

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY MURRAY,

Case No. 2:19-cv-13010

Plaintiff,

v.

JURY DEMAND

CITY OF WARREN, MAYOR JAMES
FOUTS, AND FORMER POLICE
COMMISSIONER JERE GREEN,

Defendants.

JONATHAN R. MARKO (P72450)
MARKO LAW, PLLC
Attorneys for Plaintiff
27735 Jefferson
St. Clair Shores, MI 48081
313.777.7528 phone
313.771.5785 fax
jon@jmarkolaw.com

A civil action against the above named Defendants arising out of the same or substantially similar transactions or occurrences has previously been filed in the Court. The case number is 17-11260 and the assigned judge is the Honorable Terence G. Berg.

COMPLAINT AND JURY DEMAND

Plaintiff Gregory Murray (“Plaintiff”) through his attorneys, Marko Law PLLC, for his Complaint against Defendant City of Warren; Mayor James Fouts, Former Police Commissioner Jere Green (acting in their individual capacity), (collectively, “Defendants”), states as follows:

NATURE OF THE ACTION

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”), and Title I of the Civil Rights Act of 1991, for unlawful employment practices and creating a hostile work environment on the basis of race, to provide appropriate relief to Plaintiff, an employee of Defendants who was adversely affected by such practices. Plaintiff alleges that Defendants subjected him to a hostile work environment that altered the terms and conditions of his employment because of his race. Plaintiff further alleges that these actions deprived him of certain civil rights to which he was entitled, in violation of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and Section 1983 of the Civil Rights Act of 1871, 42 U.S.C. § 1983.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). This action is authorized and instituted pursuant to 42 U.S.C. § 2000e-5(f)(1), 42 U.S.C. § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 42 U.S.C. § 1988.
3. Venue is proper in this Court because the discrimination and retaliation practices hereafter alleged to be unlawful were committed within the jurisdiction of this District.

PARTIES

4. Plaintiff is African American. Plaintiff began his employment with the Defendant City of Warren on January 6, 2017.
5. Plaintiff was the first African American Diversity and Inclusion Coordinator to ever be employed in the history of the Defendant City of Warren.
6. At all times herein, all the individually named and identified Defendants acted under color of state law, within the meaning of 42 U.S.C. § 1983.
7. At all times herein, all the individually named and identified Defendants acted pursuant to a conspiracy to deprive the Plaintiff of his constitutional rights based on invidious racial animus.
8. At all times herein, Defendants attempted and, indeed, did deprive Plaintiff of his rights to make and enforce his contract of employment, such as is enjoyed by white persons, within the meaning of 42 U.S.C. § 1981.
9. At all relevant times, each Defendant has been an “employer” of Plaintiff within the meaning of Title VII, 42 U.S.C. § 2000e(b).
10. At all relevant times, Plaintiff has been an “employee” of Defendants within the meaning of Title VII, 42 U.S.C. § 2000e(f).

FACTS COMMON TO ALL COUNTS

11. Since Plaintiff’s employment began as the first African American Diversity and Inclusion Coordinator, in the Defendant City of Warren, Plaintiff has been

constantly subjected to the Defendant City of Warren's custom, policy and practice of racial discrimination and disparate treatment due to lack of training and other conduct by the Defendants Mayor Fouts and other department heads.

12. Defendant City of Warren has a notorious history of racially discriminatory practices customs and policies against African Americans. That custom, policy, and practice of racial discrimination has been publicly evidenced, for example, through racially disparaging and insulting comments reportedly made by the Defendant Mayor Fouts and Defendant Former Police Commissioner Green and other Department Heads of the Defendant City of Warren.
13. The customs, practices, and policies of unlawful racial and gender discrimination by the Defendant City of Warren, particularly in its police and fire department, has also been evidenced by its failure to correct, discipline, retrain and/or supervise the individual Defendants herein, the Warren Police and Fire Department (Departments) supervisors and knowledge—through the notice and knowledge provided to the highest level and final policy makers within the Department—of the following series of events, among others, and widespread throughout the Department.
14. Plaintiff's employment with Defendant City of Warren was to institute diversity and inclusion training throughout Defendant City of Warren Police, Fire and other Departments.

15. Because of Defendant City of Warren history of past customs, practices, and policies of unlawful racial, gender and other discrimination Plaintiff was employed to examine past and current customs, practices, and policies of unlawful racial, gender, and other discrimination and develop training and policy that would promote diversity.
16. Plaintiff was additionally charged to promote diversity and inclusion in the City of Warren work force, including the police department, the fire department and all other city departments and functions by developing and enforcing policies and programs to attract, retain and promote a diverse work force in which employees' value and respect differences in the workplace, and in interactions with the public.
17. Additionally, Plaintiff was to investigate or assist in the investigation of inappropriate, improper or illegal activities that impair diversity and inclusion in the police department, the fire department and other city departments and functions, and where appropriate, recommend necessary remedial actions.
18. When Plaintiff began to investigate the following incidents, his efforts were thwarted by Defendants past customs, practices, and policies of unlawful racial and gender discrimination;
 - a) Barbara Beyer admitted responsibility for her repeated use of the racially derogatory word, "Nigger," in the presence of Officer

Desheila Howlett, no definitive disciplinary action was imposed against her until several weeks after the incident. Due to the severity of the conduct, which Plaintiff believed violated civil rights laws, Plaintiff recommended immediate dismissal of Ms. Beyer. Plaintiff's recommendation was rejected by Defendant Fouts. Instead, Beyer only received an unpaid two-week suspension that was imposed only after she had received her annual longevity (bonus) check.

- b) Shawn Johnson repeatedly used inappropriate racial slurs, including—among other things-- telling an African American co-worker Desheila Howlett that she looked like the image on the gorilla glue bottle:



Plaintiff recommended that Johnson immediately be terminated. Again, Defendant Fouts rejected Plaintiff's recommendation. Instead of imposing discipline appropriate to the serious nature of the racial discrimination and animus,

Shawn Johnson's racial misconduct was swept under the rug and nearly a year-and-a-half after the incidents, Johnson attended a one-day diversity training with Plaintiff.

c) Around September of 2017, Plaintiff received a complaint from the former Director of the Michigan Department of Deaf, Blind, and Hard of Hearing, alleging that Warren police officers violated federal state and civil rights laws by denying African American residents access to an interpreter, as required by law. As part of his job duties, Plaintiff conducted an investigation into the civil rights violations and found that the Warren police did indeed violate civil rights laws. Plaintiff reported the violations to Defendant Fouts, the police chief, and the City Attorney. Defendant Fouts demanded that Plaintiff cease any further engagement with Warren police officers relative to his investigation, thus effectively preventing Plaintiff from performing his job duties and properly investigating civil rights violations.

d) In early 2017 it came to Plaintiff's attention that a Warren fire department official, referred to firefighter Jose Suarez as the station's "house nigger". The official was not disciplined for this discriminatory harassment. When Plaintiff discovered the violation,

he recommended immediate termination to Defendant Fouts. Defendants rejected this recommendation.

- e) In August 2017, the Equal Employment Opportunity Commission (EEOC) came in to the City of Warren to conduct a training. Defendant Fouts mocked a person with disabilities at the training in front of his executive staff including the Plaintiff, by “flailing his hands” and disparagingly mimicked a person with Tourette’s syndrome. Plaintiff confronted Defendant Fouts immediately after the training about his inappropriate behavior. As a result of Plaintiff’s complaint, Defendant Fouts prohibited Plaintiff from conducting further trainings.
- f) Plaintiff attempted to form a diversity commission to address the illegal discriminatory practices of the City of Warren. Defendant Fouts prevented Plaintiff from forming the diversity commission to address racial and discriminatory practices and policies in the City of Warren.

19. When addressing the institutional racism and the lack of training within the Defendant City of Warren, Plaintiff was ignored then retaliated against even though he had been hired by Defendant City of Warren to address unlawful racial and gender discriminatory employment practices are institutional within

the Defendant City of Warren and City of Warren Police and Fire Departments.

20. When Plaintiff reported unlawful discrimination to Defendant Mayor Fouts. Plaintiff was told by Defendant Fouts to ignore it until after the elections because Warren voters might vote the Defendant Mayor Fouts out of office if he allowed Plaintiff to address unlawful discrimination.
21. Plaintiff identified and reported to former Police Chief Green that unlawful discrimination had occurred at the Defendant City of Warren police Department. Former Police Chief Green refused to address the unlawful discrimination. Plaintiff assisted the victims of that discrimination in filing a complaint against the Defendant City of Warren Police Department. That Plaintiff was retaliated against as a result of assisting in identifying and filing a complaint of unlawful discrimination.
22. It is not surprising that the Defendant City of Warren was not addressing illegal and institutional racism, gender and other discrimination considering Defendant Mayor Fouts comment or the years for example:
 - a) Regarding African Americans “blacks do look like chimpanzees.”
 - b) Regarding women “Think I want to date a f***** 60-year-old hag?
 - c) And "hateful dried-up c*****."
 - d) And having a romantic relationship with a subordinate employee, who received substantial increase in her

compensation from the City during that relationship.

- e) Asking to speak with African American Detroit Mayor Kwame Kilpatrick, “I want to speak to that nigger”

COUNT I
Violation of Title VII – Discrimination Based on Race

23. Plaintiff realleges and incorporates by reference Paragraphs 1 through 22.

24. At all relevant times, there was in effect a federal statute, the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, which provides:

It shall be an unlawful employment practice for an employer –

- (1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex or national origin.

42 U.S.C. § 2000e-2(a).

25. Defendants were aware, or should have been aware, of Title VII and that it is illegal to treat an employee differently because of the employee’s race.

26. During Plaintiff’s employment with Defendants, he was subjected to acts of racial discrimination by Defendants’ employees, supervisors, and Mayor.

27. This illegal discrimination created a hostile and abusive work environment for Plaintiff.

28. Defendants' actions as set forth above were willful, intentional and/or made in reckless disregard of Plaintiff's rights.
29. Defendants' conduct as described above constitutes a willful violation of Title VII.
30. Plaintiff was subjected to adverse employment actions, including being unlawfully terminated and/or constructively discharged.
31. Plaintiff was retaliated against for engaging in protected activities, including but not limited to civil rights investigations and insisting on compliance with civil rights laws.
32. As a direct and proximate result of the unconstitutional and illegal acts of the Defendants, as alleged herein, Plaintiff has sustained a violation of his right to a work environment free of unlawful racial discrimination and, as a result, is entitled to damages as set forth in the damages section of his complaint.

COUNT II

Violation of 42 U.S.C. §1983 – Fourteenth Amendment Equal Protection

33. Plaintiff herein re-alleges and incorporates Paragraphs 1-30 above:
34. At all times herein, the individually named and identified Defendants herein intentionally discriminated against the Plaintiff based on his race in all manner of ways as set forth herein all in violation of 42 U.S.C. §1983;
35. As a direct and proximate result of the unconstitutional acts of the Defendants as alleged herein, Plaintiff has sustained a violation of his right to equal

protection of the law and, as a result, is entitled to damages as set forth in the damages section of his complaint.

COUNT III
Violation of 42 U.S.C. §1983 – Fourteenth Amendment Due Process

36. Plaintiff herein re-alleges and incorporates Paragraphs 1-33 above:
37. At all times herein Defendants owed to Plaintiff a duty to protect his both from the antagonism, and racism.
38. Defendants purposely refused and failed to provide the necessary help and assistance to eliminate the institutional discrimination based on past customs, practices, and policies of unlawful racial, gender and other discrimination.
39. The Defendants aforementioned failure and refusal was based on the antagonism and hostility to the Plaintiff based on his race.
40. In so doing the Defendants purposely refused and failed to provide the necessary help and assistance to eliminate the institutional discrimination based on past customs, practices, and policies of unlawful racial, gender and other discrimination. As such, these Defendants violated the rights of Plaintiff to substantive due process, as secured by the Fourteenth Amendment of the United States Constitution and by 42 U.S.C. §1983.
41. As a direct and proximate result of the unconstitutional acts of the Defendants as alleged herein, Plaintiff has sustained a violation of his right to equal protection of the law and, as a result, is entitled to damages as set forth in the

damages section of his complaint.

COUNT IV
Violation of 42 U.S.C. §1983 – Monell Liability – City Of Warren

42. Plaintiff re-alleges and incorporates Paragraphs 1-41 above;
43. At all times herein, the Defendant City of Warren maintained a series of policies, customs, and practices which individually and collectively constituted a moving force in the constitutional violations asserted herein, including but not limited to:
- a. Direct humiliating, outrageous, racist, and belittling antagonism toward African Americans.
 - b. Failure to train its employees as to the mandatory requirement that racist, sexist and other discriminatory practices are inexcusable and will be responded to with outright discharge;
 - c. Failure to train its employees with regard to the use of hostile statements and verbalisms directed against African Americans, women and persons with protected disabilities;
 - d. Failure to address known complaints of actions and remarks by its police officers directed at African Americans, women and persons with protected disabilities;
 - e. Failure, amounting to a refusal, to discipline its employees for engaging in humiliating, outrageous, racist, and belittling actions

directed at African Americans, women and persons with protected disabilities.

44. These customs, policies, and practices of the Defendant City of Warren were a moving force in the constitutional violations inflicted by the individual Defendants upon the Plaintiff, as set forth herein, above;
45. As a direct and proximate result of the unconstitutional acts of the Defendants as alleged herein, Plaintiff has sustained a violation of his right to equal protection of the law and, as a result, is entitled to damages as set forth in the damages section of his complaints.

COUNT V

Violation of 42 U.S.C. §1985 – Conspiracy Invidious Racial Animus

46. Plaintiff re-alleges and incorporates Paragraphs 1-45 above;
47. At all times, herein, these Defendants agreed and conspired to violate the Plaintiff's rights secured by the Thirteenth and Fourteenth Amendments to the United States Constitution;
48. This agreement and conspiracy, and the actions undertaken pursuant to this agreement and conspiracy, were so done based upon an invidious racial animus directed at the Plaintiff;
49. As such the Defendants violated Plaintiff's rights that are guaranteed and made actionable under 42 U.S.C. §1985;
50. As a direct and proximate result of the unconstitutional acts of the Defendants

as alleged herein, Plaintiff has sustained a violation of his right to equal protection of the law and, as a result, is entitled to damages as set forth in the damages section of his complaint.

COUNT VI

Violation of 42 U.S.C. §1981 – The Right To Make And Enforce Contracts

51. Plaintiff re-alleges and incorporates Paragraphs 1-50 above;
52. At all times herein the Plaintiff had entered into a contract of employment with the Defendant, City of Warren.
53. These Defendants undertook, instead, to turn that contract into an employment situation wherein the Plaintiff was subjected to a racially hostile and toxic work environment that inflicted upon his humiliation, and racism, as set forth above herein—whereby his right to make and enforce his contract with the City of Warren was afflicted, diminished, and undermined thereby creating a situation where Plaintiff's rights were far less than and not the same as those enjoyed by white persons, in violation of 42 U.S.C. §1981;
54. As a direct and proximate result of the unconstitutional acts of the Defendants as alleged herein, Plaintiff has sustained a violation of his right to make and enforce contracts and, as a result, is entitled to damages as set forth in the damages section of our complaint.

COUNT VII
COMMON LAW BREACH OF CONTRACT

55. Plaintiff re-alleges and incorporates Paragraphs 1-54 above;
56. At all times herein the Plaintiff had entered into a contract of employment with the Defendant, City of Warren on January 6, 2017.
57. That Defendant City of Warren breached that contract by adding additional duties to Plaintiff's job that were not include in the contract job description, refusing to allow Plaintiff to do his job that was defined in the job description and thwarting his ability to institute policy and procedure that would address the institutional discrimination that he was hired to address and resolve.
58. That Defendant City of Warren and Mayor Fouts breached the contract with Plaintiff by refusing to allow Plaintiff to fulfill his contractual obligation being more concerned with political fallout in upsetting Warren citizens.
59. As a direct and proximate result of the breach of contract Defendants as alleged herein, Plaintiff has sustained damages as set forth in the damages section of our complaint.

COUNT VIII
PROMISSORY ESTOPPEL

60. Plaintiff re-alleges and incorporates Paragraphs 1-57 above;
61. Defendant City of Warren and Defendant Mayor Fouts made a clear and unambiguous promise to Plaintiff that in his position as Diversity and

Inclusion Coordinator he would be able to address the institutional racism that exist at the Defendant City of Warren Police, Fire and other departments.

62. Plaintiff reasonably and justifiably relied on said promises and put his trust in Defendant City of Warren and Defendant Mayor Fouts that it would fulfill its promises.
63. Defendant City of Warren and Defendant Mayor Fouts did not perform its promise to allow Plaintiff to address the institutional racism that exist in the Defendant City of Warren's Police, Fire and Other Departments, being more concerned with political fallout in upsetting votes.
64. Plaintiff's reliance on Defendants promises was a substantial factor in causing Plaintiff's harm as alleged herein.
65. As a direct and proximate result of Promissory Estoppel, Defendants as alleged herein, Plaintiff has sustained damages as set forth in the damages section of our complaint

COUNT IX
VIOLATION OF MICHIGAN ELLIOT-LARSEN CIVIL RIGHTS
ACT- DISPARATE TREMANT

66. Plaintiff re-alleges and incorporates Paragraphs 1-65 above;
67. At all relevant times, Plaintiff was an employee and Defendants were an "employer" within the meaning of Michigan's Elliot-Larsen Civil Rights

Act (“ECLRA”), MCL 37.2101, et seq.

68. At all relevant times, under the ELCRA, Plaintiff had a right to employment free from discrimination based on his race.
69. Defendants, through its agents, representatives, and employees, was predisposed to discriminate on the basis of race and acted in accordance with that predisposition.
70. Defendants, through its agents, representatives, and employees, treated Plaintiff differently from similarly situated Caucasian employees in the terms and conditions of employment, on the unlawful basis of race.
71. As a direct and proximate result of Defendant’s unlawful actions, Plaintiffs have suffered and continues to suffer injuries and damages.

COUNT X
VIOLATION OF MICHIGAN ELLIOT-LARSEN CIVIL RIGHTS ACT

72. Plaintiff re-alleges and incorporates Paragraphs 1-71 above;
73. At all relevant times, Plaintiff was an “employee” and Defendant was an “employer” within the meaning of ECLRA, MCL 37.2101, et seq.
74. Plaintiff was subjected to unwelcome conduct due to his race.
75. Plaintiff complained about the unwelcome conduct, stating that it was based on his racial status.
76. The Defendant violated Plaintiff’s rights under the ELCRA by allowing the unwelcome conduct to affect a term or condition of employment, including

unreasonably interfering with Plaintiff's work performance, and thus creating an intimidating and hostile work environment.

77. As a direct and proximate cause of Defendant's unlawful actions, Plaintiff has sustained and continues to sustain injuries and damages.

COUNT XI
VIOLATION OF MICHIGAN ELLIOT-LARSEN CIVIL RIGHTS ACT
RETALIATION

78. Plaintiff re-alleges and incorporates Paragraphs 1-75 above;
79. Defendants retaliated against Plaintiff for filing complaints regarding Defendants' discriminatory and unlawful practices.
80. Defendants' actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.
81. As a direct and proximate result of Defendant's actions, Plaintiff has suffered and continues to suffer damages and injuries.

WHEREFORE, Plaintiff request that this Court enter judgment against Defendants, providing the following relief:

- a. Back-pay, with prejudgment interest;
- b. Front-pay;
- c. Compensatory damages in whatever amount that Plaintiff is found to be entitled;
- d. An injunction requiring Defendants to cease and desist all unlawful racial and within the City Warren;

- e. An injunction barring Defendant from taking any further discriminatory or retaliatory actions or omissions against Plaintiff;
- f. An award of reasonable attorney's fees, expenses, and costs;
- g. Other appropriate nondiscriminatory measures to overcome the above described discrimination; and
- h. Such other and further relief that the Court deems appropriate.

Respectfully submitted,

/s/ Jonathan R. Marko
JONATHAN R. MARKO (P72450)
MARKO LAW, PLLC
Attorneys for Plaintiff
27735 Jefferson Ave
St. Clair Shores, MI 48081
313.777.7528 phone
313.771.5785 fax
jon@jmarkolaw.com

Dated October 14, 2019

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHISN DIVISION**

GREGORY MURRAY,

Plaintiff,

v.

CITY OF WARREN;

Defendants.

JONATHAN R. MARKO (P72450)
MARKO LAW, PLLC
Attorneys for Plaintiff
27735 Jefferson
St. Clair Shores, MI 48081
313.777.7528 phone
313.771.5785 fax
jon@jmarkolaw.com

JURY DEMAND

Plaintiff Gregory Murray (“Plaintiff”) through his attorneys, Marko Law PLLC and hereby demands a jury trial in this cause.

Respectfully submitted,

/s/ Jonathan R. Marko
JONATHAN R. MARKO (P72450)
MARKO LAW, PLLC
Attorneys for Plaintiff
27735 Jefferson Ave
St. Clair Shores, MI 48081
313.777.7528 phone
313.771.5785 fax
jon@jmarkolaw.com

Dated October 14, 2019

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2019, I presented the foregoing paper to this Court's ECF System which will send notification of such filing to the above listed attorneys of record.

/s/ Marissa A. Williams