

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN BROOKS,

Plaintiff,

v.

Civ. Act. No.:
6:16-cv-1427 (LEK/ATB)

CITY OF UTICA,

Defendant.

FIRST AMENDED COMPLAINT

For a First Amended Complaint, John Brooks alleges as follows:

INTRODUCTION

1. John Brooks is a firefighter for the City of Utica (“the City” or “Utica”). After eight years of distinguished service as a member of the Utica Fire Department (“UFD”), Firefighter Brooks had a deep and life altering religious conversion — he became a Nazarite and made a sacred vow to God not to cut his hair. Although the City and the UFD have made exceptions to their grooming policy for others, they would not tolerate Brooks’ religious belief and refused to make an exception for him.

2. This intolerance manifested itself in many unpleasant and illegal ways. UFD and the City singled out Firefighter Brooks and subjected him to a course of harassment: they have discriminated against him because of his religion, they have denied him basic administrative remedies available to all city employees; they have disparaged his religious convictions in front of his fellow firefighters; they have denied him his medical benefits; they have refused him an allowance to UFD’s grooming policy given to other firefighters; they have crossed constitutional divided between state and religion by

becoming the arbiter of Nazirite religious practices and beliefs; they have threatened to discipline him for the exercise of his religious beliefs; they have denied him accommodations even though they have given other firefighters accommodations for the exercise of their religious beliefs; and most tragically, they have endangered his life.

3. The reason for all of this hostility — as the deputy fire chief stated, “I don’t get guys like you.” Nazirite vows and practices constitute a distinct minority among religious practices in the United States. Nevertheless, Title VII, the First and Fourteenth Amendment to the United States Constitution, New York’s Human Rights Law, and the Constitution of the State of New York protect Firefighter Books’ rights even if his religious expression and faith are not fully comprehensible and acceptable to the City.

4. All John Brooks has ever wanted is to peacefully honor his vow to God without harassment. Firefighter Brooks has tried to avoid a lawsuit – he has exhausted his administrative procedures and his pleads to the City have proven futile and counterproductive. Out of options, Firefighter Brooks now turns reluctantly to this Court for redress of his civil and constitutional rights.

5. Firefighter Brooks brings this action against the City for employment discrimination due to religion and gender under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and Sections 296(1) (a) and (e) of the New York Executive Law (hereinafter “Human Rights Law”); and for violation of his federal constitutional rights under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983; and for violation of his state constitutional rights under Article I, section 3 of the Constitution of the State of New York.

6. Firefighter Brooks seeks declaratory and injunctive relief, compensatory, nominal and punitive damages, attorneys' fees and costs, and other appropriate equitable and legal relief.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over Mr. Brook's claims pursuant 28 U.S.C. § 1331 in that this action arises under federal law.

8. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.

9. Venue is proper in the Northern District of New York under 28 U.S.C. §1391, because Defendant is a municipal corporation located within the Northern District of New York.

PARTIES

10. Plaintiff John Brooks ("Ff. Brooks" or "Firefighter Brooks" or "Ff. Brooks"), is employed by Defendant as a Firefighter-Paramedic and is a practicing Nazirite.

11. Defendant, City of Utica ("the City" or "Utica"), is a Municipal Corporation organized and existing under the laws of New York State with over fifteen employees; and as such is a covered employer under state and federal anti-discrimination laws.

12. The City operates a fire department. The Utica Fire Department ("UFD") is a department within the City government.

FACTS

A. John Brooks is an excellent Firefighter for the City and its people.

13. In August 2006, Mr. Brooks became a Firefighter-EMT for the City and the UFD and has been employed continuously by the UFD from 2006 until the present time.

14. The UFD has promoted Ff. Brooks to Firefighter-Paramedic.

15. Brooks has bravely protected the people of Utica.

16. On one occasion, Ff. Brooks responded to a call in which a small girl had been ejected from a wrecked car, over a bridge and into the canal beneath. He swam into the canal, diving down into the water to attempt to find the girl.

17. On another occasion, another small girl was left outside in freezing or near freezing conditions and found devoid of the vital signs of life. Ff. Brooks responded to the call and revived the girl on the way to the hospital.

18. On another occasion, Ff. Brooks was speaking with a distraught homeowner at the scene of a house fire. The homeowner was upset that his family had lost their clothing and had nothing to wear. Ff. Brooks handed the man a hundred dollars to help clothe the family.

19. The UFD has recognized Ff. Brooks' excellent professionalism by temporarily promoting him to "Lieutenant" and giving him charge of a fire engine and its team on various occasions.

20. Ff. Brooks has great respect for his officers at UFD and has always tried to carry out their orders to the best of his ability.

B. John Brooks becomes a Nazirite.

21. A Nazirite is a man or woman who makes a special vow to separate himself to God. A Nazirite vow usually includes dietary restrictions, such as not consuming alcohol, as well as allowing the hair of the head to grow uncut. Nazirite practices originate from the Jewish faith after Moses led the Israelites out of Egyptian captivity.

(see Numbers, Chapter 6). The Bible records the practices of such Nazirites as Samson, the prophet Samuel and John the Baptist.

22. On June 24, 2014, the day of the Feast of St. John the Baptist, in a private prayer to God, Ff. Brooks made a Nazirite vow and separated himself to God.

23. As an outward expression and a symbol of his faith in God, Ff. Brooks' Nazirite vow included allowing the hair of his head to grow uncut.

24. Ff. Brooks has not cut the hair of his head since May 2014 more than a month before he made his vow on June 24, 2014.

25. Ff. Brooks believes that after dedicating himself to God in this way all aspects of his life have improved.

26. Ff. Brooks sincerely believes as a matter of faith that he must keep his Nazirite vow to God.

27. Cutting his head hair would violate Ff. Brooks' Nazirite vow, sear his conscience and be a sin against God.

28. Ff. Brooks has not cut his head hair since early May 2014.

29. The length of Ff. Brooks' hair does not interfere, and never has interfered, with his duties as a Firefighter-Paramedic.

30. Ff. Brooks uncut hair is a private expression to all whom he encounters of the vow that he has made to God and of his religious beliefs.

C. Ff. Brooks faces harassment, discrimination and retaliation for filing a complaint with the City's harassment officer.

31. On or about January 11, 2017, UFD Deputy Chief Michael Wusik ("Chief Wusik") commented to Ff. Brooks that Ff. Brooks needed a haircut.

32. This was the first comment Ff. Brooks had received from UFD regarding the length of his hair since he had ceased to cut it over seven months earlier.

33. On or about January 17, 2015, Ff. Brooks emailed Chief Wusik that he was a practicing Nazirite, and that his religious beliefs prohibited him from cutting his head hair and he requested an accommodation for his religious expression, belief and practice.

34. Exhibit A to this Complaint is a true and accurate copy of the January 17, 2015 email that Ff. Brooks sent Chief Wusik and is made a part of the complaint as if fully set forth.

35. About four days later, on or about January 21, 2016, during uniformed inspection, UFD Lieutenant Fasolo (“Lt. Fasolo”) told Ff. Brooks that he had been instructed by his superiors to inform Ff. Brooks that Ff. Brooks was to be considered out of uniform because of the length of his hair.

36. On or about January 18, 2017, Chief Wusik forwarded Ff. Brooks’ January 17, 2015 email to UFD Deputy Chief John Kelly (“Chief Kelly”).

37. Ff. Brooks explained to Lt. Fasolo that he was a Nazirite and that allowing his head hair to grow uncut was a central part of his religious exercise.

38. Ff. Brooks requested from Lt. Fasolo a religious accommodation for his hair length.

39. Lt. Fasolo stated he would forward the information to Chief John Kelly.

40. Later that same day, Chief Kelly came to the firehouse and confronted Ff. Brooks.

41. Lt. Fasolo advised Chief Kelly that Ff. Brooks had requested a religious accommodation for the length of his hair.

42. Chief Kelly told Ff. Brooks that if Ff. Brooks did not cut his hair by January 25, 2015 (the next work day for Ff. Brooks), he would be relieved of duty.

43. Again Ff. Brooks verbally explained that he was a Nazirite and that allowing his head hair to grow uncut was a central part of his religious exercise and an outward expression of his faith.

44. Ff. Brooks requested from Chief Kelly a religious accommodation for his hair length.

45. Religious accommodations have been granted to UFD Firefighters of other religious faiths.

46. For example, although the City's policy requires UFD firefighters to render a hand salute to the UFD fire chiefs.

47. A UFD firefighter, who is a Jehovah's Witness, has religious beliefs that forbid him to make such a salute.

48. The Defendant accommodated this belief by not requiring the Jehovah's Witness Firefighter to salute the Chiefs.

49. Defendant allows Christian Firefighters on Ash Wednesday (a day when certain Christians begin a period of religious fasting and deprivation in anticipation of the annual marking of the crucifixion and resurrection of Jesus) to display a cross of ash on their foreheads (which is both a religious practice and symbolic speech like Ff. Brooks' appearance) in violation of the Defendant's grooming policy.

50. When a retired Catholic firefighter dies, the Defendant accommodates on-duty UFD firefighters who attend the funeral Mass by allowing them to drink Communion wine, despite Defendant's policy that prohibits the consumption of alcohol while on duty.

51. These religious accommodations have been authorized by and ratified by the City and represented the official policy and practice of the City.

52. In light of these various religious accommodations, later on January 21, 2015, Ff. Brooks submitted a written report to Chief Kelly; in the report Ff. Brooks explained that breaking his Nazirite vow to God by cutting his hair would be devastating to him and that he would like a religious accommodation noting that “[o]ther religious accommodations for other faiths are commonly made.”

53. A true and accurate copy of the Report dated January 21, 2015 that Ff. Brooks submitted to Chief Kelly is attached to the Complaint as Exhibit B and is made a part of the complaint as if fully set forth.

54. Ff. Brooks followed up on his report by emailing Chief Kelly that the City employee handbook explicitly provides for religious accommodations for grooming standards. A true and accurate copy of the January 21, 2015 email that Ff. Brooks sent to Deputy Chief Kelly is attached to the Complaint as Exhibit C and is made a part of the complaint as if fully set forth.

55. The City provides administrative remedies for its employees (regardless of department) which include the assistance of a harassment officer.

56. On or about January 22, 2015, Ff. Brooks met with the City’s designated harassment officer, Lori Rockwell, in her office.

57. Ff. Brooks described the previous day’s encounter at the firehouse to Ms. Rockwell.

58. Ms. Rockwell told Ff. Brooks words to the effect of “They can’t do that to you. I will take care of it.”

59. Ff. Brooks left the January 22 meeting with Ms. Rockwell with the understanding that she was initiating an investigation of his complaint of religious discrimination.

60. On or about January 23, 2015, UFD Assistant Fire Chief George Clark (“Chief Clark”) consulted with the City’s corporation counsel regarding Ff. Brooks’ request for a religious accommodation.

61. The corporation counsel advised Chief Clark that denying Ff. Brooks’ request for a religious accommodation and ordering Ff. Brooks to cut his hair was consistent with and in accordance with policy and practice of the City.

62. On or about January 25, 2015, by letter dated January 23, 2015, Assistant Chief Clark ordered Ff. Brooks to cut his hair in compliance with the City’s grooming standards and concomitantly denying Ff. Brooks’ request for a religious accommodation.

63. A true and accurate copy of the January 23, 2015 letter from Assistant Chief Clark to Ff. Brooks is attached to this Complaint as Exhibit D and is made a part of the complaint as if fully set forth.

64. In the January 23, 2015 letter, Assistant Chief Clark also ordered Ff. Brooks to appear in Clark’s office on January 29, 2015 and be in compliance with the order to cut his hair or face further disciplinary action.

65. The rationale behind the January 23 Order was ostensibly safety: “[A]t structure fires, Self Contained Breathing Apparatus must be worn and it is critical to your safety [that] nothing interferes with your face piece. Longer length hair and facial hair can and most often does impair the safe use of the face piece by preventing a thorough seal. This creates an unacceptable safety hazard mainly to yourself but

also to other personnel who may have to perform rescue actions should you become incapacitated. Safety cannot be willfully compromised at any time.”

Exhibit D.

66. The January 23 Order did not stop with the alleged “safety” concerns.

67. In the January 23 Order, the City expressly entangled itself in questions of the Nazirite practices and cast doubt upon the sincerity of Ff. Brooks’ faith: “I have reviewed your claim of a religious objection. You *have claimed* you have become a Nazirite and as part of this belief you are required to refrain from cutting your hair. While your religious beliefs are to be considered and have been researched, ... the research [indicates] many Nazirite [sic] do not strictly adhere to this particular aspect of their belief.” Exhibit D (emphasis added).

68. The January 23 Order was directed by, authorized by and ratified by the City as communicated by the Corporation Counsel to Chief Clark and represented the official policy and practice of the City.

69. Ff. Brooks responded to the January 23 Order by email on January 25, 2015.

70. A true and accurate copy of Ff. Brooks’ January 25, 2015 email to Assistant Chief Clark is attached to the Complaint as Exhibit E and is made a part of the complaint as if fully set forth.

71. In the January 25 email, Ff. Brooks expressed his confusion over the safety concerns regarding the SCBA and the length of his hair; he pointed out that UFD had many firefighters at that time, as well as in the past, whose hair was much longer than Ff. Brooks’ hair and those safety concerns were resolved without requiring them to cut their hair.

72. Moreover, the January 25 email, noted that neither NIOSH, OSHA nor NFPA standards identified long scalp hair as a concern or a factor which compromised the safe functioning of the SCBA.

73. In the January 25 email, finally Ff. Brooks expressed his hope that his religious accommodation request would receive the same regard shown to other UFD firefighters with hair much longer than his.

74. It did not.

D. Defendant deprives Ff. Brooks of an employment benefit.

75. On or about January 26, 2015, the day after he received the order to cut his hair, Ff. Brooks again met with Defendant's designated harassment officer, Ms. Rockwell, to follow up on his complaint initiated January 22, 2015.

76. On or about January 26, 2015, Defendant's harassment officer informed Ff. Brooks that the City's corporation counsel told her that Ff. Brooks would neither be permitted to file a complaint nor would any investigations into his allegations be allowed.

77. On or about January 26, 2015, in response to Ms. Rockwell's refusal to accept his complaint or even provide him with a complaint form, Ff. Brooks asked her where to file his harassment complaint.

78. Ms. Rockwell admitted to Ff. Brooks that harassment complaints were filed with her but that she could not accept his complaint at the direction of corporation counsel.

79. Part of the employment benefits of being an employee of the City of Utica is having access to administrative remedies.

80. Upon information and belief, Ff. Brooks' harassment complaint is the only such complaint that the City has refused to accept for filing.

81. Given that Corporation Counsel had advised Assistant Chief Clark to issue the January 23 Order which questioned the sincerity of Ff. Brooks' religious beliefs, it is a fair inference (and an accurate one) that Ff. Brooks was denied a significant benefit of City employment because of his religious beliefs, practices and speech and/or in retaliation for raising the initial complaint with Ms. Rockwell on January 22, 2015 concerning a religious accommodation.

82. Moreover, it turns out the City, as communicated through corporation counsel, directed Ms. Rockwell to deprive Ff. Brooks of his administrative remedies in an effort to suppress his religious speech and practices and as a demonstration of hostility and disapproval towards his Nazirite faith.

E. The Baseball Cap Incident.

83. Ff. Brooks' next UFD work day was on or about January 29, 2015.

84. On or about January 29, 2015, Ff. Brooks was called into Assistant Chief Clark's office.

85. During that meeting, Assistant Chief Clark interrogated Ff. Brooks' religious beliefs, questioned Ff. Brooks' obligation to follow the tenets of the Nazirite vow and debated with Ff. Brooks' interpretations of the Nazirite vow and its requirements.

86. Again, the City chose to deeply entangle itself in religion by becoming the judge and arbiter of the meaning of a Nazirite vow.

87. After the meeting, Assistant Chief Clark accused Ff. Brooks of being "anti-establishment."

88. Assistant Chief Clark handed Ff. Brooks a UFD ball hat and ordered him to wear the UFD ball hat at all times.

89. Assistant Chief Clark admonished that Ff. Brooks would be subjected to special daily inspections and/or monitoring to ensure he complied with the order to wear the UFD ball hat at all times.

90. In response Ff. Brooks asked Assistant Chief Clark why the Defendant considered it a safety hazard for Ff. Brooks to have long hair but not a safety hazard for female firefighters to have long hair.

91. In reply, Chief Clark stated that an exemption is provided for hair length for female firefighters but that no such exemption is provided for religious beliefs and emphasized that the order to wear the ball cap was not an accommodation.

92. In fact, the order to wear the cap was a form of punishment, discipline, harassment and humiliation.

93. To begin with, despite the City's profess concern for uniform and professional appearance, the cap neither fit Ff. Brooks' head nor stay on his head.

94. The ill-fitting cap was intended to and did make Ff. Brooks look ridiculous rather than professional.

95. Ff. Brooks was required to wear the UFD cap at all times while on duty, including at the scenes of fires.

96. The UFD cap was impossible to wear with the SCBA face piece which placed Ff. Brooks' life in jeopardy.

97. No safety test or fit test ever was conducted to determine if the UFD ball hat was safe to wear at the scene of a fire or compatible with Ff. Brooks' personal protective equipment.

98. No other firefighters were required to wear a UFD ball hat while on duty.

99. Other firefighters frequently ridiculed and insulted Ff. Brooks because of the UFD cap.

100. Wearing the cap while on duty was both dangerous and humiliating to Ff. Brooks.

101. Based upon Chief Clark's communication with and receiving direction and advice from Corporation Counsel, it is a fair inference (and an accurate one) the order to wear the ball cap and the intended and attended hostility which it generated towards Ff. Brooks was directed by, authorized by and ratified by the City and represented the official policy and practice of the City.

F. May 1, 2015 Directive issued by Defendant.

102. After a five month pattern of harassment and threats of discipline failed to make Ff. Brooks disavow his religious beliefs, practices and speech, the City increased pressure on Ff. Brooks in an effort to force him to abandon his religious activities which it did not understand or approve, and which it viewed as non-conformist and subversive.

103. On or about May 1, 2015, Assistant Chief Clark summoned Ff. Brooks to a meeting and handed him a written directive dated May 1, 2015, and labelled with the subject line "Notice of Compliance with Grooming Standards."

104. A true and accurate copy of the May 1, 2015 directive is attached hereto as Exhibit F and is made a part of the complaint as if fully set forth.

105. The May 1 written directive required Ff. Brooks to wear a hairnet over his hair (or hairbands) at all times while on duty.

106. Chief Clark, however, retracted the option to wear hair bands and ordered Ff. Brooks to only wear hairnet — in other words, hairbands were unacceptable.

107. The directive sternly informed Ff. Brooks that his compliance would be subjected to daily monitoring and reporting by his superiors.

108. Finally, the May 1 directive threatened disciplinary action against Ff. Brooks if he failed to comply with the intensified “grooming” orders.

109. Most ominously, the City, as communicated to Ff. Brooks by Chief Clarke, was continuing its quest to discredit Ff. Brooks’ faith and religious vows.

110. Specifically, Chief Clarke threatened him with disciplinary action if the City determined (through investigation) that Ff. Brooks was lying about becoming a Nazirite.

111. Upon information and belief, neither the City nor UFD nor any of its officers has ever threatened to investigate or rendered opinion concerning any other employee’s religious beliefs and the sincerity thereof.

112. Given the City’s inexhaustible efforts to cast dispersions upon Ff. Brooks’ Nazirite faith and vows, a fair inference (and an accurate one) is that the City was and is hostile towards Ff. Brooks’ religious beliefs, practices and expression.

113. Moreover, the May 1 directive was directed by, authorized by and ratified by the City and represented the official policy and practice of the City.

G. The Hairnet Endangers Ff. Brooks’ Life.

114. Wearing the hairnet while on duty was humiliating to Ff. Brooks.

115. Other UFD firefighters frequently ridiculed and insulted Ff. Brooks because of the hairnet he was required to wear.

116. Medical patients Ff. Brooks encountered on his calls as a paramedic ridiculed Ff. Brooks because of the hairnet.

117. More importantly, wearing the hairnet while on duty posed a danger to Ff. Brooks' life and health.

118. Despite the City's previous protests over safety, at the May 1 meeting, Ff. Brooks had asked Assistant Chief Clark whether a hair net was compatible with the SCBA.

119. Assistant Chief Clark had failed to answer Ff. Brooks' question regarding whether a hair net was compatible with the SCBA.

120. No safety test or fit test ever was conducted to determine if a hairnet was safe to wear at the scene of a fire or compatible with Ff. Brooks' personal protective equipment.

121. Based upon this conduct and lack of responsiveness, a fair inference (and an accurate one) is that the City's previously stated concerns that Ff. Brooks' hair had to be cut to facilitate the proper operation of the SCBA equipment was but a thin pretext to disguise the City's true motive — hostility towards and disapproval of Ff. Brooks' religious beliefs, practices and expression.

122. Whether not caring about the compatibility of the hairnet with the SCBA gear was prompted by malice or negligence, the City's hostility towards Ff. Brooks placed his safety at risk.

123. Since the hairnet served no purpose (including any purpose related to safety or uniformity), a fair inference (and an accurate one) is that the City designed the hairnet directive to punish and to intimidate Ff. Brooks for his religious beliefs, practices and expression which the City found peculiar and distasteful.

124. The Defendant's oppressive obsession with Ff. Brooks' Nazirite vows placed Ff. Brooks' life and health in jeopardy.

125. On or about the night of May 23, 2015, or the early morning hours of May 24, 2015, Ff. Brooks was on duty as a Firefighter-Paramedic for UFD assigned to Engine 1 (the term “engine” refers to a firetruck and its team).

126. Engine 1 responded to a structure fire in a building on Dudley Avenue in Utica the late night of May 23, 2015 or the early morning hours of May 24, 2015.

127. When Ff. Brooks arrived at the scene at the fire, it was dark.

128. Ff. Brooks, with Lt. Ambrose, entered the burning building (two stories in height).

129. Ff. Brooks was wearing a hairnet as defendant had ordered.

130. Lt. Ambrose and Ff. Brooks made their way up a set of stairs to the second story where they encountered a heavy smoke condition.

131. The noxious (and potentially lethal) environment mandated that Lt. Ambrose and Ff. Brooks deploy their SCBA’s to avoid smoke inhalation.

132. When Ff. Brooks attempted to pull the SCBA over his face, the face mask became entangled with the hairnet.

133. The hairnet lodged between Ff. Brooks’ face and the seal of the face mask.

134. The hairnet prevented the face mask from sealing properly against Ff. Brooks’ face.

135. In the intense smoke condition inside the burning building, Ff. Brooks was forced to remove the face mask of his SCBA to clear the hairnet from the face mask seal.

136. Ff. Brooks took the time to reposition the hairnet on his head to comply with Defendant’s order.

137. Ff. Brooks again attempted to don his SCBA face mask while wearing the hairnet.

138. Again Ff. Brooks was unable to do so because the hairnet interfered with the SCBA face mask.

139. After at least one more unsuccessful attempt to place his SCBA face mask over the hairnet, in fear for his safety and that of Lt. Ambrose and the other firefighters on the scene, Ff. Brooks removed the hairnet from his head. With the hairnet no longer operating as an obstruction the SCBA face mask worked as designed and a proper seal was achieved protecting Ff. Brooks from the smoke.

140. Lt. Ambrose, unaware of the emergency the hairnet had caused Ff. Brooks, had continued into the smoke-filled second story of the building.

141. Ff. Brooks did not know Lt. Ambrose's location inside the burning building; so he had to explore the second story of the burning building alone to locate Lt. Ambrose.

142. Ff. Brooks located Lt. Ambrose and continued to work to extinguish the fire.

143. If Ff. Brooks had collapsed from smoke inhalation or been injured in some other way during the multiple attempts to deploy his SCBA face mask with the hair net on his head, Lt. Ambrose would have been left alone inside a structure fire in a heavy smoke condition which would have endangered Ff. Brooks, Lt. Ambrose and other firefighters on scene would have been required to attempt to save him or Lt. Ambrose.

144. It is basic UFD safety procedure for firefighters to enter structure fires in pairs and remain in immediate contact during the entire time they are inside the structure.

145. Recall Defendant's January 23, 2015, written directive denying Ff. Brooks' religious accommodation request, which directive alleged that it was critical to Ff.

Brooks' safety that nothing interfere with the face piece of his SCBA equipment (Exhibit D).

146. The hairnet, which Defendant forced Ff. Brooks to wear and which Defendant never tested operationally, directly endangered his safety while in a heavy smoke condition within a burning building.

147. The fair and accurate inference for the Defendant's reason to send Ff. Brooks into a burning building without testing the compatibility of the hairnet with the SCBA face mask is that Defendant's need to act on its hostility towards Ff. Brooks' religious faith, expression and practice was more important than Mr. Books' safety.

148. In a May 24 email to Assistant Chief Clark, Ff. Brooks reported the danger the hairnet had caused him during the Dudley Avenue fire.

149. Ff. Brooks told Defendant that he could not continue to wear a hairnet because of the safety threat it posed to himself and others.

150. Despite being placed upon notice of the danger presented by contemporaneously wearing a hairnet and SCBA equipment, Defendant has never rescinded the hairnet order.

151. The targeting of Ff. Brooks' safety runs deeper.

152. On information and belief, since January 1, 2015, Defendant has conducted at least two fit tests of personal protective equipment that all firefighters should have received.

153. On information and belief, the first of those fit tests was conducted by UFD personnel.

154. On information and belief, subsequently another fit test for UFD firefighters was conducted by a representative of a company that sold Defendant new protective equipment.

155. The only fit test Ff. Brooks has received since he requested a religious accommodation and reported Defendant's discriminatory activity to Defendant's harassment officer was conducted by the representative of a company that sold Defendant new protective equipment, including new SCBAs.

156. The representative told Ff. Brooks that SCBA face masks are effective and compatible for use with long head hair.

157. Upon information and belief, Defendant knew that SCBA face masks are effective and compatible for use with long head hair.

158. Therefore, it is a fair inference supported by the facts that Defendant's safety concerns were a pretext to justify its religious discrimination.

159. Defendant failed to provide Ff. Brooks the first mandatory fit test of his protective equipment conducted after his request for a religious accommodation and his report of Defendant's discriminatory activity to Defendant's harassment officer.

160. This was intended to and did place Ff. Brooks' health and life at risk.

H. "I don't understand guys like you."

161. Over the course of six months Ff. Brooks repeatedly tried to avail himself of the City's administrative remedies provided as a benefit to its employees — doggedly, he, on or about June 1, 2015, filed a written complaint with Defendant's harassment officer Ms. Rockwell.

162. Ff. Brooks never received a formal response or acknowledgement from Defendant regarding the complaint he filed with Rockwell.

163. Defendant never engaged in the interactive process with Plaintiff to determine a reasonable accommodation for his religious beliefs.

164. Defendant did not investigate Ff. Brooks' complaint because they had condoned, ordered and ratified the hostility and discrimination suffered by Ff. Brooks.

165. Since Ff. Brooks written complaint to Rockwell went unanswered; on or about June 18, 2015, he sent an e-mail to "all members of the Corporation Counsel and Lori Rockwell" asking about the status of his complaint and countless requests for an accommodation.

166. Later that same day, Chief Wusik came to the firehouse where Ff. Brooks was on duty, immediately approached the area where Ff. Brooks was working and began talking about Ff. Brooks' hair.

167. Chief Wusik said to Ff. Brooks, "You have no respect for yourself or your father."

168. Ff. Brooks attempted to explain his religious practices and beliefs.

169. Chief Wusik's reaction to Ff. Brooks' explanation of his religious beliefs was to smirk and scoff.

170. Finally, Chief Wusik reached out and tapped Ff. Brooks on the head with an envelope he held in his hand and said, "I don't understand guys like you."

I. Defendant tells Ff. Brooks his vow to not to cut his hair is akin to him being a paraplegic — that is, the City believes he is disqualified from being a firefighter because of his religious beliefs.

171. On or about June 26, 2015 a lawyer retained by the Defendant met with Ff. Brooks and his union representative.

172. The lawyer asked Ff. Brooks to explain the situation.

173. Ff. Brooks told the lawyer about his religious beliefs, his multiple requests for a religious accommodation, and the discrimination and harassment to which he had been subjected.

174. The lawyer showed Ff. Brooks a file with some of the documents Ff. Brooks had submitted as a complaint.

175. The lawyer asked Ff. Brooks what he wanted.

176. Ff. Brooks told the lawyer that he wanted to follow the same hair length guidelines the female firefighters were allowed to follow with no other stipulations.

177. The lawyer replied that Ff. Brooks' request for a religious accommodation was like a paraplegic asking for a medical accommodation to work at the fire department — to be clear, the Defendant's counsel assigned to investigate the claim of discrimination took the position that Ff. Brooks' long hair was not like a female firefighters' long hair but was rather a condition that rendered him totally incapable of performing the core functions of a firefighter akin to a paraplegic.

178. The lawyer told Ff. Brooks that he was not going to investigate Ff. Brooks' complaint.

179. This incident reveals, at a minimum, the Defendant's total inability and unwillingness to accept Ff. Brooks' religious beliefs and Defendant's unmitigated and

irrational hostility towards Ff. Brooks' religious beliefs and the Defendant's (in Defendant's mind) justification of its discriminatory treatment of him through its practices, policies and customs.

180. Defendant's job descriptions for its firefighters make no distinction between male and female firefighters — female firefighters have the same or similar duties as their male counterparts.

181. Current UFD female firefighters in Defendant's employ have head hair that is as long as or longer than Plaintiff's head hair; these female firefighters are not subjected to constant threats of discipline for having long hair; these female firefighters are never singled out for daily inspections and monitoring because of the length of their hair.

182. Defendant's UFD grooming policy requires that female firefighters with long hair wear their hair in a bun or a ponytail at all times.

183. Regardless of the grooming policy, current UFD female firefighters routinely wear their long hair down and unsecured including while on calls.

184. Female UFD firefighters are not reprimanded, disciplined, inspected, or monitored for wearing long hair down and unsecured while on duty in violation of the UFD grooming policy.

185. Female UFD firefighters, including those with longer hair than that of Ff. Brooks, use the same SCBA assemblies and face masks as male firefighters and use such equipment during fires without issue.

J. Ff. Brooks suffers loss of benefits because of Defendant's hostile and discriminatory policies and actions.

186. Defendant's Employee Handbook requires the Defendant to make a reasonable accommodation in the grooming standards in the event of a conflict with an employee's sincerely held religious beliefs.

187. These accommodations represent a significant benefit of employment.

188. Defendant has accommodated other religious faiths as described above at ¶45 to ¶51.

189. Plaintiff's repeated requests for an accommodation were met with threats of disciplinary action, harassment, ridicule and retaliation.

190. In addition, on or about March 3, 2017, while on an EMS call Ff. Brooks was attacked by someone on the street and bitten during the attack.

191. He was ordered by his superior to go to the hospital to have his on-duty injury examined and treated.

192. Ff. Brooks went to the hospital as ordered, received treatment and was ultimately billed for the medical services.

193. Pursuant to UFD policy and procedure, Ff. Brooks submitted his bill to the City for reimbursement.

194. The City has refused to pay the bill or to explain the denial.

195. Before he took the Nazirite vow or sought a religious accommodation, the City never denied paying for medical treatment arising from an on-duty injury.

196. The non-payment of the bill has negatively impacted Ff. Brooks' credit rating which the City knows and apparently desire as a form of passive hostility towards Ff. Brooks for the exercise and expression of his religious faith.

197. Additional, a significant benefit of UFD is the ability to advance by civil service test.

198. Previously Ff. Brooks has taken such exams.

199. However, since the City began its campaign of harassment towards him, Ff. Brooks understood that studying for and taking such an exam for promotion would be a futile exercise given the City's pattern of hostility towards him and did not take the most recent civil service test because of it.

K. Exhaustion of Administrative Remedies.

200. Ff. Brooks reports to works in fear of being subjected to discipline or reprisal from his superior officers on the basis of his sincerely held religious beliefs and his requests for a reasonable accommodation.

201. Ff. Brooks has suffered, and continues to suffer, harm, including mental stress and anguish due to Defendant's unlawful discriminatory conduct which includes but is not limited to: failing or refusing to accommodate Plaintiff's sincerely held religious beliefs; failing or refusing to stop the continued and routine harassment, ridicule and continual threats of discipline; failing or refusing to accept Plaintiff's repeated attempts to file an internal complaint of discrimination; being treated differently than similarly situated female firefighters, and Defendant's retaliatory conduct in response to Ff. Brooks' request for a reasonable accommodation for his religious beliefs.

202. On or about June 19, 2015, Plaintiff filed a timely Verified Complaint (DHR Case No.: 10110175866 and EEOC Charge No.: 16GB503157) against the Defendant with the New York State Division of Human Right (hereinafter "DHR") alleging discrimination and retaliation in violation of federal and state laws.

203. By Notice and Final Order dated June 29, 2016, the New York State DHR, at Plaintiff's request, dismissed Plaintiff's state law claims for the purpose of allowing him to pursue his claims of unlawful discrimination in federal court (Exhibit G attached hereto and made a part hereof).

204. By Dismissal and Notice of Rights dated September 2, 2016, which was received by Plaintiff on or about September 6, 2016, Plaintiff was notified by the EEOC of his right to file a civil action against Defendant (Exhibit H attached hereto and made a part hereof).

205. This action has been timely filed within ninety (90) days of Plaintiff's receipt of the aforesaid right to sue letter.

206. On or about February 29, 2016, Ff. Brooks served on Defendant a Notice of Claim alleging violation of Plaintiff's right to be free from discrimination and retaliation.

207. On May 24, 2016, pursuant to Section 50-h of New York General Municipal Law the City examined Ff. Brooks under oath regarding the allegations contained in the above referenced Notice of Claim.

208. At all times relevant herein, Ff. Brooks' job performance is, and has always been, far more than satisfactory.

209. Ff. Brooks' religious expression of wearing his hair uncut was and is delivered in his private capacity as a citizen on a matter of public concern unrelated to his employment, and did not interfere with Defendant's ability to administer public services or with its internal or external operations or internal order and discipline and is not likely to do so.

STATEMENT OF LAW

210. Each and all of the acts herein alleged of the Defendant (which includes those of its officers, agents, servants, employees, or persons acting at its behest or direction), were done and continue to be done under color of state law and pursuant to Defendant's policies, practices and/or customs.

211. The actions of Defendant violate and violated Plaintiff's rights under the First and Fourteenth Amendments to the U.S. Constitution and other law, and are further a violation of 42 U.S.C. 1983.

212. Defendant's policies, practices and/or customs, on their face and as applied to Plaintiff, violate and violated Plaintiff's rights under the First and Fourteenth Amendments to the U.S. Constitution and other law, and are further a violation of 42 U.S.C. 1983.

213. Defendant's actions have caused, and will continue to cause, Plaintiff to suffer undue and actual hardship and irreparable injury.

214. Defendant's policies, practices, and/or customs are vague, irrational and unreasonable, and impose irrational and unjustifiable restrictions on constitutionally protected rights and activity.

215. Plaintiff has no adequate remedy at law to correct the continuing deprivations of his rights under law.

216. As a direct and proximate result of Defendant's continuing violations of Plaintiff's rights, Plaintiff has in the past and will continue to suffer in the future direct and consequential damages, including but not limited to, the loss of the ability to exercise his constitutional and other rights.

217. Defendant's failure to adopt clear and concise written policies which protect the rights of Plaintiff caused the unlawful and discriminatory treatment by Defendant.

218. Defendant's failure to properly train, direct, control and supervise the actions and conduct of its officers, agents, servants, employees, or persons acting at its behest or direction, which failure amounted to deliberate indifference, resulted in the violation of Plaintiff's constitutional and other rights.

219. Defendant's deliberate indifference to act to stop or remedy the unlawful actions set out herein amounted to endorsement, adoption and ratification of said unlawful actions and is a violation of Plaintiff's constitutional and other rights.

220. Defendant failed to repudiate or discipline, and failed to immediately act to remedy, the unlawful and discriminatory actions and unlawful conduct set out herein.

FIRST CAUSE OF ACTION

Unlawful Discrimination on the basis of Religion in Violation of Title VII

221. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

222. Defendant's conduct as herein alleged violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a)(1), which makes unlawful, discrimination against an

employee on the basis of religion. The term “religion” includes “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. § 2000e(j).

223. Defendant’s actions, policy and practice constitute an impermissible consideration of religion under 42 U.S.C. § 2000e-2(m) because, among other things, Plaintiff’s religion, sincerely held religious faith, religious exercise and/or religious practices were a motivating factor in Defendant’s conduct.

224. Defendant discriminated against Plaintiff in violation of Title VII when, among other things, it repeatedly threatened Plaintiff with discipline, including termination of employment, repeatedly harassed Plaintiff, endangered his safety and denied him employment benefits because of his religious beliefs, expression and practices.

225. The stated reasons for the Defendant’s conduct were not the true reasons, but instead were a pretext to hide the Defendant’s discriminatory animus.

226. As a proximate result of Defendant’s discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, loss of employment benefits, emotional distress and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

227. Defendant’s unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff’s rights.

228. Plaintiff requests relief as described in the Prayer for Relief below.

SECOND CAUSE OF ACTION

Unlawful Failure to Accommodate Religious Beliefs in Violation of Title VII

229. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

230. Defendant's conduct as herein alleged violates Title VII of the Civil Rights Act of 1954, 42 U.S.C. §2000e(j), requires an employer to "accommodate" an employee's religious practices and beliefs

231. Defendant acted in violation of Title VII when, among other things, rather than initiating steps toward accommodating Plaintiff's religious beliefs, Defendant refused to enter into the interactive process, it refused to take Plaintiff's internal complaint, it refused to investigate Plaintiff's complaints, it refused to provide a reasonable accommodation for Plaintiff's sincerely held religious beliefs and it repeatedly threatened Plaintiff with disciplinary action if he failed to comply with orders to cut his head hair.

232. Accommodating Plaintiff would not cause Defendant an undue hardship or create a safety risk to Plaintiff or others.

233. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

234. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, loss of employment benefits, emotional distress, and humiliation. As a result of such actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

235. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

236. Plaintiff requests relief as described in the Prayer for Relief below.

THIRD CAUSE OF ACTION

Unlawful Discrimination on the basis of Religion in Violation of Title VII (Hostile Work Environment)

237. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

238. Defendant's conduct as herein alleged violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a)(1), which makes unlawful, discrimination against employee on the basis of religion. The term "religion" includes "all aspects of religious observance and practice, as well as belief." 42 U.S.C. § 2000e(j).

239. Defendant discriminated against Plaintiff in violation of Title VII when, among other things, it created a hostile and abusive work environment (which included endangering Plaintiff's safety and denying the rightful benefits of his employment) based upon Plaintiff's religious beliefs, practices and expression.

240. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

241. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, loss of employment benefits, emotional distress and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

242. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

243. Plaintiff requests relief as described in the Prayer for Relief below.

FOURTH CAUSE OF ACTION

Unlawful Discrimination on the basis of Reprisal for Engaging in Protected Activities in Violation of Title VII

244. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

245. The Defendant's conduct as herein alleged violates Title VII of the Civil Rights Act of 1964, which makes it unlawful for an employer to retaliate against an employee because he engaged in activities protected by Title VII.

246. Defendant retaliated against Plaintiff in violation of Title VII when, among other things, it repeatedly threatened Plaintiff with discipline, including termination of employment, repeatedly harassed Plaintiff, endangered Plaintiff's safety and denied him employment benefits because of his religious beliefs, expression and practices.

247. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

248. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, emotional distress and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

249. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

250. Plaintiff requests relief as described in the Prayer for Relief below.

FIFTH CAUSE OF ACTION

Unlawful Discrimination on the Basis of Disparate Treatment on the Basis of Gender in Violation of Title VII

251. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

252. The Defendant's conduct as herein alleged violates Title VII of the Civil Rights Act of 1964, which makes it unlawful for an employer to discriminate against an employee because of his gender or religion. Defendant discriminated against Plaintiff when, among other things, it treated him differently than female employees with long head hair. Namely, including without limitation, female employees with long head hair are not made to wear baseball caps and/or hairnets at all times while on duty and are not required to follow the Defendant's grooming policy which requires that females with long hair keep their hair up at all times and/or wear their hair in a ponytail or bun at all times while on duty. Nor are female employees with long hair disciplined or threatened with discipline for not following Defendant's grooming policy.

253. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus

254. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, emotional distress and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

255. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

256. Plaintiff requests relief as described in the Prayer for Relief below.

SIXTH CAUSE OF ACTION

Violation of the New York State Human Rights Law

257. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

258. Defendant's conduct as herein alleged violates the NYS HRL, which makes unlawful, discrimination against employee on the basis of religion.

259. Defendant discriminated against Plaintiff in violation of HRL when it repeatedly threatened Plaintiff with discipline, including termination of employment because he refused to cut his head hair due to sincerely held religious beliefs.

260. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

261. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, emotional distress and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

262. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

263. Plaintiff requests relief as described in the Prayer for Relief below.

SEVENTH CAUSE OF ACTION

Unlawful Failure to Accommodate on the Basis of Religion in Violation of the HRL

264. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

265. Defendant's conduct as herein alleged violates the NYS HRL, which requires an employer to "accommodate" an employee's religious practices and beliefs.

266. Defendant acted in violation of HRL when, among other things, rather than initiating steps toward accommodating Plaintiff's religious beliefs, Defendant refused to enter into the interactive process, it refused to take Plaintiff's internal complaint, it refused to investigate Plaintiff's complaints, it refused to provide a reasonable accommodation for Plaintiff's sincerely held religious beliefs and it repeatedly threatened Plaintiff with disciplinary action if he failed to comply with orders to cut his head hair.

267. Accommodating Plaintiff would not cause Defendant an undue hardship or create a safety risk to Plaintiff or others.

268. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

269. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, emotional distress, and humiliation. As a result of such actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

270. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

271. Plaintiff requests relief as described in the Prayer for Relief below.

EIGHT CAUSE OF ACTION

Unlawful Discrimination on the basis of Religion in Violation of the NYS HRL

272. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

273. Defendant's conduct as herein alleged violates the NYS HRL which makes unlawful, discrimination against employee on the basis of religion.

274. Defendant discriminated against Plaintiff in violation of HRL when, among other things, it created a hostile and abusive work environment; and when it repeatedly threatened Plaintiff with discipline, including termination of employment; and when it ordered Plaintiff to wear an ill-fitting baseball cap at all times while on duty; and when it ordered Plaintiff to wear a hairnet at all times while on duty; and when it subjected Plaintiff to daily inspections and monitoring,; and when it challenged Plaintiff's sincerely held religious beliefs and ridiculed Plaintiff for those beliefs; and when it refused to take Plaintiff's repeated requests to file an internal complaint; and when it ignored and continues to ignore Plaintiff's repeated requests for an accommodation.

275. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

276. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, emotional distress and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

277. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

278. Plaintiff requests relief as described in the Prayer for Relief below.

NINTH CAUSE OF ACTION

*Unlawful Discrimination on the basis of Reprisal for Engaging in Protected
Activities in Violation of the NYS HRL*

279. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full,

280. The Defendant's conduct as herein alleged violates the NYS HRL, which makes it unlawful for an employer to retaliate against an employee because he engaged in activities protected by HRL.

281. Defendant discriminated against Plaintiff in violation of HRL when, among other things, it repeatedly threatened to discipline Plaintiff, when it ordered Plaintiff to wear a baseball cap and/or hairnet at all times while on duty; when it refused to accept Plaintiff's internal complaint; and when it subjected Plaintiff to ridicule and questioned Plaintiff's religious beliefs; after Plaintiff requested an accommodation for his religious beliefs and after Plaintiff sought to file an internal complaint with the Defendant's harassment office.

282. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

283. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, emotional distress and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

284. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

285. Plaintiff requests relief as described in the Prayer for Relief below.

TENTH CAUSE OF ACTION

Unlawful Discrimination on the Basis of Disparate Treatment on the Basis of Gender in Violation of the NYS HRL

286. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

287. The Defendant's conduct as herein alleged violates NYS HRL, which makes it unlawful for an employer to discriminate against an employee because of his gender or religion.

288. Defendant discriminated against Plaintiff when it treated him differently than female employees with long head hair. Namely, to include without limitation, female employees with long head hair are not made to wear baseball caps and/or hairnets at all times while on duty and are not required to follow the Defendant's grooming policy which requires that females with long hair wear their hair in a ponytail at all times while on duty. Nor are female employees with longhair are neither disciplined nor threatened with discipline for not following Defendant's grooming policy.

289. The stated reasons for the Defendant's conduct were not the true reasons, but instead were a pretext to hide the Defendant's discriminatory animus.

290. As a proximate result of Defendant's discriminatory actions, Plaintiff has suffered and continues to suffer, among other things, the loss of his rights, mental anguish, emotional distress, and humiliation. As a result of those actions and consequent harms, Plaintiff has suffered such damages in an amount to be proved at trial.

291. Defendant's unlawful actions were intentional, willful, malicious and/or done with reckless disregard for Plaintiff's rights.

292. Plaintiff requests relief as described in the Prayer for Relief below.

ELEVENTH CAUSE OF ACTION

Violation of the Free Exercise Clause of the First Amendment (42 U.S.C. 1983)

293. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

294. The actions of Defendant, as alleged herein, violate and violated Plaintiff's right to free exercise of religion as guaranteed by the First Amendment to the United States Constitution and were carried out pursuant to Defendant's policies, practices, and/or customs.

295. The Free Exercise Clause of the First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment, protects citizens' freedom to believe as they will and to freely engage in religious exercise consistent with their beliefs.

296. Government action based upon disagreement with or disapproval of religious tenets or practices violates the Free Exercise Clause.

297. The Free Exercise Clause forbids the government from penalizing or discriminating against individuals or groups because they hold religious beliefs or engage in religious activities with which the government disagrees or disapproves.

298. The Free Exercise Clause forbids government from forcing citizens to choose between their religion and forfeiting benefits, such as government employment, and abandoning the precepts of their religion in order to maintain their jobs.

299. The Free Exercise Clause forbids the government from imposing special disabilities based upon a citizen's religious views and exercises.

300. Defendant's conduct, as alleged herein, among other things, was based on disagreement with and disapproval of Plaintiff's religion; penalized and discriminated against Plaintiff for his religious beliefs and exercise; forced Plaintiff to choose between his employment and his religious beliefs; and imposed disabilities upon Plaintiff because of his religion.

301. Defendant's actions substantially burden Plaintiff's sincerely held religious beliefs.

302. Defendant's actions substantially burden Plaintiff's sincerely held religious beliefs.

303. "Defendant's policies, practices and customs as set out herein are not neutral or generally applicable.

304. Defendant's actions were not neutral toward religion and targeted Plaintiff's religion and religious exercise for distinctive treatment.

305. Defendant has no rational, let alone compelling, reason for its actions against Plaintiff, nor are its actions narrowly tailored or the least restrictive means of advancing a permissible government interest.

TWELFTH CAUSE OF ACTION

Violation of the Establishment Clause of the First Amendment (42 U.S.C. 1983)

306. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

307. The actions of Defendant, as set out herein, violate and violated the establishment of religion protections as guaranteed by the First Amendment to the United States Constitution and were carried out pursuant to Defendant's policies, practices, and/or customs.

308. The Establishment Clause of the First Amendment, incorporated and made applicable to the states by the Fourteenth Amendment, protects citizens' freedom from government hostility to religion.

309. Defendant's actions were and are unlawfully hostile to Plaintiff's religion in violation of the Establishment Clause.

310. Defendant's actions had and have no secular purpose or primary secular purpose; Defendant's actions had and have the principal or primary effect of inhibiting religion, to include Plaintiff's religion; Defendant's actions fostered and foster an excessive government entanglement with religion.

311. A reasonable observer of Defendant's actions would perceive a message of governmental hostility toward religion, and governmental hostility toward Plaintiff's religion.

THIRTEENTH CAUSE OF ACTION

Violation of the Free Speech Clause of the First Amendment (42 U.S.C. 1983)

312. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

313. Defendant's actions violate and violated the Free Speech Clause of the First Amendment to the Constitution of the United States, and were carried out pursuant to Defendant's policies, practices and/or customs.

314. Defendants actions violate Plaintiff's free speech rights under the First Amendment.

315. The First Amendment protects expressive conduct as well as verbal or written communication.

316. Plaintiff's wearing his hair uncut is a private expression to all he encounters of the vow he made to God and of his dedication to God and of his religious beliefs.

317. Religious speech enjoys the highest protections of the First Amendment.

318. The First Amendment prohibits government from engaging in viewpoint discrimination.

319. Defendant's actions against Plaintiff were due to Defendant's disagreement with and disapproval of Plaintiff's sincerely held religious viewpoint and his expression of his sincerely held religious viewpoint, which is unlawful viewpoint discrimination.

320. Defendant's actions unlawfully impose overbroad restrictions on Plaintiff's speech, constitute an unlawful prior restraint on Plaintiff's speech that grants unbridled discretion to government officials, and unconstitutionally condition a government benefit on the relinquishment of a First Amendment right.

321. Defendants actions unlawfully chill, deter and restrict Plaintiff's protected speech right.

322. Defendant has no rational, let alone compelling, interest for its actions against Plaintiff, nor are its actions narrowly tailored or the least restrictive means of advancing a permissible government interest.

FOURTEENTH CAUSE OF ACTION

Violation of the Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. 1983)

323. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

324. Defendant's actions violate and violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and were carried out pursuant to Defendant's policies, practices and/or customs.

325. The Equal Protection Clause requires that the government treat equally all persons similarly situated.

326. Religion and gender are suspect classes under the Equal Protection Clause, and Plaintiff belongs to each class.

327. Defendant's actions violated Plaintiff's equal protection rights by treating him differently and unequally with similarly situated individuals on the basis of his religion and gender.

328. Defendant's actions infringe upon Plaintiff's fundamental rights to freedom of speech, freedom of religion, and freedom from government hostility to religion, among other fundamental rights.

329. Defendant's violations of Plaintiff's equal protection rights include, but are not limited to, its disparate treatment of Plaintiff; its failure to accommodate Plaintiff; its retaliation against Plaintiff; the hostile work environment to which it subjected Plaintiff.

330. Defendant's actions specifically targeted Plaintiff's religion and religious exercise for unequal treatment.

331. The other firefighters employed by Defendant at all times relevant herein are and were similarly situated to Plaintiff and occupy employment positions identical to or substantially similar to Plaintiff's.

332. Defendant has no rational, let alone compelling, interest for its actions against Plaintiff, nor are its actions narrowly tailored or the least restrictive means of advancing a permissible government interest.

333. Defendant's actions do not further an important government interest by means that are substantially related to that interest.

FIFTEENTH CAUSE OF ACTION

Violation of Article I, Sec. 3 of the Constitution of the State of New York

334. Plaintiff repeats and realleges each and every previous allegation contained in the First Amended Complaint as if set forth in full.

335. Defendant's actions violate and violated Article I, Section 3 of the Constitution of the State of New York, and were carried out pursuant to Defendant's policies, practices and/or customs.

336. Article I, Section 3 protects the "free exercise and enjoyment of religious profession and worship, without discrimination or preference."

337. Defendant's actions substantially burden Plaintiff's exercise of his sincerely held religious beliefs.

338. Defendant's actions include, among other things, penalizing and discriminating against Plaintiff for his religious beliefs and exercise; forcing Plaintiff to choose between his employment and his religious beliefs; and imposing disabilities upon Plaintiff because of his religion.

339. Defendant's actions were based on disapproval of Plaintiff's religion and religious exercise.

340. Defendant's actions intentionally burdened Plaintiff's religious exercise and beliefs.

341. Defendant's actions are not neutral and do not advance a legitimate government objective.

342. Defendant's actions unreasonably interfere with Plaintiff's religious exercise.

343. Defendant's actions are not neutral or generally applicable.

344. Defendant's actions compel Plaintiff to abandon his religious exercise and violate his religious convictions.

345. Defendant has no rational, let alone compelling, interest for its actions against Plaintiff, nor are its actions narrowly tailored or the least restrictive means of advancing a permissible government interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff John Brooks respectfully requests that this Court:

A. Enter a declaratory judgment that the practices complained of in this Complaint are unlawful and violate Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. 1983, and Article I, Section 3 of the Constitution of the State of New York.

B. Grant all injunctive relief necessary to bring Defendant into compliance with the aforementioned laws; including without limitation a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination against applicants or employees because of their religion, by failing to accommodate their religious beliefs and practices and/or by engaging in unlawful retaliation against employees who request that their religious practices be accommodated.

C. Order Defendant to grant Plaintiff a reasonable accommodation to its grooming policy, and any other policy, practice or custom, to accommodate Plaintiff's religion.

D. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for all religious adherents.

E. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities and do not unlawfully retaliate against

religious adherents such as Nazirites who request accommodation of their religious beliefs and practices.

F. Order Defendant to pay compensatory damages for Plaintiff's emotional pain and suffering, among other things, in an amount to be proven at trial;

G. Order defendants to pay exemplary, nominal and punitive damages;

H. Order Defendants to pay attorney's fees and costs of this action as provided by 42 U.S.C. §§ 1988 and 2000e-5(k) and other law (including expert fees, disbursements and other expenses related to this lawsuit);

I. Award such other and further relief as the Court deems necessary, just, proper and equitable.

JURY DEMAND

Plaintiffs hereby request a trial by jury for all issues so triable in conformity with Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: Albany, New York
October 26, 2017

/s/ Thomas Marcelle
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EXHIBIT A

jbrooks

From: jbrooks
Sent: Saturday, January 17, 2015 10:16 AM
To: mwusik
Subject: Our discussion on Whitesboro St.

Deputy Chief Wusik,

I am offering an explanation regarding your comment that I "need a haircut" at the fire on Whitesboro St. on 1/11/15. I didn't feel that the fireground was an appropriate time or place for me to explain my situation, so I am writing you this E-mail.

As you may or may not know, I am a practicing Nazirite. This means that I have taken a Biblical vow that restricts me from cutting my hair. Allowing my hair to grow is an integral part of my religious beliefs. It is not for aesthetic reasons.

If you have any questions about this, I would be happy to discuss them with you. But I respectfully request that the department accommodates this aspect of my religious practice. I assure you that my beliefs nor my hair will hamper my ability to perform any of my job requirements. Thank you.

Respectfully,
Firefighter John Brooks

EXHIBIT B

**DEPARTMENT OF PUBLIC SAFETY
BUREAU OF FIRE - Utica, N. Y. 13501**

SPECIAL REPORT

To: Deputy Chief Kelly
Date: January 21, 2015

I am writing this special report at your request, to reiterate in writing the conversations between you, Lt. Fasolo and myself.

This morning Lt. Fasolo called me aside for a uniform inspection. He noted the length of my hair and advised me that he was instructed to inform me that it was considered out of uniform. I advised Lt. Fasolo that I am a Nazirite, and not cutting my hair is an integral part of my religious observation. I also asked for an exemption to be made for my beliefs. He stated that he personally did not have an issue with that, and that he would forward that information to you.

Later this morning you arrived for your daily rounds. You called me aside with Lt Fasolo to advise me that you did not think my hair was that bad, but it is in violation of the departments grooming policy. Also, that if I wasn't in compliance by my next work day (1/25/15) that there is a possibility that I would be relieved of duty. I also informed you of the religious requirements regarding my hair, and asked for my beliefs to me accommodated. You stated that you would forward that information to your superiors.

To explain my religion in further detail, I am a Nazirite. Nazirites must strictly abide by several rules as described in The Holy Bible. One of the central principles is to not cut the hair of the head. I have been strictly adhering to these principles for months and have been allowing my hair to grow. The length of my hair was never mentioned by any of my superiors, until it recently became known that the reason I was allowing it to grow was for religious purposes.

Becoming a Nazirite has been one of the most important events in my life. I feel that having dedicated myself to God in this way, all aspects of my life have improved at work, home, and in my personal relationships. To cut my hair and break my vow to The Lord would have a spiritually and emotionally devastating effect on my life.

I have a great respect for my officers and have always carried out all orders to the best of my ability. But I also have very sincerely held religious beliefs that I must abide by. My hair does not interfere with my job. I realize that there is an issue between my religious practice and the grooming policy and I would be willing to accept any accommodations that the department could make to resolve this issue. Other religious accommodations for other faiths are commonly made by this department. I respectfully request that my beliefs receive the same respect and accommodation.

Respectfully submitted,
FF John Brooks

EXHIBIT C

jbrooks

From: jbrooks
Sent: Wednesday, January 21, 2015 2:06 PM
To: jkelly
Subject: Chief Kelly

Chief Kelly,

In addition to my Special Report, I would also like to refer to the City of Utica Employee Handbook. In section 514 titled "Personal Appearance" under "Reasonable Accommodation", it is stated that the City may make an exception to hairstyle and grooming standards in order to reasonably accommodate an employees sincerely-held religious practice. It also states that I should contact the Department Head to request this accommodation. I am contacting you in order to maintain the chain of command, but this is the accommodation that I have requested in the Special Report. Please advise me if I have permission to contact the Department Head in regards to this issue. I hope that an accommodation is considered before punishment. Thank you.

FF John Brooks

EXHIBIT D



THE CITY OF UTICA

Bureau of Fire

552 BLEECKER STREET * UTICA, NEW YORK 13501
Cell Phone: 315-534-3683 * Office: 315-792-0222



Robert M. Palmieri
Mayor

George W. Clark
Assistant Fire Chief

TO: FF. John Brooks
FROM: Asst. Chief George W. Clark
DATE: January 23, 2015
SUBJECT: Notice of Compliance with Grooming Standards

FF. Brooks,

You have notified your shift supervisor, Deputy Chief John Kelly, you are respectfully refusing to conform to department standards regarding the length of your hair. This refusal has been in conforming to your religious belief.

The grooming standards for the Utica Fire Department are not there merely for appearance reasons. The grooming standards are there primarily for your safety. Safety equipment in the form of personal protective equipment (PPE) must be worn at all times while operating at an emergency incident. The equipment worn will depend on the type of emergency, EMS, MVA, HAZ-MAT or a structure fire. Especially at structure fires, Self Contained Breathing Apparatus must be worn and it is critical to your safety nothing interferes with your face piece. Longer length hair and facial hair can and most often does impair the safe use of the face piece by preventing a thorough seal. This creates an unacceptable safety hazard mainly to yourself but also to other personnel who may have to perform rescue actions should you become incapacitated. Safety cannot be willfully compromised at any time.

I have reviewed your claim of a religious objection. You have claimed you have become a Nazirite and as part of this belief you are required to refrain from cutting of your hair. While your religious beliefs are to be considered and have been researched, in this instance safety is the paramount concern. It is also noted in the research, many Nazirite do not strictly adhere to this particular aspect of their belief. While I do not pretend to fully understand your commitment to your belief, it is not unreasonable to enforce a long established safety standard despite your stated religious belief.

Therefore, you are hereby directed and ordered to cut your hair in compliance with existing departmental standards. You are further directed and ordered to appear in my office at 0830 hrs. Thursday January 29, 2015. You may have Union Representation if you so desire, at this meeting. If you are not in compliance with this directive at that time, further disciplinary action may follow.

Respectfully,

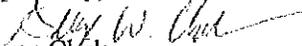

George Clark
Assistant Fire Chief

EXHIBIT E



jbrooks

From: jbrooks
Sent: Sunday, January 25, 2015 2:28 PM
To: gclark
Subject: RE: FF John Brooks

Assistant Chief Clark:

I have reviewed your letter and have a few concerns that I wish to discuss during our meeting on Thursday. I understand that you have a concern for my safety regarding my hair length and the SCBA. This is confusing to me. As I'm sure you are well aware, there are many Utica Firefighters (past and present) with hair two to three times longer than mine. If the length of my hair is truly a safety concern, then surely others are in danger too. If the safety concern can be resolved without them cutting off their hair, then the same could also be done with me, especially when doing so would be a violation of my religion.

I have successfully operated my SCBA at several recent fires without incident. If at any time you would like to witness the donning of my PPE, I would be willing to demonstrate that the very nature of donning my facepiece prevents any hair from preventing a proper seal. I have reviewed NIOSH, OSHA, and NFPA standards. Although facial hair may be a concern, long scalp hair length is not listed as a safety concern. I am not requesting to grow any facial hair.

I'm pleased that you took the time to research my religion. You also expressed that other members of my religion choose to not strictly adhere to its practices. There is nothing I can do about people that identify themselves as Nazirites and choose not to adhere to its restrictions. I choose to strictly adhere to its principles to the best of my ability.

I truly hope that a simple and practical solution to your concerns is considered instead of disciplinary action. I am willing to fasten, restrain or cover my hair in any number of ways. I can do this for the entirety of my shift or before donning my PPE. I hope this would resolve any safety concerns as it would be well above and beyond what is expected of other members with much longer hair. Thank you.

FF John Brooks

From: gclark
Sent: Friday, January 23, 2015 4:49 PM
To: rbrooks; jbrooks; jkelly
Cc: srisucci
Subject: FF John Brooks

Chief Brooks,

I consulted with Corporation Counsel Bill Borrill this afternoon regarding the issue of a religious exception for the length of John Brooks hair. He has authorized I send a letter to John Brooks and have him comply with a directive to adhere to the grooming policy. The letter is attached to this email. If you have any questions or concerns regarding this course of action please do not hesitate to contact me.

George Clark

EXHIBIT F



THE CITY OF UTICA
Bureau of Fire



552 BLEECKER STREET * UTICA, NEW YORK 13501
Cell Phone: 315-534-3683 * Office: 315-792-0222

Robert M. Palmieri
Mayor

George W. Clark
Assistant Fire Chief

TO: FF. John Brooks
FROM: Asst. Chief George W. Clark
DATE: May 1, 2015
SUBJECT: Notice of Compliance with Grooming Standards

FF. Brooks,

Since approximately January of 2015, you are respectfully refusing to conform to department standards regarding the length of your hair. This refusal has been in conforming to your religious belief, specifically your claimed belief as a Nazarite.

The grooming standards for the Utica Fire Department have long been established. As such there have been numerous complaints regarding your appearance in the station houses as well as at emergency incidents you respond to. These complaints involve the perceived lack of professional appearance while on duty and more directly involve the length of your hair, especially as compared to the other firefighters you have responded with.

Therefore, you are hereby directed and ordered to restrain your hair by wearing a hair restraint/net and or restraining your hair with bands. In addition your officer and the shift supervisor will monitor your appearance daily and submit a report to my office stating you are complying with this directive. As always, your station uniform shall also be inspected and is expected to be clean and in good order.

Please be advised, failure to adhere to this directive may result in disciplinary action. In addition, should it be determined you are no longer a Nazarite your hair shall immediately conform to present standards. Please also be advised, if it is determined you are not a Nazarite or have in fact never been a Nazarite, disciplinary action may also occur as a result of any deception that may have occurred.

Respectfully,

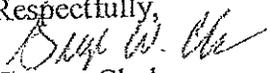

George Clark
Assistant Fire Chief

EXHIBIT G

100-10
7/1/16



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**
on the Complaint of
JOHN BROOKS,
Complainant,
v.
CITY OF UTICA,
Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10175866

Federal Charge No. 16GB503157

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Order of Dismissal for Administrative Convenience ("Recommended Order"), issued on May 31, 2016, by Edward Luban, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any

member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **JUN 29 2016**
Bronx, New York


HELEN DIANE FOSTER
COMMISSIONER

TO:

Complainant

John Brooks
810 Eagle Street
Utica, NY 13501

Complainant Attorney

H. Larry Vozzo, Esq.
AXA Tower I, 100 Madison Street - Suite 1710
Syracuse, NY 13202

Respondent

City of Utica, Fire Department
Attn: Legal Department
1 Kennedy Plaza
Utica, NY 13502

Respondent Attorney

David A. Longieretta, Esq.
Longieretta Law Firm
1 Kennedy Plaza
Utica, NY 13502

Hon. Eric T. Schneiderman, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights

Robert Goldstein, Director of Prosecutions
Lilliana Estrella-Castillo, Chief Administrative Law Judge
Edward Luban, Administrative Law Judge
Michael Swirsky, Litigation and Appeals
Caroline J. Downey, General Counsel
Melissa Franco, Deputy Commissioner for Enforcement
Peter G. Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

JOHN BROOKS,

Complainant,

v.

CITY OF UTICA,

Respondent.

**RECOMMENDED ORDER
OF DISMISSAL FOR
ADMINISTRATIVE
CONVENIENCE**

Case No. **10175866**

PROCEEDINGS IN THE CASE

On June 19, 2015, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

The case was assigned to Edward Luban, an Administrative Law Judge (“ALJ”) of the Division. Complainant was represented by H. Larry Vozzo, Esq. Respondent was represented by David A. Longoretta, Esq.

By letter dated May 19, 2016, Complainant's attorney requested that the Division dismiss the complaint for administrative convenience so Complainant could initiate an action in federal court.

By letter dated May 24, 2016, Respondent's attorney notified the presiding ALJ that Respondent objected to Complainant's request. In a telephone conference held on May 25, 2016, Respondent's attorney said that Respondent preferred to resolve the case in the Division.

Respondent's objection is not a sufficient basis to deny the requested dismissal. Dismissal would be consistent with the Division's Rules of Practice (*see* 9 N.Y.C.R.R. § 465.5 (e)(2)(vi)) and would advance the state's human rights goals "by not compelling use of scarce state resources where the complainant has clearly expressed his desire to have his claim litigated in Federal Court." *See Columbian Rope Co. v. State Div. of Human Rights*, 174 A.D.2d 1033, 1034, 572 N.Y.S.2d 196, 197 (4th Dept. 1991).

Pursuant to Section 297.3(c) of the Human Rights Law, the complaint should be dismissed on the grounds of administrative convenience. The Complainant intends to pursue federal remedies in court, in which forum all the issues concerning the question of discrimination charged can be resolved.

ORDERED, that the case be dismissed for administrative convenience.

Dated: May 31, 2016
Syracuse, New York


Edward Luban
Administrative Law Judge

EXHIBIT H

Rec'd
9/6/16

DISMISSAL AND NOTICE OF RIGHTS

To: **John Brooks**
810 Eagle Street
Utica, NY 13501

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2015-03157

Holly M. Woodyard,
State & Local Program Manager

(212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations 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 charge.

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (briefly state)

Charging Party wishes to pursue matter in Federal District Court.

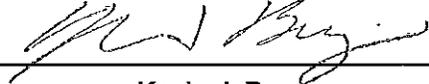
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Kevin J. Berry,
District Director

SEP 02 2016

(Date Mailed)

Enclosures(s)

cc: **David A. Longoretta, Esq.**

Attn: Legal Department
CITY OF UTICA, FIRE DEPARTMENT
1 Kennedy Plaza
Utica, NY 13502

H. Larry Vozzo, Esq.
AXA Tower I, 100 Madison St., Suite 1710
Syracuse, NY 13202