

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

2017 JUL 13 PM 1:20

MARTIN CHAPMAN, on behalf of himself
and on behalf of all others
similarly situated,

Plaintiff,

v.

CASE NO.: 3:17-cv-799-J-39JRK

CITY OF JACKSONVILLE,

Defendant.

_____ /

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, MARTIN CHAPMAN, by and through undersigned counsel, and on behalf of himself, the Putative Class set forth below, as well as in the public interest, brings the following Class Action as of right against Defendant, CITY OF JACKSONVILLE, and in support of his claims states as follows:

JURISDICTION AND VENUE

1. This is an action for damages under the Americans with Disabilities Act of 1990, as amended ("ADAAA"), 42 U.S.C. § 12101 *et seq.* and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C § 621 *et seq* for unlawful discrimination on the basis of disability and age.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 1355.

3. Venue is proper in the Middle District under 28 U.S.C. § 1391, because all of the events giving rise to these claims occurred in this District.

PARTIES

4. The Named Plaintiff and class representative MARTIN CHAPMAN (“Plaintiff”) is a resident of Duval County, Florida.

5. Defendant operates the City of Jacksonville, Florida, Office of the Sheriff, in Duval County, Florida.

GENERAL ALLEGATIONS

6. Plaintiff has satisfied all conditions precedent, or they have been waived.

7. Plaintiff has hired the undersigned attorneys and agreed to pay them a fee.

8. Plaintiff requests a jury trial for all issues so triable.

9. At all times material hereto, Plaintiff was an “employee” of Defendant within the meaning of the ADA.

10. At all times material hereto, Defendant employed fifteen (15) or more employees. Thus, Defendant is an “employer” within the meaning of the ADA.

11. At all times material hereto, Plaintiff was an “employee” of Defendant within the meaning of the ADEA.

12. At all times material hereto, Defendant employed twenty (20) or more employees. Thus, Defendant is an “employer” within the meaning of the ADEA.

FACTS SPECIFIC TO PLAINTIFF

13. Plaintiff began working for Defendant as a police officer in August 1988, and he worked in this capacity until on or about October 26, 2012.

14. Plaintiff is 55 years of age.

15. During Plaintiff’s employment with Defendant, Plaintiff suffered from a physical condition that substantially limited his ability to perform one or more major life activities.

Plaintiff had a record of such condition, and/or was regarded by Defendant as having a condition that substantially limited his ability to perform one or more major life activities.

16. Specifically, on or about January 27, 2010, Plaintiff sustained a workplace injury to both his right and left rotator cuffs and left pectoral muscle while completing a physical agility test required for all active duty officers.

17. Plaintiff continues to suffer from the aforementioned physical condition.

18. Thus, Plaintiff was a “qualified individual with a disability” within the meaning of the ADAAA.

19. Following his injury, Plaintiff took a brief leave of absence and when he returned, Plaintiff requested an accommodation for his disability.

20. In response to Plaintiff’s request, Defendant placed Plaintiff on “Permanent Light Duty” status. Plaintiff was assigned to work in the forfeiture department.

21. At all times material hereto, Plaintiff could perform the essential functions of his job with Defendant with or without accommodation.

22. During his employment with Defendant, Defendant had a reduction in force policy under which it “bumps” officers on Permanent Light Duty status starting with the officer with the highest years of service.

23. On or about October 26, 2012, Defendant notified Plaintiff that it was bumping him from the position he held in accordance with the policy and would be separated from employment.

24. At the time Plaintiff was separated, Defendant also separated five other officers over the age of forty on “Permanent Light Duty” status.

25. Shortly thereafter, Defendant replaced Plaintiff and the five other separated officers with younger, non-disabled officers with significantly less experience.

CLASS ACTION ALLEGATIONS

26. Plaintiff asserts a claim under Counts I and II of this Complaint on behalf of a Putative Disability Class defined as follows:

Disability Class: All former officers who were disabled and whom Defendant terminated and/or forced to retire pursuant to its bumping policy.

27. Plaintiff asserts claims under Count III of this Complaint on behalf of a Putative Age Class defined as follows:

Age Class: All former officers who were over the age of forty and whom Defendant terminated and/or forced to retire pursuant to its bumping policy.

28. **Numerosity:** The members of the Putative Classes are so numerous that joinder of all Class members is impracticable. On information and belief, hundreds of individuals satisfy the definition of the Class.

29. **Typicality:** Plaintiff CHAPMAN'S claims are typical of those of the members of the Putative Classes. The adverse employment action suffered by Plaintiff, specifically termination/forced retirement of disabled officers and officers over the age of forty on Permanent Light Duty Status was uniform in its application to all Class Members.

30. **Adequacy:** Plaintiff CHAPMAN will fairly and adequately protect the interests of the Putative Classes, has no interests antagonistic to the Class, and has retained counsel experienced in complex class action litigation.

31. **Commonality:** Common questions of law and fact exist as to all members of the Putative Classes, and predominate over any questions solely affecting individual members of the Putative Classes. These common questions include, but are not limited to:

- a. Whether Class members are qualified individuals with disabilities;
- b. Whether class members are protected under the ADEA;
- c. Whether Class Members engaged in protected activity when they asked for an accommodation of their disability;
- d. Whether Defendant met its duty to accommodate by relying solely on its bumping policy;
- e. Whether Defendant took adverse and unlawful employment action against Class Members in violation of the ADAAA and ADEA; and
- f. Whether Defendant's bumping policy disproportionately impacts officers over the age of forty;
- g. Whether Defendant has a justifiable business necessity for its policy;
- h. Whether (and the extent to which) other relief should be granted based on Defendant's failure to comply with the ADAAA and the ADEA.

32. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1), because prosecution of actions by or against individual members of the Putative Classes would result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendant. Further, adjudication of each individual Class member's claim as separate action would potentially be dispositive of the interest of other individuals not a party to such action, thereby impeding their ability to protect their interests.

33. This case is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2), because Defendant has acted or refused to act on grounds that apply generally to the Putative Classes, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the Classes as a whole.

34. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3), because questions of law and fact common to the Putative Classes predominate over any questions affecting only individual members of the Putative Classes, and also because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct, which is described in this Complaint, stems from common and uniform policies and practices, resulting in common violations of the ADA and the ADEA.

35. Members of the Putative Classes do not have an interest in pursuing separate actions against Defendant, as the amount of each Class member's individual claim for damages is small in comparison to the expense and burden of individual prosecution. Class certification will also obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant's practices. Moreover, management of this action as a class action will not present any foreseeable difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Putative Class members' claims in a single action, brought in a single forum.

36. Plaintiff intends to send notice to all members of the Putative Classes to the extent required by Rule 23. The names and addresses of the Putative Class members are readily available from Defendant's records.

COUNT I – CLASS CLAIM ADA VIOLATION

37. Plaintiff CHAPMAN, on behalf of the Class, realleges and readopts the allegations of paragraphs 1 through 25 of this Complaint, as though fully set forth herein.

38. Plaintiff is a member of a protected class under the ADA.

39. Plaintiff was subjected to disparate treatment by Defendant on the basis of his disability, and/or perceived disability.

40. Defendant failed to accommodate Plaintiff's disability.

41. Specifically, Defendant terminated Plaintiff's employment pursuant to a bumping policy without meeting its obligation to accommodate Plaintiff.

42. Defendant's actions were willful and done with malice.

43. Plaintiff and the Class were injured due to Defendant's violations of the ADA, for which Plaintiff and the Class are entitled to legal and injunctive relief.

WHEREFORE, Plaintiff CHAPMAN, on behalf of the class demands:

- a) A jury trial on all issues so triable;
- b) That process issue and that this Court take jurisdiction over the case;
- c) That this Court enter an injunction restraining continued violation of the ADA;A;
- d) Compensation for lost wages, including back pay with interest, benefits, and other remuneration for violation of the Plaintiff's civil rights;
- e) Reinstatement of Plaintiff to a position comparable to prior position, or in the alternative, front pay;
- f) Reinstatement of Plaintiff's full fringe benefits and seniority rights;
- g) Any other compensatory damages, including emotional distress, allowable at law;
- h) Punitive damages;
- i) Prejudgment interest on all monetary recovery obtained;
- j) All costs and attorney's fees incurred in prosecuting these claims; and
- k) For such further relief as this Court deems just and equitable.

COUNT II – CLASS CLAIM ADA/AA RETALIATION

43. Plaintiff CHAPMAN on behalf of the class realleges and readopts the allegations of paragraphs 1 through 25 of this Complaint, as though fully set forth herein.

44. As a qualified individual with a disability whom Defendant knew or perceived to be disabled, Plaintiff is a member of a protected class under the ADA/AA.

45. Plaintiff engaged in protected activity under the ADA/AA by requesting an accommodation.

46. Defendant retaliated against Plaintiff for engaging in protected activity under the ADA/AA by terminating his employment and/or forcing him to retire.

47. Defendant's actions were willful and done with malice.

48. The adverse employment action that Defendant took against Plaintiff was material.

49. Plaintiff was injured due to Defendant's violations of the ADA, for which he is entitled to legal and injunctive relief.

WHEREFORE, Plaintiff CHAPMAN on behalf of the class demands:

- a) A jury trial on all issues so triable;
- b) That process issue and that this Court take jurisdiction over the case;
- c) That this Court enter a declaratory judgment against Defendant, stating that Defendant interfered with Plaintiff's rights under the ADA/AA;
- d) That this Court enter an injunction restraining continued violation of the ADA/AA;

- e) Compensation for lost wages, including back pay with interest, benefits, and other remuneration for violation of the Plaintiff's civil rights;
- f) Reinstatement of Plaintiff to a position comparable to his prior position, or in the alternative, front pay;
- g) Reinstatement of Plaintiff's full fringe benefits and seniority rights;
- h) Any other compensatory damages, including emotional distress, allowable at law;
- i) Punitive damages;
- j) Prejudgment interest on all monetary recovery obtained;
- k) All costs and attorney's fees incurred in prosecuting these claims; and
- l) For such further relief as this Court deems just and equitable.

COUNT III – CLASS CLAIM ADEA VIOLATION

50. Plaintiff realleges and readopts the allegations of paragraphs 1 through 25 of this Complaint, as though fully set forth herein.

51. As an individual who is over forty years of age, Plaintiff is a member of a protected class under the ADEA.

52. Defendant's policy or practice of terminating and/or forcing into retirement officers on Permanent Light Duty Status has a disparate impact on officers over the age of forty, in violation of the ADEA.

53. Plaintiff was injured due to Defendant's violations of the ADEA, for which Plaintiff is entitled to legal and injunctive relief.

WHEREFORE, Plaintiff on behalf of the class demands:

- a) A jury trial on all issues so triable;

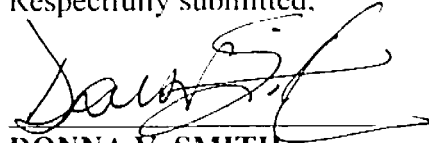
- b) That process issue and that this Court take jurisdiction over the case;
- c) An injunction restraining continued violation of the ADEA;
- d) Compensation for lost wages, benefits, and other remuneration;
- e) Reinstatement of Plaintiff to a position comparable to his prior position with back pay plus interest, or in the alternative, front pay;
- f) Liquidated damages in an amount equal to Plaintiff's total damages;
- g) Prejudgment interest on all monetary recovery obtained;
- h) All costs and attorney's fees incurred in prosecuting these claims; and
- i) For such further relief as this Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff demands trial by jury as to all issues so triable.

Dated this 12 day of July, 2017.

Respectfully submitted,



DONNA V. SMITH

Florida Bar Number: 661201

WENZEL FENTON CABASSA, P.A.

1110 North Florida Avenue, Suite 300

Tampa, Florida 33602

Main Number: 813-224-0431

Direct Dial: 813-386-0995

Facsimile: 813-229-8712

Email: dsmith@wfcclaw.com

Email: rooke@wfcclaw.com

Attorneys for Plaintiff

FD-35 44 (Rev. 12-07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MARTIN CHAPMAN, on behalf of himself and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Duval
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Donna V. Smith, Wenzel Fenton Cabassa, P.A. 1110 N. Florida Avenue, #300, Tampa, Florida 33602, 813-224-0431

DEFENDANTS

CITY OF JACKSONVILLE

County of Residence of First Listed Defendant Duval
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 IHA (1395(f))	<input type="checkbox"/> 490 Cable Sat. TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	Habeas Corpus:	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 530 General	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 720 Labor Mgmt Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 121 SC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 730 Labor Mgmt Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 550 Prison Condition	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 871 IRS Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing Accommodations		IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare		<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer w/ Disabilities - Employment		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 446 Amer w/ Disabilities - Other		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights				

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

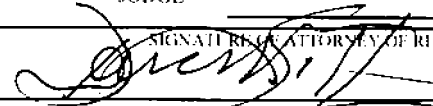
Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity)
42 U.S.C. § 12101 et seq. and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C § 621 et seq.
 Brief description of cause:
Unlawful discrimination on the basis of disability and age.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS: CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 7/12/17 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT \$400 APPLYING FEE 1 JUDGE 3a MAG JUDGE JRK

JAX024643

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [City of Jacksonville Hit with Class Action Over ADA, Age Discrimination Claims](#)
