

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**DAVIN CLEMONS,**

**Plaintiff,**

**vs.**

**Civil Action No.** \_\_\_\_\_

**CITY OF MEMPHIS, MEMPHIS POLICE  
DEPARTMENT,**

**JURY TRIAL DEMANDED**

**Defendants.**

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**COMPLAINT FOR DAMAGES**

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**INTRODUCTION**

1. Plaintiff, Davin Clemons, a TACT Officer for the Memphis Police Department, hereby brings this Complaint for Damages and injunctive relief against his current employer the Defendant City of Memphis Memphis Police Department for discrimination, harassment and retaliation against him based upon his sexual orientation, his work as an LGBTQ Liaison, his disability, and his religion.

2. LGBTQ stands for Lesbian, Gay, Bisexual, Transgender, and Queer. In his role as a LGBTQ Liaison, Officer Clemons works with the local LGBTQ community. On or about early 2014, the Community-Police Relations project of the Mid-South Peace and Justice Center engaged in discussions and forums resulting in a decision to create liaison positions whereby the Shelby County Sheriff's Office and the Memphis Police Department would appoint liaison officers to build trust between the LGBTQ community and the Police Department/Shelby County Sheriff's Officers. Historically, members and supporters of the LGBTQ communities feel they

have been harassed, mistreated or falsely accused of crimes by the police/officers. This is or was a serious concern for transgender individuals, especially transgender women of color. By way of example, in 2008 a Memphis Police Officer was videotaped beating a transgender woman. The Officer pleaded guilty to federal civil rights violation(s) and was sentenced to approximately two years in prison. By November 2008 the transgender woman was found shot to death.

3. In the early 2000s there was an LGBTQ Liaison, but the position was vacant after that officer left. The purpose of the LGBTQ Liaisons is to improve trust and relationships, but this is not possible if the appointed Memphis Police LGBTQ Liaison is being discriminated against, harassed and retaliated against due to his participation as a LGBTQ Liaison and due to his sex, religion, and disability.

4. The acts and omissions by Defendants of discrimination, harassment and retaliation are in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.* (sex/sex stereotyping/sexual orientation, religious, retaliation); and the American with Disabilities Act as Amended (failure to accommodate, discrimination/retaliation).

5. Also, Plaintiff brings this Complaint against the Defendants City of Memphis (Memphis Police Department) for interference by Defendants with Officer Clemons' protected liberty and property interests under the Due Process Clause of the Fourteenth Amendment; and equal protection from discrimination as guaranteed by the Equal Protection Clause of the Fourteenth Amendment. All of these Constitutional claims are made actionable against Defendants by 42 U.S.C. Section 1983.

6. On or about August 5, 2014, Plaintiff was approved to be the LGBTQ liaison for the Memphis Police Department. Following this appointment, Officer Clemons has been subjected to harassment, including but not limited to being reprimanded and humiliated,

subjected to different work standards than other similarly situated Officers, and constantly verbally, or otherwise, disciplined, all in violation of the law.

7. The US Supreme Court on June 26, 2015, issued its decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_ (2015), 135 S. Ct. 2584, finding that same-sex marriage is a fundamental right protected by the Fourteenth Amendment's Due Process and Equal Protection clauses. In reaching its decision, the *Obergefell* Court also held and recognized that the fundamental liberties protected by the Fourteenth Amendment's Due Process Clause extend to certain personal choices, including intimate choices defining identity and beliefs; that the liberty protections of the Fourteenth Amendment "includes certain specific rights that allow persons, within a lawful realm, to define and express their identity;" that liberty includes "intimate choices that define personal identity and beliefs"; and that "sexual orientation is both a normal expression of human sexuality and immutable." *Obergefell*, slip op. at 1,2,7 and 10. In making its decision on same-sex marriage equality, the *Obergefell* Court acknowledged that sexual orientation and identity are fundamental liberties protected by the Fourteenth Amendment Due Process and Equal Protection clauses. *Obergefell*, slip op. at 8.

8. On February 3, 2015 the Equal Employment Opportunity Commission issued a Memorandum directing its offices to do intake and charge processing of Title VII claims of sex discrimination related to LGBTQ Status. There have been a number of federal sector cases including *Baldwin v. Dep't of Transp.*, Appeal No. 0120133080 (July 15, 2015), finding that sexual orientation discrimination is, by its very nature, discrimination because of sex. Further, there have been private sector cases filed alleging sex discrimination due to sexual orientation and sexual identity. See, e.g., *EEOC v. Pallet Companies d/b/a IFCO Systems NA, Inc.*

("IFCO"), (D. Md., No. 1:16-cv-00595-RDB, filed March 1, 2016), and see, *EEOC v. Scott Medical Health Center, P.C.*, (W.D. Pa., No. 2:16-cv-00225-CB, filed March 1, 2016).

### **JURISDICTION**

9. The Court has jurisdiction over Plaintiff's claims brought through 42 U.S.C. §1983 pursuant to 28 U.S.C. §§ 1331, and 1343(3) in that this case involves a civil action arising under the Constitution and the laws of the United States; 28 U.S.C. §1343(a)(3) and (4) in that this is a civil action to secure equitable or other relief and to redress the deprivation of a right, privilege or immunity secured by the Constitution or under acts of Congress providing for the protection of civil rights; 42 U.S.C. § 2000(e)-5(f)(3) as this is a civil action brought under Title VII of the Civil Rights Act of 1964; and the ADA, ADA.

10. At all times relevant, the Defendants are an employer within the meaning of Title VII, 42 USC 2000e, *et seq.*, and within the meaning of the American with Disabilities Act, 42 USCA § 12101, *et seq.*

11. Plaintiff received his Notice of Suit Rights from the EEOC regarding his EEOC Charge Nos. 490-2015-01390 and 490-2015-00854 alleging disability, sex (sexual orientation, sex stereotyping, and harassment) religion, and retaliation discrimination, mailed on February 11, 2016, within three (3) days from mailing. This lawsuit is timely filed within 90 days after Plaintiff received this notice.

**VENUE**

12. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391 (b)(c) as Defendants are subject to the jurisdiction of this Court and the events or omissions giving rise to the claims occurred in this judicial district.

13.

**PARTIES**

14. Plaintiff, Davin Clemons is an adult male citizen of the United States, who resides and has resided at all times pertinent to the events referred to herein in Shelby County, Tennessee.

15. Defendant, City of Memphis, is a municipality located in Shelby County, Tennessee. Service can be accomplished by delivering a copy of the Summons and Complaint to the Chief Executive Officer thereof, or to the City Attorney: Bruce McMullen at 125 N. Main Street, Room 336, Memphis, TN 38103.

16. Defendant Memphis Police Department is a governmental entity of the City of Memphis. Service can be accomplished by delivering a copy of the Summons and Complaint to any officer or managing agent thereof, or to the City Attorney: Bruce McMullen at 125 N. Main Street, Room 336, Memphis, TN 38103.

**FACTS**

17. Plaintiff Davin Clemons, an African American, male, TACT Officer for the Memphis Police Department, brings this Complaint for Damages and injunctive relief against his current employer, the Defendants, City of Memphis, Memphis Police Department, and Defendant Mayor Jim Strickland (in his Official Capacity for injunctive relief), and Interim

Director Michael Rallings for discrimination, harassment and retaliation against him based upon his sex, his work as an LGBTQ Liaison, his disability, and his religion.

18. LGBTQ stands for Lesbian, Gay, Bisexual, Transgender, and Queer.

19. In his role as a LGBTQ Liaison, Officer Clemons works with the local LGBTQ community.

20. Officer Clemons began his work with the Memphis Police Department in 2002 as a patrolman.

21. In 2005 Officer Clemons was wrongfully terminated from his position with the Memphis Police Department and was subsequently reinstated in 2008 in connection with a legal battle.

22. Since on or about December 19, 2007, Officer Clemons has had a shaving profile, in that he provided documentation to the Memphis Police Department showing that he has a disability that prevents or discourages him from clean shaving.

23. Officer Clemons became a member of the TACT Unit of the Memphis Police Department in 2010.

24. On or about 2012 Officer Clemons formed and founded an inclusive Christian Church with Pastor Darnell Gooch, Jr. who is also a Memphis Police Officer. This Christian Church – Cathedral of Praise Church of Memphis – is inclusive in that it welcomes and affirms LGBTQ individuals and their participation in this church.

25. In June 2013 Officer Clemons became an Ordained Elder of the Cathedral of Praise Church of Memphis.

26. Sometime in 2013/2014 the Community-Police Relations project of the Mid-South Peace and Justice Center engaged in discussions and forums resulting in a decision

whereby the Shelby County Sheriff's Office and the Memphis Police Department would appoint liaison officers to build trust between the LGBTQ community and the Police Department and the Shelby County Sheriff's Office.

27. On or about August 5, 2014 Plaintiff received a memorandum from Deputy Chief Arley Knight written to Martavious Hampton at the MGLCC (Memphis Gay, Lesbian, Community Center) and copied to Plaintiff, stating that Officer Clemons was approved to be the LGBTQ Liaison.

28. In his role as LGBTQ Liaison, Officer Clemons was to attend LGBTQ functions, receive LGBTQ information and data, pass this data and information along to supervisors, and be the central contact person for the LGBTQ community on behalf of the Memphis Police Department.

29. Officer Clemons was not paid any additional wages for his work as an LGBTQ Liaison.

30. Members and supporters of the LGBTQ communities feel they have been harassed, mistreated or falsely accused of crimes by the police/Sheriff's officers. This is, or was a serious concern for transgender individuals, especially transgender women of color. By way of example, in 2008 a Memphis Police Officer was videotaped beating a transgender woman of color. The Officer pleaded guilty to federal civil rights violation(s) and was sentenced to approximately two years in prison. By November 2008 the transgender woman was found shot to death.

31. In the early 2000s there was an LGBTQ Liaison, Charles Hill, but the position was vacant after that officer left. The purpose of the LGBTQ Liaison(s) is to improve trust and relationships. This however is not possible if the appointed Memphis Police LGBTQ Liaison is

being discriminated against, harassed and retaliated against due to his sex, religion, and disability.

32. Prior to becoming the LGBTQ Liaison, Officer Clemons did not have any disciplinary matters between his reinstatement in 2008 and his appointment in August 2014.

33. Around becoming the LGBTQ Liaison, Officer Clemons confirmed and did not deny that he was a gay male and an Ordained Elder for a Christian Church.

34. Since being approved as the LGBTQ Liaison for the Memphis Police Department, Officer Clemons has been subjected to harassment and discrimination, including but not limited to being reprimanded, belittled, humiliated, subjected to different work standards than other Officers, constantly verbally or otherwise disciplined, ostracized, and mistreated all in violation of the law.

35. Officer Clemons sent a memorandum on or about March 24, 2014 to Major Sam Hines expressing Officer Clemons' interest in the LGBTQ Liaison position.

36. Sometime on or about the time of the memorandum, Officer Clemons discussed the potential LGBTQ Liaison position and his interest in that position with then Lieutenant Carlos Davis and Major Sam Hines. Lieutenant Davis is best friends with Lieutenant Eric Hulseley.

37. On information and belief, Lt. Davis and Lt. Hulseley discussed Officer Clemons' interest in the LGBTQ Liaison position, and Officer Clemons' "homosexual lifestyle." Lt. Jenkins later in 2015 confirmed to Officer Clemons that he (Jenkins) believed that Lt. Hulseley's mistreatment of Officer Clemons was due to Officer Clemons' "homosexual lifestyle." Officer Clemons made a note of this statement by Lt. Jenkins in Officer Clemons' journal. The journal note is dated January 2, 2015 referencing a conversation between Officer Clemons and Lt.



Jenkins that took place on January 1, 2015. Prior to Lt. Hulsey being made aware of Officer Clemons' sexual orientation, Lt. Hulsey treated Officer Clemons better/similar to other officers.

38. On or about July 4, 2014, Officer Clemons was approached on Beale Street by Lt. Hulsey who yelled and degraded Officer Clemons in front of thousands of citizens at a Fourth of July event. This happened in front of Lt. Jimmy Jenkins.

39. Officer Clemons feels that his treatment by Lt. Hulsey was aggressive and intentional, and this treatment felt to Officer Clemons as a challenge to his (Clemons') manhood. Officer Clemons believes that Lt. Hulsey engaged in this behavior due to sexual stereotypes and, in particular, a belief that Officer Clemons was not sufficiently masculine, was too feminine, or due to a belief that men should only date women, not other men.

40. On or about August 12, 2014 Lt. Hulsey assigned Officer Clemons only (not other officers) a mandatory overtime detail for the next day. This date – August 13, 2014 (Wednesday) after regular duty hours – was one of a number of religious days Lt. Jenkins has agreed to allow Officer Clemons to set aside as religious accommodation day. Lt. Jenkins stated to Officer Clemons that Officer Clemons could take these religious accommodation days so long as the entire unit was not required to work, such as when there is a need for barricades, warrant pick-ups or dignitary protection details.

41. When Officer Clemons informed Lt. Hulsey that he (Clemons) was not available for what was supposed to be “voluntary” overtime due to prior religious obligations, Lt. Hulsey refused to remove Officer Clemons from the detail, and insisted that Officer Clemons perform the overtime on a “mandatory” basis, even when other officers were available and willing to take Officer Clemons' spot on the overtime list.

42. Lt. Hulsey refused to allow another officer to work the overtime shift he had assigned to Officer Clemons. Officer Clemons was forced to take personal leave to attend his religious services; all the while the other TACT members were performing overtime on a voluntary basis.

43. This incident led to a heated verbal disagreement between Officer Clemons and Lt. Hulsey whereby Lt. Hulsey was yelling and screaming and pointing his finger at Officer Clemons and saying that he (Clemons) is going to work the mandated overtime. Officer Clemons objected to working a voluntary overtime on a mandatory basis. Officer Clemons did not yell or scream at Lt. Hulsey in voicing his disagreement. Officer Clemons requested a witness or union representative and Lt. Hulsey denied it.

44. Officer Clemons was charged with insubordination and disobedience of an Order and originally given a 20-day suspension. After pursuing his appeal rights, Officer Clemons's suspension was reduced first to 12-days, then to a one (1) day suspension for disobedience of an order, and a seven (7) day suspension for insubordination.

45. Officer Clemons believes this negative treatment, assignment of mandatory overtime, disregard of his religious days and ultimate suspension were due to his sex, assignment as the LGBTQ Liaison and his participation as member of clergy in an inclusive (LGBTQ) Christian Church. Other TACT officers who are heterosexual were not assigned to mandatory overtime. Other TACT officers who have religious responsibilities in non-inclusive Christian Churches were not assigned mandatory overtime.

46. Further the Memphis Police Department has a mandatory prayer after roll call and before the officers begin their tour of duties at every precinct in the City of Memphis. It is mandatory as officers are not free to leave.

47. At least once a week Officer Clemons openly says prayer in an inclusive manner, in that he includes all people of faith, respectful of a universal God and respectful of those who are not of faith. Knowing that Officer Clemons is a gay Christian Elder, Lt. Hulseby has made statements to others (including in 2015, Lt. Hulseby made statements to Officer LeRoy Hudson about Officer Clemons) referring to Officer Clemons as a “false Prophet” and that Officer Clemons has a “lifestyle” that should not be followed by others, i.e. that his (Clemons’) religious faith is not to be taken seriously because Officer Clemons is gay.

48. Officer Clemons was also denied a witness and/or a union representative as other officers are allowed when they make such a request.

49. On or about August 20, 2014, the Memphis Flyer published an article referencing the appointment of Officer Clemons as the LGBTQ Liaison for the Memphis Police Department and referencing Officer Barbara Tolbert as the LGBTQ Liaison for the Shelby County Sheriff’s Department.

50. On or About August 27, 2014 the Commercial Appeal published an article with photos referencing the appointment of Officer Clemons as the LGBTQ Liaison for the Memphis Police Department and referencing Officer Barbara Tolbert as the LGBTQ Liaison for the Shelby County Sheriff’s Department.

51. On or about November 13, 2014, Officer Clemons had an accident on duty while driving in inclement weather (snow/ice).

52. Officer Clemons was charged with failure to maintain proper control, despite the fact that other non-gay TACT unit employees (who are not the LGBTQ Liaison) have had accidents and have not been charged, including Major Carlos Davis.

53. On or about March 10, 2015 an administrative hearing was held and Officer Clemons was given a three (3) day suspension by Colonel Patricia Burnett. He appealed the suspension, but Chief Knight sustained the suspension.

54. On or about January 1, 2015 Lt. Hulsey approached Officer Clemons while he (Clemons) was loading his equipment in his vehicle and commented on Officer Clemons having facial hair, by stating “What are you going to do with the hair on your face?”

55. Officer Clemons advised Lt. Hulsey that he (Clemons) had a shaving profile in his file, which prevents him (Clemons) from having to “clean shave” for medical reasons.

56. During this discussion, Lt. Hulsey also told Officer Clemons that he (Clemons) had too many rifle rounds in his vehicle and Lt. Hulsey instructed Officer Clemons to return the rounds, without any explanation. No other TACT officers were made to return rounds.

57. Following this incident, Officer Clemons went to Lt. Jenkins and asked why he (Clemons) was being targeted and Lt. Jenkins told Officer Clemons that he (Jenkins) believes that Major Davis was behind the targeting and harassment by Lt. Hulsey because he (Davis) does not approve of Officer Clemons’ “homosexual lifestyle.”

58. On or about February 6, 2015 after Officer Clemons’ shift, he (Clemons) was driving home in his “take-home-vehicle” (a City of Memphis vehicle which officers are allowed to take home when they are on call 24/7). Officer Clemons passed Major Davis on Union Avenue. A minute or so later Officer Clemons was contacted by Lt. Jenkins who advised Officer Clemons to return the take-home-vehicle back to the TACT office per Major Davis’ instructions. Officer Clemons then got a call back another minute or so later again from Lt. Jenkins stating that Officer Clemons was to immediately turn in his vehicle, equipment and firearms because Officer Clemons’ suspension days had been issued. This was on a Friday. Officer Clemons was

not to start his suspension until Monday, February 9, 2015. No other TACT officers were required to turn in their vehicle, equipment or firearms during a suspension or in advance of a suspension.

59. This demand for immediate return of vehicle, equipment and firearms was very upsetting for Officer Clemons as this ongoing harassment due to his sex was causing him emotional distress.

60. On April 23, 2015 Officer Clemons observed his name on the departmental Special Order form with a 3-day suspension and enhanced remedial driving, but Officer Clemons had not as of that date been notified of his appeal date in connection with the November accident, and no decision had yet been issued. Nonetheless, the Special Order was disseminated.

61. Officer Clemons went to the Memphis Police Association (MPA) in anticipation of filing a grievance regarding the lack of due process.

62. A decision was rendered prior to any hearing, in violation of the policy and procedures for the City of Memphis Police Department. This extreme negative conduct by the Memphis Police Department caused additional stress.

63. Officer Clemons believes this treatment resulted because of his sex and his work as the LGBTQ Liaison.

64. On April 23, 2015, Officer Clemons went again to City Hall Labor Relations and spoke with Mr. Bethel advising him of the issue of retaliation and sex discrimination and harassment. Mr. Bethel took notes and advising he would forward it to Attorney Carr of Labor Relations.

65. On April 27, 2015 Officer Clemons received a written Administrative Summons from Lt. Hulsey to appear at a hearing in connection with the November 2014 vehicle accident

for which he had already been given on paperwork a 3-day suspension. This Administrative Summons had the date of May 8 on it, although the hearing was actually schedule for May 5.

66. Officer Clemons believed that Lt. Hulsey purposefully gave him (Clemons) paperwork with the wrong hearing date in the hope that Officer Clemons would miss his hearing.

67. The hearing took place on May 5, 2014 at 9:00AM in Deputy Chief A. Knight's office.

68. Officer Clemons was told that he would receive a 3-day suspension and would have to attend enhanced remedial driving.

69. Officer Clemons was treated differently than other TACT employees, including that Major Carlos Davis (a heterosexual male) had an accident which totaled one take-home-vehicles in 2013-2014, and had an accident that caused damage to a take-home-vehicle also in the 2013-2014 time period.

70. Major Davis received no disciplinary actions regarding those accidents.

71. On March 2, 2015 Officer Clemons was attending a doctor's appointment for high blood pressure and stress caused by the harassment at work (Lt. Jenkins approved the doctor visit). Major Davis was angry that Officer Clemons was allowed to go to the doctor, and that Officer Clemons was not patrolling his assigned area.

72. Officer Clemons completed an OJI Report for high blood pressure and brought his OJI to Lt. Hulsey. Lt. Hulsey refused to sign it and told him (Clemons) to take it to Lt. Jenkins. Lt. Jenkins asked Officer Clemons to remove the names and he would sign the form. Officer Clemons responded that he believed it would be a problem if he removed the names. Lt. Jenkins then told Officer Clemons to speak with Major Davis. Officer Clemons then went and spoke with Major Davis and he (Davis) directed Officer Clemons to speak with Colonel Patricia Burnett.

Officer Clemons spoke with Colonel Burnett who asks Officer Clemons to remove the names of Major Davis and Lt. Hulsey because she said the OJI was too hostile with these names included in the report.

73. Officer Clemons explained to Colonel Patricia Burnett that re-writing the OJI would be misleading and could be falsifying official documents.

74. Officer Clemons was faced with the option of re-writing an OJI request which he believed would be false and/or misleading, or if not, submitting the OJI as none of his supervisors would sign off on it.

75. Officer Clemons did not submit the OJI, as he felt his efforts to do so had been thwarted; and that this treatment (interference with an OJI) was part of the ongoing harassment and retaliation.

76. On May 25, 2015 Lt. Hulsey approached Officer Clemons regarding his (Clemons') facial hair. Lt. Hulsey told Officer Clemons he would no longer be allowed to participate in the barricades and would be assigned to the command post until he clean shaved. Lt. Hulsey was again advised that he (Clemons) had a facial hair profile and Lt. Hulsey stated to Officer Clemons that it did not matter.

77. A meeting was held with Major Davis where Officer Clemons was told he would have to go see a dermatologist as his facial hair profile did not match the current MPD policy.

78. To the knowledge of Officer Clemons is not aware of any other officer who was told their facial hair profile needed to be updated or was insufficient.

79. On June 5, 2015 Officer Clemons had a dermatologist appointment and was told he would have to use accumulated time for his appointment. Prior to being the LGBTQ Liaison, Officer Clemons was not required to take accumulated time when going to the doctor. At that

time, no other member of the TACT unit was required to use accumulated time to go see a doctor.

80. Lt. Jenkins told Officer Clemons that he too was unaware of any officer having to use accumulated time to go to the doctor.

81. Officer Clemons believes this targeting of his facial hair profile was part of the ongoing harassment, discrimination and retaliation.

82. On or about June 3-5, 2015 the TACT unit received new rifles. These new rifles were then taken to the shooting range to calibrate them properly, and to use them for practice and training.

83. TACT Officer Godfrey Howard advised Officer Clemons that he (Clemons) should stay close to Howard during the training exercise with the new rifles. Officer Howard explained that he (Howard) was aware that Major Davis and Lt. Hulsey were going to attempt to fail Officer Clemons and that Major Davis and Lt. Hulsey were watching Officer Clemons. Officer Clemons also understood that by staying close to Officer Howard, less attention would be drawn to Officer Clemons improving Officer Clemons' chance of passing.

84. Officer Clemons passed the test.

85. After the training, comments were made at roll call by Lt. Hulsey that certain people's targets did not match their names, implying that someone had cheated. Officer Clemons felt that he was the subject of the comments by Lt. Hulsey.

86. No charges were made nor any discipline issued; but Officer Clemons believes this was part of the ongoing harassment, discrimination and retaliation.



87. On or about June 16, 2015 the Amazing Grace Missionary Baptist Church requested that Officer Clemons attend the annual picnic for the church and represent the MPD TACT because of his (Clemons') work as a minister.

88. Officer Clemons was not informed at that time of the request, but he had been expecting a request, as a member of the Amazing Grace Missionary Baptist Church informed him that such a request would be forthcoming. When the request was made, the Memphis Police Department did not assign Officer Clemons, but instead assigned two other officers (both heterosexual men).

89. When Officer Clemons found out that the Amazing Grace Missionary Baptist Church had requested his participation but that he had not assigned, Officer Clemons believed that the non-assignment was because he (Clemons) is a gay male Elder.

90. On November 18, 2015 Officer Clemons filed an OJI claim against Lt. Hulsey for stress and anxiety.

91. On November 21, 2015 Officer Clemons got engaged to another male Police Officer, Darnell Gooch, Jr. A video of the engagement was circulated on social media. Officer Clemons was informed that both Lt. Segrest and Lt. Hulsey viewed the video with Officer Godfrey Howard. Officer Clemons was also told that Lt. Segrest, Lt. Hulsey and Officer Howard were making fun of, mocking and making negative comments about the engagement of Officer Clemons to a same-sex male Officer and that Officer Clemons is gay. Officer Clemons was informed that Lt. Segrest, Lt. Hulsey, and Officer Howard behaved this way because they did not agree with and did not approve of Officer Clemons' sexual orientation.

92. Several TACT Unit personnel advised Officer Clemons that Officer Howard was showing the video around the TACT Unit office.

93. Within a couple days of the video being shown around the TACT unit, Officer Clemons was informed of the events and was embarrassed, humiliated, distraught and upset about this happening. Officer Clemons believes this is part of the ongoing harassment, discrimination and retaliation.

94. On December 3, 2015 Officer Clemons received an email from Lt. Segrest advising Officer Clemons to clean his desk. Officer Clemons' desk has been the same way for the last five years with all of his paperwork on his desk.

95. Officer Haynes who had substantially less paperwork on his desk was also asked to clean his desk by Lt. Segrest. Officer Clemons believes that the request to Officer Haynes was designed to try to cover up the illegal behavior, harassment, discrimination and retaliation by Lt. Segrest.

96. Lt. Segrest put all of Officer Clemons' items from his (Clemons') desk, including paperwork, awards, and co-worker pictures in a box and put the box in the locker room. This was a shock to Officer Clemons. Officer Clemons has never seen any other Officer so disrespected in the treatment of his or her desk, and believes this bad treatment to be part of the ongoing illegal behavior, harassment, discrimination and retaliation.

97. On December 15, 2015 Officer Clemons received a Negative OBR --Observed Behavior Report, a minor infraction-- from Lt. Segrest advising that Officer Clemons and Officer Davis had violated an order by riding in separate vehicles to the City Lot. Neither Officer Clemons nor Officer Davis were aware of this order. Lt. Segrest never told Officer Davis or Officer Clemons to ride together to the City Lot. Prior to this alleged infraction, the TACT Unit had never ridden together in pairs in the same vehicle going to the city lot for security detail.

98. Officer Clemons believes this Negative OBR is part of the ongoing illegal treatment, harassment, discrimination and retaliation.

99. On January 25, 2016 Officer Clemons was told to stay after roll call to speak with Lt. Segrest concerning why Officer Clemons had not responded to an email that Lt. Segrest sent to Officer Clemons when Officer Clemons was not at work. The email was sent when Officer Clemons was at school. Officer Clemons did not see or review this email when he was away at school. Once Officer Clemons saw the email, he responded.

100. Officer Clemons was on personal leave for school. The leave had been approved.

101. Officer Clemons believes this conduct by Lt. Segrest is part of the ongoing illegal treatment, harassment, discrimination and retaliation.

102. On or about January 25, 2016 the TACT Unit executed a search warrant at Holmes Road in the Tillman Station. When Lt. Hulseley observed that Officer Clemons was going to be in the lineup for executing the search warrant, Lt. Hulseley directed and ordered Officer Paul Hutchison to remove Officer Clemons from the lineup and put on Officer Clemons on containment — the outside of the premises.

103. Lt. Hulseley told Officer Paul Hutchison in a sarcastic manner that Officer Clemons has “stress” and doesn’t need to be in the lineup.

104. Officer Hutchison told Officer Clemons about his removal from the lineup and about the comments from Lt. Hulseley. This made Officer Clemons feel distraught, humiliated, embarrassed and upset. Officer Clemons has been on the TACT Unit for 6 years and has met or exceeded the qualifications that are required of him to perform his duties.

105. Officer Clemons believes this conduct by Lt. Hulseley is part of the ongoing illegal treatment, harassment, discrimination and retaliation.

106. Officer Clemons filed internal EEO Complaints with his employer on June 10, 2015, August 3, 2015 and January 26, 2016.

107. Officer Clemons filed charges of discrimination with the EEOC against Defendants on the basis of sex, male, same-sex stereotype, sexual orientation, religion, and ADAAA discrimination, failure to accommodate and retaliation. Officer Clemons first Charge was on February 9, 2015, amended March 12, 2015.

108. Officer Clemons has a right to sue in connection with this EEOC filing which is attached as Exhibit A to this Complaint.

109. Officer Clemons filed another EEOC Charge on May 6, 2015 for retaliation by the Defendants because he had filed the previous EEOC Charge of discrimination based on “disability, sexual orientation and religion.”

110. Officer Clemons has a right to sue in connection with this May 6, 2015 filing and is attaching it as Exhibit B.

111. Plaintiff received his Notice of Suit Rights from the EEOC regarding his EEOC Charge Nos. 490-2015-01390 and 490-2015-00854 alleging disability, sex, (sexual orientation, sex stereotyping, and harassment) religion, and retaliation discrimination, mailed on February 11, 2016, within three (3) days from mailing. This lawsuit is timely filed within 90 days after Plaintiff received this notice.

112. As a result of the events described herein, Officer Clemons has suffered economic damages, and has suffered other harm including, humiliation, embarrassment, pain and emotional distress and loss of enjoyment of life. Officer Clemons has also suffered damage to his professional reputation.

113. At all times relevant to the events described herein, the actions of Defendants through its employees were intentional, willful, and/or done with reckless indifference.

## CAUSES OF ACTION

### Count I

#### **Discrimination in violation of Title VII of the Civil Rights Act of 1964**

114. Plaintiff incorporates all the foregoing paragraphs above as if fully set forth herein, and alleges that:

115. Plaintiff is a member of a protected class covered by Title VII, 42 U.S.C. sec. 2000e, *et seq.*

116. The harassing and discriminatory actions, conduct and/or omissions directed by Defendants through its employees were motivated by Officer Clemons' sex (male) in that sexual orientation discrimination encompasses treating an employee less favorably because of his sex (in that Officer Clemons did not conform to sex stereotypes and norms), and that the actions and conduct directed by Defendants through its employees whereby Officer Clemons was treated less favorably because the other employees and his supervisors objected to Officer Clemons having romantic and sexual association with a male partner.

117. Plaintiff engaged in a protected activity, including that the complained about being discriminated against due to his sex (male) and opposed unlawful practices of the Defendants.

118. Defendants through its agents, representatives and employees, intentionally willfully and knowingly affected the terms and conditions of Plaintiff's employment and engaged in unlawful sex discrimination, sex stereotyping/sexual orientation discrimination,

harassment and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et. seq.*

119. Defendants through its agents, representatives and employees, engaged in actions and omissions constituting unlawful religious discrimination, hostile work environment, harassment and retaliation (as Plaintiff engaged in a protected activity) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et. seq.*

120. As a direct and proximate result of Defendants' unlawful discriminatory, retaliatory and harassing conduct against Plaintiff, and violations of Plaintiff's federally and Constitutionally protected rights, Officer Clemons has suffered harm, including but not limited to lost wages, benefits, and damage to his reputation, embarrassment, humiliation, pain and emotional distress and loss of enjoyment of life.

## **Count II**

### **Violations of the Fourteenth Amendment of the U.S. Constitution and local ordinance**

121. Plaintiff incorporates all the foregoing paragraphs above as if fully set forth herein, and alleges that:

122. The actions and omissions by Defendants through its agents, representatives and employees, under color of law affected the terms and conditions of Plaintiff's employment and constitute unlawful sex discrimination, sex stereotyping/sexual orientation discrimination, harassment, religious and disability discrimination and retaliation in violation of Memphis Tennessee Code of Ordinances Section 3-8-6, which provides, "There shall be no discrimination in city employment of personnel because of religion... sex...disability, sexual orientation, gender identity or other non-merit factors...."

123. The effect of the actions, conduct and/or omissions deprived Officer Clemons of his liberty interests and the equal protection of the laws and adversely affected the terms and conditions of his employment.

124. The acts and omission by Defendants through its agents, representatives and employees, under color of law of constitute sex discrimination, sex stereotyping/sexual orientation discrimination, and harassment and are unlawful and interfere with Officer Clemons' protected liberty interests under the Due Process Clause of the Fourteenth Amendment; and interfere with his right to the equal protection of the law as guaranteed by the Equal Protection Clause of the Fourteenth Amendment. All of these Constitutional claims are made actionable against Defendants by 42 U.S.C. Section 1983.

125. As a direct and proximate result of Defendants unlawful discriminatory, retaliatory and harassing conduct against Plaintiff, and as a direct and proximate result of the violations of Plaintiff's federally and Constitutionally protected rights, Officer Clemons has suffered harm including but not limited to lost wages, benefits, and damage to his reputation, embarrassment, humiliation, pain and emotional distress and loss of enjoyment of life.

### **Count III**

#### **Discrimination in violation of the Americans with Disabilities Act and as Amended**

126. Plaintiff incorporates all the foregoing paragraphs above as if fully set forth herein, and alleges that:

127. The actions and omissions (intentional, willful and knowing) by Defendants, through its agents, representatives and employees, constitute unlawful discrimination and/or retaliation against Plaintiff in the terms and conditions of his employment based upon his medical condition (on the basis of his disability and failure to accommodate), all in violation of

the Americans with Disabilities Act of 1990, as amended (ADA and ADAAA), 42 U.S.C. §12117 *et seq.*

128. Plaintiff seeks injunctive relief to remedy the alleged wrongdoings on the basis that he has no adequate or complete remedy at law to redress the discriminatory practices of Defendants.

129. As a direct and proximate result of Defendants unlawful discriminatory, retaliatory and harassing conduct against Plaintiff, and as a direct and proximate result of the violations of Plaintiff's federally and Constitutionally protected rights, Officer Clemons has suffered harm including but not limited to lost wages, benefits, and damage to his reputation, embarrassment, humiliation, pain and emotional distress and loss of enjoyment of life.

#### **PRAYER FOR RELIEF**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff prays that the Court enter a judgment in his favor against the Defendants following a jury verdict in his favor and that the following relief be granted:

1. A permanent injunction against the Defendants prohibiting any future discriminatory practices as there is no adequate or complete remedy at law to redress the discrimination, retaliation and harassment;
2. An Order to Defendants to conduct training concerning the prevention of discriminatory practices based upon sex and sexual orientation; and other equitable relief as may be appropriate;
3. Backpay, lost benefits and other pecuniary and economic losses caused by the Defendants unlawful conduct;



4. Compensatory damages and losses in an amount to be determined at trial, but not less than \$300,000.00.
5. All reasonable attorneys' fees, costs, pre-judgment and post-judgment interest; and
6. Such further relief as is deemed appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully Submitted,

HOLLAND & ASSOCIATES, PC

*s/Maureen T. Holland, Esq. #15202*

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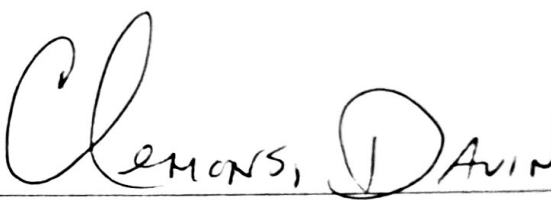
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**DECLARATION OF DAVIN CLEMONS**

I, Davin Clemons, in accordance with 28 U.S.C. Section 1746, declare under penalty of perjury that the facts in the foregoing Complaint are true and correct.

Executed on 12 day of May, 2016.

  
Davin Clemons