

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**ROBERT SMITH, JR.**

**Plaintiff,**

**CASE NO.**

**v.**

**CITY OF LAKE CITY, FLORIDA,**

**Defendant.**

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**COMPLAINT**

Plaintiff, ROBERT SMITH, JR., hereby sues Defendant, CITY OF LAKE CITY, FLORIDA, and alleges:

**NATURE OF THE ACTION**

1. This is an action brought under Chapter 760, Fla. Stats., Chapter 112, Fla. Stats., 42 U.S.C. §2000e, et seq., and 42 U.S.C. §1981a, and Florida common law involving claims which are, individually, in excess of Seventy Five Thousand Dollars (\$75,000.00), exclusive of costs and interest.

**THE PARTIES**

2. At all times pertinent hereto, Plaintiff, ROBERT SMITH, JR., has been a resident of the state of Florida and was employed by Defendant the CITY OF LAKE CITY, FLORIDA. Plaintiff is a member of a protected class due to his race, African American, and also due to the fact that he reported discrimination adversely affecting himself and others. He was the victim of retaliation thereafter.

3. At all times pertinent hereto, Defendant, CITY OF LAKE CITY, FLORIDA (“the CITY”), has been organized and existing under the laws of the state of Florida. At all times

pertinent to this action, the CITY has been an "employer" as that term is used under the applicable laws identified above.

4. Plaintiff has satisfied all conditions precedent to bringing this action.

#### **STATEMENT OF THE ULTIMATE FACTS**

5. Plaintiff, who is African American, began working for the CITY as a Police Captain, a position second-in-command in the CITY's Police Department, on or about October 10 2010. Throughout his employ with the CITY, Plaintiff reported to the CITY's Chief of Police, Argatha Gilmore (African American).

6. On or about September 23 2011, three of the CITY's police officers were shot in an altercation outside of a home located on NW Irma Street in the CITY. Plaintiff took exception to Chief Gilmore leaving the scene for two and a half hours (2 ½) during the shootout, and asked her at a command staff meeting on September 26 2011, three days later, why she did so.

7. Both Gilmore and City Manager Wendell Johnson (Caucasian) became upset and defensive as a result of Plaintiff's public questioning of Gilmore, and the following day, September 27 2012, Johnson called another command staff meeting for the purpose of rallying support for Gilmore.

8. On or about October 11, 2011, for no apparent reason, Gilmore sent Plaintiff to be evaluated by Police Department psychologist Patrick Cook.

9. On or about mid October, 2011, Plaintiff met with the CITY's former Police Department Captain Rudolph Davis to obtain contact information for Davis' attorney in his employment discrimination suit against the CITY.

10. On or about October 31, 2011, Plaintiff was served with a subpoena ordering his

appearance at a deposition in the case of Rudolph Davis v. City of Lake City, Florida. Such case is a race-based employment discrimination action against the CITY, brought by Davis, an African-American.

11. On or about November 1, 2011, Gilmore and Johnson attended Davis' deposition in his action against the CITY, and learned of Davis' earlier meeting with Plaintiff.

12. On or about November 2, 2011, Johnson called Plaintiff into his office, and questioned him both as to why he had been subpoenaed by Davis in that case, and as to his expected forthcoming deposition testimony. Plaintiff took the opportunity during the November 2nd meeting with Johnson to inform Johnson of the disparate and discriminatory treatment he was subjected to, some of which is set forth above.

13. On or about November 4, 2011, the CITY's Police Officer Joe Moody advised Plaintiff that Police Department Captain John Blanchard was "out to get you," and had instructed fellow police officers to "catch him [Plaintiff] doing something wrong."

14. Also on or about November 4, 2011, Gilmore sent an email to Plaintiff addressing issues Plaintiff discussed with Johnson on November 2nd. In that email, Gilmore instructed Plaintiff to inform her of all circumstances in which he perceived he was being treated unfairly.

15. On or about November 6, 2011, Plaintiff wrote a letter of complaint to Gilmore communicating his perception of being targeted for unfair treatment and retaliated against.

16. On or about November 9, 2011, Plaintiff was ordered by Gilmore via email to provide a detailed written list of the events of disparate treatment he had complained of, and any documentation thereof. Shortly thereafter, Plaintiff submitted to Gilmore a twenty-five (25) page document in response.

17. Oddly, in light of the charges being by him rather than about him, on or about

November 15, 2011, in retaliation for his having reported discrimination and prior retaliation based on race, Plaintiff was instructed to visit Johnson's office, and from there walked over to the law offices of Defendant's attorney, Richard Stadler (hereinafter STADLER), where he was told that he was being placed on Administrative Leave with pay while the CITY purported to initiate an investigation of the truthfulness of his charges.

18. On or about December 12, 2011, Plaintiff was called to City Hall to meet with Johnson, Gilmore, and a Mr. Gene Bullard. At such meeting, Plaintiff was given a letter from Johnson, which letter communicated that a report from STADLER served to inform Johnson that he had just cause to investigate Plaintiff for truthfulness. Thus, acknowledging that the investigation had from its inception been of Plaintiff rather than of Plaintiff's charges, Johnson acted to extend the investigation of Plaintiff.

19. On or about December 14, 2011, Plaintiff filed a complaint against the CITY with the Equal Employment Opportunity Commission ("EEOC"), which complaint eventually resulted in Plaintiff being authorized to file suit against Defendant.

20. On or about December 15, 2011, at Johnson's request, Gilmore acted to turn over the investigation of Plaintiff to the Internal Affairs Division of the Gainesville Police Department.

21. On or about December 19, 2011, Gainesville Police Sergeant Andrew Miles visited Portsmouth, Virginia for the purpose of reviewing files on Plaintiff maintained by that city's Police Department.

22. On or about December 25, 2011, in violation of statute, Johnson released to a Lake City newspaper documents obtained during the investigation of Plaintiff.

23. On or about January 5, 2012, Gainesville Police Department Internal Affairs

investigator Lieutenant Timothy Hayes informed Plaintiff that he was subject of an investigation being conducted by Hayes.

24. Policy no. 117 of the CITY's Police Department provides that an internal affairs investigation of a member of that department must be completed within forty-five (45) days. The written policy also provides for an extension of that time period, such an extension requiring a specified extension period and a stated reason therefor.

25. On or about February 29, 2012, a date approximately seventy-five (75) days following the initiation of the internal affairs investigation, Hayes conducted a first interview of Plaintiff by telephone. In that interview, Hayes questioned the truthfulness of Plaintiff's charges against Defendant, specifically of Plaintiff's statement to Gilmore that he did not know why he was subpoenaed in the Davis case, and also questioned as to whether Plaintiff withheld pertinent background information from the CITY when initially hired.

26. On or about March 15, 2012, without proper regard for the confidential nature of the attorney-client relationship provided by law, Plaintiff was instructed via email by Gainesville Police Department investigators to produce telephone records showing dates and times of communications with his attorney, and notes of conversations with his attorney.

27. On or about March 16, 2012, upon appearing for a second interview, this one in person in Gainesville, Plaintiff informed Hayes that the 45-day period provided for in the policy of the CITY's Police Department referenced above had expired. Upon being so informed, Hayes terminated the interview. While he had communicated the length and expiration of the time limitation, Plaintiff did not demand that the interview be halted or otherwise object to its continuation.

28. In a letter dated and hand-delivered to Plaintiff on March 20, 2012, Gilmore

communicated that he had “directed Lt. Hayes to follow his department (Gainesville PD) internal investigations procedures [sic] in conducting this investigation,” communicated further that “[t]he Gainesville Police Department policy follows the 180-days afforded by Florida Statutes to complete an Internal Affairs investigation” [sic], presumably in lieu of the forty-five (45) day period set forth in a written policy of the CITY’s Police Department, inconsistently with the suggested applicability of the 180-day statutory period communicated that Gilmore was “officially extending the investigation,” and ordered Plaintiff to “adhere to directions of Lt. Hayes as it relates to next steps in this investigation” [sic].

29. Prior to the morning of March 26, 2012, STADLER, on behalf of the City and in representation of the interests of the CITY, determined that an investigation of a member of the CITY’s Police Department could not be conducted under the policies of another city’s police department, determined further that the 45-day investigation period provided for in the policy of the CITY’s Police Department referenced above could be waived by Plaintiff, and so communicated to Hayes.

30. On the morning of March 26, 2012, based on information communicated to him by STADLER, Hayes emailed Plaintiff referencing and correcting Gilmore’s letter of March 20, 2012. Hayes communicated that “he [STADLER] does not believe you can be held to policies of the Gainesville Police Department and I concur,” and further that “Stadler did believe that you could waive the 45 day rule.” Hayes proceeded to “request clarification from you/your representative or if you would waive the 45 day rule and be amenable to a second interview?”

31. On March 27, 2012, Plaintiff prepared and sent a letter to Hayes, acknowledging receipt of the email the previous day, agreeing that the 45-day period of the CITY’s Police Department’s Policy no. 117 governed the investigation, and quoting the section on extension of

such period including the requirement that “the complainant shall be notified of the probable length of and reason for any extension.” Plaintiff proceeded to point out that due to its silence on probable length and reason, “[t]he letter I received March 20<sup>th</sup>, 2012 does not fall within the mandates of policy # 117.” Plaintiff continued in that letter that “as I indicated in my interview with you on February 29<sup>th</sup>, 2012, I believe this investigation initiated against me was, and is, nothing more than a vindictive, malicious act of retaliation brought about because I testified against Chief Argatha Gilmore, and Mr. Wendell Johnson in a Title VII Civil Rights judicial proceeding.” Further still, based on the 45-day limit set forth above, Plaintiff requested in his final paragraph as follows: “Therefore, I respectfully request that all activity associated with this investigation stop immediately. . . .”

32. On April 4, 2012, STADLER prepared a letter to Plaintiff communicating his “review[ ] of your letter of March 27, 2012 to Lt. Timothy Hayes. . . .” STADLER went on, correctly or otherwise, that “[w]hile I recognize that you have not consented to extend the investigation beyond the forty-five (45) days provided for by City policy, your consent is not required. . . . [T]he decision to extend the investigation beyond the forty-five (45) days rests solely with the Chief of Police, and Chief Gilmore has already advised you that she has exercised her discretion to extend the period for the investigation beyond the forty-five (45) days.” STADLER continued that “Chief Gilmore is, by this letter, directing you to appear before the investigating officer, Lt. Timothy Hayes, and to answer all of his questions concerning this matter. If you fail to do so this will be deemed a disregard of a direct order which is a terminable offense.”

33. In the afternoon of April 10, 2012, Hayes sent an email to Plaintiff attaching STADLER’s letter of April 4 2012, and requesting confirmation of receipt.

34. On or about April 13, 2012, Plaintiff submitted to the CITY via email attachment a signed employee Complaint on the CITY's form for the purpose, attached to which was a single-spaced full page entitled Statement of Complaint, communicating much of the above. That attached statement ended with the following sentence: "The letter I received from Chief Gilmore (Exhibit # IA-1) fails to comply with current policy because there is no reason given for the extension, or statement as to the approximate time period of the extension."

35. Having communicated earlier that day with STADLER by telephone as to the deficiencies in Gilmore's March 20 2012 attempt to extend the 45-day limitation set forth in the CITY's Police Department's policy, also on April 13 2012, Plaintiff's counsel, on behalf of Plaintiff, sent a series of emails to Hayes, the first reading in pertinent part as follows;

. . . I am in receipt of Richard Stadler's April 4, 2012 letter whereby Captain Smith is directed to contact you in order to schedule a further interview. I write in order to comply with that directive subject to the following objection.

Chief Argatha Gilmore has provided a letter in an attempt to extend the forty-five day deadline enumerated in Lake City Police Department Policy 117.40 III.D; however, the extension letter is facially deficient in that it fails to designate the reason for, and probable length of, the extension, as required. As such, Captain Smith is under no duty to comply with Chief Gilmore's directive as it is in direct violation of 117.40. I have contacted Mr. Stadler, as requested, and informed him of same. At this time, I am awaiting Mr. Stadler's response. If and when Chief Gilmore takes the appropriate action to extend this investigation pursuant to the applicable policies, I will contact you in order to schedule a follow-up interrogation at a mutually agreeable time and place.

36. Plaintiff's counsel's second email to Hayes indicated that "[a]s we discussed, I will contact you once Mr. Stadler and I are able to correct the legal/procedural issues."

37. Notwithstanding the above, in the afternoon of April 23 2012, STADLER sent to Plaintiff's counsel, via email attachment, a letter purporting to "accurately reflect your position



[of April 13 2012].” Inconsistent with the above, the body of that attached letter reads, disingenuously, in pertinent part as follows:

This letter is to confirm our phone conversation of April 13, 2012 in which you indicated that you are representing Robert Smith, Captain, City of Lake City Police Department. You indicated to me that Captain Smith would not be appearing for any further interviews in the Internal Affairs investigation, despite my letter to Captain Smith indicating that his appearance was a direct order from Chief Gilmore... You stated that this investigation was a “witch hunt” and that your client was not going to participate any further. I have so advised the Chief. If my understanding was wrong on any points set forth in this letter please notify me as soon as you receive this letter.

38. Thus, a telephone conference summarized in the email referenced above written within hours of the meeting to Hayes in the sentences, “[a]t this time, I am awaiting Mr. Stadler’s response. If and when Chief Gilmore takes the appropriate action to extend this investigation pursuant to the applicable policies, I will contact you in order to schedule a follow-up interrogation at a mutually agreeable time and place,” was intentionally contrived and misstated by Defendant’s attorney to mean “that Captain Smith would not be appearing for any further interviews in the Internal Affairs investigation,” and that “your client was not going to participate any further.” Self-evidently, the misstatement of the content of a telephone conference, contrived ten (10) days after the fact, with Plaintiff’s counsel was part of a program underway to establish a pretextual basis for Plaintiff’s termination.

39. The following day, on April 24, 2012, Plaintiff’s counsel responded to STADLER’s letter by email, as follows:

I am in receipt of the attached letter. After review, I am concerned about your misrepresentation of our conversation. During our telephone conversation, I explained to you that Chief Gilmore has not properly extended the investigation as required by Lake City Police Department policy. . . . While I did refer to this

investigation as a “witch hunt,” at no time did I state that Captain Smith would not participate further in the investigation. I succinctly stated to you the deficiencies in Chief Gilmore’s extension and explained to you that Captain Smith would not participate further *unless and until the investigation was brought into compliance with LCPD Policy.*

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...I heard nothing from you nor any Lake City personnel until receiving the attached letter via email. In that letter, you have misrepresented the content of our conversation. The statements “you indicated to me that Captain Smith would not be appearing for any further interviews in the Internal Affairs investigation...” and “you stated that this investigation was a ‘witch hunt’ and that your client was not going to participate any further” are patently false (with the exception of the “witch hunt”). Your statement of our conversation and Captain Smith’s position are clearly belied by the attached email [to Hayes].

Furthermore, I understand that Chief Argatha Gilmore has used your misrepresentation of our conversation as a basis to terminate Captain Smith. Aside from your misrepresentation, I also find it interesting that you chose to wait for a period of ten days to confirm our April 13 conversation. What makes this particularly interesting is that you chose to confirm, and misrepresent, our conversation one business day after receipt of Captain Smith’s Notice of Right to Sue from the EEOC/FCHR. Lake City now uses this very misrepresentation to substantiate Captain Smith’s termination less than 24 hours after your misrepresentation, and before I had an opportunity to correct same.

At this time, I would strongly urge you to communicate the true content of our previous conversation to Chief Gilmore and any other Lake City personnel involved in the decision to terminate Captain Smith so that they may rescind that decision.

[Italics in original].

40. Also on April 24, 2012, and prior to counsel’s email set forth immediately above, acting on behalf of the CITY and with Johnson’s full support and approval, Gilmore fired Plaintiff on the contrived and pretextual reason of his failure to follow a direct order.

41. The CITY has also engaged in a pattern and practice of giving preference to Caucasian officers and enforcing different terms and conditions of employment for Caucasian officers than their black counterparts. The CITY discriminated against Plaintiff and other black employees on the basis of their race, African American, and the CITY retaliated against Plaintiff for participating in protected activity in violation of the statutes set forth above.

42. Plaintiff has retained the undersigned to represent his interest in this cause and is obligated to pay her a fee for her services. Defendants should be made to pay said fee under applicable law, including Chapter 760, Fla. Stats., and 42 U.S.C. §2000e, et seq.

### **COUNT I--RACE-BASED DISCRIMINATION**

43. Paragraphs 1-42 above are re-alleged and incorporated herein by reference.

44. This count sets forth a claim against the CITY for discrimination based upon race brought under Chapter 760, Fla. Stats., 42 U.S.C. §2000e, et seq., and 42 U.S.C. §1981a.

45. The CITY has taken action and allowed action to be taken against Plaintiff because he is African American. During Plaintiff's employment with the CITY, he has been the victim of racial harassment and disparate treatment with no action taken by the CITY to prevent or otherwise correct a known problem.

46. The CITY knew or should have known of the race-based discrimination perpetuated against Plaintiff and failed to take prompt and adequate remedial action or took no action at all to prevent the abuse to Plaintiff. The events set forth herein led, at least in part, to adverse actions against the Plaintiff including without limitation his termination.

47. The CITY knowingly condoned and ratified the discrimination set forth above.

48. The discrimination complained of herein affected terms, conditions, and privileges of Plaintiff's employment with the CITY.

49. The CITY's conduct and omissions constituted intentional discrimination and unlawful employment practices based upon race in violation of the state and federal laws applicable to this action.

50. As a direct and proximate result of the CITY's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other tangible and intangible damages. These damages have occurred in the past, are permanent and continuing.

#### **COUNT II-RETALIATION**

51. Paragraphs 1-42 above are re-alleged and incorporated herein by reference.

52. The CITY is an employer as that term is used under the applicable statutes referenced above.

53. The foregoing allegations establish a cause of action for unlawful retaliation after Plaintiff reported unlawful employment practices adversely affecting him under Chapter 760, Fla. Stats., 42 U.S.C. §2000e, et seq., and 42 U.S.C. §1981a.

54. The foregoing unlawful actions by the CITY were purposeful.

55. Plaintiff voiced opposition to unlawful employment practices during his employment with the CITY and was the victim of retaliation thereafter, as related in part above. The events set forth herein led, at least in part, to adverse actions against Plaintiff including without limitation his termination.

56. Plaintiff is a member of a protected class because he reported unlawful employment practices and was the victim of retaliation thereafter. There is thus a causal connection between the reporting of the unlawful employment practices and the adverse employment action taken thereafter.

57. As a direct and proximate result of the foregoing unlawful acts and omissions, Plaintiff has suffered mental anguish, emotional distress, expense, loss of benefits, embarrassment, humiliation, damage to reputation, illness, lost wages, loss of capacity for the enjoyment of life, and other tangible and intangible damages. These damages are continuing and are permanent.

### **COUNT III-WHISTLEBLOWER RETALIATION**

58. Paragraphs 1-42 above are re-alleged and incorporated herein by reference.

59. This count sets forth a claim against the CITY under §112.3187, et seq., Fla. Stats.

60. Plaintiff was a public employee protected under the provisions of Chapter 112, Fla. Stats.

61. As stated more specifically, in part, above, Plaintiff reported and disclosed violations of laws, rules, and/or regulations to persons inside and outside of his normal chain of command and others having the authority to investigate, police, manage and otherwise remedy such violations. Plaintiff reported malfeasance, misfeasance, and other acts specifically outlined in §112.3187(5), et seq., Fla. Stats.

62. Under §112.3187(4), Fla. Stats., the CITY is prohibited from taking adverse personnel action against persons like Plaintiff who disclose the types of information disclosed by

Plaintiff. Specifically, the CITY was prohibited from dismissing, disciplining or otherwise taking any other adverse personnel action against an employee for disclosing information pursuant to the provisions of §112.3187(4), Fla. Stats.

63. After reporting these matters as related in part above, Plaintiff was the victim of retaliatory actions set forth in part above.

64. Plaintiff maintains that the actions of all employees within the CITY who affected his employment adversely were taken at least in part in retaliation against him for his "whistleblowing" activities.

65. As a direct and proximate result of the actions taken against him by the CITY, Plaintiff has suffered injury, including but not limited to past and future wage losses, loss of benefits, and other tangible and intangible damages. These damages have occurred in the past, are occurring at present and will occur in the future.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and this court take jurisdiction over this cause;
- (b) that this court grant equitable relief against Defendants under the applicable counts set forth above, mandating Defendants' obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) that this court enter judgment against Defendants and for Plaintiff awarding damages to Plaintiff from Defendants for Defendants' violations of law enumerated herein;
- (d) that this court enter judgment against Defendants and for Plaintiff permanently enjoining Defendants from future violations of law enumerated herein;

(e) that this court enter judgment against Defendants and for Plaintiff awarding Plaintiff costs, attorney's fees, and interest as provided by law; and

(f) that this court grant such other and further relief as is just and proper under the circumstances.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury on all issues set forth herein which are so triable.

Dated this 8<sup>th</sup> day of May, 2012.

Respectfully Submitted,

/s/ Marie A. Mattox  
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