

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**JOHN BENITEZ, JR .,**

Plaintiff,

v.

Case No.

**CITY OF DEARBORN**, *a Michigan  
municipal corporation.*

HON.

Defendant.

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**Deborah L. Gordon PLC**  
**Deborah L. Gordon (P27058)**  
**Sarah S. Prescott (P70510)**  
Attorneys for Plaintiff  
33 Bloomfield Hills Parkway, Suite 275  
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248-258-2500

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**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Plaintiff **JOHN BENITEZ, JR.** by his attorneys **Deborah L. Gordon PLC**, complains against Defendant as follows:

**Jurisdiction and Parties**

1. This is an action for sex/gender discrimination in violation of Title VII of the Civil Rights Act of 1964, *as amended*, 42 USC §2000 *et seq.*, and violation of the Equal Protection Clause of the United States Constitution, arising out of Plaintiff's employment with Defendant.
2. Plaintiff **JOHN BENITEZ, JR.** is a resident of Oakland County, which is within the Eastern District of Michigan.
3. Defendant **CITY OF DEARBORN** is a Michigan municipal corporation located in

Wayne County, and within the Eastern District of Michigan.

4. The events giving rise to this action occurred in the Eastern District of Michigan.
5. Plaintiff, through his counsel, was for the first time put on notice on October 19, 2011 that a Right to Sue letter had been issued by the Equal Employment Opportunity Commission. Until that time, Plaintiff had no knowledge of any such letter issuing and had not received any Right to Sue letter.
6. This Court's jurisdiction over this matter derives from 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3). Venue is appropriate in this Court under 28 U.S.C. § 1391 and 42 U.S.C. § 2000e-5(f)(3) because the unlawful employment practices giving rise to this action were committed in the Eastern District of Michigan, and the Plaintiff resides in this District.

#### **Background Facts**

7. Plaintiff repeats and realleges Paragraphs 1 through 6 set forth above with the same force and effect as though set forth in full herein.
8. Benitez is a highly skilled and experienced male registered nurse. Prior to the events at issue, he had served this country in Vietnam as a U.S. Army medic; he had worked for over thirty years as a staff nurse for General Motors.
9. Benitez began working at Defendant's Health Department as a nurse in or about September 2010. Upon his hire, Defendant rated Benitez as "highly qualified" when it came to his education, experiences, and personal and professional qualities. Benitez's former supervisors had characterized him as an "outstanding," "reliable," "personable" nurse overall, with "excellent" skills.
10. In the interview process, Benitez scored higher than the other candidates.

11. Benitez's performance while working for Defendant was, at all times, satisfactory or better.
12. The State of Michigan is home to the largest single concentration of Muslim Americans in North America, and the City of Dearborn is widely reported to be made up of more than 30% Muslim citizens. The city is the location of the Islamic Center of America, the largest mosque in North America.
13. In the course of his employment with Defendant, Benitez was called on to treat patients of all genders, ages, races, ethnicities and religions. Benitez was fully capable of providing exceptional service to all his patients, regardless of these factors, and he did so and greatly enjoyed doing so.
14. Shortly after he began working for Defendant, a female nursing supervisor and adherent to the Muslim faith, instructed Benitez to cease treating those women she deemed to be conservative Islamic women, specifically any female wearing a head scarf. Instead, the supervisor directed Benitez to transition such patients to her for care.
15. Benitez fully complied with this instruction.
16. On or about November 17, 2010, a doctor in the Health Department observed Benitez following this instruction and questioned him about the cumbersome and unusual practice of taking women wearing a head scarf to the nursing supervisor for care, rather than treating them himself.
17. In specific, the doctor observed Benitez transitioning a female patient who simply needed a flu shot to the nursing supervisor, rather than administering the shot himself.
18. Benitez advised the doctor that the nursing supervisor had instructed him not to

treat female patients wearing head scarves.

19. The doctor indicated that this process was improper, and told him to treat the female patients, just as he would any other patients of any religion, race, color or ethnicity.
20. Benitez complied with this new instruction.
21. On or about December 1, 2010, Benitez was terminated.
22. Benitez was directly told that the termination was not because of any performance problem, but was instead carried out because the clinic's conservative male Muslim clientele did not want a male treating female patients. The supervisory staff adopted this view and terminated Benitez because of his male gender.

**COUNT ONE**

**Sex-Gender Discrimination in Violation of  
Title VII of the Civil Rights Act of 1964**

23. Plaintiff repeats and realleges the allegations stated in Paragraphs 1 through 22 above with the same force and effect.
24. At all relevant times, Plaintiff was an employee and Defendant was an employer within the meanings set forth in the Title VII of the Civil Rights Act of 1964, as *amended*, 482 USC § 2000e, *et seq.*
25. Plaintiff is a member of a protected class; he is male.
26. At all times, Plaintiff performed his job duties in a manner that was satisfactory or better.
27. Defendant's treatment of Plaintiff, as described above, was based, at least in part, on the unlawful consideration of his sex/gender.
28. Similarly situated women were treated better in the terms and conditions of their employment.

29. The actions of Defendant and its agents were willful, intentional, in deliberate disregard of and with reckless indifference to the rights and sensibilities of Plaintiff.
30. As a direct and proximate result of Defendant's wrongful acts and omissions, Benitez has sustained injuries and damages including but not limited to, loss of earnings and earning capacity; loss of career opportunities; loss of fringe and pension benefits; mental anguish, physical and emotional distress; humiliation and embarrassment; loss of professional reputation; and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful employment of his choice.

**COUNT TWO**

**42 U.S.C. § 1983**

**Denial of Equal Protection Rights Guaranteed by the U.S. Constitution**

31. Plaintiff hereby incorporates by reference Paragraphs 1 through 30 above.
32. Plaintiff had a right to fair and equal treatment under the law regardless of his sex, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
33. Defendant, by and through its agents and acting under color of law, intentionally singled out and treated Plaintiff less favorably than females, without a legitimate, important or compelling interest for that treatment.
34. The discrimination on the basis of gender described more fully above represents official policy and practice of and is attributable to Defendant.
35. It would have been plainly obvious to a reasonable policymaker that such discrimination did deprive or would lead to deprivations of Plaintiff's constitutional rights.
36. Upon information and belief, Defendant's policymaking officials nevertheless agreed to, approved, and ratified this unconstitutional conduct.

37. On information and belief, Defendant further failed to train its employees in the legal and appropriate methods for operating in compliance with the Constitution and knowing this would result in violation of Plaintiff's constitutional rights.
38. Acting under color of law, Defendant promulgated and/or carried out the official policies, orders and directives described above intentionally and deliberately, with wanton and reckless disregard for the civil and constitutional rights, privileges and sensibilities of Plaintiff.
39. As a direct and foreseeable consequence of Defendant's policy decisions and failure to train when a constitutional violation was occurring, Plaintiff was deprived of his rights under the Fourteenth Amendment to the United States Constitution.
40. As a direct and proximate result of Defendant's wrongful acts and omissions, Benitez has sustained injuries and damages including but not limited to, loss of earnings and earning capacity; loss of career opportunities; loss of fringe and pension benefits; mental anguish, physical and emotional distress; humiliation and embarrassment; loss of professional reputation; and loss of the ordinary pleasures of everyday life, including the right to pursue the gainful employment of his choice.

#### **Relief Requested**

For all of the foregoing reasons, Plaintiff demands judgment against Defendant as follows:

**A. Legal Relief:**

1. Compensatory damages in whatever amount he is found to be entitled;
2. Punitive and exemplary damages in whatever amount he is found to be entitled;
3. A judgment for lost wages and benefits, past and future, in whatever

amount he is found to be entitled; and

4. An award of interest, costs and reasonable attorney fees.

**B. Equitable Relief:**

1. An order reinstating Plaintiff to the position, seniority status, longevity status and other designations he would have received had there been no wrongdoing by Defendant;
2. An injunction prohibiting Defendant from enforcing any discriminatory policies against Plaintiff in the future, and prohibiting any further acts of discrimination or deprivations of constitutional rights;
3. An award of interest, costs and reasonable attorney fees; and
4. Whatever other equitable relief appears appropriate at the time of final judgment.

**DEBORAH L. GORDON, PLC**  
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Dated: November 23, 2011

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**JURY DEMAND**

Plaintiff **JOHN BENITEZ, JR.** by his attorneys **Deborah L. Gordon, PLC,**  
demands a trial by jury of all the issues in this cause.

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