

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JACQUETTA HAWKINS, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Proposed Plaintiff-Intervenor,

v.

SUMMIT COUNTY, OHIO, et al.,

Defendants.

CASE NO. 5:11CV2753

JUDGE SARA LIOI

MAGISTRATE JUDGE
KATHLEEN B. BURKE

Jury Trial Demanded

UNITED STATES' MOTION TO INTERVENE

The United States Department of Justice ("United States") hereby moves, pursuant to Federal Rule of Civil Procedure 24(b) and Section 706(f)(1) of Title VII of the Civil Rights Act of 1964 as amended ("Title VII"), 42 U.S.C. § 2000e-5(f)(1), for leave to intervene as Plaintiff-Intervenor in the above-titled action. In support of its Motion, the United States states as follows:

1. This action is based on charges of discrimination timely filed with the Equal Employment Opportunity Commission ("EEOC") by eighteen of the Plaintiffs, including Jacquetta Hawkins, Meredith Wade, Stacy Clark, Deidre Heatwall, Bethanne Scruggs, Patricia Bennett, Lyn Watters, Elaine George-Pickett, Cathy Phillips, Heather Stewart, Peggy Starr, Debra McMasters, Heather McPherson-Danner, Melissa House, Angela Berg, Cynthia Young,

Angela Dent and Tracy Braziel (“Plaintiffs”).

2. In their charges of discrimination, these eighteen Plaintiffs allege that Defendants Summit County, Ohio, Summit County Sheriff’s Department, Sheriff Drew Alexander, in his individual and official capacity, and Chief Gary James, in his individual and official capacity, (“Summit County” or “Defendants”) discriminated against them, on the basis of sex, in violation of Title VII.

3. The EEOC investigated and found reasonable cause to believe that these eighteen Plaintiffs and other similarly-situated female deputies were subjected to an unlawful sex-segregated job assignment system, in violation of Title VII.

4. On or about April 4, 2012, the EEOC formally referred this matter to the United States Department of Justice after an unsuccessful attempt to conciliate the charges.

5. Pursuant to Title VII, after the United States receives a referral from the EEOC finding that a state or local government employer has violated Title VII, the Attorney General may apply to the appropriate court for an order that will ensure compliance with Title VII and remedy the effects of past discrimination. In addition, Section 706(f)(1) of Title VII permits the United States to seek intervention into a private lawsuit upon certification that the case is of general public importance.

6. The Assistant Attorney General of the Civil Rights Division has certified that this case is of general public importance, as set forth in the Certificate of Public Importance attached as Exhibit 1 to this Motion.

7. Federal Rule of Civil Procedure 24(b) allows for permissive intervention in an action when a statute of the United States confers a conditional right to intervene or when an intervenor’s claim and the main claim share a common question of law or fact. The United

States' proposed Complaint, which is attached as Exhibit 2 to this Motion, shares common issues of law and fact with Plaintiffs' Complaint. Summonses for the Complaint are attached as Exhibit 3

8. With respect to governmental parties, Federal Rule of Civil Procedure 24(b) also allows for permissive intervention when a party's claim relies upon a statute administered by the governmental agency. Title VII confers upon the United States a conditional right to intervene in an action alleging a violation of Title VII by a governmental actor.

9. This motion is timely and the United States' intervention would not result in undue delay of this case or cause prejudice to the interests of the existing parties.

10. This motion is based on the Memorandum in Support of the United States' Motion to Intervene, the Certification of Public Importance and other such oral or documentary evidence as may be presented at a hearing on this motion.

11. A proposed Order granting the United States' Motion to Intervene is attached as Exhibit 4.

Date: June 7, 2012

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
DELORA L. KENNEBREW
Chief

By: s/ Barbara Schwabauer
ESTHER G. LANDER
Deputy Chief
BARBARA SCHWABAUER
VARDA HUSSAIN
Trial Attorneys
United States Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Room 4017

Washington, D.C. 20530
(202) 305-3034

STEVEN M. DETTELBACH
United States Attorney
Northern District of Ohio

s/ Michelle L. Heyer

By: MICHELLE L. HEYER (0065723)
Assistant United States Attorney
HEATHER TONSING VOLOSIN (0069606)
Assistant United States Attorney
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3686 (phone)
(216) 522-2404 (fax)
Michelle.heyer@usdoj.gov

Counsel for Proposed Plaintiff-Intervenor United States

NOTICE OF CERTIFICATE OF SERVICE

I hereby certify that Proposed Plaintiff Intervenor United States' Motion to Intervene and accompanying exhibits were served upon the following counsel of record via electronic filing on June 7, 2012:

Barbara Kaye Besser
Bruce B. Elfvin
Stuart G. Torch
Elfvin & Besser
4070 Mayfield Road
Cleveland, Ohio 44121

Counsel for Plaintiffs

Mary Ann Kovach
Michael D. Todd
Office of the Prosecuting Attorney
Summit County
53 University Avenue, 6th Floor
Akron, Ohio 44308

Counsel for Defendants

Gwen E. Callender
222 East Town Street
Columbus, Ohio 43215

*Counsel for Fraternal Order of Police,
OLC, Inc., FOP Lodge #139*

Date: June 7, 2012

s/ Barbara Schwabauer
BARBARA SCHWABAUER

Counsel for United States

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JACQUETTA HAWKINS, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Proposed Plaintiff-Intervenor,

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SUMMIT COUNTY, OHIO, et al.,

Defendants.

CASE NO. 5:11CV2753

JUDGE SARA LIOI

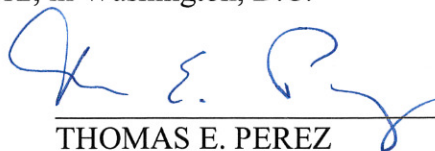
MAGISTRATE JUDGE
KATHLEEN B. BURKE

Jury Trial Demanded

CERTIFICATION OF PUBLIC IMPORTANCE

Pursuant to the delegation of authority from the United States Attorney General, *see* 28 C.F.R. § 0.50(a), I, Thomas E. Perez, Assistant Attorney General, Civil Rights Division, United States Department of Justice, hereby certify, in accordance with Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1), that the above-captioned matter is of general public importance and that, accordingly, intervention by the United States as plaintiff is warranted.

Executed this 29th day of May 2012, in Washington, D.C.



THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JACQUETTA HAWKINS, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

SUMMIT COUNTY, OHIO, et al.,

Defendants.

CASE NO. 5:11CV2753

JUDGE SARA LIOI

MAGISTRATE JUDGE
KATHLEEN B. BURKE

Jury Trial Demanded

PLAINTIFF-INTERVENOR'S COMPLAINT

Plaintiff-Intervenor United States of America (“United States”) alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).
2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.
3. Defendant Summit County, Ohio, (“Summit County”) is a local government agency, which maintains places of business in this judicial district, and a substantial part of the events giving rise to this action took place in this judicial district.
4. Defendant Drew Alexander (“Alexander”) is Sheriff of Summit County, Ohio. Defendant Alexander is sued in his official capacity. Pursuant to Ohio Revised Code § 341.05,

Defendant Alexander, in his official capacity as Sheriff, is charged with the operation and staffing of the Summit County Jail.

5. Defendant Summit County and Defendant Alexander, in his official capacity, are persons within the meaning of 42 U.S.C. § 2000e(a), and employers or agents of an employer within the meaning of 42 U.S.C. § 2000e(b).

6. Summit County Jail (“SCJ”) is located in the city of Akron, Ohio and houses approximately 600 male and female inmates at any given time. The primary nonsupervisory job title at SCJ is Deputy Sheriff. Deputy Sheriffs (“deputies”) are responsible for inmate supervision. Most deputies hold positions serving either Intake or Security functions, the latter of which involves staffing the living areas of the jail.

7. Plaintiffs Jacquetta Hawkins, Bethanne Scruggs, Cathy Phillips, Angela Berg, Tracy Braziel, Elaine George-Pickett, Deidre Heatwall, Melissa House, Heather Stewart, Cynthia Young, Meredith Wade, Peggy Starr, Lyn Watters, Shawntell Kennedy, Heather McPherson-Danner, Angela Molea, Patricia Bennett, Cynthia Wood, Angela Dent, Debra McMasters, and Stacy Clark (the “Hawkins plaintiffs”) are females deputies employed by Summit County and assigned to the Summit County Jail.

8. Prior to January 2, 2012, most deputies at SCJ worked in one of four positions: (1) Intake, (2) Female Intake, (3) General Security, and (4) Female Security. Female deputies were allowed to work in all four positions.

9. On August 31, 2010, SCJ applied to the Ohio Civil Rights Commission (“OCRC”) for certification of a bona fide occupation qualification (“BFOQ”) for certain positions on the basis of sex. In particular, the SCJ sought to establish a fixed number of positions for male and female deputies in Intake on each shift such that males would constitute

approximately 80 percent of all Intake deputies. SCJ did not request BFOQ certification for positions in the male living areas of the jail, known as General Security. SCJ did, however, request a BFOQ to place female deputies in a position known as “Float.” The OCRC granted the application for the Intake and Float positions in January 2011, and the certification will remain valid until January 26, 2013.

10. In November 2011, SCJ issued a blank staffing chart for use in the 2012 bidding process for deputies. The chart listed five positions: Intake Male, Intake Female, Security Male, Security Female and Security/Intake Float Female. Whereas previously women could bid on all Intake positions based on seniority, under the new staffing system, only 6 Intake positions were available to female deputies; the remaining 23 Intake positions were available only to male deputies. Also, under the new staffing system, female deputies were no longer able to bid on Security positions based on seniority in both the male and female living areas. Only 18 “Security Female” positions, supervising the female living areas, were available to female deputies; the remaining 87 “Security Male” positions, supervising male living areas, were available only to male deputies.

11. On November 14, 2011, Jail Administrator Gary James (“James”) issued a memorandum regarding the 2012 bidding process and explicitly stated that female deputies were allowed only to bid for jobs within Female Intake, Female Security, and Female Float.

12. On December 5, 2011, James issued another memorandum to clarify confusion relating to the bidding process. He wrote that “female deputies have three (3) positions and three (3) shifts to bid on . . . Female deputies ARE NOT to bid on ANY of the male positions. Meaning a female deputy SHOULD NOT place a bid for a ‘General Security’ position. There no longer is a position for female deputies in ‘General Security.’”

13. SCJ's new, sex-segregated job assignment system is much broader than the staffing plan it originally submitted to OCRC in August 2010 when it applied for a BFOQ certification. The staffing plan submitted to the OCRC did not request BFOQ certification with respect to positions in Male Security (formerly General Security). In addition, the staffing plan submitted to the OCRC listed 38 available jobs for female deputies, while the new system provides only 32 jobs for female deputies.

14. On January 2, 2012, SCJ implemented the new, sex-segregated assignment system. As a result of this system, many female deputies (including the Hawkins plaintiffs) were unable to pick their preferred job assignments, were unable to pick their preferred shifts, lost their previous shifts, and/or lost their previous job assignment despite their seniority within the SCJ.

15. As a result of the implementation of the new, sex-segregated assignment system at SCJ, female deputies can now only work in Female Intake, Female Security, and Female Float positions, but they are no longer permitted to work in Male Intake (formerly "Intake") or Male Security (formerly "General Security"), which are the two largest job classifications at the jail and now reserved for male deputies only.

16. Prior to January 2, 2012, the Hawkins plaintiffs and other similarly-situated female deputies at SCJ who held positions in Intake (now "Male Intake") were fully capable of performing, and have performed, all essential functions of this job assignment, with the limited exception of opposite-sex strip searches.

17. Prior to January 2, 2012, the Hawkins plaintiffs and other similarly-situated female deputies at SCJ who held positions in General Security (now "Male Security") were fully capable of performing, and have performed, all essential functions of this job assignment.

18. After January 2, 2012, female deputies assigned to the Female Float position have been assigned to “float” in the General Security (now “Male Security”) job assignment and have continued to perform all essential functions of this job assignment.

STATEMENT OF CLAIMS

19. Summit County has pursued, and continues to pursue, policies and practices that discriminate against women and that deprive or tend to deprive women of employment opportunities because of their sex. The acts and practices of defendant Summit County described in paragraphs 3-18 above, constitute a pattern or practice of discrimination on the basis of sex in violation of § 707 of Title VII, 42 U.S.C. § 2000e-6.

20. Summit County has discriminated against the Hawkins plaintiffs and other similarly-situated female deputies at the SCJ in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by:

- (a) implementing a sex-segregated job assignment system which is broader than required to safely and efficiently operate SCJ; and
- (b) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment.

21. The Equal Employment Opportunity Commission (“EEOC”) received timely charges of discrimination from Jacquetta Hawkins, Bethanne Scruggs, Angela Berg, Tracy Braziel, Elaine George-Pickett, Deidre Heatwall, Melissa House, Heather Stewart, Cynthia Young, Meredith Wade, Peggy Starr, Lyn Watters, Heather McPherson-Danner, Patricia Bennett, Angela Dent, Debra McMasters, Stacy Clark, Catherine Muncy, Stefanie Hoover, and Carole Mariner. Pursuant to Section 706 of Title VII, the EEOC investigated the charges and found reasonable cause to believe the plaintiffs and other similarly-situated female deputies were

subject to an unlawful sex-segregated job assignment system, in violation of Title VII. The EEOC referred the matter to the United States Department of Justice after an unsuccessful attempt to conciliate the charges.

22. All conditions precedent to the filing of this Title VII sex discrimination in job assignment suit have been performed or have occurred.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

- (a) Enjoin defendant Summit County from further discrimination in job assignments against the plaintiffs and similarly-situated female deputies;
- (b) Require defendant Summit County to adopt a job assignment system that complies with Title VII;
- (d) Award backpay and all other appropriate monetary relief, to the plaintiffs and other similarly-situated female deputies at SCJ in an amount to be determined at trial to make them whole for the loss they suffered as a result of the discriminatory conduct alleged in this Complaint;
- (d) Award the plaintiffs and other similarly-situated females any prejudgment interest on the amount of lost wages and benefits determined to be due;
- (e) Award compensatory damages to the plaintiffs and to other similarly situated female-deputies to fully compensate them for the pain, suffering, and medical expenses caused by the discriminatory conduct alleged in this Complaint, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;
- (f) Order defendant Summit County to institute policies, practices, and programs to ensure a non-discriminatory workplace, including but not limited to implementing

appropriate polices to ensure equal employment opportunity for their employees, and providing adequate training to all employees and officials regarding discrimination and retaliation;

(g) Award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

BY:

s/ Delora L. Kennebrew
DELORA L. KENNEBREW (GA Bar No. 414320)
Chief
Employment Litigation Section

s/ Esther G. Lander
ESTHER G. LANDER (Bar No. DC 461316)
Deputy Chief
Esther.Lander@usdoj.gov

s/ Barbara A. Schwabauer
BARBARA A. SCHWBAUER (OH Bar No. 0086999)
VARDA HUSSAIN (VA Bar No. 70132)
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4017
Washington, DC 20530
Telephone: (202) 305-5034
Facsimile: (202) 514-1005

Barbara.Schwabauer@usdoj.gov

STEVEN M. DETTELBACH
United States Attorney
Northern District of Ohio

s/ Michelle L. Heyer

By: MICHELLE L. HEYER (0065723)

Assistant United States Attorney

HEATHER TONSING VOLOSIN (0069606)

Assistant United States Attorney

801 West Superior Avenue, Suite 400

Cleveland, OH 44113

(216) 622-3686 (phone)

(216) 522-2404 (fax)

Michelle.heyer@usdoj.gov

Attorneys for Plaintiff United States of America

Exhibit 3

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

UNITED STATES OF AMERICA

Plaintiff

v.

SUMMIT COUNTY, OHIO, et al

Defendant

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)
)
)
)
)
)
)
)

Civil Action No. 5:11-cv-02753-SL

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* SUMMIT COUNTY, OHIO
c/o Mary Ann Kovach, Michael D. Todd
Office of the Prosecuting Attorney - Summit County
53 University Avenue
Akron, OH 44308

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Barbara A. Schwabauer
Trial Attorney
U.S. Department of Justice, Civil Rights Division, Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4017
Washington, DC 20530

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:11-cv-02753-SL

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* SUMMIT COUNTY, OHIO
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
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CASE NO. 5:11CV2753

JUDGE SARA LIOI

MAGISTRATE JUDGE
KATHLEEN B. BURKE

Jury Trial Demanded

[PROPOSED] ORDER

IT IS HEREBY ORDERED that the United States' Motion to Intervene is GRANTED. Intervening Plaintiff United States' Complaint in Intervention and Jury Demand, attached to the United States' Motion to Intervene is entered by the Court clerk as filed.

Honorable Sara Lioi
U.S. District Court Judge