IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ROBERTO R. VARGAS,	§	
Plaintiff,	§	
	§	
vs.	§	**CIVIL ACTION NO. _________________**
	§	**Jury Demanded**
CITY OF MCALLEN AND RAFAEL	§	
BALDERAS, IN HIS OFFICIAL	§	
CAPACITY AS FIRE CHIEF,	§	
Defendants.	§	

PLAINTIFF, ROBERTO R. VARGAS', ORIGINAL COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Roberto R. Vargas, hereinafter called Plaintiff, complaining of and about City of McAllen and Rafael Balderas, in his official capacity as Fire Chief of the City of McAllen, hereinafter called Defendants, and for cause of action shows unto the Court the following:

PARTIES AND SERVICE

1. Plaintiff Roberto R. Vargas, is a citizen of the United States and the State of Texas and resides in Hidalgo County, Texas.

2. Defendant City of McAllen of McAllen may be served by serving the City Secretary, its officer, at 1300 Houston Avenue, McAllen, TX 78501. *See* Tex. Civ. Prac. & Rem. Code § 17.024(b).

3. Defendant Rafael Balderas, in his official capacity as Fire Chief, is a citizen of the State of Texas. Said Defendant may be personally served with process at the following address: 201 North 21st St., McAllen, TX 78501.

JURISDICTION

4. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1331. This case presents a federal question.

5. Pursuant to 28 U.S.C. § 1391(b), venue for this suit is proper in this district and division because it is in this district and division where the events occurred.

FACTS

6. Whenever, in this complaint it is alleged that any Defendant did any act, thing, and/or omission, it is meant that Defendant and/or Defendant's officers, agents, servants, employees or representatives did such act, thing and/or omission and that at the time it was done with full authorization and/or ratification of Defendant or done in the normal and routine course and scope of employment of Defendant and/or Defendant's officers, agents, servants, employees or representatives.

7. On June 5th, 2005, the Plaintiff, after twelve years serving as a volunteer firefighter in the Houston suburb of Southside Place in good standing, realized a life-long dream when he was started as a recruit with the City of McAllen Fire Department ("Department"). However, as an older recruit, the Plaintiff faced hurdles in the pursuit of this dream. During recruit school, the Plaintiff was intentionally struck in the face by a tenured firefighter in what the Plaintiff believes was an incident of hazing. After a less than satisfactory response to his complaint, the Plaintiff continued to endure a hostile work environment, particularly in the form of questions to his fitness level due to his age which resulted in an improvised fitness assessment in the presence of Deputy Chiefs. While his legitimate complaint continued to fall upon deaf ears, the Plaintiff finished recruit probationary year without further problems.

8. This hazing continued when the Plaintiff started working at the station. On August 16th, 2006, while the Plaintiff was at work, Lieutenant Roland Garza (Lt. Garza) and Driver Jed Kennan (Kennan) from Truck 3 left the station without the Plaintiff on purpose, in violation of the rules of the department. The Plaintiff believes this action was an incident of hazing. Department Administration pressured the Plaintiff to file a formal complaint, while many rank and file members defended the hazing, leaving the Plaintiff with a Faustian bargain

9. A few months after the hazing incident, on February 5th, 2007, the Plaintiff transferred to a new shift (A-shift) to escape the pressure from co-workers. Within a month, the Plaintiff had an accident off duty when he was hit from behind while in his personal vehicle, off duty. Injuries sustained in this accident cause the Plaintiff to be off work from March 7, 2007 till April 17, 2007. When the Plaintiff returned to work, he was greeted by some with the suspicion that he had benefitted from leave with pay for getting hurt in the accident.

10. More troubling is an incident that occurred on January 21st, 2008. Acting Lieutenant Wedel (Wedel), along with Lieutenant Juan Gloria (Lt. Gloria), took the Plaintiff to the drill field to do some improvised training. The Plaintiff questioned Lt. Gloria at the time of the training because he did not believe that it was safe due to inclement weather conditions, but the Plaintiff was ordered to continue with the training session. During the improvised training session, the Plaintiff sustained back injuries, a fractured patella and a torn meniscus, all of which required surgery. Because of the required surgery, the Plaintiff was off of work for almost one year, not returning to work until January 12, 2009. During this same time period the Plaintiff was allowed to work his second job, provided that he followed his doctor's orders. By permitting Plaintiff to work his second job the City of McAllen was not required to compensate him under workers compensation law for the loss

of his side income.

11. During this time period, the Plaintiff felt that there were many in the department who viewed the plaintiff as getting more long "paid vacations" under suspicious circumstances. The Plaintiff began to feel high levels of work-related stress, which was affecting his home life. Consequently, on or about February 7th, 2008, the Plaintiff, his wife and daughter all sought lengthy ongoing counseling for the stress. The Plaintiff was treated by four (4) different psychologists via the Employee Assistance Program, over several years, in a good faith effort to improve his work environment.

12. In the same time period in December, 2008, the Plaintiff decided to use his recovery time away from the station productively and to start taking classes at the University of Phoenix towards a degree in Business Management. The Plaintiff received written permission to attend the University of Phoenix, an online program, from City of McAllen Human Resources Director Juan Gonzalez ("Gonzalez") in order to receive reimbursements under the Collective Bargaining Agreement ("CBA") between The City of McAllen and the McAllen Firefighters Union. However, when the Plaintiff started to submit reimbursement forms for his classes, Defendant Rafael Balderas ("Balderas"), City of McAllen of McAllen City of McAllen Manager Mike Perez ("Perez") and Gonzalez balked at paying for the classes, as they felt these classes imposed a significant cost on the city. This led to grievances and the City of McAllen's response was to force an "involuntary" side bar agreement outside the CBA in order to receive a pending reimbursement check, thereby implementing changes to education benefits to all employees. As a result, members of the department and the Union blamed the Plaintiff for these changes, which the Plaintiff believes have tarnished his reputation within the Department.

13. On or about November 15th, 2009, the Plaintiff was advised that he was being relieved of duty pending a psychological exam to determine his fitness for duty due to false allegations that the Plaintiff had made threats. The Plaintiff believes these threats primarily emanated from Kevin Vera, a McAllen Firefighter that was subsequently terminated for Sexual Assault of a Child, but caused the Department to require the Plaintiff to undergo a lengthy mental fitness for duty evaluation before he returned to work. It took almost seven (7) months to obtain this evaluation due to problems with the City of McAllen and payments to Vendors.

14. As a result of this process, the Plaintiff's ability to study and participate in a promotional examination for the position of driver was adversely affected. The Plaintiff was cleared to return to work June 23rd, 2010 based on the findings of the mental fitness evaluation. Once again, the Plaintiff felt that even though he reported hazing to the city (Juan Gonzalez – HR Director and Rogelio Rubio – Fire Chief) on or about the end of November 2009, during the initial investigation, the city did nothing. In fact, subsequent hazing took place in front of officers who did nothing. Some of this hazing was even conducted by officers of the department, such as Captain Mike Hernandez ("Capt. Hernandez") that spread the sentiment the plaintiff was getting more long "paid vacations" and started a campaign of retaliatory behaviors toward the plaintiff.

15. While off-duty and attempting to obtain a mental fitness evaluation, the Plaintiff's wife was diagnosed with cervical cancer. As the City of McAllen is self-insured, cancer treatments imposed a significant cost on the city. In addition, even after the Plaintiff returned to work, the burden of his wife's cancer diagnosis caused the Plaintiff to miss several weeks of work related to physician appointments, creating more stress and ill will

amongst certain members of the Department.

16. On October 31st, 2010, the Plaintiff was working on McAllen Engine Company #5 at a public function for Halloween when Engine #5 was dispatched on an auto/pedestrian incident. Engine #5 was initially sent to an incorrect address and in order to get to the correct address, the driver decided to back Engine #5 in order to go to the correct location. By McAllen Department rules, the Plaintiff should have guided the driver, but neither the driver nor the Officer, Lt. Marco Reyes, gave the Plaintiff the opportunity to get out of Engine #5.

17. During the backing maneuver, the driver apparently made contact with an object. Lt. Reyes, after being advised of the incident, directed the driver to proceed to the correct location of the initial incident. Upon arriving at the location, the Plaintiff noted that there was a minor dent in the rear of Engine #5. The Plaintiff reported the damage to Lt. Reyes. Lt. Reyes ordered the Plaintiff and the driver to "not tell anyone" about the incident and that he would take care of the matter. The Plaintiff, provided Lt. Reyes and the driver his personal tools, as Lt. Reyes and the driver attempted a repair that evening without success. Lt. Reyes continued to admonish the Plaintiff to not talk about the incident to anyone.

18. Three days later, on November 3rd, 2010, the Plaintiff was interviewed by Capt. Hernandez and Deputy Chief Ramon Rodriguez ("Dep. Chief Rodriguez") regarding the incident. Initially, the Plaintiff denied knowledge of the incident. However, later the Plaintiff admitted knowledge of the incident, expecting that it would come out that he was just following the orders of Lt. Reyes to remain silent regarding the incident. Later in November, the Plaintiff received a message from Lt. Reyes reversing the order. But at that point, the matter had progressed to disciplinary action without a thorough/complete

investigation and on or about December 4th, 2010 the Plaintiff was placed on administrative leave, pending an investigation. On January 7th, 2011, after having realized that the City of McAllen failed to get a statement from the Plaintiff, the Plaintiff was directed to write a memo regarding the accident on or before January 10th, 2011.

19. On January 18th, 2011, after submitting his memo, Plaintiff was indefinitely suspended (terminated) by the McAllen Fire Department. The Plaintiff timely appealed his termination and requested a hearing. The hearing examiner overturned the indefinite suspension, finding that the City of McAllen failed to give the Plaintiff proper due process by failing to advise him of the charges in a timely manner. The only charge which the hearing examiner found proven at the hearing was that the Plaintiff failed to tell Capt. Hernandez and Dep. Chief Rodriquez what he knew about the incident when initially questioned on November 3rd, 2010. The hearing examiner held that the Plaintiff should suffer a 10 day suspension with no other loss of benefits. During the period while the Indefinite Suspension was in place, the Plaintiff's house went into foreclosure.

20. The hearing examiner's decision was appealed by the City of McAllen to the 139th Judicial District Court in Hidalgo County. The Plaintiff and City of McAllen agreed to a judgment in the appeal that essentially upheld the hearing examiner's decision, but included a couple of significant details. First, the Plaintiff was reinstated as of January 13, 2012, and second, for the purposes of future disciplinary action, the City of McAllen agreed that the action regarding the October 31st, 2010 event could only be used as an enhancement for disciplinary action for a period of one year.

21. On or about September 1st, 2012, the Plaintiff was scheduled to work at the station. On his way to work, the Plaintiff was shopping for groceries for the shift when a display stack of

water bottles fell on him, causing him injuries. The Plaintiff finished shopping and reported for work, informing his officer that he was injured while shopping. The officer relieved him of duty to follow up on the incident and seek medical treatment. The Plaintiff did follow up and was advised by the emergency room physician that he needed to follow up with another physician and could not return to work.

22. The Plaintiff did see the physician on or about September 6th, 2012 and remained off at work. On September 18th, 2012, the Plaintiff filed a request for a leave of absence to recover from the injury from September 17th, 2012 until October 14th, 2012. Eventually this leave was continued until October 27th, 2012, at which time the Plaintiff returned to work. During his time off, however, the Plaintiff was alleged to have worked as a substitute school nurse for a school district in the McAllen area. Although Plaintiff was struggling to make ends meet, Plaintiff's home was lost in foreclosure and had to move his family to a rental home. Plaintiff pleaded with the City of McAllen through HR Director Gonzales for relief, but the City of McAllen denied his pleas.

23. It appears that as early as September 28th, 2012, the City of McAllen, in the person of Captain Michael Hernandez, may have become aware of the allegations of misconduct by the Plaintiff. This was sent up the chain of command in October of 2012, but apparently Fire Chief Balderas became aware of the allegations of misconduct near the end of January, 2013. Chief Balderas apparently investigated the matter, but apparently didn't formally start the investigation until March of 2013.

24. At this time Plaintiff was struggling to remedy the Tuition Reimbursement issues still at issue after the 2011 disciplinary action. On March 25th, 2013, Plaintiff met Chief Balderas under the belief that the meeting was to discuss and possibly remedy the Plaintiff's Tuition

Reimbursement, CBA uniform allowance and Step-up "Driver" opportunities. This meeting was not supposed to be about any new allegations, but instead about lingering issues related to the 2011 disciplinary action and agreed order, specifically that the Plaintiff was of the opinion that the City of McAllen had failed to make him whole with regards to the agreement resolving the first disciplinary action.

25. The Plaintiff, without the benefit of Union Representation, was provided a Notice of Complaint alleging that the Plaintiff performed work for any other employer on the dates of September 28, 2012, October 5, 2012; . . . (and other dates not within the Plaintiff's leave of absence)." At this point Fire Chief Balderas questioned the Plaintiff about the alleged outside employment and directed the plaintiff to provide official documentation by 5 pm on March 27th 2013 from the outside employer/employers as to the dates in question.

26. The next working shift day, March 27th, 2013, the Plaintiff provided Chief Balderas, in the presence of local union representative Hector Bennett, with documentation explaining the lack of "official" documentation from the school district, considering it was short notice and also a "Holiday Week " (Good Friday). The Plaintiff submitted documentation from the treating physician which indicating that the Plaintiff was discharged form his care and that the Plaintiff was restricted from work as a firefighter, but that less demanding work that posed less risk of re-injury would be allowed. At that point Chief Balderas appeared to be angered by the lack of "sufficient" documentation needed to continue what seemed to the Plaintiff to be a pre-determined disciplinary process.

27. Assistant Chief James Schultz ("Asst. Chief Schultz") was called in by Chief Balderas to attest to statements allegedly made by the Plaintiff which Chief Balderas believed were verbal admissions that the Plaintiff was working some of the days in question. In what

appears to be an impulsive action, Chief Balderas then served the Plaintiff with the pre-written "**Notice of Possible Discipline; Notice of Due Process Hearing Opportunity"** for a meeting to be held on March 29, 2013**.** The Plaintiff requested more time to secure proper legal representation on such short notice and acquire the originally requested official documentation. The Plaintiff's request was denied and was advised that the Due Process Hearing would take place with or without the Plaintiff present. Chief Balderas was expediting the process as his 180 day deadline to impose discipline was about to expire.

28. The next working shift, March 29, 2013, was Good Friday, The Plaintiff, complying with the "**Notice of Possible Discipline; Notice of Due Process Hearing Opportunity,"** appeared at 4:45 pm in Chief Balderas' office without the benefit of legal representation. Plaintiff was only able to have local IAFF union representation – Hector Bennett and Cesar Cadena – present. At 5:00 pm, Fire Chief Balderas was a not present, nor were any other City of McAllen representatives present for the **"Due Process Hearing."** At approximately 5:15 pm, Chief Balderas arrived, appearing visibly flustered and wearing shorts, a T-Shirt and sandals. At the commencement of the hearing, Chief Balderas ordered the Plaintiff to "talk." The Plaintiff asked for clarification of the charges as written in the **"Notice of Possible Discipline; Notice of Due Process Hearing Opportunity,"** at which time Chief Balderas was visibly angered by the question and stated " I'm not here to answer any of your questions."

29. Facing a hostile Chief Balderas and sensing there was a lack of good faith, the Plaintiff's local union representatives suggested that the hearing should not continue at this time. While preparing to leave the meeting, Chief Balderas asked if it was agreed upon that due process had been served. The plaintiff and his representatives responded with a resounding

"no." Nothing further was said by Chief Balderas, and the Plaintiff and his representatives left the room. On April 3, 2013, Chief Balderas issued the indefinite suspension, which the Plaintiff appealed. This was the second indefinite suspension issued in the Plaintiff's career.

30. A hearing was held July 31st, 2013 and the hearing examiner issued his ruling on October 10th, 2013, denying the appeal in part and sustaining the appeal in part. The hearing examiner found that the City of McAllen had cause to discipline the Plaintiff for the alleged fraudulent use of sick leave, but that the city 1) improperly relied on a prior disciplinary action to support the termination and 2) the City of McAllen denied the Plaintiff due process rights during the investigation. The final remedy the hearing examiner proposed was a five-day suspension and the Plaintiff was reinstated effective October 28th, 2013.

31. In May of 2013, while the Plaintiff was appealing the termination, the Plaintiff's wife initiated divorce proceedings against the Plaintiff. The Plaintiff was forced to move back to his childhood hometown of Houston and he lost the home where he was living in McAllen, essentially making him homeless at that point in time. In addition to losing his home, the Plaintiff also had to liquidate assets to stay afloat (a truck, furniture and other equipment) from his residence totaling in excess of $30,000. The plaintiff sustained financial hardships that took a toll on the marriage and the divorce was finalized in July of 2014.

32. In addition to the three investigations and the consequential damages noted in paragraphs 1 through 29, the Plaintiff asserts that the City of McAllen, and its Fire Chief, Rafael Balderas, acting in his official capacity, continue to harass and retaliate against the Plaintiff. In December, 2013, Chief Balderas required the Plaintiff to work several shifts

to allegedly repay the city for shifts where the Plaintiff allegedly did not complete trades. The City of McAllen, after initially telling the plaintiff that his degree program from the University of Phoenix did qualify for reimbursement under the City of McAllen's collective bargaining agreement, did not paid for classes as agreed upon, and continues to stall and not reimburse the proper amounts for classes which the Respondent has taken. And finally, in April 2014, in a meeting with several other high-ranking officers in the McAllen Fire Department, Chief Balderas stated that "the only reason [the Plaintiff] is here is because the District Attorney dropped the ball" with regards to the Plaintiff's 2008 on-the-job injury leave, a patently false statement.

CAUSE OF ACTION UNDER SECTION 21.051 OF THE TEXAS LABOR CODE

33. Plaintiff incorporates within this cause of action all of the allegations set forth in paragraphs 1 through 32, supra.

34. Section 21.051 of the Texas Labor Code states that an employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age, if the employer discharges an individual, or discriminates in any other manner against the individual in connection with compensation or the terms, conditions, or privileges of employment. Tex. Labor Code §21.051(1). In addition, Section 21.051 also holds that and employer that limits, segregates, or classifies an employee . . . in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee has committed and unlawful employment practice.

36. In this case, the City of McAllen, by and through its agents, have shown that the continuing to intentionally engaged in wrongful acts with malice or with reckless indifference to the

statutorily-protected rights of Plaintiff by the following actions:

a. During his time in recruit school, the Plaintiff, upon information and belief, was hazed and intentionally struck in the face during an evolution. The Plaintiff believes these actions were due to the age of Plaintiff at the time of recruit school;

b. Lt. Gloria and Acting Lt. Wedel's informal training session, as noted *supra* in paragraph 10, which led to a knee injury requiring surgery and continuing care by a physician to this day;

c. The false allegations of threats by unspecified members of the department, as noted *supra* in paragraph 13, which led to a fitness for duty evaluation that required several months to obtain;

d. Captain Hernandez failed to give the Plaintiff the opportunity to respond to the false allegations levied against the Plaintiff during the mental fit for duty;

e. Subsequent comments made to Chief Schultz by Captain Hernandez in the presence of other Fire Department personnel just moments after the second indefinite suspension, "you don't know how many people you just made happy;"

f. Captain Hernandez stated in a memo that he perceived that the Plaintiff is disabled because of the need for counseling was imposing inconvenient accommodation;

g. Captain Hernandez has arbitrarily denied the Plaintiff proper training and deprived the plaintiff acting driver opportunities.

37. By these actions, the Defendants, its agents, servants and employees discriminated against Plaintiff due to his protected category status and/or protected activity status under Texas law. As a result of the discriminatory treatment, other wrongful conduct and the acts described herein, Plaintiff has suffered damages as further alleged in this Complaint.

CAUSE OF ACTION UNDER 42 U.S.C. § 1983

38. Plaintiff incorporates within this cause of action all of the allegations set forth in paragraphs 1 through 37, supra.

39. The Civil Rights of 1871, now codified as 42 U.S.C.S. §1983 as federal law provides: "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any laws, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C.S. §1983.

40. The state action requirement for standing under 42 U.S.C.S. §1983 has more commonly been referred to as "color of state law," from the statute itself. Plaintiff is informed and believes, and thereupon alleges that, in committing said acts and/or omissions, each Defendant was the agent and employee of each other Defendant and was acting within such agency and employment and that each Defendant was acting under color of state law.

41. 42 U.S.C.S. §1983 requires that the conduct complained of must have deprived the person of some privilege or immunity secured by the Constitution or laws of the United States. As such, Plaintiff alleges that Defendants, jointly and/or severally deprived him of those rights, privileges, and immunities secured by the Fifth and/or Fourteenth Amendments to the Constitution incorporated and applied to the states through the Fourteenth Amendment. Defendants violated this provision by the following actions and/or omissions, *inter alia*:

    a. The Plaintiff was employed by the City of McAllen, which is a municipality with the State of Texas. Therefore, the City of McAllen is a local government entity, and

the Plaintiff is a public employee. The City of McAllen, by and through Defendant's agent, Fire Chief Balderas acting in his official capacity, intentionally engaged in wrongful acts under color of law. To wit, on or about April 3, 2013 Fire Chief Balderas improperly applied an enhancement from a prior disciplinary action with intent to cause the termination of the Plaintiff.

b. The City of McAllen, by and through its agent, Fire Chief Balderas acting in his official capacity, intentionally engaged in wrongful acts with malice or with reckless indifference to the constitutionally-protected rights of Plaintiff. To wit, on or about April 3, 2013, Fire Chief Balderas denied the Plaintiff substantive and procedural due process in violation of the Fifth and/or Fourteenth Amendments to the Constitution by arbitrary and capricious actions in improperly relying on a prior disciplinary action to support the termination, failing to give the Plaintiff proper notice of potential disciplinary actions and placing allegations, treating the Plaintiff differently than similarly situated Firefighters and placing documentation in Plaintiffs "G" file that have been utilized to impact plaintiff's career opportunities without disclosing to the Plaintiff.

42. It is also well-established that municipalities are liable under 42 U.S.C.S. §1983 for constitutional torts that are in compliance with their customs, practices, policies or procedures. A municipality is liable for constitutional deprivations visited pursuant to governmental custom even though such custom has not received formal approval through the body's official decision making channels. In this case, the City of McAllen, by and through its agents, Fire Chief Balderas and other individuals in the chain of command are liable because they sanctioned the custom, practice and/or policy or procedures of, *inter*

alia, 1) failing to adequately supervise and/or observe their employees and/or officers, 2) failing to provide adequate training in regard to the disciplinary process and requirements for substantive and procedural due process, 3) failing to impose proper and sufficient policies and/or procedures as to the use of the disciplinary process and requirements for substantive and procedural due process, and 4) ignoring the serious need for training and supervision of superior officers with regards to the disciplinary process and requirements for substantive and procedural due process.

43. The actions and/or inaction taken in this case was uncalled for and taken pursuant to the customary practices and/or policies or procedures that were sanctioned by all named entity Defendants. Liability for Defendant City of McAllen is established under §1983 because the "turn a blind eye" approach to the improper use of disciplinary actions in the Fire Department that, although not authorized by officially adopted policy, is so common and well settled as to constitute a custom that fairly represents official policy. Defendant City of McAllen had actual or constructive knowledge of each practice, custom, and/or policy or procedure and numerous prior incidents of such conduct and/or inaction as to establish accession to that custom by the policy makers. Defendant City of McAllen unspoken policies above is a decision that reflects deliberate indifference to the risk that a violation of a particular constitutional or statutory rights will follow the decision. In the alternative, Defendant City of McAllen is liable under §1983 for failing to adopt clear policies outlining the criteria for disciplinary actions within the Fire Department.

44. Moreover, Defendant City of McAllen is liable for the inadequate training of their Fire Department officers under §1983. Liability attaches to Defendant City of McAllen because their failure to train amounts to deliberate indifference to the rights of their employees.

DAMAGES

45. Plaintiff sustained the following damages as a result of the actions and/or omissions of Defendants described hereinabove:

    a. Economic damages;

    b. Pursuant to the Civil Rights Attorney's Fees Award Act, 42 U.S.C.S. §1988, a prevailing party in a §1983 case is entitled to recover its attorney's fees. Hence, Plaintiff prays for all reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiff;

    c. Back pay from the date that Plaintiff was denied equal pay for equal work and interest on the back pay in an amount to compensate Plaintiff as the Court deems equitable and just;

    d. All reasonable and necessary costs incurred in pursuit of this suit;

    e. Emotional pain;

    f. Inconvenience;

    g. Mental anguish in the past;

    h. Mental anguish in the future;

    i. Reasonable medical care and expenses in the past. These expenses were incurred by Robert Vargas and such charges are reasonable and were usual and customary charges for such services in Harris County, Texas;

    j. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;

    k. Loss of earnings in the past;

    l. Loss of earning capacity which will, in all probability, be incurred in the

future;

m. Loss of benefits; and

n. Injury to reputation.

EXEMPLARY DAMAGES

46. Plaintiff would further show that the acts and omissions of Defendants complained of herein were committed with malice or reckless indifference to the protected rights of the Plaintiff. In order to punish said Defendants for engaging in unlawful business practices and to deter such actions and/or omissions in the future, Plaintiff also seeks recovery from Defendants for exemplary damages.

SPECIFIC RELIEF

47. Plaintiff seeks the following specific relief which arises out of the actions and/or omissions of Defendants described hereinabove:

    a. Promote Plaintiff to the position and pay grade to which Plaintiff should have been promoted but for the unlawful employment actions of Defendants.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Robert Vargas, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Defendant, together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

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PLAINTIFF HEREBY DEMANDS TRIAL BY JURY