

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

**LISA MITCHELL,**

**Plaintiff,**

v.

**TOWN OF FAIRVIEW  
and GRANVER TOLLIVER**

**Defendants.**

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Cause No. \_\_\_\_\_

**Jury Trial Demanded**

**PLAINTIFF’S ORIGINAL COMPLAINT**

Plaintiff, Lisa Mitchell, (“Plaintiff “) for her complaint against Defendants, Town of Fairview (“Fairview”) and Granville Tolliver (“Tolliver” or collectively “Defendants”) would show as follows:

**I.  
INTRODUCTION**

1.01 Plaintiff has been the victim of recurring sex discrimination and sexual harassment during her employment with the town of Fairview while under the direct supervision of Defendant, Tolliver. Plaintiff was verbally and physically assaulted and harassed by her supervisor, Tolliver and was thus forced to endure hostile work environment during her employment. in reliance upon assurances by Tolliver that she would be eligible for promotions if she obtained proper qualifications, Plaintiff incurred significant tuition expenses to obtain a Bachelor’s and Associate’s degree in Criminal Justice. However, even after Plaintiff obtained these qualifications, Plaintiff was passed over and denied promotions in which she had expressed her interest. These promotions consistently went to less experienced and less qualified male officers.

Plaintiff has thus been made a victim of sex discrimination and has endured continuous and unwanted assaults and harassment in a clearly sexually hostile environment. Consequently Plaintiff has suffered damages in the form of lost wages, lost prestige, emotional distress and has been forced to incur costs and attorneys fees by bringing the instant action.

## **II.** **PARTIES**

2.01 Plaintiff Lisa Mitchell is an individual who is a citizen in the State of Texas and resides at 2705 Plantation Drive, Anna Texas 75409. Plaintiff can be contacted through her undersigned counsel.

2.02 Defendant, the Town of Fairview is a Municipality and employer within the meaning of Title VII and the Texas Human Rights Act. The town may be served through its appointed counsel, Wolfe, Tidwell and McCoy, L.L.P. 2591 Dallas Pkwy. Suite 205, Frisco, TX 75034

2.03 Defendant, Granver Tolliver is an individual and it is believed that he may be served with process through the same designated counsel, Wolfe, Tidwell and McCoy, L.L.P. S591 Dallas Pkwy. Suite 205, Frisco, TX 75034.

## **III.** **JURISDICTION AND VENUE**

3.01 The Court has jurisdiction pursuant to 28 U.S.C. §1331 as this action involves a question of the application of federal law, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”) and the Age Discrimination in Employment Act. The Court has supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. §1367.

3.02 Plaintiff has filed a charge of discrimination and retaliation with the Equal Employment Opportunity Commission and has received a Notice of Right to Sue authorizing her to proceed with the instant action.

3.03 Pursuant to 28 U.S.C. §1391, venue for all causes of action stated herein lies in the Northern District of Texas because the acts and omissions of Defendant on which Plaintiff's claims are based, took place in whole or in part within the boundaries of this district.

#### **IV. FACTUAL BACKGROUND**

4.01. Plaintiff was hired by Defendant, Fairview as a police officer in October 2005.

4.02. Plaintiff's immediate and only supervisor was Defendant, Tolliver, Chief of Police. Throughout her employment, Plaintiff's performance met her employer's expectations.

4.03 In September 2007, Tolliver, in apparent recognition of her performance, met with Plaintiff and told her that she had to go to college in order to advance within the Police Department. Tolliver assured Plaintiff that he had promotional plans for her, but he could not promote her unless she met the minimum requirements of an Associate's degree followed by a Bachelor's degree in the field of Criminal Justice.

4.04 In reliance upon Tolliver's representations, Plaintiff enrolled in the Colorado Technical University to major in Criminal Justice. Plaintiff paid a substantial tuition fees to attend pursue this major.

4.05 On November 11, 2008, Plaintiff obtained her Associate's Degree in Criminal Justice and continued her studies towards her Bachelor's degree as directed by Defendant,

Tolliver. Tolliver continued to assure Plaintiff that her continued education in this field would qualify her for promotional opportunities within the department.

4.06 In approximately March 2009, Plaintiff found a USB mass storage device (flash drive) on her desk when she arrived for work. Thinking that it belonged to another officer, she placed it on the other officer's desk. However, the same USB device continued to appear on her desk for about a week.

4.07 Plaintiff took the drive home to view the contents in private in the hope it would reveal the owner's identity. The drive contained numerous photos of Defendant, Tolliver standing by the back seat of a patrol car receiving oral sex and having sexual intercourse with a married woman whose wedding ring was clearly visible in the picture.

4.08 Plaintiff was very disturbed by these photos, but feared that any complaint about this discovery would result in retaliation and possible termination.

4.09 Plaintiff suspected that Tolliver had put the drive on her desk. Plaintiff telephoned Tolliver and told him that she had a flash drive belonging to him and that she had seen the photographs of him with the woman in the patrol car. Tolliver told Plaintiff to get into the department early and he would wait for her in his office. When Plaintiff arrived, Tolliver was waiting for her in his office. He took the drive from her and opened it up on his computer in front of Plaintiff and viewed the photographs of him having sex with the woman by the patrol car. Tolliver admitted to Plaintiff that he had taken these photographs and that it was him in the pictures with the woman. Plaintiff asked Tolliver what was the message that he was trying to send by leaving this drive on her desk. At first, Tolliver denied putting the drive on her desk. At first, Tolliver denied any wrongdoing, but then admitted that he had taken the pornographic

photos and that it was him in the pictures. Tolliver then asked Plaintiff how many copies of this drive had she made and Plaintiff said none

4.10 On October 12, 2010, Police Officer Nicholas Lovern (male) was promoted to corporal. Officer Lovern does not have an Associate's or Bachelor's degree.

4.11 On the same date, Police Officer David Jones (male) was also promoted to corporal. Officer Jones had been the subject of a sexual harassment complaint for which he received a reprimand. Plaintiff was understandably troubled by these promotions since her performance and academic credentials were superior to both of these officers and she was more than qualified for such an appointment.

4.12 Plaintiff had made Tolliver aware of her desire to be promoted and had demonstrated her desire for promotion by attending the college courses as Tolliver had previously directed her. Plaintiff was fully qualified for the corporal positions that were given to the other two male officers.

4.13 Following these two promotions, Tolliver approached Plaintiff and told her that he wanted to put one more stripe on her shoulder above the two stripes that were given to the two corporals. Plaintiff reasonably understood this to mean that Tolliver wanted to promote her to the rank of Sargeant. Tolliver confided in Plaintiff that the two recently promoted corporals could not do for him what she could do for him and that she was not to worry because he had bigger plans for her. Tolliver told her that she possessed a unique skill because she could work on both the patrol side as well as the administrative side. Tolliver told Plaintiff that he wanted to make her a Sargeant. Plaintiff asked Tolliver when would this promotion occur and Tolliver replied that it would take approximately 12 to 15 months.

4.14 In the same conversation, Tolliver told Plaintiff that he would not be able to control himself if he had to work around her for long periods of time in the same office and volunteered that he was going to have “to fire her to fuck her.” Plaintiff was extremely upset and disturbed by such a blatant, unprofessional and unwelcome sexual comment by her superior, but did not say anything as she was desirous of getting a promotion and did not want to do anything that would adversely affect her job.

4.15 Tolliver's harassing comments and behavior towards Plaintiff escalated throughout 2010 and 2011. On several occasions, he pulled her pony tail when they were both on duty. Even though Plaintiff worked the night shift, Tolliver never lost an opportunity to be sexually crude and vulgar to her when they were both in the department.

4.16 On October 22, 2011 at the Veteran's Appreciation event, Plaintiff participated in the mounted patrol portion of the festivities. That morning, Tolliver called Plaintiff a “bitch” and said that the only time she was not a “bitch” was “when she was sleeping”.

4.17 At the end of the event, Plaintiff asked Tolliver if she could load the horses back onto their trailers before the fireworks began so that they would not become upset and injure anyone. When Plaintiff approached him, he gestured for her to lean toward him as though he had something to say to her in confidence. When she leaned in towards Tolliver, he grabbed her ponytail with force and whispered to her crudely “This is how I'll take you from behind.... This is how I will fuck you.” When she told him to let go, he made a crude gesture with his right hand at his side to gesture how he would penetrate her vaginally with his fingers. Again, Plaintiff was repulsed, but was afraid to complain for fear of retaliation by Chief Tolliver.

4.18 On November 8, 2011, Plaintiff was passed up for another promotion. Officer Jeffery Hoover (male) who had only been with the department for approximately eighteen months was promoted to corporal. Officer Hoover did not have either an Associate's or Bachelor's a degree when he was promoted.

4.19 By this time, Plaintiff had been passed up for at least three (3) promotions which went to less experienced male police officers. It was now obvious that Plaintiff would never be promoted because she was female and would not succumb to Tolliver's sexual advances.

4.20 At this point, Plaintiff had incurred almost \$60,000 in tuition fees to obtain the degrees that Defendant Tolliver had directed her to obtain in order to be promoted.

4.21 After enduring years of sexual harassment resulting in an intolerable hostile work environment and having been passed over no less than three times for promotions that were awarded to less experienced and less qualified male officers, Plaintiff tendered her resignation on November 9, 2011.

4.22 Normally, when a police officer resigns from the Fairview Police Department, they are scheduled for an exit interview with Defendant's Human Resources Department.

4.23 No one from the Town or the Department contacted Plaintiff following her resignation. Plaintiff was not given an exit interview unlike the Assistant Town Manager and another police officer, both male, who were separated from the department shortly prior to the Plaintiff's separation and were both given exit interviews.

4.24 On December 1, 2011, Plaintiff contacted Judy Webster, the Town's Human Resource Manager for an appointment to sign paperwork for her retirement and explain why she was resigning. Plaintiff asked Ms. Webster if it was not concerning to her that a police officer who had been employed for the past six years without any reported deficiency in her job

performance was suddenly leaving. Ms. Webster merely replied that it was “slightly concerning.” Plaintiff then asked if Ms Webster wanted to know the reason why she was resigning. Ms. Webster ignored the question and told her that no appointment was necessary for the paperwork and no exit interview needed to be scheduled.

**V.  
FIRST COUNT**

**ASSAULT AND BATTERY  
(Against Defendant, Tolliver)**

5.01 The foregoing paragraphs of this Petition are incorporated in this count by reference as if set forth at length herein.

5.02 Plaintiff was the victim of sexual assault and battery suffered at the hands of Tolliver. Plaintiff was subjected to unwanted and offensive groping by Tolliver.

5.03 As a result of these actions, Plaintiff has endured shame, embarrassment, humiliation and mental, emotional and physical pain and anguish.

5.04 Tolliver’s acts of sexual assault and battery committed upon Plaintiff were intentional and willful, Plaintiff is therefore entitled to recover exemplary damages. Accordingly, Plaintiff sues Defendant, Tolliver for exemplary damages.

**VI.  
SECOND COUNT**

**SEX DISCRIMINATION AND SEXUAL HARASSMENT  
IN VIOLATION OF TITLE VII, 42 U.S.C. § 2000(e) et seq  
(Against Defendant, Town of Fairview)**

6.01 The foregoing paragraphs of this Complaint are incorporated in this count as fully as if set forth at length herein.



6.02 Plaintiff was an employee within the meaning of Title VII and belong to a class protected under the statute, namely females. 42 U.S.C. § 2000e(f).

6.03 Defendant, the Town of Fairview is an employer within the meaning of Title VII. 42 U.S.C. § 2000e(d).

6.04 Defendant through its agent deliberately passed over and denied Plaintiff for promotions for which she was qualified and gave these promotions to less qualified and less experienced male officers.

6.05 Defendant, Town of Fairview intentionally discriminated against Plaintiff because of her sex in violation of Title VII.

6.06 Defendant also violated Title VII by creating a hostile work environment and engaging in *quid pro quo* sexual harassment.

6.07 Plaintiff has timely filed with the Equal Opportunity Employment Commission (“EEOC”) and the Texas human Rights Commission a charge of discrimination against Defendant. Plaintiff is filing this law suit within 90 days of her receipt thereof.

6.06 As a direct and proximate result of Defendants’ conduct, Plaintiffs suffered the following injuries and damages:

a. Plaintiff suffered physical injury and violation as a result of Tolliver’s conduct.

b. Plaintiffs suffered mental anguish and emotional distress, as well as loss of enjoyment of life, inconvenience, and general damages.

6.07 Plaintiff is entitled to an award of attorneys’ fees and costs under Title VII, U.S.C. §2000e-5(k).

6.08 Defendant Town of Fairview violated Title VII by discriminating against Plaintiff in connection with compensation, terms, conditions, or privileges of employment because of

Plaintiff's sex. Plaintiff was subjected to a continuous course of harassment, and worked in a sexually hostile environment.

6.09 Such discrimination by Defendant Town of Fairview against Plaintiff was intentional. Accordingly Plaintiff is entitled to recover damages from The Town of Fairview for back pay, front pay, past and future pecuniary losses, emotional pain and suffering, inconvenience, loss of enjoyment of life and other non-pecuniary damages. Further, this discrimination was done by the Town of Fairview with malice or with reckless indifference to Plaintiff's federally protected rights. Plaintiffs are therefore also entitled to recover punitive damages.

**VII.  
THIRD COUNT**

**SEX DISCRIMINATION AND SEXUAL HARASSMENT  
IN VIOLATION OF THE TEXAS HUMAN RIGHTS ACT  
(Contingent upon issuance of Right to Sue Letter)  
(Against Defendant, Town of Fairview)**

7.01. The foregoing paragraphs of this Petition are incorporated in this Count by reference as if set forth at length herein.

7.02. Defendant Town of Fairview employs at least fifteen (15) employees and is an employer within the meaning of the Texas Human Rights Act.

7.03. Conditions precedent to filing this action for discrimination under Texas state law have been or will be met. Plaintiffs timely filed her charge of discrimination and harassment on the basis of sex with the Texas Commission of Human Rights. This claim will mature when Plaintiff receives her Notice of Right to file a civil action from the Texas Commission on Human Rights.

7.04. Defendant Town of Fairview has violated the Texas Human Rights Act, Texas Labor Code §21.001 *et seq*, by constructively discharging Plaintiff and/or discriminating against Plaintiff in connection with compensation, terms, conditions or privileges of employment because of Plaintiff's sex. Defendant Town of Fairview has engaged in a single continuous course of conduct of discrimination against Plaintiffs because of sex in order to destroy Plaintiff.

7.05 Defendant, Town of Fairview allowed a sexually hostile environment to exist in the workplace.

7.06 Defendant, Town of Fairview knowingly allowed sex harassment to occur in the workplace thereby creating a hostile work environment for the Plaintiff on account of her sex.

7.07 Plaintiff was forced to endure inappropriate and offensive comments and touching by Defendant Town's police chief, Tolliver.

7.08 Defendant Town of Fairview made no attempt to prevent this pervasive a harassment and was aware of Defendant Tolliver's unwelcome sexual harassment end of his past acts of sexual harassment against other female officers.

7.09 Defendant, Town of Fairview's failure to remedy the harassment or alleviate the hostile work environment was intentional. Accordingly, Plaintiff is entitled to recover damages from the Town of Fairview ore for back pay, front pay, past and future pecuniary losses, emotional pain and suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses. Further, this discrimination was done by Defendant with malice or with reckless indifference to Plaintiff's state-protected rights. Plaintiff therefore are also entitled to recover punitive damages in a sum which is in excess of the minimum jurisdictional limit of this Court. Plaintiffs are also entitled to recover all costs of court. attorney's fees and expert fees as allowed by Texas Labor Code Ann. §21.259.

7.10 The actions and conduct of Defendant were harassing, oppressive and malicious. Defendant acted with actual malice toward Plaintiff, that is, Defendant acted with ill will, spite, evil motive, or purpose to injure Plaintiff. The wrongs done by Defendant were aggravated by the kind of willfulness, wantonness and malice for which the law allows the imposition of exemplary damages. Plaintiff therefore seeks exemplary damages in an amount in excess of the minimum jurisdictional limit of the Court.

**VIII.**  
**Jury Trial Demanded**

8.01 Plaintiff demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that on final trial, Plaintiff have and recover and the following relief against Defendants:

- (1) Judgment for actual damages in the amount of past and future lost earnings and benefits and damages to past and future earnings capacity;
- (2) Judgment for back pay and front pay as allowed by law;
- (3) Judgment for past and future pecuniary losses, emotional pain and suffering, inconvenience, loss of enjoyment of life and other non-pecuniary losses;
- (4) Damages for past and future mental anguish, emotional distress and physical distress;
- (5) Exemplary damages in an amount to be determined by the trier of fact;
- (6) Prejudgment and Post-judgment at the maximum legal rate;
- (7) All costs of court;

- (8) Attorneys' fees; and
- (9) Such other and further relief to which Plaintiffs may be justly entitled.

Dated this 19<sup>th</sup> day of June, 2012.

Respectfully submitted,

KILGORE & KILGORE, PLLC

By: /s/ Nicholas A. O'Kelly

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