

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

JEFFREY JAMES DEAN  
303 Middle Blvd.  
Salisbury, Maryland 21801

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Plaintiff

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Case No.: \_\_\_\_\_

v.

THE BERLIN FIRE COMPANY  
214 North Main Street  
Berlin, Maryland 21811

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Serve: David Fitzgerald, President  
214 North Main Street  
Berlin, Maryland 21811

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Defendant

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**COMPLAINT FOR DAMAGES**  
**UNDER TITLE VII OF THE CIVIL RIGHTS ACT**

Plaintiff, Jeffrey James Dean, by and through his undersigned counsel, James L. Otway, Esquire, and Otway Russo, P.C. sues Defendant, The Berlin Fire Company, and for causes of action against said Defendant states as follows:

**PARTIES**

1. **JEFFREY JAMES DEAN** (Jeff) was at all relevant times a paid full – time EMT paramedic employed by the Berlin Fire Company He is a resident of Salisbury, Wicomico County, Maryland.

2. **THE BERLIN FIRE COMPANY** (“BFC”) is a Maryland non-stock corporation with a principal place of business located at 214 North Main Street in Berlin, Maryland. Its resident agent is David A. Fitzgerald of the same address.

**JURISDICTION & VENUE**

3. This Court has jurisdiction over the claims set forth herein as the claims are for violation of Federal Civil Rights. Venue is appropriate in this Court as the acts and omissions giving rise to these claims occurred primarily in Berlin and Ocean City, Maryland and Defendant carries on its regular business in Maryland. Federal Jurisdiction exists under 42 U.S.C. 2000 (e)(5) and 28 U.S.C. 1387, et seq.

**FACTS COMMON TO ALL COUNTS**

4. Jeffrey J. Dean was hired by the Berlin Fire Company in October of 2005 as a Paramedic/Firefighter. This was a paid position and at all times relevant to this case he was an employee of the BFC. During his first six years he was never cited or disciplined for any act or omission. During the course of his employment, he witnessed innumerable racial, sexual and other insults made by senior Fire Company Officials, including the then Chief, Byron Trimble and Assistant Chief Derrick Simpson, President David Fitzgerald and EMS Supervisor, Norris Phillip Donohue, Sr. Donohue and Fitzgerald held leadership positions in the BFC and each was acting as an agent of the Fire Company at all times relevant to this suit. All acts and omissions complained of occurred or were performed in the course of their duties in their respective positions. In most instances the acts or omissions complained of occurred at the main firehouse located at 214 North Main Street in Berlin, Maryland or while on the business of the Fire Company at other locations.

5. For example, during the first approximately six years of Dean's employment by BFC his work partner was Gary Purnell, the Berlin Fire Company's only African American volunteer, member or employee, who had a speech impediment. While Dean worked with Gary Purnell he witnessed members and leadership refer to Gary as "nigger" "coon", "DAN" (dumb

ass nigger), “marble-mouth” and other racial and derogatory epithets both in an out of his presence. Members of the department, including leadership referred to him as “Spot”, in reference to a company photograph in which Mr. Purnell was the only black spot in a sea of white faces. When Mr. Purnell would enter the room, members would shout out “Where the white women at?”. When Mr. Purnell rose at an awards banquet to accept his award for twenty-five years of service, members yelled out the same refrain.

6. Laura Puckett was an administrative assistant at the Berlin Fire Company during Dean’s employment there. She reported directly, to David Fitzgerald, President. She was subject to continued sexual harassment by both members and leadership. For example, in the presence of Ms. Puckett and members of the Berlin Fire Company, Norris Philip Donohue, an EMS Supervisor, commented at the time when Berlin Fire Company was installing security key swipe readers, that “Pretty soon we are going to have to install one on Laura’s ass”. When she confronted him, he responded “Yeah, so we can keep a record on who has come and gone”. Donohue would also comment to Zachery Tyndall, another paramedic, when Ms. Puckett was out sick, that Tyndall would have to suck his dick because Laura was not there to do it. Members and leadership would regularly make derogatory sexual comments to and about her.

7. Many of the acts complained of were witnessed by other members of the Berlin Fire Company. Most were reported to the leadership of the Company and many were, in fact, committed by the leadership of the Company. While Dean was assigned to work with Gary Purnell, most of the ridicule and harassment was directed at others. That changed on September 12, 2011 when Dean was assigned a new paramedic partner, Zachery Tyndall. Tyndall had previously been assigned to work as a paramedic on another shift. Donohue told Dean that Tyndall was reassigned to work with him because Tyndall had been complaining a lot and

causing trouble and leadership wanted Dean to teach him to “keep his mouth shut.” Donohue said they chose Dean because he was a good employee and “not a problem.”

8. Through the next two months, Tyndall and Dean discussed the atmosphere of harassment and discrimination at the Berlin Fire Company and over time Tyndall related that he had been subject to years of non-consensual physical sexual contact, harassment, retaliation and discrimination by Trimble, Simpson, Donohue and others since he began with the Berlin Fire Company as a cadet some seven years prior – all based upon their perception of Tyndall’s sexual preference as homosexual (Tyndall was not homosexual).

9. Tyndall related that Trimble would walk by him and grab his genitals or try to embrace him. Trimble would come up behind Tyndall and run his hands through his hair. Tyndall reported that both Trimble and Simpson would call him “faggot”, “queer”, “cocksucker” and other derogatory names. Trimble even confronted Tyndall’s mother (who was a volunteer for the Ladies Auxiliary) and repeatedly told her that her son was gay. Between the day they first became partners and when Tyndall disclosed to Dean the full details of the harassment, Dean witnessed two incidents of groping of Tyndall by Trimble and Simpson. Both incidents occurred while Tyndall was in uniform and on duty and while Trimble and Simpson were his supervisors.

10. Tyndall began to complain to his superiors and as he did the pressure on him increased and boiled over onto Dean as well. Trimble, Simpson and Donohue put pressure on him to keep Tyndall quiet. Trimble and others would say to Dean “Where is your homo partner?” “Where’s the little faggot?” and stopped referring to Tyndall by his given name but rather used derogatory terms. Throughout 2011, Dean began feeling pressure from Donohue, Trimble, Simpson and others at the Berlin Fire Company to join in their harassment of Tyndall, which he refused. In early 2012, Trimble and Simpson increased their verbal assaults and

started additional tactics to drive Tyndall from the Department. If they determined the identity of any women with whom Tyndall had a date they would contact her and tell her Tyndall was gay.

11. There was a deliberate and conscious effort on the part of, Fitzgerald, Donohue, Trimble and Simpson, to harass and intimidate Zack Tyndall and drive him from the Department because of their belief that Tyndall, who they perceived to be “effeminate,” did not conform to their gender stereotypes. Because Tyndall was perceived to be nonconforming to Berlin Fire Company members’ and leader’s’ gender stereotypes, they subjected him to an objectively hostile and abusive work environment. But for Tyndall being male, he would not have been subjected to these conditions.

12. The discriminatory conduct began with Brian Trimble. Trimble repeatedly made gender-stereotypical slurs about and in front of Tyndall, Dean and other firefighters and civilians. Mr. Tyndall repeatedly requested that Trimble stop.

13. Tyndall and Dean asked Trimble, Simpson, Fitzgerald and Donohue to stop and on numerous occasions would complain regarding the constant harassment. Tyndall emailed John Holloway, President of the Board of Directors, to advise him about the harassment.

14. In early 2012 Tyndall went directly to Trimble to again complain. Trimble told him that he had a plan to get rid of him that year. Trimble asked Tyndall “If I keep picking on you and calling you gay, can I make you quit?” This conduct was committed by Trimble and Simpson because Tyndall did not conform to their gender stereotypes.

15. Tyndall and Dean continued to complain to persons in leadership positions in the Fire Company, all to no avail.

16. Left with no choice, Tyndall determined to take his complaints to the Mayor and Human Resources Director of Berlin. Dean agreed to go with him and to provide a statement as

to what he had seen and heard. On February 24, 2012 Dean and Tyndall related the history of events at the Fire Company to the Mayor and Human Resources Director of the Town of Berlin. The Town of Berlin conducted an investigation which ultimately led to the dismissal of Mr. Donohoe. Fitzgerald, Trimble and Simpson, however, not only continued their practices but began a campaign against Dean and Tyndall. For example, Mr. Fitzgerald, president of the fire company, made a comment at a regular meeting of the fire company about “two employees going up to Town Hall to file a grievance”. This led to members calling for Dean’s and Tyndal’s termination.

17. As time passed, the name calling and physical harassment continued and heightened. Dean’s support of Tyndall had an immediate effect in the way he was treated by leadership. Harassment that had previously been reserved to Tyndall was now expanded to include Dean. Dean, who had never been disciplined for anything, began to be chastised for miniscule matters and was written up for formal discipline for manufactured offenses or for something so minor as letting leaves blow into the engine bay of the Firehouse. Leadership not only failed to respond to the complaints; but openly indicated that they were going to drive Dean and Tyndall from the Department.

18. Trimble, Simpson and Fitzgerald continued to harass, isolate and ostracize Dean from activities at the Berlin Fire Company both as a volunteer fireman and as a paid paramedic. Their continued actions were done with the knowledge, consent and active participation of the leadership of Berlin Fire Company, including President Fitzgerald who refused, after repeated requests, to take any action to prevent the continued verbal attacks and harassment of Dean. On one occasion, Dean returned from an ambulance call and was completing an inventory of controlled substances used on the ambulance. As he completed the count, he realized that one of

the narcotics was missing and he became extremely concerned that the Fire Company leadership would attempt to use this as a basis for terminating him. An extended search of the vehicle finally located the medicine in a sharps container (a container for needles etc.) where it could only have been deliberately placed by someone with access to the firehouse and the ambulance. Prior to discovery of the missing vial, Fitzgerald called the Berlin Police Department and demanded that they investigate Dean. All of this conduct was committed by Fitzgerald, Trimble and Simpson because Dean had supported Tyndall and reported the discriminatory behavior to the Town of Berlin. The actions against Dean were all in retaliation for his providing witness to the acts of the Leadership and reporting the events to the Town of Berlin and to MIEMSS. During the week of April 8, 2017, Tyndall was away on vacation, when Tyndall's residential fire alarm went off, triggering a call for fire and EMS response to Tyndall's home. No volunteers arrived, no fire apparatus responded. Dean eventually went to Tyndall's home alone and found there to be no fire present. Dean called the Berlin Police Department and asked them to make regular patrols by Tyndall's home while he was away.

19. In the summer of 2012, there was increasing tension within the Berlin Fire Company due to the Company's refusal to correct the ongoing pattern of harassment and discrimination in the face of continued requests from the Town of Berlin. The Town threatened to cut off funding of the Fire Company unless it made positive changes in the policies and conduct of the leadership of the Fire Company. The Berlin Fire Company refused and the Town cut funding for the Berlin Fire Company. Members of the Berlin Fire Company and the leadership increased their threats and intimidation directed to Mr. Dean. Mr. Dean began having significant anxiety and depression and was started on antidepressants by his physician.

20. In the fall of 2012, the threats and harassment continued to increase and Dean's reaction to the threats and harassment worsened. He found himself increasingly unable to deal with the stress. He became physically ill from the stress and the thought of going to work. He would become nauseous and would have anxiety attacks. He also developed severe reflux which eventually progressed to acute esophagitis with a structure, which prevented him from swallowing food and required an endoscopy procedure. In October of 2012 he saw his family physician who directed him to remain out of work for a period of one month. He was originally scheduled to return to work on November 20, 2012. However, as his anxiety and depression did not improve, his medical leave was extended for another 60 days and he was scheduled to return to work on January 21, 2013.

21. While Dean was out on leave, the tension continued to rise within the Department and he would receive continued reports of harassment and threats directed to Tyndall and to Dean. On or about December 26, 2012, while Mr. Dean was out on medical leave, Tyndall was on duty as a Paramedic/EMT when a call was received for multiple ambulances to respond to an automobile collision to attend to several seriously injured occupants of the vehicles. Mr. Tyndall responded from the Berlin Fire Company alone in a second ambulance.

22. When Mr. Tyndall arrived on the scene, he immediately assisted two injured occupants. The driver was stabilized, removed from the vehicle through the driver side door, and transported to the regional trauma center in Salisbury. The other passenger was unconscious, did not speak, had blood coming from his mouth, and was having difficulty breathing. Mr. Tyndall began his treatment of the passenger and had him removed from the vehicle and onto a gurney. Mr. Tyndall repeatedly asked Trimble and other members of the Berlin Fire Company for

assistance with the passenger. Trimble and other members of the Berlin Fire Company either chose to ignore Mr. Tyndall or outright refused to help by stating "I can't."

23. Specifically, Mr. Tyndall asked Trimble and others to connect the oxygen tank to the bag that Mr. Tyndall was using to "bag breathe" for the patient. After Mr. Tyndall made repeated requests for help to members of the Berlin Fire Company and his requests were repeatedly ignored, a Maryland State Trooper asked Mr. Tyndall if he could help. The Maryland State Trooper connected the oxygen hose that helped the patient breathe.

24. Mr. Tyndall requested assistance in getting the patient into the ambulance. Again, Trimball and other members of the Berlin Fire Company either chose to ignore Mr. Tyndall or outright refused to help. Two probationary members finally helped Mr. Tyndall as best they could.

25. Mr. Tyndall requested assistance from members of the Berlin Fire Company to drive the ambulance while he administered life -saving treatment to the patient. Again, Trimble and other members of the Berlin Fire Company chose to ignore Mr. Tyndall or outright refused. A Berlin police officer, Jeannine Jerscheid, saw that Mr. Tyndall's requests were being ignored by Defendant Trimble and other members of the Berlin Fire Company and she chose to find a police officer who could drive the patient to Atlantic General Hospital ("AGH"). Lieutenant Robert Fisher of the Berlin Police Department agreed to drive the ambulance to AGH. Tyndall related these events to Dean the next day.

26. This conduct further increased Mr. Dean's fear and anxiety about returning to work and worry that he could not count on Trimble or any of the members of the Berlin Fire Company to come to his aid, to assist him on an ambulance call, in a burning building or in the presence of any danger, even in a life or death situation. Mr. Dean grew even more anxious about

returning to work. Fitzgerald made a comment to Dean that maybe MIEMMS could pay him for his time. Dean did not know what he was referring to; but later learned that Fitzgerald's wife worked for MIEMMS and likely shared with him that Dean had provided the MIEMMS investigator with detailed testimony regarding the discrimination and harassment at the Berlin Fire Company.

27. As a result of the December 26, 2012 incident, The Maryland Institute for Emergency Medical Services Systems (MIEMSS) was requested to investigate the conduct of the Fire Company regarding the members' response to Tyndall's requests for assistance. Dean met with the investigator. Dean provided detailed information of the harassment and discriminatory conduct directed initially at Tyndall, and others, and thereafter at Dean once it became known that he had provided information to the Town of Berlin regarding the discrimination at the Fire Company.

28. Dean finally received medical clearance to return to work and provided same to Fitzgerald, requesting to be put back on the active duty roster. Fitzgerald ordered Dean to first complete a "skills assessment" before he would be permitted to return. Such assessment had never been required of any other paramedic who had been on leave and then returned. When Dean asked Fitzgerald for a copy of the Departmental policy that permitted or required such an assessment, Fitzgerald immediately retreated from that position and instead told him he would have to have a "psychological evaluation".

29. Dean reported to the office of Michael Finegan, Ph.D. and underwent four hours of psychological tests after which he met with Dr. Finegan. Dr. Finegan found out why Dean was there and the fact that he had been cleared by the physician who had treated him and he refused to proceed with the evaluation, telling Dean that if his treating physician had cleared him, it was

improper for the Fire Company to have him independently tested without an adequate independent basis for concern.

30. Several weeks passed without any word from the Department regarding his return to duty date other than to place him on administrative leave. Finally, Dean received communication from the office of Dr. White, a psychiatrist, directing him to appear for psychological evaluation. Dean complied. After examination, Dr. White pronounced Dean to be psychologically fit for return to duty.

31. Dean contacted Fitzgerald regarding returning to the work schedule. In response, Fitzgerald advised him that he was to report to the Talbot County EMS on the following Tuesday, March 12, 2013 for training during which he would “precept” and go through 12 Advanced Life Support calls before he would be permitted to return to work.

32. Talbot County EMS was 90 minutes from Berlin. The head of the EMS was a friend of Fitzgerald who had previously been a member of the Berlin Fire Company. The requirement of precepting at another department had never been imposed on any prior member, even those who had been on much longer leaves for military service and other reasons. It was even more unusual in Dean’s case as he was a preceptor and field trainer for Paramedic students who attended Wor-Wic Community College in Salisbury, MD, had taught EMS students as an adjunct professor at the college and as an evaluator for students tanking the national certification exam. Nonetheless, Dean complied, believing that if he did not they would use it as a reason to fire him.

33. On the same day Dean reported for duty in Talbot County, the leadership of the Berlin Fire Company fired Zack Tyndall without giving him a reason for same. However, it is

alleged that the only reason was that he did not fit the gender stereotype preferred by the leadership of the Department.

34. The continued harassment by Fitzgerald, Donohue, Trimble and Simpson and other leaders and members of the Berlin Fire Company, was done intentionally and maliciously and for the purpose of intimidating Dean and it had the further purpose and effect of creating a hostile work environment wherein it would be difficult or impossible for him to adequately perform the responsibilities of his positions as paramedic and fireman. It was done solely, singularly and directly in retaliation for Dean supporting Tyndall and giving statements regarding the harassment and discrimination to the Town of Berlin and MIEMSS.

35. Dean completed his training in Talbot County on March 29, 2013 and was ready to return to work. Unfortunately, on April 4, 2013 Mr. Dean and his son, while driving, were struck by a drunk driver traveling at a high speed who proceeded through a stop sign. The other driver was killed and Dean and his son were taken to the hospital. Dean suffered multiple injuries, the most serious of which was to his shoulder.

36. Dean was contacted by Fitzgerald who asked how long he would be out. Dean initially responded "for a while." Thereafter he consulted with his physician and told Fitzgerald it would be until May 14, 2013. Shortly thereafter Dean received written notice that he had been fired.

#### **COUNT I – TITLE VII ACTION**

37. Plaintiff incorporates herein by reference all of the allegations of paragraphs 1- 36 above, as fully as if said allegations had been repeated at length herein and for a cause of action against Defendant, Berlin Fire Company, states as follows:

38. The Berlin Fire Company employs in excess of the statutory minimum number of employees so as to satisfy all jurisdictional prerequisites necessary to bring a Title VII Action under and pursuant to 42 USC 2000(e)(5) and to claim equitable and other relief which are sought under 42 USC §e-5(g)

39. Almost all of the conduct occurred at the Berlin Fire Company or when on the business of the Berlin Fire Company.

40. Plaintiff filed an EEOC claim and has received a right to sue letter from the Equal Employment Opportunity Commission, a copy of which is attached hereto as **Exhibit 1**.

41. All of the above is a direct and proximate result of the conduct of Fitzgerald, Donohue Trimble and Simpson and other leaders and members of the Berlin Fire Company, while acting individually and as the agents, servants and officers or managers of the Berlin Fire Company.

42. Dean, is a member of a protected class under Title VII.

43. The conduct of the Defendant's agents, officers, leaders and members was severe and pervasive. It persisted frequently and on a nearly daily basis after Mr. Dean gave statements to the Town of Berlin and MIEMSS daily basis. The conduct of the Berlin Fire Company altered Dean's terms and conditions of employment and left him unable to effectively do his job. He was subject to these disadvantageous terms and conditions of employment to which that similarly situated employees would not have been exposed.

44. Plaintiff was physically, economically and emotionally damaged as a result of the conduct of the Defendant's agents, officers, leaders and members.

45. The conduct of the Defendant, acting through its agents, officers, directors and members was done in retaliation because Dean reported unlawful discriminatory practices.

WHEREFORE, Plaintiff demands damages and judgment against Defendant, Berlin Fire Company in an amount which will compensate him for:

- (a) Violation of his rights under Title VII of the Civil Rights Act;
- (b) Compensatory Damages for lost past and future wages, impairment of earning capacity, emotional distress, past and future, humiliation and past and future medical expenses;
- (c) Punitive damages against Berlin Fire Company and its members to punish them for their willful, wanton, oppressive and malicious conduct;
- (d) Trial by jury on all issues so triable;
- (e) Costs expended herein including reasonable attorneys fees;
- (f) Pre-judgment and post-judgment interest; and
- (g) Such other and further relief to which Plaintiff may be entitled.

#### **COUNT II – HARASSMENT AND RETALIATION**

46. Plaintiff incorporates herein by reference all of the allegations of Paragraphs 1- 45 above, as fully as if said allegations had been repeated at length herein and for a second cause of action against Defendant states as follows:

47. Plaintiff's complaints to leadership of the Berlin Fire Company, including members of the Berlin Fire Company Hiring Committee, Berlin Fire Company Board of Directors, and other Berlin Fire Company leaders, and the Town of Berlin, were made to oppose unlawful discriminatory practices. Defendant knew or should have known that retaliation for making such complaints is illegal.

48. After Dean complained of the treatment of Tyndall at the hands of the Berlin Fire Company and agents of the Berlin Fire Company, and supported his claims, Defendant engaged

in retaliatory behavior, culminating in Dean's termination as a Berlin Fire Company employee and Berlin Fire Company volunteer on or about April 22, 2013.

49. After receiving repeated complaints against the discriminatory practices, Defendant Berlin Fire Company terminated Mr. Dean for a pretextual reason and one for which employees were usually reprimanded or written up.

50. Plaintiff filed an EEOC claim and has received a right to sue letter from the Equal Employment Opportunity Commission.

51. As a direct and proximate result of the conduct alleged herein, Dean was terminated from his positions, both as a paid employee and volunteer, with Defendant Berlin Fire Company, which jobs he intended to keep indefinitely. He suffered a period of unemployment and underemployment and continues to suffer economic loss as a result of the termination of his jobs with Defendant Berlin Fire Company.

52. Dean has not returned to work as a paramedic and he has lost the career.

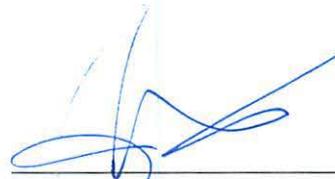
53. As a result of the acts complained of herein, Mr. Dean has suffered and will continue to suffer the loss of his career, as a paid employee with Berlin Fire Company, as well as the loss of salary, benefits and other compensation which such employment entailed.

54. Mr. Dean will also suffer future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. He has further experienced severe emotional and physical distress.

WHEREFORE, Plaintiff prays that this court enter judgment in his favor and against Defendant as follows:

- a. That a finding be entered that Defendant intentionally discriminated against Plaintiff with malice and reckless indifference to Plaintiff's protected rights in violation of Title VII of the Civil Rights Act;
- b. That Plaintiff be awarded all wages, benefits, and compensation lost due to the illegal conduct, including back pay, front pay, damages for emotional distress, and punitive damages, all in an amount to be determined by the jury but believed to exceed \$500,000.00;
- c. That Plaintiff be awarded reasonable attorney's fees and costs;
- d. That Plaintiff be awarded prejudgment interest; and
- e. That Plaintiff be awarded such other and further relief as may be just and necessary.

Date: September 12, 2017



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