

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
(JASPER DIVISION)**

BRANDY ALLRED,)	
)	
PLAINTIFF,)	
)	
VS.)	CIVIL ACTION NUMBER:
)	
CITY OF SUMITON AND)	CV-06-RRA-1316-J
HUGH KIRKPATRICK,)	
)	
DEFENDANT,)	

**DEFENDANT, HUGH KIRKPATRICK'S
ANSWER INDIVIDUALLY AND AS A POLICE OFFICER
FOR SUMITON IN HIS OFFICIAL CAPACITY**

COMES NOW Defendant Hugh Kirkpatrick, Individually and in his official capacity as a police officer for Sumiton and submits the following

answer to Plaintiff's Complaint:

JURISDICTION AND VENUE

Denied.

NATURE OF PROCEEDINGS

Denied

PARTIES

1. Admits
2. Denied (Defendant is without sufficient knowledge to admit)
3. Admits

COMMON FACTUAL ALLEGATIONS

4. Denied
5. Denied

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6. Denied
7. Denied
8. Denied
9. Denied
10. Admit
11. Admits referring to known prostitutes as whores. Denies any wrongful implications from language "what he would do when he would pick-up these females, etc."
12. Denied
13. Denied
14. Denied
15. Denied
16. Denied to this Defendants knowledge.
17. Denied to this Defendants knowledge.
18. Denied to this Defendants knowledge.
19. Defendant has no knowledge of this allegation or any alleged action by the Mayor, so he cannot admit or deny what the Mayor did or did not do.
20. Admit
21. Admit
22. Denied to the Defendants knowledge.
23. Denied
24. Admit
25. Denied

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26. Denied
27. Denied
28. Denied
29. Denied to the Defendants knowledge.
30. Denied to the Defendants knowledge.
31. Denied
32. Denied to the Defendants knowledge.
33. Denied to the Defendants knowledge.
34. Denied to the Defendants knowledge.
35. Admit.
36. Denied to the Defendants knowledge.
37. Denied. to the Defendants knowledge.
38. Denied.
39. Denied.
40. Denied to the Defendants knowledge.
41. Denied to the Defendants knowledge.
42. Denied
43. Admit
44. Admit
45. Denied to the Defendants knowledge.
46. Denied to the Defendants knowledge.
47. Denied to the Defendants knowledge.

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- 48. Denied to the Defendants knowledge.
- 49. Denied
- 50. Denied
- 51. Denied to the Defendants knowledge.
- 52. Denied
- 53. Denied
- 54. Denied as to any wrongful acts. Admitted as to this Defendant being an agent/police officer of the City of Sumiton.

IV. CAUSES OF ACTION

COUNT ONE - TITLE VII

- 55. No response required.
- 56. Denied
- 57. Denied
- 58. Denied
- 59. Denied
- 60. Denied
- 61. Denied

COUNT TWO - TORT OF OUTRAGE

- 62. No response required.
- 63. Denied and previous responses to said paragraphs are re-asserted.
- 64. Denied

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COUNT THREE - ASSAULT AND BATTERY

- 65. No response required.
- 66. Denied and previous responses to said paragraphs are re-asserted.
- 67. Denied

**COUNT FOUR - NEGLIGENCE HIRING, TRAINING,
SUPERVISION AND RETENTION**

- 68. No response required.
- 69. Denied and previous responses to said paragraph are re-asserted.
- 70. No response required.
 - A. Denied.
 - B. Denied.
 - C. Denied.
 - D. Denied.
- 71. Denied to the Defendants knowledge.
- 72. Denied.
- 73. Denied

COUNT FIVE : 42 U.S.C. 1983 DUE PROCESS

- 74 (73).Denied to the Defendants knowledge.
- 75. Denied to the Defendants knowledge.
- 76. Denied to the Defendants knowledge.

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VI (V). GENERAL PRAYER FOR RELIEF

1. Deny
2. Deny
3. Deny

Now the Defendant (Kirkpatrick) having answered each specific allegation to the extent his personal knowledge will allow, your Defendant (Kirkpatrick) Answers further as follows:

VII. DEFENDANT (KIRKPATRICK'S) GENERAL DENIAL

77. Your Defendant, to wit: Hugh Kirkpatrick, in his “**official capacity**” denies each and every claim for damages and/or theory of liability asserted by the Plaintiff, and every wrongful

or tortuous act claimed by the Plaintiff and further expressly denies any negligent, intentional, willful, reckless or malicious acts or omissions designed to offend, harass, annoy, intimidate or in anyway harm Plaintiff, or to subject her to any discomfort, even as to those averments admitted, and your Defendant demands strict proof of said allegations.

78. Your Defendant, to wit: Hugh Kirkpatrick, in his “**individual capacity**” denies each and every claim for damages and/or theory of liability asserted by the Plaintiff, and every wrongful or tortuous act claimed by the Plaintiff and further expressly denies any negligent, intentional, willful, reckless or malicious acts or omissions designed to offend, harass, annoy, intimidate or in anyway harm Plaintiff, or to subject her to any discomfort even as to those averments admitted and your Defendant demands strict proof of said allegations.

VIII. AFFIRMATIVE DEFENSES

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79. Defendant (Kirkpatrick) is protected by qualified immunity, sovereign immunity and absolute immunity.

80. Plaintiff has failed to fulfill the conditions precedent to bringing suit under Title VII.

81. The applicable statutes of limitation bar Plaintiff's recovery.

82. Plaintiff has failed to mitigate damages.

83. Plaintiff has failed to state a federal claim against this Defendant for the reasons or acts complained of were not caused by an official policy, practice, custom, or usage of these Defendants, jointly or by this Defendant, individually or in his official capacity.

84. Plaintiff is not entitled to punitive damages against this Defendant.

85. Any injury or damages suffered by the Plaintiff were the result of an independent intervening cause and not the result of any alleged actions or omissions of this Defendant.

86. The doctrines of collateral estoppel and res judicata bar Plaintiff's recovery.

87. Plaintiff is barred from recovery under the doctrine of unclean hands.

88. Defendant Hugh Kirkpatrick is not Plaintiff's employer.

89. Plaintiff's claims are barred by the doctrine of contributory negligence.

90. This Plaintiff consented to and personally participated in most of the conversations that may have contained "street language" and/or "adult humor," as well as a personal relationship

with Defendant (Kirkpatrick) away from the workplace.

91. Plaintiff openly discussed her private life with other employee's or those present

and invited like responses.

92. All allegations not specifically admitted are denied.

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Respectfully submitted on this the 26th day of September, 2006.

s/ Herbie Brewer

Herbie Brewer, Esquire (BRE019)
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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys:

OF COUNSEL:

Charles Tatum, Jr., Esquire
P.O. Box 349
Jasper, Al 35502

s/ Herbie Brewer

Herbie Brewer