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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Emma Flippen,

) No. CV08-630-PHX-NVW

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Plaintiff,

) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**

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vs.

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Ashland Arms, LLC, an Arizona limited
liability company, dba Friendship Inn
Motel,

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Defendant.

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Plaintiff Emma Flippen brought suit against Ashland Arms LLC (“Ashland Arms”) alleging race discrimination in an employment contract and unlawful retaliation under 42 U.S.C. § 1981. (Doc. # 38.) Ashland Arms moved for dismissal as a sanction for discovery abuses by Flippen. (Doc. # 53). An evidentiary hearing on this motion took place on April 22, 2009. For the reasons explained in the following findings of fact and conclusions of law, the motion will be granted and the complaint dismissed.

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I. Findings of Fact

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A. The Allegations

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According to the allegations, Ashland Arms owns and operates a motel in downtown Phoenix called the Friendship Inn Motel (“Friendship Inn”). Emma Flippen was hired by Ashland Arms to work at the Friendship Inn as a desk clerk. Her immediate supervisor was Chris Burkhead, a white male who worked as a local motel manager for Ashland.

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1 In her complaint, Flippen describes reprehensible behavior on the part of Burkhead.
2 Flippen alleges that Burkhead abused her with racial slurs, physical aggression, and
3 discriminatory working conditions. Burkhead fired Flippen in 2004, allegedly in retaliation
4 for her complaints. According to Flippen, she was the only black motel employee at virtually
5 all relevant times and she was the only victim of the abusive policies and behaviors. Flippen
6 claims that she reported these problems to two other supervisors and no action was taken.

7 Ashland Arms disputes these instances of alleged discrimination. In opposition to
8 Flippen's motion for summary judgment, various Ashland Arms employees submitted
9 affidavits in which they deny Flippen's specific allegations of race discrimination. William
10 Dudley, a coworker who regularly observed interactions between Burkhead and Flippen,
11 states in his declaration that he never observed any of the alleged abuse. He denied that there
12 was anything unique about Flippen's working conditions; a restriction on using the
13 manager's kitchen applied to all employees alike. Other declarations indicate that Flippen
14 never reported problems to her supervisors. A police report relating to a physical altercation
15 between Flippen and Burkhead indicates nothing about racial bias. According to the
16 affidavits, Flippen was terminated for excessive personal use of the phone, interfering with
17 the work of other employees, and hosting personal visitors at work, all of which violated
18 company rules.

19 Flippen then brought this action alleging unlawful employment discrimination and
20 retaliation. After the commencement of discovery, Ashland Arms moved for dismissal with
21 prejudice on grounds of alleged misconduct by Flippen. Specifically, Ashland Arms
22 contends that Flippen brought her case under an assumed name and gave misleading sworn
23 responses to an interrogatory and deposition question relating to her criminal history and
24 identity.

1 Some of the facts presented are insufficient to support a finding that Flippen wilfully
2 submitted a false answer to interrogatories. For example, the Court gives no weight to
3 Ashland Arms’s claim that Flippen has prosecuted this case under a false name. Flippen’s
4 given name as it appears on her birth certificate is Emma Elmira Flippen. She has used
5 various names over the years, including the last name Jones, primarily because of changes
6 in marital status. Her usage of the name “Emma Flippen” in this case is consistent with good
7 faith and does not suggest wrongdoing. Similarly, it is unsurprising that a woman of such
8 limited education would forget or misremember the events and significance of events that are
9 24 years in the past, particularly where she suffered a stroke in the intervening years.
10 Therefore, the Court finds that Flippen did not wilfully misrepresent her criminal history with
11 respect to the 24 year-old misdemeanor conviction that resulted in no probation or
12 incarceration. The Court gives no weight to the showing that Ashland Arms has been unable
13 to locate some of the witnesses identified by Flippen.

14 As to the more recent criminal proceedings, however, the Court finds that Flippen’s
15 failure to submit a correct answer to the interrogatory was willful and in bad faith. Only two
16 weeks before she answered the interrogatory, Flippen was sentenced to probation for theft
17 of more than \$1,000 in government property, a crime punishable by up to ten years in prison
18 and a \$250,000 fine. 18 U.S.C. § 641. The evidence also shows that Flippen was so
19 traumatized by her initial arrest that she required hospitalization. In her live testimony,
20 Flippen offered no persuasive explanation for her failure to recount these events, claiming
21 only that she thought the answer was “no” because she thought the word “convicted” referred
22 to incarceration. In isolation, it is very plausible to suppose that a woman with a third- or
23 fourth-grade education would confuse the meaning of “convicted” with “incarcerated.” In
24 the context of this case, however, there are significant indicia of willful bad faith besides.

25 Flippen may have little formal education, but she has over sixty years of life
26 experience. To people of all ages and education levels, the significance of an arrest is
27 unmistakable. The attending physical restraint and portent of criminal proceedings are not
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1 merits; and (5) the availability of less drastic sanctions.” *Id.* (quoting *Anheuser-Busch, Inc.*
2 *v. Nat. Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995)). A finding of willfulness, fault,
3 or bad faith is required for dismissal to be proper. *Id.*

4 In this case, and in light of the finding of willful bad faith, all five factors favor
5 dismissal of the suit. The enforcement of good faith in discovery serves judicial economy
6 and the public’s interest in expeditious resolution of litigation because the willful
7 concealment of relevant evidence threatens the integrity and efficiency of every judicial
8 proceeding. The party seeking sanctions, in this case Ashland Arms, faced a substantial risk
9 of prejudice from Flippen’s conduct as already explained above. And although public policy
10 favors disposition of cases on their merits, the successful concealment of Flippen’s arrest and
11 conviction would have undermined the legitimacy of that very prospect. Finally, the Court
12 has determined that no less drastic sanction will suffice. To preclude Flippen’s own
13 testimony would doom her chances of success at trial and impose needless litigation costs
14 on Ashland Arms. As Flippen’s counsel conceded, monetary sanctions are unlikely to be
15 paid.

16 IT IS THEREFORE ORDERED THAT Defendant’s Motion for Discovery Sanctions
17 (doc. # 53) is granted. The complaint is dismissed as sanction for discovery misconduct.
18 The clerk shall enter judgment dismissing this action with prejudice and shall terminate the
19 case.

20 DATED this 14th day of May, 2009.

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23 Neil V. Wake
24 United States District Judge
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