

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT  
Case Type: 7 - Employment

Daniel Lowell Benson,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

**SUMMONS**Michael D. Scott, in his individual and  
official capacities, and City of Eagan,

Defendants.

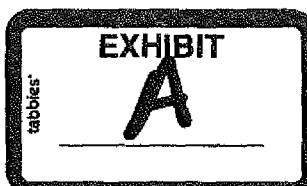
**THIS SUMMONS IS DIRECTED TO: DEFENDANTS ABOVE-NAMED**

**1. YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

**2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

Paul Applebaum (0223098)  
**APPLEBAUM LAW FIRM**  
First National Bank Building  
332 Minnesota Street, Suite W-1610  
St. Paul, Minnesota 55101  
PH: (651) 222-2999  
FAX: (651) 223-5179  
paul@applebaumlawfirm.com

or



Scott W. Swanson (0241283)  
**ATTORNEY-AT-LAW**  
220 Exchange Building  
26 Exchange Street East  
St. Paul, MN 55101  
PH: (651) 338-6551  
FAX: (651) 292-9583  
scott.swanson.esq@gmail.com

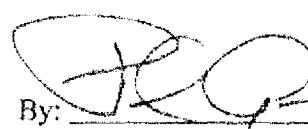
**3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

**4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

**5. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

**6. ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: April 6, 2017

By: 

Paul Applebaum (0223098)

**APPLEBAUM LAW FIRM**

First National Bank Building

332 Minnesota Street, Suite W-1610

St. Paul, Minnesota 55101

PH: (651) 222-2999

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St. Paul, MN 55101

PH: (651) 338-6551

FAX: (651) 292-9583

[scott.swanson.esq@gmail.com](mailto:scott.swanson.esq@gmail.com)

*Attorneys for Plaintiff*

STATE OF MINNESOTA

DISTRICT COURT

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FIRST JUDICIAL DISTRICT  
Case Type: 7 - Employment

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Daniel Lowell Benson,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

Michael D. Scott, in his individual and  
official capacities, and City of Eagan,

**COMPLAINT AND JURY  
DEMAND**

Defendants.

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Plaintiff, Daniel Lowell Benson, for his complaint against the Defendants, states and alleges  
as follows:

1. This is an action at law pursuant to the Minnesota Human Rights Act and 42 U.S.C. 1983 and 1988 for damages sustained by Plaintiff as a result of the violations by Defendants of Plaintiff's clearly established right to be free from discrimination based upon his sexual orientation, which are secured to him under the laws and Constitution of the United States and Minnesota.

**PARTIES**

2. At all times relevant, Plaintiff Daniel Lowell Benson ("Benson") was and is a citizen of the United States of America and of the State of Minnesota, County of Dakota, and City of Eagan. He is of full age.

3. At all times material to this complaint, Defendant Michael D. Scott ("Scott") was a duly appointed and acting Chief of the Fire Department of the City of Eagan, and was acting under

color law and under color of his official capacity. To the extent applicable under state law, Scott was the servant, agent, and employee of the City of Eagan, so that his acts are imputed to the City.

4. Benson sues Scott in his individual and official capacities.

5. Upon information and belief, Scott is a resident of the City of Cannon Falls, Minnesota.

6. At all times relevant, the City of Eagan was and is a duly incorporated municipal corporation and the employer and principal of Eagan Fire Chief Scott.

#### JURISDICTION AND VENUE

7. Plaintiff brings this action pursuant to the Fifth and Fourteenth Amendments to the Constitution of the United States, Article I § 3, § 7 and § 10 of the Constitution of the State of Minnesota, which confer upon this court jurisdiction as to all claims.

8. Because all of the facts complained of arose in the City of Eagan, this action properly lies in Dakota County, Minnesota.

#### FACTUAL ALLEGATIONS

9. Benson became a firefighter with the Eagan Fire Department nearly 18 years ago. Over time, he obtained a "life-saving award" and moved up in status within the fire department. Until recently, and for several years before that, Benson was appointed to and held the position of Battalion Chief.

10. As both a firefighter and battalion chief, Benson performed with distinction.

11. In his position as Battalion Chief, Benson received pay that consisted of a monthly stipend, call pay, and training pay. He also regularly contributed to a pension plan established by the Eagan fire department.

12. For most of his adult life, Benson kept his sexual orientation private within the Eagan fire department, where he did not openly come out and broadcast that he was gay. In fact, until recently, he does not ever remember telling anyone in the fire department that he was gay or that he was married to another man.

13. Sometime in November 2016, Benson and other officers were informed by Scott that they would all have to re-apply to their positions.

14. At that meeting where he was told he would have to re-apply for his position, Benson was asked about whether he had a spouse or significant other. In response, Benson disclosed to the department, including Scott, that he was married to "Greg" and that they were acting as fathers to a son, as well as hosted 2 exchange students whom they considered to be sons.

15. During this re-application process, which in reality was just an obvious ruse by Defendant Scott, Benson was essentially "outed" against his will. It was then known at the Eagan fire department that Benson was a gay man.

16. Shortly after the re-application process, Benson was informed at a meeting with Chief Scott that he was being removed, or not reappointed, as battalion chief. Instead, he was asked to remain in the department as a regular, on-call firefighter, which was several levels below that of battalion chief.

17. Scott gave several "reasons" for his decision not to re-appoint Benson as Battalion

Chief, which Benson rebutted, in writing to Scott. In that rebuttal, Benson complained about having been wrongfully "outed" and accused Scott of having taken the action against him based upon his sexual orientation. Scott later wrote Benson and reiterated that an on-call firefighter position was open for him.

18. Upon information and belief, Benson's position as battalion chief has been filled by a firefighter who is heterosexual, who is either married to or dating a female, and who is less experienced and less qualified for the position than was Benson.

19. After Benson was demoted from battalion chief to on-call firefighter, no other ranks were re-interviewed, nor were any ranks that were interviewed or re-applied similarly demoted.

20. Based upon the timing of his being "outed" and the pre-textual reasons given for his demotion from battalion chief to on-call firefighter, it is clear that although the Eagan fire department may employ gay "black-hat" firefighters, Defendant Scott, as chief, will not consider them for leadership positions, as evidenced by his firing Benson, a gay man, as a battalion chief.

21. In order to continue his lifelong dream of being a firefighter, Benson will and must accept the on-call firefighter position.

22. As a result of the demotion from battalion chief to on-call firefighter, Benson will suffer lost pay and a diminution of his benefits, including his pension.

23. As a result of the demotion from battalion chief to on-call firefighter, which perpetuates a discriminatory attitude that gay persons are second-class citizens in the Eagan fire department, Benson will further suffer embarrassment, humiliation, and mental and emotional anguish.

**COUNT 1****SCOTT'S VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS**

Benson re-alleges paragraphs 1 – 23 as if fully stated herein and further states and alleges:

24. The sine qua non of gender stereotypes is that all men should form intimate relationships only with women, and all women should form intimate relationships only with men.

25. Benson failed to act and appear according to Scott's expectations defined by gender, which were that his firemen and department officers in particular, e.g., a battalion chief, must be "manly" men, who are attracted to and date or marry only women, and that marrying a woman (and not another man) is an essential part of being a man.

26. By having married another man, and presumably engaging in all the activities and customs that relationship necessarily entails, Benson did not conform to Scott's gender stereotype with which he associated the firefighters under his supervision and at the Eagan Fire Department:

27. Scott removed Benson from, or did not re-appoint Benson to, his position as battalion chief because of the gender stereotypes Scott held and Benson's non-conformity with those.

28. Scott would not have taken the adverse action against Benson in his employment with the Eagan Fire Department if Benson, a man, was dating or seeing a woman, instead of dating or marrying another man.

29. By his actions, Scott acted outside the scope of his jurisdiction and without authorization of law, and acted willfully, knowingly, and purposefully with specific intent to deprive Benson of his right to freedom from gender and sexual orientation discrimination in his employment. Benson's rights to equal protection in this regard are secured to him by the Fifth and Fourteenth

Amendments to the Constitution of the United States, the laws and statutes of the United States, as well as the constitution and laws of the state of Minnesota.

30. As a direct and proximate result of Scott's gender discrimination, Benson has suffered and will suffer mental and emotional anguish, embarrassment and humiliation. Benson has also suffered pecuniary loss, the exact amount of which will be proven at trial.

Benson demands relief as set forth below.

**COUNT 2**

**EAGAN'S VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS (*MONELL CLAIM*)**

Benson re-alleges paragraphs 1 – 30 as if fully stated herein and further states and alleges:

31. Upon information and belief, there is a long-standing policy, practice, or custom of the Eagan fire department, as set by and implemented by its fire chief, Defendant Scott, to exclude gay persons from leadership positions within the department.

32. Defendant Scott, as fire chief for the Eagan fire department, is a final policy maker for the City of Eagan under the law.

33. At all times relevant, Benson had kept his sexual orientation private in the Eagan fire department workplace.

34. As a result of keeping his sexual orientation private in the workplace, Benson was able to move up through the Eagan fire department's officer ranks, most recently as Battalion Chief.

35. In November 2016, Benson was "outed" by the department when he had to disclose that he was married to another man. His sexual orientation within the Eagan fire department workplace was no longer private.

36. In less than a month, on November 28, 2016, and for pre-textual reasons, Benson was informed by Scott that he would not be re-appointed to his battalion chief position in the Eagan fire department.

37. Once it became known to Scott, Eagan's fire chief, that Benson was gay, the policy, procedure or custom that the officer ranks would not be populated by a gay man in the Eagan fire department was implemented by Scott, as Benson was effectively fired as a battalion chief and demoted to the lowest rank, or "black-hat" firefighter.

38. As a direct and proximate result of the aforesaid policy, practice or custom of the Defendant City of Eagan and its fire department, and further as a direct and proximate result of Defendant Scott's implementation of the same, Benson suffered wrongful, illegal, and discriminatory action against him in his employment by the Eagan fire department in violation of his civil rights, all of which caused him compensable damages.

Benson demands relief as set forth below.

### **COUNT 3**

#### **DISCRIMINATION UNDER STATE LAW**

Benson re-alleges paragraphs 1 -- 38 as if fully stated herein and further states and alleges:

39. By virtue of his sexual orientation, Benson is part of a class of employees protected by Minnesota's anti-discrimination laws.

40. At all times relevant, Benson met and/or exceeded the skills, qualifications, and

experience necessary for the battalion chief position he held, and further his job performance met or exceeded the requirements of his position.

41. Despite his qualifications, experience, and performance, Defendants effectively "fired" Benson from battalion chief and otherwise demoted him.

42. Upon information and belief, Benson was replaced by someone not gay, who was not as experienced or qualified as Benson.

43. Defendants' adverse employment action against Benson, including but not limited to that outlined above, was motivated by Benson's sexual orientation, which constitutes illegal discrimination in violation of the Minnesota Human Rights Act, Minn. Stat. 363A.01, *et seq.*

44. As a direct and proximate result of Defendants' illegal discrimination against him, Benson has suffered and continues to suffer mental or emotional anguish, pain and suffering, as well as pecuniary loss and damage, including without limitation lost wages and earnings, benefits, and out-of-pocket expense.

Benson demands relief as set forth below.

**WHEREFORE**, Plaintiff Daniel Benson prays for judgment as follows:

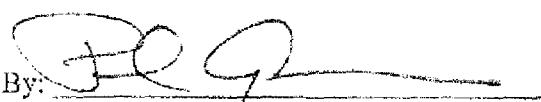
- a. awarding Plaintiff compensatory damages in excess of \$50,000.00, the exact amount to be determined at trial;
- b. awarding Plaintiff punitive damages against Defendant Scott under Count 1, as a matter of federal common law, *Smith v. Wade*, 461 U.S. 30 (1983), in an amount to be determined at trial;
- c. awarding Plaintiff punitive damages on Count 2, not to exceed \$8500.00, pursuant to

applicable law, including Minn. Stat. § 363A.29, subd. 4;

- d. awarding Plaintiff treble damages pursuant to applicable law, including Minn. Stat. § 363A.29, subd. 4;
- e. awarding Plaintiff his costs and disbursements, including reasonable attorney's fees, as may be allowed by law, including but not limited to 42 U.S.C. Sec. 1988;
- f. granting Plaintiff such other relief as the Court may deem just and equitable.

**PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL APPLICABLE COUNTS.**

Dated: April 6, 2017

By: 

Paul Applebaum (0223098)

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St. Paul, Minnesota 55101

PH: (651) 222-2999

FAX: (651) 223-5179

paul@applebaumlawfirm.com

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**ATTORNEY-AT-LAW**

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St. Paul, MN 55101

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scott.swanson.esq@gmail.com

*Attorneys for Plaintiff*

**ACKNOWLEDGMENT REQUIRED BY  
MINNESOTA STATUTE SECTION 549.211**

The parties represented by the undersigned hereby acknowledge that pursuant to Minn. Stat. Section 549.211, monetary and/or non-monetary sanctions may be imposed for claims made in violation of that statute.

Dated: April 6, 2017

By:   
Paul Applebaum (0223098)