

**Kirtley Wells Law Office**

3800 N. Central Avenue, Suite 615  
Phoenix, Arizona 85012  
(602) 264-7424

1 Trisha Kirtley, Esq. (013905)  
2 Kirtley Wells Law Office  
3 3800 N. Central Ave., Suite 615  
4 Phoenix, AZ 85012  
5 Telephone: 602-264-7424

6 Attorney for Plaintiff

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 Kimberly Johnson,

10 Plaintiff,

11 v.

12 Town of Youngtown, Dave Evans and  
13 Greg Hunter,

14 Defendants.

**Cause No.:**

**COMPLAINT**

**(Jury Trial Demanded)**

17 This action is based on unlawful employment practices on the basis of sex and  
18 retaliation and seeks to provide appropriate relief to Kimberly Johnson who was  
19 adversely affected by such practices. Kimberly Johnson alleges that Defendants  
20 violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et*  
21 *seq.* (“Title VII”) and other common law actions when Defendants discriminated  
22 against her because of her sex and that she suffered retaliation as a result of her  
23 opposition to Defendants’ unlawful discrimination against her.  
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**JURISDICTION AND VENUE**

1  
2 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331,  
3 1337, 1343, and 1345 to redress the unlawful deprivation of Plaintiff’s rights secured,  
4 guaranteed, and protected by federal law.  
5

6 2. This action is authorized and instituted pursuant to Title VII of the Civil  
7 Rights Act of 1964 (“Title VII”), 42 U.S.C. §2000e(f)(1) and (3), pursuant to Section  
8 102 of the Civil Rights Act of 1991, 42 U.S.C. §1983, 42 U.S.C. §1985.  
9

10 3. Venue is proper pursuant to 29 USC § 1132(e).

11 4. The employment practices alleged below to be unlawful were and are now  
12 being committed within the jurisdiction of the United States District Court for the  
13 District of Arizona.  
14

**PARTIES**

15  
16 5. Plaintiff Kimberly Johnson, at all relevant times, was and continues to be a  
17 resident of Maricopa County, Arizona.  
18

19 6. Defendant Town of Youngtown (“Defendant Youngtown” or  
20 “Youngtown”), at all relevant times to this action, conducted and continues to conduct  
21 business in the State of Arizona.  
22

23 7. At all times relevant, Defendant Youngtown has continuously had at least  
24 forty (40) or more employees.  
25  
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1           8. Defendant Dave Evans, at all relevant times, was and continues to be a  
2 resident of Maricopa County, Arizona.

3  
4           9. Defendant Greg Hunter, at all relevant times, was and continues to be a  
5 resident of Maricopa County, Arizona.

6           10. More than one hundred and eighty days (180) days prior to the institution  
7 of this lawsuit, Kimberly Johnson filed a charge of discrimination against the Town of  
8 Youngtown with the Equal Employment Opportunity Commission (“EEOC”).  
9

10           11. The Town of Youngtown has engaged in unlawful employment practices  
11 in violation of Title VII by discriminating against Kimberly Johnson in the terms and  
12 conditions of her employment and retaliating against her for opposing unlawful  
13 discrimination.  
14

15           12. The effect of the practices complained of herein above has been to  
16 deprive Kimberly Johnson of equal employment opportunities and otherwise  
17 adversely affect her status as an employee because of her sex and because of her  
18 opposition to Youngtown’s unlawful employment practices.  
19

20                           **GENERAL ALLEGATIONS**

21           13. On June 25, 1996, Kimberly Johnson (“Chief Johnson,” “Johnson,” or  
22 “Plaintiff”) was hired by the Youngtown Police Department as a Police Aide.  
23

24           14. Over the next twelve (12) years Johnson was promoted to Patrolman,  
25 Police Detective, Sergeant, and Lieutenant.  
26

1           15. On June 19, 2008, Lieutenant Johnson was given a Personnel Evaluation  
2 (“Evaluation”) by the Youngtown Chief of Police. The Evaluation rated Johnson’s  
3 performance with the highest possible rating: “meets or exceeds standards” and  
4 recommended her for a promotion to Chief of Police.  
5

6           16. At the time of evaluation, Lieutenant Johnson had been a supervisor  
7 within the department for approximately 10 years. During those 10 years, Johnson’s  
8 work performance was not questioned or scrutinized and she was rated outstanding  
9 or successful in all performance areas.  
10

11           17. On July 1, 2008, Johnson was promoted to the position of Youngtown  
12 Chief of Police with a one (1) year probationary period, scheduled to end on June 30,  
13 2009.  
14

15           18. Johnson was Youngtown’s first female Chief of Police.

16           19. Johnson reported to Lloyce Robinson, Youngtown’s Town Manager  
17 (“Robinson” or “Town Manager”).  
18

19           20. Defendant Greg Hunter (“Hunter”) and Defendant Dave Evans  
20 (“Evans”) were Police Sergeants under Chief Johnson’s command.

21           21. Almost immediately after assuming her position as Chief of Police  
22 several members of the police force, including Defendants Dave Evans and Greg  
23 Hunter, engaged in a campaign to have Chief Johnson removed as Chief of Police.  
24  
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1           22.     At the urging and encouragement of Sergeants Evans and Hunter,  
2 Youngtown police officers complained about, grieved, and openly disrespected  
3 almost every decision or policy made by Chief Johnson. Chief Johnson’s directives  
4 were disobeyed, and in many cases, some of the officers were insubordinate.  
5

6           23.     Chief Johnson’s superior, Robinson, failed to support Chief Johnson in  
7 enforcing the Police Department’s policies and personnel actions.  
8

9           24.     Robinson, instead, attempted to appease the individual male officers  
10 despite the fact that their complaints and grievances regarding Chief Johnson were  
11 without merit and/or rooted in illegal discriminatory animus against Johnson because  
12 she was a female.  
13

14           25.     The failure of the Town Manager (Robinson) to support Chief  
15 Johnson’s efforts to perform her duties as Chief of Police undermined Johnson’s  
16 authority and empowered the officers to continue their campaign against Chief  
17 Johnson, in effect encouraging the recalcitrant officers to openly defy Johnson.  
18

19           26.     On October 27, 2008, Sergeant Hunter delivered a letter to the Mayor  
20 of the Town of Youngtown (“No Confidence Letter”) signed by nine members of the  
21 Youngtown Police Department (“Officers”), including Sergeants Hunter and Evans  
22 that asserted, “[d]ue to the hostile working environment, lack of leadership and the  
23 emotional instability, we, the undersign[ed], no longer have the confidence in Kim  
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1 Johnson’s ability to lead the Youngtown Police Department.” The nine Officers  
2 constituted the total active patrol force on October 27, 2008.

3  
4 27. As a result of the No Confidence Letter, the Town of Youngtown  
5 retained Traaen & Associates (“Traaen”) to conduct a Fact Finding Investigation  
6 (“Investigation”) regarding the allegations in the No Confidence Letter against Chief  
7 Johnson.

8  
9 28. Specifically, Traaen was charged with investigating whether the  
10 allegations in the No Confidence Letter were true that Chief Johnson 1) “created a  
11 hostile work environment,” 2) displayed emotional instability,” and 3) exhibited a  
12 lack of leadership.”

13  
14 29. The investigation also sought to determine whether all of the Officers  
15 actually had confidence in Johnson’s ability to lead when she was promoted to Chief  
16 of Police and whether the Officers no longer had confidence in her ability to lead.

17  
18 30. After interviewing the nine Officers regarding the specific allegations  
19 in the No Confidence Letter, Traaen concluded that the No Confidence Letter did not  
20 represent a unanimous shared opinion about Chief Johnson

21  
22 31. Traaen also concluded that all of the Officers that signed the Letter did  
23 not do so voluntarily based in part on the interview responses when at least one or  
24 more of the officers interviewed responded that:

- Chief Johnson did not create a hostile work environment for any of the Officers;

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- Chief Johnson did not display emotional instability;
- Chief Johnson did not exhibit a lack of leadership;
- Chief Johnson was not the focus/issue of his/her concerns regarding retaliation;
- His/her concerns regarding retaliation were directed at the Town of Youngtown’s administration and elected officials, as opposed to Chief Johnson;
- S/he did not have “strong opinions” that a hostile work environment existed at the Youngtown Police Department;
- He had not lost total confidence in Chief Johnson.
- He did not have personal knowledge of the accusations in the No Confidence Letter, but assumed the accusations were true because of what “others” were stating.
- He signed the No Confidence Letter out of a sense of “unity” and felt “caught in the middle.”
- If asked again to sign the No Confidence Letter, he would not sign the No Confidence Letter.

32. Traaen’s Investigation also concluded that the allegations against Chief Johnson did not have any merit and that the Officers did not afford Chief Johnson a “full, fair and unbiased opportunity to earn their confidence in her ability to lead.”

33. The Investigation determined that, while a hostile work environment on the basis of gender did indeed exist in the Youngtown Police Department, *Chief Johnson* was the victim of the hostile work environment as opposed to the perpetrator.

1           34.   Traaen concluded that the hostile work environment in which Chief  
2 Johnson was a victim was based on the unpleasant and dysfunctional environment of  
3 the entire department.

4  
5           35.   After the Investigation, members of the police force made defamatory  
6 and degrading statements on an Internet web page regarding Chief Johnson,  
7 including false allegations regarding Chief Johnson's personal life, past work history,  
8 and assertions the Investigation by Traaen was biased and had a pre-determined  
9 outcome.

10  
11           36.   The Town of Youngtown had notice of the unprofessional and  
12 defamatory conduct by members of the police department.

13  
14           37.   The Town of Youngtown did not discipline and/or reprimand the  
15 members of the police department responsible for the Web page.

16           38.   Chief Johnson was suspended and not permitted to return to work until  
17 more than one week after November 7, 2008, the date Traaen's final Fact Finding  
18 Report was submitted to the Town of Youngtown.

19  
20           39.   After Chief Johnson returned to work, Robinson discouraged Chief  
21 Johnson from disciplining Officers under Johnson's command because Robinson  
22 was fearful that it would cause bad publicity.

23  
24           40.   For example, Chief Johnson gave a written disciplinary notice to an  
25 officer for disobeying an order which the Officer claimed was retaliation for signing  
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1 the No Confidence Letter. Although Robinson acknowledged that the write-up was  
2 appropriate, she questioned, “why did you [Chief Johnson] have to write him up  
3 now?”  
4

5 41. On May 28, 2009, Robinson stripped Chief Johnson of her authority by  
6 issuing a change of command removing all personnel responsibilities from Chief  
7 Johnson to one of her male subordinates “until further notice.”  
8

9 42. Robinson did not define “personnel issues” in her May 28, 2009  
10 directive.

11 43. Robinson also instructed Chief Johnson not to discipline any employee,  
12 and assigned personnel responsibilities to one of Chief Johnson’s male subordinates.  
13

14 44. On June 19, 2009, Robinson extended Chief Johnson’s probation for  
15 three (3) months, to end on September 30, 2009.

16 45. On September 2, 2009, four months after removing Chief Johnson’s  
17 authority, Robinson reiterated her May 28, 2009 mandate when she formally issued a  
18 Personnel Directive directing Johnson not to handle “personnel issues.” Robinson  
19 also reprimanded Chief Johnson for allegedly engaging in “unprofessional,  
20 unacceptable, and insubordinate” conduct when Johnson discussed a timesheet issue  
21 with an officer under Johnson’s command.  
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1           46.     Robinson did not thoroughly investigate the incident in which Chief  
2 Johnson was accused of “unprofessional conduct.” Instead, Robinson took the word  
3 of Chief Johnson’s male subordinate regarding the incident.  
4

5           47.     Robinson did not question Chief Johnson regarding the specifics of the  
6 alleged “unprofessional, unacceptable, and insubordinate” officer incident.  
7

8           48.     Robinson questioned only whether Chief Johnson had “cursed.”  
9

10          49.     In fact, Robinson had used similar “strong language” towards Chief  
11 Johnson many times during her Chief Johnson’s employment.  
12

13          50.     Prior to September 2, 2009, Chief Johnson had never been informed  
14 that she had inappropriately disciplined an employee.  
15

16          51.     On September 8, 2009, Chief Johnson requested Robinson clarify the  
17 September 2, 2009 Personnel Directive Memorandum by identifying Chief  
18 Johnson’s performance insufficiencies and the status of her employment.  
19

20          52.     Chief Johnson also requested Robinson to clarify how Johnson could  
21 perform her job duty of ensuring the accuracy of timesheets if she was not able to  
22 talk with the individual officers to resolve inaccuracies on the timesheets.  
23

24          53.     Robinson did not respond to Chief Johnson’s September 8, 2009  
25 requests for clarification regarding Johnson’s job status, performance expectations,  
26 and an assessment of Johnson’s insufficiencies.

1           54.    On September 11, 2009, Robinson sent Chief Johnson a Personnel  
2 Directive Memorandum which asserted that the police department had not responded  
3 to an incident in a timely manner. Robinson demanded to know if Chief Johnson  
4 had directed an officer to investigate the matter and if Johnson had reported the  
5 incident to the Code Compliance Officer or Town Marshall.  
6

7           55.    On September 14, 2009, Chief Johnson responded requesting Robinson  
8 to identify the activities or actions that constituted “personnel issues” and clarify the  
9 restrictions on Chief Johnson’s authority to address issues.  
10

11           56.    In turn, Robinson informed Chief Johnson that she could not be  
12 released from probation because of the pending investigation and that she had  
13 pending complaints from Chief Johnson’s subordinates.  
14

15           57.    On September 23, 2009, Robinson terminated Chief Johnson’s  
16 employment with the Town of Youngtown purportedly because Chief Johnson was  
17 not able to recognize her own deficiencies and/or correct them.  
18

19           58.    Johnson’s termination was because of her sex in violation of Title VII  
20 and in retaliation because Johnson opposed unlawful discrimination.

21           59.    Defendant Youngtown is independently responsible for the acts and  
22 omissions described above.  
23

24           60.    The acts and omissions of Hunter and Evans all occurred within the  
25 course and scope of their employment with Youngtown. Accordingly, Youngtown  
26

1 is vicariously liable for the acts of its agents and employees.

2           61. Plaintiff is entitled to punitive damages, as Defendants’ conduct was  
3 reckless and/or with malice and/or guided by an evil hand.  
4

5                           **Count I - Title VII, Sex Discrimination**  
6                           **Count II - 42 U.S.C. § 1983, Sex Discrimination**  
7                           **Count III - 42 U.S.C. § 1983, Sex Harassment**

8           62. Plaintiff hereby re-pleads and incorporates all allegations set forth  
9 above.

10           63. Defendant intentionally discriminated against Kimberly Johnson on  
11 account of her sex, in violation of Title VII of the Civil Rights Act of 1964, by  
12 denying her equal terms, conditions and privileges of employment.

13           64. Defendants intentionally harassed Kimberly Johnson  
14 because of her sex, female by denying her equal terms, conditions and privileges of  
15 her employment and the rights, privileges or immunities secured by the United States  
16 Constitution and laws

17  
18           65. The discrimination and harassment was offensive, severe, and  
19 pervasive.  
20

21           66. The discrimination and harassment continued after July 2008, when  
22 Chief Johnson reported to Robinson that the male members of the police department  
23 were openly disrespecting her, disobeying orders, and being insubordinate and after  
24 August 2008, when Johnson complained to Robinson that nothing had been done  
25 regarding the Traaen finding that she had been the victim of gender discrimination.  
26

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1           67.     The discrimination and harassment continued after November 5, 2008,  
2 after the Traaen Investigation concluded that Johnson was the victim of gender based  
3 discrimination.  
4

5           68.     Defendant Youngtown’s purported reasons for terminating Kimberly  
6 Johnson’s were a pretext to guise illegal discrimination  
7

8           69.     As a direct and proximate result of Defendants’ conduct, Kimberly  
9 Johnson suffered and continues to suffer damages in amounts to be proven at trial,  
10 including but not limited to embarrassment, pain and suffering, mental distress,  
11 ordeal, humiliation and emotional distress.  
12

13   **Count IV - Title VII, Retaliation**  
14   **Count V - 42 U.S.C. § 1983, Retaliation**

15           70.     Plaintiff hereby re-pleads and incorporates all allegations set forth  
16 above.  
17

18           71.     Defendants intentionally retaliated against Kimberly Johnson because  
19 she opposed unlawful sex discrimination, in violation of Title VII and 42 U.S.C. §  
20 1983 by denying her equal terms, conditions and privileges of her employment and  
21 the rights, privileges and immunities secured by the United States Constitution and  
22 laws.  
23

24           72.     Youngtown failed to promptly investigate the allegations discrimination  
25 made by Chief Johnson in July 2008.  
26

1           73.    Youngtown failed to promptly investigate and/or otherwise act regarding  
2 the allegations of discrimination against Chief Johnson reported to Youngtown by the  
3 Traaen Investigation in November 2008.  
4

5           74.    Defendants Youngtown failed to take prompt, effective, remedial action  
6 to correct the discrimination as required by law and the policies of the Town of  
7 Youngtown.  
8

9           75.    Amongst other things, Defendants retaliated against Johnson on  
10 September 23, 2009 by terminating Johnson's employment because of her opposition  
11 the discrimination and harassment.  
12

13           76.    As a direct and proximate result of Defendants' conduct, Kimberly  
14 Johnson suffered and continues to suffer damages in amounts to be proven at trial,  
15 including embarrassment, pain and suffering, mental distress, ordeal, humiliation and  
16 emotional distress.  
17

18                           **Count VI - Intentional Infliction of Emotional Distress**

19           77.    Plaintiff hereby re-pleads and incorporates all allegations set forth  
20 above.  
21

22           78.    The acts complained of above, were extreme and outrageous as to go  
23 beyond all possible bounds of decency.  
24

25           79.    As a direct and proximate result of Youngtown's extreme and  
26 outrageous conduct, Johnson has been harmed in an amount to be proven at trial.

1           80. As a direct and proximate result of Defendants’ conduct, Kimberly  
2 Johnson suffered and continues to suffer damages in amounts to be proven at trial,  
3 including embarrassment, pain and suffering, mental distress, ordeal, humiliation and  
4 emotional distress.  
5

6                   **Count VII - Defamation – Slander per se, Libel, and False Light**

7           81. Plaintiff hereby re-pleads and incorporates all allegations set forth  
8 above.  
9

10           82. Defendants, with reckless disregard for the truth, negligently and/or  
11 intentionally, made and published defamatory statements attacking Kimberly  
12 Johnson’s character and standing in the community and portraying her in a false  
13 light.  
14

15           83. Defendant Youngtown knew or should have known that its officers  
16 publicized highly offensive information on a website that portrayed Kimberly  
17 Johnson in a false light.  
18

19           84. As a direct and proximate result of the defamation Kimberly Johnson  
20 has suffered damages and will continue to suffer damages in amounts to be proven at  
21 trial.  
22

23                   **Count VIII - Interference With Contractual Relations**  
24                   **Count IX – Interference With Prospective Contractual Relations**

25           85. Plaintiff hereby re-pleads and incorporates all allegations set forth  
26 above.

1           86. Defendants’ unlawful interference with Kimberly Johnson’s  
2 employment constitutes Interference With Contractual Relations and/or Prospective  
3 Contractual Relations and their unlawful conduct prevented Kimberly Johnson from  
4 enjoying the full benefit of her employment.  
5

6           87. As a direct and proximate result of Defendants’ conduct, Kimberly  
7 Johnson suffered and continues to suffer damages in amounts to be proven at trial,  
8 including embarrassment, pain and suffering, mental distress, ordeal, humiliation and  
9 emotional distress.  
10

11           88. As a direct and proximate result of the unlawful interference Kimberly  
12 Johnson has suffered damages and will continue to suffer damages in amounts to be  
13 proven at trial.  
14

15                                   **Count X - 42 U.S.C. § 1985(3), Conspiracy**

16           89. On October 27, 2008, Defendants Evans and Hunter delivered the No  
17 Confidence Letter to the Mayor of Youngtown stating “we, the undersign[ed], no  
18 longer have the confidence in Kim Johnson’s ability to lead the Youngtown Police  
19 Department.  
20

21           90. Defendants Evans and Hunter solicited and obtained signatures from  
22 members of the Youngtown Police Department, although some officers did not agree  
23 with the content of the No Confidence Letter.  
24

25           91. Upon information and belief, Defendants Youngtown, Evans, and  
26



1 Hunter conspired with each other and/or with other employees of the Town of  
2 Youngtown against Kimberly Johnson to discriminate against her and, amongst other  
3 things, to harass and intimidate Johnson, to dissuade her from acting on their  
4 unlawful conduct, to retaliate against Johnson for opposing unlawful discrimination  
5 and to terminate Johnson's employment with the Town of Youngtown.

7           92. Upon information and belief, in furtherance of the conspiracy,  
8 Defendants Youngtown, Evans, Hunter and others continued to discriminate and  
9 harass Johnson, in violation of her right to be free from discrimination and retaliation  
10 by, including but not limited to, posting derogatory information regarding Johnson  
11 on an Internet website, fabricating incidences of insubordination and unprofessional  
12 conduct, influencing other employees against Johnson, speaking to Johnson in an  
13 unprofessional and/or harsh manner, misleading Johnson to believe that her reports  
14 of sex discrimination, and harassment because of sex would be handled in a fair,  
15 impartial and appropriate manner pursuant to the policies and procedures of the  
16 Town of Youngtown and the relevant state, local and federal laws, failing and/or  
17 refusing to investigate Johnson's complaints of sex discrimination and sex  
18 harassment, exposing Johnson to continued harassment and discrimination,  
19 retaliating against Johnson for reporting discrimination and chilling Johnson's ability  
20 to fully report the discrimination, not properly instructing Johnson in the policies,  
21 procedures and practices of her job, providing false information regarding Johnson's  
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1 work performance to provide the basis for eliminating her authority and termination,  
2 all depriving Johnson of her right to be free from discrimination.

3 93. As a direct and proximate result of Defendants conduct, the conspiracy,  
4 Johnson has suffered damages and continues to suffer damages in amounts to be  
5 proven at the time of trial.

6 94. Defendants' conduct was in reckless disregard and/or callous  
7 indifference of Johnson's federally protected rights.  
8

9 95. Defendants were motivated by malice and/or an evil motive.

10 96. Johnson is entitled to punitive damages.

11 **DEMAND FOR JURY TRIAL**

12 97. Plaintiff hereby requests a jury trial.  
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff respectfully requests that this Court:  
16

17 A. Grant a permanent injunction enjoining Defendant Youngtown and their  
18 officers, successors, assigns and all persons in active concerns or participation with  
19 them, from engaging in any employment practice, which discriminates on the basis of  
20 sex and which unlawfully retaliates against its employees;  
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1           B. Order Defendant Youngtown to institute and carry out policies, practices  
2 and programs which provide equal employment opportunities for female employees,  
3 and which eradicate the effects of its past and present unlawful employment practices;  
4

5           C. Order Defendants to make whole Kimberly Johnson, by providing  
6 appropriate back pay with prejudgment interest, in amounts to be determined at trial,  
7 and other affirmative relief necessary to eradicate the effects of its unlawful  
8 employment practices, including but not limited to, rightful placement;  
9

10           D. Order Defendant to pay damages for its breach and interference with  
11 Plaintiff's contractual relations and/or prospective contractual relations including  
12 without limitation, post judgment costs and attorney's fees, pursuant to, but not limited  
13 by Arizona Revised Statute §12-341 and §12-341.01, with interest on all such sums  
14 until paid in full.  
15

16           E. Order Defendants to pay front pay in an amount to be proven at trial;

17           F. Order Defendants to make whole Kimberly Johnson by providing  
18 compensation for past and future non-pecuniary losses resulting from the unlawful  
19 practices complained of above, including damages for emotional pain and suffering,  
20 including but not limited to anguish, distress, humiliation, embarrassment, anxiety,  
21 damage to reputation, and ordeal, in amounts to be determined at trial;  
22  
23

24           G. Order Defendants to pay Plaintiff punitive damages in an amount to be  
25 determined at trial;  
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H. Award Plaintiff her costs, attorney’s fees and pre-judgment and post judgment interest.

G. Grant such further relief as this Court deems just, necessary and proper.

DATED this 10<sup>th</sup> day of September 2010.

Kirtley Wells Law Office

By /s/Trisha Kirtley  
Trisha Kirtley  
3800 N. Central Avenue, Suite 615  
Phoenix, AZ 85012  
Attorney for Plaintiff