

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

BARRY JONES,
an individual,

Plaintiff,

Case No.

VS

Judge:
Magistrate:

M.A.C. COSMETICS, INC.,
a foreign corporation,

Defendant.

SHEREEF H. AKEEL (P54345)
WILLIAM R. THOMAS (P77760)
Akeel & Valentine, PLC
Attorneys for Plaintiff
888 West Big Beaver Road, Suite 910
Troy, MI 48084-4736
(248) 269-9595
shereef@akeelvalentine.com
wil@akeelvalentine.com

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, BARRY JONES, by and through his undersigned counsel, AKEEL & VALENTINE, PLC, and for his complaint against a M.A.C. COSMETICS, INC. states as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff, Barry Jones, is a resident of the State of Michigan.
2. Defendant, M.A.C. Cosmetics Inc., ("Defendant" or the "Company"), is a Delaware Corporation, with its principal place of business in New York, who does business in the State of Michigan.
3. This instant action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as well as under the Michigan Elliott-Larsen Civil Rights Act ("ELCRA"), M.C.L. § 37.2101, *et seq.*
4. The actions that give rise to the claims asserted occurred in Oakland County, within the State of Michigan.
5. The amount in controversy in the instant action exceeds \$75,000.00, exclusive of interest, costs, and attorney fees.
6. Plaintiff filed a complaint with the Equal Employment Opportunity Commission ("EEOC") and obtained a Right to Sue letter dated November 25, 2015 (but received later by Plaintiff), rendering this complaint timely, as it has been filed within the 90 day limit. (**Exhibit A**).
7. This Honorable Court has jurisdiction over Plaintiff's Title VII claims based on federal questions jurisdiction, 28 U.S.C. § 1331.

8. This Honorable Court has jurisdiction over Plaintiff's claim under Michigan law based on diversity jurisdiction, 28 U.S.C. § 1332, because complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.

9. This Honorable Court also has supplemental jurisdiction over Plaintiff's claims under Michigan law pursuant to 28 U.S.C. § 1367(a) because they are inextricably intertwined with the federal claims and arise out of the same nucleus of operative facts.

10. Venue is proper in this Honorable Court as Defendant conducts business within the Eastern District of Michigan, is subject to personal jurisdiction within the Eastern District of Michigan, and a substantial part of the events giving rise to the claims alleged occurred in the Eastern District of Michigan. *See* 29 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

11. Plaintiff repeats and re-alleges the foregoing paragraphs, as though fully set forth herein.

12. Plaintiff is a married man.

13. Plaintiff is Christian and has been preaching for approximately 19 years.

14. In or about January 2007, Plaintiff was ordained as an elder in the Church of God in Christ.

15. As a part of his sincerely held religious beliefs, Plaintiff cannot wear makeup.

16. Since 2011, Plaintiff has been a licensed esthetician and has operated his own beauty salon.

17. In or about September 2014, Plaintiff began working for Defendant as a Retail Makeup Artist.

18. In order to become a full-time makeup artist with Defendant, Plaintiff was required to complete various certifications.

19. Plaintiff completed the first two certifications without issue.

20. As part of the third certification, Defendant allegedly required all employees to wear makeup—including blush, eyeshadow, lipstick, and fake eyelashes.

21. Plaintiff declined to do so on account of his sincerely held religious beliefs.

22. When Plaintiff's trainers, Defendant's employees or agents, discovered Plaintiff was not wearing makeup, they confronted Plaintiff and informed him that he was required to wear makeup.

23. Plaintiff informed his trainers that he could not on account of his sincerely held religious beliefs.

24. The actions of Plaintiff's trainers humiliated Plaintiff in front of his co-workers.

25. After Plaintiff refused to wear makeup, his trainers referred the matter to the store manager, Kenneth Gibson, also Defendant's agent or employee.

26. Mr. Gibson asked why Plaintiff would not wear makeup and Plaintiff informed him that he could not because of his sincerely held religious beliefs.

27. Mr. Gibson told Plaintiff that he would need to choose between wearing makeup or his religious beliefs.

28. Mr. Gibson told Plaintiff that if he did not wear makeup he would not be allowed to continue his employment.

29. Plaintiff sought an accommodation which included not wearing makeup, which was rejected by Defendant.

30. Subsequently, after Plaintiff refused to wear makeup on account of his sincerely held religious beliefs, Defendant discharged Plaintiff from his employment.

COUNT I
FAILURE TO PROVIDE A RELIGIOUS ACCOMODATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF
1964, 42 U.S.C. § 2000e et seq.

31. Plaintiff repeats and re-alleges the foregoing paragraphs, as though fully set forth herein.

32. Pursuant to 42 U.S.C. § 2000e, *et seq.*, otherwise known as Title VII of the Civil Rights Act of 1964 ("Title VII") as amended, it is an unlawful employment practice for an employer "to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1).

33. "Religion" under Title VII is defined to include "all aspects of religious observance and practice, as well as belief[.]" 42 U.S.C. § 2000e(j).

34. At all times relevant herein, Defendant was an employer, covered by and within the meaning of Title VII.

35. Plaintiff was an elder within the Church of God in Christ.

36. Plaintiff held sincere religious beliefs, one of which precluded him from wearing makeup.

37. Defendant, by and through its employees, agents, or servants, knew of Plaintiff's sincerely held religious belief that he could not wear makeup.

38. Plaintiff's sincerely held religious belief conflicted with one of Defendant's alleged requirements for Plaintiff's employment, that being employees were required to wear makeup.

39. Plaintiff, informed Defendant of the conflict between his sincerely held religious belief and Defendant's alleged requirement.

40. Defendant refused to provide Plaintiff with an accommodation for his sincerely held religious belief and required him to choose between keeping his job or following his sincerely held religious beliefs.

41. When Plaintiff refused to wear makeup, Defendant discharged Plaintiff.

42. Defendant would not have suffered an undue hardship by providing Plaintiff with an accommodation for his sincerely held religious belief.

43. As a direct and proximate cause of Defendant's unlawful actions, Plaintiff has sustained injuries and damages, including but not limited to: loss of earnings and earning capacity; loss of career opportunities; loss of goodwill; harm to his business reputation; loss of esteem and standing in his employment community; humiliation and embarrassment; mental and emotional distress; and loss of ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter a judgment in favor of Plaintiff, and against Defendant, for Damages in whatever amount Plaintiff is found to be entitled, including but not limited to: an award of lost wages and the value of fringe benefits, both past and future; costs, interest, and attorney fees; compensatory and punitive damages as allowed for under the law; and an order awarding Plaintiff any other equitable relief as this Honorable Court deems appropriate at the time of final judgment.

COUNT II
RELIGIOUS DISCRIMINATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF
1964, 42 U.S.C. § 2000e et seq.
(Disparate Treatment)

44. Plaintiff repeats and re-alleges the foregoing paragraphs, as though fully set forth herein.

45. At all times relevant herein, Defendant was an employer, covered by and within the meaning of Title VII.

46. Plaintiff was an elder within the Church of God in Christ.

47. Plaintiff held sincere religious beliefs, one of which precluded him from wearing makeup.

48. Defendant, by and through its employees, agents, or servants, knew of Plaintiff's sincerely held religious belief that he could not wear makeup.

49. Plaintiff's sincerely held religious belief conflicted with one of Defendant's alleged requirements for Plaintiff's employment, that being employees were required to wear makeup.

50. Plaintiff informed Defendant of the conflict between his sincerely held religious belief and Defendant's alleged requirement.

51. Defendant refused to provide Plaintiff with an accommodation for his sincerely held religious belief and required him to choose between keeping his job or following his sincerely held religious beliefs.

52. When Plaintiff refused to wear makeup, Defendant discharged Plaintiff.

53. Plaintiff's religion was a factor that made a difference in Defendant's decision to subject Plaintiff to the wrongful and discriminatory treatment described above.

54. Defendant, by its agents, representatives, and employees, was predisposed to discriminate on the basis of religion and acted in accordance with that predisposition.

55. Defendant's actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.

56. Defendant did not have a legitimate business reason for discharging Plaintiff.

57. If Plaintiff had not held his Christian religious beliefs, he would not have been treated in the manner described.

58. Defendant is liable for disparate treatment and intentional discrimination under Title VII.

59. As a direct and proximate cause of Defendant's unlawful actions, Plaintiff has sustained injuries and damages, including but not limited to: loss of earnings and earning capacity; loss of career opportunities; loss of goodwill; harm to his business reputation; loss of esteem and standing in his employment community; humiliation and embarrassment; mental and emotional distress; and loss of ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter a judgment in favor of Plaintiff, and against Defendant, for Damages in whatever amount Plaintiff is found to be entitled, including but not limited to: an award of lost wages and the value of fringe benefits, both past and future; costs, interest, and attorney fees; compensatory and punitive damages as allowed for under the law; and an order awarding Plaintiff any other equitable relief as this Honorable Court deems appropriate at the time of final judgment.

COUNT III
RELIGIOUS DISCRIMINATION
IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF
1964, 42 U.S.C. § 2000e et seq.
(Disparate Impact)

60. Plaintiff repeats and re-alleges the foregoing paragraphs, as though fully set forth herein.

61. Defendant allegedly employs a practice of forcing all of its retail makeup artists to wear makeup, regardless if they are male or female.

62. Defendant's employment practice has a disproportionately adverse effect on male Christians who hold the sincerely held belief that they cannot wear makeup or resemble a woman.

63. Defendant's employment practice is not a business necessity.

64. There exists alternative practices without a similarly undesirable discriminatory effect that Defendant could employ that would also server Defendant's interests.

65. Defendant is liable for disparate impact under Title VII.

66. As a direct and proximate cause of Defendant's unlawful actions, Plaintiff has sustained injuries and damages, including but not limited to: loss of earnings and earning capacity; loss of career opportunities; loss of goodwill; harm to his business reputation; loss of esteem and standing in his employment

community; humiliation and embarrassment; mental and emotional distress; and loss of ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter a judgment in favor of Plaintiff, and against Defendant, for Damages in whatever amount Plaintiff is found to be entitled, including but not limited to: an award of lost wages and the value of fringe benefits, both past and future; costs, interest, and attorney fees; compensatory and punitive damages as allowed for under the law; and an order awarding Plaintiff any other equitable relief as this Honorable Court deems appropriate at the time of final judgment.

COUNT IV
RELIGIOUS DISCRIMINATION IN VIOLATION OF
THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, MCL § 37.2101, et seq.
(Disparate Treatment)

67. Plaintiff repeats and re-alleges the foregoing paragraphs, as though fully set forth herein.

68. At all times relevant herein, Defendant was an employer, covered by and within the meaning of Michigan's Elliott-Larsen Civil Rights Act ("ELCRA"), MCL § 37.201, *et seq.*

69. Plaintiff was an elder within the Church of God in Christ.

70. Plaintiff held sincere religious beliefs, one of which precluded him from wearing makeup.

71. Defendant, by and through its employees, agents, or servants, knew of Plaintiff's sincerely held religious belief that he could not wear makeup.

72. Plaintiff's sincerely held religious belief conflicted with one of Defendant's alleged requirements for Plaintiff's employment, that being employees were required to wear makeup.

73. Plaintiff informed Defendant of the conflict between his sincerely held religious belief and Defendant's alleged requirement.

74. Defendant refused to provide Plaintiff with an accommodation for his sincerely held religious belief and required him to choose between keeping his job or following his sincerely held religious beliefs.

75. When Plaintiff refused to wear makeup, Defendant discharged Plaintiff.

76. Plaintiff's religion was a factor that made a difference in Defendant's decision to subject Plaintiff to the wrongful and discriminatory treatment described above.

77. Defendant, by its agents, representatives, and employees, was predisposed to discriminate on the basis of religion and acted in accordance with that predisposition.

78. Defendant's actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.

79. Defendant did not have a legitimate business reason for discharging Plaintiff.

80. If Plaintiff had not held his religious beliefs, he would not have been treated in the manner described.

81. Defendant is liable for disparate treatment and intentional discrimination under the ELCRA.

82. As a direct and proximate cause of Defendant's unlawful actions, Plaintiff has sustained injuries and damages, including but not limited to: loss of earnings and earning capacity; loss of career opportunities; loss of goodwill; harm to his business reputation; loss of esteem and standing in his employment community; humiliation and embarrassment; mental and emotional distress; and loss of ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter a judgment in favor of Plaintiff, and against Defendant, for Damages in whatever amount Plaintiff is found to be entitled, including but not limited to: an award of lost wages and the value of fringe benefits, both past and future; costs, interest, and attorney fees; non-economic and exemplary damages as allowed for under the law; and an order awarding Plaintiff any other equitable relief as this Honorable Court deems appropriate at the time of final judgment.

COUNT V
RELIGIOUS DISCRIMINATION IN VIOLATION OF
THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, MCL § 37.2101, et seq.
(Disparate Impact)

83. Plaintiff repeats and re-alleges the foregoing paragraphs, as though fully set forth herein.

84. At all times relevant herein, Defendant was an employer, covered by and within the meaning of the ELCRA.

85. Defendant allegedly employs a practice of forcing all of its retail makeup artists to wear makeup, regardless if they are male or female.

86. Defendant's employment practice has a disproportionately adverse effect on male Christians who hold the sincerely held belief that they cannot wear makeup or resemble a woman.

87. Defendant's employment practice is not a business necessity.

88. There exists alternative practices without a similarly undesirable discriminatory effect that Defendant could employ that would also server Defendant's interests.

89. Defendant is liable for disparate impact under the ELCRA.

90. As a direct and proximate cause of Defendant's unlawful actions, Plaintiff has sustained injuries and damages, including but not limited to: loss of earnings and earning capacity; loss of career opportunities; loss of goodwill; harm

to his business reputation; loss of esteem and standing in his employment community; humiliation and embarrassment; mental and emotional distress; and loss of ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter a judgment in favor of Plaintiff, and against Defendant, for Damages in whatever amount Plaintiff is found to be entitled, including but not limited to: an award of lost wages and the value of fringe benefits, both past and future; costs, interest, and attorney fees; non-economic and exemplary damages as allowed for under the law; and an order awarding Plaintiff any other equitable relief as this Honorable Court deems appropriate at the time of final judgment.

Respectfully submitted,

AKEEL & VALENTINE, PLC
/s/: SHEREEF H. AKEEL

By: Shereef H. Akeel (P54345)
William R. Thomas (P77760)
Attorneys for Plaintiff
888 West Big Beaver Road, Ste. 910
Troy, MI 48084
(248) 269-9595
shereef@akeelvalentine.com
wil@akeelvalentine.com

Date: December 14, 2015

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BARRY JONES,
an individual,

Plaintiff,

Case No.

vs

Judge:
Magistrate:

M.A.C. COSMETICS, INC.,
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Defendant.

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JURY DEMAND

NOW COMES Plaintiff, BARRY JONES, by and through his undersigned counsel, AKEEL & VALENTINE, PLC, and hereby demands a Trial by Jury of the above-referenced causes of action.

Respectfully submitted,

AKEEL & VALENTINE, PLC
/s/: Shereef H. Akeel

By: Shereef H. Akeel (P54345)
William R. Thomas (P77760)
Attorneys for Plaintiff

888 West Big Beaver Road, Ste. 910
Troy, MI 48084
(248) 269-9595

shereef@akeelvalentine.com

wil@akeelvalentine.com

Date: December 14, 2015

EXHIBIT A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):



FEPA



EEOC

471-2015-02037

Michigan Department Of Civil Rights

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Barry Jones

Home Phone (incl. Area Code)

(313) 529-3378

Date of Birth

Street Address

City, State and ZIP Code

19739 Lesure, Detroit, MI 48235

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

ESTEE LAUDER DBA MAC COSMETICS

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(800) 216-7173

Street Address

City, State and ZIP Code

21500 Northwestern Hwy., Southfield, MI 48075

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)



RACE



COLOR



SEX



RELIGION



NATIONAL ORIGIN



RETALIATION



AGE



DISABILITY



GENETIC INFORMATION



OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE
Earliest Latest**12-13-2014****12-13-2014**

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began working for the above-named employer on or about 06 September 2014. I was last employed as a Retail Makeup Artist.

During the course of my employment I informed management on several occasions of my religion and my need for accommodation. On 13 December 2014, I was informed that the company could no longer accommodate my sincerely held religious beliefs and that my employment would be terminated.

I can only conclude that I have been denied religious accommodation and discharged due to my religion, Christian, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

May 07, 2015

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

07 May 2015