

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

**JAMES LUONUANSUU
10 EAST LIBERTY STREET
NEWTON FALLS, OHIO 44444**

Plaintiff

**LORDSTOWN POLICE DEPARTMENT)
1583 SALT SPRINGS ROAD)
LORDSTOWN, OHIO 44481)**

Defendant

CASE NO.

JUDGE

COMPLAINT

(Jury Demand Endorsed Hereon)

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Plaintiff, James Luonuansuu, by his undersigned counsel and for his several causes of action and claims for relief against Defendant,. and avers, as of all times pertinent, the following matters and things.

Count I (Disability Discrimination)

1. Plaintiff, at all times relevant hereto, was a resident of Ohio and resided at the above captioned address.
2. Defendant Lordstown Police Department is and was at all times relevant hereto and currently is a municipal police department in Lordstown, Ohio with offices at the above captioned address.
3. Defendant was and is an employer within the meaning of the federal Americans with Disabilities Act of 1990, as amended ("ADA"), Title 42, U.S. Code, Sections 12101-12117, as well as of the provisions of the CFR promulgated by the EEOC under the ADA.
4. At all times relevant hereto Plaintiff was and is suffering from medical condition and Defendant knew about Plaintiff's medical condition.

5. At all times relevant hereto Plaintiff could perform the essential functions of his employment with or without accommodation.
6. Plaintiff was employed by the Lordstown Police Department as a dispatcher from 2001 until June 17, 2011.
7. Plaintiff regularly worked the night shift.
8. In 2009 Plaintiff began experiencing problems with remaining awake during his shift. Plaintiff would unknowingly drift off to sleep.
9. Plaintiff sought medical treatment, received a diagnosis of a disabling medical condition and continued treatment. He was deemed fit for duty.
10. At all relevant times, Plaintiff was disabled, within the meaning of the ADA and/or Defendants perceived and/or regarded Plaintiff as having a disabling condition; and said condition and/or perception constitutes a covered "disability" within the meaning of the ADA.
11. At all relevant times, Defendant knew Plaintiff was disabled, within the meaning of the ADA and/or Defendant perceived and/or regarded Plaintiff as having a disabling condition; and said condition and/or perception constitutes a covered "disability" within the meaning of the ADA.
12. Plaintiff could perform the essential functions of the dispatcher position with or without reasonable accommodations.
13. Due to further incidents of drifting off to sleep while on duty, he was disciplined
14. Effective June 7, 2010 he entered into a last chance agreement with the Department.
15. The Last Chance Agreement provided in part:

Luonuansuu agrees not to appeal or otherwise challenge the voluntary nature of this Last Chance Agreement, or bring any related claim against the Village in any forum, including, but not limited to: the negotiated grievance/arbitration process, the Equal Employment Opportunity Commission, the Ohio Civil Rights Commission, and/or any federal or state court.

16. In July 2010, Plaintiff attended the fitness for duty examinations ordered by the Department under the terms of the Last Chance Agreement.

17. Plaintiff was deemed fit for duty and returned to work.

18. At the time Plaintiff entered into the Last Chance Agreement he had not brought any other claims in any forum against the Village.

19. Subsequent to attending the ordered fitness for duty examinations, the Department demanded that Plaintiff pay for the fitness for duty examinations, even though he was ordered to attend the medical examinations by the Department.

20. The Department, without Plaintiff's consent, deducted the cost of the fitness examinations from his regular paychecks on October 7, 2010 and November 4, 2010. The Last Chance Agreement did not set forth that Plaintiff was to pay for the fitness for duty examination.

21. On April 12, 2011, Plaintiff's Union, Ohio Police Benevolent Association, initiated an action against the Village and the Mayor of the Village alleging that the garnishment of his wages constituted conversion and a breach of the Last Chance Agreement.

22. On or about April 14, 2011, Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") alleging that the

Village's act of requiring him to pay the cost of the fitness for duty examination was an act of discrimination on account of the Village's perception that he was disabled.

23. The filing of EEOC Charge No. 1 constitutes activity protected under state and federal anti-discrimination laws on the basis that similarly situated employees of the Village, outside of Plaintiff's protected class, were not required to pay for fitness for duty examination.

24. On June 7, 2011 the Village terminated Plaintiff for breaching the terms of the Last Chance Agreement by filing the Lawsuit and EEOC Charge No. 1.

25. EEOC Notice Number 915.002 (4/17/97) prohibits employers from requiring employees to waive their right to file a charge of discrimination.

26. The act of terminating Plaintiff for filing EEOC Charge No. 1 constitutes retaliation for Plaintiff having engaged in activity protected under state and federal anti-discrimination statutes.

27. On or about October 14, 2011 Plaintiff filed a charge of discrimination, Charge No. 532-2-12-00193, with the EEOC alleging that the Village's act of terminating him for filing a charge of discrimination arising out of having to pay for his fitness for duty examination constituted retaliation for having engaged in activity protected under state and federal anti-discrimination laws (hereinafter Charge No. 2). A copy of Charge No. 2 is attached hereto as PXA and is incorporated herein by reference.

28. In or about October 2011, Plaintiff applied for a dispatcher position with the Ohio State Highway Patrol ("OSHP").

29. On December 18, 2011 Brent B. Milhoan, Chief of Police, Lordstown Police Department, was interviewed by an investigator from the OSHP as part of Plaintiff's application process.
30. Defendant comingled Plaintiff's confidential medical information with the personnel records maintained by Defendant, and did not maintain separate files for Plaintiff's confidential medical information.
31. During the interview with the OSHP investigator Chief Milhoan disclosed confidential medical information about Plaintiff, disclosed Charge No. 1 and Charge No. 2 then pending against Defendant and informed the OSHP that Plaintiff was terminated for violating a Last Chance Agreement.
32. Plaintiff, who was otherwise qualified for the OSHP dispatcher position, based upon his over ten year employment in a comparable position with the Village of Lordstown Police Department, was denied the dispatcher position by the OSHP
33. The acts of Defendant in disclosing to the OSHP Plaintiff's confidential medical information and his engagement in activities protected under state and federal anti-discrimination statutes constitutes post-employment retaliation.
34. On or about March 30, 2012 Plaintiff filed a timely charge of discrimination with the EEOC (Charge No. 532-2012-00193) alleging post-employment retaliation against Defendant arising out of Chief Milhoan's disclosures to the OSHP investigator (hereinafter Charge No. 3.) A true copy of Charge No. 3 is attached hereto as PXB and is incorporated herein by reference.
35. By correspondence dated June 13, 2013, the United States Department of Justice issued Plaintiff a Notice of Right to Sue under Charge 2 and Charge 3. A true copy of

the Notice of Right to Sue is attached hereto as PXC and is incorporated herein by reference.

36. This Court has jurisdiction over Plaintiff's claims by virtue of Title I of the Americans with Disabilities Act of 1990, 42 USC 12111, et seq.

Count I (ADA)

37. Plaintiff restates the allegations contained in foregoing paragraphs of this Complaint as if fully restated herein.

38. By reason of Defendant's foregoing acts and omissions of disability discrimination, Plaintiff has been damaged in said sums of Back and Front Pay and Compensatory and Punitive Damages, plus reasonable attorneys' and experts' fees and costs.

Count II (Retaliation – ADA)

39. Plaintiff restates the allegations contained in foregoing paragraphs of this Complaint as if fully restated herein.

40. 42 USC 12203 of the ADA, *inter alia*, proscribes employers from discrimination against any individual who has opposed any act or practice unlawful under the ADA or files a charge of discrimination with the EEOC.

41. Plaintiff engaged in activities protected under the ADA by filing Charge 1 and Charge 2.

42. Defendant retaliated against Plaintiff on account of his engagement in activity, set forth above, protected under the ADA

43. By reason of the foregoing acts of retaliation while employed by Defendant and subsequent to the termination of Plaintiff, Plaintiff has been damaged in said sums of

Back and Front Pay and Compensatory and Punitive Damages, plus reasonable attorneys' and experts' fees and costs.

Count III (State Law Disability Discrimination)

44. Defendant is an employer within the meaning of the Ohio Civil Rights Act (the "OCRA"), Chapter 4112, Ohio Revised Code ("R.C."), and specifically as provided in R.C. 4112.01(A)(2) of the OCRA.

45. At all relevant times, Plaintiff was disabled, within the meaning of the OCRA and/or Defendants perceived and/or regarded Plaintiff as having a disabling condition; and said condition and/or perception constitutes a covered "disability" within the meaning of R.C. 4112.01, *et seq.*

46. At all relevant times, Defendant knew Plaintiff was disabled, within the meaning of the OCRA and/or Defendants perceived and/or regarded Plaintiff as having a disabling condition; and said condition and/or perception constitutes a covered "disability" within the meaning of R.C. 4112.01, *et seq.*

47. By reason of the foregoing acts and omissions of discriminatory conduct by Defendant in violation of the OCRA, Plaintiff has been damaged in said sums of Back and Front Pay and Compensatory and Punitive Damages.

Count IV (State Law Retaliation)

48. Plaintiff restates the allegations contained in foregoing paragraphs of this Complaint as if fully restated herein.

49. Defendant is an employer within the meaning of the Ohio Civil Rights Act (the "OCRA"), Chapter 4112, Ohio Revised Code ("R.C."), and specifically as provided in R.C. 4112.01(A)(2) of the OCRA.

50. Defendant retaliated against Plaintiff on account of her engagement in the aforementioned protected activity in the form of filing charges of discrimination with the EEOC.

51. By reason of the foregoing acts and omissions of retaliatory conduct by Defendants in violation of the OCRA, Plaintiff has been damaged in said sums of Back and Front Pay and Compensatory and Punitive Damages.

WHEREFORE, Plaintiff demands:

- A. Trial by jury on all Counts and issues;
- B. Judgment for plaintiffs and against the Defendant for said sums of: Back and Front Pay; Compensatory and/or Punitive Damages; prejudgment interest; and/or reasonable attorneys' fees and costs; and
- C. Such other and further relief as is just and equitable under the facts and circumstances.

Respectfully submitted,
s/ John F. Myers
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES LUONUANSUU)	CASE NO. 4:13 CV 2050
)	
Plaintiff)	JUDGE BENITA Y. PEARSON
)	
v.)	DEFENDANT LORDSTOWN POLICE
)	DEPARTMENT'S MOTION TO
LORDSTOWN POLICE DEPARTMENT)	DISMISS PURSUANT TO FEDERAL
)	CIVIL RULE 12(b)(6)
Defendant)	

Now comes Defendant, Lordstown Police Department ("LPD"), by and through its counsel, and hereby moves to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) all allegations in Plaintiff James Luonuansuu's ("Plaintiff") Complaint (Doc. #1), filed with this Court on September 16, 2013. The basis for Defendant's Motion to Dismiss is more fully set forth below in Defendant's Brief in Support of Motion.

Respectfully submitted,

/s/ Neil D. Schor

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BRIEF IN SUPPORT OF MOTION

I. INTRODUCTION -- PLAINTIFF’S COMPLAINT

Plaintiff James Luonuansuu (“Plaintiff”) on September 16, 2013 (Doc. #1) filed a multi-count Complaint against his former employer, whom he has identified as the Lordstown Police Department (“LPD”). (Doc. #1, ¶2.) Plaintiff alleges he had been employed at LPD as a dispatcher from 2001 until June 17, 2011, and alleges that at that time Lordstown Village (“Lordstown”) terminated Plaintiff for breaching the terms of his Last Chance Agreement (Doc. #1, ¶24) which had been entered into previously between Plaintiff and Lordstown effective June 7, 2010. Plaintiff had entered into the Last Chance Agreement following a series of incidents in which Plaintiff was found to have been sleeping on duty – which led to discipline by LPD.

Plaintiff states claims in his Complaint for (1) Disability discrimination (Count I); (2) ADA – (Second Count I); (3) Retaliation – ADA (Count II); (4) State law disability discrimination (Count III); and (5) State law retaliation (Count IV). Plaintiff seeks damages against LPD including back and front pay; compensatory and/or punitive damages, prejudgment interest, reasonable attorney fees and costs.

Plaintiff’s Complaint, however, fails to state claims upon which relief can be granted under FRCP 12(b)(6) on both procedural and substantive grounds. For the foregoing reasons, Plaintiff’s federal and state law claims must be dismissed by this Court as a matter of law.

II. PLAINTIFF’S FEDERAL AND STATE LAW CLAIMS MUST BE DISMISSED BECAUSE THE LORDSTOWN POLICE DEPARTMENT IS NOT *SUI JURIS*.

As an initial matter, Plaintiff has only sued Defendant LPD – and no other entities or individuals at the Village of Lordstown. It is clear under Ohio law, and interpreted by United States District Courts as well, that police departments such as LPD are not *sui juris* because they

cannot be sued absent positive statutory authority in Ohio – which does not have such a law. *Scott v. Giant Eagle*, 2013 U.S. Dist. LEXIS 63578 (N.D. Ohio, May 2, 2013, at p. 7), citing *Hicks v. City of Barberton*, 2011 U.S. Dist. LEXIS 80272 (N.D. Ohio, July 22, 2011). Plaintiff's naming of LPD as the sole defendant is exactly like the plaintiff in *Scott, supra*, who named the City of Berea Police Department as a defendant -- which is not a legal entity capable of being sued. See also *Yahnke v. Nixon*, 2010 U.S. Dist. LEXIS 88892 (N.D. Ohio, Aug. 27, 2010). Accordingly, because the solely named defendant herein in Plaintiff's Complaint is LPD, Plaintiff's Complaint must be dismissed pursuant to FRCP 12(b)(6) as a matter of law.

III. PLAINTIFF'S FEDERAL CLAIMS ARE APPROPRIATE FOR DISMISSAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) ON PROCEDURAL AND SUBSTANTIVE GROUNDS AND THE PLEADING REQUIREMENTS OF *IQBAL* AND *TWOMBLY*.

A. FRCP 12(b)(6) Standards.

A Motion to Dismiss for failure to state a claim pursuant to FRCP 12(b)(6) “should not be granted unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41 (1957). Well-pleaded allegations must be taken as true and construed most favorably toward the non-moving party. See, e.g., *Mayer v. Mylod*, 988 F.2d 635-637 (6th Cir. 1993). “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions, as threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

Moreover, a court may not grant an FRCP 12(b)(6) motion based on its disbelief of the factual allegations contained in the complaint, *Lawler v. Marshall*, 898 F.2d 1196, 1199 (6th Cir. 1990), a court “need not accept as true legal conclusions or unwarranted factual inferences.”

Morgan v. Church's Fried Chicken, 829 F.2d 10, 12 (6th Cir. 1987). “In order to survive a motion to dismiss under 12(b)(6), a complaint must appear ‘plausible’ on its face, and follow that the factual allegations are assumed to be true.” *Alli v. City of New York*, 2012 U.S. Dist. LEXIS 148879 (S.D. NY. Oct. 12, 2012), citing *Iqbal*, 556 U.S. at 678; *Twombly*, 55 U.S. at 560-70. Consequently, a claim should not be dismissed unless it is unsupported by the law or the facts alleged are insufficient.

When ruling on motions to dismiss, a court should normally look no further than the complaint, but “documents that a defendant attaches to a motion to dismiss are considered part of the pleading if they are referred to in the plaintiff’s complaint and are central to plaintiff’s claim.” *Weiner v. Klais & Co., Inc.*, 108 F.3d 86, 89 (6th Cir. 1997). For the foregoing reasons, the allegations supporting Plaintiff’s federal claims do not meet the FRCP 12(b)(6) standards, as well as the requisites of both *Iqbal*, *supra* and *Twombly*, *supra*, and therefore must be dismissed as a matter of law.

B. Plaintiff’s Federal Claims of Disability Discrimination Set Forth in Count I (¶¶1-36) and in Second Count I (¶¶37-38) Should be Dismissed.

Plaintiff’s Federal Claims of Disability Discrimination set forth in Count I (¶¶1-36) and in second Count I (¶¶37-38) should be dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted because Plaintiff has failed to comply with the statute of limitations contained in 42 U.S.C. §2000e-5(f)(1). In the present case, in Count I entitled “Disability Discrimination” (¶¶1-36), Plaintiff alleges that Defendant Lordstown Police Department was an “employer” within the meaning of the Federal Americans with Disability Act of 1990 As Amended, 42 U.S.C. §12101-12117 (see ¶3 of the Complaint). Plaintiff alleges that he was “disabled” within the meaning of the ADA and/or Defendant

“perceived” and/or “regarded” Plaintiff as having a disabling condition; and said condition and/or perceived condition constitutes a covered “disability” within the meaning of the ADA. (See ¶10 of Complaint.) Plaintiff alleges that Defendant Lordstown Police Department knew Plaintiff was disabled within the meaning of the ADA and/or Defendant perceived and/or regarded Plaintiff as having a disabling condition; and said condition and/or perception constituted a covered “disability” within the meaning of the ADA. (See ¶11 of Complaint.) Plaintiff alleges that following the execution of a Last Chance Agreement, Plaintiff attended a fitness for duty examination, but the Defendant demanded Plaintiff pay for the fitness for duty exam, and that the Defendant deducted the cost of the fitness for duty exam from his regular paychecks. (See ¶¶18-20 of Complaint.) Plaintiff alleges that as a result he filed a charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) on April 14, 2011, alleging that the Defendant’s act of requiring to pay the cost of the fitness for duty was an act of discrimination on account of the Village’s perception that he was disabled. (See ¶22 of Complaint.) Plaintiff alleges that the filing of EEOC Charge No. 1 (which is EEOC Charge No. 532-2011-01033) constituted a protected activity. (See ¶23 of the Complaint.) Plaintiff further alleges that Defendant co-mingled medical information with personnel records maintained by the Defendant. (See ¶30 of Complaint.) Plaintiff alleges that this Court has jurisdiction over Plaintiff’s claim by virtue of Title 1 of the Americans with Disability Act of 1990 42 U.S.C. §12111, et seq. (See ¶36 of Complaint.) Plaintiff alleges that by reason of Defendant’s foregoing acts of disability discrimination, Plaintiff has been damaged. (See ¶¶ 37 and 38 of Complaint.)

However, Plaintiff’s Federal claims of disability discrimination under the Americans Disability Act as Amended and as alleged in Count I entitled “Disability Discrimination” at

paragraphs 1-36 and Second Count I entitled “ADA” at paragraphs 37 and 38 of the Complaint should be dismissed because Plaintiff failed to comply with the applicable statute of limitations. Plaintiff failed to comply with 42 U.S.C. §2000e-5(f)(1). Pursuant to 42 U.S.C. §2000e-5(f)(1) Plaintiff had ninety (90) days after receiving his determination letter from the EEOC giving him the right to file his lawsuit based upon alleged Federal claims of disability discrimination under the ADAAA. The determination letter from the U.S. EEOC dealing with Plaintiff’s charge of disability discrimination, Charge No. 532-2011-01033, was issued by the EEOC to Plaintiff on May 30, 2012. (See copy of EEOC determination letter dated May 30, 2012 attached as Defendant’s Exhibit A.) In that EEOC determination letter, the EEOC reiterated the charges alleged by Plaintiff included the allegation that Plaintiff claims he was disciplined and required to pay for a fitness for duty examination due to being perceived as being disabled in violation of Title 1 of the Americans Disability Act of 1990, As Amended. The EEOC determined that there was insufficient evidence to indicate that the respondent Lordstown Police Department discriminated against Plaintiff. The EEOC stated:

“The charging party may only pursue this matter by filing suit against the respondent within 90 days of receipt of this notice. If charging party fails to file a lawsuit, his right to sue the respondent will be lost.”

Therefore, Plaintiff had at the latest ninety (90) days from receipt of the May 30, 2012, letter to file suit against the Village of Lordstown. Such ninety (90) day period expired approximately August 31, 2012. However, Plaintiff did not file his lawsuit until September 16, 2013, more than a year after the statute of limitations expired.

As to the limitation period as applied to individual claims under the Americans with Disability Act, if Congress explicitly puts a limit upon the time for filing a right which it created, there is an end of a matter. *Equal Employment Opportunity Commission v. W.H. Braum, Inc.*,

347 F.3d 1192 (10th Cir. 2003), ¶12. Title I of the Americans Disability Act expressly adopts the statutory scheme of Title VII of the Civil Rights Act of 1964. Pursuant to O.R.C. §42 U.S.C. §12117(a) Congress has enacted by statute that the powers, remedies and procedures set forth in Sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-4, §2000e-5, §2000e-6, §2000e-8 and §2000e-9) shall be the powers, remedies and procedures this title provides to the Commission, to the Attorney General, or to any person alleging disability discrimination on the basis of disability and in violation of any provision of this Act, or regulations promulgated under §106 [42 U.S.C. §12116] concerning employment. As to individual claims under the Americans with Disability Act As Amended, the employee must first file a charge with the EEOC within the required statutory time period. *Equal Employment Opportunity Commission v. W.H. Braum, Inc., supra.* at ¶13. In this case, since Ohio is a deferral state, the charge must be filed within three hundred (300) days after the alleged unlawful employment practice occurred. *Id.*; 42 U.S.C. §2000e-5(e)(1). Second, the EEOC then has exclusive jurisdiction over the claim for the first one hundred eighty (180) days after the charge is filed. *Id.* citing 2000e-5(f)(1). Finally, once the EEOC determines not to pursue the charge, the employee has ninety (90) days from receipt of the right to sue letter in which to file suit. *Equal Employment Opportunity Commission v. W.H. Braum, Inc., supra.*; 42 U.S.C. §2005e-5(f)(1). In the present case, the EEOC sent a letter to Plaintiff dated May 30, 2012, giving him ninety (90) days of receipt within which to file suit. The EEOC letter also specifically stated “the charging party may only pursue this matter by filing suit against the respondent within 90 days of receipt of this notice. If the charging party fails to file a lawsuit, his right to sue the respondent will be lost.” (See DXA.)

Since Plaintiff did not file a lawsuit for more than a year after the ninety (90) day limitation period expired, Plaintiff's claims are barred by the statute of limitations contained in 42 U.S.C. §2000e-5(f)(1). Therefore, Defendant moves this Court pursuant to Federal Rule of Civil Procedure 12 (b)(6) to dismiss Plaintiff's Federal claims of disability discrimination as set forth in Count I entitled "Disability Discrimination" contained in paragraphs 1-36 and which allege violation of the Federal Americans with Disability Act As Amended in second Count I entitled "ADA" contained in paragraphs 37 and 38.

C. Plaintiff's Federal Claims of Retaliation and Post-Employment Retaliation Set Forth in Count II Entitled "Retaliation – ADA" Should be Dismissed.

Plaintiff's Federal claims of retaliation and post-employment retaliation contained in Count II entitled "Retaliation – ADA" as set forth in paragraphs 39 through 43 of the Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted because Plaintiff failed to comply with the statute of limitations contained in 42 U.S.C. §2000e-5(f)(1). Plaintiff alleges he engaged in protected activities under the ADA by filing Charge 1 with the EEOC. (See Complaint at ¶23.) Charge 1 with the EEOC was the claim of alleged disability discrimination known as EEOC Charge No. 532-2011-01033 (see Defendant's Exhibit A and ¶¶23 and 41 of the Complaint.) Plaintiff alleges that Defendant retaliated against Plaintiff on account of his engagement in protected activities protected under the ADA. (See ¶42 of the Complaint.) Plaintiff alleges that Defendant retaliated against Plaintiff while employed by Defendant and that Defendant retaliated against Plaintiff subsequent to the termination of Plaintiff's employment. (See ¶43 of the Complaint.) Plaintiff alleges that Defendant violated 42 U.S.C. §12203 of the ADA and alleges that 42 U.S.C. §12203 of the ADA prescribes employers from discriminating against any individual who has opposed any act or

practice unlawful under the ADA or files a charge of discrimination with the EEOC. (See ¶40 of the Complaint.)

Pursuant to 42 U.S.C. §12203(a), no person shall discriminate against any individual because such individual made a charge. Pursuant to 42 U.S.C. §12203(c), the ADA anti-retaliation statute incorporates the remedies and procedures available under 42 U.S.C. §12117. Pursuant to 42 U.S.C. §12117(a) Congress has enacted by statute that the powers, remedies and procedures set forth in 42 U.S.C. §2000e-5 shall be the powers, remedies and procedures to the Commission, Attorney General or to any person alleging disability discrimination on the basis of disability and in violation of any provision of the Act concerning employment. Under 42 U.S.C. §2000e-5(f)(1), once the EEOC determines not to pursue the charge, the employee has ninety (90) days from receipt of the right to sue letter in which to file suit. *Equal Employment Opportunity Commission v. W.H. Braum, Inc., supra.*; 42 U.S.C. §2000e-5(f)(1). In the present case, the EEOC sent a letter to Plaintiff dated June 13, 2013, giving him a right to sue. The EEOC indicated in the June 13, 2013, letter that the Department of Justice will not file suit on behalf of the above-referenced charges including Charge No. 532-2012-00193 (retaliation) and Charge No. 532-2012-00767 (post-employment retaliation). (See Plaintiff's Exhibit A, Plaintiff's Exhibit B, and Plaintiff's Exhibit C attached to the Complaint). The EEOC stated in its June 13, 2013, letter that Plaintiff has a right to sue but if he chooses to sue, suit must be filed within ninety (90) days of receipt of this notice. (See Plaintiff's Exhibit C). The June 13, 2013, letter states as follows:

“You are further notified that you have the right to institute a civil action under Title 1 of the Americans with Disability Act of 1990, 42 U.S.C. §12111, et. seq. against the above-named respondent. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of receipt of this notice.” (See Plaintiff's Exhibit C).

In the present case, the EEOC's right to sue letter as to EEOC Charges 2 and 3 (retaliation and post-employment retaliation) is dated June 13, 2013. However, Plaintiff did not file his lawsuit until ninety-five (95) days after the date of the June 13, 2013, letter. Plaintiff filed suit on September 16, 2013. The ninety (90) day period would have expired five (5) days earlier on September 11, 2013.

For the reasons set forth above, Defendant moves this Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's Federal claims of retaliation and post-employment retaliation as set forth in Count II entitled "Retaliation – ADA" at paragraphs 39 through 43 of the Complaint because Plaintiff failed to comply with applicable statute of limitations.

D. Plaintiff's Request for Compensatory Damages and Punitive Damages for Alleged Violations of the Federal ADA Anti-Retaliation Statute, 42 U.S.C. §12203 Should be Dismissed.

Plaintiff's request for compensatory damages and punitive damages for alleged violation of the Federal ADA Anti-Retaliation Statute, 42 U.S.C. §12203 should be dismissed for failure to state a claim upon which relief can be granted. The ADA Anti-Retaliation Statute only provides equitable remedies and does not permit a Plaintiff to receive compensatory damages or punitive damages for violations of 42 U.S.C. §12203.

Plaintiff alleges in his Complaint that 42 U.S.C. §12203 of the ADA prescribes employers from discrimination against any individual who has opposed any act or practice unlawful under the ADA or files a charge of discrimination with the EEOC. (See ¶40 of the Complaint.) Plaintiff alleges that he engaged in activities protected by the ADA by filing Charge 1 and Charge 2 with the EEOC and that Defendant retaliated against Plaintiff on account of his engagement of that activity as protected under the ADA. (See ¶¶41 and 42 of the Complaint.) Plaintiff requests back pay, front pay, compensatory damages and punitive damages. (See ¶ 43

of Complaint.) However, Plaintiff's request for compensatory damages and punitive damages are not authorized as a result of any alleged violation of 42 U.S.C. §12203.

42 U.S.C. §12203(a) provides that no person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this act or because such individual made a charge under this act. 42 U.S.C. §12203(c) states that the remedies and procedures available under 42 U.S.C. §12117 shall be available to an individual for violations of 42 U.S.C. §12203(a) with respect available those remedies set forth in 42 U.S.C. §2000e-4, §2000e-5, §2000e-6, §2000e-8 and §2000e-9. [See 42 U.S.C. §12117(a)]. Under 42 U.S.C. §2000e-5(g)(1), certain equitable relief can be provided including back pay and injunctive relief but neither it nor any of the other sub-sections provide for compensatory damages or punitive damages.

In addition, when the ADA was amended in 1991, §2000e-5 was expanded by 42 U.S.C. §1981(a). However, courts have found that although 42 U.S.C. §1981(a) specifically mentions claims under 42 U.S.C. §12112, no mention is made of retaliation claims under §12203. Therefore, the majority of courts have held that in ADA retaliation cases under 42 U.S.C. §12203, compensatory damages and punitive damages are not available. *Kramer v. Banc of America Securities LLC*, 355 F.3d 961 (7th Cir. 2004) writ of cert. denied, 542 U.S. 932 (2004); *Alvarado v. Cajun Operating Co.*, 588 F.3d 1261 (9th Cir. 2009). Also see *Baker v. PPL Corporation*, 2010 U.S. Dist. LEXIS 7591 (M.D. Pa. 2010). In addition, several courts within the Sixth Circuit, including the *Faurecia* court from the Northern District of Ohio, have all held that neither compensatory damages nor punitive damages are available in a retaliation claim under 42 U.S.C. §12203. *EEOC v. Faurecia Exhaust Systems, Inc.*, 601 F. Supp. 2d 971 (N.D. of Ohio 2008) ("the court elects to follow *Kramer* and finds that Plaintiff's ADA retaliation

claim under §12203 cannot support compensatory or punitive damages as a matter of law”); *Arredondo v. S2 Yachts*, 496 F. Supp. 2d 831 (W.D. Mich. 2007); *Cantrell v. Nissan North America, Inc.*, 2006 U.S. Dist. LEXIS 45227 (M.D. Tenn. 2006).

As discussed above, the ADA Anti-Retaliation Statute, 42 U.S.C. §12203 states in 42 U.S.C. §12203(c) that the remedies available for violation of that section are provided by 42 U.S.C. §12117. 42 U.S.C. §12117 in turn makes available those remedies set forth in 42 U.S.C. §2000e-4, §2000e-5, §2000e-6, §2000e-8 and §2000e-9. [42 U.S.C. §12117(a)]. Section §2000e-5(g)(1), permits certain equitable relief, including back pay and injunctive relief but it does not authorize compensatory damages or punitive damages. Therefore, Plaintiff’s request for compensatory damages and punitive damages for an alleged violation of the ADA Anti-Retaliation Statute, 42 U.S.C. §12203, should be dismissed as a matter of law and on the basis of Plaintiff’s failure to meet the *Iqbal* and *Twombly* pleading requirements.

IV. PLAINTIFF’S STATE LAW CLAIMS AGAINST LPD ARE BARRED BECAUSE THE VILLAGE OF LORDSTOWN IS IMMUNE FROM SUIT AS A POLITICAL SUBDIVISION UNDER ORC CHAPTER 2744 AND IS NOT SUBJECT TO THE ORC §2774.09(B) IMMUNITY EXCLUSION.

Plaintiff’s Causes of Action set forth in Count III (state law disability discrimination – ORC Chapter 4112) and Count IV (Retaliation – ORC Chapter 4112) do not state claims for relief pursuant to the Ohio Civil Rights Act against LPD, even if Lordstown is identified as a party defendant, because as an Ohio political subdivision, Lordstown would be immune from these intentional tort claims under ORC §2744.02(A)(1), as well as ORC §2744.02(B). Regarding Plaintiff’s Complaint, there are no applicable specific exceptions to the ORC §2744.02(B) immunity provisions (such as ORC Chapter 4112 discrimination/retaliation claims) identified in this statute even if LPD’s actions toward Plaintiff are deemed to be “proprietary

functions.” See *Vacha v. City of North Ridgeville*, 136 Ohio St.3d 109 at ¶12. Therefore, Plaintiff’s Complaint should be dismissed as a matter of law.

However, LPD does recognize that there is a potential exception to the aforementioned immunity protections in ORC §2744.02(B) set forth in ORC §2744.09(B), where the Ohio Political Subdivision Tort Liability Act does not apply to civil actions by an employee against his political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision. *Vacha*, ¶12, citing *Sampson v. Cuyahoga Metro Hous. Auth.*, 131 Ohio St.3d 418, 2012-Ohio-570. Yet despite the ORC §2744.09(B) exclusion, Plaintiff’s state law Chapter 4112 claims do not present claims upon which relief can be granted because they do not “arise out of the employment relationship” between himself and Lordstown/LPD.

First, Count III (state law disability discrimination) as alleged under §4112.01(A)(2), is based upon Lordstown’s termination of Plaintiff allegedly because of his disabling condition (¶¶45-47 of the Complaint). In a strict reading of the Cause of Action asserted in Count III (¶¶44-47), nothing therein directly indicates that claims are causally related or causally connected to the employment relationship between Plaintiff and LPD. Therefore, Count III should be dismissed.

However, even if the discrimination/retaliation claims as set forth in Charges 1 and 2 (see Complaint, ¶¶24-31) qualify for the ORC §2744.09(B) exclusion because they “arise out of the employment relationship” between Plaintiff and LPD, by definition Charge No. 3 (Complaint, ¶34), cannot arise out of the “employment relationship” to create a basis for a state law retaliation claim because Charge 3 is clearly a “post-employment” claim. Charge 3, as a basis for a state law claim under ORC §2744.09(B), does not meet the test of either *Vacha*, *supra* or

Sampson, supra, because the alleged post-employment disclosures by Chief Milhoan to the OSHP investigator (*i.e.*, the alleged disclosure of confidential medical information, and information about Charges 1 and 2 – see Complaint, ¶¶32-33) was in fact presented to the OSHP well after Plaintiff left LPD – which means the claims cannot meet the definitional requirements of this particular exclusion because the employment relationship had already terminated. Therefore, LPD contends that any state law claims asserted against LPD for retaliation which are post-employment and not excluded from immunity pursuant to ORC §2744.02(B) must be dismissed as a matter of law.

V. PLAINTIFF’S STATE LAW CLAIM FOR RETALIATION BASED UPON CHARGE 3 IS SUBJECT TO THE IMMUNITY PROVISION OF ORC §4113.71.

Plaintiff in his Complaint alleges that LPD co-mingled Plaintiff’s confidential medical information to the OSHP through LPD Chief Milhoan and that this information – including personnel records and information about Plaintiff’s Charges 1 and 2 -- constituted post-employment retaliation because this information allegedly disclosed to the OSHP was protected under state and federal anti-discrimination statutes. (See Complaint, ¶33.) Plaintiff claims that this information constituting Charge 3 caused Plaintiff, based on LPD and Milhoan’s activities, to be denied the dispatcher position he applied for at the OSHP (see Complaint, ¶32).

However, LPD, to the extent it even qualifies as an “employer” pursuant to ORC §4113.71, possesses immunity as to job performance information disclosures within the meaning of the statute. Specifically, ORC §4113.71 states:

(B) An employer who is requested by an employee or prospective employer of an employee to disclose to a prospective employer of that employee information pertaining to the job performance of that employee for the employer and who discloses the requested information to the prospective employer is not liable in damages in a civil action to that employee, the prospective employer, or any person for any harm sustained as a proximate result of making the disclosure of

any information disclosed, unless the plaintiff in a civil action establishes, either or both of the following:

- (1) By preponderance of the evidence, that the employer disclosed particular information with the knowledge that it was false, and with deliberate intent to mislead the prospective employer or another person, in bad faith, or with malicious purpose;
- (2) By a preponderance of the evidence that the disclosure of particular information by the employer constitutes an unlawful discriminatory practice described in §4112.02 . . .

As stated previously concerning the specifics in Plaintiff's Complaint, there are no allegations therein that the disclosure of the confidential information or work performance issues by LPD Chief Milhoan to the OSHP – at its request -- was either false or done with deliberate intent to mislead the OSHP, or was conducted in bad faith or with malicious purpose. Furthermore, there are no allegations set forth in Plaintiff's Complaint by which he can demonstrate that this particular immunity protection for LPD under ORC §4113.71 establishes via retaliation under ORC §4112.02 an “unlawful discriminatory practice.” See *LaBarge v. Werner Enterprises* 2008 U.S. Dist. LEXIS 116521 (S.D. Ohio, July 10, 2008). See also *Miller v. J. B. Hunt Transport, Inc.* 2013-Ohio-3892.

Moreover, for the same reasons stated above, even if Plaintiff attempted to allege that a discriminatory practice was set forth under ORC §4112.02 concerning Plaintiff's purported “confidential information” which was released to the OSHP, it again would not arise out of the employment relationship to create an ORC §2744.09(B) exclusion since it is strictly a post-employment retaliation claim arising (OSHP interview occurred on December 18, 2011) almost six months after Plaintiff's termination. Therefore, Plaintiff cannot meet the requirements in his retaliation claim to overcome the immunity protection of ORC §4113.71 and Plaintiff's Complaint must be dismissed as a matter of law.

Plaintiff's state law claims in Counts III and IV must also be dismissed pursuant to FRCP 12(B)(6), because nowhere in Plaintiff's Complaint does Plaintiff cite to ORC §4112.02(I). This provision states:

It shall be an unlawful discriminatory practice:

(I) for any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this action or because that person has made a charge, testified, assisted or participated in any manner in any investigation, proceeding or hearing under Sections 4112.01 to 4112.07 of the Revised Code.

Because the only claim for "retaliation" in the employment context recognized under Ohio law arises under ORC §4112.02(I), see *Buren v. Karrington Health*, 2002-Ohio-206 (at *16), Plaintiff's claim must also be dismissed because his Complaint fails to allege a "discriminatory practice" (Charges 1-3) which would even fall within the realm of ORC §4113.71. Plaintiff's Complaint should therefore be dismissed as a matter of law.

VI. CONCLUSIONS.

For the reasons set forth above, Defendant Lordstown Police Department respectfully requests this Court grant its Federal Rule of Civil Procedure 12(b)(6) Motion and dismiss all of Plaintiff's federal and state law claims set forth in the within Complaint.

/s/ Neil D. Schor

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Email: mboetcher@hhmlaw.com
Attorneys for Defendant,
Lordstown Police Department

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2013, the foregoing *Defendant Lordstown Police Department's Motion to Dismiss Pursuant to Federal Civil Rule 12(b)(6)* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Neil D. Schor

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Attorneys for Defendant,
Lordstown Police Department



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Cleveland Field Office

AJC Federal Building
1240 East Ninth Street, Suite 3001
Cleveland, OH 44199
(216) 522-7416 (Main Number)
1-866-408-8075 (Charge Status/Pending Business)
1-800-669-4000 (General Info/New Charge Filing)
FAX (216) 522-7395 • TTY (216) 522-8441

Charge No. 532-2011-01033

James G. Luonuansuu
10 East Liberty Street
Newton Falls, OH 44444

Charging Party

Lordstown Police Department
1583 Salt Springs Road SW
Lordstown, OH 44481

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title I of the Americans with Disabilities Act of 1990, as amended (ADAAA).

All requirements for coverage have been met. Charging Party alleges that he was disciplined and required to pay for fitness for duty medical examinations, due to being perceived as being disabled, in violation of Title I of the Americans with Disabilities Act of 1990, as amended (ADAAA).

Respondent denies the allegations.

After a thorough review of the evidence, there is insufficient evidence to indicate that Respondent discriminated against Charging Party as alleged. This does not certify that Respondent is in compliance with Title I of the Americans with Disabilities Act of 1990.

The Charging Party may only pursue this matter by filing suit against the Respondent within 90 days of receipt of this notice. If Charging Party fails to file a lawsuit, his right to sue the Respondent will be lost.

However, growing out of this charge of discrimination, the investigation revealed that Respondent commingled medical information in employee personnel records, in violation of Title I of the Americans with Disabilities Act of 1990, as amended (ADA). Section 102 of the ADA provides that information regarding the medical condition or history of an applicant or employee must be maintained on separate forms and in separate medical files and treated as a confidential medical record except for those statutory accepted persons with a need to know.


Based on the foregoing, I have determined that the evidence obtained during the investigation establishes violations of the ADA.

After being notified that the Investigator would recommend a violation of the law, Respondent provided proof that it had removed employee medical files from employee personnel files. Since the Respondent has rectified this matter, conciliation is not necessary.

On Behalf of the Commission:

MAY 30 2012

Date


Daniel J. Cabot
Field Office Director

cc: Jess T. Enyeart, Esq.
Harrington, Hoppe & Mitchell
108 Main Avenue SW, Suite 500
Warren, OH 44481

John F. Meyers, Esq.
Holland, Myers & Myers
697 West Market Street, Suite 102
Akron, OH 44303



Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Ave. NW
Washington, DC 20530

June 13, 2013

DJ# 205-57-0

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. James Luonuansuu
10 East Liberty St.
Newton Falls, OH 44444

Re:	EEOC Charge Against:	Lordstown Police Department
	EEOC Nos.:	532-2012-00193 & 532-2012-00767
	DJ#:	205-57-0

Dear Mr. Luonuansuu:

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

It has been determined that the Department of Justice will not file suit on the above-referenced charge of discrimination that was referred to us by the Equal Employment Opportunity Commission (EEOC). This should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation on your case was unsuccessful by the EEOC. You are further notified that you have the right to institute a civil action under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111, et seq., against the above-named respondent. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

Therefore, if you wish to pursue this matter, you should consult an attorney at your earliest convenience. If you are unable to locate an attorney, you may wish to contact the EEOC or apply to the appropriate court, since that court may appoint an attorney in appropriate circumstances under Section 706(f)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1), referenced in Section 107(a) of the ADA, 42 U.S.C. § 2117(a).

We are returning the files in this matter to EEOC's District Office. If you or your attorney have any questions concerning this matter or wish to inspect the investigative file, please address your inquiry to:

Spencer H. Lewis, Jr.
Equal Employment Opportunity Commission
Philadelphia Field Office
801 Market Street
Suite 1300
Philadelphia, PA 17107

We are forwarding a copy of this Notice of Right to Sue to the Respondent in this case.

Sincerely,

Thomas E. Perez
Assistant Attorney General

BY:



Eugenia Esch
Attorney
Disability Rights Section

cc: Lordstown Police Department
EEOC - Philadelphia Field Office

CHARGE OF DISCRIMINATION

AGENCY

CHARGE NUMBER

THIS FORM IS AFFECTED BY THE PRIVACY ACT OF 1974, SEE PRIVACY ACT STATEMENT BEFORE COMPLETING THIS FORM.

[] FEPA

[X] EEOC ONLY

OHIO CIVIL RIGHTS COMMISSION AND EEOC

NAME (INDICATE MR., MS., MRS.)

James G. Luonuansuu

HOME TELEPHONE

(INCLUDE AREA CODE)

330-978-0083

STREET ADDRESS CITY, STATE, ZIP CODE, AND COUNTY

10 East Liberty Street Newton Falls, Ohio 4444

(DATE OF BIRTH)

June 6, 1966

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (IF MORE THAN ONE LIST BELOW.)

NAME

Lordstown Police Department

NUMBER OF EMPLOYEES

100

TELEPHONE (INCLUDE AREA CODE)

330-824-2545

STREET ADDRESS CITY, STATE AND ZIP CODE

1583 Salt Springs Road, SW Lordstown, Ohio 44481-8625

COUNTY

Trumbull

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

[] RACE [] COLOR [] SEX [] RELIGION [] NATIONAL ORIGIN
[X] RETALIATION (Post-employment) [] AGE [] DISABILITY (perceived as) [] OTHER (SPECIFY)Please see attached particulars.

DATE DISCRIMINATION TOOK PLACE EARLIEST (ADEA/EPA) LATEST (ALL)

[X] CONTINUING ACTION

THE PARTICULARS ARE: (IF ADDITIONAL SPACE IS NEEDED, ATTACH EXTRA SHEET(S):

NOTARY (When necessary for State and Local Requirements)

I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE, AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (DAY, MONTH, YEAR)

CHARGING PARTY SIGNATURE

DATE



3/30/12

CHARGE PARTICULARS

James G. Luonansuu
(continued)

1. Charging had been employed by the Lordstown Police Department as a dispatcher from 2001 until June 7 2011.
2. On April 14, 2011 Charging Party filed a Charge of Discrimination (EEOC Charge No. 532-2011-01033) alleging discrimination on account of a perception by Respondent that he was disabled.
3. On October 26, 2011 Charging Party filed a second Charge of Discrimination (Charge No.532-2012-00193) alleging that he terminated, *inter alia*, in retaliation for having engaged in activity protected under state and federal anti-discrimination laws.
4. In or about October 2011, Charging Party applied for a dispatcher position with the Ohio State Highway Patrol.
5. On December 18 2011 Brent B. Milhoan, Chief of Police, Lordstown Police Department, was interviewed by the OSHP. During the interview Chief Milhoan disclosed confidential medical information about Charging Party, disclosed the two aforementioned Charges of Discrimination pending against Respondent at the time and informed the OSHP was terminated for violating a last chance agreement that included a provision that a specific waiver of Charging Party's right to file a charge of discrimination with the EEOC or the Ohio Civil Rights Commission for any alleged discriminatory conduct on the part of Respondent arising out of the discipline that had led to a 60 day disciplinary suspension. Chief Milhoan specifically informed the OSHP investigator that Charging Party was terminated, in part for filing a charge of discrimination with the EEOC, in violation of the last chance agreement. (See Exhibit G to the attached OSHP Background Investigation of Charging Party prepared as part of the OSHP application process.)
6. The acts of Respondent in responding to the OSHP in the OSHP background investigation of Charging Party constitute post-employment retaliation for Charging Party having engaged in activity protected under Title VII of the Civil Rights Act of 1964, as amended.

JGL / 3/30/12

CHARGE OF DISCRIMINATION

THIS FORM IS AFFECTED BY THE PRIVACY ACT OF 1974; SEE PRIVACY ACT STATEMENT BEFORE COMPLETING THIS FORM.

AGENCY

☐ FEPA☒ EEOC ONLY

CHARGE NUMBER

OHIO CIVIL RIGHTS COMMISSION AND EEOC

NAME (INDICATE MR., MS., MRS.)

James G. Luonuansuu

HOME TELEPHONE
(INCLUDE AREA CODE)

330-978-0083

STREET ADDRESS
10 East Liberty StreetCITY, STATE, ZIP CODE, AND COUNTY
Newton Falls, Ohio 4444(DATE OF BIRTH)
June 6, 1966

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (IF MORE THAN ONE LIST BELOW.)

NAME

Lordstown Police Department

NUMBER OF EMPLOYEES
50

TELEPHONE (INCLUDE AREA CODE)

330-824-2545

STREET ADDRESS

1583 Salt Springs Road, SW Lordstown, Ohio 44481-8625

CITY, STATE AND ZIP CODE

COUNTY
TrumbullCAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))
☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (SPECIFY)DATE DISCRIMINATION TOOK PLACE EARLIEST
(ADEA/EPA) LATEST (ALL)☒ CONTINUING ACTION
June 7, 2011THE PARTICULARS ARE: (IF ADDITIONAL SPACE IS NEEDED, ATTACH EXTRA SHEET(S):
See attached.

NOTARY (When necessary for State and Local Requirements)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.

CHARGING PARTY SIGNATURE

DATE

I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE,
AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE,
INFORMATION AND BELIEF.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(DAY, MONTH, YEAR)

CHARGE PARTICULARS

James G. Luonuansuu

1. I began employment with the Lordstown Police Department as a dispatcher since 2001.
2. I regularly worked the night shift.
3. In 2009 I began experiencing problems with remaining awake during my shift. I would unknowingly drift off to sleep. On three occasions I was found sleeping, or nodding off to sleep while on duty.
4. I sought medical treatment, received a diagnosis and continue treatment.
5. I was disciplined and retained my employment under the terms of a last chance agreement offered by Lordstown which I agreed to and signed on June 7, 2010.
6. Under the terms of the last chance agreement Lordstown imposed a 60 day suspension and required me to submit to a fitness for duty evaluation from medical providers chosen by Lordstown.
7. I served the sixty day suspension.
8. I was deemed fit for duty and returned to work.
9. The last chance agreement also provided:

Luonuansuu agrees not to appeal or otherwise challenge the suspension or the voluntary nature of the this Last Chance Agreement, or bring any other related claim against the Village, in any forum, including, but not limited to: the negotiated grievance/arbitration process, the Equal Employment Opportunity Commission, the Ohio Civil Rights Commission, and/or any federal or state court.
10. At the time I agreed to the terms of the last chance agreement I had not filed a charge of discrimination.
11. On October 7, 2010 and November 4, 2010 Lordstown garnished a total of \$880.00 from my paychecks as "reimbursement" for the fitness for duty medical examinations I was directed to submit to under the terms of the last chance agreement. The last chance agreement did not require me to pay for the fitness for duty medical examinations.

12. On April 12 2011, through my union attorney, I brought an action against Lordstown and the mayor of Lordstown alleging that garnishment constituted conversion, an illegal garnishment and a breach of the last chance agreement.
13. On April 14, 2011 I filed a charge of discrimination with the Equal Employment Opportunity Commission alleging that Lordstown discriminated against me on account of a perception that he was disabled by deducting the medical fees from my paycheck. See EEOC Charge No. 532-2011-01033.
14. On June 7, 2011 I was terminated for breaching the last chance agreement for engaging in activity protected under state and federal anti-discrimination and anti-retaliation laws by filing a charge of discrimination in the form of filing the above mentioned Charge of Discrimination.
15. EEOC Notice Number 915.002 (4/19/97) sets forth that an employer cannot require an employee to waive their right to file charges of discrimination.
16. I was terminated for filing a charge of discrimination that related to conduct on the part of Lordstown that occurred after the execution of the last chance agreement.