

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

**BRANDY ALLRED,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 )  
 **CITY OF SUMITON and** )  
 **HUGH KIRKPATRICK,** )  
 )  
 **Defendants.** )

**CIVIL ACTION NUMBER:**

**COMPLAINT**

**COMES NOW** the Plaintiff, Brandy Allred, by and through her attorney of record, Charles C. Tatum, Jr., and files this Complaint. As grounds for the relief requested, the plaintiff states as follows:

**I. JURISDICTION AND VENUE**

The jurisdiction of this court is invoked pursuant to the 28 *U.S.C.* § 1331, 1343(4), 2201, 2202 and 42 *U.S.C.* Section 2000e et seq. This is a suit authorized and instructed pursuant to *Title VII* of the Act of Congress known as the “Civil Rights Act of 1964,” (as amended), including the “Civil Rights Act of 1991. The jurisdiction of this court is invoked to secure protection of and redress deprivation of rights secured by 42

*U.S.C. Section 2000e et seq.* providing for injunctive and other relief against sex discrimination, sexual harassment and retaliation. Through pendant jurisdiction this court's jurisdiction extends over the related state law claims of negligent hiring, supervision and retention, assault and battery and the tort of outrage because all such claims arise from a "common nucleus of operative facts".

This cause of action arose in, and a substantial part of the events giving rise to the claims, occurred in the Northern District of Alabama. Therefore, venue is proper under *28 U.S.C. Section 139(b)*.

## **II. NATURE OF PROCEEDINGS**

This is a proceeding for back-pay, reinstatement in an atmosphere free from sexual harassment and/or front-pay, a declaratory injunction enjoining the Defendants, City of Sumiton, from maintaining a policy, practice, custom or usage of discrimination against the plaintiff because of her sex with respect to sexual harassment, sex discrimination and retaliation. In addition, the plaintiff seeks compensatory and punitive damages against Hugh Kirkpatrick, individually, and as agent of the defendant employer, for his acts which constitute, sexual harassment, outrageous conduct, negligence and assault. The plaintiff has met all

conditions precedent for filing this cause under *Title VII* of the Civil Rights Act of 1964, as amended by the 1991 Civil Rights Act. Copies of the plaintiff's EEOC Charge and Right to Sue Letter are attached hereto as Exhibits "A" and "B".

### **PARTIES**

1. Plaintiff, Brandy Allred, is and was at all times mentioned herein, an adult citizen of the United States and a resident of the State of Alabama.
2. Defendant, City of Sumiton, is a municipal corporation located in Walker County, Alabama, organized and operating under the laws of the State of Alabama and the United States of America.
3. Defendant, Hugh Kirkpatrick, is an adult United States Citizen, who at all times relevant to this complaint, a police officer for the City of Sumiton.

### **III COMMON FACTUAL ALLEGATIONS**

4. The Plaintiff, Brandy Allred, started work as a Dispatcher and Jailor for the City of Sumiton on April 1, 1999. Since the beginning of her employment, Defendant, Hugh Kirkpatrick has made numerous remarks that she considered to be inappropriate and sexually harassing.
5. In June, 1999, Defendant Kirkpatrick picked up (arrested) a female prisoner from Cullman County on an outstanding warrant. Defendant

Kirkpatrick made a comment in the plaintiff's presence that he watched her play with herself and he also said her "pus\*\*" was as smooth as a baby's bottom.

6. In January, 2004, Defendant, Kirkpatrick, forced a dispatcher to quit her job because she refused to carry on relations with him. Plaintiff had knowledge of this fact.
7. In May, 2004, in the presence of other employees, Defendant Kirkpatrick made a sexist remark regarding a former employee, Kim Peterson. He said "I would not f\*\*\* her nasty a\*\* with Tim Allred's d\*\*\*\*". Tim Allred was the plaintiff's husband.
8. Also in May, 2004, Defendant Kirkpatrick said, "The only reason I hired Sharon (Sharon Thacker Carey) was because she had big t\*\*s."
9. In the Winter of 2004, Defendant Kirkpatrick asked the plaintiff, "Do you think that Sharon (Carey) would have sex with me since she is already having an affair with an officer?"
10. Defendant Kirkpatrick often told what he called "war stories" in the presence of the plaintiff regarding his previous job with the Jasper Police Department.
11. On one occasion, Defendant Kirkpatrick bragged about picking up, in his

words, “whores”. Defendant Kirkpatrick then explained to an officer in the plaintiff’s presence what he would do when he would pick up these females he described as “whores.”

12. Specifically, Defendant Kirkpatrick stated that he would keep paper plates with him in his patrol car. He continued, saying that he would keep the paper plates in his car so that when he would have sex with a female in his patrol car, he would cut out a whole and “put it on his d\*\*\*” to keep his uniform from getting dirty.
13. In December, 2004, Defendant, Kirkpatrick, told the plaintiff that if she came to work wearing tight jeans and a tight shirt so he could see her “t\*\*s”, then she could wear whatever she wanted.
14. Also in December, 2004, Defendant Kirkpatrick said to the plaintiff, “you make my d\*\*\* hard when you bend over in front of me”.
15. In January, 2005, Defendant Kirkpatrick, said to the plaintiff, “I like it when you wear those white shirts so I can see your t\*\*s”.
16. In January, 2005, the plaintiff complained to the Mayor about Defendant Kirkpatrick and his inappropriate sexual behaviors.
17. The plaintiff told the Mayor that Defendant Kirkpatrick was physically rubbing on and touching one of the female employees, Sharon Carey,

regularly at the police station in her presence and that it made her feel uncomfortable and was not right.

18. The Mayor called several officers to see if the plaintiff was telling the truth.
19. The Mayor never did anything else or talked to the plaintiff about her complaint or Defendant Kirkpatrick's conduct.
20. From January, 2005 through April, 2005, at various times, Defendant Kirkpatrick would make remarks about the weight he has lost.
21. One time, he said to the plaintiff, "Since I have lost weight, I can see my d\*\*\* and it has gotten longer."
22. In January, 2005, the plaintiff went to the office to drop off her paperwork from her visit to the doctor.
23. While the plaintiff was at the police department, Defendant Kirkpatrick remarked, "After your surgery, we could do it doggie style since I have had my surgery and I can see my d\*\*\*".
24. In March, 2005, the plaintiff wrote Sharon Carey up for wearing tight clothes to work and coming to work out of uniform and inappropriately dressed in tight tops and pants.
25. Defendant Kirkpatrick got very angry with the plaintiff for writing her

employee up.

26. During the last part of March, 2005, Defendant Kirkpatrick told the plaintiff that if she went to the Mayor on him for any reason, that she would be fired.
27. In April, 2005, Chief Kirkpatrick arrested a male from Bevill State. Officer Long had a difficult time getting the man to change into a jail uniform. As Defendant Kirkpatrick left the kitchen area, he was laughing about the man not wanting to change into the jail uniform. Then Defendant Kirkpatrick said “He probably didn’t want to take his clothes off because his d\*\*\* was so little. I feel sorry for the guy.”
28. Constantly, during her employment with the City of Sumiton, Defendant Kirkpatrick would rub up against the plaintiff or other employees or touch the plaintiff’s or other employees’ breast.
29. On April 5, 2005, the plaintiff could not stand the stress in her work environment from the constant sexual harassment so she turned in her resignation from her job.
30. The plaintiff felt that her only choice was to resign or be fired by Kirkpatrick if she went to the Mayor.
31. The Mayor had not done anything about her previous complaint and so

she felt like he would go along with whatever Defendant Kirkpatrick wanted to do.

32. On April 6, 2005, the Mayor contacted the plaintiff and asked her why she resigned from her job.
33. The plaintiff told the Mayor that she resigned because of the continuing sexual harassment that from the defendant, Kirkpatrick.
34. The Mayor also told the plaintiff to put her complaint in writing, so on April 8, 2005, the plaintiff delivered her complaint, in writing to the Mayor.
35. On April 7, 2005, after a meeting, the Mayor asked the plaintiff if she wanted her job back.
36. The plaintiff told him yes, but that she did not want to deal with the retaliation from Defendant Kirkpatrick for filing her complaint against Kirkpatrick.
37. The Mayor told the plaintiff that she did not have to put up with retaliation.
38. After the Mayor left, Defendant Kirkpatrick stated, in the presence of the dispatchers that worked under the plaintiff, that "I do not care what the Mayor said, the Mayor does not work for the police department, I do."

39. Defendant Kirkpatrick then told the plaintiff, “There will be retaliation and you will just have to deal with it.”
40. The plaintiff went back to the Mayor and told him what Defendant Kirkpatrick had said, and that under the circumstances, she did not feel comfortable working under Defendant Kirkpatrick.
41. The Mayor told the plaintiff that he saw no choice but to put her on Leave Without Pay until this matter was resolved, even though the plaintiff could not be suspended under City of Sumiton Policy without just cause.
42. Immediately after telling the plaintiff that there would be retaliation and that she would have to deal with it, at the direction of Defendant Kirkpatrick, four (4) dispatchers filed a grievance against the plaintiff.
43. Defendant Kirkpatrick personally delivered the grievances to the City Clerk.
44. The plaintiff went to what was suppose to be a hearing on the grievances.
45. During the meeting, the City Clerk let it slip that the “grievance hearing” was actually a “disciplinary hearing” against the plaintiff, even though the plaintiff had never been written up or disciplined under the City of Sumiton’s disciplinary policy.

46. The City of Sumiton failed to give the plaintiff notice and an opportunity to be heard before a fair and impartial hearing tribunal.
47. During the hearing, the City of Sumiton refused to allow the plaintiff the opportunity to cross examine the witnesses against her.
48. The City of Sumiton demoted the plaintiff, cut the plaintiff's pay, and took the plaintiff's seniority in retaliation to the plaintiff's complaining of sexual harassment.
49. The plaintiff has been discriminated and retaliated against in that the Defendants, City of Sumiton and Hugh Kirkpatrick, encouraged and condoned the employees filing grievances against her because she had filed a grievance of sexual harassment against Defendant Kirkpatrick.
50. The plaintiff has also been retaliated against by being laid off without pay for filing her complaint of sexual harassment.
51. The plaintiff has also been retaliated against for complaining of sexual harassment by the City's considering disciplining her at what was suppose to be a grievance hearing.
52. The plaintiff has been discriminated against for not going along with and participating in Defendant Kirkpatrick's request for sexual favors in the way that she dressed and interacted with him.

53. During all of the acts described herinabove, Defendants City of Sumiton and Kirkpatrick were acting under color of state law and pursuant to customs, policies and practices of the City of Sumiton.
54. During all of the acts described hereinabove, Defendant Kirkpatrick was acting as an agent or employee of the City of Sumiton. As a result of this agency relationship, the City of Sumiton is liable for the wrongful acts of Kirkpatrick complained of herein.

#### **IV CAUSES OF ACTION**

##### **COUNT I - TITLE VII**

55. The plaintiff re-alleges and incorporates by reference paragraphs "4-54" above with the same force and effect as if fully set out in specific detail herein and above.
56. The defendants have unlawfully discriminated against the plaintiff as follows: The Defendant, City of Sumiton, condoned and allowed the plaintiff to be sexually harassed by personnel, i.e. Hugh Kirkpatrick, for a continuous period.
57. Throughout the plaintiff's employment with the City of Sumiton, she was subjected to abusive, lewd, unwelcome conduct and verbiage of a sexual nature by Hugh Kirkpatrick, an employee with the City of Sumiton's

Police Department.

58. Because the plaintiff failed to acquiesce to the sexual conduct of the defendant and threatened to file suit for said wrongful conduct, the employer retaliated against the plaintiff by ostracizing the plaintiff and then threatening to fire the plaintiff under the pretext of putting the plaintiff on “leave without pay”.
59. The plaintiff has been discriminated against because of her sex in the terms and conditions of her employment.
60. The actions of the defendants were willful, intentional, discriminatory and in violation of the plaintiff’s right to be free from retaliation and sex discrimination under *Title VII* of the Civil Rights Act of 1964, as amended.
61. The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for back-pay (plus interest), injunctive and declaratory judgment is her only means of securing adequate relief. The plaintiff is now suffering and will continue to suffer irreparable injury from the defendants’ unlawful policies and practices as set forth herein unless enjoined by this court.

**COUNT II - TORT OF OUTRAGE**

62. This claim is brought against Kirkpatrick and the Defendant, City of Sumiton, for the action of its agent or employee, Hugh Kirkpatrick, in his individual capacity.

63. Paragraphs "4-54" are hereby re-alleged and incorporated herein.

64. Defendant, Kirkpatrick, outrageously and intentionally inflicted emotional distress upon the plaintiff, subjecting her to abusive, profane, insensitive, and unprofessional language and touching throughout the plaintiff's employment with the City of Sumiton. Further, the plaintiff was sexually harassed and belittled because of her gender by Defendant Kirkpatrick.

### **COUNT III - ASSAULT AND BATTERY**

65. This claim is brought against Kirkpatrick and the Defendant, City of Sumiton for the actions of its agent and employee, Hugh Kirkpatrick, in his individual capacity.

66. Paragraphs "4-54" are hereby re-alleged and incorporated herein.

67. Defendant, Hugh Kirkpatrick, assaulted the plaintiff by intentionally subjecting her to verbal assault while the plaintiff was employed with the Defendant, City of Sumiton and committed battery against the plaintiff by unlawfully touching the plaintiff during the course of the plaintiff's employment.

**COUNT IV - NEGLIGENT HIRING, TRAINING,  
SUPERVISION AND RETENTION**

68. This claim is brought against the City of Sumiton, who is responsible for the day-to-day operations and for the actions of their employee, Defendant Kirkpatrick.
69. Paragraphs "4-50" are hereby re-alleged and incorporated herein.
70. The Defendant, City of Sumiton, committed the following negligent and/or wanton acts in relation to the hiring, training, supervision and retention of Defendant, Hugh Kirkpatrick, to-wit:
- a. The Defendant, City of Sumiton, hired the Defendant, Hugh Kirkpatrick, as its employee. Said defendant knew or reasonably should have know of Defendant Kirkpatrick's prior history and predisposition regarding harassing females and said defendant knew or should have known that Defendant Kirkpatrick was totally unfit to be employed by the City of Sumiton;
  - b. the Defendant, City of Sumiton, failed to properly train Defendant Kirkpatrick regarding the law, rules and regulations applicable to sexual harassment;
  - c. the Defendant, City of Sumiton, failed to properly supervise

Defendant Kirkland in his day-to-day activities and, in particular, as said activities related to improper interaction with female employees;

- d. the Defendant, City of Sumiton, failed to take proper disciplinary action against Defendant Kirkpatrick and failed to discharge Defendant Kirkpatrick despite the fact that the City of Sumiton, was well aware of Kirkpatrick's improper and illegal conduct.

71. Further, Defendant, City of Sumiton, negligently and wantonly failed to adopt and enforce reasonable policies and procedures regarding sexual harassment at the workplace.

72. As a result of the defendants' aforementioned negligent and wanton acts, considered jointly and or standing alone, the plaintiff was forced to suffer the injuries heretofore complained.

73. The plaintiff demands punitive damages of the defendant, City of Sumiton, due to the reckless, wanton nature of said defendant's conduct in hiring, supervising and/or retaining Defendant Kirkpatrick in their employment.

**V. COUNT V.: 42 U.S.C. 1983 DUE PROCESS**

73. That the defendant, City of Sumiton, violated the plaintiff's clearly

established right to procedural due process of law, by failing to provide the plaintiff timely notice of the proposed disciplinary action against her.

75. That the defendant City of Sumiton violated the plaintiff's clearly established right to procedural due process of law by denying the plaintiff the opportunity to cross examine witnesses during the course of the unlawful disciplinary hearing conducted against the plaintiff.

76. That the defendant City of Sumiton violated the plaintiff's clearly established right to procedural due process by failing to provide the plaintiff an adequate pre-suspension hearing, or a fair and impartial post suspension hearing as required by law.

## **V GENERAL PRAYER FOR RELIEF<sup>1</sup>**

**WHEREFORE, PREMISES CONSIDERED**, the plaintiff respectfully prays that this court assume jurisdiction of this action and, after trial:

1. Grant the plaintiff a permanent injunction enjoining the defendants, its agent, successors, employees, attorneys and those acting in

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<sup>1</sup>This "General Prayer for Relief" is common to, and incorporated into each count in the Complaint.

concert with the defendants and at the defendants' request, from continuing to violate *Title VII* of the Act of Congress known as the "Civil Rights Act of 1964", as amended, *42 U.S.C. § 2000e et seq.*

2. Enter an order requiring the defendants to make the plaintiff whole by awarding her the position she would have held in the absence of sex discrimination, sexual harassment, and retaliation, back-pay (plus interest), compensatory and punitive damages, lost seniority, nominal damages, benefits and loss of pension.
3. The plaintiff further pays for such other relief and benefits as the cause of justice may require, including, but not limited to, an award of costs, attorney's fees and expenses.

Respectfully submitted,

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Charles C. Tatum, Jr. (TAT009)  
Attorney for Plaintiff  
Post Office Box 349  
Jasper, Alabama 35502  
(205) 387-0708

**DEFENDANTS MAY BE SERVED AT:**

City of Sumiton  
416 State Street  
Sumiton, AL 35148

Hugh Kirkpatrick  
c/o City of Sumiton  
416 State Street  
Sumiton, AL 35148