

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

TRAVIS S. THOMAS, SR.,)	
)	
Plaintiff,)	CASE NO. _____
)	
v.)	JURY TRIAL REQUESTED
)	
)	
AUBURN UNIVERSITY,)	
)	
Defendant.)	

COMPLAINT

COMES NOW the Plaintiff, Travis S. Thomas, Sr., by and through his undersigned counsel of record, and hereby doth complain against the above-named Defendant, as set forth herein-below.

I. JURISDICTION & VENUE

1. Plaintiff Thomas files this Complaint, institutes these proceedings, and invokes the jurisdiction of this Court under and by virtue of 28 U.S.C. §§ 1331 and 1334 (a)(4), as an action arising under the Act of Congress known as Title VII of the Civil Rights Act of 1964, (42 U.S.C. § 2000(e) et seq.), as amended by the 1991 Civil Rights Act, 42 U.S.C. § 1981(a); and 42 U.S.C. § 1201, et seq., to obtain equitable relief, the costs of suit, including reasonable attorneys' fees, and damages suffered by the Plaintiff, due to the Defendant's discrimination against Plaintiff.

2. Plaintiff Thomas filed a charge of race and gender discrimination (Charge No.: 420-2020-02341) with the U.S. Equal Employment Opportunity Commission ("EEOC") in Birmingham, Alabama on June 9, 2020 and received a Right-to-Sue on said charge on December 7, 2020. (Exhibit A). Plaintiff filed a second discrimination

charge (Charge No.: 420-2020-02644) on July 6, 2020, alleging wrongful retaliation against him for having filed the first charge. Plaintiff received a Right-to-Sue on February 25, 2021 on said second charge, giving Plaintiff the right to pursue this claim in federal court for 90 days after said receipt. (Exhibit B).

3. Venue is proper in the Eastern Division of the Middle District of Alabama, since the alleged discriminating actions of Defendant occurred in Lee County, Alabama.

II. PARTIES

4. The named Plaintiff, Travis S. Thomas, Sr. (hereinafter "Plaintiff" or "Mr. Thomas"), is a citizen of the United States and a resident of Auburn, Alabama. Plaintiff is over the age of nineteen years.

5. The Defendant, Auburn University (hereinafter "Defendant" or "Auburn"), is a state university located in Lee County, Alabama. At all times relevant to this complaint, Plaintiff was employed, and continues to be employed, by Defendant.

III. STATEMENT OF FACTS

6. Mr. Thomas is an African American male.

7. Mr. Thomas earned his Bachelor's degree in Sports Leadership (2011), a Master's degree in Exercise Physiology (2013), and a second Master's degree in Sport Management (2019) from Auburn University in Montgomery.

8. Mr. Thomas has had over seven (7) years of professional experience in athletic academic advising, at institutions including the University of Alabama from 2012 to 2013 and 2015 to 2016, and Old Dominion University from 2016 to 2017.

9. On or about May 22, 2017, Mr. Thomas was hired by Auburn University as an Academic Counselor for swimming, diving, and volleyball. On or about September

2018, Mr. Thomas was promoted to Director of Academic Support Services, which required Mr. Thomas to supervise football and volleyball academic staff, serve as a point of contact for academic eligibility, provide academic and interpersonal counseling to student athletes, and serve as a liaison between athletic academic staff and coaching staff.

10. Since his employment at Auburn began, but especially after the death of his wife Ruby in July, 2019, Mr. Thomas' work environment became increasingly subjected to racial and gender-related professional scrutiny and hostility by Defendant Auburn University through his supervisors.. Mr. Thomas was the only male, and the only African American, on the Leadership team, but was consistently left out of meetings and conversations by the other three members of the Leadership team, all white females, namely Kathryn Flynn, Courtney Gage, and Cathie Helmbold. Thus, Mr. Thomas' appointment as Director of Academic Services became marginalized, rendering him as a "token", to provide the illusion of racial and gender equality by Auburn University, and help Auburn defend itself against its criticized image as the whitest school in the SEC.

11. Mr. Thomas' position involved strategic planning and timing, and was extremely detailed. Unfortunately, Mr. Thomas soon was on the receiving end of gender-based pressures brought down on him by his three female supervisors, causing a cold and hostile working environment. On one occasion, when Mr. Thomas attempted to tell a senior associate athletic director, Dr. Kathryn Flynn, that she and the two other females were "over-reacting" to the grades of the football team. Dr. Flynn replied that "over-reacting" was "not something he [Mr. Thomas] should say to a supervisor who is also a woman."

12. Aside from the issues within the office, there developed an inherent culture of pressure and fear by and between, and among, full-time and part-time employees. Since May 2017, several staff members were pressured to leave the department, including two African Americans. Other African American employees did not make it out of a probationary period, while yet other employees, including several African Americans were forced to find positions outside of the Athletic Department, never working in the Athletic Department again.

13. On or about December 18, 2019, Mr. Thomas met with Dr. Kathryn Flynn to discuss the reporting structure of the Student-Athletes Supporting Services, to address different reporting structures in the SEC, and to further discuss how Auburn University's structures were not aligned with the majority of its counterparts. Unfortunately for Mr. Thomas, during the conversation, Dr. Flynn directed very hurtful and stressful comments at Mr. Thomas, maligning his work in his overwhelming African American caseload, with comments grounded in racial roots inferred towards the Plaintiff. Such comments included that Mr. Thomas hadn't "been himself this semester" and stated that Mr. Thomas' "ability to recall information is not as good." These were condescending put-downs. Despite losing his wife to breast cancer on July 9, 2019, and despite his single parent duties, Mr. Thomas was still well able to handle both professional and personal duties.

14. In addition, Dr. Flynn appeared to berate Mr. Thomas, stating "the grades for football are the worst they've ever been." Unfortunately, many football players with the greatest academic challenges were, and are, African Americans. As a result, the Auburn administration expects that, since Mr. Thomas is African American, he can

better remedy the downfalls of his African American caseload, given that many football player students at Auburn are African American. Indeed, the trio of white female supervisors shook their heads at Mr. Thomas, as if he could easily improve the players' grades, and should improve the players' grades, more than he actually can, because of his caseload and other limitations. Indeed, the poor grades of the football players were held over his head and used as a threat against future promotions, when it was Mr. Thomas' duty to communicate with the coaching staff and administrators on issues that arose. Nonetheless Mr. Thomas did proactively meet with students to discuss grades and schedule mentor and tutoring sessions. Notwithstanding, the three white female administrators use of sarcastic comments reflected a subtle form of race discrimination resulting in a race-based cold and hostile work environment for himself.

15. Dr. Flynn and her two assistants further criticized Mr. Thomas, stating that he needed to "work on [his] supervisory skills," something Mr. Thomas tried to accept in a constructive manner. However, Dr. Flynn never provided Mr. Thomas with any examples of how or where he was deficient, nor did she document any examples of his lack of supervisory skills. Other than criticizing Mr. Thomas for being too close to the staff he supervised, Dr. Flynn, Ms. Gage and Ms. Helmbold had little to say about the work of the other people Mr. Thomas supervised which was part of Mr. Thomas work. Although Dr. Flynn and her assistants were too smart to use racial epithets, Mr. Thomas took the criticism of his ethnic style as a not-too-subtle put down, laced with racial and gender overtones.

16. The day after Mr. Thomas' meeting with Dr. Flynn, his responsibilities of supervising the academic football staff were taken away, and given to his immediate

supervisor, Associate Athletic Director Courtney Gage, a white female. As a result, Mr. Thomas was essentially demoted to the job of academic counselor.

17. Mr. Thomas' demotion was discriminatory, and the beginning of a paper trail creation to provide a justification for Auburn's ultimate dismissal of Mr. Thomas. As a result, on June 9, 2020, Mr. Thomas filed a charge of race and gender discrimination against Auburn University with the EEOC. (Exhibit C).

18. On or about June 10, 2020, Mr. Thomas' attorney, the undersigned, Julian L. McPhillips, Jr., emailed a letter to Auburn University's Athletic Director Allen Greene raising concerns about the way Auburn was treating Mr. Thomas (see Exhibit D), and requested a meeting between Mr. Thomas and Mr. Greene.

19. On or about June 11, 2020, Auburn University Counsel Maran White responded to Mr. McPhillips, stating that such a meeting was inappropriate, and she directed Mr. Thomas to Auburn's AA/EEO office. Mr. McPhillips responded with a letter to Ms. White, attaching a copy of Mr. Thomas' original EEOC charge (Exhibit C), filed by mail on June 9, 2020, and stamped as received by the EEOC on June 19, 2020.

20. Mr. Thomas made several attempts to have senior administrators step in and help him deal with his issues. He went to Senior Associate Monique Holland and Assistant Athletic Director Karla Gacasan several times when all this began. Travis said that he opened up and voiced how he was feeling, and they insured him that steps would be taken to remedy this. Yet nothing ever happened, and Mr. Thomas began to feel even more pressure from his three white female supervisors to make him quit. Almost everything that the three supervisors deemed a mistake, even if they were

wrong, now warranted a meeting with Human Resources. One academic counselor responded to Mr. Thomas “It’s always double standards the way they treat you.”

21. Mr. Thomas later met with an employee in Auburn's Human Resources (H.R) Department, namely Takisha Brown, who was superficially sympathetic, and pledged a full investigation of his concerns. However, Mr. Thomas was greatly disappointed to receive a much-lowered Performance Review on June 30, 2020, setting him up for lower raises and other adverse action. Mr. Thomas believes the lower review was directly in response to, and in retaliation for, his filing his June 9, 2020 first EEOC charge against Auburn (notifying the Auburn Athletic director on June 10, 2020, about said charge) (Exhibit D). Indeed, the lower score given Mr. Thomas came **only two weeks after the filing of his first EEOC charge.**

22. Thus, Mr. Thomas filed a Supplemental charge of discrimination with the EEOC on July 6, 2020, alleging unlawful “retaliation” against the Plaintiff Thomas, due to the much lower performance review he received (Exhibit E).

23. Based on the foregoing, Mr. Thomas has been subjected to race and gender discrimination, and a hostile work environment, also in violation of Title VII, 42 U.S.C. § 2000(e), as well as unlawful retaliation, in violation of Title VII, 42 U.S.C. § 2000(e).

24. As a result of the discrimination and retaliation practiced against Mr. Thomas, he has suffered extreme mental and emotional distress. Mr. Thomas has also incurred costs and attorney's fees to pursue this matter.

25. One of the many examples of the race and gender discrimination and retaliation Plaintiff Thomas was experiencing is that, in December 2019-January 2020,

plaintiff learned that Auburn University caused, or allowed to be caused, significant pressure to be placed upon a certain female Auburn University professor to change a D (Failing grade) to a C (Passing grade) for a graduate Auburn football player, who had transferred into Auburn from Arizona State, but neglected his studies, resulting in receiving bad grades (Exhibit F). Mr. Thomas says the student was a counselee of his and that Dr. Flynn, Ms. Gage, and Ms. Helmbold, and all the coaching staff knew about the struggles of the players.

26. The Auburn University football team needed the grade changed not only for the graduate football player to play in Auburn's Bowl game that January 2020, but so that the Auburn football team would not lose its eligibility to accept other graduate transfers for an entire additional year.

27. By email dated December 23, 2019, only days before the New Year's Bowl game, said professor persisted in refusing to change the football players grade (real name of player redacted, to comply with FERPA law) (Exhibit F).

28. Between her December 23, 2019 email, and the January 1, 2020, Bowl game said professor was caused to change her mind, or simply changed her mind, and accordingly changed the grade, thus allowing football player to play, and further allowing Auburn University to maintain an open channel for the receipt of graduate transfer football players.

29. Plaintiff Thomas has known about this suspicious grade change situation for at least a year (from January 2020-January 2021), and knew that his three white female supervisors (Flynn, Gage, and Helmbold) also knew that it was suspicious, and said three supervisors knew that Mr. Thomas knew about it (Exhibit G). Plaintiff avers,

on information and belief, that his knowledge of this was an additional reason why Plaintiff's three white female supervisors wanted him out of the Academic division of the Auburn University Athletic Department.

30. At a meeting on January 28, 2021, Plaintiff felt threatened by Auburn's compliance official Rich McGlynn, when Mr. McGlynn pronounced that Mr. Thomas should have reported the possible NCAA infraction described above, even if Mr. Thomas didn't know there actually had been an infraction. Nonetheless, Mr. McGlynn also threatened that, because Auburn's rules require employees to report anything that might be a "potential violation", he, Plaintiff Thomas, could be subject to termination for failure to do so.

31. To this threat Mr. Thomas replied that he, Plaintiff Thomas, would "only be speculating" to believe there was a potential violation, and that such "speculation" was not the same as a potential violation. Further, at a year earlier January 2020 certification meeting, the Plaintiff had brought this entire matter up to the Leadership Team, the Auburn Compliance Office, the Faculty Athletic representative, and the Registrar's office, so everyone knew about what was going on an entire year earlier. Thus, no one could correctly say Mr. Thomas was hiding information.

32. After this email from Professor Nelson (Exhibit F), Mr. Thomas was not informed of any activities concerning the student after that, until the January 2020 certification meeting weeks later. Present at that certification meeting were the Register's office, Athletics Compliance office, Faculty Athletic Representative, Senior Athletic Director for SASS, two Associate Athletic Directors for SASS, Director Academic Support Services and Football Academic Counselors. During that meeting

Mr. Thomas brought up that this student should have been ineligible because he did not receive two C's to play in the bowl game, or to remain eligible for Spring 2020. Mr. Thomas raised concerns at that meeting but was informed "you know his grade got changed". The conversations were awkward, but Mr. Thomas never received any information on the grade change until that meeting. Further when Mr. Thomas brought up the grade change in the meeting, it was laughed off by people present, as if no big deal.

33. Mr. Thomas himself did not actually know about the grade change until after the meeting, although it apparently came a couple of days after the original email from the professor saying she would not change the grade. Mr. Thomas was never informed of the grade change, which broke Auburn's normal operating procedures. Anytime a grade change normally came through it was forwarded, at the very latest, to Mr. Thomas the day of the change, not weeks later.

34. Plaintiff Thomas's knowledge of the matters described above was, and/or is, another reason why all three of his white female supervisors, and defendant Auburn University itself, wanted Plaintiff terminated, or otherwise pressured to leave.

35. Plaintiff's three white female supervisors all knew about the professor's apparently pressured grade change, which made possible the Auburn football player's eligibility for the January 1, 2020 bowl game, yet none of said three white females were ever threatened about their knowledge, nor were they ever threatened with termination, despite their failure to report it to Auburn University itself, just as Auburn has been accusing the Plaintiff of doing in its notice of termination.

36. The more gentle and respectful way the three white females were treated by Auburn University, as compared to the more antagonistic and disrespectful way Plaintiff himself, a young black male, was blamed, constituted race and sex discrimination against the Plaintiff himself.

37. The pervasively cold and hostile way Plaintiff has been treated became so severe that it was obvious to Plaintiff that the Defendant Auburn University's Athletic Department, and its three white female supervisors, were trying to make him quit, and/or leave the department, if not Auburn's campus altogether. Likewise, it was obvious to Plaintiff Thomas that if he were to go on his own, it would be under circumstances constituting constructive discharge of himself as an Auburn University employee.

38. Unfortunately, plaintiff was never given the opportunity to resign, because on February 24, 2021, he received notice from Ms. Karla Gacasan, head of the Athletic department, of a prospective termination, subject to review on the following Monday, March 1, 2021.

39. On Monday, March 1, 2021, Plaintiff showed up, without counsel, to a meeting involving Ms. Gacasan, Mr. McGlynn, and a security officer and was finally notified that he was terminated as an employee of Auburn University.

40. There are also African American representatives in senior administration levels at the Athletic Department, namely Athletic Director Allen Greene, and Ms. Monique Holland, senior athletic department person. Plaintiff tried to speak with Mr. Greene several times about his problems, but was never allowed by Auburn to do so.

Plaintiff has also spoken with Ms. Holland multiple times since his difficulties began in 2019, but she has been no help.

41. Plaintiff avers that on yesterday's date, March 3, 2021 he signed a third charge of discrimination with the EEOC with an unfiled copy of this lawsuit, included as the primary exhibit, so that no jurisdictional challenge can be properly made that he did not list the new and latest events in an EEOC charge prior to his Federal District Court complaint. Plaintiff contends, however, that all said events up to the date of his termination of March 1 have flowed from, or a natural outgrowth of, the facts alleged in his first two EEOC charges of June 9, 2020 and July 6, 2020, and that said natural subsequent facts are proper for consideration in this case, as a matter of federal case law. However, out of abundance of caution a third charge has also been filed, and if a third right to sue is received the plaintiff and his undersigned attorneys reserve the right to amend this complaint to properly allege and attach said third right to sue.

IV. PLAINTIFF'S CAUSES OF ACTION

COUNT ONE - RACE DISCRIMINATION

42. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 40 above, the same as if more fully set forth herein, and further avers that the Defendant's actions and inactions toward him violated his right to be free of race discrimination in employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000(e), et seq.), and the 1991 Civil Rights Act, and 42 U.S.C. 1981(a).

43. As a proximate cause of Defendant's afore-described actions in discriminating against Plaintiff, due to his race, Plaintiff was injured and damaged, as

set forth in paragraphs 1 through 41 above. In addition, Plaintiff has suffered considerable mental and emotional anguish.

44. Plaintiff avers that he has pursued and exhausted his administrative remedies.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:

- a) Judgment declaring that the Defendant discriminated against Plaintiff, on the basis of Plaintiff's race;
- b) An order granting Plaintiff compensation for rights to which Plaintiff would have been entitled, had Plaintiff not been the victim of race discrimination, effective from the date of final judgment;
- c) An award of compensatory damages, including for mental anguish, to which Plaintiff may be entitled;
- d) An award of all court costs and reasonable attorneys' fees, including those incurred for seeking administrative relief; and
- e) Such further, other and different relief as the Court may deem appropriate and necessary.

COUNT TWO - GENDER DISCRIMINATION

45. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 40 above, the same as if more fully set forth herein, and avers that the Defendant's actions toward him violated his right to be free of gender discrimination in

employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000(e), et seq.), and the 1991 Civil Rights Act, and 42 U.S.C. 1981(a).

46. As a proximate cause of Defendant's afore-described actions in discriminating against Plaintiff, due to his gender, Plaintiff was injured and damaged, as set forth in paragraphs 1 through 41 above. In addition, Plaintiff has suffered considerable mental and emotional anguish.

47. Plaintiff avers that he has pursued and exhausted his administrative remedies.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:

- a) Judgment declaring that the Defendant discriminated against Plaintiff, on the basis of Plaintiff's gender;
- b) An order granting Plaintiff compensation for rights to which Plaintiff would have been entitled, had Plaintiff not been the victim of gender discrimination, effective from the date of final judgment;
- c) An award of compensatory damages, including for mental anguish, to which Plaintiff may be entitled;
- d) An award of all court costs and reasonable attorneys' fees, including those incurred for seeking administrative relief; and
- e) Such further, other and different relief as the Court may deem appropriate and necessary.

COUNT THREE - RACE-BASED COLD AND HOSTILE WORKING ENVIRONMENT

48. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 - 40 above, the same as if more fully set forth herein, and further avers that the Defendant's actions toward him violated his right to be free of a race-based cold and hostile working environment in employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000(e), et seq.), as amended by the 1991 Civil Rights Act.

49. As specifics for the race-based cold and hostile work environment that Plaintiff suffered, Plaintiff cites the facts set forth particularly in the statement of facts above, paragraphs 1 - 40 above, and further avers that he has many witnesses to back him up, including players on the football and basketball teams.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:

- a) A judgment declaring that the Plaintiff was subjected to an egregious race-based hostile work environment;
- b) An award of compensatory damages, including for mental anguish, to which Plaintiff may be entitled;
- c) An award of all court costs and reasonable attorneys' fees, including those incurred for seeking administrative relief; and
- d) Such further, other and different relief as the Court may deem appropriate and necessary.

COUNT FOUR – GENDER-BASED COLD AND HOSTILE WORKING ENVIRONMENT

50. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 - 41 above, the same as if more fully set forth herein, and further avers that the Defendant's actions toward him violated his right to be free of a gender-based cold and hostile working environment in employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000(e), et seq.), as amended by the 1991 Civil Rights Act.

51. As specifics for the race-based cold and hostile work environment that Plaintiff suffered, Plaintiff cites the facts set forth particularly in the statement of facts above, paragraphs 1 - 39 above.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:

- a) A judgment declaring that the Plaintiff was subjected to an egregious race-based hostile work environment;
- b) An award of compensatory damages, including for mental anguish, to which Plaintiff may be entitled;
- c) An award of all court costs and reasonable attorneys' fees, including those incurred for seeking administrative relief; and
- d) Such further, other and different relief as the Court may deem appropriate and necessary.

**COUNT FIVE – WRONGFUL RETALIATION FOR FILING EARLIER EEOC CHARGE,
in violation of Title VII (42 U.S.C. § 2000(e))**

52. Plaintiff Thomas hereby repeats, realleges, and incorporates by reference the preceding paragraph of this complaint and avers that the actions described by Plaintiff in the above-described paragraphs 9-39, and especially in paragraphs 19-39, constitute unlawful retaliation against him for having filed his first charge of discrimination on June 9, 2020, (stamped received by the EEOC on June 19, 2020) constituted wrongful retaliation.

53. Plaintiff Thomas avers that part of Defendant's strategy to make him leave the Compliance Division of the Auburn Athletic department ostracizing him, and treating him coldly, also constituted a constructive discharge, although Plaintiff has hung on to his job as late as mid-February 2021.

54. Plaintiff Thomas he also suffered wrongful retaliation himself, in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000(e), and he has been greatly damaged thereby, is about to lose his job, and has been subjected to such a pervasively cold and hostile work environment that he could no longer maintain both his job and sanity at the same time.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:

- a) A judgment declaring that the Plaintiff was subjected to an egregious race-based hostile work environment;
- b) An award of compensatory damages, including for mental anguish, to which Plaintiff may be entitled;

- c) An award of all court costs and reasonable attorneys' fees, including those incurred for seeking administrative relief; and
- d) Such further, other and different relief as the Court may deem appropriate and necessary.

V. JURY DEMAND

Plaintiff hereby requests trial by jury on all issues so triable.

Respectfully submitted this 3rd day of March 2021.

Travis S. Thomas, Sr., Plaintiff

Before me, the undersigned Notary Public, appeared **Travis S. Thomas, Sr.**, who, known to me, does swear the foregoing is true and correct in every particular on this 3rd day of March 2021.

Notary Public
My Commission Expires:

By Julian McPhillips (ASB-3744-L74J)
Counsel for Plaintiff

By: David Sawyer (ASB-5793-R61K)
Counsel for Plaintiff

OF COUNSEL:
MCPHILLIPS SHINBAUM, L.L.P.
516 South Perry Street
Montgomery, Alabama 36104
Telephone: (334) 262-1911
Facsimile: (334) 263-2321
julianmcphillips@msg-lawfirm.com