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12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**
15

16	Sinan Fazlovic,)	CASE NO.:
17)	
18	Plaintiff,)	COMPLAINT
19	vs.)	
20)	
21	Maricopa County, a political subdivision;)	(JURY DEMAND)
22	Maricopa County Sheriff's Office; Joseph)	
23	Arpaio, individually and in his official capacity)	
24	as Sheriff of Maricopa County and Jane Doe)	
25	Arpaio, husband and wife; David Hendershott,)	
26	individually and in his official capacity and Jane)	
27	Doe Hendershott, husband and wife; Scott)	
28	Freeman, individually and in his official)	
	capacity and Jane Doe Freeman, husband and)	
	wife; Tiffani Shaw, individually and in her)	
	official capacity and John Doe Shaw, husband)	
	and wife; Timothy Overton, individually and in)	
	his official capacity and Jane Doe Overton, as)	
	husband and wife; Mary Ellen Sheppard,)	
	individually and in her official capacity, and)	
	John Doe Sheppard, husband and wife;)	
	Defendant.)	
)	

1 This is an action for violations of Title VII of the Civil Rights Act of 1964,
2 as amended, 42 U.S.C. § 2000e *et seq.*, the First and Fourteenth Amendments to the
3 United States Constitution, Article XX, par. 1 of the Arizona Constitution, and the
4 Arizona Free Exercise of Religion Act, A.R.S. §§ 41-1493 – 42- 1493.02.
5

6 **INTRODUCTION**

7 1. Plaintiff Sinan Fazlovic is a devout Muslim. As a result of adherence to his
8 religious practice Sinan Fazlovic was discriminated against in his employment by
9 Defendants.
10

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367(a),
13 2201 and 2202, and 42 U.S.C. §§ 1983, 1988, and 2000(e)-5 *et seq.*
14

15 3. All conditions precedent to jurisdiction under 42 U.S.C. § 2000(e)-5 have
16 been met, to wit: Plaintiff, Sinan Fazlovic, timely filed charges of employment
17 discrimination and retaliation alleging violations of Title VII of the Civil Rights Act of
18 1964, as amended, with the United States Equal Employment Opportunity Commission
19 (“EEOC”), to wit EEOC Charge Nos. 540-2006-04059 and 540-2008-00155. Plaintiff
20 submitted his charges in a timely fashion and received a notice of right to sue as to each
21 charge from the United States Department of Justice on or shortly after March 26, 2009.
22 This action has been commenced within ninety (90) days of Plaintiff’s receipt of the
23 notice of right to sue as to EEOC Charge Nos. 540-2006-04059 and 540-2008-00155.
24

25 4. The named Defendants, by virtue of their own acts and omissions or by
26 virtue of the acts and omissions committed by one or more of their agents, employees or
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1 representatives, as described herein, have conducted business or caused events to occur
2 within the District of Arizona and, more particularly, within Maricopa County Arizona, as
3 more particularly described herein so as to give rise to both subject matter and personal
4 jurisdiction of this Court.
5

6 5. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(b).
7

8 **PARTIES**

9 6. Sinan Fazlovic (“Plaintiff” or “Fazlovic”) is and was at all times relevant, a
10 male and practicing Muslim, a citizen of the United States and a resident of Maricopa
11 County, State of Arizona. Beginning on or about July 19, 2005 and during the relevant
12 time that followed, Plaintiff was employed by Defendants, Maricopa County, Maricopa
13 County Sheriff’s Office and/or Joseph Arpaio, Sheriff of Maricopa County, as a Detention
14 Officer in the Maricopa County Sheriff’s Office. For a period of time immediately
15 following his position as a Detention Officer, and thereafter, Plaintiff held the position of
16 Office Assistant Specialist from approximately October 3, 2007 until on or about July 27,
17 2008. At all times relevant, Plaintiff was an “employee” of Defendants, Maricopa
18 County, Maricopa County Sheriff’s Office and/or Joseph Arpaio, Sheriff of Maricopa
19 County. Plaintiff has standing to bring this suit.
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21

22 7. At all times relevant, Defendant Maricopa County (“Defendant County” or
23 “County”), was and is a political and legal entity existing under the laws of the State of
24 Arizona and, together with Defendant Maricopa County Sheriff’s Office (“Defendant
25 MCSO” or “MCSO”), and Defendant Joseph Arpaio, Sheriff of Maricopa County,
26 (“Defendant Arpaio,” “Sheriff Arpaio” or “Arpaio”) were, during the relevant time
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1 period, joint employers of Plaintiff or, alternatively, were separately the employers of
2 Plaintiff for all purposes including Title VII of the Civil Rights Act of 1964, as amended,
3 within the meaning of 42 U.S.C. §2000e(b). Defendant Arpaio is the final decision
4 maker for the practices, policies and operation of the Maricopa County jail system.
5

6 8. At all times relevant, Defendant Maricopa County Sheriff's Office
7 ("Defendant MCSO" or "MCSO"), was and is a department, agency, office or branch of
8 Defendant County, and by virtue thereof, Defendant MCSO is named as a Defendant
9 herein. At all times relevant hereto, Defendant MCSO together with Defendant County
10 and Sheriff Arpaio, were the joint "employer" of the Plaintiff or, alternatively, were
11 separately the employers of Plaintiff for all purposes including Title VII of the Civil
12 Rights Act of 1964, as amended, within the meaning of 42 U.S.C. §2000e(b).
13
14

15 9. Defendant Joseph Arpaio, Sheriff of Maricopa County, ("Defendant is an
16 elected public official of Maricopa County. Defendant Arpaio is named as a Defendant
17 herein in both his official capacity and in his individual capacity. At all times relevant,
18 Defendant Arpaio held the position of Sheriff of Maricopa County, Arizona and exercised
19 supervisory authority over Plaintiff and the individual Defendants all of whom were
20 directly or indirectly involved in one or more decisions affecting Plaintiff's employment
21 status with the County, MCSO and/or Sheriff Arpaio, including, but not limited to,
22 decisions regarding hiring, transfers, demotions, requests for religious accommodations,
23 salary and job classifications, assignment of positions and/or assignment of job duties as
24 well as the benefits, privileges, terms and conditions of Plaintiff's employment. As
25 described within, in making these decisions and responding to Plaintiff's requests Sheriff
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1 Arpaio and each individual Defendant failed to make reasonable accommodation for
2 Plaintiff's sincerely held religious beliefs in the terms or conditions of his employment.

3
4 10. At all times relevant, Arpaio had policy making and decision making
5 authority over personnel policies affecting MCSO employees including Detention
6 Officers. Defendant Arpaio, and each individual Defendant with authority over any
7 personnel policies and decisions exercised their authority in a manner that discriminated
8 against Plaintiff on the basis of his religious beliefs and failed to reasonably accommodate
9 these beliefs. At all times relevant, Defendant Sheriff Arpaio, together with Defendants,
10 County and MCSO, were the joint "employer" of the Plaintiff or, alternatively, were
11 separately the employers of Plaintiff for all purposes including Title VII of the Civil
12 Rights Act of 1964, as amended, within the meaning of 42 U.S.C. §2000e(b). In
13 addition, at all relevant times, Defendant Arpaio was acting in both his individual and
14 official capacities as Sheriff and agent of Defendant County and MCSO and in the
15 furtherance of his marital community.
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18
19 11. At all times relevant, Defendant David Hendershott, ("Defendant
20 Hendershott") was and is employed as the Chief Deputy of Defendants, Arpaio and
21 MCSO. Defendant Hendershott exercised supervisory authority over Plaintiff and over the
22 individual Defendants other than Arpaio, all of whom were directly or indirectly involved
23 in one or more decisions affecting Plaintiff's employment status with the County, MCSO
24 and/or Sheriff Arpaio, including, but not limited to, decisions regarding hiring, transfers,
25 demotions, requests for religious accommodations, salary and job classifications,
26 assignment of positions and/or assignment of job duties as well as the benefits, privileges,
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1 terms and conditions of Plaintiff's employment. Upon information, at all times relevant,
2 Hendershott had policy making and decision making authority over personnel policies
3 affecting Detention Officers including Plaintiff. In addition, at all relevant times,
4 Defendant Hendershott was acting in both his individual and official capacities as an agent
5 of Sheriff Arpaio and Defendants County and MCSO and in the furtherance of his marital
6 community.
7

8
9 12. Upon information, at all times relevant, Defendant Scott Freeman,
10 ("Defendant Freeman") was employed by and held the position of "Chief" of Defendants
11 Sheriff Arpaio and MCSO, and exercised direct and/or indirect supervisory authority over
12 Plaintiff and others, all of whom were directly or indirectly involved in one or more
13 decisions affecting Plaintiff's employment status with the County, MCSO and/or Sheriff
14 Arpaio, including, but not limited to, decisions regarding hiring, transfers, demotions,
15 requests for religious accommodations, salary and job classifications, assignment of
16 positions and/or assignment of job duties as well as the benefits, privileges, terms and
17 conditions of Plaintiff's employment. Plaintiff alleges that at all relevant times, Defendant
18 Freeman was acting in both his individual and official capacities as an agent of Sheriff
19 Arpaio and Defendants County and MCSO and in the furtherance of his marital
20 community. Defendant Freeman had policy making and decision making authority over
21 some personnel policies affecting Detention Officers including Plaintiff.
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23

24
25 13. At all times relevant, Defendant Tiffani Shaw, ("Defendant Shaw") was
26 employed by and held the position of "Deputy Chief" of Defendants Sheriff Arpaio and
27 MCSO. Defendant Shaw exercised direct and/or indirect supervisory authority over
28

1 Plaintiff and over MCSO employees who were directly or indirectly involved in one or
2 more decisions affecting Plaintiff's employment status with the County, MCSO and/or
3 Sheriff Arpaio, including, but not limited to, decisions regarding hiring, transfers,
4 demotions, requests for religious accommodations, salary and job classifications,
5 assignment of positions and/or assignment of job duties as well as the benefits, privileges,
6 terms and conditions of Plaintiff's employment. Plaintiff alleges that at all relevant times,
7 Defendant Shaw was acting in both her individual and official capacities as an agent of
8 Sheriff Arpaio and Defendants County and MCSO and in the furtherance of her marital
9 community. Defendant Shaw had policy making and decision making authority over
10 personnel policies affecting Detention Officers including Plaintiff.
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13
14 14. At all times relevant, Defendant Timothy Overton, ("Defendant Overton")
15 was employed by and held the position of "Deputy Chief" of Defendants Sheriff Arpaio
16 and MCSO. Defendant Overton exercised direct and/or indirect supervisory authority over
17 Plaintiff and over MCSO employees who were directly or indirectly involved in one or
18 more decisions affecting Plaintiff's employment status with the County, MCSO and/or
19 Sheriff Arpaio, including, but not limited to, decisions regarding hiring, transfers,
20 demotions, requests for religious accommodations, salary and job classifications,
21 assignment of positions and/or assignment of job duties as well as the benefits, privileges,
22 terms and conditions of Plaintiff's employment. Plaintiff alleges that at all relevant times,
23 Defendant Overton was acting in both his individual and official capacities as an agent of
24 Sheriff Arpaio and Defendants County and MCSO and in the furtherance of his marital
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1 community. Defendant Overton had policy making and decision making authority over
2 personnel policies affecting Detention Officers including Plaintiff.

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4 15. At all times relevant, Defendant, Mary Ellen Sheppard (“Defendant
5 Sheppard”) was employed by and held the position of “Deputy Chief” of Defendants
6 Sheriff Arpaio and MCSO. Defendant Sheppard exercised direct and/or indirect
7 supervisory authority over Plaintiff and others, all of whom were directly or indirectly
8 involved in one or more decisions affecting Plaintiff’s employment status with the
9 County, MCSO and/or Sheriff Arpaio, including, but not limited to, decisions regarding
10 hiring, transfers, demotions, requests for religious accommodations, salary and job
11 classifications, assignment of positions and/or assignment of job duties as well as the
12 benefits, privileges, terms and conditions of Plaintiff’s employment. Plaintiff alleges that
13 at all relevant times, Defendant Sheppard was acting in both her individual and official
14 capacities as an agent of Sheriff Arpaio and Defendants County and MCSO and in the
15 furtherance of her marital community. Upon further information, Defendant Sheppard
16 had policy making and decision making authority over personnel policies affecting
17 Detention Officers and MCSO employees including Plaintiff.
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21 **GENERAL ALLEGATIONS**

22
23 16. Plaintiff was born in Bosnia. He immigrated to the United States in 1999
24 and became a naturalized citizen of the United States in or around December 2004. At all
25 times relevant Plaintiff was and is a devout member of the Muslim religion and faith. As
26 such, Plaintiff has maintained the practice of wearing a full-length beard in accordance
27 with the religious tenets of the Muslim faith.
28

1 17. Plaintiff applied for and was offered employment as a Detention Officer by
2 Defendants, County, MCSO and/or Sheriff Arpaio on or about May 26, 2005. At the time
3 Plaintiff was offered employment, he had a full-length beard.
4

5 18. Plaintiff asked representatives of County, MCSO and/or Sheriff Arpaio if he
6 could keep his beard, explaining that it was and is an integral part of the Muslim faith that
7 all males who are capable of growing facial hair, keep a full-length beard. Plaintiff would
8 not have applied for nor accepted the position if he had been told that he could not adhere
9 to his religious tenets and wear a beard.
10

11 19. Plaintiff was told that he would be allowed to retain his beard by
12 representatives acting for or on behalf of one or more of the Defendants. This was
13 permitted by the existing departmental regulation. Not one individual Defendant indicated
14 that wearing his beard would be a problem; the hiring was approved by Defendant Arpaio
15 and other individual Defendants.
16

17 20. Consequently, Plaintiff accepted employment as a Detention Officer and
18 reported for his first day of employment on or about July 19, 2005 as a Detention Officer
19 assigned to Detention Officer Academy. Plaintiff attended Detention Officer Academy
20 between approximately July 19, 2005 and September 22, 2005.
21

22 21. Plaintiff reported to the Detention Officer Academy on or about July 19,
23 2005 with his full beard. On or about July 27 - 29, 2005, Defendant Arpaio approached
24 Plaintiff at work and asked him who he was.
25

26 22. As a result Plaintiff was told to report to Defendant Shaw. Defendant was
27 told for the first time by Shaw that he would have to shave his beard, and that he had to do
28

1 so by the next day if he wanted to retain his job. Plaintiff reminded Shaw that he was
2 assured when hired that he could maintain the beard in accordance with his faith. Without
3 explanation, Defendant Shaw insisted that Plaintiff would have to shave his beard to
4 conform to directions from Defendant Sheriff Arpaio; Shaw did not provide any written
5 information.
6

7 23. Plaintiff submitted a memo to Defendant Shaw to remind her of the original
8 understanding when he was hired, and seeking approval to wear the beard as required by
9 his religion. Defendant Shaw told Plaintiff that as a Detention Officer, he might be
10 required to wear a Self-Contained Breathing Apparatus (SCBA) in emergency situations
11 and that his beard prevented him from maintaining a proper seal of the SCBA against his
12 face. Plaintiff verbally offered to submit to a “fit test” to demonstrate that a proper seal
13 could be maintained but his request was denied.
14
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16 24. As set out below, from that point on Plaintiff regularly offered to have a
17 standard “fit test” in order to conclusively demonstrate that there was no conflict between
18 adhering to his religious belief and any safety or security concerns. The primary
19 occupational safety agency in the country (“OSHA”), opined in 1998 that persons with
20 beards could meet the standards for wearing a secure SCBA or equivalent device and
21 work under smoke and fire conditions.
22
23

24 25. On or about August 4, 2005, Plaintiff’s written request for religious
25 accommodation to retain his beard was denied by Defendant Shaw. Upon information
26 and belief, all Defendants approved or acquiesced in this denial. Plaintiff than filed an
27 internal grievance challenging the denial of his request for a religious accommodation.
28

1 26. As set out below, from that date on Plaintiff filed several internal grievances
2 and appeals about Defendants' failure to provide the required –and promised- religious
3 accommodation and allow the beard. Plaintiff also filed several unsuccessful grievances
4 and appeals about the failure of Defendants to permit or attempt to find comparable
5 employment opportunity and pay after the denial of work in the jails as a Detention
6 Officer.
7

8 27. On or about August 4, 2005, Plaintiff's written request filed that same day
9 was denied by Defendant Overton; on information & belief this was done at the direction
10 or approval of Defendants Arpaio and Hendershott.
11

12 28. Faced with the threat of termination for insubordination Plaintiff shaved his
13 beard. This caused Plaintiff great emotional distress and mental anguish given his deep
14 religious beliefs and strong commitment to and practice of his Muslim faith.
15

16 29. On or about August 24, 2005, Plaintiff appealed the denial of his grievance
17 by filing it with Defendant Arpaio. Plaintiff continued to offer to take a "fit test" to
18 alleviate any concern Defendants had regarding use of SCBA in emergency situations.
19

20 30. On or about September 22, 2005, Plaintiff was notified by Defendant
21 MCSO and Deputy Chief Mike Olson that he had successfully completed Detention
22 Officer Academy and was being assigned to Institutional, Services, Food Service Division
23 as a Detention Officer. Plaintiff continued to pursue his requests for a religious
24 accommodation that would allow him to re-grow and keep a full-length beard.
25

26 31. On or about September 23, 2005, Defendants County, MCSO and/or Arpaio,
27 with the approval and acquiescence of Defendant Sheppard and, on information and
28

1 belief, the other Defendants, adopted a new policy regarding grooming standards, Policy
2 GC-19 which, *inter alia*, prohibited any and all facial hair for employees of the MCSO.

3
4 32. On or about January 25, 2006, Defendant Hendershott told Plaintiff that his
5 appeal to Defendant Arpaio and request for religious accommodation was denied. On
6 about February 1, 2006, one or more of the Defendants notified Plaintiff that he would
7 need to change his job position and cease being a Detention Officer, if he wished to wear
8 a beard.

9
10 33. On or about July 20, 2006, Plaintiff submitted a request for transfer to a
11 Detention Officer position that involved the transport of prisoners, as opposed to working
12 within a jail. There would be little if any need for the wearing of an SCBA and Plaintiff
13 was seeking to accommodate Defendants stated concerns with his religious needs;
14 Defendants had not to that date, nor at any point after, assumed their legal responsibilities
15 to avoid religious discrimination nor attempted a constructive accommodation for
16 Plaintiff.

17
18 34. Defendants denied Plaintiff's request for transfer on July 21, 2006. On
19 information and belief, this arbitrary decision was approved by or acquiesced in by one or
20 more of the named Defendants. Plaintiff was told that he was being denied because he
21 was ineligible for a transfer since he had not been in his current position for one year.
22 Defendants did not offer any explanation as to why this practice could not be altered to
23 accommodate the religious needs and rights of Plaintiff.

24
25 35. On or about October 3, 2006, Plaintiff requested another transfer and sought
26 a position with Jail Intel. Plaintiff was qualified for this position and it would allow him to
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1 wear a full-length beard. That request was also denied without explanation by one or
2 more of the named Defendants.

3
4 36. On or about December 15, 2006, the extreme mental anguish and emotional
5 distress that Plaintiff had been suffering since shaving his beard became unbearable.
6 Despite the need for a job and concerns about support for his family, he could no longer
7 violate the teachings and commandments of his religion, and Plaintiff began to re-grow
8 his beard.

9
10 37. On or about January 3, 2007, Plaintiff was informed by Defendant Shaw
11 that he would be transferred to the Sheriff's Information Management Service ("SIMS")
12 with no loss of pay. He was told to request reassignment to this vacant position and that he
13 could keep his beard in that position. Defendant Shaw advised Plaintiff that during this
14 process, he would be granted a temporary waiver from Policy GC-19 regarding dress,
15 appearance and grooming.

16
17 38. Plaintiff was aware of other MCSO personnel who had been assigned to
18 SIMS, and to Jail Intel, at Detention Officer pay, while wearing beards; there was no need
19 for use of an SCBA in these positions. As a result, on or about February 2, 2007, Plaintiff
20 requested that he be permanently assigned to SIMS or reassigned to Jail Intel duties at
21 Detention Officer pay thereby enabling him to retain his then current rate of pay and
22 benefits.
23

24
25 39. On or about April 2, 2007, Defendant Sheppard denied Plaintiff's requests.
26 On information and belief, Defendant Sheppard was acting at the request or approval of
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1 Defendants Arpaio and Hendershott. Defendant Sheppard informed Plaintiff that he had
2 until April 11, 2007 to accept a transfer to another position at reduced pay.

3
4 40. Continuing to pursue an accommodation despite the complete lack of
5 cooperation or good faith by Defendants, on or about April 9, 2007, Plaintiff submitted
6 another internal grievance seeking a position that would allow him to retain his beard. He
7 requested to be assigned to a location that was principally out-of-doors so that a SCBA
8 would not be required (and repeated the request to be permitted to take a "fit test" or use a
9 different brand of SCBA). As a further alternative, Plaintiff renewed his request that he
10 remain in SIMS on a permanent basis as a Detention Officer. This internal grievance was
11 denied on April 11, 2007 by Defendant Sheppard. Upon information and belief,
12 Defendants Arpaio and Hendershott approved or acquiesced in this denial.
13
14

15 41. Plaintiff subsequently appealed this denial to Defendant Hendershott on or
16 about April 23, 2007; however, it was denied by Defendant Hendershott on April 26, 2007
17 with no explanation.
18

19 42. On or about September 7, 2006, Plaintiff filed his first charge of religious
20 discrimination and retaliation with the EEOC. Upon information and belief, a copy of this
21 charge was mailed to one or more of the Defendants including, but not limited to,
22 Defendants County, MCSO and Sheriff Arpaio.
23

24 43. On or about October 1, 2007, Defendant Freeman advised Plaintiff to report
25 to work clean shaven by October 8, 2007 or to accept a demotion to a lower paying job.
26 Defendant Freeman advised Plaintiff that if he did not do so, he would be terminated for
27 neglect of duty, insubordination and violation of Department policies. At the time
28

1 Plaintiff received notification from Defendant Freeman, Plaintiff was earning \$18.74 per
2 hour plus benefits. On information and belief, this demotion was approved by or
3 acquiesced in by Defendants Arpaio, Hendershott and one or more of the other named
4 Defendants.
5

6 44. As seen by the above decisions and responses to Plaintiff's requests and
7 grievances, Defendants failed to explore adequate pay and job alternatives for Plaintiff
8 consistent with his religious needs. To the contrary, Defendants required as a condition of
9 his employment that Plaintiff accept a significant reduction in pay and treated Plaintiff
10 differently and worse than other MCSO employees who could not stay in a Detention
11 Officer jail assignment. Defendants further took some of these steps in response to
12 Plaintiff's internal grievances about his employment concerns and his filing an EEOC
13 Complaint.
14
15

16 45. On October 3, 2007, faced with termination, Plaintiff accepted a demotion
17 to the position of Office Assistant Specialist at the rate of \$13.06 per hour. Upon
18 commencing work as an Office Assistant Specialist, Plaintiff was not allowed to act as
19 other Office Assistant Specialists, and was given menial tasks that were not part of the
20 duties associated with that position. This predictably led to Plaintiff being harassed and
21 criticized by coworkers and management.
22

23
24 46. Plaintiff filed a second charge of discrimination and retaliation with the
25 EEOC on or about October 11, 2007. He also filed a grievance against Defendant Shaw
26 alleging ongoing religious discrimination and failure to make religious accommodations.
27
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1 Defendant Hendershott denied this grievance on or about October 22, 2007 without
2 explanation.

3
4 47. On or about December 3, 2007, Plaintiff was forced by one or more
5 Defendants to accept an assignment to a non-detention officer position as a SIMS clerk on
6 second shift; this change resulted in a further reduction of pay to the rate of \$12.32 per
7 hour.

8
9 48. Continuing to seek accommodation, in July 2008, Plaintiff applied for the
10 position of Inmate Classification Specialist. This would have allowed him to work as a
11 Detention Officer while retaining his beard. The request was rejected without explanation
12 by one or more of the Defendants.

13
14 49. Defendants acted to and did impose intolerable and discriminatory work
15 conditions which included, but were not limited to, humiliating and degrading job
16 assignments; discriminating against Plaintiff as compared to non-Muslim employees with
17 regard to accommodations, terms and conditions of employment; imposing substantial and
18 involuntary reductions in pay and benefits as a condition of remaining employed; failing
19 to respect Plaintiff's rights, well being, needs, requests and grievances and failing to
20 reasonably accommodate Plaintiff after Defendants incorrectly deemed Plaintiff unable to
21 perform the duties of a Detention Officer. On July 27, 2008, Plaintiff was constructively
22 discharged because of Defendants' ongoing and continuous religious discrimination,
23 creation of a religiously hostile work environment and failure to accommodate his
24 religious beliefs as set forth herein.
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1 MCSO policies after Plaintiff pointed out that they were inconsistent with Defendants'
2 denial of his requests for religious accommodations and first indicating that his request
3 would be granted; by refusing to allow Plaintiff to take a "fit test" to prove that he could
4 wear the assigned SCBA in emergency situations or, alternatively, demonstrating that
5 other SCBA were available and approved for use by Detention Officers; by requiring the
6 Plaintiff to accept the demotion and reduction in pay; by creating a hostile work
7 environment for Plaintiff because of his religion through these and other actions and
8 constructively discharging Plaintiff by reason of Defendants' refusal to provide a religious
9 accommodation.

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11
12 55. Defendants Arpaio, Hendershott, Freeman, Shaw, Overton and Sheppard are
13 individually liable because they are and/or were, at all times relevant, responsible for
14 supervising Plaintiff and establishing and/or maintaining the terms and conditions of his
15 employment and for making, enforcing, and/or changing MCSO policies that effected
16 Plaintiff's employment and the free exercise of his religious beliefs. Further, Defendants
17 Arpaio, Hendershott, Freeman, Shaw, Overton and Sheppard are personally liable because
18 each, at various times, denied Plaintiff's request for religious accommodations, interfered
19 with the free exercise of Plaintiff's religion and personally retaliated against Plaintiff for
20 pursuing his rights in violation of clearly established law.
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24 56. As a direct and approximate result of Defendants' violations of the First
25 Amendment, Plaintiff has suffered, is suffering and will continue to suffer damages in an
26 amount subject to proof, is entitled to injunctive relief and declaratory relief against the
27 Defendants County, MCSO and Sheriff Arpaio, attorneys' fees and costs from all
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1 Defendants; and monetary and punitive damages from Defendants Arpaio, Hendershott,
2 Freeman, Shaw, Overton and Sheppard.

3
4 **COUNT II**

5 **FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**
6 **(VIOLATION OF DUE PROCESS – 42 U.S.C. § 1983)**

7 57. Plaintiff incorporates by reference Paragraph 1-56 as fully set forth herein.

8 58. At all times relevant, Plaintiff had a reasonable expectation of continued
9 public employment as a Detention Officer by the County, MCSO and/or Arpaio which
10 constituted a protected property right not only in his job but also in promotional
11 opportunities within the County and MCSO.
12

13 59. At all times relevant, the County, MCSO and Arpaio had certain policies
14 and procedures in place with regard to Plaintiff's public employment including, but not
15 limited to, the right to pursue grievances, to be free from religious discrimination, to have
16 employment and personnel decisions that would not be in violation of federal law and to
17 not be deprived of property without due process of law.
18

19 60. One, more or all Defendants, acting under color of law, individually and in
20 concert with one another, and others whose identity is not presently known, violated
21 Plaintiff's federally protected due process rights by, but not limited to, involuntarily
22 forcing Plaintiff to relinquish his Detention Officer position by adopting, revising,
23 enforcing or, alternatively, failing to enforce, policies and procedures which preclude
24 practicing Muslims who are Detention Officers from wearing beards in observance of
25 their religious faith.
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1 61. As a result, Plaintiff was involuntarily forced to relinquish and was
2 constructively discharged from his position as a Detention Officer and the related pay and
3 benefits because of the intolerable and discriminatory working conditions described
4 herein.

5
6 62. The act and omissions of the individual named Defendants complained of
7 herein were undertaken by these Defendants in both their individual and official capacities
8 and while acting within the course and scope of their employment or under such
9 circumstances that subject them individually and in their official capacities along with
10 their respective marital communities, to joint and several liability for damages.
11

12 **COUNT III**

13 **ARTICLE 20, PARAGRAPH 1 ARIZONA STATE CONSTITUTION**
14 **(VIOLATION OF THE RIGHT OF FREE EXERCISE OF RELIGION)**

15 63. Plaintiff incorporates by reference Paragraphs 1-62 as fully set forth herein.
16

17 64. The Arizona State Constitution provides, in pertinent part:

18 Perfect toleration of religious sentiment shall be secured to every
19 inhabitant of this state and no inhabitant of this state shall ever be
20 molested in person or property on account of his or her mode of
religious worship, or lack of the same.

21 65. Each of the Defendants has violated Plaintiff's right to exercise his religion
22 and to be free from religious discrimination under Arizona law by refusing to
23 accommodate Plaintiff's requests to wear a beard as required by his religious faith.
24

25 66. Each of the Defendants has violated Plaintiff's right to exercise his religion
26 and to be free from religious discrimination under Arizona law by punishing Plaintiff for
27 making and persisting in his requests to wear a beard and for pursuing his rights by
28

1 changing MCSO policies after Plaintiff pointed out that they were inconsistent with
2 Defendants' denial of his requests for religious accommodations and first indicating that
3 his request would be granted; by refusing to allow Plaintiff to take a "fit test" to prove that
4 he could wear the assigned SCBA in emergency situations or, alternatively, demonstrating
5 that other SCBA were available and approved for use by Detention Officers; by requiring
6 the Plaintiff to accept the demotion and reduction in pay; by creating a hostile work
7 environment for Plaintiff because of his religion through these and other actions and
8 constructively discharging Plaintiff by reason of Defendants' refusal to provide a religious
9 accommodation.

10
11
12 67. Defendants Arpaio, Hendershott, Freeman, Shaw, Overton and Sheppard
13 are individually liable because they are and/or were, at all times relevant, responsible for
14 supervising Plaintiff and establishing and/or maintaining the terms and conditions of his
15 employment and for making, enforcing, and/or changing MCSO policies that effected
16 Plaintiff's employment and the free exercise of his religious beliefs. Further, Defendants
17 Arpaio, Hendershott, Freeman, Shaw, Overton and Sheppard are personally liable because
18 each, at various times, denied Plaintiff's request for religious accommodations, interfered
19 with the free exercise of Plaintiff's religion and personally retaliated against Plaintiff for
20 pursuing his rights in violation of Arizona law.
21
22
23

24 **COUNT IV**

25 **TITLE VII – RELIGIOUS DISCRIMINATION**

26
27 68. Plaintiff incorporates by reference paragraph 1-67 herein.
28

1 69. Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e-
2 2(a)(1) provides, in pertinent part, that it shall be an unlawful employment practice for an
3 employer:
4

5 to fail or refuse to hire or to discharge any individual, or otherwise
6 discriminate against any individual with respect to his
7 compensation, terms, conditions, or privileges of employment,
8 because of such individual's race, color, religion, sex or national
9 origin.

10 70. Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e-
11 2(a)(2) further provides, in pertinent part, that it shall be an unlawful employment practice
12 for an employer:

13 to limit, segregate or classify his employees or applicants for
14 employment in any way which would deprive or tend to deprive any
15 individual of employment opportunities or otherwise adversely
16 affect his status as an employee, because of such individual's race,
17 color, religion, sex or national origin.

18 71. Defendants' violated Title VII of the Civil Rights Act of 1964, as amended,
19 by failing to accommodate Plaintiff's sincerely held and non-burdensome observation of
20 his religious faith and further discriminated against Plaintiff in the terms and conditions of
21 his employment on the basis of his religious practice and observance as alleged herein
22 which includes, but is not limited to, punishing Plaintiff for making and persisting in his
23 requests to wear a beard and for pursuing his rights by changing MCSO policies after
24 Plaintiff pointed out that they were inconsistent with Defendants' denial of his requests for
25 religious accommodations and first indicating that his request would be granted; by
26 refusing to allow Plaintiff to take a "fit test" to prove that he could wear the assigned
27 SCBA in emergency situations or, alternatively, demonstrating that other SCBA were
28

1 available and approved for use by Detention Officers; by requiring the Plaintiff to accept
2 the demotion and reduction in pay; by creating a hostile work environment for Plaintiff
3 because of his religion through these and other actions and constructively discharging
4 Plaintiff by reason of Defendants' refusal to provide a religious accommodation.
5

6 72. As a direct and approximate result of Defendants' violations of Title VII,
7 Plaintiff has suffered, is suffering, and will continue to suffer damages in an amount
8 subject to proof, and is entitled to injunctive relief and declaratory relief against
9 Defendants County, MCSO and Sheriff Arpaio, attorneys' fees and costs of said
10 Defendants as well as monetary damages.
11

12 **COUNT V**

13 **TITLE VII - RETALIATION**

14
15 73. Plaintiff incorporates by reference paragraphs 1-72 as fully set forth herein.

16 74. Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e-3
17 provides in pertinent part:
18

19 [I]t shall be an unlawful employment practice for an employer to
20 discriminate against any of his employees...because he has opposed
21 any practice made an unlawful employment practice by this chapter,
22 or because he has made a charge, testified, assisted or participated
23 in any manner in an investigation, proceeding or hearing under this
24 sub-chapter.

25 75. By virtue of the acts and omissions as set forth herein by the named,
26 Defendants and others acting as agents or representatives of said Defendants, Defendants
27 County, MCSO and Sheriff Arpaio engaged in unlawful employment practices prohibited
28 by 42 U.S.C. § 2000e-3 by refusing reasonable transfer requests, punishing Plaintiff for
making and persisting in his requests to wear a beard and for pursuing his rights by

1 changing MCSO policies after Plaintiff pointed out that they were inconsistent with
2 Defendants' denial of his requests for religious accommodations and first indicating that
3 his request would be granted; by refusing to allow Plaintiff to take a "fit test" to prove that
4 he could wear the assigned SCBA in emergency situations or, alternatively, demonstrating
5 that other SCBA were available and approved for use by Detention Officers; by requiring
6 the Plaintiff to accept the demotion and reduction in pay; by creating a hostile work
7 environment for Plaintiff because of his religion through these and other actions, by
8 escalating their improper and illegal actions against Plaintiff in response to his complaints
9 about these actions internally and to the EEOC, and by constructively discharging
10 Plaintiff by reason of Defendants' refusal to provide a religious accommodation.

11
12
13
14 76. By virtue of the foregoing violations of Title VII alleged above, Plaintiff
15 has been damaged and has suffered economic and non-economic loss including mental
16 anguish and emotional distress and is entitled to backpay, front pay and compensatory
17 damages pursuant to 42 U.S.C. § 1981a and temporary and permanent injunctive relief.

18
19 **COUNT VI**

20 **ARIZONA FREE EXERCISE OF RELIGION ACT**

21 77. Plaintiff incorporates by reference paragraphs 1-76 as fully set forth herein.

22
23 78. The Arizona Free Exercise of Religion Act ("FERA") A.R.S. § 41-1493.01,
24 provides, in pertinent part, that the "government shall not substantially burden a person's
25 exercise of religion even if the burden results from a rule of general applicability only if it
26 demonstrates that application of the burden to the person is both: (1) in furtherance of a
27
28

1 compelling governmental interest [and] (2) the least restrictive means of furthering that
2 compelling governmental interest.”

3
4 79. By virtue of their actions above, by failing to allow Plaintiff to work as a
5 Detention Officer with an alternative device or in a position with little need for such a
6 device, and by failing to accommodate Plaintiff in the terms and conditions of his
7 employment after denying him work as a Detention Officer, Defendants imposed a
8 substantial burden on Plaintiff’s religious exercise. The substantial burden on Plaintiff
9 neither furthered a compelling governmental interest nor was the least restrictive means of
10 furthering such an interest.

11
12 80. Accordingly, Defendants have violated Plaintiff’s rights under FERA and
13 caused Plaintiff to incur economic and non-economic damages for which Defendants are
14 jointly and severally liable.

15
16 WHEREFORE, Plaintiff prays for the following relief against the
17 Defendants named herein:

18
19 A. A declaration that the Defendants have committed prohibited practices
20 made unlawful by: Title VII of the Civil Rights Act of 1964, as amended; the First and
21 Fourteenth Amendments to the United States Constitution; the free exercise of religion
22 clause of the Arizona State Constitution, and the Arizona Free Exercise of Religion Act.

23
24 B. A declaration that the Defendants are jointly and severally liable to the
25 Plaintiff for both economic and non-economic compensatory damages;

26
27 C. A declaration that the individually named Defendants, acting in their
28 individual capacity, are liable to the Plaintiff for punitive damages to the fullest extent

1 permitted by applicable law as to Counts I, II and VI of the Complaint;

2 D. Appropriate preliminary and permanent injunctive relief;

3 E. An award of attorneys' fees and costs pursuant to 42 U.S.C. §§ 1988(b)
4 and 2000e-5.
5

6 F. Such other and further relief as the court deems just and proper.

7 **A JURY TRIAL IS REQUESTED ON ALL ISSUES ENUMERATED**
8 **IN THE COMPLAINT PURSUANT TO RULE 38 OF THE FEDERAL RULES OF**
9 **CIVIL PROCEDURE AND PURSUANT TO 42 U.S.C. § 1981a(c).**
10

11 Dated this 29th day of May, 2009.

12 MARTIN & BONNETT, P.L.L.C.
13

14
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