

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

TANYA VIRGADAMO

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CIVIL ACTION NO: 13-2621

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VERSUS

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SECTION “ ”

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**CITY OF KENNER AND JOHN HELLMERS,
IN HIS INDIVIDUAL CAPACITY AND IN HIS
OFFICIAL CAPACITY AS THE FIRE CHIEF
OF THE CITY OF KENNER**

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JURY TRIAL DEMANDED

COMPLAINT

I. JURISDICTION

- 1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331, 42 U.S.C. §§ 1983, 1985, 1988, and 28 U.S.C. §1367, the Court’s Supplemental Jurisdiction.

II. VENUE

- 2. Pursuant to 28 U.S.C. § 1391, the unlawfully and discriminatory action about which Plaintiff complains occurred within the Eastern District of Louisiana, and therefore this Court is a proper venue for this action.

III. THE PARTIES

- 3. At all times relevant hereto, Plaintiff, Tanya Virgadamo, was a citizen of the United States of America and a person of the full age of majority and a resident of and domiciled in the Eastern District of Louisiana.
- 4. At all times relevant hereto, Defendant, City of Kenner, was a municipality incorporated pursuant to the provisions of Article 6, § 2 of the Louisiana Constitution of 1974 and L.S.A.-R.S. 33:1 et seq.

5. At all times relevant hereto, Defendant, John Hellmers, in his individual capacity and in his official capacity as the Fire Chief of the City of Kenner, was a resident of and domiciled in the Eastern District of Louisiana.

IV. STATEMENT OF THE CLAIMS

6. At all times relevant hereto, Plaintiff, Tanya Virgadamo, was a female, whose date of birth is October 11, 1968.
7. On or about November 9, 2011, Plaintiff, Tanya Virgadamo, applied for the position of firefighter with Defendant, City of Kenner.
8. In furtherance of her application for a firefighter position, Plaintiff, Tanya Virgadamo, took the civil service examination for the position of firefighter at Jefferson Parish in approximately December of 2011.
9. On or about January 20, 2012, Plaintiff was notified by the Jefferson Parish Department of Fire that she had passed the firefighter civil service examination with a grade of 88.
10. Plaintiff, Tanya Virgadamo, had her civil service test score transferred from Jefferson Parish to the City of Kenner, and on or about July 30, 2012, Defendant, City of Kenner, notified Plaintiff that Defendant had accepted her civil service examination test score and had placed her on the employment list for the firefighter position.
11. Thereafter, on or about January 30, 2012, the City of Kenner Municipal Fire & Police Civil Service Board advised the Plaintiff, Tanya Virgadamo, in writing that it had accepted the transfer of her grade of 88 on the firefighter test from the Jefferson Parish Fire Department and that she had **“successfully passed the firefighter examination and was placed on the**

employment list for the class of firefighter on the date listed above” which was January 20, 2012.

12. In its January 13, 2012 letter, the City of Kenner Municipal Fire & Police Civil Service Board also advised the Plaintiff, Tanya Virgadamo, that her grade of 88 would **“remain in effect eighteen (18) months from”** January 12, 2012 or until July 20, 2013.
13. Thereafter, on or about March 14, 2012, Plaintiff, Tanya Virgadamo, was interviewed in connection with her application for a firefighter position with Defendant, City of Kenner, by three (3) male employees of the City of Kenner Fire Department, including Defendant, John Hellmers, in his individual and official capacities.
14. During that March 14, 2012 interview, the three (3) male interviewers asked the Plaintiff, Tanya Virgadamo, approximately sixty (60) questions from an **“Interview Sheet”** that the Kenner Fire Department used in interviewing applicants pursuant to a policy and/or custom of Defendant, City of Kenner.
15. Included in the questions that the three (3) male interviewers asked the Plaintiff, Tanya Virgadamo, was whether she objected to **“the use of obscene language”** in her **“presence”** and whether Plaintiff objected **“to seeing males in various state of undress.”**
16. At all times relevant hereto, of approximately ninety-five (95) firefighters employed by Defendant, City of Kenner, only one (1) was female.
17. After the interview, Plaintiff, Tanya Virgadamo, was scheduled for and passed a physical agility test, stress EKG, and psychological examination.

18. Nevertheless, despite having passed all the requisite tests, including the civil service tests with a score of 88, Defendants, John Hellmers, in his individual and official capacities, and the City of Kenner, refused to hire Plaintiff, Tanya Virgadamo, as a firefighter.
19. At all times relevant hereto, Defendant, John Hellmers, in his individual and official capacities, pursuant to a policy and/or custom of the City of Kenner, was the final decisionmaker in regard to the hiring of firefighters for the City of Kenner, including the decision not to hire Plaintiff, Tanya Virgadamo.
20. Additionally, at all times relevant hereto, Defendant, John Hellmers, in his individual and official capacities, was the policymaker of Defendant, City of Kenner, in regard to the hiring of firefighters.
21. While refusing to hire the Plaintiff, Tanya Virgadamo, as a firefighter despite the fact that she had passed all the requisite tests for the position, Defendant, John Hellmers, in his individual and official capacities, hired two (2) males for the position of firefighter on or about May 7, 2012, from the list of eligible candidates which list included the Plaintiff.
22. After learning that Defendants had hired two (2) male firefighters on May 7, 2012, Plaintiff, Tanya Virgadamo, called Defendant, John Hellmers, and asked him why he did not hire her.
23. During that May 7, 2012 telephone conversation, Defendant, John Hellmers, told Plaintiff that he did not hire her because she had not completed two (2) courses, firefighter one (1) and firefighter two (2), which courses Defendant, John Hellmers, told Plaintiff were a prerequisite to being hired as a firefighter by the City of Kenner.

24. During that May 7, 2012 telephone conversation, John Hellmers also told Plaintiff, Tanya Virgadamo, that if she wanted to be hired [as a firefighter by the City of Kenner,] Plaintiff needed to complete firefighter one (1) and firefighter two (2).
25. After that conversation, Plaintiff, Tanya Virgadamo, learned that the completion of those two (2) courses was not a prerequisite to being hired as a firefighter by Defendant, City of Kenner.
26. Furthermore, on information and belief, at least, one (1) of the two (2) male firefighters that Defendant, John Hellmers, in his individual and official capacities, hired on May 7, 2012, had not completed either the firefighter one (1) or firefighter two (2) courses.
27. Subsequently, Plaintiff, Tanya Virgadamo, was told by a representative of the City of Kenner that the reason that Fire Chief John Hellmers told him that he did not hire the Plaintiff was not because she had not completed the firefighter one (1) and firefighter two (2), but because Plaintiff's psychological test indicated the she was unmotivated.
28. After being told that her psychological test allegedly indicated that she was unmotivated, Plaintiff, Tanya Virgadamo, learned from the psychologist that her test did not indicate that she was unmotivated, and Plaintiff also learned that she had passed the test.
29. On September 24, 2012, Plaintiff, Tanya Virgadamo, was hired as a firefighter by the Bayou Cane Fire Department in Houma, Louisiana, and since that date, Plaintiff has been performing the duties of a firefighter in a satisfactory manner.
30. Plaintiff, Tanya Virgadamo, still is interested in being hired as a firefighter by Defendant, City of Kenner, because her position with the Bayou Cane Fire Department requires her to travel a great distance to and from work.

31. On or about October 24, 2012 and November 23, 2012, Defendant, John Hellmers, in his individual and official capacities as the Fire Chief of the City of Kenner, hired two (2) additional firefighters for Defendant, City of Kenner, both of whom were males.
32. Despite the fact that Plaintiff, Tanya Virgadamo, has passed all phases of testing required to become a firefighter with the City of Kenner, Defendants, John Hellmers, in his individual and official capacities and the City of Kenner, have refused and continues to refuse to hire Plaintiff, Tanya Virgadamo, for the position of firefighter despite the fact that Plaintiff is still actively seeking a firefighter position with the City of Kenner, and remains on the list of candidates eligible for the position.
33. On or about July 31, 2012, Plaintiff, Tanya Virgadamo, filed a charge of discrimination (charge) with the United States Equal Employment Opportunity Commission (EEOC) in which Plaintiff complained of intentional sex discrimination by Defendant, City of Kenner, in regard to Defendants' refusal to hire her for a firefighter position. **See Exhibit A, Plaintiff's Charge of Discrimination.**
34. Shortly after filing that charge, the EEOC served a copy of Plaintiff's charge on Defendant, City of Kenner.
35. Since learning that Defendants, John Hellmers, in his individual and official capacities and the City of Kenner, hired two (2) additional male firefighters for Defendant, City of Kenner, after Plaintiff, Tanya Virgadamo, filed her charge on or about July 31, 2012, Plaintiff has filed an amended charge in which she has alleged sex discrimination and retaliation in regard to the two (2) male firefighters that Defendants' hired on or about October 24, 2012, and November 23, 2012. **See Exhibit B, Plaintiff's Amended Charge of Discrimination.**

36. On or about March 28, 2013, Plaintiff, Tanya Virgadamo, gave Defendant, City of Kenner, written notice of the allegations in her amended EEOC charge by faxing a letter and a copy of her amended charge to Defendant, City of Kenner.

V. COUNT ONE

37. Plaintiff reiterates all the allegations in Paragraphs 1-36 herein.
38. At all times relevant hereto, Defendant, John Hellmers, in his individual and official capacities, was acting under color of law pursuant to a policy and/or custom of Defendant, City of Kenner, which policy not only discriminated against females in regard to the hiring of firefighters, it also to discriminated against females by discouraging females from seeking the position of firefighter.
39. Defendant's policy and/or custom of not hiring females as firefighters and discouraging females from seeking the position is evidenced by the fact that of approximately ninety-five (95) firefighters employed by Defendant, City of Kenner, only one (1) is a female.
40. The policy of Defendant, City of Kenner, of discouraging females from seeking positions as firefighters is evidenced by some of the questions that Defendant, John Hellmers, in his individual and official capacities, and the three (3) other male interviewers asked Plaintiff, Tanya Virgadamo, during her interview for the position of firefighter.
41. Those questions that Defendant, John Hellmers, in his individual and official capacities, and the three (3) other male interviewers asked Plaintiff, Tanya Virgadamo, during her interview were designed to and had the intended effect of discouraging females from accepting positions as firefighters with the City of Kenner.

42. In refusing to hire Plaintiff, Tanya Virgadamo, despite the fact that she scored an 88 on the civil service examination and despite the fact that she has passed all the other prerequisite tests, and in asking Plaintiff questions that were designed to discourage females from accepting employment as firefighters, Defendant, John Hellmers, in his individual and official capacities, has and continues to intentionally discriminate against Plaintiff on the basis of her sex, female, in violation of Plaintiff's right to equal protection of the law under the Fourteenth Amendment of the United States Constitution.
43. In violating Plaintiff's right to equal protection of the law under the Fourteenth Amendment of the United States Constitution by intentionally discriminating against Plaintiff, Tanya Virgadamo, on the basis of her sex, female, while acting under color of state law, Defendant, John Hellmers, in his individual and official capacities, intentionally violated Plaintiff's constitutional rights, and as a result, Defendant, John Hellmers, in his individual and official capacities, is legally liable unto the Plaintiff under 42 U.S.C. Section 1983.

VI. COUNT TWO

44. Plaintiff reiterates all the allegations in Paragraphs 1-43 herein.
45. Defendant, City of Kenner, intentionally violated Plaintiff's constitutionally protected right to equal protection of the law, pursuant to a policy and/or custom of the City of Kenner, by asking Plaintiff, Tanya Virgadamo, questions during her interview that were intended and designed to discourage females from accepting employment as Firefighters, and by refusing to hire Plaintiff as a firefighter because of her sex, female, despite the fact that Plaintiff was well qualified for the position, and in doing so, Defendant, City of Kenner, intentionally

violated Plaintiff's constitutional rights, and as a result, Defendant, City of Kenner, is legally liable unto the Plaintiff under 42 U.S.C. § 1983.

VII. COUNT THREE

46. Plaintiff reiterates all the allegations in Paragraphs 1-45 herein.
47. Since Plaintiff, Tanya Virgadamo, filed her charge on or about July 31, 2012, Defendant, City of Kenner, has refused to hire Plaintiff as a firefighter despite the fact that Plaintiff is well qualified for the position.
48. In filing her charge on or about July 31, 2012, Plaintiff, Tanya Virgadamo, exercised her First Amendment right of free speech on a matter of public concern which is the sexually discriminatory hiring policies and practices of Defendant, City of Kenner.
49. Defendant, City of Kenner, retaliated against Plaintiff, Tanya Virgadamo, by refusing to hire her for the position of firefighter because Plaintiff exercised her First Amendment right by filing a charge with the EEOC in which she complained of sexually discriminatory policies and practices by the City of Kenner.
50. In refusing to hire Plaintiff, Tanya Virgadamo, as a firefighter despite her qualifications for the position of firefighter because Plaintiff exercised her First Amendment right of free speech on a matter of public concern, Defendant, City of Kenner, acted, pursuant to a policy and/or custom of the City of Kenner, and as a result, Defendant, City of Kenner, intentionally violated Plaintiff's First Amendment rights and is liable to Plaintiff under 42 U.S.C. Section 1983.

VIII. COUNT FOUR

51. Plaintiff reiterates all the allegations in Paragraphs 1-50 herein.

52. Since Plaintiff, Tanya Virgadamo, filed her charge on or about July 31, 2012, Defendant, John Hellmers, in his individual and official capacities, has refused to hire Plaintiff as a firefighter despite the fact that Plaintiff is well qualified for the position.
53. In filing her charge on or about July 31, 2012, and in complaining about the sexually discriminatory hiring practices of Defendants, Plaintiff, Tanya Virgadamo, was exercising her First Amendment right of free speech on a matter of public concern.
54. Defendant, John Hellmers, in his individual and official capacities, retaliated against Plaintiff by refusing to hire her for the position of firefighter because Plaintiff exercised her First Amendment right by filing a charge with the EEOC in which she complained of sexually discriminatory policies and practices by the City of Kenner.
55. In refusing to hire Plaintiff, Tanya Virgadamo, as a firefighter despite her qualifications for the position because Plaintiff exercised her First Amendment right of free speech on a matter of public concern, Defendant, John Hellmers, in his individual and official capacities, intentionally violated Plaintiff's First Amendment rights, and as a result, is legally liable unto Plaintiff under 42 U.S.C. Section 1983.

IX. COUNT FIVE

56. Plaintiff reiterates all the allegations in Paragraphs 1-55 herein.
57. More than thirty (30) days prior to filing this action, Plaintiff, Tanya Virgadamo, gave Defendant, City of Kenner, written notice of and attempted to amicably resolve all her sex discrimination claim(s) in accordance with Section 303(C) of the LEDL, R.S. 23:303(C).
58. In refusing to hire Plaintiff, Tanya Virgadamo, as a firefighter because of her sex, female, despite the fact that Plaintiff was well qualified for the position, and in giving pretextual

reasons for not doing so, Defendant, City of Kenner, intentionally discriminated against the Plaintiff on the basis of her sex, female, in violation of the Louisiana Employment Discrimination Law (LEDL), R.S. 23:332(C).

59. As a result of the unlawful and discriminatory actions of Defendants, about which she complains herein, Plaintiff, Tanya Virgadamo, has suffered damages for which Plaintiff, Tanya Virgadamo, seeks relief in the following non-exclusive areas:

- A. Physical Pain and Suffering;
- B. Mental Anguish, Anxiety, Emotional Distress, Humiliation, and Injury to Reputation;
- C. Punitive Damages;
- D. Back Pay, Loss of Earnings, and Loss of Earnings Capacity;
- E. Instatement or, in Lieu Thereof, Front Pay;
- F. Medical Expenses;
- G. Loss of Benefits, Including But Not Limited to, Health Insurance, Retirement Benefits, and Annual and Sick Leave; and
- H. Reasonable Attorney's Fees.

60. Plaintiff, Tanya Virgadamo, also respectfully requests that this Honorable Court issue an order requiring Defendants, City of Kenner and John Hellmers, in his individual capacity and in his official capacity as the Chief of the Kenner Fire Department, to hire Plaintiff, Tanya Virgadamo, as firefighter. Alternatively, Plaintiff, Tanya Virgadamo, respectfully requests that this Honorable Court award her front pay.

61. PLAINTIFF, TANYA VIRGADAMO, DEMANDS A TRIAL BY JURY ON ALL ISSUES.

WHEREFORE, Plaintiff, Tanya Virgadamo, respectfully prays that after all due legal proceedings all conducted and after all legal delays have expired that this Honorable Court render a judgment herein in her favor and against Defendants, City of Kenner and John Hellmers, in his individual capacity and in his official capacity as the Chief of the Kenner Fire Department, *in solido*, in an amount supported by the evidence, plus reasonable attorney's fees to be determined by the Court, Plaintiff's costs herein, and legal interest from the date of judicial demand.

Respectfully Submitted,

/s/ Clement P. Donelon

CLEMENT P. DONELON, T.A., (LA. BAR #4996)

3900 N. Causeway Blvd., Suite 1470

Metairie, Louisiana 70002

Telephone: (504) 887-0077

Facsimile: (504) 887-0078

Cpdlaw@aol.com

Clem1@cpdlaw.net

Counsel for Plaintiff, Tanya Virgadamo

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TANYA VIRGADAMO

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CIVIL ACTION NO:

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VERSUS

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SECTION " "

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CITY OF KENNER AND JOHN HELLMERS,
IN HIS INDIVIDUAL CAPACITY AND IN HIS
OFFICIAL CAPACITY AS THE FIRE CHIEF
OF THE CITY OF KENNER

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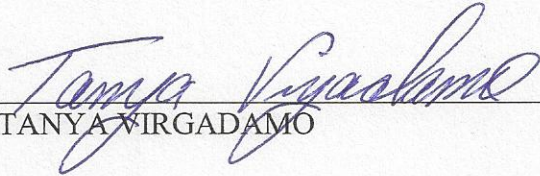
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JURY TRIAL DEMANDED

VERIFICATION

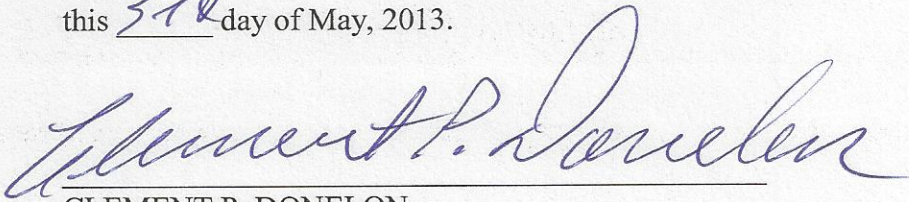
I have read the foregoing Complaint in the above-styled matter, and the allegations that I have made therein are true and correct to the best of my knowledge, information and belief.


TANYA VIRGADAMO

SWORN TO AND SUBSCRIBED

BEFORE ME, the undersigned authority

this 31st day of May, 2013.



CLEMENT P. DONELON
Louisiana Bar No. 04996
Notary Public No. 36599