

1 Court therefore adopts its recitation of Plaintiff’s allegations from its previous Order
2 (Doc. 24), and will simply set forth the additional allegations here.

3 Plaintiff was a Juvenile Probation Officer in Maricopa County, Arizona. On
4 June 27, 2012, two days after Plaintiff returned to work from leave under the Family and
5 Medical Leave Act (FMLA), Plaintiff’s Supervisor, Charlotte Shrum, distributed a new
6 caseload list that increased Plaintiff’s caseload area “from 5 zip codes in Central Phoenix
7 to 23 zip codes covering the north, west and south boundaries of Maricopa County.”
8 (TAC ¶ 11.) Plaintiff’s caseload area was the only one significantly altered among the
9 employees in his work unit. (TAC ¶ 11.) Plaintiff resigned the next day, and his caseload
10 was split up and distributed among the remaining employees in the work unit. (TAC
11 ¶ 11.) Four months later, his caseload was divided and given to two employees. (TAC
12 ¶ 11.) Before quitting, Plaintiff raised his concerns about the increased caseload area to
13 his Supervisor and the Acting Director, Richard Kokes, and he “felt after speaking to
14 [them] there would be no change to the caseload and that the powers that be had no
15 intentions of changing the caseload.” (TAC ¶ 13.)

16 The Court previously dismissed Plaintiff’s claims under Title I of the Americans
17 with Disabilities Act (“ADA”), finding that Plaintiff’s allegations that his caseload area
18 was significantly increased were insufficient to constitute constructive discharge as a
19 matter of law. (Doc. 24.) While the Court gave Plaintiff another opportunity to amend the
20 Complaint—his third—Plaintiff added only the allegations outlined above. Defendants
21 now move to dismiss Plaintiff’s claims under Rule 12(b)(6). (Doc. 26.)

22 Plaintiff again fails to allege sufficient facts for the Court to plausibly conclude
23 that he was constructively discharged under Ninth Circuit Court of Appeals case law. In
24 *Poland v. Chertoff*, the United States Customs Service, the plaintiff’s employer,
25 transferred the plaintiff from Portland, Oregon to Vienna, Virginia—resulting in
26 separation from his family—and took away his supervisory duties. 494 F.3d 1174, 1178
27 (9th Cir. 2007). The plaintiff accepted the transfer but quit his job five months later, three
28 years before his retirement date. *Id.* The district court concluded that the plaintiff’s

1 reassignment constituted a constructive discharge because “it resulted in separation from
2 his family and demotion to a nonsupervisory position” and a person in the plaintiff’s
3 circumstances “would have reasonably believed the reassignment was a ‘career-ending’
4 event that compelled him to retire earlier than he planned.” *Id.* at 1179.

5 The Ninth Circuit reversed the district court, concluding as a matter of law that the
6 plaintiff was not constructively discharged because the record did not show that the
7 plaintiff’s working conditions “were so poor that they trumped his motivation to earn a
8 living.” *Id.* at 1185. In so holding, the court noted that a finding of constructive discharge
9 cannot be based on an employee’s subjective preferences and does not arise when an
10 employee quits without giving his employer a reasonable chance to work out issues. *Id.* at
11 1184-85. The constructive discharge inquiry is objective and turns on whether a
12 reasonable person would find the working conditions so intolerable or egregious that the
13 person would feel compelled to resign, not whether the plaintiff subjectively called the
14 conditions “a career ender,” as in *Poland*, or “egregious,” as in the case now before the
15 Court. *See id.*

16 Plaintiff’s new allegations in the TAC do nothing to change the Court’s conclusion
17 in its prior Order. (*See* Doc. 24.) While Plaintiff has added allegations that no other
18 Probation Officer had such an “egregious caseload” and that, after Plaintiff quit, the
19 caseload was divided among multiple Probation Officers, Plaintiff’s underlying
20 allegation—that his caseload territory had increased significantly—still does not rise to
21 the level of constructive discharge when viewed objectively. *See Poland*, 494 F.3d at
22 1185. Furthermore, while Plaintiff alleges he received no relief from the expanded
23 caseload territory when he raised concerns about it to his Supervisor on the day she
24 assigned it to him, he quit the next day without giving his employer almost any chance to
25 work out any issues with the new assignment. Under the Ninth Circuit precedent, the
26 Court must conclude that Plaintiff’s allegations regarding his work conditions are not
27 sufficient to state a claim based on constructive discharge.

28

