

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Plaintiff,

Case No.: 4:16-cv-476

On removal from the Circuit Court of the
Second Judicial Circuit, In and for Leon
County, Florida, Case No. 2015-CA-01239

vs.

**BOARD OF TRUSTEES,
FLORIDA A&M UNIVERSITY,
a public body corporate'**

Defendant.

DEFENDANT'S NOTICE OF REMOVAL

The Defendant, BOARD OF TRUSTEES, FLORIDA A&M UNIVERSITY, a public body corporate, pursuant to 28 U.S.C. § 1441, et seq., and 1446, and Local Rules 3.1(B) and 7.2 of the United States Court for the Northern District of Florida, hereby gives notice of the removal of an action pending in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, and in support of the removal, states the following:

1. Defendant desires to exercise its right under the provisions of Title 28 U.S.C. § 1441, et seq., to remove this action from the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, where it is now pending under the name and style of [REDACTED] *v. Board of Trustees, Florida A&M University,*

a public body corporate, Case No. 2016-CA-001239 (hereinafter referred to as the Circuit Court Action). The Circuit Court Action is of a civil nature over which the United States district courts have been given original jurisdiction and which may be promptly removed. See 28 U.S.C. §§ 1331 and 1441. Specifically, Plaintiff's claim for damages includes alleged violations under Chapter 760, Florida Statutes; 42 U.S.C. §2000e et seq and 42 U.S.C. §1981a. See Exhibit A, Plaintiff's Complaint at ¶¶ 1, 8-19, 34-42, 44-52, 54-62, 65-69.

2. Under the provisions of 28 U.S.C. § 1441, et seq., Defendant has the right to remove this cause from the Circuit Court Action to the United States District Court for the Northern District of Florida, Tallahassee Division, the district and division in which the action is currently pending.

3. Plaintiff served the summons and complaint upon Florida Agricultural & Mechanical University Board of Trustees on July 11, 2016. In accordance with the requirements of 28 U.S.C. § 1446, this petition for removal is filed within 30 days after receipt of the initial pleading by the Defendant through service of the summons and complaint.

4. Pursuant to 28 U.S.C. § 1446(a), Defendant has filed with this Notice of Removal, true and legible copies of Plaintiff's Complaint and all process, pleadings or orders on file in the state court as of the date of this Notice of

Removal, including copies of the following documents served upon it or which have been filed in the Circuit Court Action:

(a) Plaintiff's Complaint is attached hereto as Exhibit A.

(b) The summonses that have been served at the time of this filing are attached hereto as Exhibit B.

(c) Notice of Appearance on behalf of the Defendant by Henry Buchanan, P.A. served on July 12, 2016, is attached hereto as Exhibit C.

5. As set forth herein, the Defendant desires and is entitled to have this cause removed from the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, to the United States District Court for the Northern District of Florida, Tallahassee Division, such being the district where suit is currently pending.

6. Written notice of the filing of this petition will be given to the adverse party as required by law.

7. A true copy of this petition will also be filed with the Clerk of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, as required by law.

WHEREFORE, Defendant, BOARD OF TRUSTEES, FLORIDA A&M UNIVERSITY, prays that this action be removed to this Court and that this Court accept jurisdiction and, henceforth, that this action be placed on the docket of this

Court for further proceedings, the same as though this action had been originally instituted in this Court.

Dated this 29th day of July, 2016.

HENRY BUCHANAN, P.A.

/s/Joseph V. Gardner
J. STEVEN CARTER
Florida Bar No. 896152
scarter@henryblaw.com
JOSEPH V. GARDNER
Florida Bar No. 111987
jgardner@henryblaw.com
Post Office Drawer 14079
Tallahassee, Florida 32317-4079
(850) 222-2920: Telephone
(850) 224-0034: Facsimile
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed via the CM/ECF system and U.S. Mail to: Marie A. Mattox, Marie A. Mattox, P.A. 310 Bradford Road, Tallahassee, Florida 32303 on this 29th day of July, 2016.

/s/Joseph V. Gardner
Attorney

Exhibit A
to
DEFENDANTS' NOTICE OF REMOVAL

Plaintiff's Complaint

**[REDACTED] v. FLORIDA AGRICULTURAL AND MECHANICAL
UNIVERSITY BOARD OF TRUSTEES**
USDC CASE NO: 4:16 cv 476

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 16-CA
FLA BAR NO.: 0739685

[REDACTED]
Plaintiff,

vs.

BOARD OF TRUSTEES,
FLORIDA A & M UNIVERSITY,
a public body corporate,

Defendant.

COMPLAINT

Plaintiff, [REDACTED] hereby sues Defendant, BOARD OF TRUSTEES,
FLORIDA A & M UNIVERSITY, a public body corporate, and alleges:

JURISDICTION

1. This is an action brought under §112.3187, Florida Statutes, for claims which are, individually, valued in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs, interest and attorney's fees. This is an action brought under Chapter 760, Florida Statutes; 42 U.S.C. §2000e et seq.; and 42 U.S.C. §1981a

2. This is an action for damages, injunctive relief, attorney's fees and costs.

THE PARTIES

3. At all times pertinent hereto, Plaintiff, [REDACTED], has been a resident of the State of Florida. He was employed with Defendant at all times pertinent hereto and is sui juris. He is a member of a protected class because of his race, white, his religion, Mormon, his

age (over 40). Moreover, he is a member of a protected class because he reported discrimination and was subject to retaliation thereafter.

4. At all times pertinent hereto, Defendant, BOARD OF TRUSTEES, FLORIDA A & M UNIVERSITY, a public body corporate, has been organized and existing under the laws of the State of Florida, and has been an "employer" as that term is used under the applicable laws set forth above.

CONDITIONS PRECEDENT

5. Plaintiff has satisfied all conditions precedent to filing this action, if any.

FACTS

6. Plaintiff, a Mormon white male, age 40 or older, was employed with Defendant from in or about 1998 until the present and held the position of Sergeant.

7. Plaintiff was hired soon after a verdict of race discrimination by Defendant was made in another case of a white employee.

8. During his employment with Defendant, Plaintiff was treated less favorably than similarly situated African American officers, including, without limitation, [REDACTED] because of his race and/or for other reasons in that he was forced to be on probation for additional 30 days without legitimate cause, had complaints against him entered into the CAD database even though this was against protocol, denied training, given worse equipment, not given opportunities for a promotion in or about November 2014, paid a lower salary, not given the opportunity to work overtime, and was issued unwarranted reprimands.

9. Because of the actions identified above, Plaintiff reported discrimination within Defendant.

10. Plaintiff also reported harassment and retaliation by [REDACTED] during the hearing for a grievance he filed against [REDACTED] on or about October 29, 2014, and reported a hostile work environment during a hearing for a grievance he filed against [REDACTED] on or about December 16, 2014. Both the grievance and Plaintiff's testimony during the grievance hearing constitute protected activity under §112.3187, Florida Statutes, Chapter 760, Florida Statutes and Title VII.

11. Thereafter, [REDACTED] and [REDACTED] retaliated against Plaintiff, including, without limitation, by moving him from night shift to day shift causing a significant loss in pay, issuing unwarranted reprimands, giving Plaintiff a bad evaluation, and threatening Plaintiff.

12. In continued retaliation and discrimination, on or about March 27, 2015, [REDACTED] threatened Plaintiff in front of others in a meeting by stating that he better get all his assignments done by Monday or he didn't want to see what was going to happen to him. [REDACTED] also threatened Plaintiff on or about March 9, 2015. Defendant also began giving Plaintiff additional duties and overloading Plaintiff, expecting Plaintiff work off the clock, and continuously changing his hours.

13. Plaintiff was also discriminated against on the basis of religion. In or about March 2015, Plaintiff asked for an authorization form for part time work and stated that his wife does not work for religious reasons. [REDACTED] responded that his wife not working was Plaintiff's choice. No accommodations were given to Plaintiff.

14. Also, Plaintiff told [REDACTED] that he needed the extra pay he made working on the night shift in order for his son to go on a mission trip. Soon after that, [REDACTED] moved Plaintiff to the day shift and Plaintiff was effectively denied the ability to earn the additional income.

15. Additionally, around this same time period, during a group discussion, [REDACTED] with Defendant made derogatory comments about Plaintiff's religion. Thereafter, [REDACTED] entered a complaint against Plaintiff into the CAD system and, upon information and belief, Defendant has never taken this out even though it was reported as having been wrongly entered and was false.

16. In or about 2013, when [REDACTED] became Chief, he told Plaintiff that he intended to "get rid of the old and bring in the new." Thereafter, many older officers were forced out while most of the officers who were hired are younger. Plaintiff was one of the older officers who was forced out.

17. Because of the actions set forth in part above, in late March and early April, 2015, Plaintiff was forced to file charges of whistle blower retaliation as well as discrimination and retaliation for having reported/objected to discrimination.

18. In continued disparate treatment and in retaliation for the filing of his charges of discrimination/retaliation, Defendant continued to take actions against Plaintiff as set forth in part above and he was terminated effective October 15, 2015, pursuant to a Notice of Intent to Dismiss dated September 30, 2015, wherein Defendant placed Plaintiff on Administrative Leave without pay effective immediately. Plaintiff was terminated on false and contrived charges.

19. Plaintiff has retained the undersigned to represent his interests in this cause and is obligated to pay her a fee for her services. Defendant should be made to pay said fee under the applicable statutes cited herein.

COUNT I
VIOLATION OF PUBLIC WHISTLE BLOWER ACT

20. Paragraphs 1-19 are incorporated herein by reference.

21. This is an action against Defendant under §112.3187 et seq.

22. Plaintiff was a public employee protected under Chapter 112, Florida Statutes.

23. As stated more specifically, in part, above, Plaintiff reported and disclosed violations of state rules, regulations and laws to a person who had the authority to investigate, police, manage and otherwise remedy the violations of rules, regulations and laws reported by Plaintiff. Plaintiff also reported malfeasance, misfeasance, and other acts specifically outlined in §112.3187 (5), et seq., Florida Statutes.

24. After providing information as well as reporting these matters as related more fully above, Plaintiff was the victim of retaliatory actions as set forth more fully above.

25. Plaintiff's position and responsibilities within Defendant were adversely affected as a result of reporting violations of rules, regulations and laws specified in part above.

26. These actions were taken against Plaintiff after Plaintiff objected to and/or reported matters that Plaintiff reasonably suspected were and/or actually were incidents of gross misconduct, malfeasance, and/or misfeasance within Defendant.

27. These reports were conveyed in writing and/or were made to supervisors and/or other persons within the Defendant who could remedy the violations. After reporting these

matters within Defendant, adverse actions were taken against him as set forth in part above including Plaintiff's termination.

28. Under §112.3187(4), Defendant is prohibited from taking adverse personnel action against persons like Plaintiff who disclose the types of information disclosed by Plaintiff. Specifically, Defendant is prohibited from dismissing, disciplining or otherwise taking any other adverse personnel action against an employee for disclosing information pursuant to the provisions of §112.3187(4), Florida Statutes.

29. Under §112.3187(3)(c) "adverse personnel action" is defined as "the discharge, suspension, transfer or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor."

30. After making the disclosures identified in part above, Plaintiff suffered adverse employment action, which adverse actions are reported in part above.

31. Plaintiff maintains that the actions of all employees within Defendant who affected his employment adversely did so in retaliation against him for "whistle blowing" activities.

32. As a direct and proximate result of the actions taken against him by Defendant, Plaintiff has suffered injury, including but not limited to past and future wage losses, loss of benefits, and other tangible and pecuniary damages. These damages have occurred in the past, are occurring at present and will occur in the future.

COUNT II
RELIGIOUS DISCRIMINATION

33. Paragraphs 1-19 are hereby re-alleged and incorporated herein.

34. This action is brought under 42 U.S.C. §2000e et seq. and Chapter 760, Florida Statutes, for discrimination based on religion.

35. Plaintiff has been the victim of discrimination on the basis of Plaintiff's religion in that Plaintiff was treated differently than similarly situated employees of Defendant do not share Plaintiff's religious beliefs and preferences and has been subject to hostility and poor treatment on the basis, at least in part, of Plaintiff's religion.

36. Defendant is liable for the differential treatment and hostility towards Plaintiff because it controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

37. Furthermore, Defendant knowingly condoned and ratified the differential treatment of Plaintiff as more fully set forth above because it allowed the differential treatment and participated in the same.

38. Defendant's known allowance and ratification of these actions and inactions created, perpetuated and facilitated an abusive and offensive work environment within the meaning of the statutes referenced above.

39. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were of a religion-based nature and in violation of the laws set forth herein.

40. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant. The events set forth herein led, at least in part, to Plaintiff's termination.

41. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon religion in violation of Chapter 760, Florida Statutes, and 42 U.S.C. §2000e et seq.

42. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other fringe benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

COUNT III
AGE DISCRIMINATION

43. Paragraphs 1-19 are re-alleged and incorporated herein by reference.

44. This is an action against Defendant for discrimination based upon age brought under Chapter 760, Florida Statutes.

45. Plaintiff has been the victim of discrimination on the basis of his age in that he was treated differently than similarly situated younger employees of Defendant and has been subject to hostility and poor treatment on the basis, at least in part, of his age.

46. Defendant is liable for the differential treatment and hostility towards Plaintiff because it controlled the actions and inactions of the persons making decisions affecting Plaintiff

or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

47. Furthermore, Defendant knowingly condoned and ratified the differential treatment of Plaintiff as more fully set forth above because it allowed the differential treatment and participated in same.

48. Defendant's known allowance and ratification of these actions and inactions actions created, perpetuated and facilitated an abusive and offensive work environment within the meaning of the statutes referenced above.

49. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were of an age based nature and in violation of the laws set forth herein.

50. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant and he was fired.

51. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon age in violation of Chapter 760, Florida Statutes.

52. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

COUNT IV
RACE DISCRIMINATION

53. Paragraphs 1-19 are re-alleged and incorporated herein by reference.

54. This is an action against Defendant for discrimination based upon race brought under Chapter 760, Florida Statutes and 42 U.S.C. §2000e et seq.

55. Plaintiff has been the victim of discrimination on the basis of his race in that he was treated differently than similarly situated black employees of Defendant and has been subject to hostility and poor treatment on the basis, at least in part, of his race.

56. Defendant is liable for the differential treatment and hostility towards Plaintiff because it controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

57. Furthermore, Defendant knowingly condoned and ratified the differential treatment of Plaintiff as more fully set forth above because it allowed the differential treatment and participated in same.

58. Defendant's known allowance and ratification of these actions and inactions created, perpetuated and facilitated an abusive and offensive work environment within the meaning of the statutes referenced above.

59. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were of a race based nature and in violation of the laws set forth herein.

60. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant and he was fired.

61. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon race.

62. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

COUNT V
RETALIATION

63. Paragraphs 1-19 are re-alleged and incorporated herein by reference.

64. Defendant is an employer as that term is used under the applicable statutes referenced above.

65. The foregoing allegations establish a cause of action for unlawful retaliation after Plaintiff reported or opposed unlawful employment practices adversely affecting him under 42 U.S.C § 2000e et seq., Chapter 760, Florida Statutes, and other statutory provisions cited herein.

66. The foregoing unlawful actions by Defendant were purposeful.

67. Plaintiff voiced opposition to unlawful employment practices during Plaintiff's employment with Defendant and was the victim of retaliation thereafter, as related in part above and he was fired.

68. Plaintiff is a member of a protected class because Plaintiff reported unlawful employment practices and was the victim of retaliation thereafter. There is thus a causal

connection between the reporting of the unlawful employment practices and the adverse employment action taken thereafter.

69. As a direct and proximate result of the foregoing unlawful acts and omissions, Plaintiff has suffered mental anguish, emotional distress, expense, loss of benefits, embarrassment, humiliation, damage to reputation, illness, lost wages, loss of capacity for the enjoyment of life, and other tangible and intangible damages. These damages are continuing and are permanent. Plaintiff is entitled to injunctive/equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff including reinstatement;
- (c) enter judgment against Defendant and for Plaintiff awarding damages to Plaintiff from Defendant for Defendant's violations of law enumerated herein;
- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest and equitable relief; and

(g) grant such other relief as being just and proper under the circumstances.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues set forth herein which are so triable.

Dated this 2nd day of June 2016.

Respectfully submitted,

/s/ Marie A. Mattox

Marie A. Mattox [FBN 0739685]

MARIE A. MATTOX, P. A.

310 East Bradford Road

Tallahassee, FL 32303

Telephone: (850) 383-4800

Facsimile: (850) 383-4801

Email: marie@mattoxlaw.com

Secondary emails:

michelle2@mattoxlaw.com

marlene@mattoxlaw.com

ATTORNEYS FOR PLAINTIFF

Exhibit B
to
DEFENDANTS' NOTICE OF REMOVAL

Summons

**[REDACTED] v. FLORIDA AGRICULTURAL AND MECHANICAL
UNIVERSITY BOARD OF TRUSTEES**
USDC CASE NO: 4:16 CV 476

Filing # 42274803 E-Filed 06/02/2016 07:49:44 PM

RECEIVED

JUL 11 2016

Office of the General Counsel
Florida A&M University

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

Plaintiff,

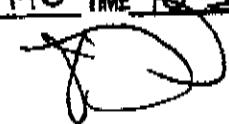
Case No. 16-CA 2016 CA 001239

vs.

BOARD OF TRUSTEES OF
FLORIDA A & M UNIVERSITY,
a public body corporate,

Summons

Defendant.

CERTIFIED PROCESS SERVER # 067
SECOND JUDICIAL CIRCUIT COURT OF FLORIDA
DATE SERVED 7.11.16 TIME 10:50


THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition
in this action on Defendant:

BOARD OF TRUSTEES, FLORIDA A & M UNIVERSITY, a public body corporate
c/o Elmira Mangum, President/Corporate Secretary of the Board of Trustees
Office of the President, Florida A & M University
400 Lee Hall
Tallahassee, FL 32307

Each defendant is required to serve written defenses to the complaint or petition on Marie
A. Mattox, P. A., Plaintiff's attorney, whose address is 310 East Bradford Road, Tallahassee, FL
32303, within 20 days after service of this summons on that defendant, exclusive of the day of
service, and to file the original of the defenses with the clerk of this court, either before serve on
plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered
against that defendant for the relief demanded in the complaint or petition.

DATED on 6/3/2016, 2016.



CLERK OF THE CIRCUIT COURT

By: 

Deputy Clerk

Exhibit C

to

DEFENDANTS' NOTICE OF REMOVAL

Notice of Appearance on behalf of the
Defendant by Henry Buchanan, P.A.

██████████ v. FLORIDA AGRICULTURAL AND MECHANICAL
UNIVERSITY BOARD OF TRUSTEES
USDC CASE NO: 4:16 cv 476

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**


Plaintiff,

CASE NO. 2016-CA-001239

v.

**BOARD OF TRUSTEES OF
FLORIDA A&M UNIVERSITY,**

Defendant.

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned hereby notices the appearance of Henry Buchanan, P.A., and its attorneys, J. Steven Carter and Joseph V. Gardner on behalf of Defendant, FLORIDA AGRICULTURAL & MECHANICAL UNIVERSITY BOARD OF TRUSTEES. The undersigned respectfully requests inclusion with the party's service list respective to this cause.

Dated this 12th day of July 2016.

HENRY BUCHANAN, P.A.

s/ Joseph V. Gardner
J. STEVEN CARTER
Florida Bar No. 896152
scarter@henryblaw.com
JOSEPH V. GARDNER
Florida Bar No. 111987
igardner@henryblaw.com
Post Office Drawer 14079
Tallahassee, Florida 32317-4079
(850) 222-2920: Telephone
(850) 224-0034: Facsimile
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic mail service and U.S. Mail to Marie A. Mattox, Marie A Mattox, P.A. 310 East Bradford Road, Tallahassee, Florida 32303 on this 12th day of July 2016.

s/ Joseph V. Gardner

Attorney