

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DAMON EASTER,

Plaintiff,

v.

CITY OF AUSTIN,

Defendant.

§
§
§
§
§
§
§
§
§
§

C.A. No. 1:18-cv-948

PLAINTIFF’S ORIGINAL COMPLAINT

INTRODUCTION

The City of Austin has treated one of the hardest working, most experienced fire cadets to come through its fire academy poorly for one reason and one reason alone – he is African American. Despite entering into a consent decree allowing minority cadets to enter into the fire academy, the fire department has found new methods and techniques to discriminate and retaliate against the same individuals the consent decree was put in place to protect. It has denied this fire cadet compensation, steadfastly put up road blocks in an attempt to make his academy experience so difficult that he would quit, and ultimately has deterred his dream of public service in the fire department.

PARTIES

1. Plaintiff, Damon Easter (“Plaintiff” or “Easter”), is an individual who resides in Austin, Travis County, Texas.

2. Defendant, City of Austin (“Defendant” or the “City”), is a governmental body created pursuant to the laws of the State of Texas and located within this judicial district.

Defendant may be served by serving the City of Austin Mayor, Steve Adler, at 301 W. 2nd St, Austin, Texas 78701.

3. Defendant is a “person” within the meaning of 42 U.S.C. § 2000e(a), and an “employer,” within the meaning of 42 U.S.C. § 2000e(b).

4. Defendant maintains a fire department, the Austin Fire Department (“AFD”), and employs entry-level firefighters.

5. Subject to the requirements of Texas Local Government Code Chapter 143, Defendant is responsible for establishing the terms, conditions and other practices that relate to the employment of entry-level firefighters.

JURISDICTION & VENUE

6. This case is brought under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”). This court has jurisdiction of this case according to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

7. The unlawful employment practices described herein were committed in the Western District of Texas, and, on information and belief, all records relevant to the causes of action alleged in this complaint are kept in the Western District of Texas. Venue is invoked pursuant to 28 U.S.C. § 1391.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Easter timely filed a charge of discrimination (EEOC Charge No. 451-207-01391) (the “Charge”) with the Equal Employment Opportunity Commission (“EEOC”) to challenge the discrimination suffered on the basis of his race and retaliation for his engagement in a protected activity. A “Notice of Right to Sue” was issued and Easter timely files this lawsuit to vindicate his rights. As such, Easter has exhausted all applicable administrative remedies.

FACTUAL BACKGROUND

9. Prior to Easter's employment with Defendant, Defendant entered into a Consent Decree (the "Decree") with the United States of America on November 7, 2014. In relevant part, the Decree addressed Defendant's policies and procedures that had a disparate impact on minority prospective entry-level firefighters.

10. Specifically, Defendant engaged in unlawful employment practices by utilizing selection procedures that had the effect of depriving or tending to deprive African Americans and Hispanics of employment opportunities because of their race and/or national origin in violation of Title VII.

11. Under the Decree, Defendant was required to adopt a new, lawful selection process for use in hiring entry-level fire cadets. The Decree further allowed for previous Claimants who demonstrated that they were presently qualified for the position of entry-level cadet would be eligible for priority appointments. The Decree provided retroactive seniority to Claimants who received priority appointments and subsequently completed the six-month cadet training academy (the "Academy").

12. Easter was a previous Claimant under the Decree who was allowed to enter into the six-month cadet training academy as a priority appointee. In October 2016, Easter left his position as a fire fighter in Cedar Park, Texas, to join the Cadet Class 120 at the Austin Fire Department.

13. At the onset of Cadet Class 120, Easter began to notice that he was not receiving the same treatment in comparison to his non-African American cadets in the Academy. Specifically, Easter was receiving negative performance appraisals and test scores whereas his

non-African American counterparts were not for similar performance. After noticing the disparate treatment in his performance assessments, Easter immediately complained.

14. First, Easter complained to Team Leader Xochito Hernandez. Following Easter's protest of the perceived disparate treatment, Hernandez communicated to him that, but for the Decree, Easter would not have been selected for the Academy. Hernandez further labeled Easter as a "trouble maker" and informed him that attempting to escalate his complaints of discrimination would be futile.

15. Following Easter's complaints to Hernandez, Easter continued to master the Academy's objective assessments and benchmarks. Disregarding Easter's stellar performance, Hernandez and her fellow management officials embarked on a continuous crusade against Easter by subjecting him to unequal terms of employment including, but not limited to, issuing unwarranted negative performance appraisals to Easter. This crusade was in violation of Title VII for the mere fact that the performance assessments and appraisals constantly lacked equity towards Easter because Hernandez and other management officials scored Easter's non-African American counterparts higher for similar performances. For example, non-African American Cadets William Montgomery and Johnson historically performed objectively worse on similar academy assessments but were not subjected to the same adverse employment actions as Easter. They were not terminated for a "pattern of performance" even though their records would suggest otherwise.

16. Ultimately, Easter was terminated on November 22, 2016. Defendant cited the reason for Easter's termination was solely the result of a "pattern of poor performance." This vague, overly broad reasoning provided by Defendant is simply pretext to mask its true discriminatory and retaliatory motivation in terminating Easter's employment. Even more

disturbing, Defendant has a well-established policy of placing employees with identified performance deficiencies on “performance improvement plan” which has been the common practice with non-African American employees prior to terminating employment. However, Easter was never placed on this plan to remedy the alleged performance issues.

17. Further, Defendant has provided non-African American entry-level firefighters the ability to enter a subsequent cadet class if they were unsuccessful in a preceding cadet class. Unsurprisingly, Easter was not afforded this benefit. Instead, he was ousted from the Academy – the place he was told from the beginning he was not welcomed at – preventing him from achieving his dream and benefiting from the retroactive seniority afforded to him by the Decree.

CAUSES OF ACTION

18. Title VII Race Discrimination – Defendant’s conduct violates Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race. Based on the above facts, Defendant violated Title VII of the Civil Rights Act of 1964, as amended, when it subjected Easter to disparate treatment because of his race, African American.

19. Title VII Retaliation – Defendant’s conduct also violates Title VII’s prohibition on retaliation against a person who complains of discrimination. Based on the above facts, Defendant violated Title VII of the Civil Rights Act of 1964, as amended, when it retaliated against Easter for engaging in a protected activity – raising complaints of discrimination.

DAMAGES

20. The damages suffered by Easter include lost wages as well as compensatory damages for the injuries he suffered at the hands of Defendant, including but not limited to, his mental anguish.

JURY DEMAND

21. Easter hereby requests a jury trial for all claims.

RELIEF REQUESTED

22. Plaintiff asks this Court to enter a judgment:

a. Declaring that the acts and practices described in this Complaint are in violation of Title VII;

b. Enjoining and permanently restraining these violations of Title VII;

c. Directing Defendant to pay Plaintiff actual and compensatory damages that he suffered, past and future;

d. Awarding Plaintiff pre-judgment interest on the amounts owed at the maximum rate allowed by law;

e. Awarding Plaintiff the costs of this action, together with reasonable attorneys' fees and expert witness fees;

f. Awarding Plaintiff post-judgment interest on the amount of judgment until paid at the maximum rate allowed by law; and

g. Awarding Plaintiff such other relief, legal or equitable, as may be warranted.

Respectfully Submitted,

/s/ Chukwudi Egbunu
Chukwudi Egbunu*

State Bar No.: 24081838

Federal ID No.: 2365112

LAW OFFICE OF CHUKWUDI EGBUNU

4141 Southwest Freeway, Suite 425

Houston, Texas 77027

713.635.9488 (Telephone)

832.426.5792 (Facsimile)

chuck@celawoffice.com

*** ATTORNEY IN CHARGE FOR PLAINTIFF
DAMON EASTER**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Damon Easter

(b) County of Residence of First Listed Plaintiff TRAVIS COUNTY, TEXAS (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Chukwudi Egbuonu, Law Office of Chukwudi Egbuonu, 4141 Southwest Freeway, Suite 425, Houston, Texas, 77027; (713) 635-9488

DEFENDANTS

The City of Austin

County of Residence of First Listed Defendant TRAVIS COUNTY, TEXAS (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 2000e

Brief description of cause:

Employment discrimination and retaliation.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Honorable Lee Yeakel

DOCKET NUMBER 1:14-cv-533

DATE 11/2/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Chukwudi Egbuonu

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.