

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

DANIEL McWILLIAMS,

Civil Action No.: 1:19-cv-2949

Plaintiff

-against-

COMPLAINT

REGINA WILSON, individually and in her official capacity as a Firefighter of the New York City Fire Department, THE VULCAN SOCIETY, INC., CITY OF NEW YORK, The New York City Fire Department and JOHN or JANE DOES, individually and in his or her official capacity as an employee of the New York City Fire Department

Defendants

JURY TRIAL DEMANDED

Plaintiff, Daniel McWilliams, by and through his attorneys, Sullivan & Galleshaw, LLP, alleges the following upon information and belief against Regina Wilson The Vulcan Society, Inc. (“Vulcan Society”), The City of New York (“NYC”), the New York City Fire Department (“FDNY”), and John and/or Jane Does, in both their individual capacities and in their capacities as officials of the FDNY, (collectively the “Defendants”).

NATURE OF THE ACTION

1. Daniel McWilliams (the “Plaintiff”) brings this action to vindicate his state, federal, and civil rights, which were violated by Regina Wilson and John and/or Jane Does (the “Individual Defendants”) the NYC, officials of the FDNY and members of the Vulcan Society.

2. This action arises from a request made by the Defendant Regina Wilson to the New York City Fire Department Ceremonial Unit (the “FDNY Ceremonial Unit”) on the behalf of the Vulcan Society to provide a color guard for a memorial mass on November 19, 2017, which was to honor deceased members of the Vulcan Society (the “Memorial Mass”). The Plaintiff was selected by the FDNY Ceremonial Unit to have the esteemed honor and privilege of serving as a flag bearer in the color guard for the Memorial Mass.

3. However, Defendant Regina Wilson discriminatorily denied the Plaintiff the opportunity to participate in the color guard for the Memorial Mass and publicly demeaned and demoted the Plaintiff to serve in a lesser capacity away from the proceedings solely on the account that he is white.

4. The Individual Defendants’ unlawful and discriminatory actions set forth below blatantly violated the Plaintiff’s state, federal and civil rights.

5. Defendant NYC is liable for the unlawful and discriminatory actions taken by the Individual Defendants because the Individual Defendants were the employees of the NYC at the time and the NYC acquiesced in the Individual Defendants’ conduct and/or failed to meaningfully address a consistent pattern of discriminatory conduct towards the white members of the FDNY Ceremonial Unit and more specifically, the Plaintiff.

6. As a result of the Defendants' conduct, Plaintiff has suffered severe shame, emotional distress, and damage to his reputation. Accordingly, Plaintiff brings this action for compensatory and punitive damages.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is based on 42 U.S.C. § 2000e-5(f)(3), 29 U.S.C. §§ 1331, and based on 28 U.S.C. § 1367(a) for claims arising under state law because the state claims arise from the same common nucleus of operative facts as the federal claims and are so intertwined with the federal claims as to make the exercise of supplemental jurisdiction appropriate.

8. The Plaintiff has fully complied with all prerequisites to jurisdiction in this Court under Title VII, New York City and New York State law. Plaintiff filed a charge with the United States Equal Employment Opportunity Commission (the "EEOC") on November 9, 2018. Plaintiff received a notice dated February 20, 2019 from the U.S. Department of Justice that he had the right to sue under Title VII and commences this lawsuit within 90 days of receipt of that notice. (A copy of the notice is attached to this Complaint as **Exhibit A**).

9. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c).

PARTIES

10. The Plaintiff is a New York resident of Caucasian descent and a 29-year veteran of the FDNY.

11. At all relevant times, the Plaintiff held the rank of Lieutenant with the FDNY and was a member of the FDNY Ceremonial Unit.

12. The FDNY Ceremonial Unit is a unit of over 250 trained captains, lieutenants, firefighters and other personnel who, in addition to their primary duties, proudly coordinate and manage a variety of FDNY sanctioned and sponsored events including promotions, parades, memorial services, funerals, and other dignified ceremonies.

13. The Vulcan Society is a NYC and FDNY supported and sanctioned affinity group of Black Firefighters. One of their purported initiatives is opposing discrimination within the FDNY.

14. At all relevant times, Defendant Regina Wilson was employed by the NYC as a Firefighter for the FDNY and was the President of the Vulcan Society, and was a member of the Ceremonial Unit.

15. Defendants John and/or Janes Does are, upon information and belief, NYC employees and/or members of the Vulcan Society who aided and abetted Defendant Wilson in depriving the Plaintiff of his right to enjoy the benefits, privileges, terms and conditions of his contractual and employment relationship on account of his race.

16. Defendant NYC is a municipal corporation duly organized and existing under the laws of the State of New York. Defendant NYC is an employer as defined by Title VII. Defendant NYC is also a “person” for purposes of the enforcement of rights guaranteed under Section 1983. Defendant NYC is authorized under the laws of the State of New York to maintain a fire department, which is a department, agency, bureau, and subdivision of the NYC. Defendant NYC is Plaintiff’s employer as well as the employer of the Individual Defendants named in this action.

BACKGROUND

17. For decades, the members of FDNY Ceremonial Unit have honored the legacy of the FDNY by coordinating and managing events celebrating the accomplishments of all members of the FDNY regardless of their race, skin color, creed or religion.

18. The Plaintiff has proudly and faithfully upheld this time-honored tradition considering it both an honor and privilege. Indeed, the Plaintiff and other white members of the FDNY Ceremonial Unit have capably participated in numerous FDNY sanctioned and sponsored events, including events sponsored by the Vulcan Society, without incident.

19. However, upon information and belief, the harmonious relationship between the FDNY Ceremonial Unit and the Vulcan Society took a turn for the worse when Regina Wilson was elected President of the Vulcan Society.

20. Upon information and belief, under the reign of Regina Wilson, the Vulcan Society has engaged in consistent practice of hostile, discriminatory, and retaliatory racism – particularly towards white members of the FDNY Ceremonial Unit, all while the City and FDNY willfully turned a blind eye to such behavior and instead provided preferential treatment to non-white members.

21. For example, on February 25, 2017, the Plaintiff was hired as part of the FDNY Ceremonial Unit by Defendant Wilson and the Vulcan Society for a rededication ceremony for the Roosevelt Public Library.

22. The family of the deceased individual for whom the library was dedicated requested a photograph with the participating members of the FDNY Ceremonial Unit.

23. Despite the family's request, upon information and belief Defendant Wilson did not allow the white members of the FDNY Ceremonial Unit – eight members including the

Plaintiff – to take part in the photo, opting instead to replace them with black Vulcan Society members who were not members of the FDNY Ceremonial Unit.

FACTS

24. The Memorial Mass is an annual FDNY sanctioned and sponsored event honoring the legacy and achievements of deceased members of the Vulcan Society.

25. The members of the FDNY Ceremonial Unit, including the Plaintiff, have proudly participated in coordinating and managing the Memorial Mass in years past without incident.

26. On or about November of 2017, the FDNY Ceremonial Unit received a request from the Vulcan Society to provide a color guard for the Memorial Mass.

27. Consistent with its common practice, the FDNY Ceremonial Unit called upon its membership to find volunteers to provide a color guard for the Memorial Mass.

28. The Plaintiff was one of six members of the FDNY Ceremonial Unit chosen to participate in the Memorial Mass. The Plaintiff was selected to have the esteemed honor and privilege of serving as a flag bearer in the color guard for the Memorial Mass.

29. On the day of the Memorial Mass, the Plaintiff arrived at St. Phillip's Episcopal Church ready, willing, and able to perform his duties as a flag bearer in the color guard.

30. Upon arriving at the event, Defendant Wilson singled the Plaintiff out from the FDNY Ceremonial Unit and summoned him over to where she was speaking with the head of the color guard.

31. After the Plaintiff approached, Defendant Wilson stated to the Plaintiff, "Lieutenant, I specifically requested an all-black color guard."

32. Needless to say, the Plaintiff found Defendant Wilson's discriminatory declaration disturbing and was made to feel extremely uncomfortable.

33. The Plaintiff attempted to defuse the tense situation, make Defendant Wilson aware of her racist conduct and to offer her the benefit of correcting her racially insensitive comment by asking, “Are you removing me from the Color Guard because I am not Black?” This query was only met with further and more direct racist hostility. Specifically, Defendant stated, “Yes, I am” and stripped the Plaintiff of the prestigious honor and privilege of serving as the flag bearer in the color guard by ordering him to “go outside” and perform the lesser duties of escorting civilians and mustering uniformed officers into formation away from the Memorial Mass.

34. Shortly after the altercation, Defendant Wilson confirmed in writing through a text message that she had removed the Plaintiff from the Ceremonial Unit color guard solely because of his race stating “I want to have a [sic] all black color guard...” and “My original request was for all black members of the unit...” (A copy of the text message is attached as **Exhibit B.**)

35. The racially-charged exchange caught the attention of several of the event’s attendees, including the Plaintiff’s friends, and colleagues.

36. To preserve the solemnity of the day’s prayer and the sanctity of a house of worship and to save himself from further shame, humiliation, and embarrassment, the Plaintiff acquiesced in Defendant Wilson’s request and removed himself from the Church.

37. For the remainder of the service, the Plaintiff performed lesser duties outside the Church and away from the Memorial Mass including securing a flag display against high winds and coordinating equipment.

THE DEFENDANT’S CONTINUED DISCRIMINATORY CONDUCT

38. Despite publicly shaming, and humiliating the Plaintiff, Defendant Wilson’s hostile, discriminatory, and retaliatory conduct did not stop on the day of the event.

39. Indeed, Defendant Wilson was determined to make an example of the Plaintiff. Following the Memorial Mass, Defendant Wilson filed a complaint with Captain Vincent Tretrolla – the Manager of the Ceremonial Unit.

40. In her complaint, Defendant Wilson demanded that the Plaintiff not be paid for his services at the Memorial Mass because he did not perform the duties Defendant Wilson reassigned him to perform.

THE FDNY’S INVESTIGATION

41. On November 20, 2017, an individual unknown to the Plaintiff filed a charge of discrimination on the Plaintiff’s behalf with the FDNY’s Equal Employment Opportunity Office (the “EEO Office”). The charge alleged that Defendant Wilson discriminatorily demoted The Plaintiff to performing lesser duties for the Memorial Mass in retaliation for the Plaintiff’s attempt to participate in the color guard at the Memorial Mass.

42. The FDNY’s EEO Office performed an investigation into Defendant Wilson’s conduct during the Memorial Mass. As part of the investigation, the FDNY’s EEO Office interviewed witness and other individuals involved in the incident including Defendant Wilson.

43. According to the FDNY, Defendant Wilson admitted during her EEO interview that she believed she had the authority to request an all-black color guard for the Memorial Mass and to replace any white members who showed up for color guard duty.

44. As a result of its investigation, the FDNY’s EEO Office concluded “there was sufficient credible and corroborating evidence to find that [the Plaintiff] was excluded from the

Ceremonial Unit color guard on account of [his] race.” (A copy of the FDNY’s EEO Office’s findings are attached to this Complaint as **Exhibit C**).

45. Despite the FDNY EEO Office's finding that the Plaintiff was discriminated against based on the fact that he is white, Defendant Wilson’s past history of discriminatory conduct, her bold admissions that she requested an all black member color guard, and her exclusion of the Plaintiff from the prestigious honor of serving as a member of that color guard on account of his race, the FDNY Bureau of Legal Affairs shockingly stated in its written response to the EEO complaint that Defendant Wilson’s racist conduct was merely a “subtle exclusion” of the Plaintiff; in essence, once again turning a blind eye to discrimination and creating a double-standard within the FDNY.

FIRST CAUSE OF ACTION

42 U.S.C. Section 1981 Claim Against the Individual Defendants and the Vulcan Society

46. Plaintiff realleges and reincorporates the allegations set forth above as if fully set forth herein.

47. 42 U. S. C. Section 1981 provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property[.]”

48. Section 1981 further provides that “For purposes of this section, the term ‘make and enforce contracts’ includes the making, performance, modification, and termination of contracts, and the enjoyment of the benefits, privileges, terms, and conditions of the contractual relationship” and that the “rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

49. Defendant Wilson's discriminatory conduct violated the Plaintiff's right to enjoy the benefits, privileges, terms, and conditions of his contractual relationship by stripping the Plaintiff of the prestigious honor of serving as a flag bearer in the FDNY Ceremonial Unit's color guard for the Memorial Mass on account of his race.

50. Upon information and belief, Defendants John and/or Janes Does aided and abetted Defendant Wilson in depriving the Plaintiff of his right to enjoy the benefits, privileges, terms and conditions of his contractual and employment relationship on account of his race.

51. The Individual Defendants' conduct toward the Plaintiff was malicious, vindictive, and malevolent.

52. Likewise, the Vulcan Society violated the Plaintiff's right to enjoy the benefits, privileges, terms and conditions of his contractual relationship with the FDNY by encouraging, condoning, and/or acquiescing in its members' discrimination against the Plaintiff on account of his race.

53. As a direct and proximate result of the Individual Defendants' hostile, discriminatory, and retaliatory conduct the Plaintiff suffered mental anguish, pain and suffering, emotional distress, and injury to his reputation.

54. Consequently, the Individual Defendants and the Vulcan Society are liable to the Plaintiff for compensatory and punitive damages in an amount to be established at trial.

SECOND CAUSE OF ACTION
42 U.S.C. Section 1983 Against The Individual Defendants

55. Plaintiff realleges and reincorporates the allegations set forth above as if fully set forth herein.

56. 42 U.S.C. Section 1983 provides that “[e]very 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 other person within the jurisdiction thereof to the deprivation of any rights, 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[.]”

57. In the alternative, the Individual Defendants and the Vulcan Society are liable to the Plaintiff under 42 U. S. C. Section 1983 for violating his rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution, which makes unlawful acts by a state actor that deny any person the equal protection of the laws.

58. The Vulcan Society is an affinity group supported and sanctioned by the FDNY. As such, the actions taken by the members of this group are actions authorized by the FDNY.

59. Defendant Wilson abused her authority under color of state law, as both the President of the Vulcan Society and an employee of the FDNY, to violate the Plaintiff’s constitutional right to the equal protection of law when she discriminatorily stripped the Plaintiff of the prestigious honor of serving as a flag bearer in the color guard, and demoted the Plaintiff to performing lesser duties away from the Memorial Mass.

60. Upon information and belief, Defendants John and/or Janes Does abused their authority under color of state law, as members of the Vulcan Society and employees of the FDNY, in aiding and abetting Defendant Wilson in depriving the Plaintiff of his constitutional right to the equal protection of law.

61. The Individual Defendants’ conduct toward the Plaintiff was malicious, vindictive, and malevolent.

62. As a direct and proximate result of the Individual Defendants' hostile, discriminatory and retaliatory conduct the Plaintiff suffered mental anguish, pain and suffering, emotional distress, and injury to his reputation.

63. Consequently, the Individual Defendants are liable to the Plaintiff for compensatory and punitive damages in an amount to be established at trial.

THIRD CAUSE OF ACTION

**Discrimination - Title VII – 42 U.S.C. Section 2000e-2 Against the City of New York, and
New York City Fire Department**

64. Plaintiff realleges and reincorporates the allegations set forth above as if fully set forth herein.

65. 42 U.S.C. Section 2000e-2 provides that “[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

66. Likewise, 42 U.S.C. Section 2000e-2 also makes it an unlawful employment practice for an employer “to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”

67. The Plaintiff’s employers, Defendants NYC and FDNY, through their agent or agents including, but not limited to the Individual Defendants engaged in an unlawful employment practice under 42 U.S.C. § 2000e-2 when the Individual Defendants were allowed to discriminate against the Plaintiff with respect to the privileges of his employment by depriving

the Plaintiff of the prestigious honor of serving as a flag bearer in the color guard for the Memorial Mass.

68. Defendants NYC and FDNY had knowledge of the unlawful and discriminatory actions taken by its employees and agents against individuals such as the Plaintiff and were also well aware of the grave risk of such discriminatory conduct being committed against the Plaintiff and others similarly situated by its employees and agents, but intentionally, deliberately, recklessly, and unreasonably failed to take sufficient measure to prevent such discrimination and retaliation from occurring.

69. As a direct and proximate result of Defendants NYC and FDNY and its employees' actions and agents' acts and omissions, the Plaintiff suffered mental anguish, pain and suffering, emotional distress, and injury to his reputation.

70. Consequently, Defendants NYC and FDNY are liable to the Plaintiff for compensatory and punitive damages in an amount to be established at trial.

FOURTH CAUSE OF ACTION

Discrimination - New York State Human Rights Law – N.Y. Exec. L. Section 296 – Against Defendants Regina Wilson, John or Jane Does, NYC, and FDNY

71. Plaintiff realleges and reincorporates the allegations set forth above as if fully set forth herein.

72. Section 296 of the New York Executive Law provides that “[i]t shall be an unlawful discriminatory practice for an employer, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”

73. The Defendants are liable to the Plaintiff for violating Section 296 of the New York Executive Law.

74. Defendant Wilson, acting within the scope of her employment as an employee of the NYC and FDNY, unlawfully discriminated against the Plaintiff by depriving him of the privileges of his employment when she intentionally, maliciously and publicly stripped the Plaintiff of the prestigious honor of serving as a flag bearer in the color guard for the Memorial Mass on account of his race and demoted him to performing lesser duties away from the Memorial Mass

75. Upon information and belief, Defendants John and/or Janes Does, acting within the scope of their employment as employees of the NYC and FDNY, aided and abetted Defendant Wilson in depriving the Plaintiff of his right to enjoy the benefits, privileges, terms and conditions of his contractual and employment relationship on account of his race.

76. The Individual Defendants' conduct toward the Plaintiff was malicious, vindictive, and malevolent.

77. The Plaintiff's employers, Defendants NYC and FDNY, encouraged, condoned, and/or acquiesced in its employees' discrimination against the Plaintiff on account of his race.

78. As a direct and proximate result of the Individual Defendants' discriminatory conduct and Defendants NYC's and FDNY's acts and omissions the Plaintiff suffered mental anguish, pain and suffering, emotional distress, and injury to his reputation.

79. Consequently, the Individual Defendants are liable to the Plaintiff for compensatory and punitive damages in an amount to be established at trial.

FIFTH CAUSE OF ACTION

**Discrimination - New York City Human Rights Law, N.Y. City Admin. Code Section 8-107
Against the Individual Defendants, The FDNY, and the City of New York.**

80. Plaintiff realleges and reincorporates the allegations set forth above as if fully set forth herein.

81. The Defendants are liable to the Plaintiff for violating Section 8-107 of the New York City Human Rights Law.

82. Defendant Wilson, acting within the scope of her employment as an employee of the NYC and FDNY, unlawfully discriminated against the Plaintiff by depriving him of the privileges of his employment when she intentionally, maliciously and publicly stripped the Plaintiff of the prestigious honor of serving as a flag bearer in the color guard for the Memorial Mass on account of his race and demoted him to performing lesser duties away from the Memorial Mass

83. Upon information and belief, Defendants John and/or Janes Does, acting within the scope of their employment as employees of the NYC and FDNY, aided and abetted Defendant Wilson in depriving the Plaintiff of his right to enjoy the benefits, privileges, terms and conditions of his contractual and employment relationship on account of his race.

84. The Individual Defendants' conduct toward the Plaintiff was malicious, vindictive, and malevolent.

85. The Plaintiff's employers, Defendants NYC and FDNY, encouraged, condoned, and/or acquiesced in its employees' discrimination against the Plaintiff on account of his race.

86. As a direct and proximate result of the Individual Defendants' discriminatory conduct and Defendants NYC's and FDNY's acts and omissions the Plaintiff suffered mental anguish, pain and suffering, emotional distress, and injury to his reputation.

87. Consequently, the Individual Defendants are liable to the Plaintiff for compensatory and punitive damages in an amount to be established at trial.

SIXTH CAUSE OF ACTION
Municipal Liability Against The City Of New York

88. Plaintiff realleges and incorporates by reference the allegations set forth in the above paragraphs as if fully set forth herein.

89. The Individual Defendants acting under color of state law and in their capacity as employees of the NYC and FDNY unlawfully discriminated by depriving him of the privileges of his employment when they intentionally, maliciously and publicly stripped the Plaintiff of the prestigious honor of serving as a flag bearer in the color guard for the Memorial Mass on account of his race.

90. Defendants NYC, and FDNY knew that the Individual Defendants and the Vulcan Society have previously discriminated and discouraged participation by white members of the FDNY Ceremonial Unit at FDNY sanctioned and sponsored Vulcan Society events.

91. Defendants NYC and FDNY failed to take adequate steps to discipline its members, specifically Defendant Regina Wilson, who engaged in discriminatory and retaliatory conduct against white members of the FDNY Ceremonial Unit because adequate steps to protect the rights of these members would have required Defendants NYC and FDNY to confront the discriminatory practices taken by the Individual Defendants with greater measures than mere counseling.

92. As a direct and proximate result of the Individual Defendants' discriminatory conduct and Defendants NYC's and FDNY's acts and omissions the Plaintiff suffered mental anguish, pain and suffering, emotional distress, and injury to his reputation.

93. Consequently, the Individual Defendants are liable to the Plaintiff for compensatory and punitive damages in an amount to be established at trial.

WHEREFORE, the Plaintiff demands the following relief jointly and severally against all Defendants:

- (a) a declaration that Defendants violated Plaintiff's federal constitutional and statutory rights as well as his rights under the laws of the City of New York and the State of New York;
- (b) compensatory damages for emotional and reputational injuries suffered by the Plaintiff by reason of Defendants' unlawful and unjustified conduct, in an amount just and reasonable in conformity with the evidence at trial;
- (c) punitive damages against Defendants Regina Wilson, and/or John or Jane Doe to the extent allowable by law;
- (d) reasonable attorneys' fees pursuant to 42 U. S. C. §§ 1988, 2000e-5(k) and the New York City Administrative Code, Section 8-502(f);
- (e) a determination that the Defendants are in contempt of court and imposing such coercive, punitive and compensatory remedies, fines, and awards in favor of the Plaintiff and against the Defendants as the Court deems just and proper;
- (f) costs and disbursements of this action; and
- (g) such further relief as appears to the Court to be just and proper.


JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: Queens, New York
May 17, 2019

Yours, etc.

SULLIVAN & GALLESCHAW, LLP

By: 

KEITH M. SULLIVAN, ESQ.
Attorneys for Plaintiff
Daniel McWilliams
108-15 Crossbay Blvd,
Queens, NY 11417
(718) 843-0300

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Defendants

COMPLAINT

SULLIVAN & GALLESCHAW, LLP
Attorney for Plaintiff
108-15 Crossbay Blvd.
Ozone Park, NY 11417
(718) 843-0300

Sir:--Please take notice

[] **NOTICE OF ENTRY**

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on 20

[] **NOTICE OF SETTLEMENT**

that an order of which the within is a true copy will be presented for
settlement to the HON. one of the judges
of the within named court, at
on at 10:00 A.M.

Dated:

Yours, etc.

SULLIVAN & GALLESCHAW, LLP.