

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

<p>ANTHONY A. ALVERNAZ,</p> <p>Plaintiff,</p> <p>-v.-</p> <p>THE CITY OF ELMIRA, P. MICHAEL COLLINS, in his Official and Individual Capacities, and DANIEL J. MANDELL, in his Official and Individual Capacities,</p> <p>Defendants.</p>	<p>Civil Action No.: 6:26-cv-6018</p> <p>COMPLAINT</p> <p>DEMAND FOR JURY TRIAL</p>
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PRELIMINARY STATEMENT

1. This is an action for compensatory and punitive damages, and equitable and injunctive relief, to remedy the unlawful, discriminatory, and retaliatory conduct of Defendants, The City of Elmira (the "City"), City Manager P. Michael Collins ("Collins"), and Mayor Daniel J. Mandell ("Mandell"). Plaintiff Anthony A. Alvernaz, a decorated public servant who dedicated twenty-seven (27) years of his career to the City's Police Department and rose to the rank of Chief of Police, was subjected to a campaign of severe sexual harassment by Defendant Collins, and was ultimately terminated in retaliation for opposing Defendants' discriminatory hiring practices and for asserting his legally protected rights.
2. Throughout his employment, Plaintiff was forced to endure a hostile work environment created by Defendant Collins, who subjected Plaintiff to a barrage of unsolicited and offensive sexual advances, comments, and physical contact. This pervasive harassment included, among other things, Collins bragging about the size of his penis, telling Plaintiff he was the "best looking Chief," sending Plaintiff a photograph of himself in wet, skin-tight

underwear, and professing his "love" for Plaintiff just one week before orchestrating his termination.

3. Defendants' unlawful conduct culminated in January 2023, when Plaintiff advocated for the hiring of Montrel Sturgis, a qualified Black, disabled military veteran. In response, Defendant Collins expressed concern about hiring a disabled veteran who might claim disability benefits under New York State General Municipal Law §207-c, and threatened Plaintiff, warning that his professional life would become a "living hell" and that he would be "forced to quit" if he hired Mr. Sturgis. When Plaintiff refused to participate in this blatant discrimination and extended a conditional offer of employment to Mr. Sturgis, Defendants immediately retaliated by manufacturing a baseless investigation against Plaintiff, accusing him of insubordination, and forcing his termination on January 9, 2023. The job offer to Mr. Sturgis was rescinded the very next day.
4. Defendants' retaliation did not cease with Plaintiff's termination. After Plaintiff, through counsel, put the City on notice of its unlawful conduct, Defendants weaponized their power to inflict further harm by wrongfully denying Plaintiff his earned and accrued terminal leave pay and by contesting his claim for unemployment benefits, all in direct retaliation for Plaintiff seeking to vindicate his rights.
5. By this action, Plaintiff seeks relief for Defendants' violations of his rights under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), and the New York State Human Rights Law, N.Y. Exec. Law § 296, et seq. ("NYSHRL").

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) because Plaintiff's claims arise under the laws of the United States, specifically USERRA, 38 U.S.C. § 4301, et seq. Jurisdiction is further conferred by 38 U.S.C. § 4323(b). The Court has supplemental jurisdiction over Plaintiff's related claims arising under NYSHRL and New York Military Law, pursuant to 28 U.S.C. § 1367, as these claims are so related to the federal claims that they form part of the same case or controversy.
7. Venue is proper in the United States District Court for the Western District of New York pursuant to 28 U.S.C. § 1391(b) and 38 U.S.C. § 4323(c), because Defendant the City is a municipal entity located within this judicial district, the individual Defendants reside and/or are employed in this district, and a substantial part of the events, omissions, and unlawful employment practices giving rise to Plaintiff's claims occurred in this district, specifically in the City of Elmira, Chemung County, New York.

PARTIES

8. Plaintiff, ANTHONY A. ALVERNAZ, is an individual residing in the County of Chemung, State of New York. At all times relevant herein, Plaintiff was an "employee" of the City and is a covered individual within the meaning of USERRA, New York State Military Law, and NYSHRL.
9. Defendant, THE CITY OF ELMIRA (the "City"), is a municipal corporation duly organized and existing under the laws of the State of New York, with its principal place of business located at 317 E. Church Street, Elmira, New York 14901. The City is an "employer" within the meaning of USERRA and the NYSHRL.

10. Upon information and belief, at all times relevant herein, the City employed, supervised, and controlled Defendants Collins and Mandell and is responsible for their actions as alleged herein.
11. Defendant COLLINS, is, upon information and belief, an individual residing in the County of Chemung, State of New York. At all relevant times, Defendant Collins was employed by the City as its City Manager and acted as Plaintiff's direct supervisor with authority to direct Plaintiff's work, discipline Plaintiff, and effectuate his termination. Defendant Collins is sued in his individual and official capacities.
12. At all times relevant herein, Defendant Collins was an officer, employee, and/or agent of the City and was acting under color of state law in the course and scope of his duties and functions in engaging in the unlawful conduct described in this Complaint.
13. Defendant MANDELL is, upon information and belief, an individual residing in the County of Chemung, State of New York. At all relevant times, Defendant Mandell was the elected Mayor of the City. Defendant Mandell is sued in his individual and official capacities.
14. At all times relevant herein, Defendant Mandell was a government official responsible for establishing municipal policies and/or had supervisory authority over Plaintiff's employment. Upon information and belief, Defendant Mandell was aware of, permitted, and/or ratified the unlawful conduct of Defendant Collins.
15. At all times relevant herein, Defendant Mandell was an officer, employee, and/or agent of the City and was acting under color of state law in the course and scope of his duties and functions in engaging in the unlawful conduct described in this Complaint.

FACTUAL ALLEGATIONS

16. Plaintiff Anthony A. Alvernaz began his employment with the City of Elmira Police Department ("EPD") approximately twenty-seven (27) years ago.
17. Through dedication and meritorious service, Plaintiff rose through the ranks of the EPD, ultimately being appointed to the position of Chief of Police.
18. Prior to his unlawful termination, Plaintiff had an exemplary record and intended to continue his service for several more years to secure significant retirement benefits, including twelve (12) years of family health insurance.

1. Defendant Collins's Campaign of Sexual Harassment

19. Throughout his tenure as Chief of Police, Plaintiff was supervised by Defendant Collins, the City Manager. Defendant Collins had authority over key aspects of Plaintiff's employment, including discipline and termination.
20. In his capacity as Plaintiff's supervisor, Defendant Collins subjected Plaintiff to a continuous, severe, and pervasive pattern of unwelcome sexual harassment. This conduct included unsolicited sexual advances, propositions, inappropriate comments, and unwanted physical contact.
21. Defendant Collins's harassing conduct occurred both in person and electronically. For example, Defendant Collins:
 - a. Repeatedly bragged to Plaintiff about the size of his penis in private conversations;
 - b. Repeatedly told Plaintiff he was the "best looking Chief;"
 - c. On multiple occasions, invited Plaintiff to his house alone;

- d. Told Plaintiff he wished he could see him with his shirt off;
 - e. Would intentionally brush his hand or arm against Plaintiff's while talking to him; and
 - f. Caused Plaintiff to be sent a text message containing a photograph of Defendant Collins wearing only wet, skin-tight underwear.
22. On another occasion, while discussing a Black male candidate for a position, Defendant Collins asked Plaintiff, "Don't [black men] have big...." before trailing off and making a crude gesture toward his groin. Plaintiff found this comment to be both racist and sexually inappropriate.
23. In or around January 2022, Defendant Collins sent Plaintiff a text message professing his "love" for him.
24. Defendant Collins's conduct was unsolicited, unwelcome, and offensive to Plaintiff, causing him to feel deeply uncomfortable. Plaintiff was afraid to report Defendant Collins's behavior due to embarrassment and a well-founded fear of retaliation and the loss of his job.
25. Upon information and belief, Defendant Mandell was aware of but permitted and condoned Defendant Collins's harassing behavior.

2. Plaintiff's Opposition to Discriminatory Hiring Practices

26. In or around December 2022, an individual named Montrel Sturgis applied for a position with the City's Police Department.
27. Mr. Sturgis was a qualified candidate for the position. He is also a Black male and a disabled military veteran.
28. Upon learning of Mr. Sturgis's candidacy, Defendant Collins began a campaign to prevent his hiring. Collins explicitly warned Plaintiff that his professional life would become a "living

hell" and that he would "be forced to quit" if he continued to advocate for Mr. Sturgis's hiring.

29. After Mr. Sturgis's interview, Defendant Collins queried the hiring panel whether he was the only person concerned that because Sturgis was a disabled veteran, he would immediately try to go on NY General Municipal Law §207-c disability benefits as soon as he was hired, and stated that Sturgis appeared to be proud to be taking money from the government in the form of veterans' benefits.

30. In response to Collins' comments, Plaintiff stood up in the meeting and protested, explaining that he believed Collins' comments may have violated Mr. Sturgis's rights.

31. Following the interview, Defendant Collins became physically menacing toward Plaintiff.

Collins grabbed Plaintiff by both shoulders, leaned in close, and reiterated his threat that others in the department would quit and that Plaintiff would be forced to quit if he hired Mr. Sturgis.

32. Despite Defendant Collins's overt threats and clear discriminatory animus toward Mr. Sturgis based on his race and veteran status, Plaintiff refused to participate in the unlawful hiring practices and continued to support Mr. Sturgis's candidacy.

33. Based on his qualifications and Plaintiff's advocacy, Mr. Sturgis was extended a conditional offer of employment.

3. Defendants' Retaliation and Plaintiff's Termination

34. Upon information and belief, at some point during Sturgis's candidacy, Defendant Collins initiated a pretextual investigation against Plaintiff. Subsequently, Plaintiff received a written

directive from Collins, informing him that he was under investigation for attending a police call that had occurred nearly a month prior.

35. The directive was highly unusual in that it contained no specific allegations of misconduct against Plaintiff. Plaintiff's repeated requests for clarification about the basis for the investigation were denied.
36. On January 9, 2023, while Plaintiff was on his designated lunch break, Defendant Collins sent Plaintiff a text message. Plaintiff did not see the text immediately. Approximately fifteen (15) minutes later, Collins sent a second text demanding a meeting.
37. Because Plaintiff did not immediately respond to a text message while on his lunch break, Defendant Collins accused Plaintiff of insubordination and issued a written order demanding Plaintiff meet with him at 2:00 p.m., a time for which they already had a regularly scheduled meeting.
38. During the 2:00 p.m. meeting on January 9, 2023, Defendants, through Defendant Collins, instructed Plaintiff to resign immediately or he would be terminated. The stated reasons were the vague, unsubstantiated investigation and the pretextual charge of "insubordination."
39. Plaintiff refused to resign. Plaintiff's twenty-seven-year career with the City was wrongfully terminated on January 9, 2023.
40. The very next day, on January 10, 2023, Defendant Collins personally called Mr. Sturgis and rescinded the City's offer of employment.

4. Post-Termination Retaliation

41. Following his unlawful termination, Plaintiff retained counsel to protect his legal rights. On January 23, 2023, Plaintiff's counsel sent a letter to the City detailing Defendants' unlawful conduct and Plaintiff's legal claims.

42. Directly after the City's receipt of this letter, Defendants engaged in further retaliation by wrongfully denying Plaintiff payment for his accrued terminal leave days, a benefit he had been told he would receive, and to which he was entitled, pursuant to Elmira City Code Section 2-79(a)(1)(b).
43. On February 10, 2023, Plaintiff's counsel sent a follow-up letter to the City, putting it on notice that the denial of terminal leave constituted further illegal retaliation.
44. Shortly thereafter, Defendants again retaliated against Plaintiff by contesting his claim for unemployment benefits.
45. Upon information and belief, Defendants have continued their campaign of retaliation by propagating false and professionally damaging rumors to the public that Plaintiff was involved in criminal activity, thereby harming Plaintiff's reputation, his family, and his ability to secure future employment.

FIRST CAUSE OF ACTION

Retaliation in Violation of USERRA (38 U.S.C. § 4311(b))

46. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 44 of this Complaint as if fully set forth herein.
47. USERRA prohibits an employer from taking any adverse employment action against any person because such person has taken an action to enforce a protection afforded to any person under the Act. 38 U.S.C. § 4311(b).
48. At all relevant times, Montrel Sturgis, as a military veteran, was an individual afforded protections under USERRA, including the right to be free from discrimination in hiring based on his status as a veteran. 38 U.S.C. § 4311(a), (c).

49. Plaintiff engaged in activity protected by USERRA when he took action to enforce Mr. Sturgis's rights. Specifically, Plaintiff opposed Defendants' discriminatory animus toward Mr. Sturgis, which was based on his status as a "disabled veteran." Plaintiff's advocacy for Mr. Sturgis's hiring, despite Defendant Collins' statements and threats during the hiring process, constitutes protected activity under 38 U.S.C. § 4311(b).
50. Defendants were aware of Plaintiff's protected activity. Defendant Collins directly and physically threatened Plaintiff, warning that his professional life would become a "living hell" and that he would be "forced to quit" if he continued to advocate for Mr. Sturgis.
51. As a direct result of and in retaliation for Plaintiff's protected activity, Defendants took adverse employment actions against him, including but not limited to: initiating a baseless and pretextual investigation, accusing him of insubordination, attempting to force his resignation, and unlawfully terminating his employment.
52. Plaintiff's protected activity of opposing discrimination and enforcing the rights of a military veteran was a motivating factor in Defendants' decision to take these adverse employment actions against him. The temporal proximity between Plaintiff extending a job offer to Mr. Sturgis on January 3, 2023, and Defendants' retaliatory actions commencing just two days later and culminating in his termination on January 9, 2023, demonstrates a clear causal connection.
53. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of USERRA, Plaintiff has suffered and will continue to suffer a loss of earnings, salary, retirement benefits, and other employment benefits. Plaintiff has also suffered emotional distress, mental anguish, humiliation, and damage to his professional reputation.

54. Defendants' violations of USERRA were willful, knowing, and intentional, or were carried out with reckless disregard for Plaintiff's federally protected rights. Plaintiff is therefore entitled to an award of liquidated damages in an amount equal to his lost wages and benefits.
55. As a further result of Defendants' violations, Plaintiff has been compelled to retain the services of counsel to enforce his rights. Pursuant to 38 U.S.C. § 4323(h), Plaintiff is entitled to recover reasonable attorney's fees, expert witness fees, and other litigation expenses.

SECOND CAUSE OF ACTION

Discrimination, Harassment, and Retaliation in Violation of NYSHRL

(N.Y. Exec. Law § 296, et seq.)

(As to All Defendants)

56. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 54 of this Complaint as if fully set forth herein.
57. NYSHRL makes it an unlawful discriminatory practice for an employer, because of an individual's sex, to discriminate against such individual in compensation or in terms, conditions, or privileges of employment. The NYSHRL also prohibits harassment based on sex that subjects an individual to inferior terms, conditions, or privileges of employment.
58. The NYSHRL also makes it unlawful for an employer to retaliate or discriminate against any person because he or she has opposed any practices forbidden under the law. N.Y. Exec. Law § 296(7).
59. Further, the NYSHRL makes it an unlawful discriminatory practice "for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so." N.Y. Exec. Law § 296(6).

1. Hostile Work Environment Based on Sex

60. Defendants subjected Plaintiff to a hostile work environment because of his sex, in violation of the NYSHRL.

61. The conduct of Defendant Collins, for which all Defendants are liable, was unwelcome, offensive, and created a hostile, intimidating, and abusive work environment that altered the conditions of Plaintiff's employment. This harassing conduct was significantly more than a petty slight or trivial inconvenience.

62. Defendant the City is liable for the discriminatory acts of its managerial and supervisory employee, Defendant Collins.

63. Defendant Collins is individually liable as an "employer" under the NYSHRL because he had the power to do more than carry out personnel decisions made by others, including the authority to fire Plaintiff. Defendant Collins is also individually liable for aiding and abetting the unlawful discriminatory practices of the City, as he was the primary actor who personally engaged in the campaign of sexual harassment against Plaintiff.

64. Upon information and belief, Defendant Mandell, as Mayor, had supervisory authority and the power to hire and fire or influence such decisions, making him an "employer" under the NYSHRL. Defendant Mandell is also individually liable for aiding and abetting the City's unlawful practices by having knowledge of, and acquiescing in or failing to take action to stop, Defendant Collins's discriminatory conduct.

2. Retaliation for Opposing Unlawful Practices

65. Plaintiff engaged in activity protected under the NYSHRL by opposing employment practices he reasonably and in good faith believed to be unlawful, specifically, discrimination against Mr. Sturgis on the basis of his race and his status as a disabled veteran.
66. Defendants were aware that Plaintiff engaged in this protected activity.
67. As a direct result of Plaintiff's protected activity, Defendants took materially adverse employment actions against him, including but not limited to, manufacturing a pretextual investigation, threatening him, terminating his employment, wrongfully denying him earned terminal leave pay, and contesting his unemployment benefits.
68. Plaintiff's protected activity was a motivating factor in Defendants' decision to take these adverse and retaliatory actions against him.
69. Defendant the City is liable for the retaliatory acts of its agents, Defendants Collins and Mandell.
70. Defendant Collins is individually liable as an "employer" and/or for aiding and abetting the unlawful retaliation, as he was the individual who personally threatened Plaintiff, initiated the pretextual investigation, and carried out Plaintiff's termination in response to Plaintiff's protected activity.
71. Upon information and belief, Defendant Mandell is individually liable as an "employer" and/or for aiding and abetting the unlawful retaliation by participating in, approving of, or acquiescing in the decision to terminate Plaintiff for his opposition to the City's discriminatory hiring practices.
72. As a direct and proximate result of Defendants' discriminatory and retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer significant damages, including loss of past and future wages, salary, retirement funds, health insurance benefits,

and other employment benefits. Plaintiff has also suffered severe emotional distress, mental anguish, humiliation, damage to his personal and professional reputations, and loss of enjoyment of life.

73. The aforesaid conduct of Defendants was malicious, willful, wanton, and reckless, and was undertaken in blatant disregard for Plaintiff's statutorily protected rights, thereby entitling Plaintiff to an award of punitive damages against all Defendants.

THIRD CAUSE OF ACTION

Retaliation in Violation of New York Military Law § 242

(As to All Defendants)

73. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 72 of this Complaint as if fully set forth herein.

74. This Court has supplemental jurisdiction over this state law claim pursuant to 28 U.S.C. § 1367.

75. New York Military Law § 242 provides that every public officer or employee shall not be subjected to any loss of tenure or any other penalty or prejudice in the terms of their employment by reason of their absence pursuant to military duty. The protections of this law extend to prohibiting discrimination and retaliation against those who uphold the rights of servicemembers.

76. At all relevant times, Plaintiff was a "public employee" and Defendant the City was a "municipal corporation" as defined by and subject to the provisions of N.Y. Military Law § 242.

77. Plaintiff engaged in protected activity under N.Y. Military Law § 242 when he opposed the discriminatory treatment of and advocated for the hiring of Mr. Sturgis, a disabled military veteran, thereby taking action to enforce the rights and protections afforded to veterans under state and federal law.
78. Defendants retaliated against Plaintiff in violation of N.Y. Military Law § 242 when they initiated a baseless investigation and terminated his employment, at least in part because of his actions to prevent discrimination against a military veteran.
79. As a direct and proximate result of the conduct by Defendants, Plaintiff has suffered injury including but not limited to loss of employment, lost wages, lost benefits, retirement savings, and has incurred pain and suffering.
80. Defendants Collins and Mandell are further liable for aiding, abetting, inciting, or compelling the City's unlawful retaliatory conduct in violation of N.Y. Exec. Law § 296(6).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ANTHONY A. ALVERNAZ respectfully requests that this Court enter judgment in his favor and against Defendants, jointly and severally where applicable, granting the following relief:

On the First Cause of Action (USERRA):

1. Awarding Plaintiff compensatory damages, including but not limited to, lost wages, salary, retirement contributions, health insurance coverage, and other benefits he would have received but for Defendants' unlawful conduct;

2. Awarding Plaintiff the amount of lost wages and benefits as liquidated damages for Defendants' willful violation of USERRA, pursuant to 38 U.S.C. § 4323(d)(1)(C);
3. Ordering Defendants to comply with the provisions of USERRA;
4. Awarding Plaintiff reasonable attorney's fees, expert witness fees, and other litigation expenses, pursuant to 38 U.S.C. § 4323(h)(2); and
5. Awarding Plaintiff pre-judgment and post-judgment interest at the maximum rate allowable by law.

On the Second Cause of Action (NYSHRL):

1. Awarding Plaintiff compensatory damages for all lost earnings and benefits, including back pay and front pay, to which he would have been entitled but for Defendants' violations of the NYSHRL, in an amount to be determined at trial;
2. Awarding Plaintiff compensatory damages for the severe emotional distress, mental anguish, and humiliation he has suffered, in an amount to be determined at trial;
3. Awarding Plaintiff punitive damages against Defendants Collins and Mandell for their willful, wanton, and malicious conduct, in an amount to be determined at trial;
4. Awarding Plaintiff reasonable attorney's fees and costs; and
5. Awarding Plaintiff pre-judgment and post-judgment interest at the maximum rate allowable by law.

On the Third Cause of Action (NY Military Law § 242):

1. Awarding Plaintiff compensatory damages against all Defendants for his loss of employment, lost wages, lost benefits, and pain and suffering, in an amount to be determined at trial; and
2. Awarding Plaintiff pre-judgment and post-judgment interest.

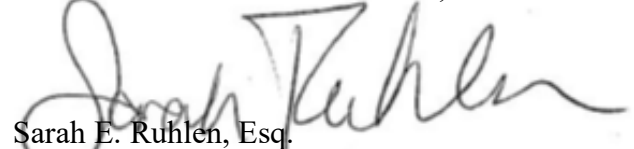
As to All Causes of Action:

1. Granting a permanent injunction enjoining Defendants, their officers, agents, successors, employees, and all persons acting in concert with them from engaging in any further discriminatory, retaliatory, or defamatory conduct against Plaintiff;
2. Granting a mandatory injunction directing Defendants to issue Plaintiff an honorable discharge, a retired Chief of Police badge, and to amend his personnel file to remove any reference to the pretextual investigation and termination; and
3. Granting such other and further legal and equitable relief as this Court may deem just and proper.

Date: January 7, 2026

Respectfully Submitted,

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