

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA**

Frantz Pierre

CASE NO. 1:17-CV-20337

Plaintiff/Petitioner

Vs.

**William Serda Deputy City Manager Individual Capacity
Jose Smith City Attorney Individual Capacity**

Defendant/Respondent

SECOND AMENDED COMPLAINT

COMES NOW, and Plaintiff, by and through undersigned counsel and hereby files this complaint and in support thereof hereby offers the following:

INTRODUCTION

1. This is an action for legal and equitable relief to redress unlawful discrimination and harassment on the basis of race, and free speech which are constitutionally protected activities against the above-named Defendants. The suit is brought to seek a declaratory judgment that Defendant has engaged in a systemic pattern and practice of racial discrimination in employment practices and to secure damages, along with the protection of and to redress the deprivation of rights secured by 42 U.S.C. 1983, which provide for relief against discrimination and harassment in employment on the basis of race related thereto.

JURISDICTION

2. This action is authorized and instituted pursuant to, 42 U.S.C. 1983, 42 U.S.C. 1988 as amended, 42 U.S.C. 1983, and 42 U.S.C. 28 USC 1343.
3. The employment practices hereafter alleged to be unlawful were committed in North Miami Beach, within the jurisdiction of the Southern District of Florida.

4. This Court has jurisdiction over Plaintiffs' 42 U.S.C. 1983 claims under 28 U.S.C. § 1331 42 U.S.C. 1988. The Court has jurisdiction to grant declaratory and further relief pursuant to 28 U.S.C 2201 and 2202. This Court will have pendent jurisdiction any state claims under 28 USC 1367.

VENUE

5. Venue is proper under 28 U.S.C. § 1391(a) because the Defendant Business' place of business is in in North Miami Beach, Miami Florida and because the actions alleged by Plaintiffs in this Complaint occurred in North Miami Beach, Miami, Florida.
6. Plaintiffs Frantz Pierre has fulfilled all conditions precedent to the institution of this action and has obtained Notices of Right to Sue.

PARTIES

7. Plaintiff, Frantz Pierre, is a Black Haitian-American, male and citizen of the State of Florida, and is a member of a protected class who resides in North Miami Beach Florida, and was elected to office in the respondent city.
8. Defendant, William Serda, is the Deputy City Manager of the city of North Miami Beach, Inc., in the State of Florida is located at 17011 N.E. 19th Avenue, North Miami Beach Florida 33162.
10. Defendant, Jose Smith, is the City Attorney of the city of North Miami Beach, Inc., in the State of Florida is located at 17011 N.E. 19th Avenue, North Miami Beach Florida 33162.

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

11. Pierre timely filed Charges of Discrimination with the Equal Employment Opportunity Commission (EEOC).
12. On October 27, 2016, The Department of Justice issued Pierre a Notice of Right to Sue, within 90 days of his receipt of which he is filing with this action.

FACTS

13. Plaintiff is a fifty-two year, and is a member of a protected class.
14. At all times hereto, Plaintiff was engaged in political activity, holding public office which is a property right guaranteed by the First Amendment and as such protected by the Federal Constitution.
15. At all times hereto, Plaintiff was engaged in free speech which is also right guaranteed by the First Amendment and as such protected by the Federal Constitution
16. The right to hold public office and the freedom of speech are clearly established constitutional rights.
17. Plaintiff was elected to the City of North Miami Beach in 2007 as a Councilman and is the only Black Haitian-American Counsel person.
18. In November of 2014, during a council meeting, Plaintiff told the City Police Chief that he should resign after it was discovered that his department was utilizing photographs of Black Male residents as target practice.
19. Plaintiff was engaged in free access conduct and/or opposition conduct against a City of North Miami Beach employee, namely the City Police Chief.
20. In retaliation officials from City of North Miami Beach sent a Code Enforcement Officer with a news crew to Plaintiff's home to cite him for various code violations. Plaintiff wasn't home.
21. Code Enforcement continued to harass Plaintiff at all hours of the day and night by coming to his home to investigate various alleged frivolous unfounded allegations.
22. One of the Code Enforcement Officer's chief complaints was that he had a fence in his yard that was missing a few nails which caused it to lean. Another complaint was that Plaintiff had a relative's legally registered vehicle in his driveway that had low air in a front tire.

23. Employees of the city of North Miami Beach set up investigations and news stories that coincided with Plaintiff's election when Plaintiff was running for councilman in the City of North Miami Beach.
24. The news spots took place one day before Plaintiff was to run for election in North Miami Beach.
25. Defendants are responsible for the code inspectors, news articles and internet and internet stories that have and/or are intended, to cause irreparable damage to his reputation political career.
26. Defendants have leaked false information to at least one blogger that continues to write internet stories that will be and/or deleterious to plaintiff's political career.
27. Serda and Smith that called news conference with media outlets to put a story out about Plaintiff abusing his position as a councilman and threatening Code Enforcement Officer Tashema Lewis. This information was given to Plaintiff by Serda who has since apologized for his actions.
28. Plaintiff has been reprimanded by subordinate members of the from the mayor's office and Defendant Smith even though they did not have the authority.
29. The news stories were the tantamount of defamation, libel and slander of Plaintiff's character.
30. North Miami Beach officials filed allegations against Plaintiff so that he could be investigated by the Florida Department of Law Enforcement.
31. Defendants' intentional and reckless falsehoods are not protected by First Amendment Protections.
32. The mayor of North Miami Beach went as far as to publically endorse the candidate that was running against Plaintiff for his Plaintiff's seat.

33. Plaintiff believes that he was targeted because he was the only Black Haitian-American, which is contrary to federal and state law.
34. Pierre has no plain, adequate or complete remedy at law for the actions of the defendants; which have caused and continue to cause irreparable harm.
35. Plaintiff's wife has been subpoenaed to testify against him at Miami-Dade County Ethics hearings.
36. Plaintiff's children have been traumatized by the actions of North Miami Beach when they send people to their home to do investigations.
37. Defendants acted in an arbitrary manner, grossly abusing the lawful powers of office

COUNT I
JOSE SMITH
Racial Discrimination in Violation of
42 U.S.C. 1983

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36 as if fully forth herein.

38. The Defendant's conduct as alleged at length herein constitutes discrimination based on race in violation of 42 U.S.C. 1983 which is prohibited by the constitution.
39. The stated reasons for the Defendant's conduct were not the true reasons, but instead were pretext to hide the Defendant's racial discriminatory animus.
40. Plaintiff, a Haitian-American male was treated differently from other councilmen in North Miami Beach. All of the other councilmen are non-Haitian and not in this protected class.
41. Councilmembers who are not a member of this class has never been subject to being on the news, ethic violations or subpoenas or other mistreatment.

42. The codes violation was reported hours before the codes enforcement officer even came to the home. Defendant's actions were a scheme so that Plaintiff would not get re-elected back to office.
43. The situation complained were not even code violations. There was a car in the driveway that was low on air and a fence that needed a nail in it. No building permit was involved. No building code was violated by Plaintiff.
44. Defendant's conduct was pretext for sending the code enforcement officer to his home to say she was threatened by Plaintiff.
45. Defendant Smith's alerted the news and had conferences concerning Plaintiff's alleged misconduct after he caused it to be aired on the news on the day of early voting while Plaintiff was running for re-election.
46. Defendant Smith's treatment of Plaintiff is without any rational basis for the difference in treatment.

WHEREFORE, plaintiff prays that the court will:

- a. Enter a judgment for Pierre and against Defendant, Smith's, practices toward Pierre are in violation of **42 U.S.C. 1983**.
- b. Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- c. Grant Pierre his costs and reasonable attorney's fees.
- d. Award damages for anger, embarrassment, mental anguish and reputation harm.
- e. Grant Pierre such other and further relief as the circumstances and law requires and/or provide. Count Three.
- f. Award Punitive Damages.

COUNT II
WILLIAM SERDA
Racial Discrimination in Violation of
42 U.S.C. 1983

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36 as if fully forth herein.

47. The Defendant's conduct as alleged at length herein constitutes discrimination based on race in violation of 42 U.S.C. 1983 which is prohibited by the constitution.
48. The stated reasons for the Defendant's conduct were not the true reasons, but instead were pretext to hide the Defendant's racial discriminatory animus.
49. Plaintiff, a Haitian-American male was treated differently from other councilmen in North Miami Beach. All of the other councilmen are non-Haitian and not in this protected class.
50. Councilmembers who are not a member of this class has never been subject to being on the news, ethic violations or subpoenas or other mistreatment.
51. The codes violation was reported hours before the codes enforcement officer even came to the home. Defendant's actions were a scheme so that Plaintiff would not get re-elected back to office.
52. The situation complained were not even code violations. There was a car in the driveway that was low on air and a fence that needed a nail in it. No building permit was involved. No building code was violated by Plaintiff.
53. Defendant's conduct was pretext for sending the code enforcement officer to his home to say she was threatened by Plaintiff.
54. Defendant Serda alerted the news and had conferences concerning Plaintiff's alleged misconduct after he caused it to be aired on the news on the day of early voting while Plaintiff was running for re-election.
55. Defendant Serda's treatment of Plaintiff is without any rational basis for the difference in treatment.

WHEREFORE, plaintiff prays that the court will:

- a. Enter a judgment for Pierre and against Defendant Serda practices toward Pierre are in violation of 42 U.S.C. 1983.
- b. Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- c. Grant Pierre his costs and reasonable attorney's fees.
- d. Award damages for anger, embarrassment, mental anguish and reputation harm.
- e. Grant Pierre such other and further relief as the circumstances and law requires and/or provide. Count Three.
- f. Award Punitive Damages

COUNT III
(Jose Smith)
(Retaliation in 42 U.S.C. 1983)

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36, as if fully forth herein.

56. Plaintiff is a public official and was engaged in a federally protected activity.
57. Defendant is not trying to turn a private matter into a public concern. Plaintiff spoke on a matter that was of public concern. Defendant asked the then Police Chief to resign when his officers were using targets with photographs of black city residents on them during target practice.
58. The interest of Plaintiff in commenting on the matter of public concern outweighs employer's interest in promoting efficiency of public servants it performs through employees.

59. Plaintiffs protected speech played a ‘substantial part’ in the government's decision to file ethics violation and generate newscasts.
60. Defendant would have had no other reason for his conduct if it were not for Plaintiff’s protected conduct.
61. Plaintiff was the subject adverse action caused Plaintiff to suffer injury likely to chill a person’s ordinary firmness.
62. The adverse action was motivated at least in part as a response to the exercise of Plaintiff’s constitutional rights.

WHEREFORE, plaintiff prays that the court will:

- a. Enter a judgment for Pierre and against Smith’s practices toward Pierre are in violation of Pierre’s rights under 42 USC 1983
- b. Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- c. Grant Pierre his costs and reasonable attorney’s fees pursuant to **42 U.S.C. 1983**
- d. Award damages for anger embarrassment and reputation harm.
- e. Grant Pierre such other and further relief as the circumstances and law requires and/or provide.
- f. Award of nominal, compensatory for all legal relief sought in this Complaint.
- g. Award punitive damages.

COUNT IV
William Serda
(Retaliation in Violation of 42 U.S.C. 1983)

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36, as if fully forth herein.

63. Plaintiff is a public official and was engaged in a federally protected activity.
64. Defendant is not trying to turn a private matter into a public concern. Plaintiff spoke on a matter that was of public concern. Defendant asked the then Police Chief to resign when his officers were using targets with photographs of black city residents on them during target practice .
65. The interest of Plaintiff in commenting on the matter of public concern outweighs employer's interest in promoting efficiency of public servants it performs through employees.
66. Plaintiffs protected speech played a 'substantial part' in the government's decision to file ethics violation and generate newscasts.
67. Defendant would have had no other reason for his conduct if it were not for Plaintiff's protected conduct.
68. Plaintiff was the subject adverse action caused Plaintiff to suffer injury likely to chill a person's ordinary firmness.
69. The adverse action was motivated at least in part as a response to the exercise of Plaintiff's constitutional rights.

WHEREFORE, plaintiff prays that the court will:

- a. Enter a judgment for Pierre and against Serda's practices toward Pierre violated of Pierre's rights under **42 U.S.C. 1983**.
- b. Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- c. Grant Pierre his costs and reasonable attorney's fees pursuant to 42 U.S.C. 1983.
- d. Award damages for anger embarrassment and reputation harm.
- e. Grant Pierre such other and further relief as the circumstances and law requires and/or provide. Count Three.
- f. Award of nominal, compensatory for all legal relief sought in this Complaint.
- g. Award Punitive Damages

COUNT V

Jose Smith

HOSTILE WORK ENVIRONMENT in VIOLATION of
(42 U.S.C. 1983)

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36, as if fully forth herein.

- 70. Plaintiff is a member of a protected class.
- 71. Plaintiff is the only Haitian-American councilman in North Miami Beach, Florida.
- 72. The conduct of defendant's was serious enough to affect the psychological wellbeing and lead to Plaintiff suffering injury.
- 73. The conduct took place because he was a member of the protected group.

74. Plaintiff was subjected to an objectively hostile and abusive environment and Plaintiff's perception was that it was an abusive environment.
75. The harassment was sufficiently severe and pervasive to alter the terms and conditions of Plaintiff's employment and create a discriminatorily abusive working environment.
76. The totality of the circumstances made for a hostile environment.

WHEREFORE, Plaintiffs demand judgment against the Defendant and ask for the following relief:

- (a) A declaratory judgment that the Defendant's employment practices challenged herein are illegal and in violation of **42 U.S.C. 1983**.
- (b) Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- (c) Award of nominal, compensatory and punitive damages for all legal relief sought in this Complaint;
- (d) Awarding reasonable attorneys' fees and costs
- (e) Award Punitive Damages
- (f). Ordering any other relief this Court deems to be just and appropriate

COUNT VI
William Serda
HOSTILE WORK ENVIRONMENT in Violation of the
(42 U.S.C. 1983)

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36, as if fully forth herein.

77. Plaintiff is a member of a protected class.
78. Plaintiff is the only Haitian-American councilman in North Miami Beach, Florida.
79. The conduct of defendant's was serious enough to affect the psychological wellbeing and lead to Plaintiff suffering injury.

80. The conduct took place because he was a member of the protected group.
81. Plaintiff was subjected to an objectively hostile and abusive environment and Plaintiff's perception was that it was an abusive environment.
82. The harassment was sufficiently severe and pervasive to alter the terms and conditions of Plaintiff's employment and create a discriminatorily abusive working environment.
83. The totality of the circumstances made for a hostile environment.

WHEREFORE, plaintiff prays that the court will:

- a. Enter a judgment for Pierre and against William Serda practices toward Pierre are in violation of 42 USC 1983
- b. Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- c. Grant Pierre his costs and reasonable attorney's fees.
- d. Award damages for anger, embarrassment, mental anguish and reputation harm.
- e. Grant Pierre such other and further relief as the circumstances and law requires and/or provide. Count Three.
- f. Award Punitive Damages

COUNT VII
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS (William Serda)

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36, as if fully set forth herein.

84. Defendant behavior was intentional and reckless and he intended his behavior and he knew or should have known that emotional distress would likely result.

85. Defendant's conduct was outrageous, that is to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable to a civilized community.
86. William Serda engaged in deliberate or reckless infliction of mental suffering and emotional distress.
87. The emotional distress was severe. Plaintiff has been to the hospital because of Defendant's conduct, he has lost weight, been placed on medication, has trouble sleeping, and continued problems.

WHEREFORE, plaintiff prays that the court will:

- a. Enter a judgment for Pierre and against Serda's practices toward Pierre for intentional infliction of emotional distress.
- b. Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- c. Grant Pierre his costs.
- d. Award damages for anger, embarrassment, mental anguish and reputation harm.
- e. Grant Pierre such other and further relief as the circumstances and law requires and/or provide. Count Three.

COUNT VIII
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS (Jose Smith)

Plaintiff re-alleges and adopts the allegations in paragraphs 1 through 36, as if fully forth herein.

88. Defendant behavior was intentional and reckless and he intended his behavior and he knew or should have known that emotional distress would likely result.

89. Defendant's conduct was outrageous, that is to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable to a civilized community.
90. Defendant Smith engaged in deliberate or reckless infliction of mental suffering and emotional distress.
91. The emotional distress was severe. Plaintiff has been to the hospital because of Defendant's conduct, he has lost weight, been placed on medication, has trouble sleeping, and continued problems.
92. Defendant Jose Smith engaged in deliberate or reckless infliction of mental suffering.
93. His outrageous conduct is what caused the emotional distress.
94. The distress that Defendant caused was severe.

WHEREFORE, plaintiff prays that the court will:

- a. Enter a judgment for Pierre and against Defendant Serda's practices for intentional infliction of emotional distress
Preliminarily and permanently restraining Defendant from engaging in the aforementioned conduct; and
- b. Grant Pierre his costs.
- c. Award damages for anger, embarrassment, mental anguish and reputation harm.
- d. Grant Pierre such other and further relief as the circumstances and law requires and/or provide.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all triable issues.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by through the E-Portal to the Clerk of Court for the Southern District of Florida, this 6th day of March, 2017.

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