



IN THE CIRCUIT COURT OF DALLAS COUNTY, ALABAMA

TONEY D. STEPHENS,

)

Plaintiff,

)

v.

)

CITY OF SELMA, and  
MAYOR DARRIO MELTON

)

Defendant.

)

CASE NO.: \_\_\_\_\_

**COMPLAINT**

**COMES NOW** the Plaintiff, Toney D. Stephens, by and through the undersigned counsel, and hereby doth complain and aver against the above-named Defendants, as set forth herein-below:

**I. PARTIES-VENUE**

1. Plaintiff, Toney D. Stephens, is a former Fire Chief for the City of Selma. Counting four years before he became chief, Plaintiff served the City of Selma's fire department for eight years.

2. Defendant City of Selma is an Alabama municipality located in Dallas County, Alabama. Defendant Mayor Darrio Melton is a resident of Dallas County, Alabama.

3. Venue is appropriate in Dallas County because each cause of action, giving rise to this case, occurred in Dallas County, Alabama.

**II. JURISDICTION**

4. The Plaintiff seeks declaratory, equitable and such further relief pursuant to Ala. Code 1975 § 6-6-222 et. seq., including § 6-6-230 and § 6-6-231, against Mayor

Darrio Melton, as Mayor of the City of Selma, and against the City of Selma. The Plaintiff also seeks compensatory damages and other damages and relief as allowed by Ala. Code (1975) § 17-1-4, and the Constitution of Alabama (1901) Section 4 and Section 13. against Mayor Darrio Melton, both individually and as Mayor of the City of Selma, and the City of Selma.

### **III. FACTS**

5. Plaintiff, while serving as Fire Chief for the City of Selma, participated in the City of Selma's political activities, speaking in public before the City of Selma's City Council regarding issues of public welfare of the City, including, but not limited to the welfare of the City's Fire Department and its many needs.

6. Beginning in 2018, and continuing until April, 2019, Mayor Darrio Melton deliberately made working conditions so intolerable that Plaintiff was forced to resign.

7. The Plaintiff, on or about April 24, 2019, sent a memo to the Defendants stating that "effective today, I would like to inform you of my resignation. I would like to be placed on leave time to exhaust my vacation, sick, and comp time. I will send you another letter with the exact day of departure." (see Exhibit A).

8. On or about April 30, 2019, Plaintiff directly hand-delivered to City Council President Corie Bowie, with copies placed into the mailboxes at the City Hall to all the other council members and Mayor Darrio Melton, a letter announcing his last day of employment would be on May 10, 2019.

9. Plaintiff's City Employee Handbook states:

**"Employee may elect to receive payment in lieu of compensatory time ("Comp Time") at a regular rate of one and one-half times their**

**regular rate of pay for all hours worked in excess of (40) forty hours in a workweek...." (see Exhibit B).**

10. Plaintiff's City Employee Handbook also states:

**"Upon termination of employment with the City, employees who have left in good standing will receive accrued vacation as follows:**

- 8-hour employee (up to 80 hours)**
- Police, sworn officers on 12-hour shift (up to 84)**
- Fire, certified, (up to 112)..." (See Exhibit B)**

11. Plaintiff's Employee Attendance Record for 2019 states Plaintiff had accrued 308 hours of vacation and sick leave at his time of resignation. (See Exhibit C).

12. Plaintiff's Fire Department Compensatory Time Report for 2019 states Plaintiff had accrued 572 hours of compensatory time. (See Exhibit D).

13. Plaintiff has made a demand upon the City of Selma, both by letter dated May 24, 2019 addressed to Mayor Darrio Melton (See Exhibit E) and by Notice of Claim, dated July 11, 2019, and September 24, 2019, each addressed to Ms. Ivey Harrison, Clerk of the City of Selma (Exhibit F), yet no response has been made. This case is therefore ripe for a ruling by this court as an active case and controversy.

#### **IV. CLAIMS**

##### **COUNT I – DECLARATORY, EQUITABLE AND FURTHER RELIEF**

14. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 13 above, the same as if more fully set forth herein.

15. Plaintiff claims that the City of Selma has not paid the earnings earned by the Plaintiff and still owed by the Defendants to the Plaintiff as set forth above.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:

- a) An award of compensatory damages in the amount up to \$31,113;
- b) Injunctive and equitable relief;
- c) An award of all court costs and reasonable attorneys' fees; and
- d) Such further, other and different relief as the Court may deem appropriate.

#### **COUNT II – CONSTRUCTIVE DISCHARGE / RETALIATION**

16. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 15 above, the same as if more fully set forth herein.

17. Plaintiff, both individually and as Chief of the Selma Fire Department, participated and engaged in political activities, and addressed and supported issues of public welfare in the public and before the Selma City Council, as specifically permitted by Ala. Code (1975) §17-1-4, and the Constitution of Alabama (1901) Section 4.

18. After participating in the City of Selma's political activities, and after speaking in public before the City of Selma's City Council regarding issues including, but not limited to, the needs of the City's Fire Department and the public welfare of the City, Mayor Darrio Melton immediately took retaliatory action against the Plaintiff and deliberately caused Plaintiff's working conditions to become so intolerable that Stephens was forced to resign.

19. Defendant Mayor Darrio Melton's unlawful retaliation taken against the Plaintiff, and forcing the Plaintiff to resign, amounted to the Plaintiff's constructive discharge by Defendant Melton. Defendant Melton is liable for his unlawful actions

prohibited by Ala. Code (1975) § 17-1-4, and Section 4 of the Constitution of Alabama (1901).

20. The Constitution of Alabama (1901), Section 13, makes courts open to provide adequate remedies for all injuries suffered to an individual's lands, goods, person, or reputation. As the direct and proximate result of Defendant Melton's unlawful actions, Plaintiff has incurred, and is currently incurring, damages to his person and reputation in an amount to be proved at trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:

- a) An award of compensatory damages, including damages for mental anguish, to which Plaintiff may be entitled;
- b) Injunctive and equitable relief;
- c) An award of all court costs and reasonable attorneys' fees; and
- d) Punitive damages; and
- e) Such further, other and different relief as the Court may deem appropriate and necessary.

#### **V. JURY DEMAND**

Plaintiff hereby requests trial by jury on all issues claimed in Count II so triable.

Done this 1<sup>st</sup> day of October, 2019.

Respectfully,

/s/ Julian L. McPhillips, Jr.

Julian L. McPhillips, Jr. (MCP004)  
Attorney for Plaintiff

/s/ Kenneth Shinbaum

Kenneth Shinbaum (SHI006)  
Attorney for Plaintiff

/s/ K. David Sawyer

K. David Sawyer (SAW008)  
Attorney for Plaintiff

**OF COUNSEL:**

**MCPHILLIPS SHINBAUM, LLP**

516 S. Perry Street  
Montgomery, AL 36104

T: (334) 262-1911  
F: (334) 263-2321

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[kshinbaum@msg-lawfirm.com](mailto:kshinbaum@msg-lawfirm.com)  
[kdsawyer64@outlook.com](mailto:kdsawyer64@outlook.com)

**NOTICE FOR SERVICE OF PROCESS**

Please serve both Defendants, City of Selma and Mayor Darrio Melton by service upon Mr. Melton at Selma City Hall, 222 Broad Street, Selma, AL 36701.



# SELMA FIRE & RESCUE

## CITY OF SELMA



1500 Broad Street • P.O. Box 450 • Selma, Alabama 36702-0450

TONEY D. STEPHENS, Fire Chief  
MARK WALKER, Assistant Chief

(334) 874-2150 Telephone  
(334) 874-1737 Fax  
[firedept@selma-al.gov](mailto:firedept@selma-al.gov)

TO: Mayor Melton & All City Council Members  
FROM: T.D. Stephens, Fire Chief  
DATE: April 24, 2019  
RE: Resignation

Effective today, I would like to inform you of my resignation. I would like to be placed on leave time to exhaust my Vacation, Sick, and Comp. Time. I will send you another letter with the exact day of departure.

Respectfully;

T.D. Stephens  
Fire Chief

EXHIBIT



efficiency rating reflecting satisfactory performance shall be required for advancement. With the approval of the department head, Director and the Mayor, advancement from the first to the second step in the range shall be allowed for full-time regular employees after the completion of one (1) year of satisfactory continuous full-time service. Employees with continued satisfactory service shall be eligible for future annual increases until such time as the maximum rate for the range is reached.

c) SALARY RATE IN PROMOTION, TRANSFER, DEMOTION, SEPARATION, OVERTIME AND THE EDUCATION INCENTIVE PROGRAM

In the event a classified employee is promoted, transferred or demoted, or separated, etc, his or her rate of pay shall be determined as follows:

- 1) PROMOTION. Upon promotion, the employee's regular base pay shall determine the new rate in the promotional class. The new rate shall be set to (a) allow a one (1) step increase above the former rate, unless otherwise recommended by the department head and approved by the Mayor; or (b) the new rate shall be the entry rate for the promotional class, whichever increase is greater. Upon the date of promotion, an employee begins a new six (6) month working test period (Probation). Position Change: An employee serving an initial probationary work testing period shall not be eligible for promotional and/or in-house vacancies in the Classified Service until satisfactorily completing this initial probationary working test period.
- 2) DEMOTION. Upon demotion, the employee's pay shall be reduced to the salary prescribed for the class and grade to which the employee is demoted. The particular rate shall be determined by the employee's period of employment in the Classified Service. In no event shall the employee's salary exceed the maximum rate of the new classification. An employee downgraded as a result of a classification error shall have his/her present rate retained. No further increases will be granted to the employee while occupying the same classification until the maximum rate for the class is raised past the rate the incumbent is presently receiving. An employee demoted without prejudice shall be placed on probationary status if requested by the department head and approved by the Director.
- 3) TRANSFER. When an employee is transferred from one (1) department to another in the same classification, the employee's step in the pay range remains unchanged. Transfer shall mean the intra-governmental movement of an employee within a class or between two (2) separate but related classes wherein the maximum pay for those classes is equal. All transfers must be approved by the department heads concerned, the Director and the Mayor.
- 4) SEPARATION. Upon separation, an employee resigning in good standing shall be paid for the number of days worked, any accumulated overtime, and up to eighty (80) hours of paid for unused vacation time, except as noted for public safety employees. The unused vacation allotment for sworn public safety employees in the Classified Service is as follows: Fire – 112 hours; Police – 84 hours. In the event of dismissal, accumulated vacation time shall be forfeited.
- 5) Overtime Pay/Compensatory Time. Any requests for overtime/compensatory time must have advance approval. Proper entry and certification on the payroll by the department head and the Payroll Department is required. Department heads must keep accurate records of all time used. Employees may be required to work overtime from time to time when specifically instructed to do

so by his immediate supervisor. Employee may elect to receive payment in lieu of compensatory time ("Comp Time") at a regular rate of one and one-half times their regular rate of pay for all hours worked in excess of (40) forty hours in a workweek. Special rules apply for Public Safety who abide by specific FLSA provisions.

Compensatory Time

Accumulated comp time must be taken within (15) fifteen days as approved by the department head and cannot be taken in conjunction with vacation.

6) Other Paid Incentives. Public Safety (Sworn officers/certified) have paid incentives not provided to employees in these classifications (i.e., Certified Bike Officer, Special Response Team, School Resource Officer, Field Training Officer,

On-Call Pay. Department head submits requests to Human Resources for approval. Employees receiving on-call pay are expected to respond within a reasonable time. Employees will be paid for time responding and doing actual work.

7) EDUCATION INCENTIVE PROGRAM - Public Safety certified employees only.

- A. An employee obtaining an Associate's Degree shall be eligible for a one (1) step pay increase above his/her regular pay step.
- B. An employee obtaining a Bachelor's Degree after obtaining an Associate's Degree shall be eligible for one (1) additional step pay increase.
- C. An employee obtaining a Bachelor's Degree without obtaining an Associate's Degree shall be eligible for a two (2) step pay increase above his/her regular pay step.
- D. An employee obtaining a Master's Degree shall be eligible for a one (1) step increase above his/her regular pay step.
- E. The employee must have obtained such degree from an accredited college or university in a field related to the job the employee holds, acceptable to the department head and the Director and must have achieved a minimum "C" average in his or her completed coursework.
- F. All increases must be recommended by the department head and approved by the Mayor.

3.5 GENERAL OR ACROSS-THE BOARD RAISE. In the event the City grants a general or across-the-board raise based on the increase in the cost of living, such increase may be a percentage increase or a flat rate or sum increase, and shall be applied uniformly to all classes in the Classified Service. Such general increases shall not affect individual eligibility for normal merit increases as provided in Rule 3.4 (b).

3.6 PAYROLL VERIFICATION: The Director, or his or her authorized designee, shall be responsible for certifying that the persons named in payroll vouchers have been appointed and/or employed in accordance with the provisions of these rules. The disbursing officer of the City shall not make or approve or take part in making or approving any payment for the personal service to any person holding a position in the City, which person is under the Personnel System of the City, unless said payroll voucher or account of such pay bears the certification of the Director or his/her authorized designee.

5.4 LAYOFFS AND REINSTATEMENT. In the event it becomes necessary because of lack of work or lack of funds to reduce staff, the following procedure shall govern the layoff:

- a) The reasons for such layoff shall be reported in writing to the Director and shall specify the number and classifications to be affected.
- b) The Director shall determine in consultation with the department(s) the organizational units to be affected by the layoff.
- c) If such a reduction is departmental, then the layoff shall first be made by laying off the employee(s) in the classification to be affected by the layoff who are provisional, temporary, seasonal, part-time and probationary, if any. From that point, layoff shall be of regular employees in the classification on the basis of their relative seniority. In the event there are two (2) or more employees who would be affected by the layoff, and they have equal seniority, the employee who stands lowest in efficiency or performance ratings, last regularly filed with the Director, shall be laid off first.
- d) If such reduction is of a general nature, and City-wide, the Director, after consultation with the Mayor, shall determine the manner of layoffs, taking into consideration the number and classifications of positions to be reduced. In all instances, seniority shall govern except in cases of two (2) or more employees having equal seniority; in this event, efficiency or performance ratings shall be applied as provided in subsection (c) of this rule.
- e) When an employee is laid off in a department which has other classifications or grades lower than the classification or grade from which the employee is laid off, the employee shall have the option of working in any other lower classification or grade in the same department, provided the Director finds that the employee is performing the duties of such lower classification, such option being subject, however to subsections (f), (g) and (h) following.
- f) When an employee so laid off elects to drop to a lower classification or grade, and where the Mayor reduces the number of employees in such lower classification or grade, the reduction shall in no case cause the layoff of any regular employee in such lower classification or grade who has more seniority in the department than the employee laid off from the classification or grade. An employee laid off from the classification or grade shall have the right, so long as the employee is in the service or on the layoff list, to return to the position from which the employee was laid off, in the event such position is refilled.
- g) The duties performed by the employee or employees so laid off may be assigned to any other regular classified employee in the department or office, who, in the opinion of the Director are qualified to perform such duties regardless of the specific classification or grade to which such employees are allocated.

Any employee to be affected by layoffs shall be given a minimum of fifteen (15) days notice.

SEPARATION OF EMPLOYMENT

5.5 REINSTATEMENT: In the event a regular status employee voluntarily resigns and separates from

the City in good standing, the employee may within a period of two (2) years from the date of separation request reinstatement to an entrance level eligible register in a class for which the employee may have had regular status. The Board shall determine the merits and conditions of such reinstatement or deny the request.

5.6 RESIGNATION. It is required that any employee who chooses to resign give at least a two weeks advance notice before the employee's final working day. Upon receipt of such written notice, the department head in conjunction with Human Resources, may waive or reduce the requirement that the employee work for this period. Failure of the employee to give the required written notice may jeopardize the employee's good standing and eligibility for rehire.

5.7 TERMINATION. Upon termination of employment with the City, employees who have left in good standing will receive accrued vacation as follows:

- 8 hour employee (up to 80 hours)
- Police, sworn officers on 12 hour shift (up to 84)
- Fire, certified, (up to 112)

Forfeiture of Accrued Vacation: An employee who is dismissed for cause or resigns in bad standing shall forfeit his or her accrued vacation.

5.8 EXIT INTERVIEWS. All employees terminating from the City are required to do an Exit Interview. Department Heads shall notify their employees to schedule an appointment with Human Resources. Human Resources will arrange for employees to meet with the Mayor. All city property must be returned and accounted for before employees receive their final checks.

5.9 REFERENCES. Generally, information is limited to confirming dates of employment and job title. Human Resources may release additional information regarding employment status upon receipt of authorization from the employee.



Selma Fire Department Comp-Time Report

## DOCUMENT

NT<sup>2</sup>  
Name Stephens Toney "Chief"

**EXHIBIT**

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mailed 5/30/19

# McPhillips Shinbaum, L.L.P.

McPhillips, Shinbaum, Luck, Bodin & Guillot

ATTORNEYS AND COUNSELORS AT LAW

Julian L. McPhillips, Jr.\*  
 Kenneth Shinbaum  
 Aaron J. Luck  
 James G. Bodin\*\*  
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 Chase Estes

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\*Also Admitted in NY  
 \*\*Also Admitted in DC

Post Office Box 64  
 Montgomery, Alabama 36101  
 Office Admin. Amelia Strickland

Of Counsel Attorneys  
 David Sawyer  
 Tanika Finney

May 29, 2019

Mr. Darrio Melton  
 Mayor, City of Selma  
 Post Office Box 450  
 Selma, AL 36702-0450

EXHIBIT

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***RE: Toney A. Stephens  
 Former Fire Chief  
 City of Selma***

Dear Mayor Melton:

Please note that I am copying two city attorneys on this letter, namely Rick Howard of Montgomery and Woodruff Jones of Selma.

This is also to let you know that this law firm and I represent Mr. Toney A. Stephens, former fire chief of the City of Selma, 2015-2019. Counting four years before he became chief, Mr. Stephens served the City of Selma's five departments for 8 years.

I attach hereto as Exhibit A Mr. Stephens' notice of resignation dated April 24, 2019, stating that he wanted to be placed on leave time to exhaust his vacation, sick, and comp time, and that Mr. Stephens could send you another letter with the exact day of departure.

However, on the same April 24, 2019 date, you verbally reached and informed by Mr. Stephens' deputy, namely Chris Graham, that Mr. Stephens would not be coming back and that he, Mr. Graham, was now the acting fire chief. You did this without the approval of the City Council, which normally appoints the fire chief, and who in fact appointed Mr. Stephens.

I attach as Exhibit B for you, pages 8, 9, and 19 of the City of Selma Rules and Regulations contained in the City Handbook. See the language highlighted in yellow which is applicable.

It would be incorrect for you to claim that Mr. Stephens did not leave the City of Selma in good standing, and is therefore not entitled to his vacation and compensatory leave time.

This is to request that payment be made to Mr. Stephens in an amount of \$31,113 (see Exhibits C and D) immediately.

If this is not done within 10 days, or by June 7, 2019, then we will accept your non-feasance as a denial and will promptly file suit in the Circuit Court of Dallas County.

As you can see, Exhibit C is a record of Mr. Stephens' Employee Attendance, showing that he had 308 hours of vacation time. Exhibit D reflects that Mr. Stephens has a total of 572 hours of compensatory time.

Please also be advised that the precedent in the past for Selma fire chief, most of whom were Caucasian, was for this amount to be paid.

Sincerely,



Julian L. McPhillips, Jr.

JMcP:bms

CC: Rich Howard, Esq.  
Woodruff Jones, Esq.  
Toney Stephens  
Kenneth Shinbaum

## McPhillips Shinbaum, L.L.P.

McPhillips, Shinbaum, Luck, Bodin &amp; Guillot

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EXHIBIT

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\*Also Admitted in NY

\*\*Also Admitted in DC

Post Office Box 64  
 Montgomery, Alabama 36101  
 Office Admin. Amelia Strickland

Of Counsel Attorneys  
 David Sawyer  
 Tanika Finney

July 16, 2019

RECEIVED  
 JUL 16 2019  
 BY \_\_\_\_\_  
 City Clerk

Ms. Ivy Harrison  
 City Clerk's Office  
 City of Selma  
 222 Broad Street  
 Selma, AL 36701

## RE: Verified Notice of Claim vs. City of Selma and its Mayor Darrio Melton

Dear Ms. Harrison:

Pursuant to the **Code of Alabama, 1975, as amended**, this is to give verified notice of claim by me, Mr. Toney Stephens, against the City of Selma and its Mayor Darrio Melton for a violation of Mr. Stephens' right to be paid for his accrued vacation time, compensatory time, and sick leave time, totaling an amount of \$31,113.00.

I was appointed Fire Chief of the City of Selma, by the Selma City Council. The Mayor of the City of Selma does not have the authority to remove the Fire Chief without the approval of the City Council. On April 23, 2019, I informed the Mayor and the City Council that I would be departing the City of Selma as Fire Chief, once I had exhausted my vacation, sick, and compensatory time, and I would send a follow-up letter of the exact day of my departure.

At that time, I had 308 hours of vacation and leave time combined, and 572 hours of compensatory time. At my current pay, I was entitled to be paid a total of approximately \$31,113.00 for those hours.

I hereby make demand upon the City of Selma for that \$31,113.00 and such other relief up to a ceiling amount of \$100,000.00 as a judge or jury deems appropriate under the facts and circumstances of this case.

Toney D. Stephens  
 Toney Stephens

Before me, the undersigned Notary Public, appeared Toney Stephens, who is known to me and who signs his name above, and did state that the foregoing is true and correct in every particular, on this the 10<sup>th</sup> day of July 2019.



Notary Public

My Commission Expires: Sept 2, 2019

Sincerely,



Julian L. McPhillips, Jr

JLMcP/bms

CC: Mayor Darrio Melton  
City Hall  
President, Selma City Council

Mailed 9/24/19

# McPhillips Shinbaum, L.L.P.

McPhillips, Shinbaum, Luck, Bodin & Guillot

ATTORNEYS AND COUNSELORS AT LAW

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Post Office Box 64  
 Montgomery, Alabama 36101  
 Office Admin. Amelia Strickland

Of Counsel Attorneys  
 David Sawyer  
 Tanika Finney

September 24, 2019

Ms. Ivy Harrison  
 City Clerk's Office  
 City of Selma  
 222 Broad Street  
 Selma, AL 36701

RE: Verified Notice of Claim vs. City of Selma and its Mayor Darrio Melton

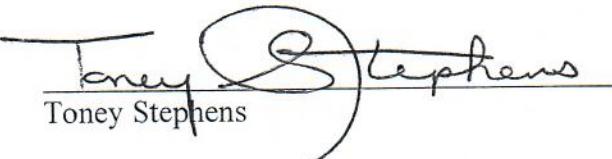
Dear Ms. Harrison:

Pursuant to the Code of Alabama, 1975, as amended, this is to give verified notice of claim by me, Mr. Toney Stephens, against the City of Selma and its Mayor Darrio Melton for a violation of Mr. Stephens' rights to freely, and without retaliation, participate and engage in political activities, and supported issues of public welfare in public and before the Selma City Council, as specifically permitted by Ala. Code (1975) §17-1-4, and the Constitution of Alabama (1901) Section 4.

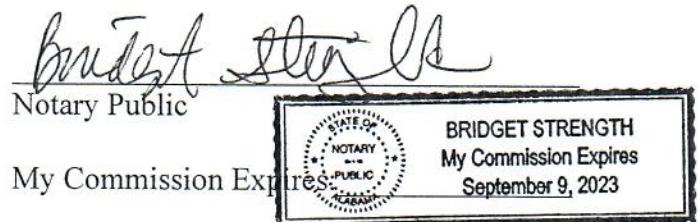
Both individually and as the Fire Chief of the City of Selma, I often participated and engaged in political activities, and supported issues of public welfare in public and spoke before the Selma City Council. In retaliation, Mayor Darrio Melton forced me to resign on or about April 24, 2019, amounting to my constructive discharge by Defendant Melton.

This retaliation and constructive discharge by Mayor Darrio Melton is prohibited by Ala. Code (1975) § 17-1-4, and by Section 4 of the Alabama Constitution.

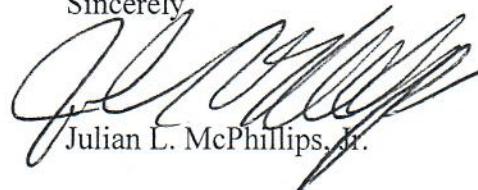
I hereby demand upon the City of Selma loss of income, benefits, compensatory damages, and such other relief up to a ceiling amount of \$100,000.00 as a judge or jury deems appropriate under the facts and circumstances of this case.

  
 Toney Stephens  
 Toney Stephens

Before me, the undersigned Notary Public, appeared Toney Stephens, who is known to me and who signs his name above, and did state that the foregoing is true and correct in every particular, on this the 24<sup>th</sup> day of September 2019.



Sincerely,



A large, handwritten signature in black ink, appearing to read 'Julian L. McPhillips, Jr.'

JLMcP/bms  
cc; Mayor Darrio Melton  
City Hall  
President, Selma City Council