

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARK LEVY

*

Plaintiff,

*

vs.

*

Civil Action No. 24-CV-03580

HOWARD COUNTY, MARYLAND, et al. *

Defendants.

*

* * * * *

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendants, Howard County, Maryland and Howard County Fire and Rescue Services,¹ by undersigned counsel, give notice of the removal of this action from the Circuit Court for Howard County, Maryland to the United States District Court for the District of Maryland. In support of its Notice of Removal, Defendants state as follows:

1. The plaintiff, Mark Levy, commenced this action against the Defendants on October 14, 2024 by filing a complaint in the Circuit Court for Howard County, Maryland which was docketed as Case No. C-13-CV-24-000850. (*See* Ex. 1, Writs of service; *see also* Ex. 2, Complaint).
2. Plaintiff attempted service of the County by mail on November 18, 2024.

¹ Pursuant to Section 103 of the Howard County Charter, “[t]he corporate name shall be ‘Howard County, Maryland,’ and it shall thus be designated in all actions and proceedings touching its rights, powers, properties, liabilities, and duties.” Therefore, any actions necessarily proceed against Howard County, Maryland. Howard County Fire and Rescue Services, which is separately named as a Defendant in the Complaint, lacks independent capacity to sue or be sued.

3. In accordance with 28 U.S.C. § 1446 (b), this notice of removal is being timely filed within 30 days after Defendants' receipt of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based originally filed in the Circuit Court for Howard County.
4. In accordance with 28 U.S.C. § 1446(a) and Local Rule 103.5 (a), the Defendants are filing, contemporaneously with this Notice, true and legible copies of all process, pleadings, documents and orders which have been served upon Defendants, consisting of the writs of summons and Complaint (Ex.1; Ex. 2).
5. In the Complaint seeking damages more than \$100,000, the Plaintiff seeks to hold the Defendants liable for alleged violations of the Americans with Disabilities Act, a federal statute.
6. This Court has original jurisdiction of the instant civil action pursuant to 28 U.S.C. §§ 1331 and 1441 because this case involves claims or rights arising from laws of the United States. Accordingly, this is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441 (a).
7. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over State law claims asserted by Plaintiff which are so related to claims in the action within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution. Counts I, II, and III allege violations of the Maryland Federal Employment Practice Act that overlap with Plaintiff's federal claims. Plaintiff's State law claims therefore arise from a

common nucleus of operative facts as Plaintiff's federal claims and provide a basis for supplemental jurisdiction. (*see* Ex. 2, ¶¶ 75, 95,108).

8. Pursuant to 28 U.S.C. §§ 1441 and 1446, the State Court case may be removed to the United States District Court for the District of Maryland because it is the Federal District Court that embraces Howard County, Maryland within its jurisdiction.
9. Contemporaneous with the filing of this Notice of Removal, and pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve written notice of this Notice of Removal on counsel for Plaintiff and file the same with the Clerk of the Circuit Court for Howard County.
10. In filing this Notice of Removal, Defendants do not waive and hereby expressly reserve the right to assert any and all defenses.

WHEREFORE, Defendants give notice that the above-captioned action is removed from the Circuit Court of Howard County, Maryland to the United States District Court for the District of Maryland.

Respectfully submitted,

HOWARD COUNTY OFFICE OF LAW

Gary W. Kuc
County Solicitor

/s/

Tsega Girma Kyere

Bar No. 29047

Senior Assistant County Solicitor
tgirma@howardcountymd.gov

/s/

DeNisha A. Watson Bar No. 29214
Senior Assistant County Solicitor
dwatson@howardcountymd.gov
3450 Court House Drive
Ellicott City, Maryland 21043
410.313.2104
410.313.3292 (facsimile)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December 2024, a copy of the foregoing Notice of Removal, with accompanying documents, were sent by first class mail, postage prepaid, to:

Seema Morris, Esquire
Law Office of Seema Morse, LLC
PO Box 42
Olney, MD 20830

Kathlyne Ramirez, Esq.
Kathlyne Ramirez, Esq., LLC
31 Walker Avenue
Gaithersburg, MD 20877

Attorneys for Plaintiff

/s/

DeNisha A. Watson Bar No. 29214
Senior Assistant County Solicitor
dwatson@howardcountymd.gov



MARYLAND
9250 Judicial Way, Ellicott City, Maryland, 21043

To: HOWARD COUNTY FIRE AND RESCUE SERVICES
SERVE: CALVIN BALL, COUNTY EXECUTIVE
GEORGE HOWARD BUILDING
3340 COURT HOUSE DRIVE
ELLICOTT CITY, MD 21043

Case Number: C-13-CV-24-000850
Other Reference Number(s):
Child Support Enforcement Number:

MARK LEVY VS. HOWARD COUNTY MD, ET AL.

Issue Date: 10/21/2024

WRIT OF SUMMONS

You are summoned to file a written response by pleading or motion, within 30 days after service of this summons upon you, in this court, to the attached complaint filed by:

MARK R LEVY
3929 Louisville Road
Finksburg, MD 21048

This summons is effective for service only if served within 60 days after the date it is issued.

Wayne A. Robey
Clerk of the Circuit Court

To the person summoned:

Failure to file a response within the time allowed may result in a judgment by default or the granting of the relief sought against you.

Personal attendance in court on the day named is NOT required.

It is your responsibility to ensure that the court has your current and correct mailing address in order to receive subsequent filings and notice in this case.

Instructions for Service:

1. This summons is effective for service only if served within 60 days after the date issued. If it is not served within the 60 days, the plaintiff must send a written request to have it renewed.
2. Proof of Service shall set out the name of the person served, date and the particular place and manner of service. If service is not made, please state the reasons.
3. Return of served or unserved process shall be made promptly and in accordance with Maryland Rule 2-126.

4. If this notice is served by private process, process server shall file a separate affidavit as required by Maryland Rule 2-126(a).

SHERIFF'S RETURN
(please print)

To: HOWARD COUNTY FIRE AND RESCUE SERVICES

_____ ID# _____ of the _____

Serving Sheriff's Name

County Sheriff's office present to the court that I:

(1) Served _____

Name of person served

on _____ at _____

Date of service

Location of service

by _____ with the following:

Manner of service

- | | |
|--|---|
| <input type="checkbox"/> Summons | <input type="checkbox"/> Counter-Complaint |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Domestic Case Information Report |
| <input type="checkbox"/> Motions | <input type="checkbox"/> Financial Statement |
| <input type="checkbox"/> Petition and Show Cause Order | <input type="checkbox"/> Interrogatories |
| <input type="checkbox"/> Other _____ | |

Please specify

(2) Was unable to serve because:

- | | |
|---|--|
| <input type="checkbox"/> Moved left no forwarding address | <input type="checkbox"/> No such address |
| <input type="checkbox"/> Address not in jurisdiction | <input type="checkbox"/> Other _____ |

Please specify

Sheriff fee: \$ _____ waived by _____

_____ Date

_____ Signature of serving Sheriff

Instructions to Sheriff's Office or Private Process Server:

1. This Summons is effective for service only if served within 60 days after the date issued. If it is not served within 60 days, the plaintiff must send a written request to have it renewed.
2. Proof of Service shall set out the name of the person served, date and the particular place and manner of service. If service is not made, please state the reasons.
3. Return of served or unserved process shall be made promptly and in accordance with Rule 2-126.
4. If this summons is served by private process, process server shall file a separate affidavit as required by Rule 2-126(a).

IN THE CIRCUIT COURT FOR Howard County

Envelope: 18389577

(City/County)

CIVIL – NON-DOMESTIC CASE INFORMATION SHEET

DIRECTIONS

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Justice of the Supreme Court of Maryland pursuant to Rule 2-111(a).

Defendant: You must file an Information Report as required by Rule 2-323(h).

C-13-CV-24-000850

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING

FORM FILED BY: [X] PLAINTIFF [] DEFENDANT

CASE NUMBER: Howard County and Howard County Fire and Rescue Services (Clerk to insert)

CASE NAME: Mark R. Levy vs. Plaintiff and Rescue Services Defendant

PARTY'S NAME: Mark R. Levy Plaintiff PHONE: Defendant

PARTY'S ADDRESS: 3929 Louisville Road Finksburg, MD 21048

PARTY'S E-MAIL: mark.ross.levy@gmail.com

If represented by an attorney: PARTY'S ATTORNEY'S NAME: Seema Morse PHONE: 202-489-4239

PARTY'S ATTORNEY'S ADDRESS: P.O. Box 42 Olney MD 20830

PARTY'S ATTORNEY'S E-MAIL: smorse@smorselaw.com

JURY DEMAND? [] Yes [X] No

RELATED CASE PENDING? [] Yes [X] No If yes, Case #(s), if known:

ANTICIPATED LENGTH OF TRIAL?: hours 3 days

PLEADING TYPE

New Case: [X] Original [] Administrative Appeal [] Appeal

Existing Case: [] Post-Judgment [] Amendment

If filing in an existing case, skip Case Category/ Subcategory section – go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)

TORTS

- [] Asbestos
[] Assault and Battery
[] Business and Commercial
[] Conspiracy
[] Conversion
[] Defamation
[] False Arrest/Imprisonment
[] Fraud
[] Lead Paint – DOB of Youngest Plt:
[] Loss of Consortium
[] Malicious Prosecution
[] Malpractice-Medical
[] Malpractice-Professional
[] Misrepresentation
[] Motor Tort
[] Negligence
[] Nuisance
[] Premises Liability
[] Product Liability
[] Specific Performance
[] Toxic Tort
[] Trespass
[] Wrongful Death

- [] Government
[] Insurance
[] Product Liability

PROPERTY

- [] Adverse Possession
[] Breach of Lease
[] Detinue
[] Distress/Distrain
[] Ejectment
[] Forcible Entry/Detainer
[] Foreclosure
[] Commercial
[] Residential
[] Currency or Vehicle
[] Deed of Trust
[] Land Installments
[] Lien
[] Mortgage
[] Right of Redemption
[] Statement Condo

- [] Forfeiture of Property / Personal Item
[] Fraudulent Conveyance
[] Landlord-Tenant
[] Lis Pendens
[] Mechanic's Lien
[] Ownership
[] Partition/Sale in Lieu
[] Quiet Title
[] Rent Escrow
[] Return of Seized Property
[] Right of Redemption
[] Tenant Holding Over

PUBLIC LAW

- [] Attorney Grievance
[] Bond Forfeiture Remission
[] Civil Rights
[] County/Mncpl Code/Ord
[] Election Law
[] Eminent Domain/Condemn.
[] Environment
[] Error Coram Nobis
[] Habeas Corpus
[] Mandamus
[] Prisoner Rights
[] Public Info. Act Records
[] Quarantine/Isolation
[] Writ of Certiorari

EMPLOYMENT

- [X] ADA
[] Conspiracy
[] EEO/HR
[] FLSA
[] FMLA
[] Worker's Compensation
[] Wrongful Termination

INDEPENDENT PROCEEDINGS

- [] Assumption of Jurisdiction
[] Authorized Sale
[] Attorney Appointment
[] Body Attachment Issuance
[] Commission Issuance

- [] Constructive Trust
[] Contempt
[] Deposition Notice
[] Dist Ct Mtn Appeal
[] Financial
[] Grand Jury/Petit Jury
[] Miscellaneous
[] Perpetuate
[] Testimony/Evidence
[] Prod. of Documents Req.
[] Receivership
[] Sentence Transfer
[] Set Aside Deed
[] Special Adm. – Atty
[] Subpoena Issue/Quash
[] Trust Established
[] Trustee Substitution/Removal
[] Witness Appearance-Compel

PEACE ORDER

- [] Peace Order

EQUITY

- [] Declaratory Judgment
[] Equitable Relief
[] Injunctive Relief
[] Mandamus

OTHER

- [] Accounting
[] Friendly Suit
[] Grantor in Possession
[] Maryland Insurance Administration
[] Miscellaneous
[] Specific Transaction
[] Structured Settlements

IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> Abatement | <input type="checkbox"/> Earnings Withholding | <input type="checkbox"/> Judgment-Default | <input type="checkbox"/> Reinstatement of Employment |
| <input type="checkbox"/> Administrative Action | <input type="checkbox"/> Enrollment | <input type="checkbox"/> Judgment-Interest | <input type="checkbox"/> Return of Property |
| <input type="checkbox"/> Appointment of Receiver | <input type="checkbox"/> Expungement | <input type="checkbox"/> Judgment-Summary | <input type="checkbox"/> Sale of Property |
| <input type="checkbox"/> Arbitration | <input type="checkbox"/> Financial Exploitation | <input type="checkbox"/> Liability | <input type="checkbox"/> Specific Performance |
| <input type="checkbox"/> Asset Determination | <input type="checkbox"/> Findings of Fact | <input type="checkbox"/> Oral Examination | <input type="checkbox"/> Writ-Error Coram Nobis |
| <input type="checkbox"/> Attachment b/f Judgment | <input type="checkbox"/> Foreclosure | <input type="checkbox"/> Order | <input type="checkbox"/> Writ-Execution |
| <input type="checkbox"/> Cease & Desist Order | <input type="checkbox"/> Injunction | <input type="checkbox"/> Ownership of Property | <input type="checkbox"/> Writ-Garnish Property |
| <input type="checkbox"/> Condemn Bldg | <input type="checkbox"/> Judgment-Affidavit | <input type="checkbox"/> Partition of Property | <input type="checkbox"/> Writ-Garnish Wages |
| <input type="checkbox"/> Contempt | <input type="checkbox"/> Judgment-Attorney Fees | <input type="checkbox"/> Peace Order | <input type="checkbox"/> Writ-Habeas Corpus |
| <input type="checkbox"/> Court Costs/Fees | <input type="checkbox"/> Judgment-Confessed | <input type="checkbox"/> Possession | <input type="checkbox"/> Writ-Mandamus |
| <input checked="" type="checkbox"/> Damages-Compensatory | <input type="checkbox"/> Judgment-Consent | <input type="checkbox"/> Production of Records | <input type="checkbox"/> Writ-Possession |
| <input type="checkbox"/> Damages-Punitive | <input type="checkbox"/> Judgment-Declaratory | <input type="checkbox"/> Quarantine/Isolation Order | |

If you indicated **Liability** above, mark one of the following. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded. Liability is not conceded, but is not seriously in dispute. Liability is seriously in dispute.

MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)

- Under \$10,000 \$10,000 - \$30,000 \$30,000 - \$100,000 Over \$100,000
- Medical Bills \$ _____ Wage Loss \$ _____ Property Damages \$ _____

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

- | | | | |
|----------------|---|--------------------------|--|
| A. Mediation | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | C. Settlement Conference | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| B. Arbitration | <input type="checkbox"/> Yes <input type="checkbox"/> No | D. Neutral Evaluation | <input type="checkbox"/> Yes <input type="checkbox"/> No |

SPECIAL REQUIREMENTS

- If a Spoken Language Interpreter is needed, check here and attach form CC-DC-041
- If you require an accommodation for a disability under the Americans with Disabilities Act, check here and attach form CC-DC-049

ESTIMATED LENGTH OF TRIAL

With the exception of Baltimore County and Baltimore City, please fill in the estimated **LENGTH OF TRIAL**.

(Case will be tracked accordingly)

- | | |
|---|--|
| <input type="checkbox"/> 1/2 day of trial or less | <input checked="" type="checkbox"/> 3 days of trial time |
| <input type="checkbox"/> 1 day of trial time | <input type="checkbox"/> More than 3 days of trial time |
| <input type="checkbox"/> 2 days of trial time | |

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-308 is requested, attach a duplicate copy of complaint and check one of the tracks below.

- | | |
|--|--|
| <input type="checkbox"/> Expedited - Trial within 7 months of Defendant's response | <input type="checkbox"/> Standard - Trial within 18 months of Defendant's response |
|--|--|

EMERGENCY RELIEF REQUESTED

**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE
MANAGEMENT PROGRAM (ASTAR)**

FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.

- Expedited** - Trial within 7 months of Defendant's response **Standard** - Trial within 18 months of Defendant's response

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY OR BALTIMORE COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

- Expedited Trial 60 to 120 days from notice. Non-jury matters.
- Civil-Short Trial 210 days from first answer.
- Civil-Standard Trial 360 days from first answer.
- Custom Scheduling order entered by individual judge.
- Asbestos Special scheduling order.
- Lead Paint Fill in: Birth Date of youngest plaintiff _____.
- Tax Sale Foreclosures Special scheduling order.
- Mortgage Foreclosures No scheduling order.

CIRCUIT COURT FOR BALTIMORE COUNTY

- Expedited (Trial Date-90 days) Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard (Trial Date-240 days) Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard (Trial Date-345 days) Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex (Trial Date-450 days) Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

10/12/24 _____
Date

Seema Morse 0512130203
Signature of Attorney / Party Attorney Number

The Law Office of Seema Morse, LLC P.O. Box 42
Address

Seema Morse
Printed Name

Olney MD 20830
City State Zip Code

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

MARK R. LEVY,
3929 Louisville Road
Finksburg, MD 21048

Plaintiff

v.

HOWARD COUNTY, MD
3430 Court House Drive
Ellicott City MD 21043
Serve: Calvin Ball, County Executive
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

And

HOWARD COUNTY FIRE AND RESCUE
SERVICES
2201 Warwick Way
Marriottsville, MD 21104
Serve: Calvin Ball, County Executive
George Howard Building
3430 Court House Drive
Ellicott City, MD 21043

Defendants.

C-13-CV-24-000850

Case No. _____

COMPLAINT

For his Complaint against Defendants **Howard County and Howard County Fire and Rescue Services**
Plaintiff Mark R. Levy, by his undersigned attorneys, upon knowledge as to his own actions and dealings,
and upon information and belief as to Defendants and their actions, alleges as follows:

NATURE OF THE CASE

Plaintiff is employed as a Fire Fighter Paramedic with Howard County Department of Fire and Rescue Services (HCDFRS). Plaintiff is a qualified individual with a mental health disability under the meaning of federal and state disability and fair employment practices laws. For approximately two years and nine months, Defendants have denied Plaintiff the reasonable accommodation for which he is entitled to under the law and have failed to articulate any undue burden to support their denial of the requested reasonable accommodation. Defendants have discriminated, harassed and retaliated against Plaintiff for engaging in protected activity, namely, requesting sick leave and requesting a reasonable accommodation. Defendants' acts of retaliatory discrimination and harassment include discipline, unfavorable assignment, demotion, and change in terms and conditions of Plaintiff's employment. Plaintiff has suffered and continues to suffer as a result of Defendants' actions. By failing to accommodate Plaintiff, and discriminating, harassing, and retaliating against him, Defendants have not only harmed Plaintiff but support the stigmatization of mental health disabilities in the workplace.

JURISDICTION AND VENUE

1. This court has personal jurisdiction over Defendants Howard County and HCDFRS pursuant to Md. Code, Cts. & Jud. Proc. § 6-102 because Howard County and HCDFRS are organized under the laws of Maryland and their principal places of business are located in Maryland.

2. This Court also has personal jurisdiction over Defendants pursuant to Md. Code, Cts. & Jud. Proc. § 6-103(b)(3) because Defendants employ Plaintiff in Maryland.

3. Venue is proper in this Court pursuant to Md. Code, Cts. & Jud. Proc. § 6-201. All material events took place in Howard County.

PARTIES

4. Plaintiff Mark R. Levy is an adult Maryland citizen residing at 3929 Louisville Road Finksburg, MD 21048. For the past eight years, Levy has been a Fire Fighter/Paramedic (FF/P) for HCDFRS.

5. Defendant Howard County, Maryland is a body corporate and politic with a primary address of 3430 Court House Drive, Ellicott City, Maryland 21043.

6. Defendant Howard County Fire and Rescue Services is an agency of Howard County, Maryland with a primary address of 2201 Warwick Way, Marriottsville, Maryland 21104.

7. Defendants employ more than 15 individuals and are therefore covered employers under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (ADA) and the Maryland Fair Employment Practices Act, MD. State Government Code § 20-606 (FEPA).

ADMINISTRATIVE PREREQUISITE

8. On January 12, 2023, Plaintiff timely filed claims of discrimination, harassment and retaliation based on disability including claims of failure to accommodate, discipline, unfavorable assignment, demotion, terms and conditions of employment and wages with the Maryland Commission on Civil Rights (MCCR), Charge #2301-0026. The charge was cross filed with the Equal Employment Opportunity Commission (EEOC), Charge #12F-2023-0021 7.

9. One hundred eighty days have elapsed since the filing of the charge.

10. As a result, Plaintiff has exhausted his administrative remedies.

11. The EEOC issued a Notice of Right to Sue on July 16, 2024.

STATEMENT OF FACTS

12. Plaintiff has been employed as a Fire Fighter Paramedic (FF/P) with Howard County Department of Fire and Rescue Services from October 31, 2016 to present.

13. Plaintiff is currently assigned to Battalion 3, Station 3, B Shift. Station 3 is located at 12535 Old Frederick Rd., Sykesville, MD 21784.

14. Given the remote location of Station 3, call volumes have historically been lower at Station 3 than other fire Stations within HCDFRS.

15. There is an operational need for Plaintiff to be assigned to Station 3, Battalion 3 given that every station must have a minimum of 1 Firefighter Paramedic (FF/P) assigned to each of the 3 shifts (A, B, C) to ensure paramedic-level response is available to respond to 911 calls, 24 hours a day / 365 days a year.

16. Plaintiff works 24 hours on duty, followed by 48 hours off duty.

17. Plaintiff's current immediate supervisor is Captain Bart Albrecht. His second level supervisor is Battalion Chief Stanley Wurzburger.

18. Plaintiff is a qualified individual with a mental health disability under the meaning of the ADA and the Maryland FEPA, which largely mirrors the ADA. Specifically, Plaintiff was diagnosed with anxiety and depression in the Fall of 2002.

19. Plaintiff's anxiety involves occasional acute mental health events or "panic attacks" and gastrointestinal symptoms. Other symptoms include irritability, poor affect, fatigue, restless sleep, lack of motivation, poor diet, rumination, and self-doubt.

20. Plaintiff's mental health conditions, when not managed well, impacts his major life activities, including, but not limited to, his ability to interact with others, ability to concentrate, learn, sleep, think, and work.

21. When Plaintiff experiences an exacerbation of symptoms, his ability to focus, process information, plan, execute plans, as well as his ability to communicate with peers is compromised. His limitation impacts his ability to manage calls, triage patients, communicate with coworkers and execute tasks.

22. Despite having a diagnosed history of mental health disability, Plaintiff has maintained good health for two decades and has been able to successfully perform his job duties and has always been able to work at full performance status.

23. Plaintiff's condition is well managed by a combination of factors including lifestyle, recognition of symptoms, medication, and treatment with his mental healthcare provider.

24. Plaintiff is able to perform the essential functions of his job, with a reasonable accommodation. The essential duties and responsibilities of Plaintiff's job, per Plaintiff's job description are:

- a. Performs as member of firefighting crew, ambulance crew or rescue team; responds to fires and other emergencies under all kinds of weather conditions;
- b. Operates tools, appliances and equipment associated with fire, emergency medical and rescue services, such as emergency generators, lighting and pumping equipment and breathing apparatus, raises and climbs ladders; makes forcible entry into burning buildings when necessary; performs rescue operations under hazardous conditions.
- c. Decides the types of fire streams and chemicals to be used in extinguishing fires; lays and operates hose lines.
- d. Drives and operates fire, ambulance and rescue vehicles.
- e. Performs general maintenance and tests of tools, equipment and apparatus to ensure safety and adequate performance; performs general maintenance and

housekeeping duties in and around the fire station.

f. May conduct training programs for career and volunteer personnel in accordance with prepared outlines; may present fire prevention and education programs to schools, industry and private citizens and conduct fire prevention inspections as required; may investigate fires of suspicious or undetermined origin and prepare investigative reports.

g. Performs other duties as assigned or required.

25. Upon hiring in 2016, Plaintiff disclosed his Anxiety & Depression disorder in his pre-employment documentation, which he had been managing well. Plaintiff also specifically disclosed his condition to Defendants during his pre-employment psychological evaluation; an evaluation conducted for all candidates as part of the hiring/screening process. Furthermore, Plaintiff specifically disclosed his condition to Defendants during the course of his employment.

26. The events that are the subject of this Complaint began on or about February 7, 2022. At that time, Plaintiff was assigned to Battalion 3, Station 3, A Shift. His third level supervisor was Battalion Chief (BC) Cerisa Speight. BC Cerisa Speight reported to Assistant Chief (AC) Sean Alliger, AC of the Emergency Services Bureau. AC Sean Alliger reported to Deputy Chief (DC) Gordon Wallace, DC of the Operations Command. DC Gordon Wallace reported to Fire and EMS Chief Louis Winston, Office of the Fire Chief.

27. Battalion 3, Station 3 has a lower call volume in comparison to other Stations. Having been assigned there was critical in allowing Plaintiff to manage his mental health condition as it enabled Plaintiff to have sufficient rest during 24-hour shifts. In the Spring of 2020, Plaintiff requested a transfer from Station 9, A shift, to Station 3, A shift, as Plaintiff wanted to work at a station with a lower call volume to facilitate continued rest, healing, and strengthening of his right knee, which

had undergone 2 surgeries in the preceding 10 months. The call volume associated with Station 9 would have prevented the full rehabilitation of his twice, surgically repaired right knee.

28. Firefighters and paramedics are given the space and time to get some rest while at work, and are allowed to attempt to sleep in the sleeping quarters provided.

29. At approximately 6:30 a.m. on the morning of February 7, 2022, Plaintiff called out sick for the first 12 hours of the 24-hour shift that he was scheduled to work. Earlier that morning he learned that he had been detailed (temporarily reassigned) from staffing the engine at West Friendship (Station 3) to staffing the ambulance at Banneker (Station 7) for 24 hours. As a result, Plaintiff's stress and anxiety response were triggered and he began to experience increased stress, a panic attack, and intense gastrointestinal symptoms which rendered him unable to come into work. Plaintiff used this sick leave to settle his mind and body from the acute physical symptoms, and to rest in preparation for the second half of his shift.

30. As a result of calling out sick, BC Speight contacted Plaintiff by phone on the evening of February 7, 2022 and ordered Plaintiff to provide a memorandum explaining why he used sick leave that morning. As requested, Plaintiff provided a memorandum on February 7, 2022.

31. On February 8, 2022 Plaintiff supplemented the memorandum with information about his mental health disabilities. Plaintiff felt pressured to do so based on his call with BC Speight the previous day, and his conversation with Captain DeAngelo Redd, the House Captain of Station 3. Across the following 10 days, several conversations between Plaintiff and various commanding officers took place. During these conversations, Plaintiff continued to share information about his disabilities to justify his use of sick leave on February 7, 2022.

32. On February 16, 2022, BC Speight approached Plaintiff and discussed the possibility of transferring him to another station, Station 12 located in Waterloo.

33. It is well known that Station 12 has one of the highest, if not the highest call volume of any station within the County. BC Speight did not provide a reason for the proposed transfer.

34. On February 16, 2022 @ 15:00 hours, BC Speight requested Plaintiff to speak with her in the Captain's office of Station 3. During that conversation, Plaintiff explained to BC Speight that the proposed transfer would have an adverse impact on his anxiety and depression in a number of ways. Plaintiff explained that because Station 12 is further from his home, it would result in the inability of Plaintiff to arrive home in time to watch his 1 & 3 year old sons, so his wife could depart for her shift as an Emergency Room Physician's Assistant. Plaintiff explained to BC Speight the gap in childcare would create added stress to his personal life. Plaintiff further explained Station 12 was projected to be one of the busiest stations in the County. In turn, Plaintiff would get very little rest during shifts which would lead to increased mental health symptoms.

35. While not a formal request for an accommodation, Plaintiff's request not to be assigned anywhere other than a station within the 3rd Battalion (to include Stations 3, 4, 5, 13) had the legal effect of a request for a reasonable accommodation. This was Plaintiff's first request for an accommodation.

36. Defendants disregarded Plaintiff's request for a reasonable accommodation and instead issued a Special Order on April 15, 2022, which provided that Plaintiff would be transferred to Station 6 in Savage (a station with a high call volume), effective April 25, 2022.

37. Plaintiff was completely taken aback by the Special Order because he had previously clearly and directly communicated to BC Speight that a move to a much busier station would have an adverse impact on his mental health.

38. On April 23, 2022, Plaintiff submitted a transfer request to his assigned officer, Lt. Evan Tyler to return to Battalion 3, Station 3, specifically requesting a transfer to shift 3C, or 3B (which did not have a paramedic), or any shift in the 3rd Battalion for which there was a

critical need for paramedics and where he excelled in his role as an FF/P. In this transfer request, Plaintiff clearly stated how a transfer to Station 6 would adversely impact his health and well-being. This request had the legal effect of constituting a request for accommodation. This was the Plaintiff's second request for an accommodation.

39. At this point, all individuals within Plaintiff's chain of command were, or should have been, on notice as to Plaintiff's request to be transferred to (and remain at) Station 3 and the medical reasons for same.

40. However, rather than transferring Plaintiff back to Station 3 or making any attempt to facilitate Plaintiff's request for an accommodation and engage in the interactive process, on April 25, 2022 Plaintiff received a phone call and email communication from Assistant Chief (AC) Vincent Baker that he would be transferring Plaintiff to an Administrative Assignment (day shift).

41. AC Baker informed Plaintiff that the transfer to the Administrative Assignment would prohibit Plaintiff from working in Emergency Services Bureau (ESB) and working overtime hours.

42. AC Baker did not provide a specific reason for the transfer or indicate that Plaintiff's fitness for duty was in question.

43. On April 28, 2022, Plaintiff provided to his chain of command, including AC Baker and Battalion Chief (BC) Jeffery Carter a letter from his mental health provider, Dr. Mu, concerning his mental health disability. The letter noted that Plaintiff's work environment (Station 3), enabled Plaintiff to be successful in his job and prevented exacerbation of his underlying mental health condition. This letter from Plaintiff's mental health provider Dr. Mu had the legal effect of constituting a request for accommodation. This was the Plaintiff's third request for an accommodation.

44. Rather than addressing and acting upon this letter in a meaningful way, the actions subsequently taken by the Department only made matters worse. A meeting took place between Plaintiff and AC Baker on April 28, 2022 at Department Headquarters. During the meeting AC Baker reiterated to Plaintiff that he was being placed on Administrative Assignment, on a 40-hour work week schedule, and that he was prohibited from entering any Fire Department property without permission. Once again, a specific reason was not provided for the transfer of Plaintiff to an Administrative Assignment, nor was there any indication that Plaintiff's fitness for duty was in question.

45. Plaintiff inquired several times as to the reason for the transfer, and the response provided by AC Baker was vague, stating that he needed to "investigate" what was going on based on the paperwork Plaintiff submitted.

46. During this same conversation, AC Baker accused Plaintiff of improperly using Sick Leave when detailed to busy units, but did not indicate any concerns over Plaintiff's fitness for duty.

47. Plaintiff reported to Department Headquarters, ASB, on April 29, 2022 for his Administrative Assignment. There, he was placed in a conference room and was not assigned any substantive tasks. Plaintiff's only task was to make copies of documents on the copy machine in the hallway.

48. Plaintiff felt anxious, humiliated and self-conscious as to what his colleagues thought about why he had been placed in an administrative role, and further, what they knew about this personal medical history. Plaintiff remained confused as to why he had been placed on an administrative assignment.

49. Reassignment to an administrative role was not a reasonable accommodation for Plaintiff since the essential function of the job Plaintiff was hired to do was to respond to fires and other emergencies, an admired position of service to the public.

50. The job of a firefighter is viewed as prestigious by the public. By contrast, the assignment to an administrative role was an empty vessel of opportunities to carry out these tasks. Plaintiff wanted to be on routine shift work; assigned to a fire station allowing him to fight fires and provide emergency medical care to his community. An accommodation allowing Plaintiff to put his life at stake to fight fires and protect the public from dangers, rather than seeming to shirk these responsibilities, would be reasonable.

51. Here, placement in an administrative role effectively demoted Plaintiff to a "second-rate" firefighter.

52. On May 4, 2022 AC Baker approached Plaintiff and acknowledged that the Department handled matters poorly and that having Plaintiff stationed at ASB was a waste of time. He stated that the Department was rapidly growing and indicated that the Department could benefit from Plaintiff's qualifications as a medic. AC Baker added that, "the entire situation could have been handled in the field", effectively acknowledging that there was no need for Plaintiff to have been placed on an Administrative Assignment. There was no indication of any concerns about Plaintiff's fitness for duty.

52. After approximately two weeks in the Administrative Assignment, Plaintiff was again reassigned, this time to a Logistics position, where he would be reporting to Lt. Chris Alliger, working out of the Blue Building located at the Department's training complex.

53. No explanation was given to Plaintiff for this reassignment. There was no indication of any concerns about Plaintiff's fitness for duty.

54. In the Logistics role, Plaintiff was responsible for moving equipment and ambulances to different locations. Similar to the Administrative Assignment, Plaintiff was not performing the duties of a FF/P. Plaintiff remained confused as to why he had been placed in the Logistics role and was left to explain the humiliating move to his colleagues. The reassignment to the Logistics role, without any explanation, has only served to increase Plaintiff's stress level and anxiety and adversely impact his well-being.

55. Reassignment to the logistics role was not a reasonable accommodation for Plaintiff since the essential function of the job Plaintiff was hired to do was to respond to fires and other emergencies, an admired position of service to the public. Like the Administrative Assignment, placement of Plaintiff in the Logistics role effectively demoted him.

56. On May 18, 2022 a meeting took place between Plaintiff, Lt. Brian Eagan, AC Baker and AC Sean Alliger. AC Baker informed Plaintiff that the reason he was placed on Administrative Assignment was because of concerns around his mental health. AC Alliger, however, informed Plaintiff that he was previously transferred from 3A to 6A because 3A had two paramedics assigned to a slow shift, and 6A had only one paramedic assigned to a busy shift. AC Alliger commented to Plaintiff that he had been told that if Plaintiff was transferred to 6A, he would "drop his medic". In other words, Plaintiff would change his credentials from Firefighter Paramedic to Firefighter EMT, in an effort to prevent the predictable stress increase as a result of being assigned to an ambulance with a high call volume. The difference in function of a FF/P compared to a FF/EMT is multifactorial. The vast majority of 911 calls in Howard County result in the dispatch of an ambulance staffed by a FF/P. Unlike a FF/EMT, a FF/P is trained to provide the highest level of pre-hospital emergency care. Accordingly, functioning as a FF/P results in be assigned to the ambulance rather than the fire engine for a very high percentage of total shifts, response to more calls, management of more complex medical emergencies, knowledge of more rules

regarding medical protocols and Department Orders, extensive and accurate documentation of patient care, higher number of hours per shift spent responding to calls, be they during daytime or nighttime. Defendants failed to conduct a survey concerning whether sufficient firefighters/paramedics could be stationed at the other fire stations while Plaintiff is assigned at Battalion 3 or Station 3A.

57. In response, Plaintiff pointed out that if AC Alliger's true purpose for transferring Plaintiff to 6A was to provide an additional Firefighter Paramedic to a busy station, (and not as a means of retaliation) despite having already been made aware Plaintiff intended to change his credentials from FF/P to FF/EMT if transferred to 6A, the true purpose of AC Alliger's explanation for said transfer defied logic.

58. The following day, May 19, 2022, Plaintiff was provided a Below Standard Performance Log in Tenzinga (the online employee performance management tool used by Defendants) for having called out sick on February 7, 2022 (more than three months earlier). The Department determined that Plaintiff's use of sick leave on February 7, 2022 was in violation of the Department's leave policy, General Order 110.02 Leave Administration, which provides, "except in emergencies, notification of illness or injury that would prohibit an employee from being at work will be accomplished as early as possible, but not less than one hour prior to the time the employee is scheduled to report to duty, assignment, or detail."

59. On 6/14/2022, AC Baker informed Plaintiff that he would be required to undergo an Independent Medical Examination (IME) with Dr. Caren DeBernardo, a licensed psychologist who serves as a County health practitioner for Fitness for Duty evaluations. The reason provided for requiring Plaintiff to participate in an IME was to determine Plaintiff's ability to perform his job duties as a Firefighter/Paramedic.

60. This IME took place on June 23, 2022, two months after Plaintiff was placed on Administrative Assignment, and four months after Plaintiff provided Defendants with a letter setting forth his medical condition and need for an accommodation.

61. In her report, Dr. DeBernardo determined that Plaintiff was able to perform the essential functions of his position. Dr. DeBernardo's report was silent as to whether Plaintiff required a reasonable accommodation.

62. Although Dr. DeBernardo was silent in her report as to whether Plaintiff required a reasonable accommodation, Defendants, without engaging in any interactive process, as required under the ADA, determined that Plaintiff did not need a reasonable accommodation. Instead, Defendants considered Plaintiff's station preference under a Temporary Hardship Request under General Order 110.19 due to his stated work/life challenges. Defendants placed Plaintiff at Station 3 (Shift B) for one year under a Temporary Hardship Request.

63. Placement of Plaintiff at Station 3 by Defendants under a Temporary Hardship Request was wholly improper and simply an attempt by Defendants to circumvent their obligation to accommodate Plaintiff under the ADA.

64. Plaintiff reported to Station 3, Shift B on August 10, 2022, under the Temporary Hardship Request.

65. On October 18, 2023, Plaintiff contacted Assistant Chief Antonio Concha, Administrative Services Bureau, and Jamar Herry, County Attorney, by email, requesting instruction on how to formally request a reasonable accommodation as the proper protocols had never been communicated to him. In this email, Plaintiff articulated that this reasonable accommodation request was to be assigned stations within the 3rd Battalion only, to include Station 3, Station 4, Station 5, Station 13. Plaintiff explained that the call volume within the

3rd Battalion is significantly lower than that of the 1st and 2nd Battalions, and as such, being assigned there would allow for adequate sleep and rest periods, essential to his mental health.

66. Plaintiff's above request was forwarded by Mr. Herry to Gabriel Ross, Chief of Benefits, Office of Human Resources, Howard County Government, which Mr. Ross acknowledged by email on October 19, 2023. Mr. Ross provided Plaintiff with a different set of paperwork to be completed by Plaintiff and his treating physician. Plaintiff completed reasonable accommodation paperwork and submitted them to Mr. Ross by email dated November 13, 2023.

67. Plaintiff articulated the same request for reasonable accommodation as he had requested to Mr. Concha and Mr. Herry and included a Medical Inquiry Form In Response to an Accommodation Request, completed by his treating physician.

68. Plaintiff's request for reasonable accommodation was denied by Defendants on January 24, 2024. Defendants failed to articulate any undue hardship in support of their denial of Plaintiff's request. Rather, Defendants used Dr. DeBernardo's conclusion that Plaintiff was able to perform the essential functions of his position as the vehicle to deny the reasonable accommodation. Defendants confused the analysis for a qualified individual with a disability. Having determined that Plaintiff was a qualified individual with a disability and could perform the essential function of his job, the Defendants determined that no reasonable accommodation was needed.

69. Plaintiff appealed the denial of reasonable accommodation by letter dated February 7, 2024 to Anju Bennett, Administrator, Office of Human Resources.

70. A Step 2 hearing on Plaintiff's appeal of February 7, 2024 appeal was conducted on April 8, 2024, at the Howard County offices.

71. By letter dated May 8, 2024 Defendants denied Plaintiff's appeal, once again failing to articulate any undue hardship in support of their denial.

72. By letter dated May 22, 2024 to Brandee Ganz, Plaintiff appealed the May 8, 2024 denial.

73. A Step 4 hearing was conducted on July 24, 2024 at the Howard County Offices.

74. Although Defendants, per appeal policy, are required to render a decision on the appeal within 30 days, Defendants have not yet done so. Patrick Pope, Assistant Chief Administrative Officer who presided over the hearing attributed "nature and complexity of the case" to the delay.

COUNT I

Discrimination Based on Disability in violation of Americans with Disability Act, 42 U.S.C. § 12101, et seq. and Maryland Fair Employment Practice Act, MD. State Government Code § 20-606.

75. Plaintiff incorporates by reference paragraphs 1-74 as if fully set forth herein.

76. Title I of the ADA prohibits an employer from failing to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity[.]" 42 U.S.C. § 12112(b)(5)(A). Maryland Fair Employment Practices Act mirrors the ADA with respect to the requirement of employers to provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability.

77. At all times during his employment with Defendants, Plaintiff was a qualified individual with a disability within the meaning of the ADA, 42 U.S.C. § 12118(8). Plaintiff was,

and is, meeting the legitimate skill, experience, education, or other requirements of his position, can perform the "essential functions" of the position with a reasonable accommodation, has a mental impairment that substantially limits one or more major life activities, and has a history or record of such an impairment.

78. As described above, Plaintiff repeatedly asked Defendant to make a reasonable accommodation for his mental health disability, namely, assigning him to Station 3 or other stations within Battalion 3, which have lower call volumes than stations within other Battalions.

79. Plaintiff's requests for a reasonable accommodation and Defendants' requirement to engage in the interactive process and individualized assessment began on February 8, 2022 when Plaintiff supplemented a memorandum and therein, informed Defendants of his anxiety and depression. At this time, individuals in Plaintiff's chain of command were put on notice of Plaintiff's specific mental health disability and request for an accommodation. Thereafter, Plaintiff provided Defendants with two letters from his treating physician, David Mu, MD, dated April 26, 2022 and June 27, 2022 supporting his request for accommodation.

80. The accommodation Plaintiff has repeatedly requested is indeed reasonable as there is an operational need for every station to have a minimum of 1 Firefighter Paramedic (FF/P) assigned to each of the 3 shifts (A, B, C) to ensure paramedic-level response is available to respond to 911 calls, 24 hours a day / 365 days a year.

81. Plaintiff was previously, and is currently, assigned to Station 3, yet Defendants refuse to properly accommodate him under the ADA and Maryland law, thereby denying Plaintiff the protections to which he is entitled.

82. Defendants have failed to articulate any undue burden or hardship as to why they will not accommodate Plaintiff.

83. Defendants have discriminated against Plaintiff in violation of the ADA and Maryland FEPA when they failed to make reasonable accommodations, when such accommodation is available, for Plaintiff's known mental health disability.

84. As a result of Defendants' malicious violations of the ADA, Plaintiff has suffered and is suffering mental distress. Defendants have repeatedly failed to provide Plaintiff the requested reasonable accommodation under federal and state law of assignment to Station 3 (or any Station within the third Battalion), where such accommodation is available.

85. Defendant's conduct as described in this Complaint constitutes discrimination on the basis of disability in violation of Title I of ADA, 42 U.S.C. § 12111, et seq., and its implementing regulation, 29 C.F.R. Part 1630.

86. In addition to failing to accommodate Plaintiff, Defendants have engaged in other discriminatory acts based on Plaintiff's mental health disability which are prohibited by the ADA and Maryland FEPA.

87. Defendants disciplined Plaintiff on May 19, 2022 for taking sick leave on February 7, 2022 (more than three months earlier) by issuing Plaintiff a Below Standard Performance Log in Tenzinga. Defendants' wrongfully determined that Plaintiff's use of sick leave on February 7, 2022 was in violation of the Department's leave policy, General Order 110.02 Leave Administration, which provides, "except in emergencies, notification of illness or injury that would prohibit an employee from being at work will be accomplished as early as possible, but not less than one hour prior to the time the employee is scheduled to report to duty, assignment, or detail."

88. Defendants issued Plaintiff an unfavorable assignment, first verbally to Station 12, and then by Special Order to Station 6, both stations with high call volume even though Plaintiff clearly

communicated that an assignment to a much busier station would have an adverse impact on his mental health.

89. On April 28, 2022 Defendants informed Plaintiff that he was being placed on Administrative Assignment, on a 40-hour work week schedule, and that he was prohibited from entering any Fire Department property without permission. Defendants did not provide any reasons for the transfer.

90. Plaintiff reported to Department Headquarters, Administrative Services Bureau, on April 29, 2022 for his Administrative Assignment. He was placed in a conference room and was not assigned any substantive tasks. Plaintiff's only task was to make copies of documents on the copy machine in the hallway.

91. Plaintiff felt anxious, humiliated and self-conscious as to what his colleagues thought about why he had been placed in an administrative role, and further, what they knew about this personal medical history. Plaintiff remained confused as to why he had been placed on an administrative assignment.

92. Placement of Plaintiff in an Administrative Assignment was punitive and was not a reasonable accommodation. Moreover the reassignment changed the terms and conditions of Plaintiff's employment. Not only was Plaintiff removed from performing the essential functions of his job as a FF/P but terms of his employment were adversely impacted in that the opportunity to work overtime while on Administrative Assignment was eliminated.

93. After approximately two weeks in the Administrative Assignment, Plaintiff was again reassigned, this time to a Logistics position. This was also a demotion and a change in terms and conditions of Plaintiff's employment. In the Logistics role, Plaintiff was responsible for moving equipment and ambulances to different locations. Similar to the Administrative Assignment,

Plaintiff was not performing the duties of a FF/P and Plaintiff was deprived of the potential to earn overtime.

94. In addition to Defendants' failure to accommodate Plaintiff, their actions in disciplining, demoting, issuing unfavorable work assignments, and changing the terms and conditions of Plaintiff's employment constituted prohibited discrimination based on mental health disability, in violation of federal and state laws.

COUNT II

Harassment and Hostile Work Environment Based on Disability in violation of Americans with Disability Act, 42 U.S.C. § 12101, et seq. and Maryland Fair Employment Practice Act, MD. State Government Code § 20-606.

95. Plaintiff incorporates by reference paragraphs 1-94 as if fully set forth herein.

96. Defendants have engaged in other discriminatory acts based on Plaintiff's mental health disability which are prohibited by the ADA and Maryland FEPA.

97. Defendants disciplined Plaintiff on May 19, 2022 for taking sick leave on February 7, 2022 (more than three months earlier) by issuing Plaintiff a Below Standard Performance Log in Tenzinga. Defendants wrongfully determined that Plaintiff's use of sick leave on February 7, 2022 was in violation of the Department's leave policy, General Order 110.02 Leave Administration, which provides, "except in emergencies, notification of illness or injury that would prohibit an employee from being at work will be accomplished as early as possible, but not less than one hour prior to the time the employee is scheduled to report to duty, assignment, or detail."

98. Defendants issued Plaintiff an unfavorable assignment, first verbally to Station 12, and then by Special Order to Station 6, both stations with high call volume even though Plaintiff clearly communicated that an assignment to a much busier station would have an adverse impact on his mental health.

99. On April 28, 2022 Defendants informed Plaintiff that he was being placed on Administrative Assignment, on a 40-hour work week schedule, and that he was prohibited from entering any Fire Department property without permission. Defendants did not provide any reasons for the transfer.

100. Plaintiff reported to Department Headquarters, Administrative Services Bureau, on April 29, 2022 for his Administrative Assignment. He was placed in a conference room and was not assigned any substantive tasks. Plaintiff's only task was to make copies of documents on the copy machine in the hallway.

101. Plaintiff felt anxious, humiliated and self-conscious as to what his colleagues thought about why he had been placed in an administrative role, and further, what they knew about this personal medical history. Plaintiff remained confused as to why he had been placed on an administrative assignment.

102. Placement of Plaintiff in an Administrative Assignment was punitive and was not a reasonable accommodation. Moreover the reassignment changed the terms and conditions of Plaintiff's employment. Not only was Plaintiff removed from performing the essential functions of his job as a FF/P but terms of his employment were adversely impacted in that the opportunity to work overtime while on Administrative Assignment was eliminated.

103. After approximately two weeks in the Administrative Assignment, Plaintiff was again reassigned, this time to a Logistics position. This was also a demotion and a change in terms and conditions of Plaintiff's employment. In the Logistics role, Plaintiff was responsible for moving equipment and ambulances to different locations. Similar to the Administrative Assignment, Plaintiff was not performing the duties of a FF/P and Plaintiff was deprived of the potential to earn overtime.

104. In addition to Defendants' failure to accommodate Plaintiff, their actions in disciplining, demoting, issuing unfavorable work assignments, and changing the terms and conditions of Plaintiff's employment constituted prohibited harassment based on Plaintiff's mental health disability, in violation of federal and state laws.

105. Defendants' actions were humiliating, demeaning, and demoralizing to Plaintiff.

106. Defendants' harassing actions, individually and collectively were severe and pervasive so as to alter the conditions of Plaintiff's employment.

107. Defendants have created a hostile work environment for Plaintiff based on Plaintiff's mental health disability. Defendants' actions have been unwelcome and offensive and have only served to exacerbate Plaintiff's mental health condition.

COUNT III

Retaliation for Engaging in Protected Activity: violation of Americans with Disability Act, 42 U.S.C. § 12101, et seq. and Maryland Fair Employment Practice Act, MD. State Government Code § 20-606.

108. Plaintiff incorporates by reference paragraphs 1-107 as if fully set forth herein.

109. On February 16, 2022 @ 15:00 hours, BC Speight requested Plaintiff to speak with her in the Captain's office of Station 3. During that conversation, Plaintiff explained to BC Speight that the proposed transfer would have an adverse impact on his anxiety and depression in a number of ways. Plaintiff explained that because Station 12 is further from his home, it would result in the inability of Plaintiff to arrive home in time to watch his 1 & 3 year old sons, so his wife could depart for her shift as an Emergency Room Physician's Assistant. Plaintiff explained to BC Speight the gap in childcare would create added stress to his personal life. Plaintiff further explained Station 12 was projected to be one of the busiest stations in the County. In turn, Plaintiff would get very little rest during shifts which would lead to increased mental health symptoms.

While not a formal request for an accommodation, Plaintiff's request not to be Stationed anywhere other than Station 3 had the legal effect of a request for a reasonable accommodation. This was Plaintiff's first request for an accommodation a protected activity under the ADA and Maryland FEPA.

110. In retaliation, Defendants disregarded Plaintiff's request for a reasonable accommodation and instead issued a Special Order on April 15, 2022, which provided that Plaintiff would be transferred to Station 6 in Savage (a station with a high call volume), effective April 25, 2022.

111. Plaintiff was adversely affected by the Special Order because a move to a much busier station would have an adverse impact on his mental health.

112. On April 23, 2022, Plaintiff submitted a transfer request to his assigned officer, Lt. Evan Tyler to return to Battalion 3, Station 3, specifically requesting a transfer to shift 3C, or 3B (which did not have a paramedic), or any shift in the 3rd Battalion for which there was a critical need for paramedics and where he excelled in his role as an FF/P. In this transfer request, Plaintiff clearly stated how a transfer to Station 6 would adversely impact his health and well-being. This request had the legal effect of constituting a request for accommodation.

113. Rather than granting Plaintiff's request for an accommodation or engaging in the interactive process, on April 25, 2022, in retaliation, Plaintiff received a phone call and email communication from Assistant Chief (AC) Vincent Baker that he would be transferring Plaintiff to an Administrative Assignment (day shift). Defendants did not indicate to Plaintiff that his fitness for duty was in question and instead kept Plaintiff in the dark as to their reason for transferring him.

114. The Administrative Assignment was retaliatory and punitive as it prohibited Plaintiff from working in the Emergency Services Bureau and working overtime hours.

115. On April 28, 2022, Plaintiff provided to his chain of command, including AC Baker and Battalion Chief (BC) Jeffery Carter a letter from his mental health provider, Dr. Mu, concerning his mental health disability. The letter noted that Plaintiff's work environment (Station 3), enabled Plaintiff to be successful in his job and prevented exacerbation of his underlying mental health condition. Submission of Dr. Miu's letter had the legal effect of a request for reasonable accommodation and constituted protected activity under the ADA and Maryland FEPA.

116. Rather than addressing and acting upon this letter in a meaningful way, the actions subsequently taken by the Department were retaliatory. A meeting took place between Plaintiff and AC Baker on April 28, 2022 at Department Headquarters. During the meeting AC Baker reiterated to Plaintiff that he was being placed on Administrative Assignment, on a 40-hour work week schedule, and that he was prohibited from entering any Fire Department property without permission. Once again, a specific reason was not provided for the transfer of Plaintiff to an Administrative Assignment, nor was there any indication that Plaintiff's fitness for duty was in question.

117. Plaintiff inquired several times as to the reason for the transfer, and the response provided by AC Baker was vague, stating that he needed to "investigate" what was going on based on the paperwork Plaintiff submitted.

118. During this same conversation, in retaliation, AC Baker accused Plaintiff of improperly using Sick Leave when detailed to busy units, but did not indicate any concerns over Plaintiff's fitness for duty.

119. Plaintiff reported to Department Headquarters, Administrative Services Bureau on April 29, 2022 for his Administrative Assignment. There, he was placed in a conference room and was not assigned any substantive tasks. Plaintiff's only task was to make copies of documents on the copy machine in the hallway. Plaintiff felt anxious, humiliated and self-conscious as to

what his colleagues thought about why he had been placed in an administrative role, and further, what they knew about this personal medical history. Plaintiff remained confused as to why he had been placed on an administrative assignment.

120. Reassignment to an administrative role was not a reasonable accommodation for Plaintiff since the essential function of the job Plaintiff was hired to do was to respond to fires and other emergencies, an admired position of service to the public. Instead, it was retaliatory in nature for taking sick leave and requesting a reasonable accommodation. Here, placement in an administrative role effectively demoted Plaintiff to a "second-rate" firefighter.

121. After approximately two weeks in the Administrative Assignment, Plaintiff was again reassigned, this time to a Logistics position, where he would be reporting to Lt. Chris Alliger, working out of the Blue Building located at the Department's training complex. Plaintiff was responsible for moving equipment and ambulances to different locations. Similar to the Administrative Assignment, Plaintiff was not performing the duties of a FF/P. Plaintiff remained confused as to why he had been placed in the Logistics role and was left to explain the humiliating move to his colleagues. The reassignment to the Logistics role, without any explanation, has only served to increase Plaintiff's stress level and anxiety and adversely impact his well-being.

122. Reassignment to the logistics role was not a reasonable accommodation for Plaintiff since the essential function of the job Plaintiff was hired to do was to respond to fires and other emergencies, an admired position of service to the public. Like the Administrative Assignment, placement of Plaintiff in the Logistics role effectively demoted him and was retaliatory in nature.

123. On May 19, 2022, Plaintiff was provided a Below Standard Performance Log in Tenzinga for having called out sick on February 7, 2022 (more than three months earlier).

124. The Department determined that Plaintiff's use of sick leave on February 7, 2022 was in violation of the Department's leave policy, General Order 110.02 Leave Administration, which provides, "except in emergencies, notification of illness or injury that would prohibit an employee from being at work will be accomplished as early as possible, but not less than one hour prior to the time the employee is scheduled to report to duty, assignment, or detail."

125. When an employee requests leave for a medical condition, the employer must treat the request as one for a reasonable accommodation under the ADA. Thus, the discipline issued by the Department, more than three months after Plaintiff called in sick, was retaliatory because Plaintiff was being punished for protected activity.

126. On 6/14/2022, AC Baker informed Plaintiff that he would be required to undergo an Independent Medical Examination (IME) with Dr. Caren DeBernardo, a licensed psychologist who serves as a County health practitioner for Fitness for Duty evaluations. The reason provided for requiring Plaintiff to participate in an IME was to determine Plaintiff's ability to perform his job duties as a Firefighter/Paramedic.

127. This IME took place on June 23, 2023, two months after Plaintiff was placed on Administrative Assignment, and four months after Plaintiff provided Defendants with a letter setting forth his medical condition and need for an accommodation. The IME was constituted retaliation for Plaintiff having taken sick leave and having requested an accommodation. If Defendants were truly concerned about Plaintiff's fitness for duty, it is suspect that their request for Plaintiff to submit for an IME came four months after Plaintiff informed Defendants of his mental health disability and request for an accommodation.

128. In her report, Dr. DeBernardo determined that Plaintiff was able to perform the essential functions of his position. Dr. DeBernardo's report was silent as to whether Plaintiff required a reasonable accommodation.

129. Although Dr. DeBernardo was silent in her report as to whether Plaintiff required a reasonable accommodation, Defendants, without engaging in any interactive process, as required under the ADA, and in retaliation, determined that Plaintiff did not need a reasonable accommodation. Instead, in further retaliation, Defendants considered Plaintiff's station preference under a Temporary Hardship Request under General Order 110.19 due to his stated work/life challenges. Defendants placed Plaintiff at Station 3 (Shift B) for one year under a Temporary Hardship Request. Such a placement is an attempt by Defendants to circumvent their obligation to properly accommodate Plaintiff under the ADA.

130. Beginning on October 18, 2023, Plaintiff filed formal requests for reasonable accommodation. To date, approximately one year later, Defendants have failed to provide Plaintiff with the requested reasonable accommodation, or even properly engage in the interactive process or conduct an individualized assessment, and further have failed to articulate any undue hardship to support their denial.

131. The adverse actions identified above were causally related to Plaintiff's protected activity. But for the request for accommodation, Plaintiff would not have been included in the Special Order, reassigning him to Station 6, he would not have been placed in an Administrative Assignment (day shift), followed by a Logistics position in the Blue building to perform demeaning tasks, without any explanation, which have only served to increase Plaintiff's stress level, anxiety and adversely impact his well-being. But for taking leave for his health condition, Plaintiff would not have received a Below Standard Performance Log in Tenzinga on May 19, 2022.

WHEREFORE, Plaintiff prays this Honorable Court for Judgment against Defendants, in the amount of compensatory damages to be determined at trial, plus attorneys' fees, costs of this action, and any other relief this Honorable Court deems just and proper to award.

October 13, 2024

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