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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Robert McBurnie,  
10 Plaintiff,

11 vs.

12 City of Prescott et al,  
13 Defendants.  
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No. CV 09-08139-PCT-FJM

**ORDER**

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16 We are now advised that settlement was not reached at the conference before Magistrate  
17 Judge Duncan on September 26, 2013 (doc. 196). Status Report of Oct. 10, 2013 (doc. 197).  
18 Accordingly, all that remains are further proceedings on remanded claims:

19 1. McBurnie’s First Amendment retaliation claim was remanded for “a renewed motion  
20 for summary judgment on the basis of the evidentiary record presented at trial.”  
21 Memorandum of Mar. 13, 2013 at 3 (doc.182).

22 2. McBurnie’s FLSA retaliation claim was remanded for trial to add actions short of  
23 discharge. Id. at 4.

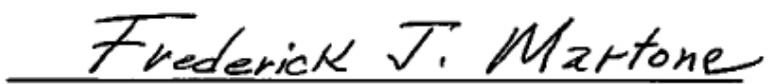
24 3. McBurnie’s Negligence claim (for emotional distress) was remanded for trial. Id. at  
25 6.

26 It is therefore ORDERED that defendants’ motion for summary judgment limited to the  
27 trial record on the First Amendment retaliation claim shall be filed no later than November  
28 27, 2013. Plaintiff’s Response shall be filed no later than December 27, 2013. Defendants’

1 Reply shall be filed no later than January 13, 2014.

2 It is further ORDERED that the parties shall file a proposed pretrial order (in our format)  
3 no later than February 14, 2014; that the Final Pretrial Conference shall be held on February  
4 19, 2014 at 2:00 PM; and, that the case shall be tried to a jury on March 3, 2014 at 9:00 AM  
5 for no longer than 4 days. Whether the case shall be tried in Prescott or Phoenix shall depend  
6 on courtroom availability and other factors.

7 DATED this 29<sup>th</sup> day of October, 2013.

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10 **Frederick J. Martone**  
11 **Senior United States District Judge**

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