

1 Stephen Montoya (#011791)
2 **Montoya, Jimenez, Lucero & Pastor, P.A.**
3 3200 North Central Avenue, Suite 2550
4 Phoenix, Arizona 85012
5 602-256-6718 (telephone)
6 602-256-6667 (fax)
7 stephen@montoyalawgroup.com

8 Attorney for Plaintiff

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Jeffrey Wilson,
13 Plaintiff,
14 v.
15 City of Phoenix,
16 Defendant.

No.
COMPLAINT
(Jury Trial Demanded)

17 For his Complaint against Defendant, Plaintiff alleges the following:

- 18 1. This is an action to redress retaliation in the public workplace at the Fire
19 Department of the City of Phoenix asserted by Jeff Wilson against the City of
20 Phoenix pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §
21 2000e, as amended.
- 22 2. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331 and 1343(4).
- 23 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and 42 U.S.C. §
24 2000e-5(f)(3).
- 25 4. Plaintiff Jeffrey Wilson is a citizen of the United States of America residing in
26 Maricopa County, Arizona.
- 27 5. Defendant City of Phoenix (the “City”) is an Arizona municipal corporation
28 located in Maricopa County, Arizona.
6. The City has been engaged in an industry affecting commerce and has had at
least fifteen employees for each working day in at least twenty calendar weeks

1 this year or last year.

2 7. The Phoenix Fire Department is an agency within the City of Phoenix owned,
3 controlled, and operated by the City.

4 8. Mr. Wilson has been employed as a Firefighter by the Phoenix Fire Department
5 since October 3, 1994 and was employed by the Fire Department at all times
6 material to this Complaint.

7 9. For the past several years, Mr. Wilson has informally and formally complained
8 about both drug abuse and violations of the federal civil rights laws at the
9 Phoenix Fire Department.

10 10. The Fire Department retaliated against Mr. Wilson in response to his complaints
11 of misconduct and discrimination in the workplace, and Mr. Wilson ultimately
12 filed a federal civil rights action against the City of Phoenix. See Wilson v. City
13 of Phoenix, Arizona District Court No. CV 10-02614-PHX-JWS.

14 11. After Mr. Wilson filed a federal civil rights lawsuit against the City of Phoenix,
15 the City retaliated against him by (among other things) subjecting him to verbal
16 and physical harassment, unfairly bad-mouthing him to his co-workers, giving
17 him less favorable work assignments, denying him overtime opportunities,
18 subjecting him to increased surveillance, and unfairly evaluating his work
19 performance.

20 12. Moreover, after Mr. Wilson filed a federal civil rights lawsuit against the City of
21 Phoenix, the Fire Department retaliatorily terminated Mr. Wilson based on
22 allegations of misconduct that were not true and did not warrant termination
23 even if true.

24 13. In fact, literally dozens of other Phoenix Firefighters who have not complained
25 about discrimination at the Phoenix Fire Department have engaged in far more
26 serious misconduct (including criminal conduct) than the misconduct of which
27 Mr. Wilson was falsely accused without being disciplined at all or disciplined as
28 harshly as Mr. Wilson was disciplined.

1 14. The Fire Department also failed to follow its own procedures when it terminated
2 Mr. Wilson.

3 15. Mr. Wilson did not encourage or consent to the retaliation summarized above.

4 16. To the contrary, Mr. Wilson challenged his retaliatory termination by means of
5 an administrative appeal before the City.

6 17. Upon conclusion of the administrative appeal, the City ultimately rescinded Mr.
7 Wilson's termination, reinstated his employment with the City, and awarded
8 him back-pay, but demoted him from Captain to Firefighter based on reasons
9 that were unfounded and in any event unrelated to the allegations of misconduct
10 against him.

11 18. Mr. Wilson gave the City direct notice of the retaliation.

12 19. The City also knew or should have known of the retaliation because it pervaded
13 the workplace and created a hostile working environment.

14 20. Despite such notice, the City failed to timely and meaningfully investigate and
15 remediate Mr. Wilson's complaints of retaliation and actually ratified the
16 retaliatory misconduct of Mr. Wilson's supervisors and co-workers at the City.

17 21. In fact, the Fire Department is engaging in a pattern and practice of retaliating
18 against its employees who criticize or complain about the Department.

19 22. The retaliation summarized above had a substantial negative impact on Mr.
20 Wilson's compensation at the City and has caused him significant emotional
21 distress and continues to do so.

22 23. Based on the misconduct of the City as summarized above, Mr. Wilson timely
23 filed a Charge of Discrimination against the City with the United States Equal
24 Employment Opportunity Commission (the "EEOC") on June 17, 2015. See
25 attached Exhibit A.

26 24. Mr. Wilson requested a right to sue letter from the EEOC and commenced this
27 action within ninety days of his receipt of that letter on January 19, 2016. See
28 attached Exhibit B.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Plaintiff respectfully requests the Court to:

- A. Issue a judgment declaring that the conduct of Defendant as described above violated Plaintiff’s rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended;
- B. Issue preliminary and permanent injunctions against Defendant enjoining them from committing similar unlawful acts in the future;
- C. Issue a judgment awarding Plaintiff nominal and compensatory damages against Defendant in amounts to be determined by the finder-of-fact at trial;
- D. Issue a judgment awarding Plaintiff reasonable costs and attorney fees against Defendant pursuant to 42 U.S.C. § 2000e and any other applicable law; and
- E. Issue a judgment awarding Plaintiff all other relief that is just and proper against Defendant under the circumstances.

Respectfully submitted this 12th day of April 2016.

MONTOYA, JIMENEZ, LUCERO & PASTOR, P.A.

s/ Stephen Montoya
Stephen Montoya
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012
Attorney for Plaintiff

I hereby certify that on April 12, 2016, I electronically transmitted the foregoing document to the Clerk of Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

s/ Stephen Montoya

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff
(s): **Jeffrey Wilson**

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

**Stephen Montoya (Jeffrey Wilson)
Montoya, Jimenez & Pastor, P.A.
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012
(602) 256-6718**

Defendant
(s): **City of Phoenix**

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **442 Employment**

VI. Cause of Action: **Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e, as amended.**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/ Stephen Montoya

Date: April 12, 2016

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

EXHIBIT A

EEOC Form 5 (11/09)

<p>CHARGE OF DISCRIMINATION</p> <p>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input type="checkbox"/> FEPA</p> <p><input checked="" type="checkbox"/> EEOC</p>
---	--

Arizona Attorney General's Office, Civil Rights Division and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.) Jeffrey Wilson	Home Phone (Incl. Area Code)	Date of Birth
---	------------------------------	---------------

Street Address City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name City of Phoenix Fire Department	No. Employees, Members 500+	Phone No. (Include Area Code) (602) 534-8501
--	---------------------------------------	--

Street Address City, State and ZIP Code

150 South 12th Street, Phoenix, Arizona 85034

Name	No. Employees, Members	Phone No. (Include Area Code)
------	------------------------	-------------------------------

REC'D EEOC
JUN 17 2015

Street Address City, State and ZIP Code

PXDO

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY GENETIC INFORMATION
 OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest Latest

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I was employed as a Firefighter and Firefighter Captain by the Phoenix Fire Department from October 3, 1994 to February 2, 2015, when the Department terminated me based upon retaliatory and false allegations of misconduct.

Specifically, for the past few years, I have been informally and formally complaining about age, disability, and gender discrimination in the workplace at the Phoenix Fire Department. The Department retaliated against me based on my complaints, and I ultimately filed a federal civil rights action against the City of Phoenix. See Wilson v. City of Phoenix, Arizona District Court No. CV 10-02614-PHX-JWS.

After my federal civil rights lawsuit against the City of Phoenix concluded in favor of the City, the Department was emboldened and accused me of misconduct based upon alleged facts that were not true and (in any event) did not violate any of the Department's rules. In fact, dozens of other Firefighters who have not complained about discrimination at the Department have engaged in far more serious misconduct than the misconduct of which I was falsely accused without being disciplined at all. The Department also failed to follow its own procedures when it ultimately terminated me.

Based on these facts, I believe that I have been retaliated against in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

6/17/15 Jeffrey Wilson
Date Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

EXHIBIT B

EEOC Form 161-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Jeffrey Wilson

From: Phoenix District Office
3300 North Central Ave
Suite 690
Phoenix, AZ 85012

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

EEOC Charge No.	EEOC Representative	Telephone No.
540-2015-02442	Jeremy A. Yubeta, Supervisory Investigator	(602) 640-5028

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court 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.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought 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.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Elizabeth Cadle,
Acting District Director

JAN 13 2016

(Date Mailed)

Enclosures(s)

CC: Don Logan
Deputy EEO Director
PHOENIX CITY OF
251 W. Washington St., 7th Floor
Phoenix, AZ 85003

Stephen Montoya, Esq.
MONTROYA, JIMENEZ & PASTOR, P.A.
3200 N. Central Ave., Suite 2550
Phoenix, AZ 85012