

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

LAMARCUS WELLS,

Plaintiff,

vs.

CITY OF AUSTIN, and JUSTIN
NEWSOM, individually and in his official
capacities,

Defendants.

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C.A. NO. 1:19-cv-1140

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LAMARCUS WELLS (hereinafter sometimes referred as “Plaintiff” or “Mr. Wells”) complains of Defendants CITY OF AUSTIN, and JUSTIN NEWSOM, (hereinafter collectively referred to as “Defendants”) and would show the Court as follows:

INTRODUCTION

- 1. This is an action by Plaintiff against his employer for racial discrimination, in violation of the laws of the United States, including 42 U.S.C. §1981, 42 U.S.C. §1983, and the Fourteenth Amendment, as well as defamation and defamation per se. Plaintiff seeks damages, attorneys’ fees, expert fees, taxable costs of the court, prejudgment and post-judgment interest.

PARTIES

- 2. Plaintiff Lamarcus Wells is a resident of Travis County, Texas.
- 3. Defendant City of Austin is a municipal corporation located in Travis County, Texas, and is a home rule city under the provisions of Article XI, Section 5 of the Constitution of the State of Texas, operating pursuant to the constitution and laws of the State of Texas. It

operates the Austin Police Department, a local law enforcement entity. The City can be served with process through the city's clerk, Jannette Goodall, at 301 W. 2nd Street, Austin, Texas 78701.

4. Defendant Justin Newsom is the former Assistant Chief of the City of Austin Police Department, and can be served with process at 609 Yosemite Trail Taylor, Texas 76574.

JURISDICTION AND VENUE

5. This is a civil action seeking redress for violation of rights guaranteed to the Plaintiff pursuant to 42 U.S.C. §1981 (through or under 42 U.S.C. §1983, due to the violation of Plaintiff's Fourteenth Amendment rights) in accordance with these statutes' provisions against discrimination. More specifically, this action seeks monetary damages and all other appropriate relief to which Plaintiff is entitled under the law on account of discrimination on the basis under 42 U.S.C. §1981 (through or under 42 U.S.C. §1983, due to the violation of Plaintiff's Fourteenth Amendment rights).
6. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §1367.
7. This action lies in the United States District Court for the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1391(b), as the events giving rise to Plaintiff's claims occurred substantially in Travis County, Texas.

CONDITIONS PRECEDENT

8. All conditions precedent have been performed or have occurred.

FACTS

9. Plaintiff Lamarcus Wells was hired by the City of Austin Police Department as a cadet on or about May 29, 2007 and has been continuously employed since that time. After successfully completing the Austin Police Department Training Academy, Mr. Wells

became a Police Officer on or about January 4, 2008. Mr. Wells became a Police Corporal Detective on or about February 5, 2017.

10. The City of Austin Police Department has a pattern and practice of discriminating against African Americans, including Mr. Wells, through its policies or customs. Specifically, but not limited to, the City of Austin Police Department systemically denies African American employees transfers to highly desired, objectively prestigious positions in certain units.
11. Transfers to these highly desired positions provide more diversified, in-depth knowledge and experience, making candidates more competitive and eligible for higher level positions and open up more job opportunities. Most, if not all, of the highly desired, objectively prestigious positions also include benefits such as a take-home vehicle, day shift hours, additional hours through overtime hours, comp hours, and/or on-call hours. While the positions have immediate benefits, the long-term benefits of the transfers are significantly far-reaching and more impactful.
12. As a result of Defendants' policy or custom of denying African American employees transfers to highly desired, objectively prestigious positions in certain units, the City of Austin Police Department currently has no African American Commanders, Assistant Chiefs, Chief of Staff, or Chief of Police.
13. The City of Austin Police Department implements inconsistent metrics, requirements, and selection processes for these positions. In years past, unit members shared inside board interview information with white applicants, which provides the white applicants an advantage in the selection process but excluded such information from African American applicants.

14. During his employment with the City of Austin Police Department, Mr. Wells applied for multiple transfers to positions within several different units. Mr. Wells' applications include, but are not limited to, the following:

- Between 2010 and 2013, approximately, he submitted two transfer requests to the career criminal unit as an officer. Mr. Wells' application was denied both times.
- Between 2013 and 2017 he submitted a transfer request to the gang unit. Mr. Wells' application was denied.
- On or about 05/11/2017 he submitted a transfer request to the narcotics unit. Mr. Wells' application was denied.
- On or about 06/29/2017 he submitted a transfer request to the organized crime narcotics conspiracy unit. Mr. Wells' application was denied.
- On or about 07/29/2017 he submitted a transfer request to the child abuse unit. Mr. Wells' application was denied.
- On or about 09/25/2017 he submitted a transfer request to be a sex crimes detective. Mr. Wells' application was denied.
- On or about 11/13/2017 he submitted a transfer request to the criminal interdiction unit. Mr. Wells' application was denied.
- On or about 12/25/2017 he again submitted a transfer request to the organized crime narcotics unit. Mr. Wells' application was finally approved on or about mid-January of 2018.
- On or about 12/28/2017 he submitted a transfer request to the human trafficking unit. Mr. Wells' application was denied.

- On or about 1/6/2018 he again submitted a transfer request to the narcotics conspiracy unit. Mr. Wells' application was denied. Mr. Wells was selected for the organized crime narcotics unit prior to this application period closing.
15. On or about September of 2017, Mr. Wells complained to his supervisor Chandra Ervin that the denial of his transfer applications was due to racial discrimination.
 16. Mr. Wells was denied the immediate and long-term benefits of the transfers to highly desired positions for years. Mr. Wells was required to submit at least eleven (11) or more separate transfer applications over several years before his transfer application to the organized crime narcotics unit was finally approved on or about mid-January of 2018. Upon information and belief, no African American employees were selected for most, if not all, of the positions Mr. Wells applied for.
 17. Mr. Wells was qualified for all of the positions he applied for. He has strong performance reviews, was recommended by his supervisor for all of the positions, and holds advanced specialized training that Mr. Wells took on his own initiative.
 18. The denial of the transfers has negatively impacted Mr. Wells' career trajectory and has caused him to miss out on valuable professional opportunities and experiences.
 19. The City of Austin Police Department was not able to provide consistent, objective reasons to Mr. Wells for why he was not selected for any of the transfers prior to January of 2018. Most or all of the aforementioned units Mr. Wells requested transfers to lacked meaningful diversity.
 20. Upon information and belief, Assistant Police Chief Justin Newsom, during a special response team deployment, allegedly stated that Mr. Wells and Officer Keston Campbell, another African American, were "stupid fucking niggers."

21. Similarly, upon information and belief, Assistant Police Chief Newsom allegedly made other racist comments. These include:

- While advising that President Obama had landed in Austin, Assistant Police Chief Newsom allegedly stated “Negro One down.”
- Assistant Police Chief Newsom allegedly said councilwoman Ora Houston was, “a dumb nigger, but a nice lady.”
- When talking about former City of Austin Police Department Assistant Chief Frank Dixon, Assistant Police Chief Newsom allegedly said, “Frank is a nigger, but he is our nigger.”

22. Assistant Police Chief Newsom’s alleged racist comments have been highly publicized in the media. Mr. Wells was not aware of Assistant Chief Newsom’s alleged racist comments until on or about the time they were publicized in the media.

CAUSES OF ACTION
COUNT ONE- DISCRIMINATION UNDER 42 U.S.C. §1981
(through or under 42 U.S.C. §1983)

23. Plaintiff re-alleges and incorporates herein paragraphs 1-22.

24. 42 U.S.C. §1981 (through or under 42 U.S.C. §1983, due to the violation of Plaintiff’s Fourteenth Amendment rights) prohibits race discrimination in the making and enforcing of contracts, including the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges and conditions of the contractual relationship.

25. The City of Austin and Justin Newsom were acting under the color of law and are liable under 42 U.S.C. §1983.

26. At all times material to this complaint, Defendant Justin Newsom was a duly appointed and acting officer of the Austin Police Department.
27. Defendant Justin Newsom exercised de facto supervisory authority over the Plaintiff.
28. Defendants intentionally discriminated against Plaintiff because of his race in violation of 42 U.S.C. §1981 (through or under 42 U.S.C. §1983, due to violation of Plaintiff's Fourteenth Amendment rights) by unlawfully denying him equal protection under the law by denying him transfers to the positions as described above. Defendants filled most or all of said positions with employees outside of Plaintiff's protected class (African American). Defendants' deliberate conduct, through its policy or custom of denying prestigious, highly desired positions to African American employees, was the moving force behind and cause of the violation of Plaintiff's rights and Plaintiff's injuries.
29. The unlawful practices committed by Defendants were and are a direct cause of Plaintiff's damages, as more fully set forth below.

**COUNT TWO-DISCRIMINATION UNDER TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964**

30. Plaintiff intends to seek leave of Court to amend his Complaint to include claims under Title VII of the Civil Rights Act of 1964 after the proper administrative remedies have been exhausted. Plaintiff only seeks to advise the Court of his intent and is not currently pleading causes of action under Title VII.

COUNT THREE- DEFAMATION AND DEFAMATION PER SE

31. Plaintiff re-alleges and incorporates herein paragraphs 1-22.
32. Defendant Newsom, individually, has made false statements to others about Plaintiff and his work performance, which damaged Plaintiff's reputation in the community.

33. Defendant Newsom, individually, made these statements intentionally, recklessly, negligently, and/or maliciously, with the effect of injuring Plaintiff's hard-earned and well-deserved good name and reputation.
34. As a matter of law, the untrue remarks of Defendant Newsom, individually, exposed Plaintiff to ridicule, shame, and embarrassment.
35. Defendant Newsom's defamatory statements were the proximate cause of severe damages to Plaintiff, which he seeks as a result of his harm.

DAMAGES

36. As a result of Defendants' unlawful conduct, Plaintiff has suffered economic damages, including past and future lost income, back wages, interest on back pay and front pay, lost earnings in the past, lost benefits under the contract or employment relationship, and employment benefits in the past and future. Plaintiff has also incurred other actual damages as a result of Defendants' unlawful conduct, including but not limited to pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, and other pecuniary and non-pecuniary losses.
37. Defendants intentionally engaged in an unlawful employment practice by discriminating against Plaintiff. Plaintiff additionally bring suit for compensatory damages, including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, and other non-pecuniary losses.
38. The conduct committed by Defendants against Plaintiff is the type of conduct demonstrating malice or reckless indifference to the rights of the Plaintiff. Therefore,

Plaintiff additionally brings suit for punitive damages against Defendant Newsom. *See* 29 U.S.C. §621 *et seq.*; 42 U.S.C. §1981a.

ATTORNEYS' FEES AND EXPENSES

39. A prevailing party may recover reasonable attorneys' and experts' fees under 42 U.S.C. §1981. Plaintiff seeks all reasonable and necessary attorneys' fees in this case from Defendants, including preparation and trial of this lawsuit, post-trial, pre-appeal legal services, and any appeals. Plaintiff additionally brings suit for expert fees and all costs associated with the prosecution of this action.

JURY DEMAND

40. Plaintiff demands a trial by jury of all the issues and facts in this case and tenders herewith the requisite jury fee.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that:

- a. The Court assume jurisdiction of this cause;
- b. The Court award Plaintiff damages as specified above;
- c. The Court award Plaintiff's reasonable attorneys' and expert fees and costs;
- d. The Court award Plaintiff presumed and other damages for defamation and defamation per se;
- e. The Court award Plaintiffs pre- and post-judgment interest at the highest rates allowed.
- f. Plaintiff further prays for any such other relief as the Court may find proper, whether at law or in equity.

Respectfully submitted this November 22, 2019.

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