**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF OKLAHOMA**

PAUL CAMPBELL FIELDS,

Plaintiff,

v.

CITY OF TULSA; CHARLES W. JORDAN, individually and in his official capacity as Chief of Police, Tulsa Police Department; and ALVIN DARYL WEBSTER, individually and in his official capacity as Deputy Chief of Police, Tulsa Police Department,

Defendants.

Case No. 11CV-115-GKF-TLW

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE***

Plaintiff Paul Campbell Fields ("Plaintiff"), by and through his undersigned counsel, hereby responds in opposition to Defendants' ill-conceived motion *in limine*. (Doc. 44). As an initial matter, most of Defendants' evidentiary objections are so vague and ambiguous that it is impossible to know what specific evidence they are seeking to exclude. Defendants' tactic here is apparently to "throw it all against the wall and see what sticks." Nonetheless, Defendants plainly invite this court to exclude relevant, probative, and material evidence demonstrating the constitutional violations at issue. This court should reject Defendants' invitation for error.

Plaintiff hereby responds to each of Defendants' "propositions" as follows:

## I. Accommodation.

Defendants' claim that "Fields is barred from arguing that the City failed to accommodate his religious convictions" (Defs.' Mot. at 1-2) is incorrect, as the very case cited by Defendants demonstrates. As Defendants note, "The Tenth Circuit holds that the failure to accommodate an employee's religious needs, '*without more*, does not establish a constitutional violation.'" (Defs.' Mot. at 2) (quoting *Shrum v. City of Coweta, Okla*, 449 F.3d 1132, 1143-44 (10th Cir. 2006). (emphasis added). However, in this case the undisputed evidence establishes

the "more" that the Tenth Circuit was referring to in *Shrum*: Defendants' actions were discriminatory and the order at issue was not a "neutral law of general applicability." Indeed, Defendants have a policy and practice of granting individualized exemptions to such orders, and yet failed to extend an exemption (*i.e.*, accommodation) for Plaintiff's religious objection without a legitimate, let alone compelling, reason. (*See* Pl.'s Mem. in Supp. of Motion for Summ. J. at 15-22 [Doc. 42]) (hereinafter "Pl.'s SJ Mem."). As the Tenth Circuit in *Shrum* stated, "We agree with Appellant Palmer that the mere failure of a government employer to accommodate the religious needs of an employee, where the need for accommodation arises from a conflict with *a neutral and generally applicable employment requirement*, does not violate the Free Exercise Clause, as that Clause was interpreted in *Smith*." *Shrum*, 449 F.3d at 1143. Thus, as the Tenth Circuit noted, the mere refusal to accommodate the officer's religious schedule, "without more, does not establish a constitutional violation," *so long as* we are dealing with a "neutral and generally applicable employment requirement." *Id.* at 1143-44. Consequently, the Tenth Circuit further noted, "*But that is not the crux of Officer Shrum's case*. Officer Shrum alleges that he was moved to the day shift precisely because of Chief Palmer's knowledge of his religious commitment. If so, the decision to transfer was not 'neutral,' but rather *motivated by Officer Shrum's religious commitments*." *Id.* at 1144 (emphasis added). In short, evidence of the defendant's failure to accommodate "Officer Shrum's religious commitments" was not the *only* part of Officer Shrum's claim, but it was certainly a relevant and necessary part. Thus, Defendants' argument that "Fields' constitutional rights claim cannot *include* an alleged failure of accommodation" (Defs.' Mot. at 2 [emphasis added]) is wrong as a matter of law.

Moreover, as noted above, for purposes of a free exercise claim, if Defendants have in place a policy or practice of making individualized exemptions, as they do here, then their failure to "accommodate" (*i.e.,* grant an exemption for) Plaintiff's religious beliefs without a compelling reason for doing so is a violation of the Free Exercise Clause. *See Axson-Flynn v. Johnson*, 356 F.3d 1277, 1294-95 (10th Cir. 2004) (describing the "'individualized exemption' exception" of *Sherbert* as an "exception[] to the *Smith* rule"). And because a heightened level of scrutiny applies in this case precisely because Defendants' order was not a "*neutral and generally applicable employment requirement*," the question of accommodation is also relevant as to whether Defendants' actions were the least restrictive to support a compelling governmental interest. Indeed, Defendants admit that the police department's objectives were accomplished when the Islamic Event was made voluntary—the very accommodation Plaintiff was requesting. (Pl.'s SJ Mem. at 20-21; "Statement of Undisputed Material Facts" at ¶ 67; *see also* Jordan Dep. at 59-60 [Doc. 50-2]). Consequently, the undisputed facts demonstrate that Defendants did not have a compelling (or legitimate) reason for not accommodating Plaintiff's simple request to make the event voluntary. In short, the very suggestion by Defendants that "evidence of a failure to accommodate is irrelevant to [Plaintiff's] claim" (Defs.' Mot. at 2) is legally and factually incorrect and *must* be rejected.

**II. Fields' Religious Activities.**

Defendants' claim that "evidence inferring that Fields' religious beliefs were burdened must be prohibited" is incorrect as a matter of law. In effect, Defendants are asking this court to grant summary judgment in their favor on their motion *in limine*. Moreover, Defendants' request (1) materially misrepresents this court's ruling on Plaintiff's motion for leave to file a second amended complaint (Op. & Order [Doc. 25]), (2) demonstrates a misapprehension of the relevant

case law, and (3) asks this court to disregard controlling precedent regarding First Amendment free exercise claims. In this court's ruling on Plaintiff's motion, the court denied Plaintiff's request to add a state law claim under the Oklahoma Religious Freedom Act, 51 Okla. State. § 252 ("ORFA"), finding that the "substantial burden" standard, as stated in the statute and interpreted by the Oklahoma state courts, was exceedingly high. To support its finding, this court cited *Steele v. Guilfoyle*, 76 P.3d 99 (Okla. Civ. App. 2003), a prisoner case which did not find a violation of the state statute because "Defendant's actions in no way prohibit[ed] Plaintiff from practicing his religion, [and] praying or meeting with fellow Muslims." (Op. & Order at 6) (citing *id*. at 100-01). In reaching its conclusion on Plaintiff's motion, however, this court was careful to distinguish a claim arising under ORFA with a claim arising under the Free Exercise Clause of the First Amendment, stating, "Plaintiff cites a number of Free Exercise cases which are irrelevant to this inquiry because *they do not use the 'substantial burden' test of ORFA*." (Op. & Order at 5, n.4) (emphasis added). As this court noted and as controlling precedent makes clear, the ORFA "burden" standard is not the applicable standard here. *See, e.g., Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988) ("It is true that this Court has repeatedly held that *indirect coercion or penalties* on the free exercise of religion, *not just outright prohibitions*, are subject to scrutiny under the First Amendment.") (emphasis added); *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1315 (10th Cir. 2010) (concluding, based on Supreme Court precedent addressing free exercise claims, that a religious exercise is "substantially burdened" when the government, *inter alia*, "places *substantial pressure* on an adherent . . . to engage in conduct contrary to a sincerely held religious belief") (emphasis added). Thus, this court properly concluded that Plaintiff's claim under the "Free Exercise Clause remains." (Op. & Order at 7).

Indeed, as the cases cited by Plaintiff in his motion for summary judgment make plain (*see* Pl.'s SJ Mem. at 14-15, 18-20), subjecting a person to punishment or adverse treatment because she merely objects to reciting lines in a script that she believes are offensive to her religion, *see Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004), or requiring police officers to shave as part of the department's uniform standards, *see Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 367 (3rd Cir. 1999) (Alito, J.) (striking down a police department's policy because it violated the plaintiff officers' right to free exercise of religion), are actions that sufficiently burden a plaintiff's religious beliefs to trigger a violation of the Free Exercise Clause. In short, "*beliefs rooted in religion* are protected by the Free Exercise Clause." *Thomas v. Rev. Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 713 (1981) (emphasis added). And the "[c]ourts are not arbiters of scriptural interpretation." *Id.* at 716. Because Plaintiff has no religious objection to simply shaving each day he comes to work for the City, does not mean that requiring the plaintiffs to shave in *Fraternal Order of Police Newark Lodge No. 12* did not burden their religious beliefs. Similarly here, because Defendants might have no objection to attending the Islamic "appreciation day," does not detract from nor diminish in any way Plaintiff's objection, which is "rooted" in his sincerely held religious beliefs. In sum, what matters for a claim arising under the Free Exercise Clause is whether the record is clear that the person asserting the claim acted "*for religious reasons*." *Id.* In this regard, the evidence before the court is undisputed. (*See* Pl.'s SJ Mem., Statement of Undisputed Material Facts at ¶ 57). Because it would be improper to question Plaintiff's scriptural interpretation that serves as the basis for his religious beliefs and thus his objection to the order (as it would be improper for the court to question a Muslim police officer's religious objection to shaving), the only question is whether punitively transferring Plaintiff, subjecting him to an Internal Affairs (IA)

investigation, and suspending him without pay for two weeks "places *substantial pressure* on [Plaintiff] to engage in conduct contrary to a sincerely held religious belief." And the answer to that question is "yes," as a matter of law.

**III. Legal Standards.**

Defendants make the innocuous claim that it is the province of this court to instruct the jury as to the law. (Defs.' Mot. at 3). However, Defendants take this general and rather straightforward principle and seek to improperly use it as a bar to exclude *admissions* made by an officer and agent of the City. This includes the exceedingly relevant admission against Defendants' interests that they punitively punished and retaliated against Plaintiff because he invoked his rights and objected to Defendants' order based on his sincerely held religious beliefs.

For example, Defendants attempt to disqualify entirely the very damaging testimony of Major Harris, a senior officer of the Tulsa Police Department and thus an agent of the City. As a senior police officer and Division Commander, Major Harris is responsible for enforcing the policies of the department, including its policy of prohibiting retaliation against an officer for invoking his First Amendment rights. (*See* "Prohibition Against Retaliation" [Doc. 42-18]). During her deposition in which she made the admissions, Major Harris was represented by Mr. Gerald Bender, the Litigation Division Manager for the City, and Mr. Brandon Burris, a Senior Assistant City Attorney. (Muise Decl. at ¶ 2, Ex. A, at Ex. 1). And more to the point, Senior Assistant City Attorney Burris asserted, without equivocation, in an email to Plaintiff's counsel prior to the deposition of Major Harris that she was in fact a "*represented party*" for purposes of this litigation. (Muise Decl. at ¶ 3, Ex. B, at Ex. 1). Consequently, Major Harris' testimony is relevant and admissible as an "admission" by a "party-opponent." Fed. R. Evid. 801(d)(2).

Moreover, the testimony of Major Harris, an experienced officer on the Tulsa Police Department and Plaintiff's immediate supervisor, was based on her understanding of the facts in light of her extensive experience on the department. Consequently, she is a percipient witness with the requisite knowledge and perspective to testify as she did.[1] *See United States v. Yanez-Sosa*, 513 F.3d 194, 200 (5th Cir. 2008) (holding that a law enforcement officer does not provide expert testimony if it is "merely descriptive," or if it is based on "common sense or the officer's past experience formed from firsthand observation").

And as Major Harris explained during this testimony, no one similarly situated to Plaintiff was ever punitively transferred the way Defendants punitively transferred Plaintiff pending his IA investigation. (Harris Dep. at 36-38 [Doc. 42-27]). And this transfer was based on the undisputed fact that Plaintiff objected to the order to attend the Islamic "appreciation" event on account of his sincerely held religious beliefs—beliefs that no Defendant questions. Moreover, as Major Harris' testimony reveals, because she supported Plaintiff's position during the course of the IA investigation, she too was a target for retaliation by Defendant Webster. (Harris Dep. at 18-20, 26 [Doc. 42-27]).

In sum, all of this evidence is exceedingly relevant, material, and probative of the discriminatory nature of Defendants' actions. *Shrum*, 449 F.3d at 1145 ("Proof of hostility or discriminatory motivation may be sufficient to prove that a challenged governmental action is not neutral."). Major Harris, as a senior police official and agent of the City, is a person with personal knowledge of these relevant facts and the personal experience to contextualize them.

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[1] Indeed, Major Harris's testimony would, nonetheless, be admissible under Rule 702 of the Federal Rules of Evidence since she unquestionably has expert knowledge, skill, experience, training, and education with regard to the policies and practices of the Tulsa Police Department. *See* Fed. R. Evid. 702 (permitting testimony from a witness with sufficient "knowledge, skill, experience, training or education").

Major Harris' testimony invades neither the province of this court nor that of the jury. Rather, this testimony provides the finder of fact with first-hand evidence of the events and Defendants' treatment of Plaintiff relative to similar circumstances.

**IV. Standing for Harm to Others.**

Defendants make a vague and ambiguous claim that Plaintiff should be prohibited from presenting evidence that "implicates the rights of others." (Defs.' Mot. at 4-5). Indeed, Defendants fail to explain with *any* detail or particularity what this evidence is (or will be). Without knowing what evidence to which Defendants are referring, it is impossible to rule on this objection.

With regard to Defendants' vague and ambiguous request to exclude evidence of the "harm to legal rights of others," insofar as Defendants *might* be claiming that Plaintiff cannot present evidence that not only did he object to *attending* the Islamic Event, but that, *based on his own conscience and religious beliefs*, he also objected to *ordering* other officers who shared his beliefs to attend, then Defendants are mistaken. In both instances, Defendants are violating Plaintiff's sincerely held religious beliefs. *See Thomas,* 450 U.S. at 716 ("Courts are not arbiters of scriptural interpretation."); *see also Cantwell v. Conn.*, 310 U.S. 296, 303 (1940) (acknowledging that the Free Exercise Clause embraces the freedom to believe).

Additionally, evidence of the proselytizing nature of the Islamic Event as testified to by other officers is certainly relevant to Plaintiff's claims, particularly including his Establishment Clause claim. *See Lynch v. Donnelly*, 465 U.S. 668, 694 (1984) ("Every government practice must be judged in its unique circumstances to determine whether it constitutes an endorsement or disapproval of religion.").

Regarding Defendants request to exclude "financial harm to others," Plaintiff is at a loss as to what Defendants are seeking. Indeed, without citing to any specific evidence or testimony, Defendants' claim makes little sense and should thus be rejected.

**V. Punishment and Finances.**

Defendants spend a great deal of time discussing the law on punitive damages (*see* Defs.' Mot. at 5-8) and apparently very little time reading Plaintiff's amended complaint. Plaintiff is not seeking punitive damages in this case. (*See* First Am. Compl. at "Prayer for Relief" [Doc.11]). Consequently, Defendants' request is baseless and should be denied.

**VI. Final Policy Makers.**

Defendants string cite multiple cases that stand for basic legal principles and rulings regarding policymakers and municipal liability under 42 U.S.C. § 1983. (Defs.' Mot. at 8-9). Yet, the only evidence they apparently seek to exclude are a few admissions made by Major Harris during her deposition. (*See* Defs.' Mot. at 9) ("Major Harris is not a final policymaker, and her statements are not attributable to the City."). However, Defendants conflate the questions of whether these admissions can be "attributable to the City" with whether Major Harris is a policymaker. Major Harris need not be a "policymaker" for her statements to be admissible as relevant evidence regarding *an existing policy, the implementation of an existing policy,* or *as a statement of a party opponent* (*i.e.,* an agent of the City) as noted above and discussed further below.

Here, Defendant Jordan, the Chief of Police, testified without equivocation that he makes policy for the Tulsa Police Department on behalf of the City.[2] Defendant Jordan testified that he

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[2] Defendant Jordan testified as follows:

Q. And as the chief of police, *do you have the responsibility to make policy for the police department on behalf of the City of Tulsa*?

is the final decision maker and thus the policymaker for the City with regard to officer discipline, including the discipline Plaintiff received for exercising his First Amendment rights.[3] Consequently, the City cannot escape liability in this case for violating Plaintiff's rights. *See Monell v. N.Y. City Dep't of Soc. Servs.*, 436 U.S. 658, 694-95 (1978) (affirming that municipalities are liable under 42 U.S.C. § 1983 if municipal policy or custom was the "moving force" behind the alleged unconstitutional action and stating that "when *execution* of a government's policy or custom, *whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy* [such as the acts of the Chief of Police in this case], inflicts the injury . . . the government as an entity is responsible under § 1983") (emphasis added).

The testimony of Major Harris—which Defendants selectively quote as follows: "Major Harris' personal belief that 'the Department took adverse action against' Fields 'for exercising his rights,' that she was 'retaliated against' and that Fields had a right to object to the order"[4] (Defs.' Mot. at 9)—constitutes *admissions* that Defendants retaliated against Plaintiff for raising a religious objection to Defendants' unlawful order. Additionally, Major Harris' testimony is

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A. *That's correct*. Yes, sir.

(Dep. of Jordan [Doc. 42-24] at 9).

[3] Defendant Jordan testified as follows:

Q. And with regard to the internal affairs and professional conduct of officers, what specifically is your responsibility as chief of police?

A. To review policy and determine any need to modify policy or initiate new policy or to remove policy from existing policies and procedures, rules and regulations. Also I' – I'm *the ultimate authority that signs any disciplinary action or reviews any disciplinary action that comes up the chain of command*.

Q. When you say "ultimate authority," is that *on behalf of the City of Tulsa* as the representative for the police department?

A. *Yes, sir*.

(Dep. of Jordan [Doc. 42-24] at 10).

[4] Defendant Webster acknowledged in his testimony that Plaintiff had a right to invoke a religious objection to his order and that he did not question the sincerity of Plaintiff's religious beliefs. (Webster Dep. [Doc. 42-25] at 20).

evidence of the application of *existing* policy that Defendant Jordan, the policymaker for the department on behalf of the City, had previously testified to with regard to religious exemptions from objectionable orders,[5] and it is evidence with regard to the application of *existing* policy that prohibits any "action motivated by a desire to punish a person for the exercise of First Amendment rights which alters the terms and conditions of employment." (*See* "Prohibition Against Retaliation" [Doc. 42-18]). Indeed, this highly relevant, material, and probative evidence corroborates the testimony of Defendant Jordan, the Chief of Police. In short, Defendants' arguments are without merit and should be rejected.

**VII. Impermissible Trial Tactics.**

This objection, like many of the other vague and ambiguous objections raised by Defendants in their motion, is truly a head-scratcher. Defendants apparently want (1) a pretrial ruling from this court that irrelevant evidence should be excluded (*i.e.*, presenting evidence regarding "claims not alleged in Fields' amended complaint"), without citing any specific "legal arguments, theories, [or] evidence" that concern Defendants; (2) a pretrial ruling that amounts to a jury instruction (*i.e.*, making comments about Defendants' failure to call a certain witness or introduce specific evidence); (3) a pretrial ruling that anticipated witnesses should be listed in the pretrial order; and (4) a pretrial ruling on "vicarious liability" without suggesting the specific evidence that concerns Defendants. As noted previously, the City is liable for violating Plaintiff's constitutional rights through the actions of Defendant Jordan, who is a policymaker

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[5] Defendant Jordan testified as follows:

Q: And so what is the – what are the procedures or policy of the police department for dealing with situations where somebody raises a sincerely held religious objection to something they're being directed to do?

A: Take it through the chain of command and *review each one on a case-by-case basis*.

(Jordan Dep. [Doc. 42-24] at 77) (emphasis added).

for the Tulsa Police Department *on behalf of the City*, and for its own actions.[6] It is not necessary to invoke "respondeat superior" to hold the City liable in this case.

In sum, Defendants' "impermissible trial tactics" arguments should be rejected.

## VIII. Other Litigation or Lawsuits.

Once again, without any specifics, it is impossible to know exactly what evidence Defendants want this court to exclude prior to trial. Consequently, this aspect of Defendants' motion should be denied.

## IX. Costs and Attorney Fees.

There is no basis for Defendants to claim that the award (or denial for that matter) of attorney's fees and costs under 42 U.S.C. § 1988 will make its way into the merits of this case. The jury does not decide that issue, the court does. Like many of the other requests, it is difficult to understand Defendants' point. Indeed, if there is any party in this litigation that would have an improper motive for mentioning attorney's fees, it would be Defendants, who may want to argue to the jury that the City is so cash poor that it couldn't pay the fees without raising taxes, as just one hypothetical and truly speculative example. Plaintiff, however, would not object to this "improper motive" via a motion in *limine* because it would be rank speculation about what Defendants might do during trial. Similarly, whether Plaintiff's counsel would mention attorney's fees at trial is rank speculation with no legal or factual basis.

And for the record, the standard for awarding attorney's and costs to a prevailing plaintiff under 42 U.S.C. § 1988 cited by Defendants (*i.e.*, "*solely* within the discretion of the Court")

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[6] For example, representatives from the City (Human Resources and the Legal Department) were present at the February 21, 2011 meeting in which Plaintiff objected to the order at issue on religious grounds and was then summarily transferred and notified that he would be the subject of an IA investigation. Additionally, the City approved and ratified the final punishment of Plaintiff for raising his religious objection to the order. (Fields Supp. Decl. at ¶¶ 2, 3 [Doc. 50-7], Dep. Ex. 19 [Doc. 50-8]).

(Defs.' Mot. at 12) (emphasis added), is not entirely accurate. While an award of attorney's fees is within the sound discretion of the district court, *the court's discretion is narrow*. The prevailing plaintiff should ordinarily recover his attorney's fees unless it would be "unjust" to do so. *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983); *see also Smith v. Heath*, 691 F.2d 220, 228 (6th Cir. 1982) (citation omitted); *Dawson v. Pastrick*, 600 F.2d 70, 79 (7th Cir. 1979) ("[A] prevailing plaintiff should receive fees almost as a matter of course.") (internal quotations omitted). Indeed, "[t]he purpose of § 1988 is to ensure 'effective access to the judicial process' for persons with civil rights grievances." *Hensley*, 461 U.S. at 429.

**X. Tulsa Police Department.**

As Defendants are no doubt aware, Plaintiff did not sue (and thus name as a defendant) the Tulsa Police Department. Rather, he appropriately sued the City (*see* Defs.' Mot. at 12-13 [citing cases]) and two senior Tulsa Police Department officials—Defendant Jordan, the Chief of Police who makes policy for the department on behalf of the City, and Defendant Webster, a Deputy Chief of Police. However, if Defendants are suggesting that Plaintiff cannot reference the Tulsa Police Department, the agency of the City for which Plaintiff and Defendants Jordan and Webster work, then that suggestion is, like so many in their motion, absurd. As noted previously, and as the undisputed evidence shows, Defendant Jordan makes policy for the Tulsa Police Department on behalf of the City, thereby imposing liability on the City for violating Plaintiff's constitutional rights.

## XI. Arbitration Proceeding.[7]

Plaintiff would agree that the arbitrator's task is to determine whether the City breached the Collective Bargaining Agreement when it impermissibly punished Plaintiff for raising a religious objection to an unlawful order. The arbitrator is not deciding the constitutional issues presented in this case. Plaintiff would disagree, however, with any limitation placed upon the use of the sworn testimony provided during this hearing as those sworn statements may be admissible as factual evidence in this case. In fact, Defendants submitted such evidence in support of their "motion for judgment." (*See* Individual Defs.' Mot. for J. [Doc. 45]).

## XII. Motions *in Limine* and Rulings Thereon.

This is yet another strange request by Defendants. What is the point? This court has issued several orders and rulings in this case (*e.g.,* denying Plaintiff's leave to file a second amended complaint, issuing a scheduling order, adjourning settlement conferences, granting Defendants time to file their motions, etc.). How are any of these relevant to the facts or the constitutional claims asserted? And how would the rulings be used in any event? Defendants do not state, and Plaintiff is again at a loss as to what Defendants want from this court by way of a pretrial order on this "proposition." Consequently, it should be denied.

## CONCLUSION

Defendants' motion is long on generalities and short on specifics. Nonetheless, with regard to the specifics that can be gleaned (or perhaps assumed) from what Defendants were attempting to argue, the motion fails as a matter of law and should thus be denied in its entirety.

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[7] Defendants list "Arbitration Proceeding" as "Proposition 12." However, in their haste they incorrectly numbered their "Propositions," skipping number eleven. Consequently, Plaintiff lists "Arbitration Proceeding" as XI.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise*
Robert J. Muise, Esq. (MI Bar No. P62849)
P.O. Box 131098
Ann Arbor, Michigan 48113
Tel (734) 636-3756 / Fax (801) 760-3901
*Admitted *pro hac vice*

WOOD, PUHL & WOOD, PLLC

/s/ Scott Wood
Scott B. Wood, OBA No. 12536
2409 E. Skelly Drive, Suite 200
Tulsa, Oklahoma 74105
Tel (918) 742-0808 / Fax (918) 742-0812

THOMAS MORE LAW CENTER

/s/ Erin Mersino*
Erin Mersino, Esq. (MI Bar No. P70866)
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, Michigan 48106
Tel (734) 827-2001 / Fax (734) 930-7160
*Admitted *pro hac vice*

*Attorneys for Plaintiff Fields*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 7, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

/s/Robert J. Muise
Robert J. Muise, Esq.