

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

_____ )	)	)
UNITED STATES OF AMERICA, )	)	)
)	)	)
Plaintiff, )	)	Civil Action No.
)	)	)
v. )	)	Jury Trial Demanded
)	)	)
ROBERTSON FIRE PROTECTION )	)	)
DISTRICT, MISSOURI )	)	)
)	)	)
Defendant. )	)	)
)	)	)
_____ )	)	)

**COMPLAINT**

Plaintiff, United States of America, alleges:

1. This action is brought by 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 the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.
3. Defendant, Robertson Fire Protection District (“Robertson”), is a governmental agency and a political subdivision of the State of Missouri, established pursuant to the laws of the State of Missouri.
4. Robertson is situated in St. Louis County, Missouri, within the jurisdiction of this Court.
5. Robertson is a “person” within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).
6. Steve Wilson is a firefighter employed by Robertson.

7. Wilson filed a timely charge of discrimination and retaliation (Charge No. 28E-2008-00929) against Robertson with the Equal Employment Opportunity Commission ("EEOC") on or around February 28, 2008. Wilson filed an amended charge on August 22, 2008.

8. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated the charge of discrimination and retaliation filed by Wilson, issued a Letter of Determination finding that there is reasonable cause to believe Robertson violated Title VII by retaliating against Wilson, and unsuccessfully attempted to conciliate the charge. The EEOC subsequently referred the matter to the United States Department of Justice.

9. All conditions precedent to the filing of suit have been performed or have occurred.

#### **RETALIATION COUNT**

10. Wilson, who is white, was retaliated against by Robertson for refusing to participate in discrimination against two African American firefighters and for providing truthful testimony regarding those acts of discrimination in response to a United States' subpoena.

11. Wilson started working as a firefighter for Robertson in 1980 shortly after his 21<sup>st</sup> birthday. Over ten years, he rose through the ranks at Robertson until he reached the rank of Battalion Chief. As one of the three Robertson Battalion Chiefs, Wilson was responsible for supervising the operation of an entire shift of Robertson firefighters.

12. On September 6, 2006, Robertson demoted Wilson from his Battalion Chief rank to a Private's rank with a corresponding reduction in pay and benefits.

13. On September 11, 2006, Robertson suspended Wilson.

14. On September 21, 2006, Robertson terminated Wilson.

15. Through his local union representation, Wilson grieved his demotion, suspension and termination. To resolve that grievance, on October 3, 2006, Robertson and Wilson entered into a Last Chance Agreement (“LCA”).

16. Under the LCA, Wilson returned to work at Robertson, but accepted his demotion and suspension.

17. The LCA also provided that Wilson was reemployed only in a probationary status that prevented him from being promoted into any position above Backup Engineer or to use his seniority to bid for an Engineer position. The Engineer position is the firefighter (still a Private’s rank) assigned to drive the fire truck and is normally decided by seniority at Robertson. The LCA provided that this probationary status would continue until October 2007 (one year), at which time it would be reviewed to determine whether the restrictions on advancement would be removed.

18. From that date forward, Robertson has only employed Wilson as a Private in a Backup Engineer position without his being promoted above Private or allowed to use his seniority to bid for a position as an Engineer.

19. On July 17, 2007, the United States filed a lawsuit in this Court against Robertson for discriminating against two former firefighters, Ephraim Woods, Jr. and Lamont Downer, on the basis of their race (black) and retaliating against them for having filed discrimination charges with the EEOC (“Woods and Downer suit”).

20. In late summer 2007, Robertson Fire Marshall Charles Braband told Robertson that he would soon want to retire. Robertson proposed a “Fire Marshall Mentoring Program” to allow Braband to mentor and train his successor.

21. At that time in 2007, on information and belief, Wilson was the only Robertson internal candidate with the required state certifications to qualify for the Fire Marshal position.

22. On August 30, 2007, Wilson sent Robertson a letter asking to be considered for the mentoring program. On September 3, 2007, Robertson responded by letter that Wilson could not be considered under the terms of the LCA.

23. On October 8, 2007, Robertson extended Wilson's LCA until June 2008. Robertson stated in its notice to Wilson of the extension that it had not had sufficient time to evaluate his performance to allow him off the probationary status.

24. On January 30, 2008 and on February 14, 2008, during the course of discovery in the Woods and Downer suit, the United States served on Robertson notice for Wilson's deposition.

25. On February 28, 2008, Wilson filed an EEOC charge complaining about race discrimination and retaliation based on his allegation that in 2004-2005 the Robertson Fire Chief David Tilley had directed him to engage in discrimination and retaliation against Woods and Downer, and when he refused to cooperate, Robertson retaliated against him by demoting, suspending, and terminating him. Wilson also alleged that when Robertson rehired him, it further retaliated against him by only rehiring him into a probationary status position as a Backup Engineer that prevented his advancement, promotion or seniority rights, and then continued in its pattern of retaliation by extending that probationary status in October 2007.

26. On March 10, 2008, the United States deposed Wilson in the Woods and Downer suit.

27. Under oath at his March 10, 2008 deposition, Wilson testified that in 2004 or 2005 Tilley called Wilson into his office and told him to go "through the two nigger computers and dig up dirt." At that time, Wilson was Robertson's designated computer administrator and

worked with Robertson's outside computer consultant to maintain Robertson's computer system. According to his deposition testimony, Wilson told Tilley "I'm not doing it, I don't get paid for this, I'm not doing it, I'm not doing it, you have to go somewhere else if you want that done." Wilson testified that when Tilley asked him "why not?" Wilson responded, "It just don't sound right, it ain't right."

28. Under oath at his March 10, 2008 deposition, Wilson also testified that in retaliation for his opposition and refusal to cooperate with Tilley's directive to discriminate and retaliate against Woods and Downer, Robertson demoted, suspended, terminated and then subjected him to a probationary status. Wilson testified that Tilley admitted to him that Robertson's actions against him were caused by his refusal to cooperate with his directives regarding Woods and Downer.

29. On May 23, 2008, this Court entered a consent decree in the Woods and Dower suit. Agreed to by both the United States and Robertson, that consent decree resolved the Woods and Downer suit by requiring Robertson to pay Woods and Downer a monetary award, by requiring Robertson to conduct general remedial relief requested by the United States.

30. On information and belief, the parties would not have reached that settlement in the absence of Wilson's deposition testimony.

31. On June 30, 2008, Robertson again extended Wilson's LCA. This time, Robertson's extension of the LCA did not provide any reason for the extension. This extension also did not propose any duration for the extension or provide for a future date for a review of Wilson's probationary status.

32. On August 22, 2008, Wilson filed an amended charge with the EEOC alleging additional acts of retaliation. In the amended charge, Wilson alleged that: (1) on May 20, 2008,

when responding to a call, he found his boots were filed with dirt and pebbles; (2) in May 2008, when Wilson signed up for a test to qualify for an Assistant Chief/Training Officer position, he was never contacted about taking the qualifying test; (3) in June 2008, someone left a copy of Wilson's deposition in an open area of the firehouse until Wilson complained to Tilley that it could create a hostile work environment; and (4) on June 30, 2008, Robertson again extended the LCA, this time without stating any basis for the extension or establishing a new review date.

Wilson alleged that because Robertson extended his probationary employment status under the LCA and deprived him of opportunities to serve as the Engineer (*i.e.*, driver) of the fire truck, he was again deprived of the opportunity for advancement in his career.

33. On March 13, 2009, Robertson removed Wilson from the LCA.

34. In December 2009, Robertson denied Wilson's request that Robertson allow him to exercise his seniority rights to "bump" one of the lower-seniority Engineers so that he could become an Engineer.

35. On information and belief, the Engineer position at Robertson has previously been open for bidding based on seniority.

36. On information and belief, the Engineer position at Robertson and the opportunity to drive the fire truck is more prestigious and therefore more likely to lead to future promotions through the ranks at Robertson than the Backup Engineer position occupied by Wilson.

37. Because Wilson opposed and refused to participate in Tilley's directive to collude in race discrimination against Woods and Downer, Robertson retaliated against him, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), by subjecting him to a probationary status, and repeatedly continuing that probationary status, that prevented him from being promoted or using his seniority rights to obtain an Engineer position.

38. Robertson's subjection of Wilson to a probationary status under the LCA, and its decision to continue that status in October 2007 and again in June 2008, would not have occurred in the absence of his opposition and refusal to participate in Tilley's directive to collude in race discrimination against Woods and Downer.

39. Because Wilson participated in the Woods and Downer suit by providing deposition testimony supporting the United States' claims against Robertson, Robertson retaliated against him, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), by subjecting him to a probationary status, and repeatedly continuing that probationary status, that prevented him from being promoted or using his seniority rights to obtain an Engineer position.

40. Robertson's subjection of Wilson to a probationary status under the LCA, and its decision to continue that status in October 2007 and again in June 2008, would not have occurred in the absence of his participation in the Woods and Downer suit through his deposition testimony supporting the United States' claims against Robertson.

41. On information and belief, despite officially removing Wilson from the LCA on March 13, 2009, Robertson still maintains Wilson on a *de facto* probationary status that prevents or limits his ability to fairly seek promotions or advancement at Robertson, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), in retaliation for his opposition and refusal to participate in Tilley's directs to discriminate or retaliate against Woods and Downer.

42. On information and belief, despite officially removing Wilson from the LCA on March 13, 2009, Robertson still maintains Wilson on a *de facto* probationary status that prevents or limits his ability to fairly seek promotions or advancement at Robertson, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a), in retaliation for his participation in the

Woods and Downer suit through his deposition testimony supporting the United States' claims against Robertson.

**PRAYER FOR RELIEF**

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

- (a) order Robertson to offer Wilson promotion to any position to which he should have been eligible to apply, but was denied due to Robertson's retaliation against him, and award him any difference in back pay and benefits as if he had received that position,
- (b) enjoin Robertson, its officers, agents, employees, successors and all persons in active concert or participation with it, from further retaliation against Wilson in violation of Title VII;
- (c) award compensatory damages to Wilson to fully compensate his pain and suffering caused by Robertson's retaliatory conduct as 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;
- (d) order Robertson to remove from Wilson's personnel files and any other employer files any negative references pertaining to Wilson's retaliation complaints, and his retaliatory probationary status;
- (e) order Robertson to take remedial steps to ensure a non-discriminatory workplace for its employees, including providing adequate training to all employees and officials responsible for making determinations regarding complaints of discrimination and retaliation; and



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

**JURY DEMAND**

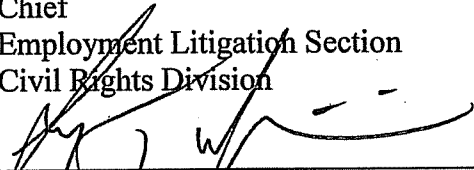
The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a


Respectfully submitted,

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JS 44 (Rev. 09/11)

**CIVIL COVER SHEET**

The JS 44 civil coversheet 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 NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> The United States of America</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Jeffrey G. Morrison, US Dept. of Justice 950 Pennsylvania Avenue, NW PHB, Rm 4613 Washington, DC 20530 (202-353-1845)</p>	<p><b>DEFENDANTS</b> Robertson Fire Protection District, Missouri</p> <p>County of Residence of First Listed Defendant <u>St. Louis</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> Charles Billings, Bruntranger &amp; Billings P.C. 1735 S. Big Bend Blvd St. Louis, MO 63117 (314-646-0065)</p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	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 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
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<b>IV. NATURE OF SUIT</b> <i>(Place an "X" in One Box Only)</i>					
<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**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

**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. 2000e

Brief description of cause:  
employment discrimination/retaliation

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    **DEMAND \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE Catherine D. Perry    DOCKET NUMBER 4:07CV1292 CDP

DATE 07/11/2012    SIGNATURE OF ATTORNEY OF RECORD # 52836 MO 43839

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_