UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL)
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	CONSOLIDATED CASES No. 05-cv-1792 (RJL)

PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

Plaintiffs Steven Chasin, Calvert Potter, Jasper Sterling, and Hassan Umrani ("Plaintiffs") respectfully move this Court for a judgment of civil contempt and an award of damages, including attorneys' fees, against Defendant District of Columbia for its violation of the permanent injunction issued by this Court in the above-captioned matters. *See* Permanent Inj. and Order, *Potter* ECF No. 157. This Motion is based on the accompanying Memorandum of Points and Authorities, the attached Declarations of Steven Chasin, Calvert Potter, Jasper Sterling, Hassan Umrani, Arthur B. Spitzer, and Robert K. Kelner and all exhibits thereto, and all prior pleadings and proceedings in this matter.

Pursuant to Local Civil Rule 7(m), before filing this Motion, Plaintiffs' counsel conferred in good faith with Defendant's counsel in an attempt to settle this matter and determine whether

there is any opposition to the relief sought. On January 31, 2022, Plaintiffs' counsel sent Defendant's counsel a letter with an offer to settle Plaintiffs' outstanding claims for damages that had accrued during the time they were removed from field duty in violation of the Permanent Injunction. *See* Mem. at 12. Counsel for all parties have engaged in settlement discussions and exchanged multiple settlement offers. *See id.* at 12-13. These efforts have failed to produce a mutually-acceptable settlement agreement.

On October 25, 2022, Plaintiffs' counsel first notified Defendant's counsel of Plaintiffs' intent to file this Motion, and counsel for the parties subsequently met and conferred via Microsoft Teams on October 26, 2022. *Id.* at 12. Following the failure of subsequent settlement discussions, Plaintiffs' counsel notified Defendant's counsel on November 4, 2022 that Plaintiffs' would proceed to file this Motion with the Court. Plaintiffs understand that Defendant opposes this motion.

Dated: November 7, 2022

Respectfully submitted,

/s/ Kevin B. Collins

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

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INTRODUCTION

Plaintiffs Steven Chasin, Calvert Potter, Jasper Sterling, and Hassan Umrani ("Plaintiffs" or "*Potter* Plaintiffs") move this Court to hold Defendant District of Columbia ("Defendant") in civil contempt of the Court for the District of Columbia Fire and Emergency Medical Services Department's ("the Department" or "FEMS") blatant violations of the permanent injunction issued in these consolidated cases on October 29, 2007 (the "Permanent Injunction"). *See* Permanent Inj. and Order, *Potter* ECF No. 157. Plaintiffs are longtime firefighters and paramedics who, years ago, successfully brought suit to enjoin an unlawful Department policy that largely prohibited District firefighters and paramedics from maintaining facial hair.[1] Each Plaintiff wears a beard in accordance with the tenets of his Muslim or Jewish faith. The Permanent Injunction protects the *Potter* Plaintiffs' rights to maintain facial hair as expressions of their faith, as guaranteed by the Religious Freedom Restoration Act of 1993 ("RFRA").[2] Among other things, the Permanent Injunction prohibits the Department from enforcing against Plaintiffs policies requiring them to be clean-shaven.

While the *Potter* Plaintiffs collectively have provided more than 100 years of distinguished service to the Department and District residents, over the past several decades, the Department has

[1] Calvert L. Potter and Steven B. Chasin were the named plaintiffs in the two original consolidated proceedings. Messrs. Sterling and Umrani were co-plaintiffs. The other original plaintiffs have all since left or retired from the Department and are not participating in this motion.

[2] RFRA provides that "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless the government proves that applying its action to the plaintiff is *both* "in furtherance of a compelling governmental interest" *and* "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(a)-(b). When an individual's religious exercise rights are violated, RFRA authorizes the individual to seek "appropriate relief" against the government, which may include an injunction against the rule, restoration to a position, back pay, or other money damages. *Id.* § 2000bb-1(c).

orchestrated repeated efforts to unlawfully remove Plaintiffs from active duty for refusing to shave their beards in violation of their faith. Most recently, on February 12, 2020, the Department issued a new policy prohibiting firefighters and paramedics from maintaining most types of facial hair. Notwithstanding this Court's Permanent Injunction, the Department enforced this policy against Plaintiffs and removed them from field duty in March 2020 when they refused to shave their beards and stood on their rights under RFRA and this Court's Permanent Injunction. Adding injury to injury, the Department reassigned Plaintiffs to less desirable and less well compensated administrative and logistical roles. Plaintiffs were not allowed to return to field duty until more than a year and a half later in late 2021. This decision to ignore a binding court order is merely the latest step in the Department's multi-decade crusade to compel District firefighters and paramedics to conform to the Department's clean-shave preference, without regard for their religious liberties. The Department's conduct demonstrates a fundamental disregard both for Plaintiffs' rights under RFRA and this Court's authority.

Accordingly, Plaintiffs respectfully request that this Court: (1) issue an order requiring Defendant to show cause for why it should not be held in civil contempt; (2) hold Defendant in civil contempt; (3) permit Plaintiffs to undertake limited discovery of the Department in order to completely and accurately quantify the damages they suffered as a result of the Department's unlawful conduct; and (4) award Plaintiffs appropriate compensatory damages.

I. FACTUAL BACKGROUND

A. Prior Litigation History

For decades, the Department has unsuccessfully sought to require its firefighters and paramedics to be clean-shaven while on duty. At the same time, it has offered an ever-shifting series of justifications for this requirement. For instance, by 1980, the Department had enacted a

clean-shaven policy that it alleged promoted safety, "fostered a sense of esprit de corps and aided public recognition of firefighters." *Kennedy v. Dixon*, 1991 WL 489548, at *1 (D.C. Super. Ct. Oct. 24, 1991), *aff'd in part, rev'd in part sub nom. Kennedy v. District of Columbia*, 654 A.2d 847 (D.C. 1994). When the policy was challenged, the D.C. Court of Appeals ruled that the Department's application of this policy violated the District of Columbia Human Rights Act. *Kennedy*, 654 A.2d at 856-57.

The Department again put forward similar policies in 1997 and 2001, ostensibly "to increase discipline, uniformity, safety and esprit de corp [sic] throughout th[e] Department." *See* Special Order No. 18, Series 2001 (issued Mar. 28, 2001), *Potter* ECF No. 2, Ex. A. The *Potter* Plaintiffs first challenged that policy in this Court in May 2001, and obtained a preliminary injunction the following month. *See* Prelim. Inj. Order, *Potter* ECF No. 34.

Following the terrorist attacks of September 11, 2001, the Department on October 10, 2002, announced that it was drafting yet another new grooming policy. *See* Joint Status Report, *Potter* ECF No. 39. When the Department had made little progress as of May 2004, this Court "ordered that the District's putative new policy be submitted to plaintiffs and to the Court by June 15, 2004." *See Potter v. District of Columbia*, 382 F. Supp. 2d 35, 37 (D.D.C. 2005). Disregarding that instruction, the Department did not release its new facial hair policy until February 2005. *Id.* Notwithstanding the fact that more than 3.5 years had passed since the September 11th terrorist attacks, the Department alleged that the new policy was "necessitated by the new and unique terrorism threat to this city." Def.'s Opp'n to Pls.' Mot. For Clarification of Prelim. Inj. at 3, *Potter* ECF No. 66. Under the new policy ("Special Order 20"),

> members who are required to wear tight fitting facepieces are not permitted to have: [A] Facial hair that comes between the sealing surface of the facepiece and the face or that interferes with the valve function; or [B] Any condition that interferes with the face to face piece seal or valve function.

Pls.' Mot. for Order to Show Cause, Second Sneed Decl. Ex. A at 4, *Potter* ECF No. 73-2. The Department conceded that "for the vast majority of firefighter activity, a perfect seal between the face mask and the face is not required for safety." *Potter v. District of Columbia*, 2007 WL 2892685, at *7 (D.D.C. Sept. 28, 2007), *aff'd*, 558 F.3d 542 (D.C. Cir. 2009). Nevertheless, it justified this policy based on speculation of a "mass casualty or terrorist event" that *could conceivably* require members to wear a specific type of mask (an air-purifying respirator or "APR") that *does* require a perfect seal. *Id.* at *8.

Applying RFRA, this Court held that the Department had failed to carry its burden of showing that banning bearded firefighters from field duty was the "least restrictive means" of furthering the Department's asserted safety interest, even under a hypothetical mass casualty scenario. *Id.* at *6, *8. That was so for several interrelated reasons. First, "the Department [had] conceded that, for the vast majority of firefighter activity, a perfect seal between the face mask and the face is not required for safety." *Id.* at *7. Second, the Department conceded that the most powerful form of respiratory protection that firefighters keep for the most hazardous environments—the positive-pressure self-contained breathing apparatus ("SCBA")—"is adequate to protect the bearded firefighter from any leakage that may be caused by facial hair," *id.* at *5, as the positive-pressure SCBA "will allow air to leak *out but not in*," *id.* at *7 (emphasis added). Third, the Court noted that "[t]he Department has been at pains to posit a situation in which the atmosphere is dangerous enough to pose a serious risk to the health and effectiveness of bearded firefighters, but which" would require lesser forms of protection than an SCBA. *Id.* Finally, this Court explained that during any rare period in which an APR rather than an SCBA might be required, bearded firefighters could be reassigned temporarily "either 'up' to areas of duty where SCBA use is required, or 'down' to cold zone areas where no respiratory protection is needed."

Id. at *8. This Court also made several findings that the Department's contentions lacked credibility. *Id.* at *8–9.

Ultimately, this Court concluded that, apart from "the catastrophic scenario the Department imagines" (when "there will be time to assign the tiny minority of firefighters whose religions require them to wear beards away from negative pressure APR duty"), "the evidence shows that a beard has never interfered with the ability of a FEMS worker to do his duty, and is unlikely to do so." *Id.* at *9.

Accordingly, this Court entered a permanent injunction that, *inter alia*, provided for the following:

> 1. That the defendant and its officials, agents, and employees, are PERMANENTLY ENJOINED from enforcing the facial hair provisions of Special Order 20, Series 2005, against the plaintiffs.
>
> 2. That the defendant shall expeditiously restore to field duty each plaintiff still employed by the District of Columbia Fire and Emergency Medical Service who has been assigned to administrative duty because he has not been clean-shaven, after expeditiously providing any necessary refresher training. So far as practicable, each such plaintiff shall be restored to the position he would have had but for his refusal to shave.
>
> 4. That, if any plaintiff claims that as a result of his refusal for religious reasons to comply with the Grooming Regulations or with Special Order 20, Series 2005, he has lost income, seniority or retirement benefits, or has lost or been forced to use sick leave, the parties will confer and seek in good faith to agree upon remedies for such losses. . . .

Permanent Inj. and Order, *Potter* ECF No. 157.

The Permanent Injunction was affirmed on appeal by the D.C. Circuit. *See Potter*, 558 F.3d at 551.

B. The Department's Latest Facial Hair Policy

Between late 2019 and January 2020, each of the *Potter* Plaintiffs became aware of an effort by the Department to update its facial hair policy. *See* Declaration of Calvert Potter ("Potter

Decl.") ¶ 8; Declaration of Hassan Umrani ("Umrani Decl.") ¶ 7; Declaration of Jasper Sterling ("Sterling Decl.") ¶ 8; Declaration of Steven Chasin ("Chasin Decl.") ¶ 8. Thereafter, in January 2020, Messrs. Chasin and Potter both reached out to their former counsel in this matter, Arthur Spitzer of the ACLU, to discuss the Department's actions. Potter Decl. ¶ 11; Chasin Decl. ¶ 9. Messrs. Chasin and Potter subsequently communicated with Mr. Spitzer on numerous occasions regarding the Department's new facial hair policy. Potter Decl. ¶ 12; Chasin Decl. ¶ 9. By January 23, 2020, Mr. Potter had received a draft copy of Safety Operations Bulletin No. 9 ("Bulletin No. 9"), which related to the use of personal protective equipment. Potter Decl. ¶¶ 9–10. Among other things, the draft of Bulletin No. 9 included a provision related to facial hair:

> [E]mployees who are required to wear tight-fitting face pieces are not permitted to have: 1. Facial hair that comes between the sealing surface of the face piece and the face. 2. Facial hair that interferes with the valve function. 3. Any condition that interferes with the face to face piece seal or valve function.

Potter Decl. Ex. A, at 2. This bulletin mirrored the language of Special Order 20, which this Court had permanently enjoined Defendant from applying to Plaintiffs in *Potter*.[3] The Department indicated that it planned to implement Bulletin No. 9 in April 2020, and attempted to justify its new policy by the purported need to "afford maximum personal protection during all types of emergency incidents—whether public service calls, training activities, emergency and routine travel on apparatus—and all non-emergency activities that could pose a hazard to the employee." *Id*. at 1. Bulletin No. 9 made no reference to COVID-19 or any other public health emergency as the reason for its promulgation. As far as Mr. Potter is aware, a final version of Bulletin No. 9 was never issued, and Bulletin No. 9 never went into effect. Potter Decl. ¶ 9.

[3] At some point following the issuance of the permanent injunction in *Potter*, the Department began allowing *any* firefighter or paramedic to maintain facial hair of up to ¼ inch. Potter Decl. ¶ 7; Chasin Decl. ¶ 7. Thus, to effectuate its renewed desire that Members be clean-shaven, the Department in 2020 was apparently required to issue new regulations to that effect.

However, on February 12, 2020, the Department formally issued a new policy related to the use of personal protective equipment known as Safety Operations Bulletin No. 10 ("Bulletin No. 10"). *See* Chasin Decl. ¶ 11; *id.* Ex. A. Bulletin No. 10 included provisions regarding facial hair that were much the same as those included in Bulletin No. 9:

> Employees are not permitted to have: [1] Facial hair that comes between the sealing surface of the face piece and the face; [2] Facial hair that interferes with the valve function; or [3] Any condition that interferes with the face-to-face piece seal or valve function.

Chasin Decl. Ex. A, at 3, § 2.13. Again, this bulletin was virtually identical to the language of Special Order 20, which this Court had permanently enjoined Defendant from applying to Plaintiffs in *Potter*.

The revisions to the Department's facial hair policy set forth in Bulletin No. 10 were announced to Department personnel on February 12, 2020 via General Order No. 6. *See* Chasin Decl. Ex. A, at 1; *see also* Chasin Decl. ¶ 11; Potter Decl. ¶ 13. General Order No. 6 explains that the policy "intends to protect and enhance the safety of all members and thereby support our ability to provide efficient fire and emergency medical services to the residents and visitors of the District of Columbia," Chasin Decl. Ex. A, at 1, materially the same interests that Defendant previously offered when it unsuccessfully sought to justify applying its clean-shave preference to Plaintiffs before this Court in the prior litigation. Neither Bulletin No. 10 nor General Order 6 made any mention of COVID-19 or any other public health emergency as the reason this new policy was implemented. Pursuant to General Order 6, enforcement of the provisions of Bulletin No. 10 was initially scheduled to begin on April 5, 2020. *Id.* at 2.

Ultimately, the Department moved this implementation date forward to March 15, 2020 via Special Order No. 55. *See* Chasin Decl. Ex. B, at 1 (providing that, effective March 15, 2020, "[s]upervisors shall ensure that members under their command comply with the facial hair

directives in Safety Operations Bulletin No. 10"). Unlike any of the prior materials issued by the Department, Special Order 55 stated that "[t]he progression of the novel Coronavirus (COVID-19) necessitates the increased use of negative-pressure filtering face piece respirators, including N-95 masks and air-purifying respirators," and claimed that "[t]he presence of facial hair interferes with the mask's seal . . . ." *Id.*

C. Enforcement of The Department's New Facial Hair Policy Against Plaintiffs

The Department began enforcing its new facial hair policy against firefighters and paramedics—including Plaintiffs—in March 2020. Potter Decl. ¶ 14; Umrani Decl. ¶ 9; Sterling Decl. ¶ 10; Chasin Decl. ¶ 13. Between March 15 and March 17, 2020, each Plaintiff came to work prepared to begin his duly assigned duties as a firefighter or paramedic.[4] Potter Decl. ¶ 14; Umrani Decl. ¶ 9; Sterling Decl. ¶ 10; Chasin Decl. ¶ 13. However, because all four Plaintiffs came to work with facial hair, they were prohibited from assuming their regular duties and were instead reassigned to logistical positions within the Department. Potter Decl. ¶¶ 14–17; Umrani Decl. ¶¶ 9–12; Sterling Decl. ¶¶ 10–13; Chasin Decl. ¶¶ 13–16. Each Plaintiff immediately made clear to his supervising officer that he did not consent to the reassignment, which he believed was in direct violation of the *Potter* Permanent Injunction issued by this Court. Potter Decl. ¶ 16; Umrani Decl. ¶ 11; Sterling Decl. ¶ 11; Chasin Decl. ¶ 14. Plaintiffs understand that Bulletin No. 10 currently remains in effect, inclusive of minor modifications made in June 2021. *See* Chasin Decl. ¶ 20; Chasin Decl. Ex. C.

As a result of their forced reassignments, the *Potter* Plaintiffs suffered significant disruptions, financial harm, and lifestyle interruptions, including but not limited to the following:

[4] Mr. Potter worked in the Department's Special Operations Division, Mr. Umrani worked as a firefighter/EMT, and Messrs. Sterling and Chasin were paramedics. *See* Potter Decl. ¶ 3; Umrani Decl. ¶ 3; Sterling Decl. ¶ 3; Chasin Decl. ¶ 3.

Mr. Potter received less total compensation during the period of his reassignment than he would have received if he had been allowed to remain on field duty. Potter Decl. ¶ 21. Specifically, he had fewer opportunities to earn overtime, holiday, weekend, and night-differential pay throughout this period. *Id.* As a result of Mr. Potter's decreased income during this time, he and his family experienced increased stress and frustration. *Id.* ¶ 23. Further, while working in the field, Mr. Potter was required to be on-duty for 24 hours, followed by 72 hours off-duty. *Id.* ¶ 22. Once he was reassigned, Mr. Potter was required to work during normal business hours, five days per week. *Id.* This change required him to make more trips to work each week, which resulted in increased wear and tear on his vehicle and required him to purchase more gasoline. *Id.*

Mr. Umrani, like the other Plaintiffs, also received less total compensation during the period of his reassignment than he would have received if he had been allowed to remain on field duty. Umrani Decl. ¶ 14. Specifically, he had fewer opportunities to earn overtime, holiday, weekend, and night-differential pay throughout this period. *Id.* Also like the other Plaintiffs, Mr. Umrani's reassignment forced him to shift from a work schedule of 24 hours on-duty followed by 72 hours off-duty to a work schedule of five days per week during normal business hours. *Id.* ¶ 15. This caused significant scheduling disruptions for Mr. Umrani and his family. *Id.* Further, Mr. Umrani's reassignment required him to make more trips to work each week, which resulted in increased wear and tear on his vehicle, and required him to purchase more gasoline. *Id.* ¶ 16. Moreover, once Mr. Umrani's car broke down and he began commuting to work via rideshare (e.g. Uber and Lyft), he incurred additional rideshare expenses as a result of his reassignment. *Id.* Finally, Mr. Umrani's reassignment required him to pass up job training opportunities and forego a possible promotion because he was not allowed to work in the field. *Id.* ¶ 17.

Mr. Sterling, like the other Plaintiffs, also received less total compensation during the period of his reassignment than he would have received if he had been allowed to remain on field duty. Sterling Decl. ¶ 15. Specifically, he had fewer opportunities to earn overtime, holiday, weekend, and night-differential pay throughout this period. *Id.* Also like the other Plaintiffs, Mr. Sterling's reassignment forced him to shift from a work schedule of 24 hours on-duty followed by 72 hours off-duty to a work schedule of eight hours per day during regular business hours. *Id.* ¶ 16. This caused significant scheduling disruptions for Mr. Sterling and his family. *Id.* His sudden reassignment forced him to use leave time to attend medical appointments and other obligations that he typically attended on his days off. *Id.* Further, as a result of this new schedule, he was no longer able to take his son to school on his days off, which was disruptive to his family. *Id.* ¶ 18. Finally, Mr. Sterling's reassignment required him to make more trips to work each week, which resulted in increased wear and tear on his vehicle, and required him to purchase more gasoline. *Id.* ¶ 17.

Mr. Chasin, like the other Plaintiffs, also received less total compensation during the period of his reassignment than he would have received if he had been allowed to remain on field duty. Chasin Decl. ¶ 21. Specifically, he had fewer opportunities to earn overtime, holiday, weekend, and night-differential pay throughout this period. *Id.* Also like the other Plaintiffs, Mr. Chasin's reassignment forced him to shift from a work schedule of 24 hours on-duty followed by 72 hours off-duty to a work schedule of eight hours per day, five days per week. *Id.* ¶ 22. Mr. Chasin's sudden reassignment thus forced him to use leave time to attend medical appointments and other obligations that he had previously scheduled to attend on his days off.[5] *Id.*

[5] As discussed below, Mr. Chasin remained in his logistical position until March 2021, when he was able to transfer to the position of FEMS Salesforce Administrator. Chasin Decl. ¶ 17. He continues to work in that position and wishes to continue doing so. *Id.*

D. Plaintiffs' Restoration to Field Duty and Attempts to Obtain Compensation

In March 2020, prior to the implementation of Bulletin No. 10, Mr. Spitzer sent a letter to the Department to protest the Department's new facial hair policy, which, he explained, was "exactly the same rule" that had been permanently enjoined by this Court. Declaration of Arthur B. Spitzer ("Spitzer Decl.") ¶ 7; *id.* Ex. A at 1. Mr. Spitzer later spoke to D.C. Senior Assistant Attorney General Andrew Saindon about this letter on March 19, 2020. Spitzer Decl. ¶ 10. At no point during this conversation, nor at any other time, did Mr. Spitzer consent to Plaintiffs' reassignment or removal from field duty. Spitzer Decl. ¶ 11. Moreover, Mr. Spitzer had no authority from Plaintiffs to consent to any such reassignment or removal. *Id.*

Between April and October 2020, Mr. Potter tried to contact Mr. Spitzer on several occasions, but received no response. Potter Decl. ¶ 18. On November 2, 2020, Mr. Spitzer informed Mr. Potter by email that his official representation of Mr. Potter and the other Plaintiffs in this litigation ended with the conclusion of the litigation years earlier. *Id.* ¶ 19; Chasin Decl. ¶ 18. Mr. Spitzer further informed Mr. Potter that he would not represent Plaintiffs going forward in their dispute with the Department. Potter Decl. ¶ 19; Chasin Decl. ¶ 18; Spitzer Decl. ¶ 12. Thereafter, Plaintiffs sought out new counsel. First Liberty Institute agreed to represent Plaintiffs in late February 2021, and Covington & Burling LLP subsequently joined the representation in April 2021. Chasin Decl. ¶ 19.

On August 9, 2021, Plaintiffs' new counsel, Robert K. Kelner of Covington & Burling LLP, wrote to the Office of the Attorney General for the District of Columbia ("Attorney General's Office") requesting that the Department cease enforcement of its facial hair policy against Plaintiffs, restore them to field duty, and compensate them for the injuries they had suffered as a result of having been removed from field duty. Declaration of Robert K. Kelner ("Kelner Decl.")

¶ 3. His letter again made clear that by enforcing Bulletin No. 10 against Plaintiffs, the Department had violated both the Permanent Injunction and Plaintiffs' rights under RFRA. *Id.* It also outlined the injuries suffered by Plaintiffs as a result of their forced reassignments. *Id.*

Three days later, on August 12, 2021, Mr. Saindon responded by email and agreed to return Plaintiffs to field duty. *Id.* ¶ 4; *id.* Ex. A. ("[N]ow that the public health emergency has ended, FEMS is prepared to return plaintiffs to their previous firefighter and paramedic positions."). Despite this initial commitment, the Department did not arrange for Plaintiffs to begin an apparently mandatory Return to Operations course until October 4, 2021—nearly two months later. Kelner Decl. ¶ 5. Thereafter, Plaintiffs Potter, Sterling, and Umrani were eventually restored to their field positions on October 10, 2021 (Potter), October 17, 2021 (Sterling), and December 14, 2021 (Umrani). Potter Decl. ¶ 20; Sterling Decl. ¶ 14; Umrani Decl. ¶ 13. Mr. Chasin remained in his logistical position until March 2021, when he was able to transfer to the position of FEMS Salesforce Administrator. Chasin Decl. ¶ 17. He continues to work in that position and wishes to continue doing so. *Id.*

After Plaintiffs had been restored to their positions in the field, Mr. Kelner wrote to Mr. Saindon on January 31, 2022 with an offer to settle Plaintiffs' outstanding claims for damages that had accrued during the time they were removed from field duty in violation of the Permanent Injunction. Kelner Decl. ¶ 6. Mr. Saindon responded on May 31, 2022, rejecting the settlement terms set forth in Mr. Kelner's letter. *Id.* ¶ 8. Before filing this motion, Mr. Kelner again reached out to Mr. Saindon, and further settlement discussions occurred on October 26, 2022. *Id.* ¶¶ 9-10. Thereafter, Mr. Kelner sent Mr. Saindon a revised settlement offer on October 28, 2022. *Id.* ¶ 11. Mr. Saindon responded on November 3, 2022, again rejecting the terms set forth in Mr. Kelner's offer. *Id.* ¶ 12. In light of these communications, it has become clear that further settlement

discussions are unlikely to be productive. *Id.* ¶¶ 12-13. Accordingly, Plaintiffs now seek this Court's intervention to vindicate their rights.[6]

II. ARGUMENT

A. Legal Standard

"Federal court orders are to be obeyed unless and until litigants succeed in having them duly overturned by the appropriate court of appeals. Litigants may not defy court orders because their commands are not to the litigants' liking." *Unitronics (1989) (R"G) Ltd. v. Gharb*, 85 F. Supp. 3d 133, 139 (D.D.C. 2015) (quoting *Am. Rivers v. U.S. Army Corps of Eng'rs*, 274 F. Supp. 2d 62, 70 (D.D.C. 2003)). When a party disregards a duly issued court order, "[t]here can be no question that courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *see also Broderick v. Donaldson*, 437 F.3d 1226, 1234 (D.C. Cir. 2006) ("The power to punish for contempts is inherent in all courts; its existence is essential to . . . the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." (citation omitted)); *Gharb*, 85 F. Supp. 3d at 139 ("Courts have inherent authority to enforce compliance with their orders through contempt proceedings."). Accordingly, courts may enforce an injunctive order through contempt. *See Phillips v. Mabus*, 894 F. Supp. 2d 71, 91 (D.D.C. 2012) ("An order granting injunctive relief is enforceable by the district court's power of contempt."); *see also McCall-Bey v. Franzen,* 777 F.2d 1178, 1183 (7th Cir. 1985) ("When an equity case ends in a permanent injunction, the trial

[6] Troublingly, while the Department has, for now, restored Plaintiffs to field duty after substantial delay, it continues to insist that its facial hair policies do not violate the Permanent Injunction. Kelner Decl. ¶ 8. Likewise, the Department has not ruled out the possibility of enforcing its facial hair policies against Plaintiffs in the future, notwithstanding the Permanent Injunction. *Id.* ¶¶ 8, 12. This continued equivocation from the Department only reinforces the importance of granting Plaintiffs' request for a finding of contempt.

court, with or without an explicit reservation of jurisdiction, retains jurisdiction to enforce the injunction, as by contempt proceedings."); *Am. Mining Cong. v. U.S. Army Corps of Eng'rs*, 120 F. Supp. 2d 23, 27 (D.D.C. 2000) (same).

A party moving for a finding of contempt "bears the initial burden of demonstrating by clear and convincing evidence that: (1) there was a clear and unambiguous court order in place; (2) that order required certain conduct by Defendants; and (3) Defendants failed to comply with that order." *United States v. Latney's Funeral Home, Inc.*, 41 F. Supp. 3d 24, 29-30 (D.D.C. 2014). "The defendants' intent in failing to comply with a court order is irrelevant." *CFTC v. Trade Exch. Network Ltd.*, 117 F. Supp. 3d 22, 26 (D.D.C. 2015); *see also SEC v. Bilzerian*, 112 F. Supp. 2d 12, 16 (D.D.C. 2000) (in the context of a contempt proceeding, the defendant's "intent is irrelevant; the Court need not find that his failure to comply with the orders was willful or intentional"). "Once the above three-part showing is made, the burden shifts to the nonmoving party to provide adequate detailed proof justifying noncompliance." *12 Percent Logistics, Inc. v. Unified Carrier Registration Plan Bd.*, 316 F. Supp. 3d 22, 25 (D.D.C. 2018).

B. The Department Should Be Held In Contempt for Violating the Permanent Injunction.

Plaintiffs satisfy each prong of the three-part test this Court uses to determine whether a party should be held in civil contempt: This Court's Permanent Injunction is clear and unambiguous; it expressly requires specific conduct by the Department; and the Department has demonstrably failed to comply with these requirements. Thus, the Department should be held in contempt.

First, the Permanent Injunction that the Department has flouted is both clear and unambiguous, as it "does not leave any reasonable doubt as to what behavior was expected and who was expected to behave in the indicated fashion." *Trade Exch. Network*, 117 F. Supp. 3d at

26 (quotations and citation omitted); *N.Y. State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1352 (2d Cir. 1989) (to support contempt, "an injunction must be specific and definite enough to apprise those within its scope of the conduct that is being proscribed." (citation omitted)). The Permanent Injunction plainly sets forth the specific conduct that is proscribed; namely, the "defendant and its officials, agents, and employees, are PERMANENTLY ENJOINED from enforcing the facial hair provisions of Special Order 20, Series 2005, against the plaintiffs." Permanent Inj. and Order, *Potter* ECF No. 157; *see, e.g.*, *MasTec Advanced Techs. v. NLRB*, 2021 WL 4935618, at *13 (D.D.C. June 3, 2021) (finding an NLRB order requiring the defendant to take specific enumerated actions to be clear and unambiguous); *cf. Act Now to Stop War & End Racism Coal. v. District of Columbia*, 2013 WL 12380268, at *2 (D.D.C. Aug. 23, 2013) (finding that a court order was not clear and unambiguous where it was "completely silent on an issue").

The entities subject to the Permanent Injunction are clear—the defendant in this action (the District of Columbia and its Fire and Emergency Medical Services Department), along with its "officials, agents, and employees." *See Potter* Compl. ¶ 1, *Potter* ECF No. 1 ("This is an action to compel the District of Columbia and the District of Columbia Fire and Emergency Medical Services Department . . . and its officials to abide by its obligation not to interfere with the religious practices of its members.").

The conduct enjoined by this Court (which the Department has undertaken nonetheless) is also clear; namely, the Department may not "enforc[e] the facial hair provisions of Special Order 20, Series 2005." Permanent Inj. and Order, *Potter* ECF No. 157. As noted previously, the facial hair provisions of Special Order 20 provide that members "who are required to wear tight fitting facepieces are not permitted to have: (A) Facial hair that comes between the sealing surface of the facepiece and the face or that interferes with the valve function; or (B) Any condition that interferes

with the face to face piece seal or valve function." Pls.' Mot. for Order to Show Cause, Second Sneed Decl. Ex. A at 4, *Potter* ECF No. 73-2. In other words, the Permanent Injunction prohibits the Department from enforcing both the requirement that members "are not permitted to have . . . [f]acial hair that comes between the sealing surface of the facepiece and the face or that interferes with the valve function," and the requirement that members "are not permitted to have . . . [a]ny condition that interferes with the face to face piece seal or valve function." *See id.*

Finally, the individuals protected by the Permanent Injunction are clear—the plaintiffs in this action, including Messrs. Chasin, Potter, Sterling, and Umrani.

Second, the Permanent Injunction requires specific conduct by the Department. Specifically, it requires the Department to refrain from enforcing the facial hair provisions of Special Order 20 against Plaintiffs.

Third, it is likewise clear that the Department failed to comply with this Court's Permanent Injunction when it removed Plaintiffs from field duty. The Department's stated rationale for removing Plaintiffs from field duty was their failure to comply with the facial hair provisions of Bulletin No. 10. Potter Decl. ¶¶ 14–15; Sterling Decl. ¶ 10; Umrani Decl. ¶¶ 9–10; Chasin Decl. ¶ 13. And those provisions are virtually identical to the facial hair provisions of Special Order 20 that were permanently enjoined by this Court. Indeed, the only substantive difference between the facial hair provisions of Special Order 20 and the facial hair provisions of Bulletin No. 10 is that Special Order 20 applied only to employees "who are required to wear tight fitting facepieces," while Bulletin No. 10 apparently applies to all "employees." Thus, by removing Plaintiffs from field duty for failing to comply with the facial hair provisions of Bulletin No. 10, the Department violated the Permanent Injunction's instruction that the Department may not enforce the facial hair provisions of the nearly-identical Special Order 20.

Moreover, the Department was on notice that its enforcement of Bulletin No. 10 against Plaintiffs violated the Permanent Injunction, yet nevertheless persisted. When they were initially removed from field duty, Plaintiffs made clear that they did not consent to their reassignment, and that they believed the Department's actions violated the Permanent Injunction. Potter Decl. ¶ 16; Sterling Decl. ¶ 11; Umrani Decl. ¶ 11; Chasin Decl. ¶ 14. Further, as early as March 2020, Plaintiffs' prior counsel made clear to the Department that enforcement of Bulletin No. 10 against Plaintiffs violated the Permanent Injunction. *See* Spitzer Decl. Ex. A.

Accordingly, Plaintiffs have satisfied all three elements necessary to make out their prima facie case that the Department should be held in civil contempt of this Court's Permanent Injunction.

C. The Department's Failure to Comply with The Permanent Injunction Cannot Be Justified.

Noncompliance with a court's order can only be justified in two narrow circumstances, neither of which have occurred here. First, a defendant may justify noncompliance through a showing—"categorically and in detail"—that it "is unable to comply with the orders." *See Bilzerian*, 112 F. Supp. 2d at 18 (citation omitted); *Am. Rivers v. U.S. Army Corps of Eng'rs*, 274 F. Supp. 2d 62, 66 (D.D.C. 2003) ("[I]mpossibility exists only when a party demonstrates that it is 'powerless to comply' with a court's order . . . ."). There is no plausible argument that the Department is unable to comply with the Permanent Injunction. The Permanent Injunction prohibits the Department from enforcing specific facial hair rules against a specific subset of firefighters and paramedics (*i.e.*, the Plaintiffs in this action). Since the Permanent Injunction is a *prohibitory* injunction that merely directs the Department to forbear from taking specific actions rather than a *mandatory* injunction requiring the Department to take a specific affirmative act, it defies credulity to suggest that the Department is unable to comply.

Second, a defendant may also justify noncompliance by showing "good faith substantial compliance with the orders." *Bilzerian*, 112 F. Supp. 2d at 18 n.5. "To prove good faith substantial compliance, the contemnor must show that it 'took all reasonable steps within [its] power to comply.'" *Serv. Emps. Int'l Union Nat'l Indus. Pension Fund v. Artharee*, 48 F. Supp. 3d 25, 30 (D.D.C. 2014) (quoting *Int'l Painters & Allied Trades Indus. Pension Fund v. ZAK Architectural Metal & Glass LLC*, 736 F. Supp. 2d 35, 40 (D.D.C. 2010)). The Department's conduct here does not constitute "substantial compliance" with the Permanent Injunction. Indeed, the entire purpose of the Permanent Injunction was to prohibit the Department from enforcing a facial hair policy against Plaintiffs that was nearly identical to the Department's current facial hair policy and to recompense Plaintiffs for the Department's prior violations of their rights. *See supra* Section I.A; *Potter*, 2007 WL 2892685, at *1 ("I have concluded that in the District of Columbia . . . the fire department may not impose a shaving requirement on men who wear their beards for religious reasons."). The Department's contravention of the core of the Permanent Injunction—by imposing on the *Potter* Plaintiffs "a shaving requirement on men who wear their beards for religious reasons"—cannot credibly be deemed substantial compliance with the Permanent Injunction. *See Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, AFL-CIO-CLC,* 103 F.3d 1007, 1018-19 (D.C. Cir. 1997) (no good faith substantial compliance with a court order compelling production of all relevant records where the defendant failure to search off-site records); *In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 & 50 U.S.C. § 1705*, 2019 WL 2182436, at *4 (D.D.C. Apr. 10, 2019) (finding that banks' good faith searches for and collection and preservation of documents responsive to a subpoena did not constitute good faith substantial compliance with an order requiring production of those documents).

Finally, any insinuation that the Department's decision to flout the Permanent Injunction can be justified or excused by the onset of the COVID-19 pandemic is unavailing as a matter of both fact and law.

First, the factual record belies any suggestion that the COVID-19 pandemic was the reason the Department issued the facial hair rules included in Bulletin No. 10. Plaintiffs learned of the anticipated policy change no later than mid-January 2020, *see* Potter Decl. ¶ 8; Sterling Decl. ¶ 8; Umrani Decl. ¶ 7; Chasin Decl. ¶ 8, before the U.S. government had even announced the first confirmed COVID-19 case in the United States.[7] Mr. Potter likewise received a copy of Bulletin No. 9—including its new facial hair rules—around the time of the very first announced case of COVID-19 in the United States. Potter Decl. ¶¶ 9–10. Moreover, Bulletin No. 9 itself made no mention of COVID-19 or *any* kind of public health emergency. Rather, it was justified as a means of addressing "all types of emergency incidents—whether public service calls, training activities, emergency and routine travel on apparatus—and all non-emergency activities that could pose a hazard to the employee." Potter Decl. Ex. A, at 1. Further, the fact that Bulletin No. 9 set an initial implementation date of April 2020—*three months* after the policy was released—suggests that Bulletin No. 9 was not drafted in response to a public health emergency requiring immediate attention.

Similarly, General Order 6 and Bulletin No. 10, circulated on February 12, 2020, also made no mention of the COVID-19 pandemic as the Department's reason for enacting its new facial hair policy. General Order 6 only mentions the Department's broad desires to "protect and enhance

[7] *See, e.g.,* Matthew J. Belvedere, *Trump Says He Trusts China's Xi On Coronavirus and the US Has it "Totally Under Control,"* CNBC (Jan. 22, 2020), https://www.cnbc.com/2020/01/22/trump-on-coronavirus-from-china-we-have-it-totally-under-control.html ("The Centers for Disease Control and Prevention on [January 21] confirmed the first case in the United States").

the safety of all members" and enhance personal protective equipment performance in "harsh environments." *See* Chasin Decl. Ex. A, at 1; *see also Potter*, 2007 WL 2892685, at *5 (reciting the kinds of very rare harsh environments—such as terrorist attacks—that the masks at issue are used for). Further, like Bulletin No. 9, Bulletin No. 10 set an implementation date of April 2020, *see* Chasin Decl. Ex. A, at 3, suggesting that even by February 12, 2020—with COVID-19 beginning to circulate—the Department saw no need to revise its original timeline for implementing the new policy.

By contrast, Special Order No. 55—which was not issued until March 12, 2020—accelerated the implementation of the Department's new facial hair policy that was already scheduled for implementation, and first cited COVID-19 as its purported justification for doing so. *See* Chasin Decl. Ex. B, at 1. Notably, however, even Special Order No. 55 did not cite COVID-19 as the reason for the *underlying policy*; rather, it simply cited COVID-19 as the reason for *accelerating* the implementation of Bulletin No. 10. *Id.* The Department's actions thus make clear that the COVID-19 pandemic was not the reason for the Department's decision to issue Bulletin No. 10.

Second, any insinuation that the COVID-19 pandemic represents a significant changed circumstance that would warrant modification of the Permanent Injunction under Federal Rule of Civil Procedure ("Rule") 60(b) or any other rule or principle of equity is unfounded. The Department cannot unilaterally choose to ignore a federal court order. The Supreme Court noted long ago that permitting a party to modify the terms of a court order on its own accord, without judicial oversight—as the Department has done here—is deeply corrosive to the rule of law. *See Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450 (1911) ("If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set

them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery.").

To that end, the Federal Rules of Civil Procedure are clear—only a court, *acting upon a motion* from the aggrieved party, has the authority to relieve that party of its obligations under a court order. *See* Rule 60(b) ("On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons . . . ."); *see also Salazar ex rel. Salazar v. District of Columbia*, 633 F.3d 1110, 1116 (D.C. Cir. 2011) (in order to be availed of Rule 60(b), a party must make a motion "within a reasonable time"). The Department is not entitled to relief from its obligations under the Permanent Injunction until the Department proves that such a modification is warranted. *See Horne v. Flores*, 557 U.S. 433, 447 (2009) (under Rule 60(b)(5), "[t]he party seeking relief bears the burden of establishing that changed circumstances warrant relief . . . ."). The Department should be well aware of Rule 60(b), given that Judge Williams specifically addressed this point earlier in this litigation. *See Potter*, 558 F.3d at 554 (Williams, J. concurring). Citing Rule 60(b)(5), Judge Williams explained that if the Department wished to seek relief from the Permanent Injunction, it would need to do so by convincing the court of "a significant change either in factual conditions or in law." *Id.* (citation omitted). The Department plainly did not heed this instruction here.

III. REQUESTED RELIEF

For the reasons discussed above, Plaintiffs respectfully request that this Court order Defendant to show cause as to why it should not be held in contempt, and that this Court find Defendant in contempt of the Permanent Injunction. Further, Plaintiffs also request that that this Court order Defendant to provide compensatory relief to Plaintiffs to redress injuries they sustained between March 15, 2020 and December 14, 2021 as a direct result of their unlawful

removal from field duty, in violation of the Permanent Injunction. *See Latney's Funeral Home*, 41 F. Supp. 3d at 29 ("A civil contempt action is characterized as remedial in nature, used to obtain compliance with a court order or to compensate for damages sustained as a result from noncompliance." (citation omitted)); *see also Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 838 (1994) (discussing the "longstanding authority of judges . . . to enter broad compensatory awards for all contempts through civil proceedings").

First, Plaintiffs request an award of damages equal to their loss of income, leave, and related benefits that resulted from the Department's violation of the Permanent Injunction. Compensatory damages of this nature are routinely awarded in contempt proceedings. *See, e.g.*, *EEOC v. Guardian Pools, Inc.*, 828 F.2d 1507, 1515 (11th Cir. 1987) ("We find that a variety of contempt sanctions may be imposed, including an award of back pay . . . ."); *EEOC v. Local 638 . . . Local 28 of the Sheet Metal Workers' Int'l Assn.*, 117 F. Supp. 2d 386, 394 (S.D.N.Y. 2000) (ordering union to provide back pay to workers after finding union in contempt of the court's Amended Affirmative Action Plan and Order). Further, this category of damages directly mirrors the damages this Court awarded Plaintiffs in 2007 under the Permanent Injunction. *See* Permanent Inj. and Order, *Potter* ECF No. 157 ("[I]f any plaintiff claims that . . . he has lost income, seniority or retirement benefits, or has lost or been forced to use sick leave, the parties will confer and seek in good faith to agree upon remedies for such losses."). And, as this Court has already recognized, back pay and similar economic losses are compensable damages under RFRA. *See* Mem. Order at 3, *Potter* ECF No. 181.

Second, Plaintiffs request an award of damages sufficient to compensate them for out-of-pocket expenses they incurred as a result of the Department's violation of the Permanent Injunction. For instance, Plaintiffs incurred a variety of additional transportation expenses as a

result of their forced reassignments, which required Plaintiffs to come to work five days per week instead of their prior field duty schedule of 24 hours on-duty followed by 72 hours off-duty. Potter Decl. ¶ 22; Sterling Decl. ¶¶ 16–17; Umrani Decl. ¶¶ 15–16. This change caused a net increase in their weekly round trips to work, which increased their gasoline expenses and caused added wear and tear on their vehicles. Potter Decl. ¶ 22; Sterling Decl. ¶¶ 16–17; Umrani Decl. ¶¶ 15–16. Further, after Mr. Umrani began commuting to work via rideshare, this change significantly increased his weekly rideshare expenses. Umrani Decl. ¶ 16.

Third, Plaintiffs request an award of non-economic damages sufficient to compensate them for the fact that their forced reassignments upended their lives for more than a year and a half, resulting in substantial personal and familial disruptions and loss of career advancement opportunities. *See, e.g.*, *Medina v. Buther*, 2019 WL 4370239, at *24-25 (S.D.N.Y. Sept. 12, 2019) (awarding compensatory damages in civil contempt proceeding for "mental anguish" as well as "physical pain and suffering"); *Schwartz v. Rent-A-Wreck of Am.*, 261 F. Supp. 3d 607, 620-21 (D. Md. 2017) (awarding damages for reputational harm in civil contempt proceeding); *Davis v. Sutton*, 2005 WL 3434633, at *3-4 (W.D. Tenn. Dec. 13, 2005) (awarding compensatory pain and suffering damages in contempt proceeding).[8]

[8] While this Court has previously declined to find that non-economic damages are available to Plaintiffs under RFRA, *see* Mem. Order at 3, *Potter* ECF No. 181, the non-economic damages Plaintiffs request in this motion materially differ from the non-economic damages that were the subject of this Court's prior ruling. Previously, Plaintiffs brought non-economic damage claims related to "emotional distress" and "anxiety" deriving from the fact that they "had to live for years in doubt about the economic viability of living observantly in their faiths" and that some plaintiffs "felt they had no alternative but to violate the teachings of their faiths." Pls.' Mot. Partial Summ. J. at 1, 8, *Potter* ECF No. 175. These claims were intimately intertwined with the plaintiffs' personal religious beliefs, and accordingly, this Court declined to award non-economic damages because "claims for emotional distress (the most common form of compensatory damages in discrimination cases) would inevitably lead to discovery of and disputes about the sincerity and importance of religious beliefs . . . ." Mem. Order at 3, *Potter* ECF No. 181. Here, Plaintiffs are

Finally, Plaintiffs request an award of damages equal to the costs and attorney's fees of litigating this contempt motion. *See, e.g.*, *Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 70, 76 (D.D.C. 2003) ("[A] court may order a civil contemnor to compensate the injured party for losses caused by the violation of the court order, and such an award will often consist of reasonable costs (including attorneys' fees) incurred in bringing the civil contempt proceeding."); *see also Gharb*, 85 F. Supp. 3d at 128 ("Attorney fees are warranted here to compensate Unitronics for money damages sustained as a result of Mr. Gharb's noncompliance with the Injunction Order.").

The largest category of damages Plaintiffs are owed is likely the various forms of compensation Plaintiffs were denied due to their unlawful reassignments to less desirable logistical positions within the Department. However, Plaintiffs respectfully submit that the precise amount of such damages that they are owed cannot be ascertained adequately without limited discovery of the Department. As one example, Plaintiffs had only limited opportunities to work overtime during the period they were reassigned to logistical positions—certainly fewer such opportunities than individuals working in the field. Potter Decl. ¶ 21; Sterling Decl. ¶ 15; Umrani Decl. ¶ 14; Chasin Decl. ¶ 21. However, without the opportunity to review Department-wide overtime data for the period in which they were reassigned, Plaintiffs cannot accurately estimate the overtime-related damages that they are owed. Access to the Department's human resources data may also be necessary to accurately quantify the amount of holiday, evening, and weekend differential pay Plaintiffs were denied during the period of their reassignments.

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not advancing emotional distress claims: the non-economic damages they seek turn on the substantial *disruptions* caused by the Department's unlawful removal of Plaintiffs from field duty. The types of damages Plaintiffs have suffered are no different than the damages one might find in a typical employment discrimination lawsuit wholly unrelated to religion. Accordingly, the amount of such damages owed can be ascertained without an inquiry into "the sincerity and importance of religious beliefs."

Where, as here, a moving party has made a prima facie showing of contempt, the court is empowered to authorize discovery necessary to fully resolve issues bearing upon the question of contempt. *See Wesley Jensen Corp. v. Bausch & Lomb, Inc.*, 256 F. Supp. 2d 228, 229 (D. Del. 2003) ("To obtain discovery based on allegations of civil contempt, [the movant] must make a prima facie showing that a court order has been disobeyed."); *Cardell Fin. Corp. v. Suchodolski Assocs., Inc.*, 2012 WL 12932049, at *57-58 (S.D.N.Y. July 17, 2012) (collecting cases applying this same rule). Accordingly, it is not uncommon for courts to grant limited discovery in contempt proceedings, including on the issue of damages. *See, e.g.*, *Cal. Expanded Metal Prods. Co. v. Klein*, 2021 WL 4078072, at *1 (W.D. Wash. Sept. 8, 2021) (ordering bifurcation of a contempt proceeding into an initial liability phase, to be followed by supplemental discovery and a damages phase if the defendant was held in contempt); *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, 2017 WL 1173928, at *5 (M.D. Pa. Mar. 29, 2017) (allowing limited discovery in contempt proceeding); *Mendoza v. Regis Corp.*, 2005 WL 1109262, at *2, *4 (W.D. Tex. Mar. 21, 2005) (permitting "limited discovery on defendants' profits" to inform damages analysis in proceeding concerning civil contempt of injunction); *United States v. IBM Corp.*, 60 F.R.D. 650, 653 (S.D.N.Y. 1973) ("[T]he court has decided to allow at least limited discovery by IBM against the government on the issue of the damages occasioned by IBM's failure to comply with this court's order . . . ."). Indeed, the due process rights of "both the alleged contemnor and the complainant" may require discovery in civil contempt proceedings as necessary "to resolve relevant factual disputes . . . ." *Tranzact Techs., Inc. v. 1Source Worldsite*, 406 F.3d 851, 855 (7th Cir. 2005).

Accordingly, if this Court finds Defendant in contempt of the Permanent Injunction, Plaintiffs request limited discovery of the Department on the issue of damages and a separate

briefing schedule in which the parties may submit evidence, argument and, if necessary, expert testimony, related to the total amount of damages to which Plaintiffs are entitled.

CONCLUSION

For all of the foregoing reasons, the Court should order Defendant to show cause as to why it should not be held in contempt, find Defendant in contempt, and permit Plaintiffs to take limited discovery of the Department on the issue of damages suffered as a result of Defendant's contemptuous conduct.

Dated: November 7, 2022

Respectfully submitted,

/s/ Kevin B. Collins

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL) CONSOLIDATED CASES
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 05-cv-1792 (RJL)

[PROPOSED] ORDER OF CONTEMPT

Upon consideration of Plaintiffs' Motion for Judgment of Civil Contempt and any responses thereto, the Court concludes that the motion should be granted.

Accordingly, it is hereby

ORDERED that Defendant District of Columbia ("Defendant") is in civil contempt for disobeying the Permanent Injunction and Order, *Potter* ECF No. 157, previously issued by the Court in the above captioned matters. It is further

ORDERED that Defendant provide compensatory relief to each Plaintiff sufficient to fully redress the injuries each has sustained as a result of Defendant's disobedience of the Permanent Injunction and Order previously issued in the above captioned matters. It is further

ORDERED that Defendant shall pay Plaintiffs' attorney's fees incurred in preparation and litigation of this contempt proceeding. It is further

ORDERED that Plaintiffs are authorized to undertake any discovery of Defendant, within the bounds of the Federal Rules of Civil Procedure, that is necessary to fully ascertain the nature and amount of compensatory damages to which Plaintiffs are entitled. It is further

ORDERED that within 14 days of the date of this Order, Plaintiffs shall confer with Defendant and file with the Court a joint proposed Case Management Plan for the Court's consideration, which shall include: (1) proposed deadlines for the completion of both fact and expert discovery on the issue of damages; and (2) a proposed briefing schedule on the issue of damages.

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It is SO ORDERED.

Date: _____

_____
Richard J. Leon
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL) CONSOLIDATED CASES
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 05-cv-1792 (RJL)

[PROPOSED] SHOW CAUSE ORDER

Upon consideration of Plaintiffs' Motion for Judgment of Civil Contempt, it is hereby ORDERED that Defendant District of Columbia ("Defendant") shall show cause, within 14 days from the date of this order, why Defendant should not be held in contempt of the Permanent Injunction and Order, *Potter* ECF No. 157, previously issued by the Court in the above captioned matters.

It is SO ORDERED.

Date: _____

_____
Richard J. Leon
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL) CONSOLIDATED CASES
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 05-cv-1792 (RJL)

DECLARATION OF STEVEN CHASIN IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

I, Steven Chasin, under penalty of perjury, hereby declare as follows:

1. This Declaration is based upon my personal knowledge.

2. I am employed by the District of Columbia Fire and Emergency Medical Services Department ("FEMS" or the "Department"), and have been employed by FEMS since 1990.

3. Until being removed from field duty in March 2020, I worked as a paramedic. While working as a paramedic, I was typically required to be in the field daily responding to emergencies.

4. I am Jewish. In accordance with the tenets of my Jewish faith, I continuously wear a beard. My beard has never interfered in any way with my performance of my duties.

5. Notwithstanding my sincere religious beliefs, the Department has, on several occasions in the past, enforced or attempted to enforce against me policies requiring that I be clean shaven while on duty. I, along with the other plaintiffs in this case, previously successfully

challenged these policies in this Court. In October 2007, this Court permanently enjoined the Department from enforcing against myself and the other plaintiffs a policy prohibiting all FEMS workers who use tight-fitting mask facepieces from having facial hair that comes between the sealing surface of the mask facepiece and the face.

6. After this October 2007 injunction was issued, the Department permitted me to continue wearing my beard in accordance with my religious faith while serving in the field as a paramedic. Thereafter, I performed these duties without incident until I was removed from active field duty and reassigned by the Department in March 2020.

7. Sometime after the October 2007 injunction was issued, the Department changed its facial hair regulations to permit any Member to maintain facial hair of up to ¼ inch.

8. On or about January 13, 2020, I became aware of the Department's intention to issue a new policy related to facial hair.

9. After becoming aware of the Department's intention to issue a new policy related to facial hair, I contacted Mr. Arthur Spitzer of the ACLU in January 2020. Over the following several months, I communicated with Mr. Spitzer on several occasions regarding the Department's new facial hair policy. It was also my understanding that Mr. Spitzer was, on my behalf, communicating with the Department and others regarding the Department's new facial hair policy.

10. The final version of the Department's policy related to facial hair was eventually issued as Safety Operations Bulletin No. 10 ("Bulletin No. 10"), which prohibits Department employees from having any of the following: (1) Facial hair that comes between the sealing surface of the face piece and the face; (2) Facial hair that interferes with the valve function; or (3) Any condition that interferes with the face-to-face piece seal or valve function.

11. Attached to this declaration as Exhibit A is a true and correct copy of General Order No. 6, Series 2020, *Manual Change—Safety Operations Bulletin No. 10 Donning and Use of Personal Protective Equipment*. I received this from the Department via email after it was issued on February 12, 2020. General Order No. 6 announces the Department's intent to change its Operations Bulletin Book to add the material reflected in Bulletin No. 10 effective April 5, 2020. General Order No. 6 also includes a complete copy of Bulletin No. 10.

12. Attached to this declaration as Exhibit B is a true and correct copy of Special Order No. 55, Series 2020, *Revised Implementation Date for Safety Operations Bulletin No. 10 Donning and Use of Personal Protective Equipment*. I received this from the Department via email after it was issued on March 12, 2020. Special Order No. 55 announces a revised implementation date for Bulletin No. 10. Specifically, it announces that Members must comply with Bulletin No. 10 effective Sunday, March 15, 2020 at 0700 hours. Special Order No. 55 also includes a complete copy of Bulletin No. 10.

13. In March 2020, I first became aware that the Department intended to enforce Bulletin No. 10 against me. Specifically, on March 17, 2020, I arrived at work and was told that I was not in compliance with the Department's new facial hair policy. Accordingly, I was told that I would not be allowed to assume regular field duty and instead would be reassigned.

14. Thereafter, I immediately informed my supervisor that I did not consent to this reassignment. Further, I informed my supervisor that this reassignment violated the permanent injunction issued by this Court in October 2007, which my supervisor acknowledged.

15. I was initially asked to continue staffing the Department's medic unit until relief could be made available. Then, at approximately 12:00 p.m. on March 17, 2020, I was removed from field duty.

16. Following my removal from regular field duty, I was reassigned to the Department's Logistics Section, where I was responsible for checking Members' temperatures on their arrival at work (to identify anyone potentially infected with COVID), and logging them in.

17. I remained in this role until March 2021. At that time, I assumed a new role with the Department working as the FEMS Salesforce Administrator. I have worked in that position since March 2021 and wish to continue doing so.

18. I understand that, in November 2020, Mr. Spitzer informed Calvert Potter that his official representation of each of the plaintiffs in this litigation ended with the conclusion of the litigation years earlier, and that he would not represent us going forward in our dispute with the Department.

19. Accordingly, I contacted First Liberty Institute on or about February 6, 2021 for the purpose of obtaining legal representation for myself, Mr. Potter, Hassan Umrani, and Jasper Sterling in our dispute with the Department. Specifically, I completed an electronic form available on First Liberty Institute's website that allows individuals to request legal assistance regarding matters involving religious liberty. I subsequently spoke with Rebecca Dummermuth of First Liberty Institute, and was informed on or about February 22, 2021 that First Liberty Institute was willing to represent us in our dispute.

20. Attached to this declaration as Exhibit C is a true and correct copy of General Order No. 33, Series 2021, *Manual Change—Safety Operations Bulletin No. 10 Donning and Use of Personal Protective Equipment*. I received this from the Department via email after it was issued on June 16, 2021. General Order No. 33 makes one change to Bulletin No. 10.

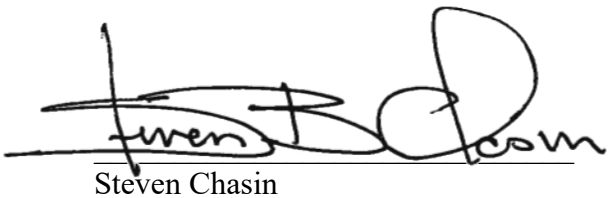
General Order No. 33 also includes a complete copy of Bulletin No. 10, as revised. I understand that this policy currently remains in effect.

21. As a result of the Department's decision to remove me from field duty and reassign me to a logistical position without my consent, I received less total compensation than I would have if I had remained on field duty. For example, I had fewer opportunities to earn overtime, holiday, weekend, and night-differential pay throughout the time of my reassignment. Had I been allowed, I would have taken advantage of at least some of these opportunities.

22. Furthermore, my sudden reassignment to a logistical position caused significant scheduling disruptions for myself and my family. While working in the field as a paramedic, I was typically on duty for 24 full hours, followed by 72 hours off duty. As a result of this predictable schedule, prior to my reassignment, I had scheduled several medical appointments for weekdays on which I was not scheduled to be on duty. When I was reassigned to a logistical position, I was required to work five days per week during regular business hours. Because of this change, I was forced to use leave time to attend these previously-scheduled medical appointments.

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

Executed this 27th day of September, 2022.



Steven Chasin

CHASIN DECL.

EXHIBIT A

Muriel Bowser
Mayor

GENERAL ORDER

Gregory M. Dean
Fire and EMS Chief

Series	Number	Originating Unit	Originating Date	Expiration Date
2020	06	OFC	February 12, 2020	Until Revised

SUBJECT:

Manual Change – Safety Operations Bulletin No. 10
Donning and Use of Personal Protective Equipment

Make the following change to the D.C. Fire and EMS Department Operations Bulletin Book:

Add Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment.*

Our Personal Protective Equipment (PPE) is designed to provide limited protection to the exposures that we encounter in many different environments. While limited, the PPE does protect us from harsh environments. The key to the protection value is to wear it and to wear it correctly all the time, every time.

This policy provides direction for the donning and use of PPE, as well as grooming standards required for safe personal protective clothing and equipment usage. This policy intends to protect and enhance the safety of all members and thereby support our ability to provide efficient fire and emergency medical services to the residents and visitors of the District of Columbia.

Officers shall ensure that members under their command understand the importance of being in compliance with this safety policy for their own safety.

Members who have a medical condition that prevents them from complying with this policy shall be ordered to report to the Police and Fire Clinic (PFC) for an evaluation and referral to their private physician.

This policy supersedes the information contained in Order Book Article XXI, *Uniforms and Personal Protective Equipment,* Sections 21 and 22.

A complete revision of Article XXI is forthcoming.

This policy becomes effective and shall be enforced on April 5, 2020.

Gregory M. Dean
Fire and EMS Chief

GMD:CB:jc

Attachment: Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment*

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

Safety Operations Bulletin No. 10 **April 2020**

DONNING AND USE OF PERSONAL PROTECTIVE EQUIPMENT

1.0 REFERENCES

1.1 Bulletin No. 28, *Religious Accommodation Policy.*

1.2 NFPA 1971, *Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.*

1.3 District of Columbia Fire and EMS Department Respiratory Protection Plan.

1.4 U.S. Centers for Disease Control and Prevention: National Institute for Occupational Safety and Health, *Facial Hairstyles and Filtering Face Piece Respirators.*

2.0 POLICY

2.1 Employees shall wear/utilize protective clothing and equipment required to afford maximum personal protection during all types of emergency and non-emergency incidents.

2.2 No aspect of personal grooming is permitted to interfere with the form, fit, function, and/or interface of any type of personal protective clothing or equipment required for use by the employee.

2.3 No aspect of personal grooming is permitted to present a hazard to the employee in the course of performing his or her duties.

2.4 An employee affected by any part of this policy due to sincerely held religious beliefs or practices shall comply with Bulletin No. 28, *Religious Accommodation Policy.*

2.5 An employee affected due to other (non–religious) reasons shall submit a detailed Special Report to the Fire and EMS Chief through the member's Chain of Command describing the policy provision involved, and the specific effect on the employee.

2.6 Members who have a medical condition which prevents them from meeting these requirements shall be ordered to report to the Police and Fire Clinic (PFC) for an evaluation and referral to their private physician. A member's duty status will be determined by the PFC.

Enforcement

2.7 In applying these standards, Battalion Commanders shall enforce the requirements of Chapter 6 of the District of Columbia Fire and EMS Department Respiratory Protection Plan, as well as the attached document entitled *Facial Hairstyles and Filtering Face Piece Respirators*, which sets forth both appropriate and inappropriate facial hair images and was published by the U.S. Centers for Disease Control and Prevention: National Institute for Occupational Safety and Health.

2.8 All personnel shall be in compliance with these requirements prior to assuming duty. Division and Battalion Commanders and Company Officers shall inspect personnel to assess and ensure their members are in compliance with these requirements at all times.

2.8.1 Members that do not meet these requirements will not be permitted to assume duty. If a member cannot immediately come into compliance, the member shall be relieved from duty and placed on LWOP for the remainder of his/her tour of duty. Company Officers shall direct members not in compliance to submit a Special Report regarding their noncompliance and order the member to come into compliance by their next work day.

2.8.2 Members who achieve compliance with these requirements by the next work day shall be restored to full duty and no further action will be taken. Those that do not comply with these requirements on the next and all subsequent work days will be directed to submit a Special Report regarding their noncompliance, ordered to come into compliance by their next work day and placed on administrative leave for the remainder of his/or her tour of duty during each subsequent occurrence.

2.9 Company Officers or employees having questions on how to interpret or comply with this policy shall bring those questions to their Battalion Fire Chief.

Personal Protective Clothing and Equipment Standards - Requirements

2.10 The Department's personal protective clothing and equipment requirements should include, but are not limited to:

2.10.1 Structural firefighting PPE,

2.10.2 Chemical protective PPE,

2.10.3 Technical rescue PPE,

2.10.4 Water rescue PPE, and

2.10.5 Various types of respiratory protection to include:

2.10.5.1 Self–Contained Breathing Apparatus (SCBA),

2.10.5.2 Supplied Air Breathing Apparatus (SABA), and

2.10.5.3 Air Purifying Respirators (APR's).

Fire Suppression Incidents

2.11 While responding to all incidents that potentially require fire suppression activities (i.e., automatic fire alarms, gas leaks, etc.), and while actually engaged in firefighting activities, employees shall wear the full structural firefighting protective ensemble in accordance with NFPA 1971, *Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting,* and Self Contained Breathing Apparatus (SCBA) at a minimum.

Other Incidents

2.12 Employees responding to other incident types shall comply with personal protective equipment selection guidelines and requirements contained in the appropriate Standard Operating Guideline (SOG), infection control procedure, and any other Department policy applicable to the incident.

Grooming Standards Required for Safe Personal Protective Clothing and Equipment Usage

Facial Hair

2.13 Employees are not permitted to have:

2.13.1 Facial hair that comes between the sealing surface of the face piece and the face;

2.13.2 Facial hair that interferes with the valve function; or

2.13.3 Any condition that interferes with the face-to-face piece seal or valve function.

Head Hair

2.14 The length of head hair shall be groomed so that, when the head is covered, the hair does not fall below the eyebrows or bunch out to the front, side, or rear of the headgear or extend below the shoulder.

2.14.1 Occurrences to the contrary cause the potential for vision obstruction, contamination from harmful substances, and flammability risks in certain scenarios.

2.15 Head hair shall be worn by employees in a manner that prevents:

2.15.1 Interference with a proper seal of any respiratory protection equipment;

2.15.2 A risk of entanglement in equipment or machinery; and

2.15.3 Contact with a patient during patient care.

2.16 The bulk of the hair shall not interfere with:

2.16.1 The use of any respiratory protection equipment;

2.16.2 Helmets or any other protective headgear from fitting and functioning as designed;

2.16.3 The use of structural firefighting hoods;

2.16.4 Closing the collar of the coat of structural firefighting PPE; and/or

2.16.5 The interface of all components listed above.

2.17 Hair restraints that are inconspicuous may be used to achieve compliance with these standards.

Jewelry/Fingernails

2.18 Earrings, rings, bracelets, and necklaces are permitted as long as they can be worn in a manner that:

2.18.1 Does not present an entanglement hazard;

2.18.2 Does not interfere with the donning or function of any type of personal protective clothing or equipment; and

2.18.3 Does not have the potential to compromise the integrity of the employee's clothing or equipment, including EMS gloves used for Body Substance Isolation (BSI) protection.

2.19 Fingernails shall be groomed to ensure that they:

2.19.1 Do not interfere with the donning or function of any type of personal protective clothing or equipment; and

2.19.2 Do not have the potential to compromise the integrity of the clothing or equipment, including EMS gloves used for BSI protection.

3.0 DEFINITIONS

3.1 *Employee(s)* – members required to comply with annual fit testing as outlined in Chapter 5 of the District of Columbia Fire and EMS Department Respiratory Protection Plan.

4.0 RESPONSIBILITIES

4.1 Employees are responsible for complying with the PPE and safety standards contained in this policy regardless of assignment.

4.2 Company Officers shall ensure the proper donning and use of protective clothing and equipment to ensure the maximum safety of each employee at all times.

4.3 Supervisors shall ensure that each employee under their command is in compliance with the Department's safety standards prior to assuming duty.

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

Safety Operations Bulletin No. 10 **April 2020**

GO-2020-06

CHASIN DECL.

EXHIBIT B

Muriel Bowser
Mayor

SPECIAL ORDER

Gregory M. Dean
Fire and EMS Chief

Series	Number	Originating Unit	Effective Date	Expiration Date
2020	55	OFC	March 12, 2020	December 31, 2020

Subject:

Revised Implementation Date for
Safety Operations Bulletin No. 10
Donning and Use of Personal Protective Equipment

Effective Sunday, March 15, 2020, at 0700 hours, members shall be compliant with Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment*, except for Sections 2.14 through 2.19. For your safety, members are urged to become compliant with this policy immediately.

Sections 2.14 through 2.19 shall maintain the original effective date of Sunday, April 5, 2020.

Members shall refer to the attached Safety Operations Bulletin No. 10 for a complete list of appropriate and inappropriate facial hairstyles.

Supervisors shall ensure that members under their command comply with the facial hair directives in Safety Operations Bulletin No. 10.

General Order No. 06, Series 2020, *Manual Change – Safety Operations Bulletin No. 10,* of *Personal Donning and Use Protective Equipment*, added Safety Operations Bulletin No. 10. The General Order indicates that this policy becomes effective and shall be enforced on Sunday, April 5, 2020.

The progression of the novel Coronavirus (COVID-19) necessitates the increased use of negative-pressure filtering face piece respirators, including N-95 masks and air-purifying respirators. Negative-pressure respirators draw air into the facepiece via the negative pressure created by user inhalation.

The main disadvantage of negative-pressure respirators is that if any leaks develop in the system, the user draws contaminated air into the facepiece.

The presence of facial hair interferes with the mask's seal and can cause 20 to 1,000 times more leakage than a seal that does not contain facial hair.

The safety of our members is the Department's top priority. As such, the Department is revising the implementation date for sections of Safety Operations Bulletin No. 10 dealing with facial hair.

Members may refer to the attached list of FAQs for additional information.

Gregory M. Dean
Fire and EMS Chief

GMD:JD:jc

Attachments: Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment*
List of FAQs

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

Safety Operations Bulletin No. 10 **April 2020**

DONNING AND USE OF PERSONAL PROTECTIVE EQUIPMENT

1.0 REFERENCES

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2.0 POLICY

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2.3 No aspect of personal grooming is permitted to present a hazard to the employee in the course of performing his or her duties.

2.4 An employee affected by any part of this policy due to sincerely held religious beliefs or practices shall comply with Bulletin No. 28, *Religious Accommodation Policy*.

2.5 An employee affected due to other (non–religious) reasons shall submit a detailed Special Report to the Fire and EMS Chief through the member's Chain of Command describing the policy provision involved, and the specific effect on the employee.

2.6 Members who have a medical condition which prevents them from meeting these requirements shall be ordered to report to the Police and Fire Clinic (PFC) for an evaluation and referral to their private physician. A member's duty status will be determined by the PFC.

Enforcement

2.7 In applying these standards, Battalion Commanders shall enforce the requirements of Chapter 6 of the District of Columbia Fire and EMS Department Respiratory Protection Plan, as well as the attached document entitled *Facial Hairstyles and Filtering Face Piece Respirators*, which sets forth both appropriate and inappropriate facial hair images and was published by the U.S. Centers for Disease Control and Prevention: National Institute for Occupational Safety and Health.

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2.16.4 Closing the collar of the coat of structural firefighting PPE; and/or

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4.0 RESPONSIBILITIES

4.1 Employees are responsible for complying with the PPE and safety standards contained in this policy regardless of assignment.

4.2 Company Officers shall ensure the proper donning and use of protective clothing and equipment to ensure the maximum safety of each employee at all times.

4.3 Supervisors shall ensure that each employee under their command is in compliance with the Department's safety standards prior to assuming duty.

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

Safety Operations Bulletin No. 10 **April 2020**

GO-2020-06

Government of the District of Columbia
Fire and Emergency Medical Services Department

Muriel Bowser
Mayor

Gregory M. Dean
Fire and EMS Chief

Safety Ops. Bulletin 10 Donning and Use of Personal Protective Equipment Frequently Asked Questions

1. **Is the Department enacting the facial, hair, jewelry, and fingernail requirements at 0700 hours on March 15, 2020?**

   The Department is enacting the facial hair requirements, Sections 2.14 through 2.19, at 0700 hours on March 15, 2020. Sections 2.14 through 2.19 will maintain the original effective date of April 5, 2020. Further Frequently Asked Questions (FAQ) guidance on hair, jewelry, and fingernail requirements will be issued before that date.

2. **I've had facial hair for years and always pass my fit test. How is this going to make me safer?**

   The Department will no longer allow members to take the fit test with facial hair; this decision and practice is consistent with the manufacturer and NFPA standards, NIOSH regulations and manufacturer requirements. The Department also will no longer allow members to maintain facial hair while on duty between fit tests, that interferes with the seal and fit of the mask, which jeopardizes member safety. This policy is consistent also with manufacturer and NFPA standards, NIOSH regulations and manufacturer requirements.

3. **I have a medical condition that prevents me from shaving. What should I do?**

   Report to the clinic for an evaluation and referral to your private physician.

4. **My religious beliefs prevent me from complying. What should I do?**

   Comply with Bulletin No. 28, *Religious Accommodation Policy*. Or contact Kim McDaniel, the Department's EEO Officer, at 202-715-7594.

Frank D. Reeves Municipal Center
2000 14th Street, NW, Suite 500
Washington, DC 20009

phone: (202) 673–3320
facsimile: (202) 462–0807
www.fems.dc.gov

5. **The Department already lost a lawsuit related to the same issue. Why do we have to comply now?**

   The Department's policy is legally sufficient. While developing the policy, we reviewed past litigation, including local, federal and national case law and statutes.

6. **I have heard that our SCBA is positive pressure so even if I have a minor leak due to facial hair I will not be exposed.**

   This is not accurate, N95 Masks and Air Purifying Respirators (APRs) that are used for respiratory protection are not positive pressure. In the positive pressure SCOTT SCBA, even minor leaks can lead to cancerous toxins exposure. Over the past year, the Department has experienced members receiving burns where non-compliant face piece fit was a factor.

7. **DC is not an OSHA state, why is the Department worried about this?**

   Even though the District is not an OSHA state, it does follow OSHA rules. Regardless of our OSHA status, we are committed to safety as a core value and as one of our top priorities. The Department's policy is consistent with NFPA standards, NIOSH regulations and manufacturer requirements.

8. **What will happen if a member does not comply?**

   Please refer to the enforcement section of the bulletin, Sections 2.7 through 2.9.

9. **How will my Company Officer know whether my facial hair is compliant with the policy?**

   Please refer to the diagram in Chapter 6 of the District of Columbia Fire and EMS Department Respiratory Protection Plan and the pictures included in the National Institute for Occupational Safety and Health (NIOSH) attachment to the bulletin. Members and their Company Officers should review those pictures to understand what facial hair is acceptable under the bulletin and what is not. *No facial hair of any length* will be allowed in areas when the drawings prohibit facial hair.

   The following video from the IAFF is also a helpful guide.
   https://www.youtube.com/watch?v=7i9NGmmtKZU&feature=em-lbcastemail

10. Will specific groups be targeted with this policy?

No. Respiratory injuries, cancer and other illnesses do not discriminate based on race, gender, age, religion, or any other protected status. This policy is intended to protect members' safety. It will be enforced for every employee required to use respiratory protection, without exception, and without disparate treatment of any individual. In short, Company Officers are required to treat all of their direct reports the same when enforcing this policy.

11. I'm a Company Officer and I'm concerned that if I enforce the policy, I will be susceptible to EEO complaints.

Respiratory injuries, cancer and other illnesses do not discriminate based on race, gender, age, religion, or any other protected status. This policy is intended to protect members' safety. If Company Officers enforce it for every employee required to use respiratory protection, without exception, and without disparate treatment of any individual, then they should not be susceptible to valid EEO complaints. In short, Company Officers are required to treat all of their direct reports the same when enforcing this policy.

If any Company Officer or manager needs guidance on how to enforce the policy, they should consult with their supervisor. If a Company Officer or manager is unsure of how to approach any issue at all, large or small, they should talk it through with their supervisor before proceeding. For specific EEO concerns, members may contact Kim McDaniel, the Department's EEO Officer, at 202-715-7594.

CHASIN DECL.

EXHIBIT C

Muriel Bowser
Mayor

GENERAL ORDER

John A. Donnelly, Sr.
Fire and EMS Chief

SERIES	NUMBER	ORIGINATING UNIT	EFFECTIVE DATE	EXPIRATION DATE
2021	33	OFC	June 16, 2021	Until Revised

SUBJECT

Manual Change – Safety Operations Bulletin No. 10 Donning and Use of Personal Protective Equipment

Make the following change to the D.C. Fire and EMS Department Operations Bulletin Book: replace Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment (April 2020),* with the attached updated version of Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment (June 2021).*

Section 4.1 has been updated to read: "Employees are responsible for complying with the PPE and safety standards contained in this policy, regardless of duty assignment or duty status."

John A. Donnelly, Sr.
Fire and EMS Chief

JAD:ES:ts

Attachments: Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment (June 2021)*

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

Safety Operations Bulletin No. 10 **June 2021**

DONNING AND USE OF PERSONAL PROTECTIVE EQUIPMENT

1.0 REFERENCES

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Enforcement

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2.16 The bulk of the hair shall not interfere with:

2.16.1 The use of any respiratory protection equipment;

2.16.2 Helmets or any other protective headgear from fitting and functioning as designed;

2.16.3 The use of structural firefighting hoods;

2.16.4 Closing the collar of the coat of structural firefighting PPE; and/or

2.16.5 The interface of all components listed above.

2.17 Hair restraints that are inconspicuous may be used to achieve compliance with these standards.

Jewelry/Fingernails

2.18 Earrings, rings, bracelets, and necklaces are permitted as long as they can be worn in a manner that:

2.18.1 Does not present an entanglement hazard;

2.18.2 Does not interfere with the donning or function of any type of personal protective clothing or equipment; and

2.18.3 Does not have the potential to compromise the integrity of the employee's clothing or equipment, including EMS gloves used for Body Substance Isolation (BSI) protection.

2.19 Fingernails shall be groomed to ensure that they:

2.19.1 Do not interfere with the donning or function of any type of personal protective clothing or equipment; and

2.19.2 Do not have the potential to compromise the integrity of the clothing or equipment, including EMS gloves used for BSI protection.

3.0 DEFINITIONS

3.1 *Employee(s)* – members required to comply with annual fit testing as outlined in Chapter 5 of the District of Columbia Fire and EMS Department Respiratory Protection Plan.

4.0 RESPONSIBILITIES

4.1 Employees are responsible for complying with the PPE and safety standards contained in this policy, regardless of duty assignment or duty status.

4.2 Company Officers shall ensure the proper donning and use of protective clothing and equipment to ensure the maximum safety of each employee at all times.

4.3 Supervisors shall ensure that each employee under their command is in compliance with the Department's safety standards prior to assuming duty.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL)
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	CONSOLIDATED CASES No. 05-cv-1792 (RJL)

DECLARATION OF ROBERT K. KELNER IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

I, Robert K. Kelner, under penalty of perjury, hereby declare as follows:

1. I am a partner at the law firm of Covington & Burling LLP. This Declaration is based upon my personal knowledge.

2. On April 29, 2021, I executed engagement letters in which I, on behalf of Covington & Burling LLP, agreed to represent Calvert Potter, Hassan Umrani, Jasper Sterling, and Steven Chasin (collectively "Plaintiffs") with respect to obtaining relief from the injuries they had suffered as a result of the enforcement of the District of Columbia Fire and Emergency Medical Services Department's (the "Department's") Safety Operations Bulletin No. 10, *Donning of Personal Protective Equipment*.

3. After undertaking the representation, I prepared a letter to D.C. Attorney General Karl A. Racine requesting that the Department cease enforcement of its facial policy against Plaintiffs immediately, restore them to field duty, and compensate them for the injuries they had

suffered as a result of having been removed from field duty. The letter also made clear that by enforcing Bulletin No. 10 against Plaintiffs, the Department had violated both the permanent injunction in this matter, and Plaintiffs' rights under the Religious Freedom Restoration Act ("RFRA"). The letter also summarized the injuries suffered by Plaintiffs as a result of their forced reassignments. At my direction, this letter was transmitted to Attorney General Racine via email and certified mail on August 9, 2021.

4. Three days later, on August 12, 2021, D.C. Senior Assistant Attorney General Andrew J. Saindon responded to my letter by email and agreed to return Plaintiffs to field duty. Mr. Saindon also indicated that a more fulsome response to my letter of August 9, 2021 was being prepared. Attached to this declaration as Exhibit A is a true and correct copy of this email from Mr. Saindon.

5. On October 1, 2021, Mr. Saindon sent me, by email, a letter providing a more complete, formal response to my letter of August 9, 2021. Among other things, Mr. Saindon's letter indicated that Messrs. Potter, Chasin, and Sterling were scheduled to begin a required Return to Operations course on October 4, 2021, and that they would be permitted to return to operations to perform EMS-only duties after completing that course. Further, Mr. Saindon's letter indicated that a Return to Operations course would be scheduled for Mr. Umrani when he returned from sick leave.

6. After Messrs. Potter, Sterling, and Umrani informed me that they had been returned to field duty, I drafted a letter to Mr. Saindon containing an offer to settle Plaintiffs' outstanding claims for damages that had accrued during the time they were removed from field duty in violation of the permanent injunction in this matter. The letter provided specific

settlement terms and asked for the Department's response. I sent this letter to Mr. Saindon by email on January 31, 2022.

7. On April 14, 2022, I sent Mr. Saindon an email inquiring about a new Department order establishing a complex and onerous set of conditions and requirements on individuals seeking a religious exemption from the Department's facial hair policies. Specifically, I sought assurances from Mr. Saindon that these new rules would not be enforced against Plaintiffs. On May 4, 2022, Mr. Saindon responded to my email by noting that the Department had no current plans to enforce these new rules against Plaintiffs. However, he did not foreclose the possibility of enforcing them against Plaintiffs in the future.

8. On May 31, 2022, Mr. Saindon sent me a letter by email that rejected the settlement proposal set forth in my letter of January 31, 2022 and provided a settlement counter-offer. Mr. Saindon's letter also reiterated the Department's view that its removal of Plaintiffs' from field duty did not violate the permanent injunction in this matter.

9. On October 25, 2022, I sent Mr. Saindon an email explaining that Mr. Saindon's counter-offer was not acceptable to Plaintiffs, and that Plaintiffs accordingly intended to file motion papers with this court seeking to hold the Department in civil contempt.

10. On October 26, 2022, I spoke to Mr. Saindon via Microsoft Teams regarding the possibility of settlement and Plaintiffs' intention to file motion papers seeking to hold the Department in civil contempt. Additional counsel for both Plaintiffs and Defendant also participated in this discussion. I explained that Mr. Saindon's settlement counter-offer of May 31, 2022 was not acceptable to Plaintiffs. Mr. Saindon indicated that the Department would be unable to submit a revised offer unless and until Plaintiffs submitted a revised settlement proposal in response to the Department's counter-offer.

11. Based on Mr. Saindon's representations, on October 28, 2022, I sent Mr. Saindon an email containing a revised settlement proposal.

12. On November 3, 2022, Mr. Saindon replied via email, and rejected the October 28, 2022 revised settlement proposal. Mr. Saindon provided a new counter-offer to Plaintiffs' revised settlement proposal, and indicated that his ability to maneuver further on the issue of settlement was limited. Mr. Saindon again reiterated that the Department has no current plans to enforce its new facial hair rules against Plaintiffs. However, he did not foreclose the possibility of enforcing them against Plaintiffs in the future.

13. Based on the significant differences between the revised settlement proposal I submitted on October 28, 2022 and the counter-offer Mr. Saindon provided on November 3, 2022, it does not appear that an out-of-court settlement is possible at this time.

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

Executed this 7th day of November, 2022.

Robert K. Kelner

KELNER DECL.

EXHIBIT A

From: "Saindon, Andy (OAG)" <andy.saindon@dc.gov>
Date: August 12, 2021 at 8:58:42 AM EDT
To: "Kelner, Robert" <rkelner@cov.com>, "Collins, Kevin" <kcollins@cov.com>, jmateer@firstliberty.org, "Hirsch, Jordan" <JHirsch@cov.com>, "Moench, Lucas" <LMoench@cov.com>
Cc: "Amarillas, Fernando (OAG)" <fernando.amarillas@dc.gov>, "Bluming, Micah (OAG)" <Micah.Bluming@dc.gov>
Subject: FW: DC FEMS Violation of RFRA and Permanent Injunction

[EXTERNAL]
Counsel,

Thank you for your letter. We are preparing a fuller response to it and will try to arrange a time for us to meet to discuss the matter. In the interim, however, now that the public health emergency has ended, FEMS is prepared to return plaintiffs to their previous firefighter and paramedic positions. If your clients have any objection to this, please let us know by tomorrow. Thank you.

Andrew J. Saindon
Senior Assistant Attorney General
Office of the Attorney General for the District of Columbia
400 Sixth Street, NW
Suite 10100
Washington, DC 20001
(202) 724-6643
(202) 730-1470 (f)
andy.saindon@dc.gov

Begin forwarded message:

From: "Whitt, Alaina" <AWhitt@cov.com>
Date: August 9, 2021 at 4:18:15 PM EDT
To: "Racine, Karl (OAG)" <Karl.Racine@dc.gov>, "Downs, Jason (OAG)" <Jason.Downs@dc.gov>
Cc: "Kelner, Robert" <rkelner@cov.com>, "Collins, Kevin" <kcollins@cov.com>, jmateer@firstliberty.org, "Hirsch, Jordan" <JHirsch@cov.com>, "Moench, Lucas" <LMoench@cov.com>
Subject: DC FEMS Violation of RFRA and Permanent Injunction

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

Dear Attorney General Racine:

On behalf of Robert Kelner, please see the attached correspondence and exhibits. These materials were also hand delivered earlier today via Washington Express (Tracking No. 3213837).

As explained in the attachments, by removing our clients—Steven Chasin, Calvert Potter, Jasper Sterling, and Hassan Umrani—from their positions as active-duty firefighters and paramedics for alleged noncompliance with the Department's resurrected policy prohibiting employees working in the field from having most types of facial hair, the Department is in violation of a permanent injunction issued by the United States District Court for the District of Columbia and affirmed by the United States Court of Appeals for the District of Columbia Circuit. We request a meeting with you or your designee to discuss a resolution of this matter and appropriate remedies for the harm that the Department has caused and continues to cause to our clients.

Regards,
Alaina

Alaina Whitt
Pronouns: She/Her/Hers

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5627 | awhitt@cov.com
www.cov.com

[cid:image001.jpg@01D78D39.97630420]

<Letter to AG Racine from R. Kelner (8.6.2021).pdf>
<Exhibits to Letter to AG Racine (Ex. A-J).pdf>

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL) CONSOLIDATED CASES
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 05-cv-1792 (RJL)

DECLARATION OF CALVERT POTTER IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

I, Calvert Potter, under penalty of perjury, hereby declare as follows:

1. This Declaration is based upon my personal knowledge.

2. I am employed by the District of Columbia Fire and Emergency Medical Services Department ("FEMS" or the "Department"), and have been employed by FEMS since 1992.

3. I am specifically assigned to the Department's Special Operations Division. Among other things, the Special Operations Division is responsible for operating in a variety of unique circumstances, including performing rescues in confined spaces, swift water rescues, tunnel rescues, responding to structural collapses, and performing vehicle extractions. Typically, work in the Special Operations Division requires me to be in the field daily responding to emergencies.

4. I am a practicing Sunni Muslim. In accordance with the tenets of my Muslim faith, I continuously wear a beard. My beard has never interfered in any way with my performance of my duties.

5. Notwithstanding my sincere religious beliefs, the Department has, on several occasions in the past, enforced or attempted to enforce against me policies requiring that I be clean shaven while on duty. I, along with the other plaintiffs in this case, previously successfully challenged these policies in this Court. In October 2007, this Court permanently enjoined the Department from enforcing against myself and the other plaintiffs a policy prohibiting all FEMS workers who use tight-fitting mask facepieces from having facial hair that comes between the sealing surface of the mask facepiece and the face.

6. After this October 2007 injunction was issued, the Department permitted me to continue wearing my beard in accordance with my religious faith while working in the field. Thereafter, I performed these duties without incident until I was removed from active field duty and reassigned by the Department in March 2020.

7. Sometime after the October 2007 injunction was issued, the Department changed its facial hair regulations to permit any Member to maintain facial hair of up to ¼ inch.

8. In October or November 2019, I became aware of the Department's intention to issue a new policy related to facial hair.

9. Sometime on or before January 23, 2020, another Member of the Department provided me with a copy of *Safety Operations Bulletin No. 9, Donning and Use of Personal Protective Equipment* ("Bulletin No. 9"). The copy of Bulletin No. 9 that I received was marked "DRAFT," and my understanding is that a final version of Bulletin No. 9 was never issued, and Bulletin No. 9 never went into effect.

10. Attached to this declaration as Exhibit A is a true and correct copy of Bulletin No. 9. Among other things, Bulletin No. 9 proposed new facial hair requirements for Department Members. Specifically, it would have prohibited Department employees who are required to wear tight-fitting face pieces from having any of the following: (1) Facial hair that comes between the sealing surface of the face piece and the face; (2) Facial hair that interferes with the valve function; or (3) Any condition that interferes with the face-to-face piece seal or valve function.

11. On January 22, 2020, I emailed Mr. Arthur Spitzer of the ACLU to make him aware of Bulletin No. 9.

12. Over the following several months, I communicated with Mr. Spitzer on numerous occasions regarding the Department's new facial hair policy. It was also my understanding that Mr. Spitzer was, on my behalf, communicating with the Department and others regarding the Department's new facial hair policy.

13. In February 2020, the Department issued a final version of its facial hair policy as Safety Operations Bulletin No. 10 ("Bulletin No. 10"), which prohibits Department employees from having any of the following: (1) Facial hair that comes between the sealing surface of the face piece and the face; (2) Facial hair that interferes with the valve function; or (3) Any condition that interferes with the face-to-face piece seal or valve function.

14. In March 2020, I first became aware that the Department intended to enforce Bulletin No. 10 against me. Specifically, on March 17, 2020, I arrived at work and was told that I was not in compliance with the Department's new facial hair policy. Accordingly, I was told that I would not be allowed to remain on regular field duty and would be reassigned.

15. My supervisor told me that I could remain on regular field duty if I shaved my facial hair as required by Bulletin No. 10. I declined to do this because of my religious beliefs.

16. Thereafter, I immediately informed my supervisor that I did not consent to this reassignment. Further, I informed my supervisor that this reassignment violated the permanent injunction issued by this Court in October 2007, and provided my supervisor with a copy of the permanent injunction.

17. Following my removal from active field duty, I was reassigned to a logistical position supporting the operations of the Department's COVID-19 logistical center, which was responsible for housing and supplying personal protective equipment for the Department.

18. Despite communicating with Mr. Spitzer on numerous occasions in January, February, and March 2020, I received few, if any, communications from him between April and October 2020. During this time, I tried to contact him on several occasions, but received no response.

19. On November 2, 2020, Mr. Spitzer informed me by email that his official representation of me and the other plaintiffs in this litigation ended with the conclusion of the litigation years earlier. Further, he informed me that he would not represent us going forward in our dispute with the Department.

20. I remained in my logistical position until October 10, 2021, when I was allowed to return to active field duty in the Special Operations Division.

21. As a result of the Department's decision to remove me from field duty and reassign me to a logistical position without my consent, I received less total compensation than I would have if I had remained on field duty. For example, I had fewer opportunities to earn

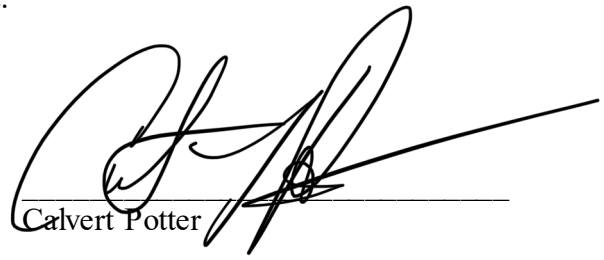
overtime, holiday, weekend, and night-differential pay throughout the time of my reassignment. Had I been allowed, I would have taken advantage of at least some of these opportunities.

22. Furthermore, while working in the field, I was typically on duty for 24 full hours, followed by 72 hours off duty. While I was reassigned to a logistical position, I was required to work five days per week during regular business hours. As a result, I had to make a greater number of round trips to work each week during the period I was reassigned. This caused increased wear and tear on my vehicle and increased the amount of gasoline I had to buy.

23. Furthermore, as a result of my reassignment, myself and my family experienced increased psychological stress and frustration as a result of my reduced income during this time.

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

Executed this 28th day of September, 2022.



Calvert Potter

POTTER DECL.

EXHIBIT A

DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

DONNING AND USE OF PERSONAL PROTECTIVE EQUIPMENT

POLICY STATEMENTS

A. All District of Columbia Fire and Emergency Medical Services Department employees shall wear / utilize protective clothing and equipment required to afford maximum personal protection during all types of emergency incidents — whether public service calls, training activities, emergency and routine travel on apparatus — and all non–emergency activities that could pose a hazard to the employee.

B. No aspect of personal grooming is permitted to interfere with the form, fit, function, and/or interface of any type of personal protective clothing or equipment required for use by the employee.

C. No aspect of personal grooming is permitted to present a hazard to the employee in the course of performing his or her duties.

D. An employee affected by any part of this policy due to sincerely held religious beliefs or practices shall comply with Bulletin No. 28, **Religious Accommodation Policy**. An employee affected due to other (non–religious) reasons must submit a detailed Special Report to the Department's Diversity Officer with a copy to the member's chain of command and the Fire and EMS Chief that describes the policy provision involved, and the specific effect on the employee.

I. ENFORCEMENT

A. Battalion Commanders and Company Officers will ensure the proper donning and use of protective clothing and equipment to ensure the maximum safety of each employee at all times.

B. Battalion Commanders and Company Officers will ensure that each employee is in compliance with the Department's grooming standards prior to assuming duty. In applying these standards, Battalion Commanders and Company Officers will apply the attached document entitled Facial Hairstyles and Filtering Face Piece Respirators, which sets forth both appropriate and inappropriate facial hair images and was published by the U.S. Centers for Disease Control and Prevention: National Institute for Occupational Safety and Health, as well as the requirements of Chapter 6 of the D.C. Fire and EMS Department's Respiratory Protection Plan.

C. Members that report for duty that are not in compliance will be removed from Operations. Members will face progressive discipline until they come into compliance.

III. PERSONAL PROTECTIVE CLOTHING AND EQUIPMENT STANDARDS

A. Requirements

The Department's personal protective clothing and equipment requirements may include — but are not limited to:

1. Structural Firefighting PPE
2. Chemical Protective PPE
3. Technical Rescue PPE
4. Water Rescue PPE
5. Various types of respiratory protection — to include:
   a. Self–Contained Breathing Apparatus (SCBA)
   b. Supplied Air Breathing Apparatus (SABA)
   c. Air Purifying Respirators (APR's).

B. Fire Suppression Incidents

While responding to all incidents that potentially require fire suppression activities (i.e., automatic fire alarms, gas leaks, etc.), and while actually engaged in firefighting activities, employees shall wear the full structural firefighting protective ensemble in accordance with NFPA 1971 - Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting, and Self Contained Breathing Apparatus (SCBA) at a minimum.

C. Other Incidents

Employees responding to other incident types will comply with personal protective equipment selection guidelines and requirements contained in the appropriate Standard Operating Guideline (SOG), Infection Control procedure and any other Department policy applicable to the incident.

GROOMING STANDARDS: REQUIRED FOR SAFE PERSONAL PROTECTIVE CLOTHING AND EQUIPMENT USAGE

A. Facial Hair

All employees are required to comply with the requirements of the Department's Respiratory Protection Plan, specifically those requirements contained in Chapter 6. Specifically, employees who are required to wear tight–fitting face pieces are not permitted to have:

1. Facial hair that comes between the sealing surface of the face piece and the face.
2. Facial hair that interferes with the valve function.
3. Any condition that interferes with the face to face piece seal or valve function.

B. Head Hair

1. The length of head hair shall be groomed so that, when the head is covered, the hair does not fall below the eyebrows or bunch out to the front, side, or rear of the headgear or extend below the shoulder.

2. Head hair cannot be worn in a manner that interferes with a proper seal of any respiratory protection equipment, poses a risk of entanglement in equipment or machinery, or has the potential to come in contact with a patient during patient care.

3. The bulk of the hair shall not interfere with —

   a. The use of any respiratory protection equipment
   b. Helmets or any other protective headgear from fitting and functioning as designed
   c. The use of structural firefighting hoods
   d. Closing the collar of the coat of structural firefighting PPE and/or
   e. The interface of all components listed above.

4. Hair restraints that are inconspicuous may be used to achieve compliance with these standards.

C. Jewelry / Fingernails

1. Earrings, rings, bracelets and necklaces are permitted as long as they can be worn in a manner that —

   a. Does not present an entanglement hazard
   b. Does not interfere with the donning or function of any type of personal protective clothing or equipment
   c. Does not have the potential to compromise the integrity of the employee's clothing or equipment, including EMS gloves used for Body Substance Isolation (BSI) protection.

2. Fingernails shall be groomed to ensure that they —

   a. Do not interfere with the donning or function of any type of personal protective clothing or equipment
   b. Do not have the potential to compromise the integrity of the clothing or equipment, including EMS gloves used for BSI protection.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL)
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	CONSOLIDATED CASES No. 05-cv-1792 (RJL)

DECLARATION OF ARTHUR B. SPITZER IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

I, Arthur B. Spitzer, under penalty of perjury, hereby declare as follows:

1. I am currently Senior Counsel for the American Civil Liberties Union of the District of Columbia ("ACLU-DC"). I have served in this position since April 2020. Previously, I served as Legal Director of the ACLU-DC from April 1980 to April 2020.

2. This Declaration is based upon my personal knowledge.

3. In my prior position as Legal Director of the ACLU-DC, I served as counsel for the plaintiffs in the above-captioned consolidated matters from the time each complaint was filed through the conclusion of the litigation more than eight years ago.

4. In 2007, Judge James Robertson permanently enjoined the District of Columbia Fire and Emergency Medical Services Department ("FEMS") from enforcing the facial hair provisions of Special Order 20, Series 2005 against the plaintiffs in the above-captioned matters. *See Potter v. District of Columbia*, 2007 WL 2892685 (D.D.C. Sept. 28, 2007), *aff'd*, 558 F.3d

542 (D.C. Cir. 2009). Among other things, Special Order 20 provided that Members who were required to wear tight-fitting facepieces were not permitted to have facial hair that comes between the sealing surface of the facepiece and the face or that interferes with the valve function. Plaintiffs were Members who wore beards in accordance with the terms of their religious faith; they successfully argued that enforcement of Special Order 20 violated their rights under the Religious Freedom Restoration Act.

5. In January 2020, I was contacted by Calvert Potter and Steven Chasin, two of the plaintiffs in the above-captioned matters who were therefore protected by this Court's 2007 permanent injunction. Mr. Potter brought to my attention a draft of a new personnel policy prepared by FEMS. Among other things, the new policy made changes to FEMS's then-current rules regarding Members' ability to maintain facial hair while on duty.

6. Mr. Potter subsequently provided me with a copy of "Safety Operations Bulletin No. 10 *Donning and Use of Personal Protective Equipment*" ("Bulletin No. 10"). Among other things, Bulletin No. 10 prohibits Members from having facial hair that comes between the sealing surface of the face piece and the face.

7. On or about March 13, 2020, I became aware that FEMS intended to begin enforcing the requirements set forth in Bulletin No. 10 within the next few days. On March 13, I wrote and sent a letter to Amy Mauro, the Chief of Staff for FEMS, and Marceline Alexander, the General Counsel for FEMS. A true and correct copy of that letter is attached hereto as Exhibit A. In the letter, I reminded Ms. Mauro and Ms. Alexander that Bulletin No. 10 was "exactly the same rule that the ACLU challenged in 2001 on behalf of twelve firefighters and EMTs who wore facial hair for religious reasons." I also noted that each of those firefighters and EMTs remained protected by the permanent injunction issued in that litigation. Accordingly, I

requested assurances "that the Department will make no effort to impose its new rules regarding facial hair on any of my clients who are still members of the Department."

8. Friday, March 13, 2020, was the last day of regular office work in 2020. Beginning on Monday, March 16, the ACLU office, like most offices in Washington, D.C., was closed because of COVID-19. People stayed home and avoided contact with others to the extent that they could.

9. On March 18, 2020, District of Columbia Senior Assistant Attorney General Andrew Saindon contacted me for the purpose of scheduling a conference call to discuss my March 13, 2020, letter to Ms. Mauro and Ms. Alexander.

10. On March 19, 2020, I spoke with Mr. Saindon by telephone. During that conversation, we discussed the concerns regarding Bulletin No. 10 that I had raised in my March 13, 2020, letter to Ms. Mauro and Ms. Alexander. We also discussed FEMS's decision to remove Members from field duty who did not comply with Bulletin No. 10. We also discussed the challenges to FEMS of operating in the midst of the pandemic, about which very little was then known.

11. While I acknowledged these challenges, at no point during my conversation with Mr. Saindon, or at any other time, did I consent to the reassignment or removal from field duty of any Member covered by the permanent injunction issued by this Court in 2007. I had no authority from Mr. Potter or Mr. Chasin to consent to any such reassignment or removal.

12. In early November 2020, I informed Calvert Potter by email that I would not be representing him or the other Plaintiffs going forward in their dispute with the Department, although I explained that I was happy to help them informally.

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

Executed this 4th day of ~~September~~ October, 2022.

Arthur B. Spitzer

SPITZER DECL.

EXHIBIT A

ACLU District of Columbia

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF THE DISTRICT OF COLUMBIA
915 15TH STREET, NW – 2ND FLOOR
WASHINGTON, DC 20005
(202) 457-0800
WWW.ACLUDC.ORG

ARTHUR B. SPITZER
LEGAL CO-DIRECTOR
(202) 601-4266
aspitzer@acludc.org

March 13, 2020

Amy Mauro
Chief of Staff
Certified mail No. 7018-1130-0001-2445-9086

Marceline Alexander
General Counsel
Certified mail No. 7018-1130-0001-2445-9062

D.C. Department of Fire and Emergency Medical Services
2000 14th Street, NW, 5th Floor
Washington, DC 20009

Dear Amy and Marceline,

Two of my clients have sent me copies of the new Safety Operations Bulletin No. 10, *Donning and Use of Personal Protective Equipment* (No. 2020-06), which prohibits Members from having "Facial hair that comes between the sealing surface of the face piece and the face."

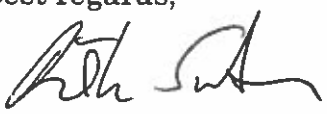
I'm writing to remind the Department that this is exactly the same rule that the ACLU challenged in 2001 on behalf of twelve firefighters and EMTs who wore facial hair for religious reasons. As you know, the courts ruled that their right to wear facial hair while continuing to serve as active firefighters and EMTs was protected by the Religious Freedom Restoration Act. Each of them remains fully protected by the *permanent* injunction that was issued in that case in 2007 and affirmed by the Court of Appeals in 2009. *See Potter v. District of Columbia*, No. 01-cv-1189, 2007 WL 2892685 (D.D.C. Sept. 28, 2007), *aff'd*, 558 F.3d 542 (D.C. Cir. 2009).

I would appreciate receiving your assurance that the Department will make no effort to impose its new rules regarding facial hair on any of my clients who are still members of the Department. I know that several are. Should the Department

take any action against these individuals for continuing to wear their facial hair, I will not hesitate to ask the federal court to hold the Fire Chief in contempt and to impose appropriate sanctions on him and the Department.

I look forward to your reply, well in advance of the April 5 effective date of the new Bulletin.

Best regards,



Arthur B. Spitzer

P.S. The Department may also wish to reconsider carefully the legality of imposing this rule on Members more generally. The Department has now had *decades* of experience with Members wearing facial hair under their face masks, apparently without a single incident in which safety was compromised. Given those facts, it is very difficult to see how the Department could successfully defend a policy that imposes a severe discriminatory impact upon Black Members—because those are the Members who suffer from *pseudofolliculitis barbae*.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL)
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	CONSOLIDATED CASES No. 05-cv-1792 (RJL)

DECLARATION OF JASPER STERLING IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

I, Jasper Sterling, under penalty of perjury, hereby declare as follows:

1. This Declaration is based upon my personal knowledge.

2. I am employed by the District of Columbia Fire and Emergency Medical Services Department ("FEMS" or the "Department"), and have been employed by FEMS since 1992.

3. I work as a paramedic. Typically, the position of paramedic requires me to be in the field daily responding to emergencies.

4. I am a practicing Muslim. In accordance with the tenets of my Muslim faith, I continuously wear a beard. My beard has never interfered in any way with my performance of my duties.

5. Notwithstanding my sincere religious beliefs, the Department has, on several occasions in the past, enforced or attempted to enforce against me policies requiring that I be clean shaven while on duty. I, along with the other plaintiffs in this case, previously successfully

challenged these policies in this Court. In October 2007, this Court permanently enjoined the Department from enforcing against myself and the other plaintiffs a policy prohibiting all FEMS workers who use tight-fitting mask facepieces from having facial hair that comes between the sealing surface of the mask facepiece and the face.

6. After this October 2007 injunction was issued, the Department permitted me to continue wearing my beard in accordance with my religious faith while working in the field as a paramedic. Thereafter, I performed these duties without incident until I was removed from active field duty and reassigned by the Department in March 2020.

7. Sometime after the October 2007 injunction was issued, the Department changed its facial hair regulations to permit any Member to maintain facial hair of up to ¼ inch.

8. On or about January 13, 2020, I became aware of the Department's intention to issue a new policy related to facial hair.

9. The final version of the Department's policy related to facial hair was eventually issued as Safety Operations Bulletin No. 10 ("Bulletin No. 10"), which prohibits Department employees from having any of the following: (1) Facial hair that comes between the sealing surface of the face piece and the face; (2) Facial hair that interferes with the valve function; or (3) Any condition that interferes with the face-to-face piece seal or valve function.

10. On March 16, 2020, I became aware that the Department intended to enforce Bulletin No. 10 against me when I came to work and was told that I was not in compliance with the Department's new facial hair policy. Because I was not in compliance, my supervisor told me that I would not be allowed to assume regular field duty and instead would be reassigned.

11. Thereafter, I immediately informed my supervisor that I did not consent to this reassignment. Further, I informed my supervisor that this reassignment violated the permanent injunction issued by this Court in October 2007.

12. My supervisor instructed me to complete a "special report" to be filed with the Department. A "special report" is an internal letter that we complete any time there is an issue of potential noncompliance with a Department policy. I prepared a special report, and noted in my special report that my supervisor's refusal to allow me to assume field duty violated the permanent injunction issued by this Court.

13. After completing my special report, I received a call from the Department later in the day and was told that, until further notice, I was being reassigned to a logistical position supporting the operations of the Department's COVID-19 logistical center, which was responsible for housing and supplying personal protective equipment for the Department.

14. I remained in this logistical position until October 17, 2021 when I was allowed to return to field duty as a paramedic.

15. As a result of the Department's decision to remove me from field duty and reassign me to a logistical position without my consent, I received less total compensation than I would have if I had remained on field duty. For example, I had fewer opportunities to earn overtime, holiday, weekend, and night-differential pay throughout the time of my reassignment. Had I been allowed, I would have taken advantage of at least some of these opportunities.

16. Furthermore, my sudden reassignment to a logistical position caused significant scheduling disruptions for myself and my family. While working in the field as a paramedic, I was typically on duty for 24 full hours, followed by 72 hours off duty. While I was reassigned to a logistical position, I was required to work five days per week during regular business hours.

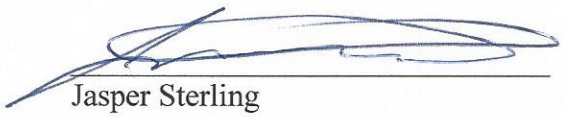
Because of this change, I was forced to use leave time to attend medical appointments and other obligations that I typically attended on my days off.

17. Also as a result of this new work schedule, I had to make a greater number of round trips to work each week during the period I was reassigned. This caused increased wear and tear on my vehicle and increased the amount of gasoline I had to buy.

18. Also as a result of this new work schedule, I was no longer able to take my son to school on my days off, which was disruptive to my family.

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

Executed this 28 day of September, 2022.



Jasper Sterling

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALVERT L. POTTER, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 01-cv-1189 (RJL) CONSOLIDATED CASES
STEVEN B. CHASIN, *et al.*, Plaintiffs, v. DISTRICT OF COLUMBIA, Defendant.	No. 05-cv-1792 (RJL)

DECLARATION OF HASSAN UMRANI IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT OF CIVIL CONTEMPT

I, Hassan Umrani, under penalty of perjury, hereby declare as follows:

1. This Declaration is based upon my personal knowledge.

2. I am employed by the District of Columbia Fire and Emergency Medical Services Department ("FEMS" or the "Department"), and have been employed by FEMS since 1989.

3. My current job title is Firefighter/Emergency Medical Technician ("EMT"). Typically, the position of Firefighter/EMT requires me to be in the field daily responding to fires and other emergencies.

4. I am a practicing Muslim. In accordance with the tenets of my Islamic faith, I continuously wear a beard. My beard has never interfered in any way with my performance of my duties.

5. Notwithstanding my sincere religious beliefs, the Department has, on several occasions in the past, enforced or attempted to enforce against me policies requiring that I be

clean shaven while on duty. I, along with the other plaintiffs in this case, previously successfully challenged these policies in this Court. In October 2007, this Court permanently enjoined the Department from enforcing against myself and the other plaintiffs a policy prohibiting all FEMS workers who use tight-fitting mask facepieces from having facial hair that comes between the sealing surface of the mask facepiece and the face.

6. After this October 2007 injunction was issued, the Department permitted me to continue wearing my beard in accordance with my religious faith while serving in the field as a Firefighter/EMT. Thereafter, I performed these duties without incident until I was removed from active field duty and reassigned by the Department in March 2020.

7. In November or December 2019, I became aware of the Department's intention to issue a new policy related to facial hair.

8. The final version of the Department's policy related to facial hair was eventually issued as Safety Operations Bulletin No. 10 ("Bulletin No. 10"), which prohibits Department employees from having any of the following: (1) Facial hair that comes between the sealing surface of the face piece and the face; (2) Facial hair that interferes with the valve function; or (3) Any condition that interferes with the face-to-face piece seal or valve function.

9. On March 15, 2020, I became aware that the Department intended to enforce Bulletin No. 10 against me when I came to work and was told that I was not in compliance with the Department's new facial hair policy. Because I was not in compliance, my supervisor told me that I would not be allowed to assume regular field duty and instead would be reassigned.

10. My supervisor told me that I could remain on regular field duty if I shaved my facial hair as required by Bulletin No. 10. I declined to do this because of my religious beliefs.

11. Thereafter, I immediately informed my supervisor that I did not consent to my reassignment. Further, I informed my supervisor that this reassignment violated the permanent injunction issued by this Court in October 2007.

12. Following my removal from active field duty, I was reassigned to a logistical position supporting the operations of the Department's COVID-19 logistical center, which was responsible for housing and supplying personal protective equipment for the Department.

13. I remained in my logistical position until December 2021, and was finally allowed to return to active field duty on December 14, 2021.

14. As a result of the Department's decision to remove me from field duty and reassign me to a logistical position without my consent, I received less total compensation than I would have if I had remained on field duty. For example, I had fewer opportunities to earn overtime, holiday, weekend, and night-differential pay throughout the time of my reassignment. Had I been allowed, I would have taken advantage of at least some of these opportunities.

15. Furthermore, my sudden reassignment to a logistical position caused significant scheduling disruptions for myself and my family. While working in the field, I was typically on duty for 24 full hours, followed by 72 hours off duty. While I was reassigned to a logistical position, I was required to work five days per week during regular business hours. Because of this change, I was forced to use leave time to attend to personal obligations that I typically would have addressed during my days off.

16. Also as a result of this new work schedule, I had to make a greater number of round trips to work each week during the period I was reassigned. This caused increased wear and tear on my vehicle and increased the amount of gasoline I had to buy. After my personal vehicle broke down, it became necessary for me to commute to work using rideshare services

like Uber and Lyft. The fact that I was required to report to work five days per week increased the amount of rideshare commuting fees that I had to pay.

17. Also as a result of my removal from field duty, I was unable to participate in specific job training activities, and was not allowed to apply for a promotion at my assigned firehouse to a Truck-5/Technician position. Had I been allowed to apply for this promotion, I would have done so.

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

Executed this 5th day of October, 2022.

Hassan Umrani