

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 13 2018

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: [Signature] DEP CLERK

WILLIE DAVIS, JACKIE PARKER,
DERRICK THREADGILL, and
EARNEST WHITTEN,

Plaintiffs,

v.

CITY OF LITTLE ROCK, a municipality,

Defendant.

Case No.: 4:18cv183 BSM

*****JURY TRIAL DEMANDED**

COMPLAINT

NOW COME Plaintiffs, WILLIE DAVIS, JACKIE PARKER, DERRICK
THREADGILL and EARNEST WHITTEN, (hereafter "Plaintiffs") by and through their
attorneys, and for their cause of action against Defendant, CITY OF LITTLE ROCK, a
municipality, state as follows:

Introduction

This is a civil rights action brought pursuant to 42 U.S.C. § 2000e, *et seq.* (Title VII of
the Civil Rights Act of 1964 as amended), pursuant to 29 U.S.C. § 621, *et seq.* (Age
Discrimination in Employment Act of 1967)("ADEA"), pursuant to 42 U.S.C. § 1983, and
pursuant to the First and Fourteenth Amendments to the United States Constitution, for
injunctive relief and in order to recover damages against Defendant, CITY OF LITTLE ROCK
("Defendant" or "CITY") for the unlawful discriminatory employment practices to which the
Plaintiffs have historically and recently been subjected, said practices also involving a hostile
work environment, retaliation and violations of the Arkansas Whistleblower Act, § 21-1-601, *et
seq.*, and constituting a hostile work environment. All Plaintiffs have suffered damages on

This case assigned to District Judge Miller
and to Magistrate Judge Volpe

account of disparate treatment based on their race and age. This cause is also an action for declaratory judgment pursuant to 28 U.S.C. § 2201 to declare the rights and other legal relations between the parties.

JURISDICTION

1. Jurisdiction and venue of this Court are invoked pursuant to 28 U.S.C. §§ 1331, 1343, 1391 and 42 U.S.C. § 1983. The unlawful employment practices and misconduct alleged to have been committed against Plaintiffs, and each of them, were committed in the State of Arkansas, and in Pulaski County, Arkansas.

PARTIES

2. At all relevant times, Plaintiff, WILLIE DAVIS (hereafter "SGT. DAVIS") was and is a citizen of the United States of America, and he is, therefore, entitled to all legal and constitutional rights afforded citizens of the United States of America. SGT. DAVIS has been employed by the LRPD since November 18, 1991. At all relevant times, SGT. DAVIS was an "employee" per 42 U.S.C. § 2000e(f), and a "public employee" per § 21-1-602(4). SGT. DAVIS is an African-American male, born in 1964. As a person of African-American heritage, SGT. DAVIS is a member of a class protected by Title VII. At all relevant times, SGT. DAVIS was over 40 years of age, and therefore he was protected from age-based employment discrimination by the ADEA.

3. On February 7, 2018, SGT. DAVIS filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"). On February 13, 2018, the EEOC issued him a Dismissal and Notice of Rights, a copy of which is attached as **Exhibit A**.

4. At all relevant times, Plaintiff, JACKIE PARKER (hereafter "OFF. PARKER") was and is a citizen of the United States of America, and he is, therefore, entitled to all legal and

constitutional rights afforded citizens of the United States of America. OFF. PARKER was first employed by the LRPD on November 11, 1995. He was terminated on November 7, 2017. At all relevant times, OFF. PARKER was an “employee” per 42 U.S.C. § 2000e(f), and a “public employee” per § 21-1-602(4). OFF. PARKER is an African-American male, born in 1964. As a person of African-American heritage, OFF. PARKER is a member of a class protected by Title VII. At all relevant times, OFF. PARKER was over 40 years of age, and therefore he was protected from age-based employment discrimination by the ADEA.

5. On December 13, 2017, OFF. PARKER filed a charge of discrimination with the EEOC. On December 19, 2017, the EEOC issued him a Dismissal and Notice of Rights, a copy of which is attached as **Exhibit B**.

6. At all relevant times, Plaintiff, DERRICK THREADGILL (hereafter “SGT. THREADGILL”) was and is a citizen of the United States of America, and he is, therefore, entitled to all legal and constitutional rights afforded citizens of the United States of America. SGT. THREADGILL has been employed by the LRPD since April 4, 1994. At all relevant times, SGT. THREADGILL was an “employee” per 42 U.S.C. § 2000e(f), and a “public employee” per § 21-1-602(4). SGT. THREADGILL is an African-American male, born in 1965. As a person of African-American heritage, SGT. THREADGILL is a member of a class protected by Title VII. At all relevant times, SGT. THREADGILL was over 40 years of age, and therefore he was protected from age-based employment discrimination by the ADEA.

7. On December 4, 2017, SGT. THREADGILL filed a charge of discrimination with the EEOC. On December 12, 2017, the EEOC issued him a Dismissal and Notice of Rights, a copy of which is attached as **Exhibit C**.

8. At all relevant times, Plaintiff, EARNEST WHITTEN (hereafter “LT. WHITTEN”) was and is a citizen of the United States of America, and he is, therefore, entitled to all legal and constitutional rights afforded citizens of the United States of America. LT. WHITTEN has been employed by the LRPD since May 19, 1986. At all relevant times, LT. WHITTEN was an “employee” per 42 U.S.C. § 2000e(f), and a “public employee” per § 21-1-602(4). LT. WHITTEN is an African-American male, born in 1955. As a person of African-American heritage, LT. WHITTEN is a member of a class protected by Title VII. At all relevant times, LT. WHITTEN was over 40 years of age, and therefore he was protected from age-based employment discrimination by the ADEA.

9. On December 4, 2017, LT. WHITTEN filed a charge of discrimination with the EEOC. On December 12, 2017, the EEOC issued him a Dismissal and Notice of Rights, a copy of which is attached as **Exhibit D**.

10. Title VII defines an employer as “a person engaged in an industry affecting commerce who has fifteen or more employees...and any agent of such person...” 42 U.S.C. § 2000e(b). An individual qualifies as an “employer” under Title VII if he or she serves in a supervisory position and exercises significant control over the plaintiff’s hiring, firing or conditions of employment. *See, e.g., Garcia v. Elf Atochem North America*, 28 F.3d 446 (5th Cir. 1994); *Paronline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989).

11. The Arkansas Whistleblower Act defines “public employer” as a municipality, *inter alia*. See Ark. Code Ann. § 21-1-602(5)(D).

12. The CITY is a municipality located in Pulaski County and formed pursuant to the law of the State of Arkansas. At all relevant times, the CITY was an “employer” within the

meaning of 42 U.S.C. § 2000e(b), and was a “public employer” within the meaning of the Arkansas Whistleblower Act. *See* Ark. Code. Ann. § 21-1-602(5)(D).

13. At all relevant times, Kenton Buckner (“Chief Buckner”) was the Chief of Police at the LRPD and, as such, served in a supervisory position and exercised significant control over the Plaintiffs’ promotion, transfer, firing or conditions of employment. At all relevant times, Wayne Bewley, Haywood Finks, Alice Fulk and Ken Temple, who were Assistant Chiefs of Police, and Chief Buckner, and each of them, were agents of the CITY.

14. An individual who is a member of a certain race is not precluded by virtue of his or her race from discriminating against an individual who is of the same race.

15. A pattern of racial discrimination within a police department can exist uninterrupted at the police department throughout the tenures of a successive chiefs of police.

16. The instant lawsuit is being filed within the requisite 90 days of each Plaintiff’s receipt of his EEOC Dismissal and Notice of Rights letter.

FACTS

Historical Background

17. In the late 1970s, a LRPD officer by the name of Johnny D. Gilbert Sr., along with several other African-American officers, filed a civil rights lawsuit against the CITY, alleging institutional racial discrimination. Specifically, the lawsuit alleged that white officers enjoyed more frequent promotions, more preferred transfers, and were disciplined less frequently and less severely than their African-American counterparts. Moreover, the lawsuit alleged, there was insufficient attention given to recruiting black officers into the department. As a result of the *Gilbert* lawsuit, the CITY entered into a consent decree with the United States Department of Justice, wherein it agreed to implement institutional changes.

18. In addition to being a plaintiff in the landmark racial discrimination lawsuit, Johnny D. Gilbert Sr. was also one of the founders of the Little Rock Black Police Officer's Association ("LRBPOA"). The LRBPOA was formed because African-American LRPD officers were historically discriminated against by the Fraternal Order of Police ("FOP") by virtue of their race. This fact is emblematic of the historical trend in the United States of the 20th Century, whereby whites barred African-Americans from membership or meaningful membership in white-dominated professional, vocational and trade organizations. This historical trend is resulted in the emergence in the 20th Century of African-American professional and trade groups, such as the National Bar Association in the field of law, the Negro League in professional sports and even the "Chitlin Circuit" in the entertainment business.

19. There has been rampant racial discrimination within the LRPD for many years, and it has festered virtually unabated through the tenure of all LRPD chiefs of police, including former chief, Stuart Thomas ("Thomas"), and current chief, Chief Buckner. For generations, African-American LRPD officers have been underrepresented at the department when compared to Little Rock's African-American population at-large. For generations, African-Americans have been underrepresented in leadership positions at the LRPD. For generations, they have been forced to endure a hostile work environment and disparate treatment in general. That racism and racial discrimination remains commonplace within the LRPD is beyond serious debate.

A Long and Ignominious History of Racial Inequality

20. Focusing on recent history, in 1992, Kevin Tindall ("Tindall"), a white LRPD officer, attended a FOP Halloween party in blackface, wearing an Afro wig, and carrying a watermelon. Tindall's white girlfriend, who accompanied him, was dressed as a fried chicken

drumstick, and the couple shuffled around mimicking “old black Sambo” stereotypes. When black officers complained, the white-dominated FOP defended Tindall’s actions, and used FOP funds to retain legal representation for him. Tindall was not terminated for this racist conduct, which engendered consternation among minority officers, and created administrative precedence for the toleration of open racial bigotry. According to sworn testimony from LRPD officer, Lt. Johnny D. Gilbert Jr., the Tindall “blackface incident,” was a major source of embarrassment, disappointment and outrage for African-American Little Rock officers.

21. In 2000, the LRPD hired Lawrence Johnson, a high-ranking African-American officer from Oklahoma, to become chief. Chief Johnson was not favored by the white LRPD leadership because he was black and because he immediately made it clear that he intended to change the culture at the department. During his tenure, Chief Johnson placed minority officers who previously never had an opportunity to lead, in leadership positions.

22. By the second year of Chief Johnson’s tenure, the white-dominated FOP initiated a coordinated public campaign to undermine him and his role as chief of police. Among the ways it undermined his authority was to spend FOP funds to lease billboards along major Pulaski County highways, and erect upon them huge signs reading “The Little Rock Police Department is in Need of Quality Leadership.” It was the express goal of the FOP to run Chief Johnson out of town, and they successfully did so, as the CITY declined to renew his contract when his first term ended.

23. In 2005, Thomas came out of retirement to become the chief of police. Early on, he made his leadership style clear, advising a group of officers that he believes in the “good ol’ boy system,” a statement Lt. Johnny D. Gilbert Jr. found openly hostile to African-American officers, as well as other non-white, non-male officers. Thomas openly boasted that he would be

the “HMIC” or “head motherfucker in charge.” He stated his administration’s goal when he declared that he would be “[t]aking our police department back.” This was directly heard by Lt. Johnny D. Gilbert Jr., who took it to mean Thomas intended to reestablish the perceived loss of power and privilege enjoyed by white officers prior to Chief Johnson’s tenure.

24. Josh Hastings (“Hastings”) was a LRPD officer from 2007 until 2012, when he was fired after killing a 15-year-old African-American boy, Bobby Moore, while responding to a car break-in call. Hastings is the son of Thomas’ academy mate, Capt. Terry Hastings (“Capt. Hastings”), who retired in March 2015 after 30 years on the force. During a deposition in a civil rights lawsuit filed over the shooting, Hastings testified that his father commonly used the term “nigger” in his household, and in front of his children. Hastings admits to using the racial slur as well.

25. It was further discovered during that lawsuit that when Hastings was a LRPD recruit, he took a polygraph test which inquired as to possible affiliations with violent, subversive groups, like the Ku Klux Klan. However, Thomas allowed the test to be conducted by Lisa Dawson (“Dawson”), who is the mother of one of Hastings’ childhood friends. Dawson filled out portions of Hastings’ Pre-Polygraph Questionnaire for him, which was a major deviation from testing protocol. Lt. Johnny D. Gilbert Jr. was a member of the hiring committee at the time, and has confirmed that Dawson rigged Hastings’ polygraph so that he would not fail it. When asked about this under oath, Thomas could rule out that Dawson filled out Hastings’ forms.

26. In January 2007, prior to Hastings’ hire, Lt. Johnny D. Gilbert Jr. voiced his strong opposition to the hire of Hastings for ethical and other reasons, calling him a potential liability. Lt. Johnny D. Gilbert Jr.’s legitimate concerns were disregarded by Thomas who had

the unilateral authority to refuse to hire Hastings. Instead, Thomas downplayed the significance of Hastings's association with the KKK, and authorized his hire. Thomas acknowledges that by hiring Hastings in spite of his link to the KKK, the LRPD was expressly or implicitly representing that the LRPD is a department where one can be a police officer, even if he or she has attended a KKK meeting in his or her recent past.

27. Approximately five years after he was hired, in August 2012, Hastings shot and killed Bobby Moore, and then lied about the circumstances of the shooting to make it seem justified. The LRPD conducted an "in-house" homicide investigation of the shooting, which was riddled with crime scene blunders and basic investigation flaws. Crucial eyewitnesses were never interviewed. While Hastings was tried for manslaughter, the evidence collected by the LRPD was too weak to convict him, so he went free.

28. In 2009, LRPD Officer Cedric Roy ("Roy"), an African-American, witnessed a white LRPD officer assaulting a handcuffed, black juvenile and intervened on behalf of the juvenile. The white officer struck the handcuffed victim on the head, choked him, and slammed him on the ground. Roy reported this excessive force to his white supervisor, Sgt. Don Brown ("Brown") who ignored it, prompting Roy to report the situation himself. Brown pressured Roy to draft his report to show that Brown was never informed of the excessive force, which Roy refused to do. Brown then redrafted Roy's report and ordered him sign it. Roy, who reported an act of excessive force committed by a white officer upon an African-American youth, wound up being disciplined for a failure to report. Soon thereafter, Roy was ostracized by his fellow officers and suffered retaliation which was reported to the CITY but never investigated.

29. In 2016, during the pendency of a civil rights lawsuit against the CITY, the CITY acknowledged that in the entire history of the LRPD to that point, there had never been a sustained finding of racial profiling against any Little Rock police officer.

30. In March 2016, Sgt. James Stephens (“Stephens”), an Internal Affairs (“IA”) supervisor, testified that he does not think racial profiling is a problem at the LRPD. Capt. Heath Helton, who is responsible for overseeing the training of LRPD recruits on subject matters such as racial sensitivity, does not think racial profiling exists in Little Rock. In September 2016, he testified that he has no reason to believe there is any racial profiling at the LRPD.

31. In March 2010, Officer David Edgmon (“Edgmon”), who is white, confronted a group of African-American young men using the term “jiggaboo,” and then identified himself as a LRPD officer, flashing his badge. Despite knowledge of this event within the department, the matter was not internally investigated until the young men uploaded video of Edgmon’s slur online, and the video went viral. Only after public outcry forced Thomas’ hand did the LRPD investigate the matter. Thomas was forced to terminate Edgmon, who was eventually reinstated by using the 1992 Tindall “blackface incident” as precedence of the LRPD allowing openly racist officers to continue their employment at the department.

32. The public outcry caused by the 2010 Edgmon “jiggaboo incident” compelled the CITY to hastily schedule a Racial & Cultural Diversity Forum meeting intended to address the matter. During the meeting, an African-American former LRPD officer cited the hypocrisy of the CITY touting its racial sensitivity when it had hired Hastings, despite knowledge of his prior association with the KKK. The African-American former officer made these public comments about Hastings’ hire prior to Hastings killing Bobby Moore in August 2012. Even though Capt. Hastings admitted under oath in May 2013 that what the African-American former officer said at

the forum was true, Capt. Hastings nonetheless became enraged and needed to be physically restrained by Thomas.

33. Incidentally, the African-American former officer who spoke out at the forum was terminated in 2010 for a sustained violation of LRPD Rule 1/5020.01 (*Sleeping, idling or loafing*)(#10-4347), when he was discovered asleep while on duty. That officers discipline history included 16 sustained policy violations in a 13 year career. Hastings was not terminated for a 2011 sustained violation of Rule 1/5020.01 (*Sleeping, idling or loafing*), when he was discovered parked in his patrol car in a church parking lot asleep and on duty while his fellow officers and supervisors urgently tried to locate him. At that time, Hastings discipline history included more sustained policy violations in fewer years than the aforementioned black officer. Even though they committed the same violation of Rule 1/5020.01, the African-American former officer was terminated because he is black, and Hastings was not terminated because he is white.

34. In 2014, a white LRPD officer, Arthur McDaniel ("McDaniel") was accused of calling a white woman in an interracial relationship a "nigger-loving whore," at a gas station after observing her African-American boyfriend while he was pumping gas with their two-year-old child. The woman claimed McDaniel made other vicious slurs, including: a) "I don't know why people bring niggers to this town."; b) stating the woman liked "fucking black niggers"; and c) referring to her son as her "nigger ass baby."

35. The woman filed a citizen's complaint (IA #12-01) and the LRPD initiated an internal investigation, but McDaniel was allowed to take an early retirement in the middle of the investigation. The practical and intended effect of McDaniel's retirement was that the IA

investigation, which was pending at the time, was discontinued and never completed, regardless of the legitimacy of the citizen's allegations.

36. At a 2016 deposition in a civil rights lawsuit, McDaniel testified about his historical usage of racial slurs:

Q: [Nigger is] a pretty offensive word, isn't it?

A: It can be taken like that, yes.

Q: When a white person says it to a black person, unless there's some very special relationship that they have, it's – you understand that to be offensive to be heard by a black person from a white person, don't you?

A: Yeah, I would agree, but I don't – I don't say it to a black person –

Q: I'm just saying –

A: – out of respect.

Q: When you use the word, you make sure there's no black people around?

A: That is correct.

37. It is a chilling thought that for many years, Little Rock citizens—42% of whom are African-American—relied on McDaniel, and officers like him, to protect and serve them.

38. One LRPD officer, Todd Payne (“Payne”), was permitted to engage in deplorably vicious and racist acts throughout his career without appropriate discipline or any discipline at all in some instances. On one occasion, he left white supremacy magazines in an LRPD squad car. He frequently circulated racist emails among his officer friends, one of which made reference to an African-American police-involved shooting victim, Navy veteran Eugene Ellison, who was

killed by a white LRPD officer in 2010 with the subject line “Dead Nigger,” and which read “The jig was killed by a confirmed bisexual racist cunt.” Several white LRPD officers were copied on Payne’s racist emails. Everyone accepted Payne’s vile conduct.

39. In another email, he referred to an African-American fellow officer as a “nigger,” and a Hispanic officer colleague as a “spic.” Payne and his white colleague, Greg Key, admitted to a witness their practice of trapping rats in downtown Little Rock dumpsters, and then transporting them to black communities to “[l]et those niggers deal with it.” These stories and others like it were well-known throughout the department at all relevant times.

40. It is a chilling thought that for many years, Little Rock citizens—42% of whom are African-American—relied on Payne, and officers like him, to protect and serve them.

41. In 2010, an African-American City Director, Ken Richardson, walked through City Hall, wearing a City of Little Rock polo-style golf shirt when he was confronted by Elliot Young, a white LRPD officer, who aggressively confronted him, and demanded that he remove the shirt. This was a very controversial incident among African-American Little Rock citizens, because it showed that even African-American civic leaders are afforded less respect and deference because of their race. In August 2016, Thomas, who was chief at the time of the incident, refused to acknowledge any type of racial component involved in the white officer’s confrontation of the African-American director.

42. Hastings’ supervisor in 2010 testified that Hastings had used the phrase “bunch of monkeys” to describe African-American Little Rock citizens, while in his LRPD uniform, a slur caught on his body mic that nonetheless went unpunished. Hastings acknowledges racial slurs at the department, and himself has heard Officer Thomas Moore (“T. Moore”) use the phrase “Niggerhood” to describe a black community. Despite this admission by Hastings and the

statements from a white Little Rock citizen that T. Moore while on duty said "I'm getting something to drink because I'm ready to go home and go to bed...I'm ready to get out of this nigger hood..." T. Moore was exonerated of using racial slurs (#10-4343). Thomas approved of the exoneration.

43. In 2014, Officer James Christ ("Christ") was investigated for using racial slurs when he called some African-American Little Rock citizens a "pack of spades," an allegation Stephens believes is factually accurate. However, Christ, who claimed the IA investigation was a product of "reverse racism," was allowed early retirement while the investigation was still pending, like McDaniel before him. The investigation was discontinued and never completed. Earlier in his career, in November 2009, Christ shot and killed an African-American mentally ill man without warning.

44. In early 2016, Officer Jeff King ("King") sent emails with disparaging racist comments referring to President Barack Obama as a "Sambo," juxtaposed with a photograph of himself in his LRPD uniform guarding Air Force One at the Little Rock airport. The United States Secret Service actually contacted the LRPD about King's slurs because the federal agency charged with protecting the life of the U.S. President considered it to be dangerous hate speech. King's slurs resulted in IA File #12-07.

45. Angered by the revelation of his racist posts, King combed the Facebook pages of African-American LRPD officers, looking for something to exploit in retaliatory fashion. Eventually, he accessed fellow LRPD officer Sgt. J.C. White's ("White") Facebook page. White is African-American. On White's page, King found that someone (not White) commented in support of President Barack Obama, decrying the racism our 44th President was enduring, stating "They are cowards JC Jim Crow has gotten smarter now. His new name is James Esquire. They

use code words now. Every time they call [President Obama] a Muslim replace that word with nigger that's what they really mean." On September 20, 2012, King filed a complaint against White to IA, based on the usage of the word "nigger." White was punished as a result of King's retaliation in IA File #12-41.

46. In March 2016, James Foster ("Foster"), a white male who is the CITY's Administrative Services Manager and who is responsible for setting budgets and applying for money grants from the federal government, revealed his racism and institutional scapegoating, which was aimed at Latino-Americans:

Q: And you give some of the reasons that you believe that there is a limited revenue coming in here, right?

A: Yes.

Q: You say that a lot of small business have gone out of business or relocated, right?

A: Yes.

Q: You talk about an influx of migrant workers, right?

A: Did I? I don't remember saying that.

Q: You say that they placed a strain on the city's ability to keep and train good quality officers.

A: (Reviews document.) Oh, we have a –

Q: Did you say that?

A: Yeah, it's in there.

Q: Okay. What does that mean?

A: That means in Southwest, we have a lot of Hispanics, at the time. We don't have enough Hispanic officers to effectively communicate with that community.

Q: Okay. And that's what you mean by the strain that these Hispanic migrant workers have placed on the city's ability to keep and train good quality officers?

A: That may be a poor choice of words. The – the problem is in our Hispanic community.

Q: **Now, do you mean “migrant workers” or do you mean “non-migrant worker Hispanics” because “migrant workers” and “Hispanic communities” are not interchangeable terms.**

A: **I don't know that I can differentiate. In my mind, I don't differentiate between the two. I know what a migrant worker is.**

47. Foster testified that there is no difference between “migrant workers” and “Hispanic communities.” In his mind, all Latino-Americans are migrant workers.

48. In 2002, like the current Plaintiffs, Foster filed a charge of discrimination with the EEOC, alleging that the CITY discriminated against him by virtue of his race and age. Foster complained that he was discriminated against when the CITY hired an African-American woman younger than he, for the position of Communications Center Manager, a job he wanted.

49. In 2016, an African-American former supervising sergeant, Corey Hall (“Hall”) testified regarding a historical pattern of white officers receiving preferential treatment at the LRPD. In fact, Hall successfully sued the CITY over racial discrimination he experienced at the LRPD during his employment. He testified to hearing slurs and racial comments made by LRPD officers over the years, and testified to racial hostility at the department, in a general sense. He even testified to casual, non-hostile usage of the word “nigger,” during on-duty conversations with a fellow officer. Stephens is aware of similar complaints by black officers at LRPD.

50. In 2016, Lt. Johnny D. Gilbert Jr. gave testimony in a racial discrimination lawsuit against the CITY and Thomas, in which an African-American officer, alleged disparate

treatment in the investigation of a domestic incident in which he was involved. Lt. Johnny D.

Gilbert Jr. was asked about his testimony in the matter:

Q: Can you just give me an idea of some of the things that you testified to just three to four weeks ago in the matter of [Officer A] versus City of Little Rock?

A: The first one that comes to mind, as I can recall, was the night that [Officer A] and his wife had had an argument, a fight. Investigators went to the home [] and made contact with his wife. [Officer A] had left before the police had arrived. They determined that she had been battered in some way by [Officer A], and they got on the radio and began to make broadcasts about his name, his description, the vehicle he was driving, the license plate of the vehicle. This was done on a regular basis, this went from the detective in the field to the radio room. And the radio room has the capability of making these broadcasts throughout the entire city on all the police radios, Little Rock police radios. This was done consistently about – at a – at a 15-minute interval over about a 2-hour time period, perhaps even longer. They kept talking about who he was, what he looked like, what he was driving, the vehicle license plate.

Q: May I interrupt you briefly?

A: Yes, sir.

Q: Did they – in describing him, did they describe his [African-American] race?

A: They did.

Q: Please continue, sir.

A: And I found it kind of odd. [Officer A] has roots in Mississippi. And there was a theory that was being forwarded that he may be going home to Mississippi. So in making these broadcasts at 15 minutes for 2-hours plus, and I said, We know who he is, we know where he lives, why are we doing that? And in my experience, we have – there have been crimes that have been committed of a much more heinous nature, we didn't do that.

...[Officer A] is 6 foot 6, 300-plus pounds, jet black. His wife is a white female, perhaps 5 foot 2, 5 foot 4, white female, pale complexion, a member of the Arkansas Army National Guard at the time. I had no problem with him or his wife, but I get this – and I can't quantify this by words, it's a feeling, it's a feeling of discomfort, it's a feeling of unease that maybe, perhaps, the culture of the police department was not comfortable with, not all of them, a few, weren't necessarily comfortable with.

Q: Let me ask you a quick question if I may. When you say that you were okay with them and that some – certain members of the department might not be, are you referring to the fact that they were in an interracial relationship?

A: That's exactly what I mean.

Q: Right. It's based on your experience?

A: Based on – based on my experience. [Officer A] was not afforded the same kind of courtesies that other police officers were given who had – who were in similar situations, black man, black wife; white male, white wife. That makes people uncomfortable in the police culture of the Little Rock Police Department. Not by all, but by some.

Q: So would you agree with me that one of your topics of your deposition in that case was the uneven or selective prosecution by the Little Rock Police Department as it relates to [Officer A]?

A: I would say that would be fair. There have been other situations that happened similar to him where a police officer was involved in a situation where his wife or spouse or girlfriend was battered, in my experience, and we didn't go after him, that suspect, that police officer so vigorously in the same manner in which they went after [Officer A].

Q: Is it fair to say that you believe that if [Officer A] – if the situation involving [Officer A] was identical except for the

fact that his wife was African-American, are you under the – do you believe that he would not have been pursued as vigorously as you've testified to?

A: Yes, sir.

Q: Who are some of the defendants in the [Officer A] case other than the City of Little Rock, if you know?

A: Chief Stuart Thomas.

Multiple LRBPOA Complaints of Institutional Racism and Racial Hostility

51. On October 19, 2012, the LRBPOA formally alleged institutional racial discrimination at the department, and sent a fact-intensive letter to Thomas which highlighted patterns of “inequities within the police department” relating to transfers, salaries, promotions, and discipline of black officers. The LRBPOA letter detailed “a disparity in disciplinary actions and critical decision-making, which affects the overall service provided to all citizens of Little Rock, and the morale of the officers.” It noted overall feelings of mistrust toward the LRPD among the public and certainly African-American Little Rock officers.

52. In 2016, during a deposition in a civil rights lawsuit, Thomas was asked what he, as LRPD chief of police, did to address the racial discrimination identified by the LRBPOA in its 2012 letter:

Q: Let me ask you this. This letter represents a formal – it represents a communication to you from black officers under your supervision, correct?

A: Yes.

Q: And they are saying that there is racial discrimination at your department, correct?

A: Yes, sir.

Q: And they're saying that that racial discrimination comes in uneven – in the form of uneven discipline, right?

A: Yes, sir.

Q: With – with transfers, yeah?

A: Yes, sir.

Q: Salaries?

A: Yes, sir.

Q: Promotions?

A: Yes, sir.

Q: And the treatment of excessive force allegations, correct?

A: Yes, sir.

Q: **Do you think that the LRPD, during your tenure, had any significant issues in any of those [racial discrimination] subtopics?**

A: **Yes.**

Q: Which ones?

A: **I – frankly, I think all of them.** At – at some point or another, we have had issues that we have had to address.

Q: **Did you find this letter to be significant?**

A: **Yes.**

Q: **Tell me all the things you did to address the problems articulated in this letter.**

A: I went through the letter. Some of it was misunderstandings. Some it was accurate. Some of it was inaccurate. I went through. I took it point by point.

Q: You read the letter?

A: Yes. Yes.

Q: Okay. After reading the letter –

A: Yes.

Q: – what did you do to address the concerns of the letter?

A: The ones that – I went back, took it. The ones that I thought were misunderstandings, I tried to prepare a – a response that showed what the actual facts of the matter were.

Q: Okay. What about the ones that you felt had merit? What did you do to address those?

A: I discussed it with staff, made sure that we were – that we were kind of all on the same page. I don't think there was anything that – that I could immediately do that corrected anything that was alleged.

Q: I'm not asking for immediate results.

A: That –

Q: I'm just asking what you did to address the concerns of the ones that you found to have merit.

A: I – I discussed it with the – the members of the BPOA, discussed it with staff.

Q: When did you discuss it with the members of the BPOA?

A: I'm sure we met – I don't know. Shortly after that – sometime after the letter.

Q: Are you sure – are you sure you met with anybody from the BPOA? Are you sure about that?

A: Multiple times during the process, yes.

Q: You spoke with members of the BPOA about this letter multiple times?

A: Probably not about that letter multiple times, but I –

Q: See, what I'm asking for is –

A: Yeah.

Q: – this letter articulates specific concerns.

A: Yeah.

Q: Some of them you thought were misunderstandings –

A: Yeah.

Q: – and some of them you thought had merit, right?

A: Right.

Q: **So focusing on the ones that had merit, other than reading this thing, what did you do to address those concerns?**

A: **I – I don't specifically recall. I remember we – I discussed it with staff.**

Q: **Did you change any policies?**

A: **I don't necessarily know that we did.**

Q: I don't know about the "necessarily" part. You don't know, do you?

A: I don't – I don't recall.

Q: Okay. **Did you institute any new policies?**

A: **I don't think so.**

53. Though Thomas openly acknowledges the LRPD had significant racial discrimination problems during his tenure, he nonetheless did nothing to address the serious concerns presented in the LRBPOA's 2012 letter.

54. Thomas' admission that the 2012 LRBPOA letter voiced legitimate concerns, combined with the CITY's failure to address and remedy those concerns, demonstrates deliberate indifference to the concerns. The result of this deliberate indifference is that the serious issues

identified by the LRBPOA in 2012 continue unaddressed and unabated, and remain at the time of the current filing.

55. In 2013, in retaliation for the 2012 LRBPOA letter to Thomas, Det. Stuart Sullivan and Det. Lela Folsom, both white LRPD officers, filed a defamation lawsuit against the LRBPOA, naming Sgt. Troy Ellison (“Ellison”), an African-American officer, as the primary defendant (Pulaski County Circuit Court Case Docket No. 60cv-13-4132). At that time, Ellison was a plaintiff in *Ellison v. Leshner, et al.*, a federal civil rights lawsuit against the CITY and others for the shooting death of his African-American father at the hands of a white officer who entered his father’s home without a warrant and killed him.

56. Also during the pendency of the *Ellison* lawsuit, Ellison was summoned to an unscheduled deadly force in-service session where he was singled out by the City Attorney, who represented the CITY in the lawsuit, and asked pointed questions about deadly force in front of the shooter of his father and other witnesses to the shooting who were also present at the in-service. LT. WHITTEN, too, was present at this in-service, and he was appalled by what he witnessed.

57. On April 28, 2017, the LRBPOA issued a news release in response to a April 21, 2017 memorandum drafted by Little Rock City Manager, Bruce Moore (“B. Moore”) wherein it was critical of the CITY’s response to gun violence in Little Rock. The release complained that B. Moore scapegoated Little Rock’s African-American community by blaming it for the spate of violent crime. It pointed to the CITY’s failure to clearly define a proactive plan to combat the violence as a contributing cause of the increasing levels of violence.

58. On July 5, 2017, the LRBPOA sent a letter to the City of Little Rock Board of Directors wherein it voiced its concern “with the administration of the Little Rock Police

Department.” The LRBPOA’s 2017 letter to the Board of Directors repeated the same concerns articulated in its 2012 letter to Thomas. Specifically, the LRBPOA requested “an independent investigation into the discrimination, inequities, and disparaging treatment of minority officers and supervisors, under the command of Chief Kenton Buckner.” The letter complained of racial hostility, and unequal treatment in discipline, training, opportunities and career advancement.

59. In response, on July 14, 2017, Chief Buckner drafted a memorandum to all police personnel wherein he declined to address the concerns expressed by LRBPOA stating, “[g]iven the nature of the subject, and consistent with past departmental practice, neither I nor other members of the LRPD leadership can address specifics which were mentioned in the letter.” The Board of Directors declined to authorize the investigation requested by LRBPOA, with one City Director stating her belief that the complaints articulated in the letter should be handled by the City Manager and the City’s Human Resources Department.

60. On October 13, 2017, Lt. Johnny D. Gilbert Jr., SGT. DAVIS, SGT. THREADGILL, Capt. Tanya Washington, an African-American female supervising officer, and LT. WHITTEN sent a letter to Stacey Witherell, Director of Human Services for the CITY. In this letter, the senior officers complained of harassment, racial discrimination, age discrimination, disparate treatment and retaliation, *inter alia*. The senior officers’ complaints were minimized and disregarded.

61. On November 17, 2017, the LRBPOA Executive Board sent a letter to Chief Buckner wherein it advised that a LRPD recruit posted a photograph of a sleeping black male with a racist caption reading “Go night night nigga” on his Facebook account. The LRBPOA enclosed the photograph with the letter, which proclaimed “Here We Go Again!” correctly implying that the LRPD continues to ignore painful lessons of its past.

62. To prove this point, the LRBPOA recalled Hastings, the former LRPD officer who had attended a KKK meeting prior to his hire—a fact known by the chief who authorized his hire—and who later shot and killed 15-year-old Bobby Moore. Echoing prior missives, the letter decried the pattern at the CITY wherein the legitimate concerns of the LRBPOA and Little Rock's African-American community are summarily ignored.

63. At all relevant times, each of the Plaintiffs were members of LRBPOA. In 2016-17, SGT. WILLIE DAVIS was the Second Vice President of LRBPOA, and Lt. Johnny D. Gilbert Jr. was the LRBPOA Media Representative.

64. As early as 2014, Chief Buckner made clear his desire and goal to have the LRBPOA permanently disbanded, and since then, he has consistently undermined the organization, publicly denouncing the LRBPOA, to the news media, intentionally trying to damage its credibility as an seeker of racial equality.

65. Because of his animus toward the LRBPOA, Chief Buckner has ridiculed and belittled each of the Plaintiffs and harshly criticized their work performance publicly and without justification.

66. Following Chief Buckner's sentiments and cues, Assistant Chief Hayward Finks terminated his membership with the LRBPOA in August 2017 after 28 years as a member.

67. Chief Buckner has also made comments that reflect the age discrimination that exists at the LRPD. Regarding placement in special assignments and approving executive training for older officers, Chief Buckner has stated that he is not interested in "wasting time and money on someone that's on their way out the door." Meanwhile, as of the time of the instant filing, violent crime and guns deaths continue at a brisk pace in Little Rock.

Individual Plaintiffs

68. In 2010, the City of Little Rock had a population of 193,524, consisting of 48.9% Caucasian, and 42.3% African-American.¹ Little Rock is the 118th largest city in the U.S., and it boasts the states' largest police force, the LRPD. In 2012, the LRPD reflected a 67.59% employment percentage rate of white officers, versus 28.89% for black officers.

69. Each of the Plaintiffs have suffered an adverse employment action and a sustained campaign of petty harassment. Each have experienced retaliatory conduct which was intended to chill their First Amendment right to associate with an organization like the LRBPOA. Each have had to perform the demanding rigors of their jobs as police officers in the midst of the aforementioned toxic racial environment caused by the CITY, and unaddressed by the CITY.

70. Chief Buckner has made comments that reflect the age discrimination that exists at the LRPD. Regarding placement in special assignments and approving executive training for older officers, Chief Buckner has stated that he is not interested in "wasting time and money on someone that's on their way out the door." This statement files in the face of the ADEA, and was heard directly by LRPD supervisor, Capt. Tanya Washington. Meanwhile, as of the time of the instant filing, violent crime and guns deaths continue at a brisk pace in Little Rock.

Sgt. Willie Davis

71. SGT. DAVIS has been employed by the LRPD since November 18, 1991, and achieved the rank of Sergeant. SGT. DAVIS holds a master's degree. He has received many accolades over the years, such as the Community Service Award in 2011 for his work with at-risk youths through the O.K. Program. SGT. DAVIS was nominated for the 2010 Outstanding Law Enforcement Officer of the Year Award.

¹ These figures are derived from 2010 U.S. Census, and City of Little Rock website.

72. In September 2017, SGT. DAVIS was given a written letter of reprimand for a violation of policy when he allegedly did not giving proper documentation to the apartment complex where he resides. White officers have failed to provide such documentation in similar circumstances on frequent prior occasions without the imposition of any discipline.

73. In 2017, SGT. DAVIS became aware of the aforementioned racist Facebook photo and caption posted by the white LRPD recruit. SGT. DAVIS shared this information with his superior officers at the LRBPOA who, in turn, supplied it to the LRPD. The revelation about this racist recruit was embarrassing to the CITY because it showed that an internet blogger on a modest budget apparently did more research into LRPD recruits than the CITY itself. It was also embarrassing because it showed that the CITY continued its historical failure to properly vet LRPD recruits, which was demonstrated in 2007 with the hire of Hastings despite his attendance at a KKK meeting prior to his hire, which was known by Thomas.

74. Rather than commend SGT. DAVIS for bringing this alarming fact to the attention of the CITY, the LRPD actually imposed discipline on him, which was an obvious act of retaliation for his exposing the CITY's deliberate indifference to racist recruits infiltrating the ranks of the LRPD.

75. There are other examples of African-American LRPD officers bringing such matters to the attention of the CITY, followed by the CITY disciplining them in retaliation for speaking out and in order to chill future complaints of inequality and racial discrimination.

76. In October 2017, for no legitimate reason and demonstrating the type of retaliation of which Plaintiffs herein complain, Chief Buckner went on to SGT. DAVIS' Facebook page, poking around until he could find something to use as a pretext to discipline

SGT. DAVIS. In November 2017, Chief Buckner imposed discipline on SGT. DAVIS in the form of a letter of reprimand based on posts found on SGT. DAVIS' Facebook page.

Sgt. Derrick Threadgill

77. SGT. THREADGILL has been employed by the LRPD since April 4, 1994, and achieved the rank of Sergeant in 2011. SGT. THREADGILL holds a master's degree in Business & Organizational Security Management. He has received many accolades over the years, in the form of countless letters of commendation and letters of appreciation.

78. On December 22, 2016, one of SGT. THREADGILL's subordinates contacted him regarding a potential domestic dispute situation. The subordinate explained that accusing spouse claimed the accused spouse became upset and attacked her. The accused spouse was armed with a gun in his back pocket, which was taken by the subordinate officer, and he was put in a patrol car. The accusing spouse was checked for injuries, but none were found. She declined medical treatment. SGT. THREADGILL used his professional, supervisory discretion and decided not to arrest the accused spouse on domestic abuse, based on the facts presented to him.

79. On July 27, 2017, SGT. THREADGILL was disciplined with a 30-day suspension (without pay) for "fail[ing] to respond to the scene of a domestic disturbance after being contacted by a subordinate officer for guidance on the appropriate charges regarding a possible felony incident." SGT. THREADGILL was told "You directed the officer to not pursue domestic charges when there was evidence that a domestic related violation had occurred. You also advised the officer to contact a supervisor in the Major Crimes Division instead of you, as a supervisor, calling the on-call detective personnel." SGT. THREADGILL was informed by Alice Fulk that he was also barred from off-duty employment during his suspension.

Lt. Earnest Whitten

80. LT. WHITTEN has been employed by the LRPD since May 19, 1986, and achieved the rank of Lieutenant in 2005. LT. WHITTEN holds a master's degree in Public Administration. He is a graduate of the FBI National Academy at Quantico, Virginia. He has received many accolades over the years, in the form of countless letters of commendation.

81. LT. WHITTEN was discriminated against when Chief Buckner changed the criteria for the captain's test after the initial announcement was made and after LT. WHITTEN expressed interest. The process was modified by Chief Buckner so that two younger white males, who were ineligible according to the rules, would be considered eligible.

82. LT. WHITTEN has been discriminated on the basis of his age, having applied on multiple occasions to fill lieutenant vacancies, but was consistently denied with the positions going to less qualified lieutenants. LT. WHITTEN was denied a homicide lieutenant vacancy despite his extensive experience, knowledge and superior qualifications. The position went to a lesser qualified white male, who has since been transferred. LT. WHITTEN was denied a training lieutenant vacancy despite his qualifications. The position went to a lesser qualified white male.

83. LT. WHITTEN was denied a Public Information Officer vacancy, despite his extensive experience, knowledge and superior qualifications. The position went to a younger officer with less experience. In one of the instances, the interview process was modified to discourage senior applicants. Moreover, LT. WHITTEN was prevented from applying for other positions when he was informed that each had already been promised to other younger or white lieutenants who had been preselected and received personal phone calls instructing them to apply.

84. LT. WHITTEN suffered an involuntary transfer from the training division in retaliation for reporting inappropriate conduct of the Division Commander. He was retaliated against and treated differently and adversely by his first line supervisor during his assignment at the Training Division for reporting an act of inappropriate conduct.

85. LT. WHITTEN has been harassed by Chief Buckner for his relationship with retired LRPD assistant chief, Eric Higgins, who vied for the position of LRPD chief of police which eventually was given to Chief Buckner. Instances of this harassment include Chief Buckner berating LT. WHITTEN over a recruiting display at the Doubletree Hotel, and public suggestion that LT. WHITTEN would be less than honest during an IA investigation in which LT. WHITTEN was a witness.

Off. Jackie Parker

86. OFF. PARKER was first employed by the LRPD since November 11, 1995. Achieved rank of Sergeant several years later. He has received many accolades over the years, in the form of letters of commendation.

87. In November 2017, OFF. PARKER was terminated because he “allowed a suspect to leave the scene without being arrested Violation of an Order of Protection; and a suspect on a separate incident to leave the scene without being arrested for a Parole Revocation Warrant.” There are many instances of similar conduct by white LRPD officers who were either not disciplined or disciplined more less harshly.

COUNT I
RACE AND AGE DISCRIMINATION

88. Plaintiffs hereby incorporate and re-allege Paragraphs one (1) through eighty-seven (87) as though fully alleged in Count I.

89. Title VII of the Civil Rights Act of 1964 (as amended) is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.

90. One purpose of the ADEA is to ensure candidates are evaluated on their merits and not their age. To assume that an employee is uncommitted to an employment position because his or her age makes him or her retirement-eligible is the very type of age-stereotyping that the ADEA prohibits.

91. Plaintiffs, SGT. DAVIS, OFF. PARKER, SGT. THREADGILL and LT. WHITTEN, were discriminated against by virtue of their race and age.

92. A plaintiff may prove intentional discrimination using either direct or circumstantial evidence. Evidence is "direct" if it establishes a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the employer's decision.

93. If the plaintiff lacks direct evidence that clearly points to the presence of an illegal motive, he or she must create the requisite inference of unlawful discrimination through the *McDonnell Douglas* analysis.

94. Regarding the *McDonnell Douglas* analysis, an employer's past discriminatory policy and practices may show that its proffered reasons for disparate treatment are pretextual and may thus be admissible.

95. Because of their involvement in LRBPOA, Chief Buckner subjected the plaintiffs to a hostile work environment, which included discouragement, harassment, coarse language, threats of demotion, involuntary transfers, relief of duty and suspensions. Plaintiffs were forced

to work in an environment that tolerates and condones racist conduct, and protects those guilty of exhibiting racist conduct and making racist statements.

96. Plaintiffs, and each of them, were denied benefits, promotions, preferred positions and desired transfers that were given to white employees, and Plaintiffs, and each of them, were subjected to disparate treatment on account of their race and age. This disparate treatment was in violation of Title VII of the Civil Rights Act of 1964 (as amended).

97. Plaintiffs, and each of them, were also disciplined in manner more harshly than similarly situated white employees who committed comparable infractions to those of Plaintiffs, in violation of Title VII of the Civil Rights Act of 1964 (as amended). These actions were taken against them while other supervisors with similar or same issues have been ignored or not addressed. They believe others have not been equally disciplined and their issues have not been addressed because of their race, age and relationships.

98. The CITY has engaged in intentional discrimination and acted with malice or reckless indifference to the federally protected rights of Plaintiffs, and each of them. The CITY discriminated against Plaintiffs, and each of them, in the face of perceived risk that its actions would violate federal law.

99. The deprivation of Plaintiffs' constitutional rights which was committed by the CITY and its agents was unnecessary, unreasonable and willfully malicious. Therefore, the CITY is liable in damages to Plaintiffs, and each of them, pursuant to 42 U.S.C. § 1983, including compensatory damages, actual damages, punitive damages, costs and attorney's fees.

COUNT II
FIRST AMENDMENT RETALIATION

100. Plaintiffs hereby incorporate and re-allege Paragraphs one (1) through ninety-nine (99) as though fully alleged in Count II.

101. The First Amendment to the United States Constitution protects the right to be free from government abridgment of speech, and free from retaliation for the exercise of a constitutionally protected right, such as freedom of association. When the government infringes upon these bedrock rights, a civil rights cause is actionable under § 1983.

102. To succeed on a First Amendment retaliation claim, a civil rights plaintiff must demonstrate three things. First, the plaintiff engaged in protected conduct. This means that the plaintiff's speech or expression was the type traditionally covered under the First Amendment. Second, an adverse action was taken against the plaintiff that would deter "a person of ordinary firmness" from continuing to engage in that speech or conduct. Third, there is a cause-and-effect relationship between the adverse employment action and the protected activity.

103. Plaintiffs, SGT. DAVIS, OFF. PARKER, SGT. THREADGILL and LT. WHITTEN, engaged in protected conduct when participating in LRBPOA functions and engaging in speech which engenders public interest. Membership in LRBPOA is protected, and Plaintiffs have a right to advocate against racial discrimination on behalf of LRBPOA members. Because of their involvement in LRBPOA, Chief Buckner sought to quell Plaintiffs' free speech rights and their freedom to associate with the LRBPOA and its members. Public employers are subject to § 1983 liability for actions which violate an employee's First Amendment rights to freedom of speech or association.

104. The deprivation of Plaintiffs' constitutional rights which was committed by the CITY and its agents was unnecessary, unreasonable and willfully malicious. Therefore, the CITY is liable in damages to Plaintiffs, and each of them, pursuant to 42 U.S.C. § 1983, including compensatory damages, actual damages, punitive damages, costs and attorney's fees.

COUNT III
ARKANSAS WHISTLEBLOWER ACT

105. Plaintiff hereby incorporates and re-alleges Paragraphs one (1) through one-hundred-four (104) as though fully alleged in Count III.

106. Under Arkansas law, a public employer—or an agent of the public employer—shall not take adverse action against a public employee because the public employee communicates, in good faith to an appropriate authority, the existence of bias, a waste of public funds or a violation or suspected violation of a law, rule or regulation adopted under the laws of the State of Arkansas or a political subdivision of the state. *See* Ark. Code. Ann. § 21-1-603(a)(1).

107. Additionally, Arkansas law provides that a public employer—or an agent of the public employer—shall not take an adverse action against a public employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review. *See* Ark. Code. Ann. § 21-1-603(c).

108. Within the meaning of the Arkansas Whistleblower’s Act, “adverse action” means “discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges.” *See* Ark. Code Ann. § 21-1-602(1).

109. In order to make a claim under the Arkansas Whistleblower Act, a plaintiff must establish, by the preponderance of the evidence, that he or she suffered an adverse action because he or she engaged or intended to engage in an activity protected under the Act. A public employer has an affirmative defense to a whistleblower lawsuit if the adverse action taken against the public employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a whistleblowing communication.

110. Plaintiffs, SGT. DAVIS, SGT. THREADGILL and LT. WHITTEN, and each of them, spoke out against bias, waste and/or misconduct. In turn, the CITY, and its agents, retaliated against them, in violation of the Arkansas Whistleblower Act.

111. As a result of the aforementioned violations of the Arkansas Whistleblower Act, Plaintiffs, SGT. DAVIS, SGT. THREADGILL and LT. WHITTEN, are entitled to compensation for the following actual damages under Arkansas Code Annotated § 21-1-604, in an amount to be established by the evidence adduced at trial:

- (1) Lost wages for days suspended without pay;
- (2) Lost future wages;
- (3) Court costs; and
- (4) Attorney's fees incurred in bringing this action.

112. Plaintiffs, SGT. DAVIS, SGT. THREADGILL and LT. WHITTEN, are further entitled to punitive damages, pursuant to Arkansas Code Annotated § 16-55-206, because they are entitled to compensatory damages and:

- (1) the CITY, and its agents, knew or should have known that its conduct would naturally and probably result in injury or damage, and it continued the conduct with malice or in reckless disregard of the consequences, from which malice may be inferred; or
- (2) the CITY, and its agents, intentionally pursued a course of conduct for the purpose of causing injury or damage to Plaintiffs, and each of them.

113. Plaintiffs, SGT. DAVIS, SGT. THREADGILL and LT. WHITTEN, are also entitled to injunctive relief, pursuant to Arkansas Code Annotated per § 21-1-604(a), in the form of an injunction prohibiting the CITY from taking any further retaliatory action against Plaintiffs, and each of them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, WILLIE DAVIS, JACKIE PARKER, DERRICK THREADGILL and EARNEST WHITTEN, by and through their attorneys, seeks the following relief for the unlawful employment practices and unconstitutional conduct described above:

1. That the Court declare Plaintiffs have been subjected to unlawful discriminatory practices, and that the Court issue a declaratory judgment that the CITY engages in discriminatory employment practices based on race and/or age;
2. That the Court issue an injunction for the purpose of prohibiting further acts of race discrimination in the future;
3. That the Court order promotion or reinstatement of Plaintiffs, as applicable;
4. That the CITY be required to pay Plaintiff's compensatory damages, including back pay;
5. That the CITY be required to pay punitive damages;
6. That CITY be required to pay reasonable costs and attorney fees per 42 U.S.C. § 1988; and
7. That Plaintiff receive any other equitable, legal and just relief as this Honorable Court deems appropriate.

Respectfully submitted,


/s/ Michael J. Laux

Michael J. Laux

E. Dist. Arkansas Bar No. 6278834

One of the Attorneys for Plaintiff

400 W. Capitol Avenue, Suite 1700

Little Rock, AR 72201

Telephone: (501) 242-0750

Facsimile: (501) 372-3482

E-mail: mlaux@lauxlawgroup.com

mikelaux@icloud.com

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Willie Davis



From: Little Rock Area Office
820 Louisiana
Suite 200
Little Rock, AR 72201

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

EEOC Charge No.

EEOC Representative

Telephone No.

493-2018-00456

Chris E. Stafford,
Investigator

(501) 324-5812

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, the Genetic Information Nondiscrimination Act, 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 claim under state law 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

William A. Cash, Jr.,
Area Office Director

FEB 13 2018

(Date Mailed)

Enclosures(s)

cc: Shella Atlas Evans
Labor & Employee Relations Manager
CITY OF LITTLE ROCK
500 W Markham Suite 130W
Little Rock, AR 72201

Exhibit A

EEOC Form 161 (11/15)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Jackie Parker
[Redacted]

From: Little Rock Area Office
820 Louisiana
Suite 200
Little Rock, AR 72201

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

EEOC Charge No.	EEOC Representative	Telephone No.
493-2018-00421	Kerie M. Frantzen, Investigator	(501) 324-5360

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, the Genetic Information Nondiscrimination Act, 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 claim under state law 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

[Handwritten Signature]

William A. Cash, Jr.,
Area Office Director

DEC 19 2017

(Date Mailed)

Enclosures(s)

cc:

Shella Atlas Evans
Labor and Employee Relations Manager
CITY OF LITTLE ROCK POLICE DEPARTMENT
500 W Markham #130 West
Little Rock, AR 72201

Remailed on 1/23/18
Remailed on 1/16/18
KCColten



Exhibit B

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Derrick Threadgill



From: Little Rock Area Office
820 Louisiana
Suite 200
Little Rock, AR 72201

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

EEOC Charge No.

EEOC Representative

Telephone No.

493-2018-00363

Tyrone Y. Blanks,
Investigator

(501) 324-5083

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, the Genetic Information Nondiscrimination Act, 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 claim under state law 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

William A. Cash, Jr.
Area Office Director

DEC 13 2017

(Date Mailed)

Enclosures(s)

cc: Shella Atlas-Evans
Labor/Employee Relations Manager
CITY OF LITTLE ROCK
500 West Markham, Suite 130W
Little Rock, AR 72201

Exhibit C

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Earnest Whitten



From: Little Rock Area Office
820 Louisiana
Suite 200
Little Rock, AR 72201

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

EEOC Charge No.

EEOC Representative

Telephone No.

493-2018-00362

Chris E. Stafford,
Investigator

(501) 324-5812

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.

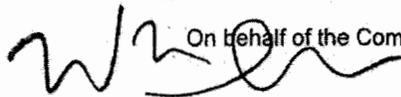
Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, 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 claim under state law 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

DEC 1 2 2017

Enclosures(s)

William A. Cash, Jr.,
Area Office Director

(Date Mailed)

cc: **Sheila Atlas Evans**
Labor & Employee Relations Manager
CITY OF LITTLE ROCK
700 W Markham
Little Rock, AR 72201