

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CHRISTOPHER SULLIVAN**

**Plaintiff,**

**v.**

**TEXAS A&M UNIVERSITY  
Defendant.**

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**CIVIL ACTION NO.:4:19-cv-04586**

**JURY DEMANDED**

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**PLAINTIFF’S ORIGINAL COMPLAINT**

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**TO THE HONORABLE U.S. DISTRICT COURT JUDGE:**

Plaintiff Christopher Sullivan (“Mr. Sullivan” or “Plaintiff”) files this Original Complaint for causes of action pleaded below, complaining of and about Defendant Texas A&M University (“TAMU” or “Defendant”), and will respectfully show onto the Court as follows:

**I. PARTIES**

1. Plaintiff Christopher Sullivan is an individual residing in Brazos County, Texas.
2. Defendant Texas A&M University is an institution of higher education established pursuant to Section 61.003 of the Texas Education Code. TAMU may be served with summons through its President, Michael K. Young, Office of the President, 1246 TAMU, Texas A&M University, College Station, Texas 77843-1246.

**II. JURISDICTION**

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as Plaintiff’s causes of action arise under federal statutes, namely the Americans with Disabilities Act of 1990

(“ADA/ADAAA”), 42 USC §§ 12102 *et seq.*, and the Texas Commission on Human Rights Act (“TCHRA”), as Defendant discriminated against Plaintiff on the basis of Plaintiff’s disability.

4. This suit further arises under the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601, *et seq.*

5. Additionally, this Court has supplemental jurisdiction over Plaintiff’s similar state law claims, pursuant to 28 U.S.C. § 1367, because such claims are so related to the claims within the Court’s original jurisdiction that they form part of the same case or controversy, under Article 3 of the United States Constitution.

6. Venue is proper in the Southern District of Texas – Houston Division, pursuant to 28 U.S.C. § 1391(a), because this is the judicial district where a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred.

### **III. NATURE OF THE ACTION**

7. This action is brought pursuant to ADA and TCHRA, on the grounds that Plaintiff was discriminated against on the basis of his disability (Atrial Fibrillation). TAMU Police Department (“PD”) ultimately retaliated against Plaintiff for pursuing his protected rights under ADA, TCHRA, and FMLA, in violation of the ADA and FMLA. This action seeks to recover damages caused to Plaintiff by Defendant’s unlawful and discriminatory employment practices, including damages caused by TAMU PD’s retaliation against Plaintiff for making complaints of discrimination.

8. This action also further seeks to recover damages for Defendant’s violation of the FMLA. Specifically, Plaintiff complains that Defendant retaliated against him after Plaintiff exercised his protected rights to request an FMLA leave to attend to his medical condition. *See also* TEX. LAB. CODE § 21.001 *et seq.*

#### **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9. On September 24, 2018, Plaintiff filed a charge with the U.S. Equal Employment Opportunity Commission (“EEOC”) against Defendant for discrimination based on disability and FMLA retaliation (Charge No. 460-2018-06544).

10. Subsequently, the EEOC issued Plaintiff a Notice of Right to Sue, dated August 26, 2019. Plaintiff files this lawsuit within ninety (90) days of receiving the Notice. Therefore, this lawsuit is timely filed.

#### **V. FACTS**

11. Mr. Sullivan began working for the TAMU PD on June 28, 2012. Mr. Sullivan trained for approximately 5 months after his hire date. Mr. Sullivan’s trainers included Sgt. Paxton and Sgt. Hartman, among others. Neither Hartman nor Paxton was a sergeant during this time of Mr. Sullivan’s training.

12. Each trainer gave Mr. Sullivan excellent scores overall during his first 5 months and he was recommended to be put through an abbreviated training program.

13. On February 29, 2012, an Emergency Medical Services vehicle took Mr. Sullivan to an emergency room with an increased heart rate. A month and a half later, in April 2012, Mr. Sullivan was formally diagnosed with atrial fibrillation. In May 2012, Mr. Sullivan had an ablation for atrial fibrillation. Mr. Sullivan had 2 more ablations in 2014, while employed by Texas A&M University Police Department. During his job interview with TAMU PD, he made Sgt. Johnson aware of his heart condition. Mr. Sullivan’s attending physicians gave him optimistic recovery prognoses, expecting a full recovery, after the treatment was completed in 2012.

14. On March 19, 2013, Mr. Sullivan was exposed to autoclave overheating and inhalation of smoke while on duty for TAMU PD.

15. On May 6, 2013, Mr. Sullivan was given a new *bona fide* offer of employment by TAMU PD for Data Entry and Filing, based on Mr. Sullivan's health issues.

16. On May 10, 2013, Dr. James Bond, Mr. Sullivan's attending physician, instructed Mr. Sullivan to stay home until May 13, 2013, and Mr. Sullivan received a "return to work form" from Dr. Charles Moore. However, Dr. Moore further requested that Mr. Sullivan take leave from May 7 until May 22, 2013, and he released Mr. Sullivan with no restrictions on May 22, 2013.

17. On June 3, 2013, Mr. Sullivan had a follow up for his atrial fibrillation procedure, with a new return to work date of June 18, 2013, as prescribed by the physician.

18. On June 4, 2013, Mr. Sullivan received a sick pool leave withdrawal form for 68 hours from TAMU PD.

19. On June 20, 2013, Dr. Nancy Dickey ordered a radiology brain MRI (sinus tachycardia investigation). Mr. Sullivan received a work release for June 24, 2013 and 80 hours of sick pool leave withdrawal on June 29, 2013.

20. In 2013, prior to requiring unforeseen medical attention, Mr. Sullivan received three quarterly evaluations from Sgt. Paxton, his supervisor at TAMU PD. Sgt. Paxton was a first-year, inexperienced supervisor during Mr. Sullivan's time with him. The feedback on all three evaluations provided that Mr. Sullivan's performance met or exceeded expectations. However, around the time of Mr. Sullivan's diagnosis and subsequent health leave, Sgt. Paxton's attitude towards Mr. Sullivan started changing. In late 2013, Sgt. Paxton commenced singling out Mr. Sullivan and treating him differently, compared to his other reports. Subsequently, Mr. Sullivan received lower marks during his annual evaluation, which stated that the "improvement was needed." This annual review used the information from "manager's notes," which notes Mr. Sullivan was not allowed to see or read until after his termination. It is unknown whether Mr.

Sullivan was ever able to see the entirety of Sgt. Paxton's manager's notes. However, the ones that were made available to Mr. Sullivan clearly show that some of the notes used, at least in part, were covering the time periods when Mr. Sullivan was receiving good quarterly evaluations.

21. In May 2014, while at a training event in Austin, Mr. Sullivan suffered from another bout of atrial fibrillation, in front of coworkers, and was hospitalized. Mr. Sullivan continued to be impacted by his condition throughout the year, which negatively affected his ability to perform his work on the full schedule. In June 2014, Mr. Sullivan had undergone another procedure to remedy his condition, but, unfortunately, he needed more sick leave hours from TAMU PD in order to recuperate and resume his full duties.

22. In 2015, Mr. Sullivan had a new supervisor, Sgt. Elkins. Sgt. Elkins treated Mr. Sullivan more fairly than Sgt. Paxton. However, seeing positive changes in Mr. Sullivan's mood, TAMU PD's management transferred Mr. Sullivan away from Sgt. Elkins because Mr. Sullivan was not being admonished by Sgt. Elkins, as TAMU PD personnel would prefer.

23. In 2016, Mr. Sullivan was transferred to work under the supervision of Sgt. Rodriguez, a first-year, inexperienced supervisor. Mr. Sullivan went to the police academy with Sgt. Rodriguez. Sgt. Rodriguez picked up right where Sgt. Paxton left off, by treating Mr. Sullivan worse than Mr. Sullivan's non-disabled peers and by creating a work environment that was by no means conducive to Mr. Sullivan's healing and productivity.

24. Around that time, TAMU PD invested into a system called Guardian Tracking. Sgt. Rodriguez started using the system to document any miniscule problem with Mr. Sullivan's performance. The Guardian Tracking system was used by Mr. Sullivan's supervisors, often at the direction of Lt. Kary Shaffer, to document every issue possible, however minor, to use it against Mr. Sullivan. Mr. Sullivan also knows, from personal conversations with Lt. Shaffer, that Lt.

Shaffer's mother had been treated with at least two ablation procedures for the same condition as Mr. Sullivan's. Mr. Sullivan is also aware that Lt. Shaffer knows that his mother saw the same group of doctors based in Austin, Texas, for her condition. Lt. Shaffer was the supervisor over the entire patrol division at the time Mr. Sullivan was terminated.

25. By the end of 2016, Mr. Sullivan was transferred again, this time to Sgt. Hartman's supervision. On a prior internal survey, Mr. Sullivan purposely omitted Sgt. Hartman as a possible choice for his supervisor. Sgt. Hartman utilized the Guardian Tracking system against Mr. Sullivan on many occasions, despite the fact that the system was only to be used to document discussions and not for disciplinary action, per TAMU PD's internal policy. Sgt. Hartman, on at least several of those occasions, used the Guardian Tracking system at the direction of Lt. Shaffer.

26. On January 23, 2017, Mr. Sullivan experienced a medical episode at work. His heart rate rose unexpectedly again, and he drove himself to a nearby emergency medical service station (EMS). Sgt. Hartman arrived at the EMS station shortly after hearing Mr. Sullivan check out on the radio, and he listened to Mr. Sullivan answering questions about his medical history and medications to the EMS personnel. Sgt. Hartman observed all procedures performed on Mr. Sullivan and heard all conversations that took place in the room. The very next day, a copy of a "Letter of Expectations" was uploaded to Guardian Tracking by Sgt. Rodriguez, targeting Mr. Sullivan's performance which was signed and dated approximately 6 to 7 months prior to this health incident. It is at the very least suspect that TAMU PD would hold on to such letter for a prolonged period of time and upload it the day after Mr. Sullivan's condition recurred.

27. Mr. Sullivan continued to be harassed by other supervisors who utilized the Guardian Tracking to build up a file that would show Mr. Sullivan in a less positive light. Mr. Sullivan's career at TAMU PD came to an abrupt end on November 14, 2017. Mr. Sullivan was

called in for a meeting with Chief Ragan and Assistant Chief Robert Meyer. When Mr. Sullivan arrived, he was presented with a letter stating that his employment was terminated, with the pay continuing until November 28, 2017. Mr. Sullivan was not allowed to work for those remaining 2 weeks.

28. Mr. Sullivan was escorted throughout the building to collect his personnel files and personal effects. When Mr. Sullivan received his documents, he noticed that one folder in the office contained all his doctor's notes, medical records, FMLA paperwork, and symptom information, to name a few items. The file containing all of this information was described to Mr. Sullivan by Karen Terrell as his "Personnel File." It was apparent that Mr. Sullivan's personnel file stood out, compared to other employees' files, because of his extensive medical history, which made him a liability to supervisors at TAMU PD.

29. Mr. Sullivan immediately requested an appeal and a complete investigation of his termination. Mr. Sullivan was promised an investigation and a copy of the report on the findings of the investigation. However, pending the investigation, Mr. Sullivan's termination was marked as a "general discharge"<sup>1</sup>, which would make it harder for him to find a reputable job, similar to the one he held at TAMU PD. In the meanwhile, Mr. Sullivan's medical history remained stored in his personnel file compiled during his employment at TAMU PD.

30. Mr. Sullivan was never given a final decision on his appeal, in violation of TAMU PD's own policy, until it was provided to him at a court date in 2018.

31. Mr. Sullivan had worked for TAMU PD for almost five and a half (5 ½) years. Mr. Sullivan's career started out strong, with great grades in training and positive evaluations. Prior to him acquiring a known disability, he earned regular pay increases and promotions, finishing with

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<sup>1</sup> Plaintiff requested the appeal to change his termination from a "general discharge" to a "honorable discharge." This would have made it easier for Plaintiff to be rehired. Especially, since Plaintiff was never reprimanded.

the rank of a Police Officer III. However, once Mr. Sullivan began to suffer from serious medical problems, his evaluation grades immediately went down, and he was blindsided at a yearly evaluation by “managers’ notes” that he was never allowed to see in full.

32. The most insignificant of issues with his performance were scrupulously documented by TAMU PD using Guardian Tracking, just to be used against Mr. Sullivan later on. At the same time, the termination was the only formal disciplinary action that Mr. Sullivan had ever been given. There was no opportunity for remedial training and no form of progressive discipline. After Mr. Sullivan’s on-duty medical episode on January 23, 2017, Guardian Tracking was almost immediately resorted to, in order to “build a case” against him to justify his termination.

33. In the University’s own HR response, it was documented that Mr. Sullivan’s health was discussed in at least one supervisors’ meeting, if not more. The following is a direct quote from assistant chief Robert Meyer in response to Mr. Sullivan’s original HR complaint after termination:

“Meyer stated that UPD tried very hard to take actions based on his disability early on because of the safety concern (i.e. job change, termination, etc.), but was told they could not according to the law. Since then, Meyer told his supervisors to address performance issues, and not worry about Sullivan’s medical issues.”

34. Assistant Chief, Robert Meyer, was the direct supervisor over the patrol division at that time. Lt. Kary Schaffer answered directly to Assistant Chief Meyer in the chain of command.

#### **IV. ADA DISABILITY DISCRIMINATION**

35. Plaintiff incorporates by reference all of the foregoing allegations in each of the paragraphs above as if fully set forth herein.

36. Plaintiff hereby asserts that TAMU PD’s termination of Mr. Sullivan’s employment was in direct violation of the American with Disabilities Act (“ADA”) and Texas law.



37. Plaintiff is disabled, as defined by the ADA and Texas law. Plaintiff was diagnosed with atrial fibrillation and underwent rounds of treatment for that condition, as evidenced by Plaintiff's medical records.

38. As evidenced by Plaintiff's pre- and post-disability personnel records, Plaintiff was clearly qualified to do his job.

39. Plaintiff suffered an adverse employment action in the form of termination, while similarly situated non-disabled employees of TAMU were allowed to keep their jobs.

40. Plaintiff alleges, in the alternative, that Defendants improperly regarded him as disabled, as defined by the ADA and Texas law, insofar as the same misconceptions of disability and individuals who have a mental illness or impairment. Despite his diagnosis, Plaintiff performed his work as instructed and received positive evaluations.

41. Plaintiff specifically pleads his right to recover punitive damages from the Defendants under the ADA, as Defendant acted with intentional and callous disregard for Plaintiff's federally protected rights. Plaintiff was discriminated against because of his disability status during the entire period of his employment, which diagnosis was known to Defendant.

42. Defendant further failed to engage in a constructive dialogue with Plaintiff to find accommodations for Plaintiff's disability. Instead of looking for an accommodation that would be reasonable and satisfactory to both Plaintiff and Defendant, Defendant, through its agents, commenced looking for any shortcomings in Plaintiff's performance Defendant could find, which culminated in Plaintiff's termination.

## **VII. TCHRA DISABILITY DISCRIMINATION**

43. Plaintiff incorporates by reference all of the foregoing allegations in each of the paragraphs above as if fully set forth herein.

44. The aforementioned conduct by Defendant constitutes violations of Chapter 21, of the Texas Labor Code (the TCHRA). *See* Tex. Lab. Code §21.001 *et seq.* Specifically, Defendant has discriminated against Plaintiff because of his disability, in violation of §§ 21.051 and 21.055 of the Texas Labor Code, which states in relevant part that:

[a]n employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age, the employer (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any manner the status of an employee.

45. Plaintiff's rights were violated when Defendant failed to accommodate for Plaintiff's medical condition, after numerous requests for such accommodation. Plaintiff specifically asked Defendant to be made a background investigator. Plaintiff's rights were violated when he lost promotional and career opportunities because of his disability. Plaintiff's rights were also violated when he was measured unfairly, compared to his non-disabled colleagues with regard to his performance reviews. Additionally, the conduct described herein created a hostile work environment under Texas law.

#### **VIII. FMLA RETALIATION**

46. Plaintiff incorporates by reference all of the foregoing allegations in each of the paragraphs above as if fully set forth herein.

47. Plaintiff had a condition that made him eligible for a medical leave, under the FMLA.

48. Plaintiff complied with all the reasonable requests for information from TAMU PD regarding his medical condition.

49. Defendant, through its employees, interfered with Plaintiff's FMLA leave and retaliated against Plaintiff for taking the FMLA leave.

50. Defendant's actions were knowing and intentional violations of the FMLA or in reckless disregard of the FMLA and Plaintiff's rights thereunder.

51. Plaintiff has suffered damages as a result of the violation. Defendant is liable for damages recoverable under the FMLA, including back pay, interest on back pay, front pay, lost benefits, liquidated damages, and attorney's fees, to which Plaintiff is entitled.

### **IX. ADA RETALIATION**

52. Plaintiff incorporates by reference all of the foregoing allegations in each of the paragraphs above as if fully set forth herein.

53. Plaintiff engaged in a protected activity by seeking a reasonable accommodation for Plaintiff's atrial fibrillation.

54. Instead of providing accommodation or starting a constructive dialogue with Plaintiff on what accommodations would be reasonable for Plaintiff's condition, Defendant engaged in a harassment campaign against Plaintiff, which culminated in Plaintiff's general discharge from Defendant's service.

55. Plaintiff's general discharge was not justified by any performance deficiency in Plaintiff's work but was motivated predominantly or entirely by Plaintiff's pursuit of his rights protected by the ADA.

56. As a direct and proximate result of Defendant's retaliatory actions, Plaintiff has suffered severe emotional distress, physical and emotional pain, suffering, inconvenience, mental anguish and other non-pecuniary losses.

57. Plaintiff has suffered and is likely to continue to suffer pecuniary loss, among

other things, in the form of lost income and benefits in an amount to be determined at trial.

58. Plaintiff has incurred and will continue to incur attorney's fees, litigation expenses and costs in pursuing his claims for retaliation under the ADA.

#### **X. HOSTILE WORK ENVIRONMENT**

59. Plaintiff incorporates by reference all of the foregoing allegations in each of the paragraphs above as if fully set forth herein.

60. Plaintiff was subjected to unwelcome harassment based on his disability when his supervisors continuously questioned his performance, recording every miniscule detail of Plaintiff's performance, and refused Plaintiff's requests for accommodations.

61. The harassment complained of affected a term, condition or privilege of Plaintiff's employment in that it, among other affects, affected his ability to succeed at his job and caused him severe emotional stress.

62. Defendant knew or should have known of the harassment, based on Plaintiff's multiple complaints, and failed to take a prompt, remedial action.

63. Defendant further specifically placed Plaintiff under the supervision of Sgt. Hartman, the very person Plaintiff requested not to be placed under.

64. As a direct and proximate result of Defendant's actions, Plaintiff has suffered severe emotional distress, physical and emotional pain, suffering, inconvenience, mental anguish and other pecuniary and non-pecuniary losses in the amount to be determined at trial.

#### **XI. JURY DEMAND**

65. Plaintiff demands a jury on all issues to be tried in this matter and herein submit the jury fee.

#### **XII. PRAYER**

For the reasons above, Plaintiff prays that Defendant be cited to appear and answer herein and that, on final trial, Plaintiff have judgment against Defendant for:

- a. All damages to which Plaintiff may be entitled pursuant to this Original Complaint, or any amendments thereto, including but not limited to back pay, future wages, reinstatement, upgrading, and compensation for benefits not received;
- b. Compensatory damages, including, but not limited to, emotional distress;
- c. Past, present, and future physical pain and mental suffering;
- d. Punitive damages;
- e. Reasonable attorneys' fees, as allowed by applicable law (with conditional awards in the event of appeal);
- f. Pre-judgment interest at the highest rate permitted by law;
- g. Post-judgment interest from the date of judgment until paid at the highest rate permitted by law;
- h. Costs of Court; and
- i. Such other and further relief, at law or in equity, to which Plaintiff may be justly entitled, whether by this Original Complaint or by any proper amendments thereto.

Respectfully submitted,



A handwritten signature in black ink, appearing to read 'A. Kennard, Jr.', is positioned above a horizontal line.

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