

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ALI ABOUBAKER,

Plaintiff,

Case No.

v.

Hon.

COUNTY OF WASHTENAW;  
DAVID SHIRLEY, in his individual  
and official capacity, RICHARD FERRELL,  
in his individual and official capacity,

Mag.

Defendants.

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DAVID M. BLANCHARD (P67190)  
EDWARD A. MACEY (P72939)  
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BLANCHARD & WALKER, P.C.  
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**COMPLAINT AND JURY DEMAND**

NOW COMES Plaintiff, ALI ABOUBAKER, by and through his attorneys, NACHT, ROUMEL, SALVATORE, BLANCHARD & WALKER P.C., and hereby complains of Defendants COUNTY OF WASHTENAW, DAVID SHIRLEY and RICHARD FERRELL as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Ali Aboubaker (“Plaintiff” or “Mr. Aboubaker”) is a resident of Ann Arbor, Michigan in the County of Washtenaw.

2. Mr. Aboubaker is an Arab American; he is an African American person of Tunisian origin. He is Muslim.

3. Defendant County of Washtenaw (“Defendant” or “Washtenaw County”) is a public agency with its principal place of business in Ann Arbor, Washtenaw County, Michigan.

4. Defendant David Shirley (“Defendant” or “Shirley”) was at all times relevant a manager of Mr. Aboubaker’s department. He is sued in his individual and official capacity.

5. Defendant Richard Ferrell (“Defendant” or “Ferrell”) was at all times relevant Mr. Aboubaker’s supervisor. He is sued in his individual and official capacity.

6. Mr. Aboubaker began working for the Washtenaw County on September 30, 1991 and was terminated on July 17, 2008.

7. The events described in this lawsuit occurred primarily in Ann Arbor, Washtenaw County, Michigan.

8. The jurisdiction of this court is invoked pursuant to 42 U.S.C §1981 and 42 U.S.C § 1983. The court has pendant jurisdiction over Mr. Aboubaker’s claims under the Elliott-Larsen Civil Rights Act, MCL § 37.2201 *et seq.* (“ELCRA”) since the Elliott-Larsen Civil Rights Act claims derive from the same set of facts.

9. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. § 1331 and over state claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391, as it is the district where the Plaintiff lives, Defendants conduct business, and the events giving rise to Plaintiff’s claims took place.

11. The amount in controversy exceeds \$75,000.

12. Mr. Aboubaker made a complaint to the Equal Employment Opportunity Commission ("EEOC") on or about June 18, 2008. The EEOC found cause and turned the case over to the Department of Justice for possible litigation.

13. If and when Mr. Aboubaker is issued a right to sue letter from the EEOC, he anticipates adding claims under the Civil Rights Act of 1964, as Amended in 1991.

### **GENERAL ALLEGATIONS**

#### *Harassed and Discriminated Against as an Arab American*

14. Mr. Aboubaker was an employee of Washtenaw County for 17 years.

15. Mr. Aboubaker held four advanced degrees, including a degree in mechanical engineering from a college in Tunisia, a degree in engineering graphics from Western Michigan University and two degrees from Kalamazoo Valley Community College in mechanical engineering and mechanical engineering technology. Additionally, he obtained approximately 79 credits from Washtenaw Community College.

16. Mr. Aboubaker originally was hired as a bus driver and advanced to the position of Maintenance Technician II.

17. After September 11, 2001, and continuing to the time of his termination, Mr. Aboubaker faced severe harassment from his supervisors and co-workers on the basis of his race, religion and national origin.

18. William Howe ("Howe"), who was one of Mr. Aboubaker's supervisors off and on from 2000 until 2006, called him a "terrorist", "Osama", "Bin Laden" and "al quida" right to his face. His co-workers did this as well.

19. Mr. Aboubaker pleaded with Howe to stop the harassment, but to no avail. He then pleaded with Shirley to stop the harassment and informed him that Howe called him a terrorist. Shirley failed to take any action.

20. Ferrell, who became Mr. Aboubaker's supervisor for the last few years of his employment, continued the harassment and discriminatory treatment of him.

21. Under Ferrell's supervision, co-workers called Mr. Aboubaker a terrorist and other derogatory names right to his face. In fact, at a leadership seminar, while Ferrell was his supervisor, a co-worker called him a terrorist in front of everyone and his co-workers laughed at him.

22. Further, Mr. Aboubaker had reason to believe Ferrell and additional employees were calling him a terrorist and making other discriminatory comments behind his back.

23. Mr. Aboubaker complained of the harassment from Howe and then Ferrell and his co-workers to Shirley at least two or three times a year from the time it started until his termination. Shirley failed to take any action.

24. In 2005, Mr. Aboubaker was interviewed by Rebecca Curry in Human Resources, as part of an internal investigation after Shirley made a racial comment about another African American employee. Mr. Aboubaker informed her of the harassment and discriminatory treatment he suffered from his supervisors and co-workers. Again, no action was taken in response to Mr. Aboubaker's complaints.

*Mr. Aboubaker's Muslim Faith Was Not Accommodated*

25. As a practicing Muslim, Mr. Aboubaker takes time during the middle of the day to pray and reserves Friday as his day of Sabbath.

26. Throughout his employment and continuing to the time of his termination, Mr. Aboubaker's supervisors interfered with his mid-day prayer time and Friday worship, even at times Mr. Aboubaker was off work.

27. Mr. Aboubaker practiced his mid-day prayer during lunch for approximately 15 minutes. He saved his breaks and lunch time to use for his special worship on Fridays which took place from approximately 1:30pm until 2:15pm. However, Ferrell would schedule meetings at lunch and often would call Mr. Aboubaker on his cell phone with job assignments during that time.

28. One time Ferrell scheduled such a meeting and Mr. Aboubaker told him he could not attend. Mr. Ferrell responded that he was providing lunch. Mr. Aboubaker again refused and reminded Mr. Ferrell that it was his prayer time. Mr. Ferrell got angry. Shortly afterwards, Mr. Aboubaker received an unfair write-up for something unrelated.

29. In late 2005, the department went from a five-day to a four-day workweek. Everyone filled out a form requesting the weekday he or she preferred to take off. Mr. Aboubaker requested Friday. Nearly everyone else besides Mr. Aboubaker received Friday off.

30. After he complained, Mr. Aboubaker received Friday off. However, Ferrell continued to call him in on Friday mornings to request that he work.

31. Despite repeatedly requesting that Mr. Aboubaker work during times that conflicted with practicing his religion, Mr. Aboubaker was routinely denied overtime opportunities.

32. Throughout his employment and continuing to the time of his termination, Mr. Aboubaker's supervisors unfairly refused to offer him overtime before less senior employees.

*Mr. Aboubaker Is Twice Unfairly Demoted*

33. In late 2005, after Mr. Aboubaker had advanced to the position of Maintenance Technician II, the job requirements were amended to include a written and hands-on skills test.

34. The written test was scheduled during Mr. Aboubaker's vacation without his knowledge. Shirley called him and demanded that he return for the test or he would lose his job.

35. Mr. Aboubaker rushed back to take the test. He requested large print and was denied.

36. He later learned that another Maintenance Technician, a white male, was not required to return early from his vacation to take the test and that he was given an accommodation that allowed manager Matthew Higgins to read the test to him.

37. At least two other Maintenance Technicians, also white males, refused to take the test and did not suffer any adverse employment action.

38. Shortly thereafter, Mr. Aboubaker was required to take a hands-on test to qualify for the position of Maintenance Technician II, even though he had already obtained that title.

39. The hands-on tests was very subjective and others were given extra time or chances to correct their mistakes, especially Woods.

40. However, Mr. Aboubaker did as well or better than others on the written and hands-on tests.

41. On or about February 19, 2006, Shirley informed Mr. Aboubaker that he allegedly did not pass the written test. Mr. Shirley then demoted Mr. Aboubaker to Maintenance Technician I.

42. Mr. Aboubaker requested to see his test, but that request was denied.

43. After his demotion, Mr. Aboubaker complained to Shirley of the harassment and discriminatory treatment. Instead of addressing his concerns, Shirley told him it was only a matter of time before Mr. Aboubaker would be fired.

44. In January 2008, Mr. Aboubaker was reassigned to the warehouse to work as a general laborer.

*Mr. Aboubaker Is Again Passed Over for Promotion and Terminated*

45. Throughout his employment and continuing to the time of his termination, Mr. Aboubaker applied for numerous positions over the years and was passed over for mostly white candidates with similar or less experience than Mr. Aboubaker.

46. On or about June 3, 2008, Mr. Aboubaker applied for the position of Drain Inspector I, for which he was well qualified.

47. Defendants hired someone with less experience, a white male outside of the bargaining union who worked as an intern for approximately 6 months to a year.

48. On or about June 18, 2008, Mr. Aboubaker filed a complaint with the EEOC.

49. On July 17, 2008, Mr. Aboubaker's employer terminated him.

50. Defendants retaliated against Mr. Aboubaker for complaining about his harassment and discriminatory treatment by unfairly disciplining him, failing to give him overtime before less senior employees, demoting him, failing to promote him, and then terminating him when he filed a complaint with the EEOC.

**COUNT I – 42 USC § 1981 –  
DISCRIMINATION ON THE BASIS OF RACE/NATIONAL ORIGIN**

51. Plaintiff hereby realleges and incorporates by reference paragraphs 1-50 above.

52. As an Arab American person who is African American and of Tunisian origin, Mr. Aboubaker is a protected person under 42 U.S.C § 1981.

53. Defendants' demotions, failure to promote, and termination of Mr. Aboubaker were motivated in substantial part by the fact that Mr. Aboubaker is an Arab American, specifically an African American of Tunisian origin.

54. Defendants' actions as described herein evince a policy or custom of discriminating against employees on the basis of race and/or national origin.

55. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**COUNT II – 42 USC § 1981 –  
RETALIATION**

56. Plaintiff hereby realleges and incorporates by reference paragraphs 1-55 above.



57. Defendants retaliated against Mr. Aboubaker for complaining about his harassment and discriminatory treatment by unfairly disciplining him, failing to give him overtime before less senior employees, demoting him, failing to promote him, and then terminating him after he filed a complaint with the EEOC.

58. Defendants' actions as described herein evince a policy or custom of discriminating against employees on the basis of race and/or national origin.

59. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**COUNT III – 42 USC § 1983  
VIOLATION OF EQUAL PROTECTION CLAUSE**

60. Plaintiff hereby realleges and incorporates by reference paragraphs 1-59 above.

61. Defendants' actions in demoting, refusing to promote and terminating Mr. Aboubaker on the basis of his race and national origin abridge his right to equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution.

62. Furthermore, Defendants failed to respond to repeated complaints by Mr. Aboubaker about adverse treatment based on his race, national origin, and religion.

63. These actions were taken intentionally and based on Mr. Aboubaker's race, national origin, and religion.

64. In addition, the acts by the individual defendants, including the failure of management employees to respond to repeated complaints of discrimination by Mr.

Aboubaker, evince a failure to train employees and a policy or custom of discriminating against employees on the basis of race, national origin, and religion.

65. Defendant Washtenaw County had repeated opportunities to stop the discrimination against Mr. Aboubaker, but instead of responding in an appropriate manner, instead demoted and then terminated him based on his race, ethnicity, and national origin.

66. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**COUNT IV – 42 U.S.C. § 1983 –  
FIRST AMENDMENT RETALIATION**

67. Plaintiff hereby realleges and incorporates by reference paragraphs 1-66 above.

68. Mr. Aboubaker had a constitutional right, under the First Amendment, to speak on matters of public concern.

69. Mr. Aboubaker exercised his First Amendment rights by speaking on a matter of public concern, namely, harassment and discrimination by county employees against another county employee on the basis of his race, national origin and religion.

70. In response to these continued complaints, Defendants refused to promote, demoted, and eventually terminated Plaintiff's employment.

71. In addition, the acts by the individual defendants evince a failure to train employees and a policy or custom of discriminating against employees on the basis of exercising their First Amendment rights.

72. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**COUNT V – ELLIOT-LARSEN CIVIL RIGHTS ACT --  
DISCRIMINATION ON THE BASIS OF RACE/NATIONAL ORIGIN**

73. Plaintiff hereby realleges and incorporates by reference paragraphs 1-72 above.

74. Mr. Aboubaker is an Arab American person who is African American and of Tunisian origin.

75. Defendant's demotions, failure to promote and termination of Mr. Aboubaker were motivated, in substantial part, by the fact that Mr. Aboubaker is an Arab American.

76. As a direct and proximate result of Defendant's discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**COUNT VI – ELLIOT-LARSEN CIVIL RIGHTS ACT –  
DISCRIMINATION ON THE BASIS OF RELIGION**

77. Plaintiff hereby realleges and incorporates by reference paragraphs 1-76 above.

78. Mr. Aboubaker is a practicing Muslim.

79. Defendant's demotions, failure to promote, and termination of Mr. Aboubaker were motivated, in substantial part, by the fact that Mr. Aboubaker is Muslim.

80. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**COUNT VII – ELLIOT-LARSEN CIVIL RIGHTS ACT  
RETALIATION**

81. Plaintiff hereby realleges and incorporates by reference paragraphs 1-80 above.

82. Defendants retaliated against Mr. Aboubaker for complaining about his harassment and discriminatory treatment by unfairly disciplining him, failing to give him overtime before less senior employees, demoting him, failing to promote him, and then terminating him after he filed a complaint with the EEOC.

83. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**COUNT VIII – ELLIOT-LARSEN CIVIL RIGHTS ACT  
HOSTILE WORK ENVIRONMENT**

84. Plaintiff hereby realleges and incorporates by reference paragraphs 1-83 above.

85. Mr. Aboubaker is an Arab American person who is African American and of Tunisian origin.

86. Mr. Aboubaker is a practicing Muslim.

87. Mr. Aboubaker was subjected to unwelcome communication and conduct by Defendants on the basis of his protected status.

88. The unwelcome conduct substantially interfered with Mr. Aboubaker's employment and created an intimidating, hostile and offensive work environment.

89. As a direct and proximate result of Defendants' discriminatory conduct, Plaintiff was harmed, and continues to be harmed, in that he has suffered economic and non-economic loss, including but not limited to, lost wages, damage to professional reputation, emotional distress, outrage and humiliation.

**RELIEF REQUESTED**

WHEREFORE, Plaintiff Ali Aboubaker prays for relief from this honorable Court in the form of back pay, front pay, injunctive relief, declaratory judgment, punitive damages, attorneys fees under Elliot Larsen and all other such relief as the Court deems just and proper, along with a post-judgment award of reasonable fees and costs.

Respectfully submitted,  
NACHT, ROUMEL, SALVATORE,  
BLANCHARD AND WALKER, P.C.

s/ David M. Blanchard  
David M. Blanchard (P67190)  
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Dated: July 13, 2011

**DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff, Ali Aboubaker, by and through his attorneys, Nacht, Roumel, Salvatore, Blanchard & Walker, P.C. and hereby demands a jury trial in the above-captioned matter.

Respectfully submitted,  
NACHT, ROUMEL, SALVATORE,  
BLANCHARD AND WALKER, P.C.

s/ David M. Blanchard  
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Dated: July 13, 2011