accepted doctorate students and the MIT DUSP faculty, but when I viewed the faculty web pages in the fall semester 2015 and spring 2016, I recognized the countries represented in the among the faculty. I had also noticed that some had worked and/or conducted research in, specifically Brazil, Argentina, and South Korea. Since then, the pages have changed slightly. I noticed that among those currently employed, none were of Filipina-American heritage. Furthermore, my observation of doctorate students at MIT DUSP revealed no representation of Filipina-Americans. Though MIT DUSP may have enrolled Philippine students in the past, this number (eight) remains marginal in the history of MIT DUSP. Filipina-Americans remain under-represented.

When comparing my academic achievements to the accepted doctorate students, the comments made by the faculty reviewers consistently refused to credit me equally for what I had achieved both professionally and academically. Instead of objectively evaluating my scholastic and professional achievements by crediting me for the strengths in my academic preparation, experience, and scholastic achievements, the faculty reviewers only found more weaknesses. Many of these comments consisted of assumptions about my academic history that were not true. Furthermore, they vociferously emphasized the GRE score as being extremely important. As other scholars, who have researched the accuracy of the test's merits have put forth, this score is unreliable. If this score was supposed to convey my potential to complete graduate studies, how is it that I completed three master's degrees, produced nine publications, and received an accolade for a post-graduate fellowship? Yet another instance of discriminate treatment

In effect, in my case, the faculty reviewers failed to balance the more important elements in my application, which were more accurately indicative of my scholarly potential and potential for graduate school success, against the GRE score. They also failed to inject perspective into the GRE score by interpreting the scores in absolute, as opposed to relative, terms. In my case, they over-valued the GRE scores and under-valued the other academic and professional attributes. The evaluations resulted in comments that do not convey the true value of these achievements. Furthermore, they failed to see the significance of my having attained three master's degrees, an achievement that led to my being able to publish academic articles, some in peer-reviewed journals without a co-author. This academic and scholastic achievements indicate that I am on my way to becoming a scholar.

MCAD Investigators are supposed to be impartial. However, Investigator Arocho is equally guilty of being biased. His investigation has not verified the accuracy of comments, and has likewise failed to find merit in academic and scholastic accomplishments. As a result, his ruling was one-sided and simply parroted the viewpoints of the faculty reviewers.

I wish to reiterate where pretext is found: "based on (a) statistics, (b) comparators similarly situated, (c) written or oral statements indicating bias, or (d) just plain false reasons." The pretext of racial and gender discrimination is found in the continued under-representation of Filipina-American doctorate students and in the reasons for deeming me a weaker candidate that, although seemingly non-discriminatory, belie another truth. Pretext is also found in the erroneous comments about my academic capacities, and in the disparate way the faculty reviewers credited the other academic attributes in my application portfolio compared to the accepted doctorate students. It is found in the failure to see any merit at all in my application despite my achievements. Race and gender discrimination may not always be motivated by malicious intent; the motivation might be due to other reasons. However, when discriminate treatment is evident, and the impacted

individual is a member of a protected group, the end result is the same: discriminatory conduct that eliminates opportunities for the individual.

If you need me to submit additional documentation for verification or for other reasons, please do not hesitate to contact me.

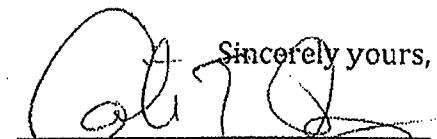
  
Sincerely yours,  
Camille Tuason Mata

Exhibit C  
Investigator Melvin Arrocho's ruling  
(“Arrocho Ruling”)

B030

**The Commonwealth of Massachusetts  
Commission Against Discrimination  
436 Dwight Street, Rm. 220, Springfield, MA 01103  
Phone: (413) 739-2145 Fax: (413) 784-1056**

**- DISMISSAL and NOTIFICATION of RIGHTS -**

To: Camille T Mata 184 Plumtree Road Sunderland, MA 01375	Case: Camille T Mata v. Massachusetts Institute of Technology MCAD Docket Number: 16SED02743 EEOC Number: Investigator: Melvin Arocho
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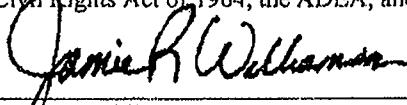
Your complaint has been dismissed for the following reasons:

- The facts alleged fail to state a claim under any of the statutes the Commission enforces.
- Respondent employs less than the required number of employees.
- Your complaint was not timely filed with the Commission, i.e. you waited too long after the date(s) of the alleged discrimination to file. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.
- You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conference, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your complaint. You have had more than 30 days in which to respond to our written request.
- The Commission's efforts to locate you have been unsuccessful. You have had at least 30 days in which to respond to a notice sent to your last known address.
- The Respondent has made a reasonable settlement, offering full relief for the harm you alleged. 30 days have expired since you received actual notice of this settlement offer.
- The Commission issues the following determination. Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes a violation of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.
- Other (briefly state)

**- NOTICE of APPEAL -**

If you wish to appeal the dismissal of your complaint and believe that the above stated reason for dismissal is incorrect, you may appeal to this Commission within 10 days after receipt of this notice. You or your attorney must make your appeal of the dismissal in writing to the appeals clerk of this Commission. Attention: Patty Woods.

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.

  
\_\_\_\_\_  
Jamie R. Williamson  
Investigating Commissioner

\_\_\_\_\_  
Date

5/31/17

## INVESTIGATIVE DISPOSITION

Case Name: Camille T Mata v. Massachusetts Institute of Technology  
 MCAD Docket No.: 16SED02743  
 EEOC Docket No.: N/A  
 No. of Employees: N/A  
 Investigator: Melvin Arocho, Compliance Officer  
 Recommendation: **Lack of Probable Cause**

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Introduction

On September 8, 2016, Complainant filed a complaint with this Commission against Respondent alleging discrimination based on race/color (Filipina) and sex (female) in violation of M.G.L. Chapter 151C.

Complainant's Allegations

Complainant alleges the following. On March 8, 2016, Complainant received the outcome of her application to the doctorate program in City and Regional Planning at Respondent. The letter was a rejection of her application. Complainant believes that race and gender played a role in the admission committee's decision to not admit Complainant.

Complainant alleges she was qualified and that she would contribute to the diversity at Respondent.

Respondent's Position

Respondent asserts the following. Respondent is a co-educational, privately endowed research university located in Cambridge, Massachusetts. Complainant applied for admission to the doctoral program at Respondent's Department of Urban Studies and Planning ("DUSP"). DUSP is a department within Respondent's School of Architecture and Planning that was founded over eighty years ago. With forty faculty members (including lecturers), DUSP has the largest urban planning faculty in the United States. DUSP has been ranked No. 1 in the United States and Canada by the Planetizen Guide to Graduate Urban Planning Programs. DUSP is comprised of four specialization areas, also referred to as Program Groups, including City Design and Development; Environmental Policy and Planning; Housing, Community and Economic Development; and International Development Group; as well as three cross-cutting areas of study. Complainant was seeking admission to work with the International Development Group ("IDG") of DUSP. IDG is the longest standing and largest program within a United States planning school devoted to graduate study and research in subjects specific to the developing world. Approximately one-quarter of Master's students entering DUSP each year choose the IDG specialization, as do approximately one-third of the entering Ph.D. students. The IDG program is ranked No. 1 in the country among planning programs that include a focus on international development. As DUSP notes on its website, the diversity of its student body is an important aspect of the program: "One especially unique value of our student body is its diversity. Respondent attracts students from a wide range of national, international, and ethnic/cultural origins and a variety of professional backgrounds in all our programs. The

diversity within our student body is expressed in the breadth of interest and research areas of our students." That diversity is also reflected in DUSP's faculty, which includes individuals from a variety of backgrounds.

Admission to the doctoral program of DUSP is highly competitive. As a prestigious, highly selective institution, Respondent, and DUSP specifically, receives many more highly qualified applicants than it can accept. Once the applications have been submitted, DUSP conducts its review in two stages. First, each application is reviewed by four to six full-time faculty members from the program group to which the applicant applied. As part of this process, the reviewers assess a variety of factors for admission and provide an overall score for the application. Although applicants are not admitted strictly based on the numeric score, the scores provide an indicator of an applicant's relative strengths. The score is on a scale of one to five, with a score of five being the highest score an applicant can receive. After they have read the applications and provided their scores, the faculty members meet as a group and decide who to put forward to the second round. Those applications that are put forward for review by the program groups are then reviewed by the DUSP Ph.D. Admissions Committee, a committee consisting of faculty members from each of the program groups. That committee reviews the applications that have been advanced from the first round and makes the final decisions on offering admission. The applications that are not among the ones put forward from the first round are not typically reviewed by the Ph.D. Admissions Committee.

The criteria for selection are varied but are designed to select applicants who will be successful in the department. Applicants must have strong academic records, field experience, and nearly all successful applicants have previously completed at least one master's degree. Emphasis is placed on "academic preparation, professional experience, and the fit between the student's research interests and the department's research activities." A program group will only admit a doctoral candidate if the candidate's "interests match that of a faculty member." Respondent generally, and DUSP specifically, is committed to diversity and equal opportunity in its admissions process. Because of the large number of very highly qualified applicants and the limited number of spaces in the DUSP doctoral program, many highly qualified applicants are not offered admission each year.

The figures for the subset that enrolled in the IDG program group highlight this diversity. Of the six candidates who were offered admission, four are women, resulting in a group that is two-thirds female. In addition, the six candidates include a broad range of ethnicities, including individuals from Egypt, Argentina, Brazil, and Germany, and an American who identifies as both Caucasian and Asian.

Complainant's application for this highly-competitive program was simply weaker than other applications. Complainant's application was independently reviewed by five faculty reviewers, all of whom individually ranked Complainant's application on DUSP's five-point scale. In each case, her reviewers assigned her a score of just a one or two. Her average score was 1.4 out of 5. In other words, her reviewers were consistent. They each

believed that Complainant's application deserved one of the lowest two scores they could assign.

A comparison of Complainant's GRE scores to those of the admitted students is telling. Complainant's GRE scores fell well below those of the six admitted students:

GRE Section	6 Admitted Students (Average)	Complainant
Verbal	89 <sup>th</sup> percentile	71 <sup>st</sup> percentile
Quantitative	77 <sup>th</sup> percentile	10 <sup>th</sup> percentile
Analytical	4.75/6	4/6

Moreover, one of the principal criteria for admission, which is fully disclosed on DUSP's website, is a fit between the candidate's interests and that of a faculty member. Here, the IDG faculty did not see a fit between Complainant's interests and their own. DUSP looks for that fit for the benefit of the candidates. Success in the Ph.D. program is challenging in the absence of that level of connection.

Complainant points in her Complaint to her publications and master's degrees as support for her candidacy. But DUSP regularly denies admission to applicants with a strong record of publication. And almost all candidates have at least one master's degree, including all of those admitted in 2016. Indeed, DUSP discourages candidates from applying if they do not have a master's degree.

Consistent with its process, Respondent thoroughly and fairly considered Complainant's application. Respondent's decision not to extend her an offer of admission was not based on her race, gender, or ethnicity. Although Complainant has admirable experience, her application simply did not match the strength of other applications.

#### Summary of Investigation and Analysis

Complainant alleges that she was subjected to discrimination based on her race/color and sex. Respondent denies the allegations.

#### *Education – Admission*

In order to establish a *prima facie* case of discrimination in education, Complainant must show that she is a member of a protected class, who met the educational qualifications for the program, that she was refused admission to the program, and that similarly situated persons not of her protected class were admitted to the program. If Complainant establishes the *prima facie* case, Respondent may show that legitimate, nondiscriminatory reasons exist for the refusal to admit Complainant. If Respondent succeeds in offering such reasons, Complainant must then show that Respondent's reasons are pretextual.

Complainant is a member of a protected class because of her race/color and sex. Complainant alleges she met the educational qualifications for the program. Complainant

was refused admission to the program and she alleges similarly situated person not of her protected class were admitted to the program.

Even if Complainant had established the *prima facie* case, Respondent provided legitimate non-discriminatory reasons for the actions taken and there is insufficient evidence of pretext. The evidence shows that for fall 2016, the group of candidates who were offered admission to DUSP are incredibly diverse in sex, ethnicity, and race. Of the six candidates who were offered admission, four (4) are women, and these four women come from many diverse backgrounds. The evidence shows that the six candidates who were offered admission represent a wide range of ethnicities, including individuals from Egypt, Argentina, Brazil, and Germany and an American who identifies as Asian and Caucasian.

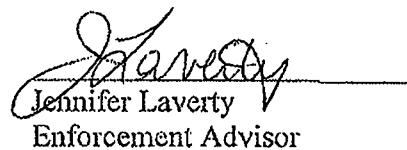
The evidence shows that the six applicants granted admission to the IDG side of the doctoral program had an average score of 4.37 out of the 5 point scale whereas Complainant scored a 1.4. The evidence shows that Complainant was not competitive when compared to the other applicants. Complainant's score of 1.4 placed her near the bottom of the 31 applicants to the IDG. Additionally, the evidence further shows that Complainant's interest was not a fit to that of any faculty member. The investigation revealed that Respondent looks for that fit for the benefit of the candidates and that it is one of the principal criteria for admission. Furthermore the evidence shows Complainant scored in the 71<sup>st</sup> percentile in verbal, in the 10<sup>th</sup> percentile on quantitative, and 4/6 in analytical on the GRE, while the successful students scored an average in the 89<sup>th</sup> percentile in verbal, 77<sup>th</sup> percentile on quantitative, and 4.75/6 in analytical on the GRE. Additionally, the evidence shows that Respondent has a diverse group of students. Given all the above, there is insufficient evidence that Respondent committed an unlawful practice.

#### Conclusion

A finding of Lack of Probable Cause is recommended as to Complainant's claims of discrimination based on race/color and sex against Massachusetts Institute of Technology.



Melvin Arocho  
Investigator



Jennifer Lavery  
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.

Janie R. Williamson

Janie R. Williamson  
Investigating Commissioner

5/31/17  
Date

Cc:

Dahlia S. Fetouh, Esquire  
Massachusetts Institute of Technology  
77 Massachusetts Avenue  
Cambridge, MA 02139

B039

Exhibit D

DUNS Number confirmation

B040

## BUSINESS CREDIT NOTIFICATION

D&amp;B D-U-N-S® NUMBER: 83-272-6033

Camille Tuason Mata  
 The Ecoplanning Institute  
 184 Plumtree Rd  
 Sunderland, MA 01375-9470



A D&B® customer  
 has requested your  
 business credit file.<sup>1</sup>

Please call 1-844-674-0289  
 today to learn more.

Dear Camille Tuason Mata,  
 Re: D&B D-U-N-S® Number 83-272-6033 for The Ecoplanning Institute

**Important notice:** *A D&B customer has requested your business credit file.*

As part of our business services, we routinely review the profiles of companies like yours to assist them in accurately reporting and managing their business credit file. According to our records, a D&B customer has requested your business credit file. When potential partners look at your profile, it may mean that decisions are being made about working with you.

**Action requested:** *Contact us today to learn more about this inquiry<sup>2</sup> and review your profile.*

Call a Dun & Bradstreet Credit Advisor<sup>2</sup> at 1-844-674-0289, Monday-Friday, 8 AM-9 PM EST.  
 Please reference your company's D&B D-U-N-S Number: 83-272-6033.

Many companies, banks, government agencies—even current and potential business partners—may be using information in your D&B credit file to help make decisions about doing business with you. Having a complete and well-managed D&B credit profile may help you:

- Show your company's financial health in the best possible light
- Negotiate better payment terms with suppliers
- Qualify for better insurance premiums and mortgage rates

Contact us today to learn more about this inquiry.

Sincerely,

Jennifer Bradford  
 Senior Credit Advisor  
 Dun & Bradstreet

P.S. Call 1-844-674-0289 today to learn more about what a credit inquiry might mean for your business.

<sup>1</sup> Inquiry or Inquiries are the number of individual request(s) for information, which may include but is not limited to credit information, by a unique external customer(s) on a D&B D-U-N-S® Number in a rolling one-year (365-days) time period. More than one inquiry can be made by each unique Dun & Bradstreet customer, which would indicate that some customers have inquired on such D-U-N-S Number multiple times and may be monitoring the associated business.

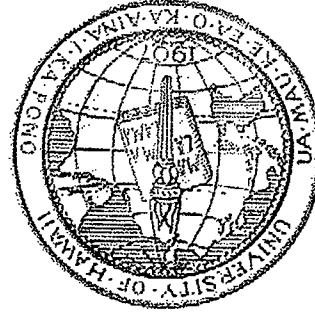
<sup>2</sup> The information and advice provided by Dun & Bradstreet and its Credit Advisors during business credit counseling sessions are provided "as-is." Dun & Bradstreet makes no representations or warranties, express or implied, with respect to such information and the results of the use of such information, including but not limited to implied warranty of merchantability and fitness for a particular purpose. Neither Dun & Bradstreet nor any of its parents, subsidiaries, affiliates or their respective partners, officers, directors, employees or agents shall be held liable for any damages, whether direct, indirect, incidental, special or consequential, including but not limited to lost revenues or lost profits, arising from or in connection with a business's use of or reliance on the information or advice given during any counseling session.

B042

Exhibit E

Testamurs

Chairperson, Board of Regents  
Chairperson



Chairperson, Board of Regents  
President  
President

Given at Honolulu, Hawaii, this thirtieth day of August,  
with all the privileges and obligations  
to a thourand four

**The Minister of Education and Religious Affairs**  
the Minister of Education and Religious Affairs  
have countersigned upon  
**The Ministry of Education at Honolulu**  
on the recommendation of the Faculty at  
**The Ministry of Education at Honolulu**  
the Regent's of

# GODDARD COLLEGE

IN RECOGNITION OF THE SUCCESSFUL COMPLETION  
OF A PROGRAM OF STUDIES IN

Liberal Arts

with concentration in

Environmental Studies

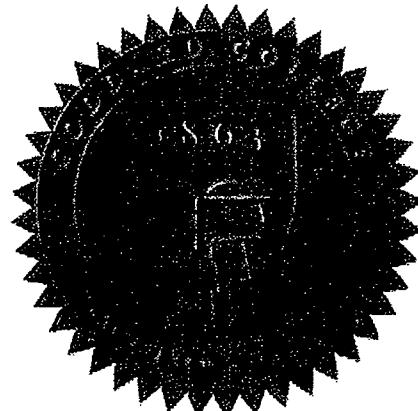
IT IS HEREBY CERTIFIED THAT

Camille Mata

HAS COMPLETED ALL THE REQUIREMENTS FOR THE DEGREE

MASTER OF ARTS

AND IS ACCORDINGLY GRANTED THAT DEGREE  
WITH ALL THE HONORS, RIGHTS, AND  
PRIVILEGES WHICH IT CARRIES.



In testimony to which the seal of the College and the signatures as authorized  
by the Board of Trustees are hereunto affixed. Done at Plainfield, Vermont,  
this 9th day of August, in the year 2009.

Brian Farmer  
PROGRAM DIRECTOR

Mark A. Mata  
PRESIDENT

# UNIVERSITY OF MASSACHUSETTS



The Board of Trustees, in accordance with the recommendation  
of the President of the University  
and of the Chancellor and Faculty  
of the University of Massachusetts at Amherst,  
hereby confers upon

**Camille U. Mata**

the Degree of  
**Bachelor of Arts**

in consideration of the satisfactory completion of the Course of Study  
prescribed for that Degree.

Given at Amherst

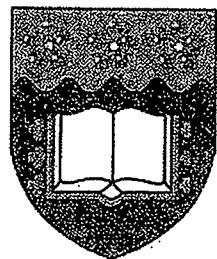
May 24, 1992

*R. D. Jeffreys*  
CHANCELLOR, AMHERST CAMPUS

*Ernest J. T. Johnson*  
PRESIDENT OF THE UNIVERSITY

*Jordan T. Cohen, Jr.*  
CHAIR, BOARD OF TRUSTEES

# University of Wollongong



Camille Tuason Mata

has this day been admitted by the Council to the Degree of

Master of Social Change and Development  
with Distinction

The Common Seal of the University was affixed hereto on

5 August 2002

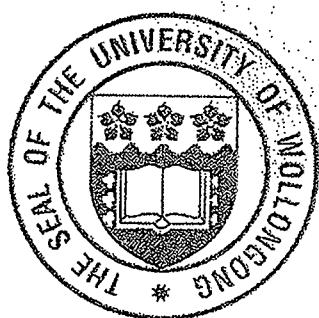
in the pursuance of a Resolution of the Council as witness the hands of

*M. Codd*

Chancellor

*David Price*

Vice-Principal (Administration)



in whose presence the seal was affixed.

B052

Exhibit F

Curriculum Vita ("CV")

B054

## CAMILLE TUASON MATA

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D.O.B: 01 October, 1969 in Laoag City, Philippines

Marital Status: Single

Nationality: American

Address: 184 Plumtree Road, Sunderland, MA. 01375, USA

Telephone: +011 (718) 362-7646

Email: camille.mata69@gmail.com

Professional profile: <http://www.nz.linkedin.com/in/camilletuasonmata>

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### Career Summary

Through my diverse professional background and proven cross-cultural capabilities, I am able to harness a variety of skills to assume a variety of tasks and responsibilities in urban planning and research projects. I have demonstrated these multiple capacities in the management and planning of projects in a global context. I have also been recognized for my research acumen and scholarly potential.

---

### Education

**Goddard College**

**2008 - 2009**

**Master of Liberal Arts (Environmental Studies)**

Thesis: "Marginalizing Access to the Sustainable Food System: Oakland's Minority Districts."

**University of Hawaii**

**2000 - 2004**

**Master of Urban and Regional Planning (Community and Social Planning)**

Thesis: "Ascertaining Food Security in Two Mindanao Peri-Urban Communities: Conducting a Situation Analysis."

**University of Wollongong**

**2001 - 2002**

**Master of Social Change and Development (International Development)**

Centre for Asia Pacific Social Transformations (CAPSTRANS)

**University of Massachusetts**

**1988 - 1992**

**Bachelor of Political Science (International Relations)**

Practicum Project: The Massachusetts Healthcare Bill.

---

### Professional Employment

**Principal Consultant**

**Sept. 2009 - March 2015**

The ECOPlanning Institute (Owner)

- Planned, designed, and wrote business plan to emphasize engagement of sustainable planning with historical preservation, community-based economies, ecological landscapes, and food systems;
- Acquired international exposure through online marketing utilizing social media networks;
- Developed variety of transferable skills related to urban planning and business development, ranging from business marketing through social media and traditional advertising, collaboration, project development and program management.

**Doctoral Candidate**

**Provisional year, July 2013 - Dec. 2014**

University of Auckland, New Zealand

- Achieved draft chapter milestones of provisional year in 14 months to advance doctorate thesis to

- fieldwork phase;
- Designed the methodology and research objective based on research gaps discerned from conducting comprehensive review of resilience theory literature;
- Completed application for human ethics approval in compliance with the regulations and standards of University of Auckland Human Ethics Committee;
- Developed core set of research management skills critical to managing complex body of knowledge.

**Town Planning Advisor****Feb. 2011 - Feb. 2012**

CUSO International/Chipata Municipal Council, Zambia

- Achieved milestones of volunteer program to steer Chipata District towards integrated planning;
- Wrote local and sectoral plans addressing critical areas in Chipata District to hone independent planning capacities of town planners;
- Trained town planners on needed skills useful to urban planning profession;
- Honed multiple skills integral to urban and regional planning, specifically professional training, public presentation, and large-scale urban planning management.

**Contributing Writer****Sept. 2010 - Oct. 2012**

Suite101.com

- Wrote online articles that discussed informative topics, which included local foods, urban planning, politics, and travel;
- Honed social media communication skills through writing for the public domain.

**Staff Writer****Mar. 2010 - Dec. 2010**

Western Massachusetts Women's Magazine

- Wrote articles about social issues affecting women of Massachusetts;
- Honed communication skills through media writing.

**Instructor (Workshop)****Aug. 15, 2009**

Goddard College

- Developed contents of 2-hour workshop ("Planning and Writing your Business Plan");
- Informed about the business planning process and key elements of a business plan;
- Developed instructional capacities in higher education environment.

**Environmental Justice Coordinator****July 2007 - July 2008**

Mary Queen of Viet Nam Community Development Coordinator

- Wrote programs and plans that addressed environmental problems in low-income, ethnic neighbourhood;
- Developed collaboration skills with multiple stakeholders in a natural hazards rebuilding context;
- Informed multiple stakeholders about neighbourhood rebuilding efforts in conference setting ("Race, Place, and Environment Conference");
- Honed capabilities in project management, problem assessment and planning, and environmental monitoring.

**Intern, Land-banking Researcher****Apr. 2006 - June 2006**

San Francisco Neighborhood Parks Council

- Completed a special project for then-Executive Director that studied land-banking policies of cities similar to San Francisco in ethnic demographic, population density, and urbanization;
- Acquired new knowledge about land-banking and its significance to protecting green, park spaces in congested, urbanized cities.

**Intern, Sustainability Coordinator****Jan. 2006 - Mar. 2006**

Thimmakka's Resources

- Applied my research and planning skills to exploring the possibility of creating a farm-to-restaurant production-retail chain by connecting Bay Area farmers to ethnic restaurant partners of Thimakka's

**Resources:**

- Wrote a City of Oakland Community Grant to initiate a pilot project that connects a local bio-diesel facility to collecting oil waste produced by ethnic restaurant partners of Thimmakka's Resources.

---

## **Scholarship/Prize**

### **Visiting Scholar**

**Oct. 2010 – Oct. 2010**

University of Minnesota Graduate Melon Fellowship (Environment, Culture, and Sustainability)

- Presented findings of research, which studied the marginalization of minority communities from the sustainable food system of the California Bay Area.

### **SBES Preview Scholarship for Talented Minorities**

**Oct. 2007**

National Science Foundation (NSF)

- Previewed the graduate program in urban and regional planning at the University of Michigan.

### **Graduate Research Assistant**

**Sept. 2002 - May 2003**

University of Hawaii, Department of Urban and Regional Planning

- Acquired insight on the multiple dimensions and skills of urban planning in a real world context;
- Assisted professor with the various tasks of practicum;
- Acquired deeper understanding of the collaborative nature of professional planning.

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## **Skills Summary**

**Computer Skills:** MS Excel, MS Word, MS PowerPoint, MS Publisher; ESRI ArcGIS; SPSS; Qualtrix.

**Foreign Languages:** Tagalog; Conversational Japanese; Basic German.

**Urban planning skills:** Comprehensive planning; communication and public presentation; community research engagement and management; collaboration and partnership-building; project management and program development; research planning and management.

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## **Career Goals**

*To obtain a post-doctorate or tenure track assistant professor of urban and regional planning position at a higher education institution that has a track record of research success.*

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## **Professional Affiliations**

*SMART Planning*

*The Planner's Network, the community of progressive planners*

---

## **Publications**

Tuason Mata, C. "Beyond Border Control: An Urban Planner's Reflections on Immigration Reform." Submitted to the International Journal of Urban and Regional Research on 9 November, 2015.

Tuason Mata, C. *Marginalizing Access to the Sustainable Food System: Examining Oakland's Minority Districts*, New Jersey: University Press of America (2013).

Tuason Mata, C., "In the Lower Ninth Ward, Repatriation Requires More than Sustainable Design". *Practicing Planner*, Volume 8, No. 4 (December 2010). <http://www.planning.org/practicingplanner/>

Tuason Mata, C. "Learning from Environmental Justice in Viet Village Versai in New Orleans". *GeoJournal*, Springer Publications, 77.2 (2012): 249-64.  
<http://www.springerlink.com/content/102895/?Content+Status=Accepted>.

Tuason Mata, C. "Beyond Land Reform to Achieve Rural Community Development: the Case of the San Jose Agrarian Municipal Cooperative in the Philippines", Cambridge: Massachusetts Institute of Technology, *Projections* 8 (2008):50-69.

Tuason Mata, C. "Examining Problems with Implementing the German Allotment Garden Model: Learning from Bugo Barangay (Cagayan de Oro, Philippines)". University of Texas, Austin: *Planning Forum Journal* 12 (2006):81-102.

Tuason Mata, C. "Bringing Soul Back to Wai'anae: the Mala'Ai'Opio Farm". *Urban Agriculture Magazine* 15 (2005):30-31.

Tuason Mata, C. "Following up on June Manning Thomas: Assessing the Obstacles to PhD Programs for People of Color". *Progressive Planners Magazine*: A Publication of the Planners Network, 163 (2005).

Tuason Mata, C. Book review, Fold, Neil and Bill Pritchard, Editors (2005). *Cross-Cultural Food Chains*. Routledge Studies in Human Geography. Abingdon and New York: Routledge Press. *Regional Studies* 40.1 (2006): 135-41.

Tuason Mata, C. Book review, Fricke, Werner and Peter Totterdill (2004). *Action Research in Workplace Innovation and Regional Development*. Amsterdam: John Benjamins Publishing Company. *Regional Studies* 39.5 (2005): 669-677.

## Personal Interests and Hobbies

- Experiencing different cultures through the expatriate lifestyle, going to museums, touring architectural relics, attending cultural events;
- Gardening, organic farming, wine tasting, hiking, long walks, biking, reading and writing;
- Playing the flute, going to classical concerts, watching movies.

Exhibit G

MIT Decision E-mail

B060



Camille Tuason Mata &lt;camille.mata69@gmail.com&gt;

---

**DUSP Admissions**

1 message

---

**duspapply@mit.edu <duspapply@mit.edu>**  
To: camille.mata69@gmail.com

Tue, Mar 8, 2016 at 10:58 AM

Dear Camille Mata:

I am sorry to inform you that we are unable to offer you admission to MIT in the Department of Urban Studies and Planning.

The number of applicants for admission to the Graduate School greatly exceeds the number that can be accommodated and it has been necessary to refuse admission to some fine applicants.

We appreciate your interest in MIT and sincerely hope you will continue with your professional studies elsewhere.

Sincerely,  
Sandra Wellford

Exhibit H

Plaintiff Complaint Letter

(\*\* This version is a modification of the original letter. The reason for the slight changes in wording is because the plaintiff had written a complaint letter to MCAD regarding another doctorate program at a different higher education institution. For that initial complaint, she used the MIT complaint letter as the template, albeit changing the names and specializations of professors who could supervise her and according to similar interests. Unfortunately, while she saved this second complaint letter under the university's name, she did not save the initial MIT complaint letter as a separate document.)

B064

Camille Tuason Mata  
184 Plumtree Road  
Sunderland, MA. 01375  
E-mail: camille.mata69@gmail.com

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6 September, 2016

Massachusetts Commission Against Discrimination  
436 Dwight Street, Room 220  
Springfield, MA. 01103  
Phone: (413) 739-2145  
Fax: (413) 784-1056  
E-mail: assistanttochairman@state.ma.us

**RE: Discrimination Complaint against Massachusetts Institute of Technology under the Civil Rights and Education (Affirmative Action, Title IX, and Civil Rights Act Title VI).**

Dear Massachusetts Commission against Discrimination (MCAD):

On 8 March, 2016, I received the decision regarding my application to the PhD program in Urban Studies and Planning at the Massachusetts Institute of Technology, informing me that the department could not offer me a place in the incoming cohort in fall semester 2016.

I am accusing the Department of Urban Studies and Planning of discrimination because I do not feel that the decision was based on merit, but on race and gender identity and is, therefore, a violation of the Massachusetts Affirmative Action, the 14<sup>th</sup> Amendment equal protection (against discrimination) clause, and the Civil Rights Act Title VI and Title IX. The strength of my case is predicated on the assumption underlying the admissions process that meritocracy plays a stronger role in determining who to admit. Specifically, I want to challenge the criteria used to evaluate the merits of individual applicants by the MIT Department of Urban Studies and Planning for a place in the doctorate program. In this regard, I believe the “peremptory challenge” can be invoked, which will force the admissions committee to delineate the technical reasons for rejection.

Firstly, I should give you some information about my credentials and other attributes (my publishing record, work experiences, age, financial status, and age) that would put me in a good position for acceptance into any competitive, urban planning doctorate program and for a scholarship. I will also give my reasons for applying to the MIT Department of Urban Studies and Planning. I am a 46 year old woman, who has earned three master’s degrees. Two of these master’s degrees give me the qualification to do research on topics concerning urban planning and international development. My third master’s degree in the liberal arts (with an environmental studies concentration) allowed me to specialize even further in food systems. This area of specialization is directly connected to my proposed doctorate thesis. Also supporting my credentials is my publishing record, a rather unusual accomplishment for a doctorate applicant. I have published a book (an outcome of my second master’s thesis), several articles (at least one of which is peer reviewed), and two book reviews.

My GRE scores from the test I sat on 13 November, 2015 were a 297 (combined) out of 340. This score has a value of 87.5 percent out of 100. My analytical writing score was on the low side (a 4 out of 6), but my publications demonstrate that when given the opportunity to proofread and write under better time-management conditions, I am able to produce scholastic work.

My non-quantitative attributes apart from my race and gender that would contribute to diversity (and would enhance my application) are my age, work experience, cross-cultural experiences, and my low-income background. Like most immigrant families, mine had to weather the impacts of a low salary. These attributes were revealed in my statement of objective and personal statement.

Earning a doctorate degree would enable me to compete for tenure-track academic career jobs. Without one, I would not be a consideration. I should note here that my decision to pursue a doctorate degree was propelled in part by the employment doors having remained virtually closed, which has put me in a financially difficult situation. The paucity of employment opportunities has partly propelled my decision to return to school and earn my doctorate degree. I should also add that I have had to re-apply to doctoral programs in the United States due to the abuse I had experienced in New Zealand. I would not have been in the application process again had the universities in New Zealand followed the professional standards prescribed by university policy and government laws.

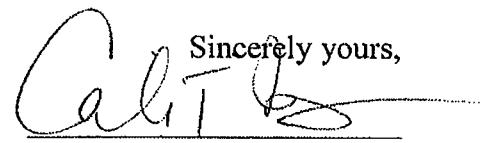
I selected the MIT Department of Urban Studies and Planning because it possesses attributes that sets it apart from other departments around the country. It has a concentration in international development planning and emphasizes research on social inequality, my core research interests in the urban planning discipline. This interest was propelled by my early influences in the Philippines and Papua New Guinea. After viewing the professors' specialty in the department, there were several who also had interests in researching social inequality in developing countries.

I have researched cases that have challenged affirmative action. One lawsuit against the University of Texas used the 14<sup>th</sup> Amendment (equal protection), and the plaintiff won (Hopwood v. Texas 1996). This same Amendment can be used in my case, but in contrast to this University of Texas lawsuit, mine will prove that meritocracy does not play as strong of a role as perceived in the selection of doctorate applicants at MIT Department of Urban Studies and Planning, thus violating Affirmative Action, Title VI and IX, and the 14<sup>th</sup> Amendment. This fact is indicated by the failure of the admissions committee to take seriously the merits of my application. I would argue that race and gender played a much stronger role in the admission committee's decision to not admit me. In the light of the paucity of Filipina American (combining race and gender) representation among the planning faculty and among the doctoral planning students at MIT Department of Urban Studies and Planning, race and gender continue to play a stronger role in determining the hiring of faculty and admitting doctorate students. Despite MIT's seeming support of affirmative action, meritocracy has continued to be subordinated to identity, indicating that persons who look like me continue to be less desirable.

It is difficult to convey to you the magnitude of the impact this recent setback has on my life. Despite my credentials, I have many times been forced to accept minimum wage jobs. Despite

my publications, which give evidence of my research training, I have been shut out of jobs requiring skilled researchers. At this juncture, I see few choices alternative to pursuing the doctorate degree.

Thank you and I look forward to your reply.

  
Sincerely yours,  
Camille Tuason Mata

B068

Exhibit I  
MIT DUSP Response

B070

Massachusetts Institute of Technology

Dahlia Fetouh  
Counsel77 Massachusetts Avenue  
Cambridge, Massachusetts  
02139-4307Office of the General Counsel  
Building 10-370Phone 617-715-4220  
Fax 617-258-0267  
Email dfetouh@mit.eduVia Email (sprpositionstmts@state.ma.us) and First Class Mail

November 28, 2016

Carol Murchinson  
 First Assistant Clerk to the Commission  
 Massachusetts Commission Against Discrimination  
 436 Dwight Street, Room 220  
 Springfield, MA 01103

Re: *Camille T. Mata v. Massachusetts Institute of Technology*  
MCAD Docket No. 16-SED-02743

Dear Ms. Murchinson:



Please accept the following as the position statement of Respondent Massachusetts Institute of Technology ("MIT" or the "Institute") in response to the above-referenced complaint of discrimination filed by Camille T. Mata. In her complaint, Ms. Mata alleges that she was subjected to discrimination based on her race, color, and sex by MIT's decision not to grant her admission to the doctoral program of MIT's Department of Urban Studies and Planning ("DUSP") for the fall of 2016.

MIT unequivocally denies that Ms. Mata has been subjected to discrimination in connection with its decision not to offer Ms. Mata a position in the DUSP doctoral program. To the contrary, that decision was based on legitimate, non-discriminatory factors after an individualized review of her complete application. MIT and DUSP are committed to diversity and equal opportunity in education. That commitment is reflected in the diversity of the students DUSP accepted into its doctoral program for the fall of 2016. Ms. Mata's application was simply not as strong as those of the individuals offered acceptance into this highly-selective graduate program.

Because Ms. Mata's complaint is entirely without merit, we respectfully request that the Commission issue a finding of no probable cause and promptly dismiss the case.

## I. Factual Background

### A. The Massachusetts Institute of Technology

MIT is a co-educational, privately endowed research university located in Cambridge, Massachusetts, dedicated to advancing knowledge and educating students in engineering, science, technology, and other areas of scholarship that will best serve the nation and the world in the 21<sup>st</sup> century. MIT employs over 1,000 faculty members and approximately 10,500 other researchers, administrators and support staff. More than 10,000 students are enrolled in MIT's undergraduate and graduate programs during any given academic year.

Carol Murchinson  
November 28, 2016  
Page 2

MIT is committed to the principle of equal opportunity in education and employment, and to creating an environment free of discrimination. MIT's Policies and Procedures include a nondiscrimination policy. A copy of MIT's Nondiscrimination Policy is included as *Exhibit A*.

**B. MIT's Department of Urban Studies and Planning**

Ms. Mata applied for admission to the doctoral program at MIT's Department of Urban Studies and Planning ("DUSP"). DUSP is a department within MIT's School of Architecture and Planning that was founded over eighty years ago. With forty faculty members (including lecturers), DUSP has the largest urban planning faculty in the United States. DUSP has been ranked No. 1 in the United States and Canada by the Planetizen Guide to Graduate Urban Planning Programs. Relevant excerpts from the DUSP website, *dusp.mit.edu*, are included as *Exhibit B*.

DUSP is comprised of four specialization areas, also referred to as Program Groups, including City Design and Development; Environmental Policy and Planning; Housing, Community and Economic Development; and International Development Group; as well as three cross-cutting areas of study. Ms. Mata was seeking admission to work with the International Development Group ("IDG") of DUSP. IDG is the longest standing and largest program within a United States planning school devoted to graduate study and research in subjects specific to the developing world. Approximately one-quarter of Master's students entering DUSP each year choose the IDG specialization, as do approximately one-third of the entering Ph.D. students. The IDG program is ranked No. 1 in the country among planning programs that include a focus on international development.

As DUSP notes on its website, the diversity of its student body is an important aspect of the program: "One especially unique value of our student body is its diversity. We attract students from a wide range of national, international, and ethnic/cultural origins and a variety of professional backgrounds in all our programs. The diversity within our student body is expressed in the breadth of interest and research areas of our students." See *Exhibit B*. That diversity is also reflected in DUSP's faculty, which includes individuals from a variety of backgrounds.

**C. Admission Process for the Doctoral Program at DUSP**

Admission to the doctoral program of DUSP is highly competitive. As a prestigious, highly selective institution, MIT, and DUSP specifically, receives many more highly qualified applicants than it can accept. Indeed, in previous years, DUSP accepted approximately 10-12 doctoral candidates from an applicant pool of approximately 125. *Id.* In the year Ms. Mata applied, DUSP offered admission to 18 doctoral candidates out of 106 applications. The slightly higher number of applicants offered admission reflects an increase in available funding.

Each applicant submits his or her application electronically. The application must include a statement of objectives, financial statement, resume or CV, three letters of recommendation, official and scanned transcripts, official and scanned GRE scores, and official and scanned TOEFL or IELTS scores for applicants whose native language is not English.

Once the applications have been submitted, DUSP conducts its review in two stages. First, each application is reviewed by four to six full-time faculty members from the program

Carol Murchinson  
November 28, 2016  
Page 3

group to which the applicant applied. Those faculty members review the applications to determine whether they would recommend the applicant for admission or waitlist to the program. As part of this process, the reviewers assess a variety of factors for admission and provide an overall score for the application. Although applicants are not admitted strictly based on the numeric score, the scores provide an indicator of an applicant's relative strengths. The score is on a scale of one to five, with a score of five being the highest score an applicant can receive. After they have read the applications and provided their scores, the faculty members meet as a group and decide who to put forward to the second round.

Those applications that are put forward for review by the program groups are then reviewed by the DUSP Ph.D. Admissions Committee, a committee consisting of faculty members from each of the program groups. That committee reviews the applications that have been advanced from the first round and makes the final decisions on offering admission. The applications that are not among the ones put forward from the first round are not typically reviewed by the Ph.D. Admissions Committee.

The criteria for selection are varied but are designed to select applicants who will be successful in the department. Applicants must have strong academic records, field experience, and nearly all successful applicants have previously completed at least one master's degree. Emphasis is placed on "academic preparation, professional experience, and the fit between the student's research interests and the department's research activities." See Exhibit B. A program group will only admit a doctoral candidate if the candidate's "interests match that of a faculty member." *Id.*

MIT generally, and DUSP specifically, is committed to diversity and equal opportunity in its admissions process. The portion of DUSP's website concerning admissions to the doctoral program states that DUSP "is committed to the active recruitment of minorities" and that "MIT is committed to the principle of equal opportunity in education and employment and abides by its nondiscrimination policy in administering the admissions process." *Id.*

Because of the large number of very highly qualified applicants and the limited number of spaces in the DUSP doctoral program, many highly qualified applicants are not offered admission each year.

**D. The Candidates Offered Admission for the 2016 DUSP Doctoral Program Are Highly Diverse**

For the fall of 2016, DUSP received 106 applications from doctoral candidates and offered admission to only 18 candidates, of which 16 have enrolled in DUSP and 1 has enrolled in a different MIT department.

The group of candidates who were offered admission are incredibly diverse in sex, ethnicity, and race. Of the 16 candidates who enrolled after being offered admission, exactly half (8) are women. And those women come from many diverse backgrounds. The eight female doctoral candidates who enrolled in 2016 include 4 Asian (1 Asian-American, 2 Koreans, and 1 Pakistani), 2 Hispanic or Latina (1 Brazilian and 1 Argentinian), and 1 Egyptian student.

Carol Murchinson  
 November 28, 2016  
 Page 4

The figures for the subset that enrolled in the IDG program group highlight this diversity. Of the 106 doctoral candidates, a total of 31 applied to the IDG program group. Of the 31 candidates who applied to the IDG program, six were offered admission. Of the six candidates who were offered admission, four are women, resulting in a group that is two-thirds female. In addition, the six candidates include a broad range of ethnicities, including individuals from Egypt, Argentina, Brazil, and Germany, and an American who identifies as both Caucasian and Asian.

**E. Ms. Mata's Application Was Not as Strong as Other Applicants**

Ms. Mata argues that she was denied admission because of her race, color, or sex. There is no evidence in support of her claim. To the contrary, Ms. Mata's application for this highly-competitive program was simply weaker than other applications. Ms. Mata's application was independently reviewed by five faculty reviewers, all of whom individually ranked Ms. Mata's application on DUSP's five-point scale. In each case, her reviewers assigned her a score of just a one or two. Her average score was 1.4 out of 5. In other words, her reviewers were consistent. They each believed that Ms. Mata's application deserved one of the lowest two scores they could assign.

By contrast, the six applicants granted admission to the IDG side of the doctoral program had an average score of 4.37 out of the 5 point scale. Ms. Mata simply was not competitive compared to the other applicants. Indeed, Ms. Mata's score of 1.4 placed her near the bottom of the 31 applicants to the IDG.

The review of the applications takes a holistic approach to assessing each of the materials submitted by the applicants. Although GRE scores are just one factor that DUSP examines, a comparison of Ms. Mata's GRE scores to those of the admitted students is telling. Ms. Mata's GRE scores fell well below those of the six admitted students:

GRE Section	6 Admitted Students (Average)	Ms. Mata
Verbal	89 <sup>th</sup> percentile	71 <sup>st</sup> percentile
Quantitative	77 <sup>th</sup> percentile	10 <sup>th</sup> percentile
Analytical Writing	4.75/6	4/6

Moreover, one of the principal criteria for admission, which is fully disclosed on DUSP's website, is a fit between the candidate's interests and that of a faculty member. Here, the IDG faculty did not see a fit between Ms. Mata's interests and their own. DUSP looks for that fit for the benefit of the candidates. Success in the Ph.D. program is challenging in the absence of that level of connection.

Ms. Mata points in her Complaint to her publications and master's degrees as support for her candidacy. But DUSP regularly denies admission to applicants with a strong record of publication. And almost all candidates have at least one master's degree, including all of those admitted in 2016. Indeed, DUSP discourages candidates from applying if they do not have a master's degree.

Consistent with its process, MIT thoroughly and fairly considered Ms. Mata's application. MIT's decision not to extend her an offer of admission was not based on her race, gender, or

Carol Murchinson  
 November 28, 2016  
 Page 5

ethnicity. Although Ms. Mata has admirable experience, her application simply did not match the strength of other applications.

## II. Legal Analysis

Ms. Mata's claim of discrimination fails as a matter of law and fact. Ms. Mata lists a litany of laws that she claims have been violated, including "the Massachusetts Affirmative Action, the 14<sup>th</sup> Amendment equal protection (against discrimination) clause, and the Civil Rights Act Title VI." As a threshold issue, Ms. Mata has cited laws that fall outside of the jurisdiction of the MCAD. Of the laws enforced by the MCAD, the only one that may apply to Ms. Mata's claim is M.G.L. c. 151C, Section 2. Accordingly, we have analyzed her claim according to that statute.<sup>1</sup>

Section 2 of M.G.L. c. 151C states that "It shall be an unfair educational practice for an educational institution . . . to exclude, limit or otherwise discriminate against any person seeking admission to a program or course of study leading to a degree, beyond a bachelor's degree, because of race, religion, creed, color, age, sex or national origin." See M.G.L. c. 151C, Sec. 2(d).<sup>2</sup> Ms. Mata claims that "race and gender played a much stronger role in the admission committee's decision to not admit me" and that "[i]n light of the paucity of Filipina American (combining race and gender) representation among the planning faculty and among the doctoral planning students at MIT, race and gender continue to play a stronger role in determining the hiring of faculty and admitting doctorate students." Complaint at 2.

Notably, Ms. Mata points to no facts to support her claim that her race or gender were the reasons she was not admitted. As described above, DUSP's decision not to offer admission to Ms. Mata was based on legitimate, nondiscriminatory reasons. Her application simply was not as strong as the others that DUSP received for this highly-selective program. Moreover, Ms. Mata has not met her burden to prove that MIT's proffered reason for her rejection was a pretext for unlawful discrimination. Mere conjecture concerning pretext is insufficient and that is all Ms. Mata has provided. To succeed, Ms. Mata had to produce evidence that MIT's proffered reasons are factually untrue. But nowhere in her letter does Ms. Mata offer *any evidence* of discrimination. She does not, for example, offer any evidence that anyone said or did anything to suggest that DUSP's decision was based on her sex or her race. Ms. Mata simply asks the MCAD to conclude that she must have been discriminated against based on her gender, race, or ethnicity because she was not offered admission. That is not sufficient. Indeed, the evidence shows that DUSP enrolled a highly diverse group of candidates. It is implausible that Ms. Mata was denied admission because she is female or Filipina (Asian) where DUSP offered admission to candidates, 50% of whom were female, and many of whom come from diverse races and ethnicities, including many who are Asian.

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<sup>1</sup> Even if the MCAD had jurisdiction under any other of the cited statutes, we nonetheless believe that the reasons Ms. Mata's claim fails under M.G.L. c. 151C would cause her claim to fail under the other cited statutes.

<sup>2</sup> In addition, Section 2(a) states that it shall be an unfair educational practice for an educational institution "to exclude or limit or otherwise discriminate against any United States citizen or citizens seeking admission as students to such institution based on race, religion, creed, color or national origin." M.G.L. c. 151C, Sec. 2(a).

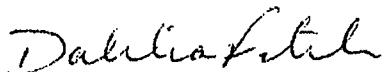
Carol Murchinson  
November 28, 2016  
Page 6

With no evidence to show that MIT denied Ms. Mata admission based on her race, ethnicity, or gender – and indeed evidence to the contrary to show that (1) Ms. Mata’s application simply was not as strong as other candidates and (2) DUSP admitted a highly diverse class – Ms. Mata’s rank speculation that she was not admitted because of her race, ethnicity, or gender is simply insufficient to support her charge.

**III. Conclusion**

Based on the above, MIT respectfully requests that the Complaint be dismissed with prejudice for lack of probable cause. Should the Commission have any questions or need additional information to assist in its investigation, please do not hesitate to let me know.

Sincerely,



Dahlia S. Fetouh

Attachments

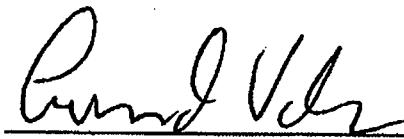
cc: Camille T. Mata

Carol Murchinson  
November 28, 2016  
Page 7

**AFFIRMATION**

I hereby state that with respect to the facts in the foregoing position statement of which I have personal knowledge, I affirm that such information is true and correct. With respect to the facts in the foregoing position statement of which I do not have direct personal knowledge, I affirm, to the best of my knowledge, that such information is true and correct.

Signed under the pains and penalties of perjury this 28th day of November 2016.



---

Lawrence J. Vale  
Ford Professor of Urban Design and Planning  
Chair, PhD Program  
Department of Urban Studies and Planning

B078

Exhibit J

Fetouh Letter,

March 16, 2017

**Massachusetts Institute of Technology**

**Dahlia Fetouh**  
Counsel

77 Massachusetts Avenue  
Cambridge, Massachusetts  
02139-4307

**Office of the General Counsel**  
Building 10-370

Phone 617-715-4220  
Fax 617-258-0267  
Email dfetouh@mit.edu

**Via Federal Express**

March 16, 2017

Mr. Melvin Arocho  
Investigator  
Massachusetts Commission Against Discrimination  
436 Dwight Street, Room 220  
Springfield, MA 01103

Re: *Camille T. Mata v. Massachusetts Institute of Technology*  
MCAD Docket No. 16-SED-02743

Dear Mr. Arocho:

I write on behalf of Respondent Massachusetts Institute of Technology ("MIT") in connection with the above-referenced complaint of discrimination filed by Camille T. Mata. Thank you for your time and attention at the February 27, 2017 investigative conference. At the conference, you asked several questions, which MIT answers as follows:

**Students from the Philippines and Southeast Asia**

You had asked if MIT's Department of Urban Studies and Planning ("DUSP") had ever accepted Filipino/a students, as well as students from Southeast Asia more generally.

Our registrar maintains information on enrolled graduate students (both Masters and Ph.D. candidates) and was able to identify graduate enrollments in DUSP from the fall of 1989 through the fall of 2016. In that time period, DUSP has enrolled 56 students from Southeast Asia, including 8 from the Philippines.<sup>1</sup> Notably, these numbers include only those students who decided to enroll in a program at DUSP and does not include the additional applicants who were offered admission by DUSP but decided not to attend. These numbers also reflect individuals who are residents of these countries; individuals who are citizens of another country but Filipino/a by origin may not be included in these statistics. In other words, these numbers are likely understated.

These numbers also do not include the data for students in other departments at MIT. MIT has enrolled dozens of undergraduate and graduate students from the Philippines alone throughout this time period. Statistics concerning the number of students from the Philippines and other countries from 1999-2016 can be found at the website for the MIT International Students Office, <http://web.mit.edu/iso/about/statistics.shtml>.

<sup>1</sup> The regional figures include students from Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

Mr. Melvin Arocho  
 March 16, 2017  
 Page 2

In addition to these students from the Philippines and other Southeast Asian countries, DUSP has a long history of supporting people from, and research in, the Philippines. The following are just a few examples:

- As I mentioned at the conference, DUSP's faculty includes a Filipina lecturer. She has focused her work on international and domestic institutional and urban projects, including work on a research and development district in Malaysia. In 2014, she received funding from the MIT Philippines Recovery Working Group to lead a team to the Philippines to discuss recovery projects following a natural disaster. This work led to the development of a studio and practicum to address natural disasters in the Philippines: <https://dusp.mit.edu/cdd/project/muntinlupa-matters-addressing-informality-metro-manila>.
- DUSP had a Filipina-American student in the Masters in City Planning program, who spent part of her time working on housing-related recovery aspects in the Philippines in the aftermath of various storms.
- DUSP runs a fellowship program for mid-career professionals called the Special Program for Urban and Regional Studies (SPURS). One SPURS Fellow from the Philippines undertook a number of projects concerning the Philippines during his fellowship and afterward.

Again, these are just a few examples of how DUSP's commitment to diversity in its students and research has extended to the Philippines.

#### Reviews and Reviewers

You asked about the individuals who reviewed Ms. Mata's application. Ms. Mata had five faculty reviewers and two Ph.D. student reviewers. The seven reviewers come from diverse backgrounds. Of the seven reviewers, two are Indian, one is Latina, one is Chinese, and one is from Singapore. Four of the five faculty reviewers had served as reviewers in the past.

You also asked if there were any scoring sheets from the reviewers that indicate how the average score of 1.4 for Ms. Mata was determined. Attached please find sheets on which the reviewers indicated their scores. Please note that one review referred to one of Ms. Mata's recommenders by name. We have redacted the name of Ms. Mata's recommender to protect his/her privacy.

#### Reasons for Denial

In the conference, you also asked for more information about the "fit" between the admitted students' interests and those of the department. As we mentioned in our position statement, the criteria for selection are varied but are designed to select applicants who will be successful in the department. Emphasis is placed on academic preparation, professional experience, and the fit between the student's research interests and the department's research activities. DUSP's reviewers, who are best positioned to evaluate these criteria, evaluated Ms. Mata's application and concluded that it was not sufficient to warrant one of the very few available spots in DUSP's IDG Ph.D. program. That conclusion had nothing to do with her ethnic or racial background. As

Mr. Melvin Arocho  
 March 16, 2017  
 Page 3

one of Ms. Mata's reviewers noted, Ms. Mata's application essay included a "poor discussion of how DUSP IDG is the right fit for applicant's planned course of study."

In contrast, among the admitted students – who again come from very diverse backgrounds – the faculty and student reviewers found clear fits between the applicants' proposed research and that of the existing DUSP faculty. For example, the Brazilian admitted student proposed an area of study that directly overlapped with more than one DUSP IDG faculty member. Her faculty reviewers said things such as "[her] area of research directly overlaps with [Faculty Member];<sup>2</sup> "very strong research statement, great fit with a number of faculty in the department;" "good statement" and "her interests... strongly align with mine as well as [Faculty Member]." Another faculty reviewer stressed her crossover appeal to other areas in the department: "I would also consider her as a strong potential crossover candidate with HCED/EPP [Housing, Community & Economic Development/Environmental Policy & Planning], as her interests have feet in each." This student also had a Master's degree from MIT with straight A grades, outstanding letters of recommendation, 8 publications, multiple honors, GRE scores between the 80<sup>th</sup> and 95<sup>th</sup> percentiles, and extensive research and professional experience.

As another example, the Egyptian admitted student had a close match with faculty interests as well. Her faculty reviewers stated, among other things: "Here statement shows a very analytical and inquisitive mind, critical, and asking questions for which she is seeking answers. The intersection of security, uneven development, top down urbanization, is fascinating to study in the middle east and Egypt is perfect. Must consider admission;" "A very impressive candidate—one of the top. Weaves together interests in uneven development, physical space, and governance very well. Would be a good match for [Faculty Member] whom she mentions—along with [Faculty Member]." Reviews from two advanced doctoral candidates note "interesting research questions and apparent good match for faculty interests" and "great fit in IDG." This student also graduated from her undergraduate and Master's programs with honors and distinctions, was awarded a thesis prize by her Master's program, had extensive professional experience and outstanding letters of recommendations, and scored between the 75<sup>th</sup> and 99<sup>th</sup> percentile on the various components of the GRE.

Finally, I reiterate what I stated in the investigative conference. Ms. Mata claims in her December 7, 2016 submission that the "accepted doctoral applicants all reflect the ethnic origin and racial group of the existing senior-level professors at MIT DUSP." This is false. As I mentioned at the conference, there are no faculty members at DUSP who are Egyptian, Korean, Pakistani, or Brazilian. In contrast, as mentioned above, there is a lecturer on DUSP's faculty who is Filipina.

### Conclusion

MIT unequivocally denies that Ms. Mata has been subjected to discrimination in connection with its decision not to offer Ms. Mata a position in the DUSP doctoral program. To the contrary, that decision was based on legitimate, non-discriminatory factors after an individualized review of her complete application. MIT and DUSP are committed to diversity and equal opportunity in education. That commitment is reflected in the diversity of the students DUSP accepted into its doctoral program for the fall of 2016, and the diversity of students from Southeast Asia who

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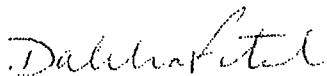
<sup>2</sup> We have deleted references to names to protect privacy.  
 574449.v2

Mr. Melvin Arocho  
March 16, 2017  
Page 4

have been accepted to DUSP for years. Ms. Mata's application was simply not as strong as those of the individuals offered acceptance into this highly-selective graduate program. Because Ms. Mata's complaint is without merit, we respectfully request that the Commission issue a finding of no probable cause and dismiss the case.

Should the Commission have any questions or need additional information to assist in its investigation, please do not hesitate to let me know.

Sincerely,



Dahlia S. Fetouh

Attachments

✓cc: Camille T. Mata (via Federal Express; with attachments)

**Question**

Rate the quality of the overall application

**Answer**

2. Likely Reject

Overall Comments

Poor GRE scores, some interesting planning work and scholarship, doubts over previous expulsion from a PhD program; refer to recommendation letters.

Personal Statement

2. Below Average

Comments

Generic, poor discussion of how DUSP IDG is the right fit for applicant's planned course of study.

**Question**

Rate the quality of the overall application

Overall Comments

Personal Statement

Recommendations

Academic Record

Work Experience

Is the applicant a 'Designer'?

**Answer**

1. Definitely Reject

Another one who is shopping for a PhD program. Was rejected by U of Auckland - which the candidate is upset about and criticisms in the statement! Weak scores, been out of school for too long, and overall a meandering career. Reject.

1. Poor

2. Below Average

2. Below Average

2. Below Average

1. No

<b>Question</b>	<b>Answer</b>
Rate the quality of the overall application	2. Likely Reject
Overall Comments	i wanted to like this application because of her experience in zambia - but candidate is not a fit for us...she even criticizes last program(?!)...
Personal Statement	2. Below Average
Recommendations	3. Average
Academic Record	2. Below Average
Work Experience	3. Average

**Question**

Rate the quality of the overall application

Personal Statement

**Answer**

- 1. Definitely Reject**
  
- 2. Below Average**

**Question**

Rate the quality of the overall application

Personal Statement

Recommendations

Academic Record

Work Experience

**Answer**

1. Definitely Reject

1. Poor

1. Poor

1. Poor

2. Below Average

**Question**

Rate the quality of the overall application.

**Answer**

2. Likely Reject

**Overall Comments**

████'s letter is luke warm; she is already a phd student somewhere else /, work on resilient food systems? GRE quantitative is very low (10%)

**Question**

Rate the quality of the overall application

**Answer**

1. Definitely Reject

B092



# KAREN A. GREEN vs. WYMAN-GORDON COMPANY.

422 Mass. 551

January 9, 1996 - May 3, 1996

Worcester County

Present: LIACOS, C.J., WILKINS, ABRAMS, LYNCH, O'CONNOR, GREANEY, & FRIED, JJ.

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The remedies and procedures of G. L. c. 151B, the employment discrimination act, are exclusive where applicable, and operated to bar a claim of sexual harassment in the workplace brought under G. L. c. 214, s. 1C [554-557], as well as claims arising out of the same facts brought under the Massachusetts Civil Rights Act, G. L. c. 12, s. 11I, and the Massachusetts Equal Rights Act, G. L. c. 93, s. 102 [557-558].

Common law claims for negligent failure to investigate and to correct, negligent training and supervision, and breach of contract arising from alleged sexual harassment in the workplace were barred by the exclusivity provisions of G. L. c. 151B, the employment discrimination act [558], and common law claims for intentional and negligent infliction of emotional distress arising from the same circumstances were barred by the exclusivity provision of G. L. c. 152, the workers' compensation act [558-561].

CIVIL ACTION commenced in the Superior Court Department on April 19, 1994.

The case was heard by Daniel F. Toomey, J., on a motion for summary judgment.

The Supreme Judicial Court granted an application for direct appellate review.

Mary A. Barker (April H. Babbitt with her) for the plaintiff.

Richard C. Van Nostrand (Michael G. Donovan with him) for the defendant.

Cynthia L. Amara & Stephen S. Ostrach, for New England Legal Foundation, amicus curiae, submitted a brief.

Robert S. Mantell, for Massachusetts Chapter of the

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National Employment Lawyers Association, amicus curiae, submitted a brief.

**LYNCH, J.** The plaintiff, Karen A. Green, alleges that she was sexually harassed over a three-year period while employed by the defendant, Wyman-Gordon Company. The defendant terminated Green's employment in June, 1992. In April, 1994, Green brought suit against the defendant in the Superior Court, alleging violations of G.L.c. 214, s. 1C (1994 ed.), the Massachusetts Civil Rights Act, G.L.c. 12, s. 11I (1994 ed.) (civil rights act), and the Massachusetts Equal Rights Act, G.L.c. 93, s. 102 (1994 ed.) (equal rights act). Her action included common law claims for negligent failure to investigate and to correct, negligent training and supervision, intentional and negligent infliction of emotional distress, and breach of contract. The trial judge allowed the defendant's motion for summary judgment on all counts. The plaintiff appealed. We granted the defendant's application for direct appellate review and now affirm. [Note 1]

The summary judgment record demonstrates the following (see *Judson v. Essex Agric. & Technical Inst.*, 418 Mass. 159, 162 [1994]): The defendant hired the plaintiff in February, 1985. Starting in June, 1989, until her termination in June, 1992, the plaintiff was subjected to multiple instances of sexual harassment while she was employed in several different departments. While employed in the housekeeping department, Green was threatened and harassed by a coworker using obscene language and sexual slurs. The defendant held a meeting and issued a warning to the coworker, but refused Green's requests to change her work schedule.

After the plaintiff was assigned to another department, she was subjected to lewd and obscene remarks and gestures from another coworker. In addition, she was exposed to posters of naked and partially clothed women on the walls and ceiling of the work area. After Green reported to her supervisors that she was being harassed, a meeting was held, but the defendant took no action against the coworker. Although Green was permitted to change shifts for about one week, she was forced to return to the shift with the offensive coworker.

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About two weeks later, the plaintiff was terminated from her employment. As a result of the harassment, the plaintiff suffered severe emotional distress.

1. **Background.** In order to analyze the plaintiff's claims properly, we need to examine the legislative and judicial response to the problem of sexual harassment in the Massachusetts workplace. This court first addressed the issue of sexual harassment in *College-Town, Div. of Interco. Inc. v. Massachusetts Comm'n Against Discrimination*, 400 Mass. 156, 162(1987). In that case, the court decided that sexual harassment was a form of discrimination and that the plaintiff's claim was cognizable under G.L.c. 151B, s. 4 (1) (1994 ed.). Id. In *O'Connell v. Chasdi*, 400 Mass. 686, 693 & n.9 (1987), however, the provisions of G.L.c. 151B (1994 ed.) did not apply because the plaintiff's employer had fewer than six employees. See G.L. c. 151B, s. 1 (5). The court nevertheless decided that the plaintiff had a claim under the civil rights act on the rationale that art. 1 of the Massachusetts Declaration of Rights created a right to be free from sexual harassment in the workplace. *O'Connell v. Chasdi*, *supra* at 693.

On December 9, 1986, before this court's decisions in *College-Town* and *O'Connell v. Chasdi* were published (but while they were pending in this court), the Massachusetts Legislature enacted St. 1986, c. 588, entitled "An act prohibiting sexual harassment." Chapter 588 amended G.L.c. 151A (unemployment compensation), G.L.c. 151B (employment discrimination), G.L. c. 151C (education), and G.L.c. 214 (equity jurisdiction). The legislation added a definition of sexual harassment to G.L. c. 151B, s. 1, see St. 1986, c. 588, s. 2, and added subsection 16A to s. 4, declaring it to be an unlawful practice under c. 151B for an employer "to sexually harass any employee." St. 1986, c. 588, s. 3. In addition, the statute added G.L.c. 214, s. 1C, which states: "A person shall have the right to be free from sexual harassment, as defined in chapter one hundred and fifty-one B and one hundred and fifty-one C. The superior court shall have the jurisdiction in equity to enforce this right and to award damages." St. 1986, c. 588, s. 6.

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In this case and two other cases decided today, [Note 2] we have an opportunity to revisit sexual harassment claims in this new statutory context.

2. **Statutory claims.** Employees who are victims of sexual harassment by their employers or their agents have a remedy under G.L.c. 151B, secs. 4 (16A) and 5. [Note 3] The plaintiff did not file a complaint with the Massachusetts Commission

Against Discrimination (MCAD) within the six-month statutory time period. See G.L.c. 151B, s. 5. The plaintiff argues that her failure to file such a claim does not preclude her from bringing a sexual harassment suit in the Superior Court under G.L.c. 214, s. 1C. Therefore, we must determine whether, by enacting G.L.c. 214, s. 1C, the Legislature intended to create a duplicative remedy for victims of sexual harassment, such that a plaintiff may either seek relief initially by filing a complaint with the MCAD, or bypass the MCAD entirely and file a suit directly in the Superior Court. We conclude that the exclusive statutory remedy for the plaintiff in this case was that provided by c. 151B, for the reasons set out below.

We ordinarily construe statutes to be consistent with one another. *St. Germaine v. Pendergast*, 411 Mass. 615, 626 (1992). We assume that the Legislature was aware of existing statutes when enacting subsequent ones. *LaBranche v. A.J. Lane & Co.*, 404 Mass. 725, 728 (1989). Thus, we attempt to interpret statutes addressing the same subject matter harmoniously, "so that effect is given to every provision in all of them." 2B Singer, *Sutherland Statutory Construction* s. 51.02, at 122 (5th ed. 1992). See *St. Germaine v. Pendergast*, *supra* (construing exclusivity provisions of workers' compensation act). With these general principles in mind, we must examine the administrative scheme created by c. 151B and determine the reach of its exclusivity provisions. [Note 4]

General Laws c. 151B, s. 9, provides, in relevant part: "[A]s

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to acts declared unlawful by section four, the procedure provided in this chapter shall, while pending, be exclusive." We have interpreted this broad exclusivity provision to embody a legislative intent "to subject all discrimination claims to some administrative scrutiny." *Charland v. Muzi Motors, Inc.*, 417 Mass. 580, 585 (1994). [Note 5] Accordingly, where c. 151B applies, a person may not evade its procedural requirements by recasting a discrimination claim as a violation of the equal rights act, see *id.* at 586, or the civil rights act, see *Mouradian v. General Elec. Co.*, 23 Mass. App. Ct. 538, 543 (1987). Applying this rationale, we have declined to create new common law remedies for employment discrimination which would allow claimants to sidestep c. 151B's administrative prerequisites. See *Melley v. Gillette Corp.*, 19 Mass. App. Ct. 511 (1985), S.C., 397 Mass. 1004 (1986). Cf.

Comey v. Hill, 387 Mass. 11, 20 (1982) (claimants may bring common law claims against employers which are grounded in tort and contract principles established prior to adoption of c. 151B).

Against this background, we see no basis to except claims of sexual harassment from the broad and comprehensive remedial scheme provided in c. 151B absent an explicit statutory authorization. We do not believe that G.L.c. 214, s. 1C, contains such an authorization. Accordingly, we agree with the defendant that, in this case, c. 151B's remedies and procedures are exclusive and bar the plaintiff's claim under G.L.c. 214, s. 1C. See 2B Singer, Sutherland Statutory Construction s. 51.02, at 121 (5th ed. 1992) ("In the absence of any express repeal or amendment, the new provision is presumed in accord with the legislative policy embodied in [the] prior statutes").

This interpretation serves the legislative purpose by preserving the integrity of the administrative scheme. As we noted in the Charland case: "Chapter 151B reflects the [L]egislature's balancing of competing interests. Employees are protected

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against certain types of [unlawful action]. Employers are protected from unnecessary litigation by a relatively short statute of limitations, see ch. 151B s. 5 (six months), and a mandatory conciliation process." Charland v. Muzi Motors, Inc., *supra* at 583, quoting Crews v. Memorex Corp., 588 F. Supp. 27, 29 (D. Mass. 1984). Indeed, the simultaneous amendment of c. 151B to add sexual harassment in employment to the list of unfair practices indicates a legislative intent to reinforce the administrative scheme, not weaken it. See St. 1986, c. 588, s. 3. See also 2A Singer, Sutherland Statutory Construction s. 46.05, at 103-104 (5th ed. 1992). It is also noteworthy that these sections were added at a time when it was unclear whether any existing statute or constitutional provision provided a remedy for victims of sexual harassment.

Added support for this construction comes from the legislative history of G.L.c. 214, s. 1C. Prior to enactment, eight different versions of the law were proposed. [Note 6] Two of those bills contained the following language: "The filing of a complaint under chapter 151B shall not be a prerequisite to filing a complaint under this section in the superior court." 1986 House Doc. No. 488 at 2. 1986 House Doc. No.

3136 at 2. The above-quoted sentence was omitted from the statute as enacted, and was in fact, "the only pertinent deletion before Section 1C became law." *Clarke v. Kentucky Fried Chicken of Cal., Inc.*, 57 F.3d 21, 26 (1st Cir. 1995). Deletions of limiting language from predecessor bills is normally presumed to be intentional. *Id.*, citing *Russello v. United States*, 464 U.S. 16, 23-24(1983), and *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 700 (1st Cir.), cert. denied, 115 S. Ct. 298 (1994). See also 2A Singer, *Sutherland Statutory Construction* s. 48.04, at 325 (5th ed. 1992). [Note 7]

The plaintiff argues that we render G.L.c. 214, s. 1C, a

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"near nullity" if we do not construe it to provide a duplicative remedy. We disagree. First, G.L.c. 214, s. 1C, ensures that all employees are protected against sexual harassment in the workplace, whether or not their employers fit within the definition in c. 151B. Thus, employees who cannot file claims with the MCAD because of limited size of the workforce, see G.L. c. 151B, s. 1 (5) (employers of fewer than six employees not included) are protected by s. 1C. Second, the statute provides exclusive jurisdiction in the Superior Court for any sexual harassment claim that is brought in the courts because either (a) the employer is not covered by c. 151B, or (b) the claimant has satisfied the procedural prerequisites for a c. 151B claim and has chosen to pursue the case in court. [Note 8] See *Clarke v. Kentucky Fried Chicken of Cal., Inc.*, *supra* at 26. [Note 9] Therefore, we affirm the motion judge's conclusion that the plaintiff's G.L.c. 214, s. 1c, claim is barred. See *id.* Accord *Johnson v. Plastic Packaging, Inc.*, 892 F. Supp. 25, 31 (D. Mass. 1995); *Desrosiers v. Great Atl. & Pac. Tea Co.*, 885 F. Supp. 308, 313-314 (D. Mass. 1995).

For the reasons stated above, the plaintiff's claims under the civil rights act and the equal rights act are similarly precluded. See *Charland v. Muzi Motors, Inc.*, *supra* at 586. Where, as here, c. 151B applies, its comprehensive remedial scheme is exclusive, in the absence of an explicit legislative

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command to the contrary. Otherwise, "[t]o permit such duplication of remedies would allow claimants to bypass the procedural prerequisites defined by the

[L]egislature in [G. L. c. 151B], crippling the effectiveness of this specific statutory remedy for discrimination in employment." *Bergeson v. Franchi*, 783 F. Supp. 713, 721 (D. Mass. 1992).

3. Common law claims. Insofar as the plaintiff's common law claims are merely recast versions of her sexual harassment claims under c. 151B, they are barred by that statute's exclusivity provision. See *Charland v. Muzi Motors, Inc.*, *supra* at 586; *Melley v. Gillette Corp.*, 19 Mass. App. Ct. 511, 512-513 (1985). We acknowledge, however, that not all of the plaintiff's common law claims are barred under c. 151B. See *Comey v. Hill*, *supra* at 20. The defendant argues, however, that those common law claims not barred by c. 151B, notably the claims for intentional and negligent infliction of emotional distress, are barred by the exclusivity provision of the workers' compensation act, G.L.c. 152, s. 24 (1994 ed.). [Note 10] We agree.

Common law actions are barred by the exclusivity provision of the workers' compensation act where: "the plaintiff is shown to be an employee; his condition is shown to be a 'personal injury' within the meaning of the [workers'] compensation act; and the injury is shown to have arisen 'out of and in the course of . . . employment.'" *Foley v. Polaroid Corp.*, 381 Mass. 545, 548-549 (1980) (*Foley I*), quoting G.L.c. 152, s. 26 (1994 ed.). The plaintiff's common law claims meet this test. It makes no difference that the emotional distress results from a fellow employee since the injury is still compensable under the workers' compensation act. See *Anzalone v. Massachusetts Bar Transp. Auth.*, 403 Mass. 119, 124 (1988); *Foley I*, *supra* at 550. See also G.L.c. 152, s. 1 (7A) (1994 ed.) (intentionally inflicted emotional harm compensable under workers' compensation act, even when result of bona fide personnel action). An employer may be vicariously liable for emotional distress intentionally inflicted by one employee on another. See *College-Town, Div. of Interco, Inc. v. Massachusetts Comm'n Against Discrimination*, 400 Mass. 156,

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167 (1987). However, we need not decide whether the employer was either directly or vicariously liable, since, in either case, the injuries would be compensable under the workers' compensation act. Accordingly, the motion judge correctly dismissed the plaintiff's claim for intentional infliction of emotional distress. The plaintiff's

negligent infliction of emotional distress claim also must fail. The plaintiff argues that recent amendments to the definition of "personal injury" permit her to recover for negligently inflicted emotional distress that is the result of a "bona fide, personnel action." [Note 11] The plaintiff argues that the language of the amendment set out in the margin somehow revives common law actions resulting in emotional distress, where that distress is not inflicted intentionally. Thus, goes the argument, if the defendant's bona fide personnel actions unintentionally caused the plaintiff's emotional injuries, then those injuries are not "compensable" under the workers' compensation act, the exclusivity provision does not apply, and the plaintiff can bring a common law action for negligent infliction of emotional distress. We do not agree.

The intent of the amendment was to reverse the result in Kelly's Case, 394 Mass. 684 (1985), where we permitted an employee to recover for emotional distress associated with a threatened layoff and transfer. See Robinson's Case, 416 Mass. 454, 458-459 (1993). See generally L. Locke, Workmen's Compensation s. 10.5, at 270-271 (Nason & Wall Supp. 1995). The plaintiff purports to turn this intention on its head, presuming that the Legislature, in cutting off an avenue of recovery for employees under the workers' compensation act, intended to open up a previously closed common law route. We see no reason to attribute such paradoxical intentions to the Legislature, especially where the result would "negate the intended purpose of the Workers' Compensation Act to provide a uniform, statutory remedy for injured workers, in

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contrast to a piecemeal, tort-based system." Catalano v. First Essex Sav. Bank, 37 Mass. App. Ct. 377, 380 (1994). See Clarke v. Kentucky Fried Chicken of Cal., Inc., *supra* at 29.

There is no question that an action for negligent infliction of emotional distress that is not the result of a bona fide personnel action is barred by the exclusivity provision of the workers' compensation act. See Foley I, *supra* at 552. Assuming that the plaintiff's emotional injuries were the result of bona fide personnel actions, [Note 12], however, there is still no basis for recovery. "[I]t would strain credulity and common sense to presume that the Legislature chose to limit employers'

collective liability under the workers' compensation scheme, only to expose individual employers to greater liability in common law negligence suits based on bona fide personnel actions." *Clarke v. Kentucky Fried Chicken of Cal., Inc.*, *supra* at 29. See *Catalano v. First Essex Sav. Bank*, *supra*.

The result we reach here is not inconsistent with our decisions concluding that plaintiffs may recover for emotional injuries sustained in connection with claims that are not barred by the exclusivity provisions of the workers' compensation act. See *Flesner v. Technical Communications Corp.*, 410 Mass. 805, 814 n.9 (1991); *Foley v. Polaroid Corp.*, 400 Mass. 82, 93 (1987) (*Foley II*); *College-Town*, *supra* at 169; *Foley I*, *supra* at 552. In those cases we concluded that emotional distress damages are not barred where the underlying claim is not barred. Furthermore, we concluded that underlying common law claims survived where "physical or mental harm is incidental, and is not an indispensable ingredient" of the claim. *Foley I*, *supra*. For example, in *Foley I*, we concluded that claims for defamation, malicious prosecution, and violation of civil rights [Note 13] were not compensable under the workers' compensation act and so were not barred. *Id.* at 552-554. See *Madden's Case*, 222 Mass. 487, 492 (1916) (claims for libel,

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malicious prosecution, false imprisonment, invasion of privacy, alienation of affection, seduction, false arrest, and "kindred tortious acts" not compensable). On the other hand, where "mental harm is the essence of the [claim]," it is an indispensable ingredient, and the claim is barred. *Foley I*, *supra* at 552. Here, as in the intentional infliction of emotional distress claim in *Foley I*, mental harm is an essential element of the plaintiff's claim. Therefore, that claim is barred under the workers' compensation act. [Note 14].

Cases from other jurisdictions support our conclusion that the plaintiff's tort claims are barred by the exclusivity provision of the workers' compensation act. See, e.g., *Juarez v. Ameritech Mobile Communications, Inc.*, 957 F.2d 317, 323-324 (7th Cir. 1992); *Lui v. Intercontinental Hotels Corp.*, 634 F. Supp. 684, 688 (D. Haw. 1986); *Fields v. Cummins Employees Fed. Credit Union*, 540 N.E.2d 631, 637 (Ind. Ct. App. 1989); *Knox v. Combined Ins. Co.*, 542 A.2d 363, 365-366 (Me. 1988); *Dickert v. Metropolitan Life Ins. Co.*, 311 S.C. 218, 222 (1993); *Haddon v. Metropolitan Life*

Ins. Co., 239 Va. 397, 400 (1990), overruled on other grounds, *Lichtman v. Knouf*, 248 Va. 138 (1994); *Baker v. Wendy's of Mont., Inc.*, 687 P.2d 885, 892 (Wyo. 1984). See also *Busse v. Gelco Express Corp.*, 678 F. Supp. 1398, 1401 (E.D. Wis. 1988) (workers' compensation exclusivity bars negligence claim against employer based on sexual harassment); *Downer v. Detroit Receiving Hosp.*, 191 Mich. App. 232, 235-236 (1991)(same). See generally 2A A. Larson, *Workmen's Compensation* s. 68.34 (d) (1995 & Supp. 1995). [Note 15]

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4. Conclusion. To summarize, we conclude that the plaintiff's statutory claims are barred by the exclusivity provision of G.L.c. 151B, as are most of the common law claims. In addition, the workers' compensation act bars the plaintiff's claims for negligent and intentional infliction of emotional distress. Accordingly, the trial judge properly entered summary judgment on behalf of the defendant on all counts. [Note 16]

Judgment affirmed.

#### FOOTNOTES

[Note 1] We acknowledge the amicus briefs submitted by the Massachusetts Chapter of the National Employment Lawyers Association, on behalf of the plaintiff, and the New England Legal Foundation, on behalf of the defendant.

[Note 2] *Doe v. Purity Supreme, Inc.*, post (1996), and *Guzman v. Lowinger*, post (1996).

[Note 3] None of the parties disputes that the defendant is an employer within the meaning of G.L.c. 151B, s. 1 (5) (1994 ed.).

[Note 4] We disagree with the plaintiff that G.L.c. 214, s. 1C (1994 ed.), is plain and unambiguous on its face and that therefore, we may not go beyond its express language to construe it. While the statute gives the Superior Court jurisdiction over sexual harassment claims, it is not clear when that jurisdiction attaches. Furthermore, we have on occasion looked at the history and purpose of an apparently unambiguous statute to determine the intent of the Legislature. See, e.g., *Sterilite Corp. v. Continental Casualty Co.*, 397 Mass. 837, 839 (1986), and cases cited.

[Note 5] Although there are exceptions to this general provision, none of them applies here. See G.L.c. 151B, s. 1 (5) (certain employers not included). See also *Jancey v.*

School Comm. of Everett, 421 Mass. 482, 499 (1995) (leaving open question whether all gender-based pay inequity claims arise from acts "declared unlawful" by G.L.c. 151B, 4).

[Note 6] 1986 House Doc. No. 488. 1986 House Doc. No. 1780. 1986 House Doc. No. 3136. 1986 House Doc. No. 3862. 1986 House Doc. No. 4074. 1986 House Doc. No. 4538. 1986 House Doc. No. 5732. 1986 Senate Doc. No. 62.

[Note 7] The plaintiff's reliance on Mercy Hosp. v. Rate Setting Comm'n, 381 Mass. 34, 42 (1980), is unavailing. In that case, this court concluded that, where there is contemporaneous evidence that a particular provision was dropped because it was deemed surplusage, it is improper to assume that the Legislature's removal of the provision changed the meaning of the statute. In this case, there is no contemporaneous evidence to support the plaintiff's claim that the provision was surplusage. Although the plaintiff has included with her brief the affidavit of a legislator, we shall not consider it here. The statements of a legislator made after the statute was enacted are not relevant in determining legislative intent. See Boston Water & Sewer Comm'n v. Metropolitan Dist. Comm'n, 408 Mass. 572, 578 (1990); Keane v. City Auditor of Boston, 380 Mass. 201, 207- 208 n.5 (1980). See generally 2A Singer, Sutherland Statutory Construction s. 48.03, at 89 (1995 Supp.).

[Note 8] Under the procedures established in G.L.c. 151B, secs. 5, 9 (1994 ed.), a person who makes a timely claim with the MCAD may withdraw that claim from the MCAD and bring suit in court at any time with permission of the MCAD, or as of right after ninety days, if the MCAD has not adjudicated the case by that time. Jurisdiction over such claims is given to the Superior or Probate and Family Court. G.L.c. 151B, s. 9.

[Note 9] The court in Clarke v. Kentucky Fried Chicken of Cal., Inc., 57 F.3d 21, 25 n.7 (1st Cir. 1995), notes that the jurisdictional language in G.L.c. 214, s. 1C, "may have been intended merely to overcome the automatic 'default' mechanism in [G. L.c. 214, s. 2] - which would otherwise vest the [Supreme Judicial Court] with exclusive original jurisdiction over all Section 1C claims for equitable relief - and to designate which other court (i.e., superior court) possesses jurisdiction once the Section 1C claimant has met the MCAD exhaustion requirements"

[Note 10] General Laws c. 152, s. 24 (1994 ed.), provides, in relevant part: "An employee shall be held to have waived his right of action at common law . . . In respect to an injury that is compensable under this chapter, to recover damages for personal injuries . . . ."

[Note 11] General Laws c. 152, s. 1 (7A), as amended through St. 1985, c. 572, s. 11, and St. 1986, c. 662, s. 6, provides, in relevant part: "Personal injuries shall include mental or emotional disabilities only where a significant contributing cause of such disability is an event or series of events occurring within the employment. No mental or emotional disability arising principally out of a bona fide personnel action including

a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter."

[Note 12] The plaintiff argues that the defendant caused her injuries by its decision not to reassign her to a different work shift, its failure to investigate harassment allegations adequately, and its failure to take appropriate corrective measures. Because of our conclusion that the claims are barred, we need not decide whether the injuries were the result of bona fide personnel actions within the meaning of the statute.

[Note 13] In *Foley v. Polaroid Corp.*, 381 Mass. 545, 553 n.7 (1980) (*Foley I*), the plaintiff did not allege any statutory violation of civil rights and did not comply with the procedural prerequisites of G.L.c. 151B. Therefore, even though his common law claim for civil rights violations was not barred by the workers' compensation act, it is unlikely that it was legally cognizable. The court in *Foley I* did not reach the issue. *Id.*

[Note 14] We observe that G.L.c. 152, s. 28 (1994 ed.), provides for double recovery under the workers' compensation act in cases of injuries resulting from intentional acts.

[Note 15] Although several jurisdictions have held that workers' compensation exclusivity does not bar some tort claims arising out of sexual harassment allegations, most of these jurisdictions allow exceptions to the exclusivity provisions for: intentional torts of a coemployee, see, e.g., *Fitzgerald v. Pratt*: 223 Ill. App. 3d 785 (1992); *Spoon v. American Agriculturalist, Inc.*, 120 A.D.2d 857, 860 (N.Y. 1986); *Pursell v. Pizza Inn Inc.*, 786 P.2d 716, 717 (Okla. Ct. App. 1990); *Palmer v. Bi-Mart Co.*, 92 Or. App. 470, 475-476 (1988); psychological injuries, see, e.g., *Busby v. Truswal Sys. Corp.*, 551 So. 2d 322, 325 (Ala. 1989); *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 490 (1986); *Kerans v. Porter Paint Co.*, 61 Ohio St. 3d 486, 490 (1991); or both, see, e.g., *Ford v. Revlon, Inc.*, 153 Ariz. 38, 44 (1987); *Vainio v. Brookshire*, 258 Mont. 273, 280 (1993); *Beavers v. Johnson Controls World Servs., Inc.*, 120 N.M. 343 (Ct. App. 1995). These exceptions have been rejected in Massachusetts so the above-cited cases are inapposite. But see *Byrd v. Richardson-Greenhields Sec., Inc.*, 552 So. 2d 1099, 1104-1105 (Fla. 1989).

Other jurisdictions have created an exclusivity exception for intentional acts of coemployees when the intent to injure is for personal reasons and not against the employee as an employee. See, e.g., *Stamper v. Hiteshew*, 797 P.2d 784, 786 (Colo. Ct. App. 1990); *Rogers v. Carmike Cinemas, Inc.*, 211 Ga. App. 427, 429 (1993); *Johnson v. Ramsey County*, 424 N.W.2d 800, 805 (Minn. Ct. App. 1988). We have not recognized such an exception in Massachusetts and see no reason to do so now under the facts alleged in this case.

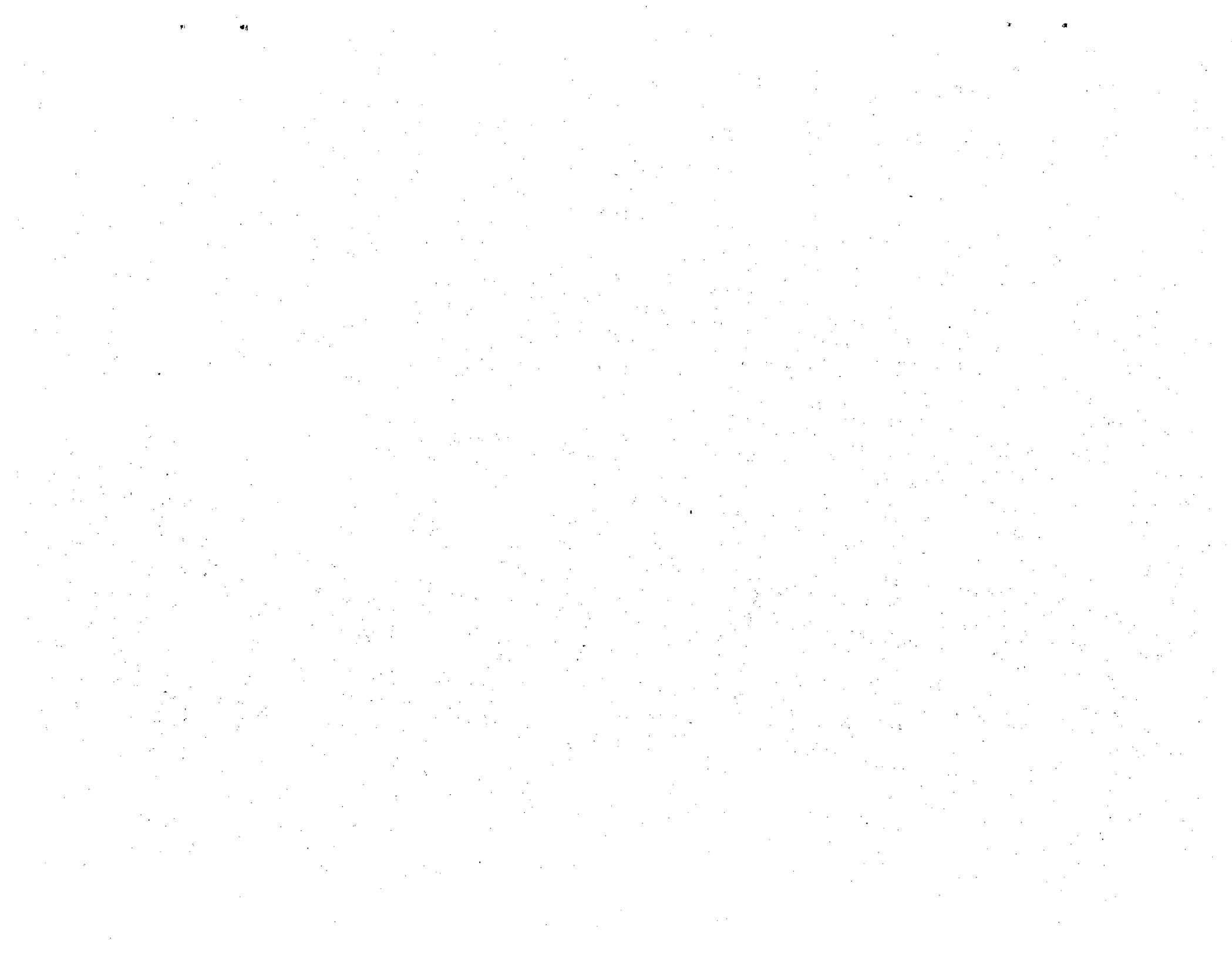
Finally, it is important to note that there is no claim before us against the coemployees who allegedly harassed the plaintiff. Therefore, we need not express an opinion on the

merits of any such claims. Cf. O'Connell v. Chasdi, 400 Mass. 686, 689-691 (1987).

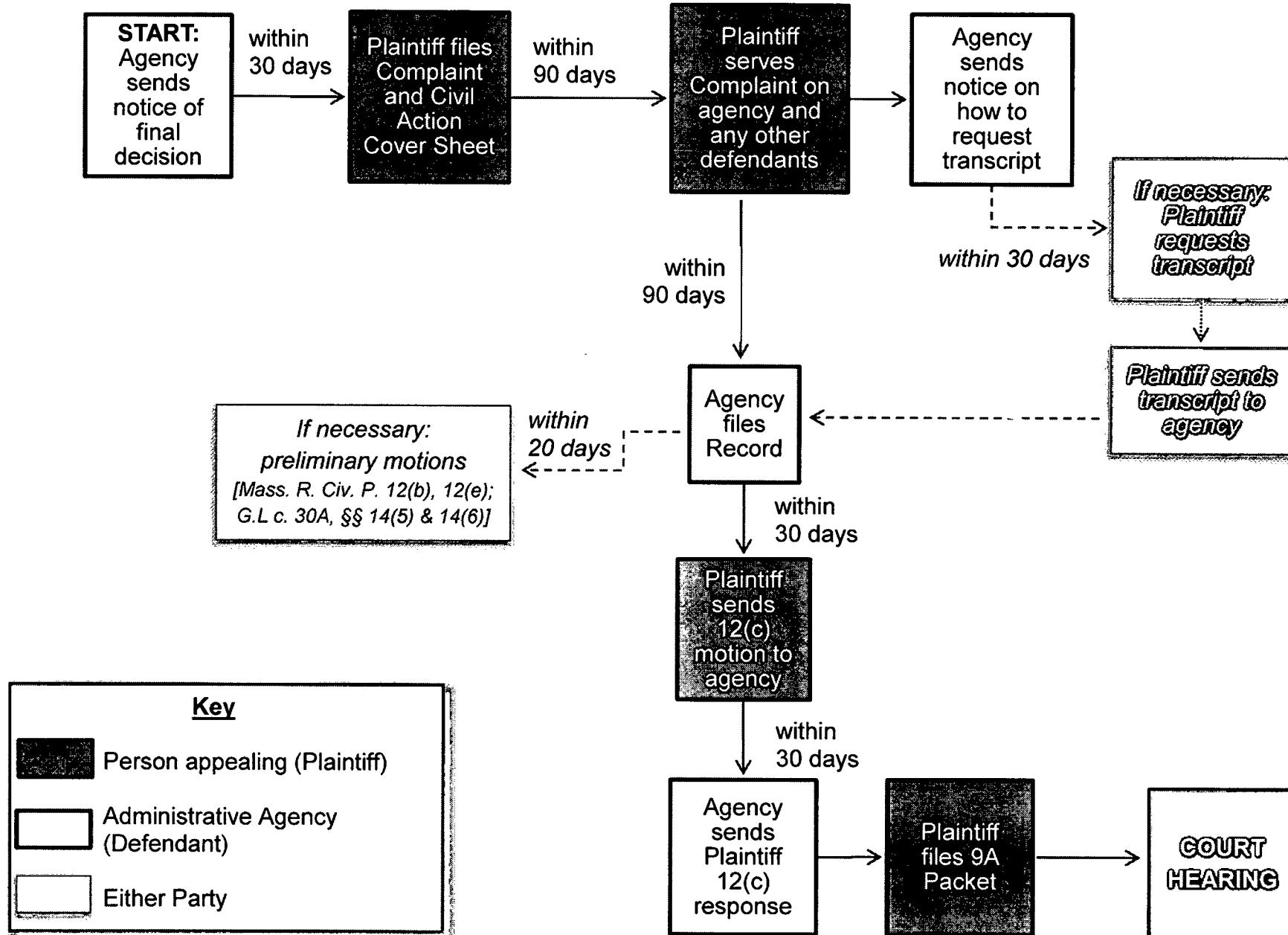
[Note 16] Based on our conclusions above, we do not reach the plaintiff's argument that her claims are not preempted by s. 301 of the Federal Labor Management Relations Act (29 U.S.C. s. 185 [1994]). See Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 41 (1991).

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D106  
30A ADMINISTRATIVE APPEALS FLOWCHART



*Note: this chart demonstrates a typical administrative appeal under General Laws chapter 30A. Not all appeals will follow this exact process.*

