

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JF

KIMBERLY ASARO,

Plaintiff,

Case No.: 17- - CD
Hon.: _____

v

CITY OF DETROIT, FIRE DEPARTMENT
COMMISSIONER ERIC JONES, in his official
capacity, LT. JASON JENNINGS, in his official
capacity, CAPT. ROBERT BROWN , in his
official capacity,

17-014038-CD
FILED IN MY OFFICE
WAYNE COUNTY CLERK
9/21/2017 11:14:10 AM
CATHY M. GARRETT

Defendants.

JAMES B. RASOR (P43476)
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PLAINTIFF'S COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a Judge in this Court.

/s/ James B. Rasor
James B. Rasor (P43476)

NOW COMES Plaintiff, KIMBERLY ASARO, by and through her attorneys, RASOR LAW FIRM, PLLC, and for her Complaint against the above-named Defendants, hereby states as follows:

1. This cause of action involves violations of Plaintiff's civil rights, as secured by the United States and Michigan Constitutions, and is brought pursuant to the statutes and common law of the State of Michigan against the above named Defendants.

2. Plaintiff, KIMBERLY ASARO (herein "Plaintiff") was, at all times relevant to this lawsuit, a resident of the City of Berkley, County of Oakland, and State of Michigan.

3. At all times relevant to this lawsuit, Defendant City of Detroit is a governmental subdivision organized under the law of the State of Michigan.

4. Defendant City of Detroit is located in the County of Wayne, State of Michigan.

5. The Detroit Fire Department is a unit under the color of the City of Detroit.

6. At all times relevant to this lawsuit, Fire Department Commissioner Eric Jones was an employee of Defendant and was acting under the color of state law and in the course and scope of his employment and is being sued as an agent of Defendant Detroit.

7. At all times relevant to this lawsuit, Lieutenant Jason Jennings was an employee of Defendant and was acting under the color of state law and in the course and scope of his employment and is being sued as an agent of Detroit.

8. At all times relevant to this lawsuit, Captain Robert Brown was an employee of Defendant and was acting under the color of state law and in the course and scope of his employment and is being sued as an agent pf Defendant Detroit.

9. At all times relevant to this lawsuit, the above-named individual Defendants were acting within the scope and course of their employment and acting under the color of state law.

10. This lawsuit arises out of events occurring within the City Detroit, County of Wayne, and State of Michigan.

11. The amount in controversy in this action exceeds Twenty-Five Thousand Dollars (\$25,000.00) exclusive of interest, costs and attorney's fees, and this case is otherwise properly within the jurisdiction of the Macomb County Circuit Court.

COMMON FACTUAL ALLEGATIONS

12. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 11, as if fully set forth herein.

13. Plaintiff is a white female, and as such, a member of a protected class.

14. Plaintiff began her employment with the Detroit Fire Department in 2002 as an Emergency Medical Technician ("EMT").

15. In March of 2016, one of Plaintiff's coworkers, Willie Bragg, who is African American, made a Facebook post that Plaintiff saw and found highly offensive due to its racist nature.

16. Among other things, the post included ideas such as that "white men, women and children should be raped and killed," that white people should be "used as alligator bait," and that white people should be enslaved and beaten like they had done to African Americans.

17. In response to this post, Plaintiff made an official complaint to recently-appointed Commissioner Eric Jones, who is also an African American, that Bragg's post highly offended her.

18. Plaintiff reasonably believed that Bragg's animosity towards white people could turn into discriminatory conduct.

19. Plaintiff also posted objections to Bragg's post on his Facebook wall and then removed herself from his Facebook page so she would not see any more of his racist posts.

20. On March 15, 2016, Plaintiff informed her supervisor, Jason Jennings, also an African American, that Bragg had begun harassing her in the workplace to the extent that he would randomly appear during her shifts and talk to her partner and go out of his way to make his presence known to her.

21. Following her report to Jennings of Bragg's behavior, Jennings ordered Bragg not to speak to Plaintiff or have any other contact.

22. Bragg, however, disregarded this order, and made further appearances around Plaintiff's presence, one of which occurred on April 8, 2016 when Bragg approached her while she worked with a patient and he stood just feet away, staring at her.

23. Then again on April 19, 2016, Bragg this time approached her and her partner's ambulance and leaned into the window and began speaking to her partner, despite him never once doing so before.

24. Plaintiff's partner reported this harassing behavior to Jennings and also Jennings' supervisor, Captain Robert Brown, also an African American.

25. As a result of Bragg's inability to follow the direct order and his continuing presence near Plaintiff, she filed another formal written complaint of harassment on April 24, 2016 to Jennings.

26. A day later, on April 25, 2016, she also sent an official complaint to Brown, where she requested Bragg's behavior needs to be fixed as it was "creating a hostile work environment;" Plaintiff was uncertain whether or not Bragg's harassing behavior and thus hostile work environment was also motivated by her race.

27. An official complaint with Defendants' HR department was filed by Plaintiff on May 3, 2016; based on Bragg's previous posts concerning white people, Plaintiff had reason to believe his harassing behavior was motivated by her being white.

28. In May 2016, because nothing was being done about Bragg's behavior despite her continual complaints, she posted a picture of Bragg leaning on her Ambulance as further evidence of his continuing harassment.

29. In response to that, Bragg reposted her post, telling people that she was trying to get him fired and had written many letters about him to the Mayor's office telling them he is racist.

30. Plaintiff saw this, and while it concerned her because it was untrue, she further became concerned because of what was said in the comment section.

31. One individual commented "hit her ass with a scalpel," which Bragg then proceeded to "like" by using a smiley face emoji.

32. Another individual, one of Bragg's acquaintances who is also a Detroit Police Officer, commented, "DO I NEED TO ARREST THIS BITCH...When r u working better yet when is she working."

33. Bragg's friends then began a thread of comments where they began searching for Plaintiff's Facebook account so they could "harass her."

34. When they finally found her Facebook page, somebody asked "what is our next move?" wherein another individual commented "You know I'm petty I'm trying to wait for Willie to tell us no if not I'm in it."

35. Bragg responded to this by writing, "go ahead."

36. In response to Plaintiff seeing these threats and statements by Bragg's friends and acquaintances, Plaintiff informed Defendants about the Facebook comments on or around June 6, 2016.

37. In response to Plaintiff's June 6 complaint, Plaintiff was told that there was nothing they could do about Bragg because he was only trying to irritate her.

38. Plaintiff, however, reasonably and legitimately feared for her safety, as there had been times in the past when Detroit EMTs would be set up and ambushed while on "EMT runs."

39. In response to Plaintiff reporting her fear concerning the pictures, Plaintiff spoke with Raymond Birch, the Assistant Chief of the Fire Department, who told her to come downtown and show them the Facebook threats.

40. Another individual downtown that saw the pictures on Plaintiff's phone, Captain Anthony Wade, an African American, said, "well I don't know what the problem is."

41. Because Defendants refused to remedy the situation, Plaintiff did feel safe returning to the workplace, and instead was forced to take vacation days and/or sick days while she waited for the Defendants to provide a safe working environment so she could return to work.

42. Per instructions from Captain Brown, Plaintiff called the downtown headquarters for further assistance on June 13, 2016, but no one would speak to her.

43. Also during this time, Plaintiff began to suffer from severe anxiety and other related medical problems stemming from the incidents with Bragg.

44. In response to Plaintiff's complaints and her concerns for her safety, Defendants held a reconciliation meeting between Plaintiff and Bragg on July 8, 2016.

45. The “reconciliation” was very one-sided, and Defendants were adamant in their belief that Plaintiff was in the wrong and Bragg was not.

46. As a result of this reconciliation, Defendants found the situation to be resolved, however, nothing changed regarding Bragg’s standing at the Fire Department.

47. Plaintiff is under the information and belief that Bragg is still employed as an EMT and that has never been reprimanded for his harassing behavior and/or his clear violation of a direct order.

48. A year earlier there had been a white Fire Fighter who had been terminated for posting “racist remarks” on Facebook.

49. The Detroit Fire Department has a policy against “workplace bullying,” which the policy states occurs “when an employee experiences a persistent pattern of mistreatment from others in the workplace that causes harm.” The policy also states that “unfriendly jokes or pranks” can be investigated as workplace violence or harassment.

50. While Defendants claim that its HR Department underwent an investigation into Plaintiff’s complaint(s), they did not interview any witnesses about the various altercations Plaintiff had reported.

51. On July 11, 2016, Defendants sent Plaintiff a letter requesting medical documentation regarding her absences as she was claiming she suffered from anxiety and other related medical issues.

52. Plaintiff sent a letter to Defendants’ HR Department on July 18, 2016, informing that because her doctor was out of town, she would not be able to obtain the necessary medical documentation until August 17 or 18.

53. Defendants then sent another letter to Plaintiff requesting the same medical documentation on July 25, 2016, despite having previously received her email explaining the delay.

54. On August 2, 2016, Defendants sent Plaintiff an “involuntary quit” form on the basis that she had failed to provide medical documentation of her illnesses within five business days from the receipt of the July 25, 2016 letter.

COUNT I – RACIAL DISCRIMINATION
VIOLATION OF THE ELLIOTT-LARSEN CIVIL RIGHTS ACT,
M.C.L. § 37.2101 *et seq.*, AS TO ALL DEFENDANTS

55. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 54, as if fully set forth herein.

56. The Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.* prohibits discrimination against any individual with respect to employment, compensation, or a term, condition, or privilege of employment because of race.

57. At all material times, Plaintiff was an employee of Defendants, covered by and within the meaning of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

58. Plaintiff is Caucasian, and is a member of a protected class under the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

59. As employers within the meaning of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*, Defendants owed Plaintiff a duty not to discriminate against her with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of her race.

60. Because of her race, Plaintiff was subjected to treatment during her career with Defendants that has been disparate from that accorded to non-white co-workers of Defendants, who were treated more favorably than her, and that was because of her race.

61. The disparate and less favorable treatment to which Defendants subjected Plaintiff to during her employment with Defendants, has included adverse employment actions on the basis of Plaintiff's race or Plaintiff has otherwise been discriminated against with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of her race.

62. The disparate and less favorable treatment to which Plaintiff was subjected during the time that she was employed by Defendants has come both from management and supervisory personnel, and from Plaintiff's non-white co-workers.

63. Defendants have a policy or pattern of practice that encourages management or supervisory personnel to directly discriminate against white employees, or that tolerates the disparate and less favorable treatment of white employees by said management and supervisory personnel.

64. Defendants have a policy or pattern of practice that encourages management or supervisory personnel to look the other-way or actively encourage disparate and less favorable treatment of white employees by non-white employees and/or supervisory personnel.

65. The individual Defendants have either directly discriminated against Plaintiff, or have tolerated and looked the other-way to disparate and less favorable treatment of Plaintiff by her non-white co-workers and/or supervisory personnel.

66. The disparate treatment to which Plaintiff was subjected to while employed by Defendants was so substantially disparate and less favorable than the treatment of non-white employees that it raises an inference of disparate treatment discrimination.

67. The disparate treatment to which Plaintiff was subjected to by Defendants was so substantially disparate and less favorable than the treatment received by her non-white co-workers that it unreasonably interfered with Plaintiff's work performance.

68. There is no legitimate business reason justifying the disparate treatment to which Plaintiff was subjected to during her career as an employee of Defendants.

69. As a direct and proximate result of Defendants' unlawful actions against Plaintiff as described herein, Plaintiff has suffered injuries and damages, including, but not limited to, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of the ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus costs, interest, and attorney fees so wrongfully incurred, as the Court deems just.

COUNT II – RETALIATION
VIOLATION OF THE ELLIOTT-LARSEN CIVIL RIGHTS ACT,
M.C.L. § 37.2101 et seq., AS TO ALL DEFENDANTS

70. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 69, as if fully set forth herein.

71. The Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.* prohibits retaliation against any individual with respect to employment, compensation, or a term, condition, or privilege of employment because of race.

72. At all material times, Plaintiff is and has been an employee of Defendants, covered by and within the meaning of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

73. Plaintiff is Caucasian and is a member of a protected class under the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

74. As an employer within the meaning of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*, Defendants owed Plaintiff a duty not to retaliate against her with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of her race.

75. Complaining about, reporting, participating in an investigation, and/or opposing violations of the Act is a statutorily protected activity under the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

76. Plaintiff repeatedly engaged in conduct protected under the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*, including, but not limited to, complaining of, reporting, and/or opposing the harassing and discriminatory conduct of the agents, servants, and/or employees of Defendants, particularly racial harassment and potential discrimination from one of Plaintiff's coworkers.

77. Defendants had knowledge of Plaintiff's protected activities as set forth in the preceding paragraph.

78. Defendants, by and through its agents, servants, and/or employees, subsequently took adverse, retaliatory action against Plaintiff including, but not limited to, bringing disciplinary actions, denying Plaintiff conditions, terms, opportunities, and privileges provided to non-white employees of Defendants, and/or terminating Plaintiff for an invalid reason.

79. Plaintiff was subjected to harassment and other retaliatory acts by Defendants and its agents, servants and/or employees in retaliation for her opposition to civil rights violations and having complained about the discriminatory acts described herein, in violation of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

80. Defendants and its agents, servants and/or employees' actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.

81. As a direct and proximate result of Defendants' unlawful actions and retaliations against Plaintiff as described herein, Plaintiff has suffered injuries and damages, including, but not limited to, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of the ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus costs, interest, and attorney fees so wrongfully incurred, as the Court deems just.

COUNT III – HOSTILE WORK ENVIRONMENT
VIOLATION OF THE ELLIOTT-LARSEN CIVIL RIGHTS ACT,
M.C.L. § 37.2101 *et seq.*, AS TO ALL DEFENDANTS

82. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 81, as if fully set forth herein.

83. The Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.* prohibits discrimination against any individual with respect to employment, compensation, or a term, condition, or privilege of employment because of race.

84. At all material times, Plaintiff was an employee of Defendants, covered by and within the meaning of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

85. Plaintiff is Caucasian and is a member of a protected class under the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

86. As an employer within the meaning of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*, Defendants owed Plaintiff a duty not to discriminate against her with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of her race.

87. Defendants by their agents, representatives, and/or employees, were predisposed to discriminate on the basis of race and acted in accordance with that predisposition.

88. While employed as an EMT, Plaintiff was constantly and repeatedly subjected to race discrimination by Defendants, by and through their agents, servants and/or employees, said acts being made unlawful by the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*

89. Defendants, by and through their agents, servants and/or employees intentionally violated the aforementioned ELCRA by the following acts:

- a. Discriminating against Plaintiff with respect to her employment, compensation, or a term, condition or privilege of employment, because of race;
- b. Limiting, segregating, or classifying Plaintiff in a way which deprived or tended to deprive Plaintiff of an employment opportunity or otherwise adversely affecting the status of Plaintiff because of race;
- c. Segregating, classifying or otherwise discriminating against Plaintiff on the basis of race with respect to a term, condition or privilege of employment, including a benefit plan or system;
- d. Creating a hostile work environment on the basis of Plaintiff's race; and/or
- e. Failing to provide a work environment free from race discrimination and/or harassment.

90. The disparate and less favorable treatment to which Plaintiff was subjected during her career with Defendants came from both management and supervisory personnel, and from Plaintiff's non-white-co-workers.

91. Defendants subjected Plaintiff to disparate treatment in whole or in part because of her race, and such treatment was sufficiently severe and pervasive such that Plaintiff was subjected to a hostile work environment on the basis of Plaintiff's race.

92. One of Plaintiff's coworkers, Willie Bragg who had made prior racist remarks concerning white people, continually harassed Plaintiff.

93. Defendants have a policy or pattern of practice that encourages management or supervisory personnel to directly discriminate against white employees, or that tolerates the disparate and less favorable treatment of white employees by said management and supervisory personnel.

94. Defendants have a policy or pattern of practice that encourages management or supervisory personnel to look the other-way or actively encourage disparate and less favorable treatment of white employees by non-white employees and/or supervisory personnel.

95. The individual defendants have either directly discriminated against Plaintiff, or have tolerated and looked the other-way to disparate and less favorable treatment of Plaintiff by her non-white co-workers and/or supervisory personnel.

96. Defendants had no legitimate business reason for their actions, in violation of the Elliott-Larsen Civil Rights Act, M.C.L. § 37.2101 *et seq.*, which specifically prohibits discrimination against any person regarding employment and/or the terms of employment on the basis of race.

97. Defendants and their agents, servants and/or employees' actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.

98. As a direct and proximate result of Defendants' unlawful actions and retaliations against Plaintiff as described herein, which constitute a hostile work environment, Plaintiff has suffered injuries and damages, including, but not limited to, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of the ordinary pleasures of life.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus costs, interest, and attorney fees so wrongfully incurred, as the Court deems just.

RESPECTFULLY SUBMITTED:

THE RASOR LAW FIRM, PLLC

/s/ James B. Rasor

James B. Rasor (P43476)

Andrew J. Laurila (P78880)

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Dated: September 13, 2017

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, KIMBERLY ASARO, by and through her attorneys, THE RASOR LAW FIRM, and hereby respectfully requests trial by jury in the above captioned matter.

RESPECTFULLY SUBMITTED:

/s/ James B. Rasor

James B. Rasor (P43476)

Andrew J. Laurila (P78880)

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Dated: September 13, 2017