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

12 **J.D. Ottman, an individual,**

Case No.

13 **Plaintiff,**

14 **vs.**

15 **COMPLAINT**

16 **(Jury trial requested)**

17 **Department of Forestry and Fire**
18 **Management, an Arizona State agency;**
19 **ABC Corporations 1-10; XYZ**
20 **Partnerships 1-10; Other Businesses 1-10**

21 **Defendant.**

22
23 Plaintiff, JD Ottman, Defendant, by and through undersigned counsel, hereby
24 alleges as follows:

25 **PARTIES**

- 26
27 1. Plaintiff, JD Ottman, is a resident of Navajo County, Arizona.
28

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1 2. Defendant Department of Forestry and Fire Management (“DFFM”), is an
2 Arizona State Agency, located at 1110 West Washington St. #500, Phoenix, Arizona
3 85007.
4

5 3. Defendants ABC Corporations 1-10; XYZ Partnerships 1-10; Other
6 Businesses 1-10 are fictitiously named herein as Defendants and agents/employees of
7 Defendant, which Defendants may later be joined as such time their true and correct
8 identities are discovered.
9

10 **JURISDICTION AND VENUE**

11 4. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1367(a).

12 5. Venue is proper in the District of Arizona under 28 U.S.C. § 1391.

13 **FACTUAL ALLEGATIONS**

14 6. Plaintiff was hired by DFFM on or around April 2010.

15 7. Plaintiff worked for DFFM for approximately nine (9) years and ten (10)
16 months.
17

18 8. During the course of his employment, Plaintiff developed constant migraine
19 who caused him to lack sleep and concentration. DFFM was aware of his condition.
20

21 9. On January 10, 2020, Plaintiff submitted a written explanation for his refusal
22 to operate the Escudilla Crew (a Department of Corrections Wildland Crew) to District
23 Manager Robert Arthur.
24

25 10. Among other things Plaintiff, reported that “some crew members were
26 involved in dealing a drug called spice while on the fire crews.” Spice, or K2, is a synthetic
27 designer drug having effects similar to marijuana.
28

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1 11. At the time Plaintiff’s report, marijuana was illegal in Arizona. Plaintiff
2 went on to report that he intended to “shut the crew down due to safety concerns to protect
3 both agencies.”.

4
5 12. Plaintiff’s written reporting was done via email. Use of illegal drug use,
6 especially by a fire crew, is against public policy and against federal and state law.

7
8 13. Instead, Plaintiff was told to shut his mouth, or he would be replaced by this
9 unqualified younger assistant, Robert Pena.

10 14. DFFM’ A2S Manager Bob Arthur hired Mr. Pena twice.

11 15. DFFM did not seem to even acknowledge Plaintiff’s complaint, much less
12 investigate, or address it.

13
14 16. DFFM’s apparent “resolution” to the complaint that firefighters were using
15 and selling drugs on the job was to remove the supervisor reporting the misconduct and
16 replace him with Mr. Pena. Plaintiff submitted his report just over a month prior to his
17 discharge.

18
19 17. Upon information and beliefs Robert Pena was then assigned to manage the
20 Escudilla crew.

21
22 18. In February 2020, Plaintiff expected to be interviewed regarding his report
23 about unlawful drug use. Instead, Plaintiff was subjected to baseless accusations,
24 harassment, and interrogation by John Truett and Rose Strike, human resources, triggering
25 a massive migraine.

26
27 19. Due to the severity of his migraine, produced by the stress of the meeting,
28 Plaintiff had to take a day off.

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20. Mr. Arthur approved Plaintiff's time off, but Mr. Truett did not.

21. Mr. Truett told Plaintiff that he was to report to work with his health condition and if he did not, he would be insubordinate.

22. Plaintiff sent several emails discussing his health condition and the reason why he needed a sick day.

23. Plaintiff was placed on a two-week suspension or administrative leave for taking a sick day.

24. During Plaintiff's two-week leave Plaintiff was restricted to remain in his home and did clerical work.

25. Plaintiff was advised by Mr. Arthur that he will be notified about any future changes and other disparaging remarks.

26. Plaintiff was released from duty with no cause and told to bring his belongings to the office, was presented with a letter of termination on February 19, 2020.

27. Given that DFFM did not take any actions to address his complaints prior to discharging him, Plaintiff continued to be extremely concerned that DFFM has not addressed the illegal drug use and distribution by crew members.

28. DFFM, through its agent John Truett, continued to harm Plaintiff.

29. Plaintiff is currently employed by the Pinetop Fire District, which is an entity overseen by DFFM.

30. Upon information and beliefs, in December 2020, Mr. Truett contacted Plaintiff, berated and harassed him over a scheduling matter. Mr. Truett tried multiple

1 times to convince Plaintiff and his crew to leave a job site a day early, which would have
2 likely resulted in discipline and losing at least 12 hours' pay.

3
4 31. Mr. Truett was rude and condescending, as documented by a neutral third
5 party who was present.

6 32. Mr. Truett's behavior constitutes ongoing harassment and interference
7 against Plaintiff by DFFM via its agent, John Truett.

8
9 33. Plaintiff filed a complaint with the EEOC for discrimination dated October
10 13, 2020.

11 34. On August 29, 2022, the EEOC issued a determination finding reasonable
12 cause to believe DFFM discriminated Plaintiff for the reason of his age in violation of the
13 ADEA.

14
15 35. After DFFM refused to participate in any mediation attempt, the EEOC
16 issued a notice of right to sue on August 7, 2023.

17
18 **COUNT I**

19 **(Violation of Age Discrimination in Employment Act – ADEA)**

20 36. Plaintiff suffered damages as a result of DFFM's conduct.

21 **COUNT II**

22 **(Violation of the American with Disabilities Act – ADA)**

23 37. Plaintiff suffered constant migraine which substantially limited one or more
24 major life activities.

25
26 38. DFFM was aware of Plaintiff's condition.

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1 39. Plaintiff was capable of performing the essential functions of the
2 employment position with DFFM.

3
4 40. DFFM terminated Plaintiff because of his disability.

5 41. Plaintiff suffered damages as a result of DFFM's conduct.

6 **COUNT III**

7 **(Violation of Title VII of the Civil Rights Act of 1964 – Retaliation)**

8
9 42. Plaintiff reported to DFFM the illegal practice of consuming illegal drugs in
10 the Escudilla crew.

11 43. DFFM attempted to silence Plaintiff's report and then terminated his
12 position.

13
14 44. Plaintiff was terminated because he reported the use of the illegal drugs in
15 the Escudilla crew.

16 45. Plaintiff suffered damages as a result of DFFM's conduct.

17 **COUNT IV**

18 **(Violation of the Arizona Civil Rights Act – A.R.S 41-1463 et seq.)**

19
20 46. Plaintiff is over 40 years of age.

21 47. Plaintiff was qualified for the position he occupied with DFFM.

22 48. DFFM terminated Plaintiff and gave his position to a younger individual.

23
24 49. Plaintiff suffered constant migraine which substantially limited one or more
25 major life activities.

26 50. DFFM was aware of Plaintiff's condition.
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1 51. Plaintiff was capable of performing the essential functions of the
2 employment position with DFFM.

3
4 52. DFFM terminated Plaintiff because of his disability.

5 53. Plaintiff suffered damages as a result of DFFM's conduct.

6 **COUNT IV**
7 **(Wrongful Termination – A.R.S 23-1501)**

8 54. Plaintiff was employed with DFFM.

9
10 55. DFFM terminated Plaintiff's employment in violation of the Arizona Civil
11 Rights Act.

12 56. DFFM terminated Plaintiff's employment in retaliation for his disclosure of
13 illegal activity occurring in the Escudilla crew.

14
15 57. Plaintiff suffered damages as a result of DFFM's conduct.

16 **WHEREFORE**, Plaintiff prays that this Court for the following:

17 A. Declaring the acts and practices complained of herein are in violation of the
18 ADEA, ADA, Title VII of the Civil Rights of 1964, Arizona Civil Rights Act, and/or
19 A.R.S. §23-1501;

20
21 B. General damages and compensatory damages to be proven at trial,
22 including, but not limited to:

- 23
24 i. Back pay in an amount to be proven a trial,
25 ii. Front pay in an amount to be proven a trial,
26 iii. The value of lost benefits;
27
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- 1 C. Any other damages, including punitive damages pursuant to the any
2 applicable authority;
3
4 D. Pre-judgment and post-judgment interest;
5
6 E. Attorney’s fees and costs of suit;
7
8 F. For such other relief to which Plaintiff may be entitled and this Court deems
9 just and proper.

10 **RESPECTFULLY SUBMITTED** this 6th day of November 2023.

11 **GILLESPIE, SHIELDS & TAYLOR**

12 By: /s/ Marco Costa
13 Marco Costa
14 *Attorney for Plaintiff*

Civil Cover Sheet

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

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

Plaintiff(s): **J.D. Ottman , ;**

**Department of Forestry and Fire Management An
Defendant(s): Arizona State Agency, ABC Corporations 1-10; XYZ
Partnerships 1-10; Other Business 1-10;**

County of Residence: Navajo

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

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Gillespie, Shields & Taylor
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IFP REQUESTED

REMOVAL FROM Maricopa COUNTY, CASE #

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties(Diversity Cases Only)

N/A

Plaintiff:-

N/A

Defendant:-

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

442 Employment

VI.Cause of Action:

Employment Civil Right Discrimination and Wrongful Termination

VII. Requested in Complaint

No

Class Action:

Dollar Demand:

Yes

Jury Demand:

VIII. This case is not related to another case.

Signature: Marco Costa

Date: 11/6/2023

