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IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

EDUARDO MESA,
Plaintiff,

vs.

Case No.

PALM BEACH COUNTY FIRE RESCUE,

Defendant.

COMPLAINT

Plaintiff, EDUARDO MESA ("Plaintiff"), by and through the undersigned counsel, hereby sues Defendant, PALM BEACH COUNTY FIRE RESCUE. ("Defendant"), and alleges as follows:

1. This is an action for damages pursuant to the Florida Civil Rights Act of 1992, Florida Statutes, Chapter 760, *et seq.* ("FCRA"), to readdress injuries resulting from Defendant's unlawful disability, national origin, and religion based discriminatory treatment of and retaliation against Plaintiff.

2. At all times material hereto, Plaintiff was a resident of Palm Beach County, Florida.

3. Defendant, Palm Beach County Fire Rescue, is authorized to conduct business in the State of Florida, and has its principal place of business in PALM BEACH COUNTY, Florida and within the jurisdiction of this Honorable Court.

4. Venue is proper because all of the actions that form the basis of this Complaint occurred within this district.

5. All conditions precedent for the filing of this action before this Court have been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

6. Plaintiff is Cuban and within a class of individuals protected by the FCRA.
7. Plaintiff commenced employment with Defendant on or about September 6, 2016.
8. Plaintiff held the job title of Recruit Probationary Firefighter/EMT in Recruit Academy 61.
9. Plaintiff experiences eye movements/twitches due to a condition/disability, specifically noted as unusual blinking/closing eyes for a few seconds at a time.
10. Plaintiff would be harassed during the recruit academy training by Captain Bruce Clark for his blinking.
11. Plaintiff would be constantly harassed and asked by Clark whether he was sleeping or praying.
12. Plaintiff was intentionally setup to fail during the Performance Objective by Clark. A retired friend of Clark's, not an instructor as is typical in training, mismanaged a manual pressure pump lever causing Plaintiff's working water pressure to be lower than required and delayed, thus caused failing scores in his graded performance objective.
13. No other candidate had a retired/non-instructor manning the pressure pump.
14. Plaintiff, during the timed Performance Objective run, was intentionally timed late by Clark so he could fail out of the academy with less than two weeks remaining of the nine weeks program.
15. Plaintiff was forced to resign and reapply for the selection process into a new recruit academy class, and thus faced greater scrutiny during the new application process.

16. Plaintiff successfully graduated the second time with Recruit Academy Class 66. Captain Clark was no longer the Recruit Academy Lead Instructor, however Plaintiff was constantly ridiculed by some of Clark's remaining group of instructors for his eye condition/disability regarding the blinking.
17. Plaintiff would be made fun of and be accused of falling asleep, praying or "performing religious rituals" while his eye would spasm/blink.
18. Plaintiff notified Clark and Lieutenant Grieco of his condition after being ridiculed and harassed, but was not taken seriously by neither instructor.
19. Plaintiff, after graduating was assigned to Station 23 in Battalion 3, run by Battalion Chief Jason Wasielewski, a friend of Clark.
20. Plaintiff was told by station crew members, that Wasielewski had heard from Clark about Plaintiff falling asleep in the recruit academy and that Wasielewski didn't like Plaintiff.
21. Plaintiff was falsely accused of stealing crew members' food and was asked if that was what Hispanics do, and whether he was Mexican or Cuban.
22. Plaintiff was asked if stealing food was customary of his culture.
23. Plaintiff would be scrutinized more closely than other non-Cubans.
24. Plaintiff performed his job at satisfactory or above satisfactory levels during the probationary year.
25. The Plaintiff has retained the undersigned counsel in order that his rights and interests may be protected. The Plaintiff has thus become obligated to pay the undersigned a reasonable attorney's fee.
26. Plaintiff was retained at the headquarter station for a longer period than other recruit class members.

27. Plaintiff was set up by Wasielewski during an A.M. crew change. This caused Plaintiff to get a written reprimand as ordered by Wasielewski after station Captain Ross had verbally reprimanded Plaintiff, only giving Plaintiff an Employee Development Form for pager/call issue.

28. Plaintiff was set up while on a call on Rescue 33 which was also addressed by station Captain James Giamberini only as a verbal reprimand with an Employee Development Form. It then escalated to a written reprimand with recommendation for termination by Wasielewski.

COUNT I

Disability Discrimination in Violation of the FCRA

1. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-28 above as if set out in full herein.
2. Plaintiff is a member of a protected class under the FCRA.
3. By the conduct describe above, Defendant has engaged in discrimination against Plaintiff because of Plaintiff's disability and subjected the Plaintiff to disability-based animosity.
4. Such discrimination was based upon the Plaintiff's disability in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff is disabled.
5. Defendant's conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendant and its supervisory personnel were aware that discrimination on the basis of Plaintiff's disability was unlawful but acted in reckless disregard of the law.
6. At all times material hereto, the employees exhibiting discriminatory conduct towards Plaintiff possessed the authority to affect the terms, conditions, and privileges of Plaintiff's employment with the Defendant.

7. Defendant retained all employees who exhibited discriminatory conduct toward the Plaintiff and did so despite the knowledge of said employees engaging in discriminatory actions.
8. As a result of Defendant's actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.
9. The conduct of Defendant, by and through the conduct of its agents, employees, and/or representatives, and the Defendant's failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under state and/or federal law.
10. The actions of the Defendant and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to state and/or federal law, to punish the Defendant for its actions and to deter it, and others, from such action in the future.
11. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendant's discriminatory practices unless and until this Honorable Court grants relief.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FCRA, and has done so willfully, intentionally, and with reckless disregard for Plaintiff's rights;
- B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for

the unlawful employment practices described herein;

- C. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- D. Require Defendant to reinstate Plaintiff to the position at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by Defendant, or in lieu of reinstatement, award front pay;
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT II

National Origin Discrimination in Violation of the FCRA

29. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-28 above as if set out in full herein.

30. Plaintiff is a member of a protected class under the FCRA.

31. By the conduct describe above, Defendants have engaged in discrimination against Plaintiff because of Plaintiff's national origin and subjected the Plaintiff to national origin-based animosity.

32. Such discrimination was based upon the Plaintiff's gender in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff is Cuban-American.

33. Defendants' conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendants and their supervisory personnel were aware that discrimination on the basis of national origin was unlawful but acted in reckless disregard of the law.

34. At all times material hereto, the employees exhibiting discriminatory conduct towards

Plaintiff possessed the authority to affect the terms, conditions, and privileges of Plaintiff's employment with the Defendants.

35. Defendants retained all employees who exhibited discriminatory conduct toward the Plaintiff and did so despite the knowledge of said employees engaging in discriminatory actions.

36. As a result of Defendants' actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.

37. The conduct of Defendants, by and through the conduct of its agents, employees, and/or representatives, and the Defendant's failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under federal law.

38. The actions of the Defendants and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to state and federal law, to punish the Defendants for their actions and to deter them, and others, from such action in the future.

39. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendants' discriminatory practices unless and until this Honorable Court grants relief.

WHEREFORE, Plaintiffs respectfully prays for the following relief against Defendants:

- a. Adjudge and decree that Defendants have violated the FCRA, and have done so willfully, intentionally, and with reckless disregard for Plaintiff's rights;
- b. Enter a judgment requiring that Defendants pay Plaintiff appropriate back pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the

- unlawful employment practices described herein;
- c. Enter an award against Defendants and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
 - d. Require Defendants to reinstate Plaintiff to the position at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by Defendants, or in lieu of reinstatement, award front pay;
 - e. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
 - f. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT III

Religion Discrimination in Violation of the FCRA

- 12. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-28 above as if set out in full herein.
- 13. Plaintiff is a member of a protected class under the FCRA.
- 14. By the conduct describe above, Defendant has engaged in discrimination against Plaintiff because of Plaintiff's religion and subjected the Plaintiff to religion-based animosity.
- 15. Such discrimination was based upon the Plaintiff's religion in that Plaintiff would not have been the object of discrimination but for the fact that Plaintiff is religious.
- 16. Defendant's conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendant and its supervisory personnel were aware that discrimination on the basis of Plaintiff's religion was unlawful but acted in reckless disregard of the law.

17. At all times material hereto, the employees exhibiting discriminatory conduct towards Plaintiff possessed the authority to affect the terms, conditions, and privileges of Plaintiff's employment with the Defendant.
18. Defendant retained all employees who exhibited discriminatory conduct toward the Plaintiff and did so despite the knowledge of said employees engaging in discriminatory actions.
19. As a result of Defendant's actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.
20. The conduct of Defendant, by and through the conduct of its agents, employees, and/or representatives, and the Defendant's failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under state and/or federal law.
21. The actions of the Defendant and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to state and/or federal law, to punish the Defendant for its actions and to deter it, and others, from such action in the future.
22. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendant's discriminatory practices unless and until this Honorable Court grants relief.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- G. Adjudge and decree that Defendant has violated the FCRA, and has done so

willfully, intentionally, and with reckless disregard for Plaintiff's rights;

- H. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;
- I. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- J. Require Defendant to reinstate Plaintiff to the position at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by Defendant, or in lieu of reinstatement, award front pay;
- K. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- L. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT IV

Retaliation in Violation of the FCRA

40. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-28

41. of this complaint as if set out in full herein.

42. Plaintiff is a member of a protected class under the FCRA.

43. By the conduct describe above, Defendants retaliated against Plaintiff for exercising rights protected under the FCRA.

44. Defendants' conduct complained of herein was willful and in disregard of Plaintiff's protected rights. Defendants and its supervisory personnel were aware that discrimination on the basis of disability, national origin and religion, was unlawful but acted in reckless disregard of

the law.

45. As a result of Defendants' actions, as alleged herein, Plaintiff has been deprived of rights, has been exposed to ridicule and embarrassment, and has suffered emotional distress and damage.

46. The conduct of Defendants, by and through the conduct of its agents, employees, and/or representatives, and Defendants' failure to make prompt remedial action to prevent continued discrimination against the Plaintiff, deprived the Plaintiff of statutory rights under federal law.

47. The actions of the Defendants and/or its agents were willful, wanton, and intentional, and with malice or reckless indifference to the Plaintiff's statutorily protected rights, thus entitling Plaintiff to damages in the form of compensatory and punitive damages pursuant to state and federal law, to punish the Defendants for its actions and to deter it, and others, from such action in the future.

48. Plaintiff has suffered and will continue to suffer both irreparable injury and compensable damages as a result of Defendants' retaliatory practices unless and until this Honorable Court grants relief.

WHEREFORE, Plaintiffs respectfully prays for the following relief against Defendants:

- a. Adjudge and decree that Defendants have violated the FCRA, and have done so willfully, intentionally, and with reckless disregard for Plaintiff's rights;
- b. Enter a judgment requiring that Defendants pay Plaintiff appropriate back pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;
- c. Enter an award against Defendants and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;

- d. Require Defendants to reinstate Plaintiff to the position at the rate of pay and with the full benefits Plaintiff would have had Plaintiff not been discriminated against by Defendants, or in lieu of reinstatement, award front pay;
- e. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- f. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

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JURY DEMAND

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated: 1/8/19

Respectfully submitted,

/s/ Rainier Regueiro
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