

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Northern District of Florida

KIM BERRYMAN-DAGES

Plaintiff

v.

CITY OF GAINESVILLE, FLORIDA

Defendant

Civil Action No.

1:10-CV-00177-MP/AK

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CITY OF GAINESVILLE
c/o Craig Lowe, Mayor
200 East University Avenue
Gainesville, FL 32601

9/28/10 11:20

A lawsuit has been filed against you.

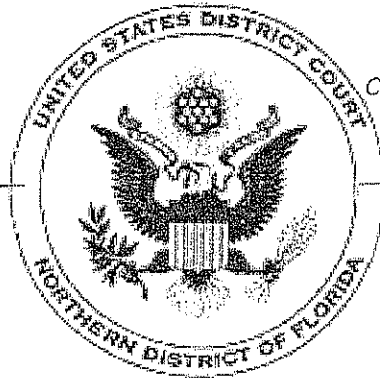
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

MARIE A. MATTOX, P. A.
310 East Bradford Road
Tallahassee, FL 32303

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date:

9/7/2010



CLERK OF COURT

SHEILA HURST-RAYBORN, ACTING CLERK

Signature of Clerk or Deputy Clerk

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Civil Action No. 1:10-CV-00177-MPTAR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

KIM BERRYMAN-DAGES,

Plaintiff,

vs.

CITY OF GAINESVILLE, FLORIDA,

Defendant.

CASE NO.

1:10CV177-MP/AK

COMPLAINT

Plaintiff, KIM BERRYMAN-DAGES sues Defendant, CITY OF GAINESVILLE, FLORIDA, and alleges:

NATURE OF THE ACTION

1. This is an action brought under Chapter 760, Florida Statutes, 42 U.S.C. §2000e et seq., and the policies of the City of Gainesville. This action involves claims which are, individually, in excess of Seventy Five Thousand Dollars (\$75,000.00), exclusive of costs and interest. Jurisdiction of this Court is invoked pursuant 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1343 (civil rights claim jurisdiction) and 28 U.S.C. §1367 (supplemental jurisdiction).

THE PARTIES

2. At all times pertinent hereto, Plaintiff, KIM BERRYMAN-DAGES, has been a resident of the State of Florida and was employed by Defendant. Plaintiff is a member of a protected class due to her gender, female and the fact that she reported discrimination adversely affecting her and she was the victim of retaliation thereafter. Plaintiff is a protected employee due to her sexual orientation under Defendant's Policy Nos 27 and 35.

3. At all times pertinent hereto, Defendant, CITY OF GAINESVILLE, FLORIDA has been organized and existing under the laws of the State of Florida. At all times pertinent to this action, Defendant 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 in that she filed two charges of discrimination with the EEOC and Florida Commission on Human Relations. She has waited the requisite time at both agencies before filing this action. She also filed a complaint with Defendant to satisfy her administrative prerequisites, if any, on her claim under the Defendant's policies, set forth above. She is eligible for her Notice of Right to Sue from the EEOC.

FACTS

5. Plaintiff was originally employed with Defendant on January 2, 1986. During her employment in or around August 2006, Plaintiff reported gender discrimination based on pay internal within Defendant. She claimed that she was being treated differently than similarly situated males with respect to the terms and conditions of her employment with

respect to pay. She claimed that similarly situated males were paid more favorably and were given increases in pay when Plaintiff was denied those increases.

6. In or around November 2007, Plaintiff participated in an EEOC proceeding to obtain the same pay increases as her similarly situated coworkers.

7. After Plaintiff participated in EEOC proceedings and reported gender discrimination in pay, she was the victim of retaliation. The retaliation included investigations and criticisms of her work. She was also demoted from a chief to a lieutenant position on or around September 3, 2008.

8. Males with accusations of wrongdoing were not demoted from their positions and were treated more favorably than Plaintiff.

9. Plaintiff also claims that she has been the victim of sexual orientation discrimination (covered only under a local ordinance) in that her sexual preference has motivated adverse actions against her set forth above.

10. Plaintiff has retained the undersigned to represent her interests in this cause and is obligated to pay her a fee for her services. Defendant should be made to pay said fee under 42 U.S.C. §1981a., and 42 U.S.C. §2000e et seq.

COUNT I

GENDER DISCRIMINATION

11. Paragraphs 1-10 are realleged and incorporated herein by reference.

12. This is an action against Defendant for discrimination based upon gender brought under Chapter 760, Florida Statutes (Saunders only) and 42 U.S.C. §2000e et seq.

13. Plaintiff has been the victim of discrimination on the basis of her gender in that she was treated differently than similarly situated male employees of Defendant and has been subject to hostility and poor treatment on the basis, at least in part, of her gender.

14. Defendant is liable for the differential treatment and hostility towards Plaintiff because it controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff. Furthermore, Defendant knowingly condoned and ratified the differential treatment of Plaintiff as more fully set forth above because it allowed the differential treatment and participated in same. Defendant's known allowance and ratification of these actions and inactions created, perpetuated and facilitated an abusive and offensive work environment within the meaning of the statutes referenced above.

15. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were of a gender based nature and in violation of the laws set forth herein.

16. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant. The events set forth herein lead, at least in part, to Plaintiff's demotion.

17. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon race in violation of Chapter 760, Florida Statutes and 42 U.S.C. §2000e et seq.

18. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, 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 benefits. These damages have occurred in the past, are permanent and continuing.

COUNT II
RETALIATION

19. Paragraphs 1-10 are hereby realleged and reincorporated as if set forth in full herein.

20. Defendant is an employer as that term is used under the applicable statutes referenced above.

21. The foregoing allegations establish a cause of action for unlawful retaliation after Plaintiff reported unlawful employment practices adversely affecting her under 42 U.S.C § 2000e *et seq.*, Title I of the Civil Rights Act of 1991 and Chapter 760, Florida Statutes.

22. The foregoing unlawful actions by Defendant were purposeful.

23. Plaintiff voiced opposition to unlawful employment practices during her employment with Defendant and was the victims of retaliation thereafter, as related in part above. The events set forth herein lead to Plaintiff's termination.

24. Plaintiff is a member of a protected class because she 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.

25. 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
SEXUAL ORIENTATION DISCRIMINATION

26. Paragraphs 1-10 are realleged and incorporated herein by reference.

27. This is an action against Defendant for discrimination based upon gender brought under Policy Numbers 27 and 35, City of Gainesville.

28. Plaintiff has been the victim of discrimination on the basis of her sexual orientation in that she was treated differently than similarly situated heterosexual employees of Defendant and has been subject to hostility and poor treatment on the basis, at least in part, of her sexual orientation.

29. Defendant is liable for the differential treatment and hostility towards Plaintiff because it controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff. Furthermore, Defendant knowingly condoned and ratified the differential

treatment of Plaintiff as more fully set forth above because it allowed the differential treatment and participated in same. Defendant's known allowance and ratification of these actions and inactions created, perpetuated and facilitated an abusive and offensive work environment within the meaning of the statutes referenced above.

30. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were based at least in part on Plaintiff's sexual orientation and in violation of the policies set forth herein.

31. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant. The events set forth herein lead, at least in part, to Plaintiff's demotion.

32. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, 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 benefits. These damages have occurred in the past, are permanent and continuing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;

(c) enter judgment against Defendant and for Plaintiff awarding damages, including punitive damages, to Plaintiff from Defendant for Defendant's violations of law enumerated herein;

(d) enter judgment against Defendant and for Plaintiffs permanently enjoining Defendant from future violations of federal law enumerated herein;

(e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs; and

(f) grant such other further relief as being just and proper under the circumstances

DEMAND FOR TRIAL BY JURY

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

DATED this 3rd day of September, 2010.

MARIE A. MATTOX, P. A.
310 East Bradford Road
Tallahassee, FL 32303
(850) 383-4800 (telephone)
(850) 383-4801 (facsimile)

/s/ Marie A. Mattox
Marie A. Mattox [FBN 0739685]
ATTORNEYS FOR PLAINTIFF