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**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**07/31/2009**  
 mru/bal/caba  
 By \_\_\_\_\_, Deputy  
 Case Number:  
**34-2009-00054595**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF SACRAMENTO – UNLIMITED JURISDICTION

Department  
 Assignments  
 Case Management 39  
 Law and Motion 54  
 Minors Compromise 22

13 TRILOCHAN SINGH OBEROI,

14 Plaintiff,

15 v.

16 DEPARTMENT OF CORRECTIONS AND  
 17 REHABILITATION (“CDCR”),  
 18 MATTHEW CATE – SECRETARY, CDCR,  
 19 EDGAR BARNEY – MANAGER OF PRE-  
 EMPLOYMENT MEDICAL UNIT, CDCR,  
 and  
 20 DOES 1-10,

21 Defendants.

Case Number:

**COMPLAINT FOR DAMAGES AND  
 INJUNCTIVE RELIEF**

(First Amendment to the United States  
 Constitution, 42 U.S.C. § 1983; Article 1,  
 Section 8 of the California Constitution;  
 Title VII of the Civil Rights Act of 1964, 42  
 U.S.C. §§ 2000e *et seq.*; Fair Employment  
 and Housing Act, Cal. Gov. Code §§ 12900  
*et seq.*)

**Jury Trial Demanded**

**BY FAX**

1 Plaintiff, Trilochan Singh Oberoi ("Oberoi"), through his attorneys, alleges as follows:

2 **INTRODUCTION**

3 1. Oberoi brings this action against the California Department of Corrections and  
4 Rehabilitation ("CDCR"); Edgar Barney ("Barney"), in his individual capacity and official  
5 capacity as Manager of the Pre-Employment Medical ("PEM") Unit at the CDCR; Matthew Cate  
6 ("Cate"), in his official capacity as Secretary of the CDCR; and Does 1-10, collectively, the  
7 "Defendants," to redress the Defendants' actions in substantially burdening Oberoi's free exercise  
8 of religion and subjecting him to illegal discrimination on the basis of his religion in applying for a  
9 correctional officer position at the CDCR. This suit is brought to secure the protection, and to  
10 redress the deprivation, of rights secured by the First Amendment of the United States  
11 Constitution, Section 8 of Article 1 of the California Constitution, Title VII of the Civil Rights Act  
12 of 1964, codified at 42 U.S.C. §§ 2000e, *et seq.*, as amended ("Title VII"), and California's Fair  
13 Employment and Housing Act ("FEHA"), codified at Cal. Gov. Code §§ 12900, *et seq.*

14 **PARTIES**

15 2. Oberoi is a citizen of the United States of America and, at all relevant times, a  
16 resident of Folsom, California. Oberoi applied for the position of Correction Officer with  
17 Defendant, CDCR, in May, 2005.

18 3. Defendant CDCR, is an agency created pursuant to the laws of the State of  
19 California. The CDCR is the largest public employer in California, with over 50,000 employees.

20 4. CDCR is a "person" within the meaning of 42 U.S.C. § 2000e(a), and an  
21 "employer" within the meaning of 42 U.S.C. § 2000e(b) and Cal. Gov. Code § 12926(d).

22 5. Defendant Barney, is, upon information and belief, the manager of the PEM Unit at  
23 the CDCR and was the recipient of numerous attempts by Oberoi to contact him, and also  
24 communicated with Oberoi, from approximately May 2006 to early 2008 regarding CDCR's  
25 refusal to allow Oberoi the opportunity to complete the application process with the CDCR.  
26 Barney is, upon information and belief, at all relevant times herein, a resident of California.

1           6.       Defendant Cate, is the Secretary of the CDCR, which funds all costs and employs,  
2 trains and directs all staff for executing all actions complained of herein. Except as alleged herein,  
3 Cate is responsible for the appointment, employment, and training of necessary officers and  
4 employees of the CDCR. He has immediate supervisory authority over the CDCR. Cate is, upon  
5 information and belief, at all relevant times herein, a resident of California.

6           7.       The true names and capacities of Defendants named as Does 1-10, inclusive, are  
7 presently unknown to Oberoi. Oberoi will amend this Complaint, setting forth the true names and  
8 capacities of the fictitious defendants, when they are ascertained. Oberoi is informed and believes  
9 and on that basis alleges that each of the fictitious defendants has participated in the acts alleged in  
10 this Complaint to have been done by named defendants.

11           8.       Defendants Barney, Cate, and Docs 1-10 are henceforth referred to collectively as  
12 the Individual Defendants.

13           9.       Oberoi is informed and believes and on that basis alleges that at all relevant times  
14 herein, each of the Defendants, whether named or fictitious, was and is an agent, employee, and  
15 servant of one another, and committed the occurrences, acts and omissions complained of herein  
16 while acting within the scope of such agency, employment, and servitude.

17                           **PROCEDURAL & ADMINISTRATIVE REQUIREMENTS**

18           10.       Oberoi has satisfied all of the procedural and administrative requirements set forth  
19 in Title VII (*see* 42 U.S.C. § 2000e-5), in particular:

20                   (A)     On or about February 2, 2007, Oberoi filed an appeal with the California  
21 State Personnel Board ("SPB") seeking redress for discrimination during the application and  
22 selection process for a Correctional Officer position at the CDCR.

23                   (B)     On or about December 14, 2007, more than sixty days after the  
24 commencement of the SPB appeal, Oberoi filed a charge of discrimination with the California  
25 Department of Fair Employment and Housing ("DFEH"). Upon information and belief, DFEH  
26 cross-filed Oberoi's charge with the U.S. Equal Employment Opportunity Commission ("EEOC").  
27

1 (C) On or about December 9, 2008, the EEOC released to Oberoi a Notice of  
2 Right to Sue. A true and correct copy of the Notice of Right to Sue issued by the EEOC is  
3 attached hereto as Exhibit A.

4 (D) The parties have stipulated to a Tolling Agreement, attached as Exhibit B,  
5 extending the ninety (90) day period to file suit following EEOC's release of a "Notice of Right to  
6 Sue" until July 31, 2009. This Complaint is filed within the time period covered by the stipulated  
7 Tolling Agreement.

8 11. Oberoi has satisfied the procedural and administrative requirements set forth in  
9 FEHA (see Cal. Gov. Code § 12960), in particular:

10 (A) On or about December 14, 2007, Oberoi filed a charge of discrimination  
11 with the DFEH.

12 (B) On or about November 25, 2008, the DFEH released to Oberoi a Notice of  
13 Right to Sue. A true and correct copy of the Notice of Right to Sue issued by the DFEH is  
14 attached hereto as Exhibit C.

15 (C) This Complaint is being filed within one year of the date of Oberoi's Notice  
16 of Right to Sue from the DFEH.

17 **FACTS COMMON TO ALL COUNTS**

18 12. Oberoi is a citizen of the United States of America and a resident of Folsom,  
19 California. He is a devout member of the Sikh faith. As a Sikh, he has a sincerely held religious  
20 belief that, at all times, he must maintain unshorn facial hair.

21 13. Sikhism is a monotheistic religion that originated in the fifteenth century in the  
22 Punjab region of South Asia. It is now one of the world's largest religions, with approximately 25  
23 million adherents worldwide. Approximately 500,000 Sikhs live in the United States.

24 14. As part of their religious practice, observant Sikhs are forbidden from cutting their  
25 hair, and men are required to wear turbans. The requirements to maintain unshorn hair and wear a  
26 turban are commonly viewed by Sikhs, worldwide, to be among the central requirements of their  
27 faith.

1           15.     Consistent with Sikhism, Mr. Oberoi maintains unshorn hair, including facial hair,  
2 and wears a turban. Mr. Oberoi has never cut or trimmed his facial hair.

3           16.     While in his native India, Oberoi spent approximately twenty-six years in the  
4 Indian Navy, and subsequently worked for the Merchant (commercial) Navy as a captain.

5           17.     During his time in the Indian Navy and Merchant Navy, Oberoi was required to  
6 participate in activities in which he had to wear several types of respirators and gasmasks. His  
7 unshorn beard never prevented him from wearing these respirators and gasmasks properly or from  
8 creating an air-tight seal, nor precluded him from fully engaging in his military and sea-faring  
9 duties.

10          18.     Around the world, hundreds of thousands of observant Sikhs serve in military and  
11 peace officer positions requiring the wearing of gas masks, respirators, helmets, uniforms, and  
12 other special equipment required for safety and security. Sikh men, including Oberoi, routinely  
13 roll their beards up to stay close to their chins, and therefore out of the way of any special  
14 equipment such as gas masks or respirators.

15          19.     In approximately March of 2005, Oberoi applied for a position as a correctional  
16 officer with the CDCR.

17          20.     On or about January 24, 2006, Oberoi completed and passed the written  
18 Correctional Officer test.

19          21.     Upon successful completion of the written test, the CDCR extended to Oberoi a  
20 conditional offer of employment, pending completion of a vision test, physical abilities test,  
21 background investigation prescreening interview, background investigation, psychological  
22 examination, and PEM examination. Except for the PEM examination, Oberoi completed all of  
23 the required steps set forth above.

24          22.     In approximately May of 2006, Oberoi advanced to the final stage of the  
25 application process, the PEM examination. He successfully completed all parts of the PEM  
26 examination except for the respirator fit-test.

1           23.     Upon information and belief, during the PEM examination, Oberoi was informed  
2 that he could not take the respirator fit-test unless he was clean-shaven. Oberoi explained that he  
3 could not shave because he was a Sikh and was religiously obligated to keep his beard unshorn.  
4 Mr. Oberoi explained that he had previously been able to wear respirators and gas masks with his  
5 rolled-up beard intact. Nevertheless, he was not allowed to complete the respirator-fit test.

6           24.     Upon information and belief, the CDCR internally disqualified Oberoi from  
7 employment eligibility for a Correctional Officer position. CDCR's actions constituted an  
8 unreasonable and conscious disregard for Oberoi's clearly established right to be free from  
9 discrimination on the basis of his religion under the United States and California Constitutions,  
10 FEHA, and Title VII.

11           25.     After initially being denied the opportunity to take the respirator fit-test, Oberoi  
12 contacted Barney, the manager of the PEM Unit. At Barney's instruction, on approximately May  
13 31, 2006, Oberoi wrote a letter to the CDCR requesting an accommodation for his religiously-  
14 mandated beard. Oberoi did not receive a reply letter with regards to his request.

15           26.     Throughout the following nine months, Oberoi contacted Barney multiple times  
16 requesting a response to his written request for accommodation. The CDCR, through Barney,  
17 continually informed Oberoi that the CDCR was "looking into the case," but never directly  
18 addressed Oberoi's request for accommodation.

19           27.     On or about February 2, 2007, Oberoi filed an appeal with the SPB concerning the  
20 CDCR's denial of Oberoi's opportunity to complete the application process because of his  
21 religiously mandated beard. The SPB has jurisdiction to hear complaints of illegal discrimination,  
22 examination appeals, and denials of request for reasonable accommodation within the State of  
23 California's civil service system.

24           28.     On June 24-25, 2008, an SPB administrative law judge held a hearing on the merits  
25 in regards to this matter. Several witnesses from the CDCR, and Mr. Oberoi, testified at the  
26 hearing.

27  
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1           29.     The testimony at the hearing established, *inter alia*, that the CDCR regularly allows  
2 a medical exemption from the clean-shaven requirement for employees with skin conditions that  
3 prevent them from shaving.

4           30.     On or about November 10, 2008, the SPB issued a ruling finding that that the  
5 CDCR had discriminated against Oberoi by failing to make any effort to accommodate his  
6 religiously mandated beard, failing to consider alternatives to a tight-fitting respirator, and failing  
7 to prove any resulting undue hardship to the CDCR for providing Oberoi a reasonable  
8 accommodation. A true and correct copy of the SPB's factual findings and decision is attached  
9 hereto as Exhibit D.

10          31.     Additionally, the SPB's ruling expressly noted that the CDCR's own medical  
11 exception allowing Correctional Officers with a skin irritation or disorder to maintain a beard  
12 conflicted with its assertion that no alternative accommodations were available for Mr. Oberoi.  
13 The SPB's administrative law judge observed that as the CDCR accommodates employees with  
14 skin conditions, "it is difficult to imagine why it cannot extend the same accommodation to  
15 [correctional officers] who cannot shave for religious reasons."

16          32.     The November 10, 2008 decision ordered the CDCR to:

17               (A)    Explore reasonable alternative accommodations, including whether it  
18 currently accommodates Correctional Officers with beards; and

19               (B)    Expedite Oberoi's pre-employment process.

20          33.     On November 18, 2008, the SPB adopted the administrative law judge's findings of  
21 fact and determination of issues as its decision on the matter. The CDCR did not appeal the SPB  
22 decision; therefore, pursuant to California Government Code § 11519(a), the decision became  
23 final on December 18, 2008.

24          34.     Immediately following the SPB's November 10, 2008 decision, counsel for Oberoi  
25 attempted to contact the CDCR several times by telephone and in writing with regard to its  
26 compliance with the decision and received little or no response, until litigation was threatened.

1 35. Not until on or about February 25, 2009 did counsel for Oberoi receive  
2 correspondence from staff counsel for the CDCR stating that Oberoi would have to update various  
3 examinations, even though he already completed those tests in 2005 when he first applied for the  
4 position at the CDCR.

5 36. Pursuant to the SPB's November 10, 2008 decision, Oberoi has re-applied for a  
6 position with the CDCR and is in the process of re-taking the required examinations to complete  
7 the application process.

8 37. Defendants continue to unreasonably refuse to explore alternative accommodations  
9 and expedite Oberoi's pre-employment application process, in conscious disregard and violation  
10 of the United States and California Constitutions, FEHA, Title VII, and the November, 2008 final,  
11 adopted SPB order.

12 38. Upon information and belief, the CDCR provides for accommodations for beards  
13 within its employee grooming policy, and has in fact given accommodations for beards to  
14 correctional officer employees.

15 39. Upon information and belief, on and around July, 2009, several California police  
16 departments including those of Walnut Creek, San Pablo, Hercules, Yuba City, Richmond, and  
17 Sutter County, announced their willingness and ability to accommodate observant Sikh employees  
18 who maintain facial hair and wear turbans. Throughout the United States, Sikh men wearing  
19 beards and turbans serve or have served in law enforcement and related positions, without being  
20 required to shave their beards to qualify for their jobs.

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF FREE EXERCISE OF RELIGION UNDER 42 U.S.C. § 1983**

24 **(as against the Individual Defendants)**

25 40. Oberoi repeats and realleges each and every allegation set forth in the preceding  
26 paragraphs of the Complaint as if fully set forth herein.  
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1           41.    The First Amendment to the United States Constitution clearly establishes that  
2 there shall be no prohibition upon the free exercise of religion.

3           42.    Upon information and belief, the CDCR, through the Individual Defendants, does  
4 not consistently enforce its grooming policy with respect to correctional officers' ability to  
5 maintain facial hair.

6           43.    Upon information and belief, the CDCR, through the Individual Defendants, allows  
7 correctional officers to maintain beards for secular reasons, including medical needs.

8           44.    Notwithstanding these facts, the CDCR refused to provide an exemption from its  
9 irregularly enforced grooming policy for Oberoi, who raised a religion-based objection to the  
10 CDCR's grooming policy.

11           45.    While the CDCR tolerates and makes *de facto* exemptions from its policy for  
12 secular reasons, it has not offered any substantial justification for refusing to provide similar  
13 treatment for applicants who seek an exemption from the grooming policy for religious reasons.

14           46.    Upon information and belief, the CDCR has unreasonably failed to explore  
15 alternative accommodations for Oberoi and expedite his application process, in knowing violation  
16 of the November, 2008 SPB decision ordering it to do so.

17           47.    The actions of CDCR , through the Individual Defendants, were unreasonable in  
18 light of the constitutional provision stated above, and constituted plain oversight or a knowing  
19 violation of the First Amendment of the Constitution.

20           48.    In so doing, the CDCR, through the Individual Defendants, acted under color of  
21 state law to violate Oberoi's rights under the Free Exercise Clause of the First Amendment of the  
22 United States Constitution.

23           49.    By reason of the CDCR's and the Individual Defendants' conduct, Oberoi has  
24 suffered severe harm, and is entitled to all legal and equitable remedies available under the U.S.  
25 Constitution.

**SECOND CAUSE OF ACTION****ILLEGAL DISCRIMINATION ON THE BASIS OF RELIGION UNDER CAL. CONST.****ART. 1, § 8****(as against all Defendants)**

50. Oberoi repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

51. Section 8 of Article 1 of the California Constitution prohibits disqualification of employees from entering or pursuing employment on the basis of religion.

52. Upon information and belief, the CDCR does not consistently enforce its grooming policy with respect to correctional officers' ability to maintain facial hair.

53. Upon information and belief, the CDCR allows correctional officers to maintain beards for secular reasons.

54. Notwithstanding these facts, the Defendants refused to provide an exemption from its irregularly enforced grooming policy for Oberoi, who raised a religion-based objection to the CDCR's grooming policy.

55. While the CDCR tolerates and makes *de facto* exemptions from its policy for secular reasons, it has not offered any substantial justification of undue hardship for refusing to provide similar treatment for applicants who seek an exemption from the grooming policy for religious reasons.

56. Upon information and belief, the CDCR has unreasonably failed to explore alternative accommodations for Oberoi and expedite his application process, in knowing violation of the November, 2008 SPB decision ordering it to do so.

57. In so doing, the Defendants violated Oberoi's rights under the Section 8 of Article 1 of the California Constitution.

58. By reason of the Defendants' conduct, Oberoi suffered severe harm, and is entitled to all legal and equitable remedies available under the California Constitution.

**THIRD CAUSE OF ACTION****RELIGIOUS DISCRIMINATION UNDER 42 U.S.C. §§ 2000e et seq.****(as against CDCR)**

59. Oberoi repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

60. The Defendants discriminated against Oberoi by failing or refusing to hire him for employment on the basis of his religion in violation of Title VII of the Civil Rights Act of 1964.

61. Oberoi was qualified for a correctional officer position with the CDCR; however, the Defendants refused and continue to refuse to hire him. Oberoi remains qualified for the position.

62. Oberoi's *bona fide* religious beliefs conflict with a workplace requirement. The Defendants subjected Oberoi to discriminatory treatment after being placed on notice of his religious beliefs. Reasonable accommodation of such religious beliefs would not have placed an undue hardship on the Defendants.

63. The Defendants permit accommodations to the CDCR's beard policy for medical reasons, thereby conclusively establishing that the no-beard requirement is not a *bona fide* occupational qualification.

64. The CDCR's policies and practices, implemented by Cate, Barney, and DOES 1-10, have had an unjustified, adverse, and disparate impact on Oberoi as a Sikh.

65. The Defendants' conduct was intentional, deliberate, willful, and conducted in callous disregard of Oberoi's rights.

66. As a direct and proximate result of said discrimination, Oberoi sustained economic damages for past and prospective loss of earnings and benefits, in an amount to be determined at trial.

67. As a further direct and proximate result of said discrimination, Oberoi sustained general damages for severe mental and emotional distress and humiliation as set forth above, in an amount to be determined at trial.

1 68. Oberoi is further entitled to an award of statutory attorney's fees pursuant to 42  
2 U.S.C §§ 2000e *et seq.*

3 **FOURTH CAUSE OF ACTION**

4 **RELIGIOUS DISCRIMINATION UNDER CAL. GOV. CODE §§ 12900 *et seq.***

5 **(as against CDCR)**

6 69. Oberoi repeats and realleges each and every allegation set forth in the preceding  
7 paragraphs of the Complaint as if fully set forth herein.

8 70. The CDCR discriminated against Oberoi by failing or refusing to hire him for  
9 employment on the basis of his religion in violation of FEHA.

10 71. The CDCR's conduct was intentional, deliberate, willful, and conducted in callous  
11 disregard of Oberoi's rights.

12 72. Oberoi was qualified for a correctional officer position with the CDCR; however,  
13 the CDCR refused to hire him, and continues to refuse to hire him despite the order of the SPB  
14 finding that CDCR had discriminated against Oberoi and after being ordered to do so by the SPB.  
15 Oberoi remains qualified for the position.

16 73. Oberoi's *bona fide* religious beliefs conflicted with a workplace requirement.

17 74. The CDCR failed to explore any available reasonable alternative means of  
18 accommodating Oberoi's *bona fide* religious beliefs, after being placed on notice of such beliefs.

19 75. Reasonable accommodation of such religious beliefs would not have placed an  
20 undue hardship on the CDCR. The CDCR permits accommodations to its beard policy for  
21 medical reasons, thereby conclusively establishing that the no-beard requirement is not a *bona fide*  
22 occupational qualification.

23 76. The CDCR's policies and practices had an unjustified, adverse, and disparate  
24 impact on Oberoi as a Sikh.

25 77. As a direct and proximate result of the CDCR's willful, knowing and intentional  
26 discrimination of him, Oberoi has experienced and will continue to experience pain and suffering,  
27 severe mental anguish and emotional and physical distress and injury, expenses, humiliation,

28 **Complaint**

**DRILLON & SMITH LLP**

1 anxiety, loss of earnings, past and future, and other employment benefits and job opportunities in  
2 an amount to be determined at trial, all in excess of the Court's jurisdiction.

3 78. In doing the acts alleged herein, the CDCR acted willfully, intentionally, and  
4 maliciously, and consciously oppressed the rights and safety of Oberoi, thereby entitling Oberoi to  
5 an award of exemplary and punitive damages pursuant to California Civil Code § 3294, in an  
6 amount to be proven at trial.

7 79. Oberoi is entitled to recover attorney's fees pursuant to the provisions of  
8 Government Code §§ 12940 *et seq.*

### 9 PRAYER FOR RELIEF

10 Oberoi prays that the Court grant the following relief:

11 1. A declaration that the Defendants' policies, practices, procedures, conditions, and  
12 customs violated the rights of Oberoi as secured by Title VII, FEHA, the First Amendment of the  
13 United States Constitution (enforced through 42 U.S.C. § 1983) and the Constitution of the State  
14 of California;

15 2. Preliminary and permanent injunctions enjoining the Defendants and their agents,  
16 successors, and employees from discriminating against Oberoi;

17 3. An award of back pay, front pay, hiring, benefits, and seniority;

18 4. An award of nominal, consequential, compensatory, and punitive damages to  
19 Oberoi in an amount to be determined at trial;

20 5. An award of litigation costs and expenses, including reasonable attorneys' fees and  
21 expert fees, to Oberoi, including without limitation fees and costs awarded pursuant to 42 U.S.C.  
22 §§ 2000c, *et seq.* and Cal. Gov. Code §§ 12900 *et seq.*;

23 6. Pre-judgment interest; and

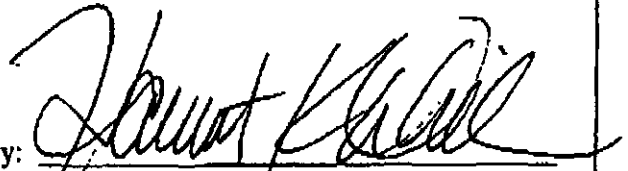
24 7. Such other and further relief as the Court may deem just and proper.

### 25 DEMAND FOR JURY TRIAL

26 Oberoi demands a jury trial.  
27  
28

1 DATE: July 31, 2009

DHILLON & SMITH LLP

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4  
5 By:   
6 HARMEET K. DHILLON  
7 Attorneys for Plaintiff Trilochan S. Obcroi

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# EXHIBIT A

EEOC Form 181 (2/08)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **TRILOCHAN S. OBEROI**  
825 BIBLEY ST #2  
Folsom, CA 95630

From: **San Francisco District Office**  
350 The Embarcadero  
Suite 500  
San Francisco, CA 94105

On behalf of person(s) aggrieved whose identity is  
**CONFIDENTIAL (29 CFR §1601.7(a))**

EEOC Charge No.	EEOC Representative	Telephone No.
<b>37A-2008-09150</b>	<b>Alexis Durbin, State &amp; Local Coordinator</b>	<b>(415) 625-5619</b>

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -  
(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



**Michael Baldonado,  
District Director**

**DEC 9 2008**

(Date Mailed)

Enclosures(s)

cc: **CA DEPT OF CORRECTIONS AND REHABILITATION**  
2201 BROADWAY  
Sacramento, CA 95818



# EXHIBIT B

1 HARMEET K DHILLON, ESQ. (SBN:207873 )  
 2 DAVID LIHWEI LIN, ESQ. (SBN: 243448)  
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 4 214 Grant Avenue, Suite 400  
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 6 Telephone: (415) 433-1700  
 7 Facsimile: (415) 520-6593

8 Attorneys for Complainant  
 9 Trilochan Singh Oberoi

10 In re  
 11 TRILOCHAN SINGH OBEROI

EEOC Charge No. 37A-2008-09150

**SECOND EXTENSION TO TOLLING  
 AGREEMENT**

16 WHEREAS, the State of California, on behalf of its agency the California  
 17 Department of Corrections and Rehabilitation and its agents and employees (collectively,  
 18 "CDCR") and Trilochan Singh Oberoi ("Oberoi") entered into a tolling agreement dated  
 19 March 6, 2009 ("Tolling Agreement"); and

22 WHEREAS, CDCE and Oberoi had agreed and in fact extended the expiry date for  
 23 the Tolling Agreement from April 30, 2009 to and June 30, 2009 ("Extension"); and

24 WHEREAS, CDCR and Oberoi have agreed to further extend the effective date of  
 25 the Tolling Agreement (the "Second Extension"); and

26 Second Extension to Tolling Agreement  
 27 EEOC Charge No. 37A-2008-09150

**DHILLON & SMITH LLP**

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WHEREAS, CDCR and Oberoi, in consideration of the mutual promises and agreements set forth in the Tolling Agreement, the Extension and the Second Extension, the sufficiency of which is hereby acknowledged, agree as follows:

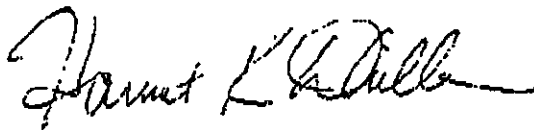
1. The terms and provisions of the Tolling Agreement and the Extension, attached hereto as Exhibit A, are incorporated herein.

2. The expiry date of the Tolling Agreement shall be extended from June 30, 2009 to and include July 31, 2009, or until Oberoi files a lawsuit against DCR, whichever is earlier. Oberoi shall provide CDCR 2 (two) business days' notice of his intent to file a lawsuit.

3. This Agreement may be executed by exchange of facsimile signatures, without need for exchange of ink-signed original signature pages, and such facsimile signature pages shall be deemed the equivalent of ink-signed original signature pages.

Trilochan Singh Oberoi,  
By his attorneys,

California Department of Corrections &  
Rehabilitation,  
By its attorneys,



Harmeet K. Dhillon, Esq.  
Dhillon & Smith LLP

Robert K. Gaultney, Esq.  
Office of Legal Affairs

Date: June 24, 2009

Date: June 26, 2009

# EXHIBIT C

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2000 "O" Street, Suite 120, Sacramento, CA 95811-5299  
(916) 445-5523 TTY (800) 700-2320 Fax (916) 323-6092  
www.dfeh.ca.gov



November 25, 2008

TRILOCHAN S. OBEROI  
825 SIBLEY ST #2  
FOLSOM, CA 95630

RE: E200708E0870-00-e/37AAB09150  
OBEROI/CA DEPT OF CORRECTIONS AND REHABILITATION

Dear TRILOCHAN S. OBEROI:

**NOTICE OF CASE CLOSURE**

The consultant assigned to handle the above-referenced discrimination complaint that was filed with the Department of Fair Employment and Housing (DFEH) has recommended that the case be closed effective November 25, 2008. Please be advised that this recommendation has been accepted.

Based upon its investigation, DFEH is unable to conclude that the information obtained establishes a violation of the statute. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.

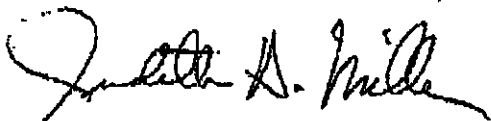
This letter is also your Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. This is also applicable to DFEH complaints that are filed under, and allege a violation of Government Code section 12948 which incorporates Civil Code sections 51, 51.7, and 54. The civil action must be filed within one year from the date of this letter. However, if your civil complaint alleges a violation of Civil Code section 51, 51.7, or 54, you should consult an attorney about the applicable statutes of limitation. If a settlement agreement has been signed resolving the complaint, it is likely that your right to file a private lawsuit may have been waived.

**Notice of Case Closure  
Page Two**

**This case may be referred to the U.S. Equal Employment Opportunity Commission (EEOC) for further review. If so, pursuant to Government Code section 12965, subdivision (d)(1), your right to sue will be tolled during the pendency of EEOC's review of your complaint.**

**DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.**

**Sincerely,**



**Judith A. Miller  
District Administrator**

**cc: Case File**

**EDDIE YIST, ACTING ASST SEC  
OFFICE OF CIVIL RIGHTS  
CA DEPT OF CORRECTIONS AND REHABILITATION  
1515 S ST RM 101N  
SACRAMENTO, CA 95814**

**DFEH-200-08ew (06/06)  
EMEDINAL**

# EXHIBIT D

## DECLARATION OF MAILING

In the Matter of the Appeal by: **Trilochan Oberoi**

Case No. 07-0490E

**Appellant:**

Trilochan Oberoi  
825 Sibley Street #2  
Folsom, CA 95630

**Appellant's Representative:**

Dhillon & Smith LLP  
214 Grant Avenue, Suite 400  
San Francisco, CA 94108  
Attn: Harmeet Dhillon

**Respondent:**

Personnel Officer  
Corrections/Directorate  
1515 S Street, 314 - South  
Sacramento, CA 95814

**Respondent's Representative:**

Corrections/EAPT  
10111 Old Placerville Road, Ste. 100  
Sacramento, CA 95827  
Attn: Debra Ichimura

(See Attached list)

I, the undersigned, say and declare that at all times herein mentioned I was a citizen of the United States, over the age of eighteen years, and not a party to the above entitled proceeding; that I was employed in the County of Sacramento, State of California, and that my business address was 801 Capitol Mall, Sacramento, California. On the date shown below I served the attached **DECISION** on each of the State agencies and persons hereinafter specified by placing true copies thereof in separate envelopes respectively addressed to said State agencies and persons named herein.

Said addresses were the last known addresses of specified agencies and persons. Each envelope was then sealed and deposited in the United States mail, at Sacramento, California, with postage thereon fully prepaid. On said date there was delivery service by United States mail at each of the places so addressed or there was regular communication by United States mail between said place of mailing and each of the places so addressed.

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

Executed on November 21, 2008 at Sacramento, California.

  
\_\_\_\_\_  
Anita Doxie



**CALIFORNIA STATE PERSONNEL BOARD**

801 Capitol Mall • Sacramento, CA 95814

**TRILOCHAN OBEROI**

v.

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

Appeal for discrimination complaint

Case No. 07-0490E  
Decision

WHEREAS, the State Personnel Board has considered carefully the findings of fact and Proposed Decision filed by the Administrative Law Judge in the above matter; and

WHEREAS, by said Proposed Decision the discrimination complaint is granted

IT IS RESOLVED that the findings of fact, determination of issues, and Proposed Decision of the Administrative Law Judge in said matter are hereby adopted by the State Personnel Board as its decision in the case on the date set forth below, that a true copy of the Proposed Decision shall be attached to this Resolution for delivery to the parties in accordance with the law, and that adoption of the Resolution shall be reflected in the record of the meeting and the Board's minutes.

\* \* \* \* \*

The foregoing resolution was made and adopted by the State Personnel Board in Case Number 07-0409E at its meeting on November 18, 2008, as reflected in the record of the meeting and Board minutes.

## BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

TRILOCHAN OBEROI  
v.  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION

Case No. 07-0490E  
Decision

Appeal for discrimination complaint

**STATEMENT OF THE CASE**

This matter came on for hearing before Gregory W. Brown, Administrative Law Judge (ALJ), State Personnel Board (SPB), on June 24 and 25, 2008, in Sacramento, California. The matter was submitted upon receipt of written briefing on September 8, 2008.

Complainant Trilochan Oberoi was represented by Harsimran Kaur, Staff Attorney, The Sikh Coalition, and Harmeet K. Dhillon, Esq., Dhillon & Smith.

Respondent, California Department of Corrections and Rehabilitation (CDCR), was represented by Debra A. Ichimura, Staff Counsel.

Complainant, who wears a beard as a member of the Sikh religion, contends that CDCR discriminated against him on the basis of religion when it denied him employment as a Correctional Officer (CO) because he wears a beard.

Respondent contends that a clean-shaven face is a prerequisite for employment as a CO, because beards interfere with the proper function of the respirators worn by CO's.

Complainant also contends that Complainant violated his First Amendment right to the free exercise of his religion. The SPB is not a court of general jurisdiction, and does not have jurisdiction over First Amendment claims. Therefore, Complainant's First Amendment claim will not be addressed in this forum.

(Oberoi continued)

### ISSUES

The issues to be resolved are:

1. Did Respondent discriminate against Complainant on the basis of his religion?
2. If Respondent discriminated against Complainant, what is the remedy?

### FINDINGS OF FACT

A preponderance of the evidence proves the following facts:

1. Complainant is a devout member of the Sikh religion. Sikh males are required to wear beards as a tenet of their faith.
2. Complainant, a native of India, was a Commander in the Indian Navy for 26 years. He moved to the United States in 1999.
3. Complainant applied for a CO position in 2005. He took and passed the written CO test on January 24, 2006. That day, CDCR extended him a conditional offer of employment, contingent upon his successful completion of the following components of the selection process: a vision test, a physical abilities test, a background investigation prescreening interview, a background investigation, a psychological evaluation, and a pre-employment medical examination.
4. Complainant completed all the above components of the selection process except for the pre-employment medical examination.
5. On May 20, 2006, CDCR notified Complainant that he should appear for his pre-employment medical examination on May 26, 2006. That letter notified Complainant that part of the examination would include a Respirator Fit Test, and that in order to participate in this test, he must appear clean-shaven.

(Oberoi continued)

6. Complainant appeared for the physical examination on May 26, 2006. He took a number of physical examinations. When he appeared for the Respirator Fit Test, he was told he could not take the test because he was not clean-shaven. Complainant stated that he could not shave due to his religious beliefs.
7. At an undetermined time thereafter, CDCR deemed Complainant ineligible for the CO position because he did not complete the Respirator Fit Test, and therefore, had not completed the pre-employment physical portion of the selection process.
8. Complainant filed his discrimination claim with the SPB on February 2, 2007.

#### **PRINCIPLES OF LAW AND ANALYSIS**

Applicants for state employment must be chosen based upon merit, free from illegal discrimination. (Cal. Const., art VII, § 1, subd. (b); Gov. Code, § 18500; *Marie Rose Johnson* (2002) SPB Dec. No. 02-08.) The SPB has jurisdiction to hear complaints of illegal discrimination within the civil service system. (Cal. Code Regs., tit. 2, §§ 54, 54.2, 547.1.) When reviewing a discrimination appeal, the SPB looks chiefly for guidance to Title VII of the Civil Rights Act of 1964 (42 U.S.C., §§ 2000e, et. seq.) and the Fair Employment and Housing Act (FEHA, Gov. Code, §§ 12925, et. seq.). (*Marie Rose Johnson* (2002) SPB Dec. No. 02-08.)

Specifically, Government Code section 12940 (FEHA) provides in part as follows:

*"It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California...*

*"(l) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to*

(Oberoi continued)

discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment *because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part.* (Emphasis added.)

There are three elements to a prima facie case of religious discrimination based on the failure to explore reasonable accommodations: 1) the employee sincerely held a religious belief; 2) the employer was aware of that belief; and 3) the belief conflicted with an employment requirement. (*California Fair Employment and Housing Commission v. Gemini Aluminum Corporation* (2004) 122 Cal.App.4<sup>th</sup> 1004, 1011 (FEHA); *Bhatia v. Chevron U.S.A.* (1984) 734 F.2d 1382, 1383 (Title VII).)

The parties here agree that the requirement that Complainant not shave his beard is a sincerely held tenet of his Sikh religion, and agree that Complainant made Respondent aware of that tenet. Furthermore, this observance conflicted with Respondent's general practice of requiring CO's to be prepared to wear a tight-fitting face mask in the event that chemical agents are deployed. Complainant, therefore, established a prima facie case of religious discrimination for Respondent's failure to explore reasonable accommodations.

Once the employee establishes a prima facie case, the burden shifts to the employer to establish that it initiated good faith efforts to accommodate the employee, or that no accommodation was possible without producing undue hardship. (*California Fair*

(Oberoi continued)

*Employment and Housing Commission v. Gemini Aluminum Corporation, supra*, 122 Cal.App.4<sup>th</sup> at p. 1011; *Bhatia v. Chevron U.S.A., supra*, 734 F.2d at pp. 1383-1384.)

Here, Respondent failed to initiate good faith efforts to accommodate Complainant before it denied him employment. In fact, it made no efforts to accommodate him at all. Rather, Respondent deemed Complainant ineligible for the position solely because of his failure to appear clean-shaven for the Respirator Fit Test.

There is no indication that Respondent considered alternatives to a respirator that forms a seal on the face, such as a hood or a full body suit. At hearing, Respondent acknowledged that an alternative hooded type of respirator could be worn by CO's with beards, but asserted that such a respirator was not acceptable because it is not approved by the National Institute of Occupational Safety and Health (NIOSH) or the Federal and California Offices of Safety and Health Administration (CalOSHA). Aside from these assertions at hearing, it is unclear from the record whether CDCR has ever systematically considered this or other alternatives to tight-fitting respirators. In any event, these assertions came two years after Respondent denied Complainant employment. Respondent failed to show that it considered this or any other alternative to a tight-fitting respirator before it denied Complainant employment.

Similarly, the record is silent as to whether, prior to denying Complainant employment, Respondent considered excusing Complainant from duties requiring a respirator, or explored the possibility of allowing others to perform those duties. While Respondent presented testimony at hearing that such alternatives were impractical, it failed to show that it systematically explored those alternatives prior to denying Complainant employment.

(Oberoi continued)

In the same vein, Respondent failed to meet its burden of showing that potential alternative accommodations would cause an undue hardship for CDCR. If the universe of potential alternative accommodations went unexplored, Respondent cannot contend that unknown alternatives would result in undue hardship.

Furthermore, the evidence strongly suggests that alternative accommodations were available. CDCR's *Department Operations Manual*, section 33020.6.1, allows CO's to wear a beard where the CO provides medical verification of a "skin irritation or disorder." At hearing, CDCR witnesses acknowledged that it is possible that CDCR currently employs CO's who wear beards. If CDCR can provide alternative accommodations to CO's who cannot shave for medical or other reasons without undue hardship, it is difficult to imagine why it cannot extend the same accommodation to CO's who cannot shave for religious reasons. This suggests that reasonable alternatives to accommodate Complainant exist, and would not cause undue hardship to CDCR.

Respondent asserts that the tight-fitting respirator used by CDCR is the only one authorized by CalOSHA and NIOSH, and that forcing it to violate those standards constitutes a per se undue hardship. (See *Bhatia v. Chevron U.S.A.*, *supra*, 734 F.2d at p. 1384.) But Respondent failed to prove that CalOSHA or NIOSH required CO's to wear tight-fitting respirators, that other respirators did not meet CalOSHA and NIOSH standards, or that it considered other alternatives that would not conflict with these standards. Again, where Respondent failed to explore the universe of potential alternatives, it cannot prove undue hardship. This is especially true where the evidence suggests that Respondent currently accommodates other bearded CO's without running afoul of NIOSH and CalOSHA standards.

(Oberoi continued)

In summation, Respondent failed to consider alternatives to accommodate Complainant's religious requirement that he wear a beard, and failed to demonstrate undue hardship from alternative accommodations. Respondent, therefore, discriminated against Complainant on the basis of his religion.

Remedy for Discrimination

Complainant does not request any particular remedy for Respondent's discrimination, even though he was asked to address the issue of remedies in post-hearing briefing. Complainant did not demonstrate that he would have passed the Respirator Fit Test or would have been offered (and would have accepted) a CO position, so wage and benefit compensation is not in order. Nor did Complainant offer evidence that he suffered any other damages, such as emotional distress, stemming from CDCR's discrimination. Complainant cannot be returned to his previous position in the pre-employment process, because it has been approximately two years since he was denied employment, and it is unknown whether he is currently qualified to serve as a CO.

If Complainant re-applies for a CO position or renews his existing CO application, however, and Complainant's religious tenets conflict with CDCR's employment requirements, Respondent shall make good-faith efforts to consider reasonable alternative accommodations. Specifically, Respondent shall consider accommodating Complainant in the same manner it accommodated, or may currently accommodate, other CO's with beards, if such CO's exist. Furthermore, Respondent shall expedite Complainant's pre-employment process to the extent that it has the authority and the opportunity to do so.



(Oberoi continued)

**CONCLUSION OF LAW**

Because Respondent did not explore reasonable alternatives for accommodating Complainant's religious proscription against shaving his beard, and did not demonstrate it would experience undue hardship if it implemented such accommodations, Respondent discriminated against Complainant on the basis of his religion.

**ORDER**

If Complainant re-applies for a CO position or renews his existing CO application, and Complainant's religious tenets conflict with CDCR's employment requirements, Respondent must consider reasonable alternative accommodations. As part of these efforts, Respondent shall determine if it accommodated or currently accommodates other CO's that wear beards, and shall determine if it can accommodate Complainant in the same manner. Respondent shall expedite Complainant's pre-employment process to the extent that it has the authority and the opportunity to do so.

DATED: November 10, 2008

  
\_\_\_\_\_  
Gregory W. Brown  
Administrative Law Judge