

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

STACIE D. RHOADS

PLAINTIFF

v. Case No. _____

WILLIAM J. BRYANT,
in his individual and official capacity
as Director of the
Arkansas State Police

DEFENDANTS

COMPLAINT

For her Complaint against Defendant William J. Bryant (“Col. Bryant”), Plaintiff Stacie D. Rhoads (“Capt. Rhoads”) alleges through her undersigned attorneys the following:

I. NATURE OF ACTION

1. This Complaint for compensatory damages and injunctive relief is brought under the Arkansas Civil Rights Act of 1993, Ark. Code § 16-123-101 (“ACRA”) alleging that the Arkansas State Police Director intentionally acted in concert with members of his Command Staff and Governor Asa Hutchinson to engage in overt reverse discrimination to the detriment of the Plaintiff. To this end, the State Police Director and his Command Staff engaged in a multi-faceted campaign to discredit and marginalize a white female State Police Captain with impeccable credentials and five times more experience than the other candidate in an attempt to promote an African American female to the rank of Major, Commander of the Criminal Investigation Division

(“CID”) notwithstanding that just eight months earlier, the State Police Commission had determined that the African American candidate lacked the qualifications to be promoted to this position. On two occasions, in November and December 2021, the Commission blocked the State Police Director’s efforts to promote the African American female to this key leadership role, which remains vacant as of the filing of this Complaint.

2. As alleged herein in further detail, the Defendant’s efforts to discredit the Plaintiff and manipulate the promotional process for the sole purpose of promoting an unqualified candidate to lead the CID solely because she is an African American included the following wrongful actions:

- a. Taking the unprecedented action of opening a pretextual, bogus criminal investigation of a “missing rifle” from an evidence vault that the Plaintiff had been responsible for in her previous role when, in fact, the participants in this scheme knew or should have known that the rifle was in the evidence vault all along;
- b. Attempting to prevent a highly respected Highway Patrol Commander from filing an official complaint with the Department of Public Safety (“DPS”) after he learned what had occurred during the pretextual criminal investigation of the so-called “missing rifle” by threatening to file a baseless complaint against him if he exposed their actions by submitting an official complaint to DPS;¹
- c. Excluding the Plaintiff from any involvement or knowledge of key decisions affecting CID, while keeping the African American candidate for promotion in the loop, notwithstanding

¹ To the credit of the Highway Patrol Major, he refused to bow to the threat made by a member of the Director’s Command Staff and filed an official complaint, resulting in an extensive investigation by DPS/OPS that is expected to be reviewed by the Secretary of DPS in the near future.

that the Plaintiff had recently been promoted and given Assistant Division Commander duties;

- d. Directing the African American candidate for promotion to issue an unprecedented Division-wide directive, without cause, prohibiting anyone in CID from communicating with the Plaintiff, thus falsely creating the impression that the Plaintiff had engaged in, or was under investigation for, serious wrongdoing when in fact she was not;
- e. Falsifying the personnel records of the African American candidate who had also applied for promotion to the position of Major, CID Commander and misrepresenting to the State Police Commission that she, as well as the Plaintiff, was entitled to the statutory veteran's preference for promotion while knowing that representation was patently false;
- f. Acknowledging during two executive sessions of the State Police Commission in late 2021 that the African American candidate's race was a factor, allegedly the only factor, behind the Director's recommendation to promote that candidate to the position of Major, CID Commander;
- g. Acting in concert with Governor Hutchinson to improperly interfere in the promotional process by having the Governor make phone calls to at least three State Police Commissioners pressuring them to "to support the Director," implying that the Governor had appointed them to the Commission with the expectation they would serve as the Director's "rubber stamp."

3. Despite the Commission's refusal to bow to the Governor's pressure, these race-based discriminatory actions constitute clear and deliberate violations of ACRA, the equal opportunity employment policies established by DPS, and the statutory framework for promoting ASP personnel. But for the Defendant's unlawful consideration of race, Plaintiff would have been

promoted to the position of Major, CID Commander on November 10, 2021. Accordingly, Plaintiff seeks: (i) backpay and other compensatory damages recoverable under ACRA; (ii) permanent injunctive relief pursuant to Ark. Code § 16-123-108 prohibiting Col. Bryant from causing or permitting any employee of the ASP to retaliate or interfere with the Plaintiff in the performance of her duties or from doing so himself; and (iii) reimbursement for the costs of this action, including her reasonable attorneys' fees.²

II. THE PARTIES

4. Captain Rhoads is a Caucasian female and a 24-year veteran of the ASP who currently holds the position of "Captain, CID Special Operations." Prior to joining the ASP in 1998, Capt. Rhoads served in the U.S. Marine Corps. Capt. Rhoads started her CID career early on, joining an ASP-DEA narcotics strike force after only a few years as a Highway Patrol trooper. For the past twenty-one (21) years, Capt. Rhoads has held various investigative and supervisory roles in CID. Her performance record is spotless, and her personnel file is full of accolades and evidence of her many accomplishments both as an investigator and a leader. Capt. Rhoads' distinguished CID

² In accordance with the undersigned counsel's obligations under Rule 11, the allegations in this Complaint are based on a four-month investigation. Counsel's pre-litigation investigation included numerous interviews and follow up communications with current and former ASP personnel (resulting in multiple sworn Affidavits) and the review of more than thirty (30) gigabytes of digital data obtained from the ASP under the Arkansas Freedom of Information Act, § 25-19-105 ("FOIA"), which included tens of thousands of internal ASP e-mails, text messages, internal documents, and phone records. ASP has not yet responded to a March 30, 2022 FOIA request seeking all e-mails from Dec. 1, 2021 through Feb. 15, 2022 to or from Col. Bryant and his Command Staff (including deleted e-mails) that include the following search terms: Stacie, Rhoads, Rhodes, Paulette, Warde, Ward, ASPC, Commission, Governor, Gov, Gov., Asa, Hutchinson, missing gun, promotion, black female, African American, CID Major, Mars, and lawsuit.

career and accomplishments are well known within the ASP. In addition to her strong work ethic and reputation as a tenacious and effective investigator, Capt. Rhoads' leadership skills have earned her the admiration and respect of her ASP peers and subordinates – many of whom consider her to be a mentor and role model. Beyond the ASP, Capt. Rhoads is highly respected by virtually every federal and state prosecutor, sheriff, and police chief in Arkansas and has often been the first person they call when dealing with a difficult or high-profile criminal matter.

5. Col. Bryant is the Director of the ASP and has held that position since being appointed to that role by Gov. Hutchinson on January 12, 2015. Col. Bryant serves at the pleasure of the Governor.

III. JURISDICTION AND VENUE

6. The Circuit Court of Pulaski County, Arkansas is the proper venue for this action.

7. The Circuit Court of Pulaski County, Arkansas has jurisdiction of the subject matter of this Complaint, and the Defendants are subject to the personal jurisdiction of this Court.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS NOT REQUIRED

8. Unlike Title VII of the Civil Rights Act, a plaintiff seeking relief under ACRA is not required to exhaust their administrative remedies. As §16-123-107(c)(B)(2)(A)(iii) of ACRA makes clear, a plaintiff seeking relief under ACRA may extend the statute of limitations by filing an EEOC complaint, but there is no requirement to do so.

V. FACTUAL ALLEGATIONS

HISTORY OF ASP'S DISCRIMINATORY HIRING AND PROMOTIONAL PRACTICES THAT RESULTED IN JUDICIAL SUPERVISION FOR ALMOST THREE DECADES

9. On February 1, 1978, the United States Department of Justice (“DOJ”) filed an employment discrimination lawsuit in the U.S. District Court for the Eastern District of Arkansas against the Arkansas State Police (“ASP”). The Complaint alleged that the ASP had engaged in a pattern or practice of unlawful employment discrimination against African Americans and women on the basis of race and sex. Later that day, a Consent Decree was entered between the DOJ and the State of Arkansas, the purpose and intent of which was to ensure that African Americans and women were not disadvantaged by the hiring, promotion, assignment, and other employment policies and practices of the ASP.

10. Thirteen years later, on September 27, 1991, African American employees of the ASP filed a class action complaint against the ASP, alleging that the ASP had engaged in unlawful employment discrimination against them and other African American state troopers. (See *Tappin v. ASP*, Case No. 4:91-CV-627 (E.D. Ark.)). By way of relief, the plaintiff in *Tappin* sought the enforcement of the terms of the 1978 Consent Decree. The two actions were consolidated, and class action status was granted. On October 6, 1995, a Settlement Agreement patterned after the 1978 Consent Decree was approved.

11. On November 24, 2003, a joint motion was entered by the plaintiff and defendants to modify the Consent Decree. On September 22, 2004, U.S. District Court Judge Susan W. Wright granted the motion to modify the Consent Decree and ruled that the Consent Decree would remain

in effect for two years from the date of the Order. The Consent Decree expired on September 23, 2006, and the DOJ closed the case.

12. The case thereafter proceeded solely pursuant to the “Tappin Settlement Agreement.” On November 21, 2006, Judge Wright held a hearing on the ASP’s “Renewed Motion to Terminate the Court’s Supervision of the “Tappin Settlement Agreement.” On March 28, 2007, Judge Wright entered an Order granting ASP’s motion, thereby ending almost three decades of federal court supervision of the ASP’s hiring and promotional practices.

13. From March 28, 2007 until April 13, 2022, the ASP has not implemented an affirmative action plan.

ASP HIRING AND PROMOTIONAL PRACTICES FOLLOWING THE TERMINATION OF
THE FEDERAL COURT’S SUPERVISION THEREOF³

14. Absent federal court supervision, the hiring and promotional practices of the ASP have deteriorated badly to the detriment of the agency’s sworn personnel. While disregarding the Commission’s authority to select the best qualified candidate for promotion (as explained below), Col. Bryant and certain members of his Command Staff have manipulated the promotional process and withheld relevant information from the Commission for the purpose of allowing Col. Bryant to make unilateral promotional decisions – many of which have been based on cronyism and other

³ Although the Arkansas courts have not addressed the question whether a Complaint alleging reverse discrimination is governed by the “notice pleading” referenced in Rule 8 of the Arkansas Rules of Civil Procedure or whether more details are required, courts in several other jurisdictions have imposed a higher pleading standard on plaintiffs in such cases. This requirement finds further support in the U.S. Supreme Court’s decision in *Comcast Corp. v. National Association of African American-Owned Media et al.*, No. 18-1171 (2020). Therefore, the undersigned counsel has provided a level of detail in this Complaint that would satisfy both “notice pleading” and the higher standard of pleading which the Arkansas Supreme Court may require when called upon to address this unsettled issue of civil procedure.

improper considerations without regard to merit, experience, qualifications, or the statutory preference to which veterans are entitled. Likewise, in recent years, Col. Bryant has interfered with the hiring process for new state troopers in a manner that plainly violates DPS' equal employment opportunity policy, which states:

“It is the policy of the Department to recruit, select, hire, train, transfer, upgrade/promote, and discipline without regard to race, color, religion, national origin, age, sex, disability, genetic information, *or any other non-merit-based factor.*”

DPS 101(emphasis added).

15. For at least the past twenty years, “[t]here [have been] seven steps in the ASP trooper application process:⁴ (1) Physical Assessment Test; (2) Written Examination; (3) Polygraph exam; (4) Background check; (5) Oral Interview with Committee;⁵ (6) Oral Interview with the Director; and (7) Medical & Psychological Examination.”⁶ In recent years, this process has been carried out under the supervision of a Captain and two Lieutenants who are assigned to ASP's Administrative Services Division.

16. The Arkansas Commission on Law Enforcement Standards (“CLEST”) has enacted rules that establish minimum requirements for hiring processes used by law enforcement agencies. Among other things, Rule 1002 requires that every candidate for employment as a police officer must be “interviewed personally by the department head or his representative or representatives.” During Col. Bryant's administration, he has declined to delegate this requirement and, with rare

⁴ ASP's Consent Decree Hearing Brief, *Tappin v. ASP*, Case No. 4:91-CV-627, p. 6 (E.D. Ark).

⁵ This Committee consists of trained evaluators from other law enforcement agencies.

⁶ As a matter of law, the ASP Commission must give its approval of the final list of Troop School recruits who are recommended to the Commission by the Director. Ark. Code 12-8-103(a)(3).

exceptions, has personally interviewed every candidate who has made it through the first five (5) steps of the process set forth above. In a departure from the practice of previous Directors, Col. Bryant has also insisted on giving his personal approval of each candidate selected to attend basic training for ASP recruits, which is commonly referred to as “Troop School.” For that purpose, Col. Bryant has convened a meeting at the end of the selection process with the Captain and two Lieutenants who have the responsibility to ensure that the selection process is carried out in a fair and impartial manner, without improper influence. For the past two years, Col. Bryant has been accompanied in this meeting by Major Charles Hubbard, a member of the Director’s Command Staff who oversees the Administrative Services Division.⁷

17. During this meeting, the Captain and the Lieutenants have used a “whiteboard” to show Col. Bryant and Major Hubbard the photos and names of the candidates they have selected as recruits for the next ASP Troop School as well as the county of their intended assignment to the Highway Patrol Division following graduation. During this part of the meeting, Col. Bryant has exercised his discretion and authority to question whether certain candidates should be hired as recruits and has, on occasion, vetoed the recommendations of the Captains and Lieutenant who oversee the selection process.

18. Following his one-on-one interview with candidates and during the meeting described above, Col. Bryant has occasionally expressed concerns about certain candidates and refused to approve certain qualified candidates based solely on their race, gender, and sexual orientation – often explaining the basis for his concerns in shockingly inappropriate terms. For example – as established by sworn Affidavits from senior ASP personnel with first-hand knowledge of the

⁷ The Administrative Services Division includes recruiting, training, and human resources.

Colonel's highly inappropriate remarks – during the 2020 and 2021 recruit selection process, Col. Bryant expressed concern and/or disqualified certain minority, female, and gay candidates while making the following statements in the presence of other ASP personnel, to-wit:

- a. Col. Bryant expressed concern about a Latino candidate from Southeast Arkansas, saying that he “*might be a plant for the Cartel.*”
- b. Col. Bryant expressed concern about an African American candidate who worked for the Department of Corrections, referring to him as a “*gang banger.*”
- c. Col. Bryant expressed concern about a Hispanic female candidate, saying “*I can't believe you guys let her through.*” Col. Bryant went on to explain that he thought this candidate might be dating a former DEA agent with a questionable record and that he didn't want this candidate “*feeding information*” (presumably about narcotics trafficking) to this former DEA agent. Without further explanation, Bryant later refused to approve this candidate's appointment to Troop School.
- d. Col. Bryant expressed concern about a highly qualified Hispanic female candidate who was then a deputy sheriff in Northwest Arkansas, saying without explanation that he “*needed to call the sheriff*” to obtain more information about her.
- e. Through Major Hubbard, Col. Bryant identified an openly gay candidate who was arguably the best qualified candidate that had gone through the selection process and informed the two Captains and Lieutenant that “*he was the one we didn't like.*” After Col. Bryant refused to approve that candidate, one of the Lieutenants asked Major Hubbard if they could revisit that decision. Major Hubbard replied by saying there was “*more to it*” and that the Lieutenant “*should leave it alone.*”

f. Col. Bryant openly questioned whether three female candidates would be tough enough to make it Troop School.

19. Col. Bryant's inappropriate, baseless comments and preconceived notions about certain types of people have been on full display during the promotional process as well. Col. Bryant made a practice of interviewing every qualified candidate for promotion to every rank. These interview sessions have not been scripted or approved by the Administrative Services Division and have often revealed the Director's conscious or subconscious bias against certain protected classes of ASP employees.

20. For example, between 2018 and 2020, a highly qualified Highway Patrol Senior Corporal with an excellent service record who would be eligible to retire with full benefits in the next few years, applied twenty (20) times for promotion to the rank of Sergeant and was an eligible candidate for every promotion. Twelve of the twenty (20) openings for which he applied were in the Highway Patrol Division. During one of the promotional interviews with the Director during 2019, Col. Bryant said to the then 52-year-old Senior Corporal: "*I figured you old fuckers would want to get off the highway.*" In a conversation that occurred near in time to Col. Bryant making this statement, Col. Bryant told a senior ASP officer that he wasn't in favor of promoting people who were nearing retirement because that would require him to go through the promotional process again in the next few years. After twenty (20) unsuccessful attempts to be promoted to the rank of Sergeant during a span of three years, the Senior Corporal retired in January 2021 after thirty years of outstanding law enforcement service. (According to records kept by the Senior Corporal, between 2016 and 2020, only two open Sergeant positions were filled with an applicant who was at least 50 years old, with the average age of the promoted candidate being 39.5 years.)

21. In other settings that did not involve hiring or promotions, Col. Bryant has done little to conceal his biases, especially regarding African Americans. For example, in July 2021, DPS hired a woman for a part-time administrative position in ASP Headquarters. By all accounts, this new employee was performing her duties at a very high level and was well-liked by her colleagues. After she was hired, Col. Bryant learned that this part-time employee had recently posted some comments on her Facebook page that were supportive of the “Black Lives Matter” movement. For the sole purpose of discussing his concerns about this employee, Col. Bryant called a meeting in his office in August 2021 with two sworn officers he trusted. As established by a sworn Affidavit signed by one of those officers, Col. Bryant expressed deep concerns about the part-time employee DPS had hired and, at one point, said: “*I don’t want a Black Lives Matter plant in the building.*”

22. Col. Bryant’s criteria for disqualifying people from being promoted has not been limited to whether they are a member of, or supportive of, a protected class. In keeping with his hostile attitude toward any ASP personnel who dare question his decisions or policies, Col. Bryant has openly made clear that he will not promote anyone who isn’t a loyal “team player.” For example, when the Captain and Lieutenants in the Administrative Services Division suggested that a particular Sergeant was clearly the best qualified person in the department to fill a yet to be advertised Lieutenant position, Major Hubbard informed them that *Col. Bryant wouldn’t promote the Sergeant given the high-level position he held in the troopers’ association.*

IN 2019, DPS REPLACED ASP AS ARKANSAS’ LARGEST
LAW ENFORCEMENT AGENCY AND ASSUMED OVERSIGHT OF ASP

23. On October 3, 2018, Governor Hutchinson announced his transformation plan to reduce the number of cabinet-level agencies from 42 to 15. On April 11, 2019, Governor

Hutchinson signed the Transformation and Efficiencies Act of 2019 into law. As a result of this reorganization of state government, ASP went from being a cabinet level department to becoming a division of DPS. From this point forward, Jami Cook, the newly appointed Secretary of DPS, became the only cabinet level law enforcement official in state government, thus displacing the ASP Director as a member of the Governor’s cabinet.⁸

24. The creation of DPS as Arkansas’ umbrella law enforcement agency required DPS to establish written policies. Most of the new DPS policies are administrative in nature. They include a comprehensive “equal employment opportunity” policy, which is referred to as “DPS 101.” The thirty-nine (39) new policies created by DPS made it necessary for ASP to revise its own “Policies and Procedures Manual.” The revised ASP policy manual incorporated the new DPS policies and was published on August 31, 2021.

THE ADOPTION OF RULES BY THE ASPC IN 2020 GAVE THE COMMISSION MORE
AUTHORITY REGARDING PROMOTIONS, BUT COL. BRYANT CONTINUED
TO ACT AS THOUGH NOTHING HAD CHANGED

25. The General Assembly created the ASP Commission and defined its broad authority with the enactment of Ark. Code § 12-8-305. Since its inception, the ASPC’s primary responsibility has been the oversight of the promotional process to ensure that promotions are based strictly on merit. To ensure that promotions in the state’s premier law enforcement agency were free of undue influences from the Governor, legislators, or others, the legislature established

⁸ It is common knowledge that throughout this transition, which transferred certain administrative authority from ASP to DPS, the relationship between Col. Bryant and senior DPS officials has been strained – to say the least. One significant point of friction has resulted from DPS taking control of internal misconduct investigations, which had been used by Col. Bryant’s administration to punish or disqualify from promotion personnel who weren’t considered “team players.”

checks and balances designed to ensure that only the most qualified ASP personnel would be selected to lead the agency's critical functions. To this end, the legislature established the Commission as an independent body whose seven members would be appointed by the Governor for staggered terms of seven years. Notably, to prevent the Governor from removing an ASP Commissioner based on how they voted, or planned to vote, on a particular promotion, the enabling legislation creating the ASP Commission did not say that the Commissioners serve at the pleasure of the Governor. Therefore, absent proof of malfeasance, ASP Commissioners may serve their seven-year terms without fear that the Governor will fire them for not making a particular promotion or refusing to approve a promotion recommended by the Director.

26. The Arkansas Administrative Procedures Act ("APA"), Ark. Code § 25-15-201 et seq. delegates to agencies and commissions the authority to promulgate "rules." In contrast to the creation of policies by agency directors and commissions, the APA rule-making process requires public notice, an opportunity for comment by members of the public, and other mandatory procedures. Ark. Code § 25-15-204 ("Procedure for Adoption"). Unlike agency and commission policies, *rules adopted pursuant to the APA have the force of law.*⁹ As such, agency and commission rules override any conflicting agency or commission policies.

27. The Commission's authority regarding promotions is set forth in the "Rules for the State Police Commission" which are codified in the Arkansas Administrative Code. Ark. Code § 12-8-103(e)(2). The section which governs "Hiring, Employment Qualifications and Promotion" can be found in Ark. Admin. Code §130.00.3-V and includes the following provision:

⁹ *Stueart v. Arkansas State Police Commission*, 329 Ark. 46, 945 S.W.2d 377 (1997); *Christensen v. Harris County*, 529 U.S. 576 (2000); *United States v. Mead Corp.*, 533 U.S. 218 (2001).

C. PROMOTION

The Director shall recommend to the Commission all officers eligible for promotion. The Commission shall approve or disapprove all such promotions and shall indicate in writing the reasons for disapproval of any promotion. Any information used in the Commission's decision shall be reduced to writing and all such written information shall be placed in the promotion packet.

28. In previous administrations, well before the enactment of the Commission's rules, the ASP Director routinely submitted to the Commission promotional packets for "*all officers* eligible for [a particular] promotion." Even before the Commission's authority over promotions was clarified by the APSC's rules, previous ASP Directors recognized that, as a practical matter, the Commission had the ultimate authority to make or reject promotions. However, the enactment of the APSC rules in 2020 erased any doubt about the Commission's authority to do so. After all, the requirement that the Director "recommend *all officers* eligible for promotion" would be an absurd requirement if the Director had the sole authority to decide who would be promoted. Notwithstanding the clarity provided by the ASPC rules, Col. Bryant has ignored the ASPC rules that were enacted in 2020 and refused to acknowledge that the Commission has the authority to promote any of the "eligible" candidates, with or without the Director's recommendation.

LT. RHOADS IS PROMOTED TO CAPTAIN AND GIVEN "ASSISTANT COMMANDER DUTIES" TO PREPARE HER FOR THE ROLE OF CID COMMANDER

29. In early 2020, CID Commander Major Mark Hollingworth informed Col. Bryant that he was planning to retire on March 1, 2021. In June of 2020, Major Hollingsworth approached Capt. Rhoads about the CID succession plan following his retirement. At the time, Capt. Rhoads was just months away from having twenty (20) consecutive years of experience in CID and was

the Commander of CID Company A, which is responsible for investigating far more felony crimes than the other five (5) CID Companies.¹⁰

30. Major Hollingsworth told Capt. Rhoads that Captain David Lafferty, who was then the Assistant Commander of CID, had decided to retire in November 2021 and that someone would need to take the reins of CID once Major Hollingsworth and Captain Lafferty retired. Major Hollingsworth went on to say that he had spoken to Col. Bryant about creating an additional Captain's position in CID to help prepare the right person for the role of Major, CID Commander. He said that Col. Bryant had approved his recommendation and explained that the position would oversee several aspects of CID, including Internet Crimes Against Children ("ICAC"), Special Investigations, the Digital Evidence Lab, and the Fusion Center. Major Hollingsworth then told Capt. Rhoads that the person chosen for this new Captain position would have assistant commander duties and would likely be the next CID Commander or follow Captain Lafferty in that role when he retired in late 2021. When Capt. Rhoads asked who Major Hollingsworth and the Colonel were thinking about for this new Captain position, he replied: "You." Capt. Rhoads and Major Hollingsworth discussed the position in more detail. Toward the end of their conversation, Major Hollingsworth told Capt. Rhoads the new Captain position the Colonel had approved would likely be filled in the next thirty (30) days.

31. In July 2020, an advertisement for the new "Captain, Special Operations" position was announced internally in the same manner that other vacancies are announced. After further conversations with Major Hollingsworth, Capt. Rhoads applied for the position. Others who

¹⁰ The CID Division is organized into six (6) "Companies" that are led by Lieutenants who are referred to as Company Commanders. In contrast, the Highway Patrol Division is organized into twelve (12) "Troops" that are led by Captains who are referred to as Troop Commanders.

applied for this new role were Capt. Paulette Ward, who requested a lateral transfer from the Office of Professional Standards, where she had spent most of her career; Lt. Dennis Morris (Commander, Company C); and Lt. Brant Tosh (Commander, Company F).

32. Per the protocol established by Col. Bryant, the Colonel interviewed all four candidates for the new CID Captain position. During his interview with Capt. Rhoads, Col. Bryant told her that this promotion was going to be “the most important promotion he would make as Director” because whoever was promoted would be the Commander of CID at the end of 2021.

33. On August 13, 2020, Capt. Rhoads was promoted to the rank of Captain and assumed responsibility for the newly formed CID section called “Special Operations.” Notably, Col. Bryant selected Capt. Rhoads instead of Capt. Ward for this “most important promotion,” a clear indication that he knew Capt. Rhoads was more qualified for this “stepping-stone” role than Capt. Ward. As shown below, consistent with what Capt. Rhoads had been told, the official DPS announcement of her promotion to Captain said that she would also assume “*assistant commander duties within the Criminal Investigation Division.*”

Lieutenant Stacie Rhoads, 50, of Perry County, was promoted to the rank of captain and will assume supervisory and assistant commander duties within the Criminal Investigation Division, Administration Office headquartered at Little Rock.

34. Shortly after her promotion to Captain, Major Hollingsworth reminded Capt. Rhoads that because of her lengthy career in CID and her vast knowledge of the CID Companies, she had been given the duties of her new role to expand her knowledge about the other CID operations that are run out of ASP Headquarters. Consistent with that goal, five months later, Major Hollingsworth added more responsibilities to Capt. Rhoads’ role in “Special Operations”: (a) coordinator and decision-maker for “Silver and Amber Alerts”; (b) oversight of “Threat to Life” reports from the

National Threat Operations Center; and (c) the additional role of “ICAC Commander.” True to his word, in the months leading up to his retirement, Major Hollingsworth made sure that Capt. Rhoads was included in internal communications regarding every key decision made at the Division level. Every e-mail related to CID that went to Major Hollingsworth was cc’d to both Capt. Lafferty and Capt. Rhoads. When Major Hollingsworth and Capt. Lafferty were not available for a Command Staff meeting, Major Hollingsworth designated Capt. Rhoads to attend in their absence.

CAPT. WARD APPLIES FOR THE ROLE OF CID COMMANDER AND IS
DEEMED TO BE UNQUALIFIED FOR THIS ROLE

35. In early March 2021, shortly after Major Hollingsworth retired, the vacant Major, CID Commander position was advertised, inviting qualified candidates to apply for the position. The only applicants for the position were Capt. Ward¹¹ and Capt. David Lafferty, who would be retiring eight months later. Because Capt. Rhoads had been promoted in August 2020, she was not eligible to apply for promotion to CID Commander because she had not served in her current assignment for twelve (12) months.¹²

36. At the time, Capt. Lafferty was one of only two people in the ASP’s history who spent his entire career in CID without spending a single day as a Highway Patrol trooper. In stark contrast, Capt. Ward: (a) only had four and half years of CID experience, most of which was as a

¹¹ Capt. Ward is an African American female. Nothing alleged herein is intended to disparage Capt. Ward, to suggest that promoting diversity is not a commendable goal, or as criticism of Capt. Ward’s efforts to advance her career.

¹² ASP Policy LE SEC 3.

polygraph examiner: (b) had spent most of her career working in the Office of Professional Standards (“OPS”); and (c) until last year, had never supervised more than three people¹³ – much less a CID Company.

37. When compared to Capt. Ward’s minimal experience in CID, Capt. Lafferty’s decades of CID experience would have made him the obvious choice to become CID Commander but for the fact that he would be retiring in eight (8) months. Two former ASP Directors – one of whom began his ASP career more than 50 years ago – cannot recall anyone ever being promoted to the role of CID or Highway Patrol Commander when it was known they would be retiring in such a short period of time. Nonetheless, Capt. Ward’s experience and other qualifications for this role were deemed to be so inadequate that the ASP Commissioners concluded she did not have the level of experience or other qualifications to lead the CID. As a result, Col. Bryant and the Commission had no choice but to promote Capt. Lafferty to this role. For these reasons, on March 11, 2021, Capt. Lafferty was promoted to the rank of Major and appointed as the new CID Commander.

COL. BRYANT DECIDES THAT THE OPTICS OF PROMOTING AN AFRICAN
AMERICAN TO HIS COMMAND STAFF WOULD BE BENEFICIAL
FOR BOTH HIM AND GOVERNOR HUTCHINSON

38. In keeping with the tone-deaf comments he had made about race in the presence of others, and with no regard for the legal requirements established by ACRA, Col. Bryant decided

¹³ See Capt. Ward’s Application Letter for Promotion to Major, CID Commander. Capt. Ward first became responsible for supervising more than three people only when she was named Acting Company A Commander for one month in the Summer of 2021 and later when Col. Bryant laterally transferred her to the position of Assistant Commander of CID without the approval of the ASPC. *Id.* (The Commission has no authority to approve or block a lateral transfer.)

in early 2021 that both he and the Governor would benefit from being able to say that the first African American female had been promoted to the rank of Major during their administrations. To do so, Col. Bryant realized that he would have to manipulate the promotional process to get past the ASP Commission's concerns about Capt. Ward's minimal CID experience and lack of significant accomplishments. Col. Bryant also realized that to accomplish his goal of elevating an African American female to the Command Staff, he would have to marginalize Capt. Rhoads in the eight months remaining before Major Lafferty retired.

39. But for Col. Bryant deciding that he wanted to elevate an African American female to be the next Major and CID Commander following Major Lafferty's retirement, Capt. Rhoads would have been promoted to that position on November 10, 2021 with no controversy and little discussion. The fact that she is not an African American is the *only* reason she wasn't promoted at that time.

40. After sharing his plans with members of his Command Staff and conferring with the Governor, Col. Bryant set in motion a series of events designed to discredit Capt. Rhoads, marginalize her role in CID, and remove the advantage she had over Capt. Ward as a Marine Corps veteran, making her the preferred candidate for promotion to CID Commander under the Arkansas Veteran's Preference Act.

41. In furtherance of this plan, and with the knowledge of Col. Bryant, the following wrongful acts were carried out with malicious intent at the Colonel's direction in conscious violation of the law, knowing they would be greatly injurious to Capt. Rhoads:

MAJOR LAFFERTY ACCUSES CAPT. RHOADS OF EMBARRASSING THE CID AND CHARACTERIZES HER AS BEING OVERLY "EMOTIONAL"

42. On February 5, 2021, just prior to Major Hollingsworth's retirement, the CID Company Commanders received an update to the ASP pursuit policy that made changes in the way CID was involved when a Highway Patrol trooper executed a Pursuit Intervention Technique ("PIT") that resulted in death or serious physical injury. The revised pursuit policy was made effective later that day without an opportunity for anyone in CID to offer feedback. Upon receipt of the revised pursuit policy, many of the Troop Commanders were upset that they weren't given an opportunity to provide input. Some of them openly questioned Col. Bryant's motives for implementing the revised policy without first seeking their input.

43. Shortly after the revised pursuit policy was issued and prior to Capt. Lafferty being promoted to Major on March 11, 2021, Major Jason Aaron, the Highway Patrol Commander for the Eastern Region, approached Capt. Rhoads and said he would like to discuss some concerns he had about the revised pursuit policy. Major Aaron asked Capt. Rhoads what would be appropriate to share with the Troop Commanders about how she believed CID investigations of PITs would be conducted under the revised pursuit policy. She replied by saying that CID would handle these cases like any other death investigation, with the goal of documenting the circumstances of what occurred that led up to the death – the same way that CID would handle an investigation if a subject died of an overdose in the backseat of a Highway Patrol car. Thereafter, Major Aaron arranged a conference call with the Troop Commanders about his conversation with Capt. Rhoads. Major Aaron wanted to convey to the Troop Commanders that Capt. Rhoads' opinions carried some weight and that they could count on what she had told Major Aaron about CID's role in

investigating deaths resulting from a PIT. Major Aaron prefaced his remarks to the Troop Commanders by saying that Capt. Rhoads would likely be the next CID Commander.

44. Capt. Lafferty was on the conference call and was not happy about Major Aaron saying that Capt. Rhoads would likely be the next CID Commander. After the conference call, Capt. Lafferty chastised Capt. Rhoads for speaking on behalf of CID without his prior approval.

45. When Col. Bryant first learned of the field commanders' negative reaction to the revised pursuit policy and the way it had been rolled out, he just ignored it. However, weeks later, after realizing that the field commanders' discontent hadn't subsided, Col. Bryant decided to call a meeting with all the Troop Commanders and Company Commanders. The meeting was scheduled to occur on March 1, 2021 – more than three weeks after the revised policy became effective.¹⁴ The field commanders meeting on March 1, 2021 started with Col. Bryant talking about the need for changes in the pursuit policy. Thereafter, some of the Troop Commanders spoke up and seemed to be confused as to exactly what CID would be investigating. Some of them questioned whether a PIT would now be considered the use of deadly force even though the U.S. Supreme Court had ruled to the contrary.¹⁵ They also asked why CID case files on PITs would be submitted to prosecutors for review when that had never been done in the past. As the discussion went on, Capt. Rhoads realized that much of the confusion surrounded the misleading wording in the revised policy about CID investigating “intentional interventions” as opposed to investigating the cause of death or serious injury. Therefore, she joined the discussion by making her point about the need to correct or at least clarify what was meant by the language requiring CID to investigate

¹⁴ Just three days before the March 1st meeting, Captain Rhoads was selected by DPS to serve on the “Disciplinary Procedures Working Group” – a prestigious appointment reserved for those with exceptional performance records, excellent judgment, and a reputation for upholding the agency’s high standards.

¹⁵ See *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769 (2007).

“intentional interventions.” At the conclusion of the meeting, Col. Bryant and Lt. Col. Garner agreed that the wording in the revised policy that was used to define CID’s role needed to be changed. Lt. Col. Tim K’Nuckles commented to the group that the meeting had been one of the most productive meetings he’d attended in a long time.

46. The next day, Capt. Rhoads received a call from Highway Patrol Troop Commander Todd Shaw who told her he was glad she had spoken up at the meeting because her comments seemed to encourage everyone else who had concerns to speak up as well. In the days that followed, Capt. Rhoads received calls from four other Troop Commanders who also thanked her for speaking up about the problem she identified with the revised pursuit policy. The Commander of CID Company E also called Capt. Rhoads and thanked her for bringing to everyone’s attention the inaccurate language in the revised policy and for saying what needed to be said.

47. On March 17, 2021, a week after his promotion to CID Commander, Major Lafferty held a CID Commanders meeting via conference call. When the meeting was over, Major Lafferty asked Capt. Rhoads to stay. After closing the door, Major Lafferty turned to Capt. Rhoads and began berating her for speaking up in the field commanders meeting that had occurred two and a half weeks earlier. Major Lafferty told Capt. Rhoads that she had been “disrespectful, rude, and downright condescending” in her comments about the pursuit policy and that she had “embarrassed the entire CID division.”¹⁶

¹⁶ During the past three years, Col. Bryant’s demand for blind loyalty and his hostile reaction to any disagreement or constructive feedback shared by senior personnel has manifested itself time and again. Recent examples include a Lt. Colonel on the Director’s Command Staff: (a) questioning a Major during his annual evaluation about his loyalty to the Director, stating “the Colonel shouldn’t be asking me whether or not [the Major] is on board and can he trust him” and that the Major needed “to be careful about whose team he was on”; and (b) telling a Captain: “We do what the Colonel tells us to do” and “you need to decide whose side you’re on.”

48. The following day, Capt. Rhoads was scheduled for annual leave. However, she went to ASP Headquarters to speak with Lt. Col. Garner, thinking he would back her up and be critical of Major Lafferty for lecturing her. She was wrong, however. Lt. Col. Garner also criticized her for the way she pointed out the mistake in the revised pursuit policy in front of all the field commanders. Lt. Col. Garner defended the revisions in the pursuit policy by telling Capt. Rhoads that the revisions in the policy “didn’t change the way things were done.” Capt. Rhoads then asked the blindingly obvious question: “Then why did we change the policy?” – to which Lt. Col. Garner replied: “Because that’s what the Colonel wants.”

49. In June 2021, Captain Rhoads received her annual performance evaluation from Major Lafferty. Her evaluation reflected the highest ratings in every category except “Personal Relationships,” for which she was rated “Solid Performer.” In the accompanying narrative, Major Lafferty made a comment that is viewed by employment law experts as a classic misogynistic stereotype that is often used by men to discredit women in the workplace: *“On occasion, Captain Rhoads allows her responses to be driven by emotion instead of analyzing the situation and providing a measured response.”*

*THE LATERAL TRANSFER OF CAPT. WARD TO THE ROLE OF
ASSISTANT COMMANDER OF CID*

50. In April 2021, an internal ASP announcement was published advertising the position of “Captain, Assistant Division Commander” that had become vacant when Capt. Lafferty was promoted to Major, CID Commander. Company Commander Lt. Scott Russell, who had considerable experience in CID, applied for this promotion as did Lt. Brant Tosh, another Company Commander. Although Lt. Russell was considered by most CID personnel to be the

most qualified candidate, Col. Bryant chose not to promote Lt. Russell or Lt. Tosh.

51. Apparently at Col. Bryant's suggestion,¹⁷ Capt. Ward also applied for the position of Assistant Division Commander as a lateral transfer from the position she then held in OPS. On April 8, 2021, fully aware that the Commission had declined to even consider Capt. Ward when she applied for promotion to CID Commander and that the Commission had no authority to block a lateral transfer, Col. Bryant seized the opportunity to advance his end game by transferring Capt. Ward from OPS to become the Assistant Division Commander of CID under Major Lafferty.

52. Thereafter, the "assistant commander duties" that Capt. Rhoads had been assigned when she was promoted to Captain in August 2020 were abruptly removed. Capt. Rhoads was kept out of the loop on virtually all the division level matters she had previously been privy to and was systematically marginalized by Major Lafferty and Captain Ward. Instead of covering for Major Lafferty when he was out of the office, Capt. Ward was assigned to cover CID in his absence. When both Major Lafferty and Capt. Ward were out of the office, Capt. Ward assigned a Lieutenant to take her place, which resulted in Capt. Rhoads reporting to a CID Lieutenant – sometimes a Lieutenant with less than half her years of experience. These highly unusual reporting arrangements did not go unnoticed by the CID Company Commanders, who privately questioned why Capt. Rhoads was so obviously being marginalized.

¹⁷ In Captain Ward's subsequent letter to the Colonel in October 2021 seeking promotion to become Major Lafferty's successor, she characterized her lateral transfer from OPS to Assistant CID Commander as a transfer that she "accepted" – not that she asked for – suggesting that it wasn't her idea in the first place.

*THE PRETEXTUAL CRIMINAL INVESTIGATION OF THE
“MISSING RIFLE” THAT WAS NEVER MISSING*

53. In anticipation of Major Lafferty’s retirement in November 2021, an internal announcement was made advertising the upcoming vacancy for the position of Major, CID Commander. Having served in her current role for more than a year, Capt. Rhoads applied for this position and included in her application the required documents establishing her entitlement to the statutory preference she was entitled to as a Marine Corps veteran. Capt. Ward was the only other applicant for this promotion. She was not eligible for veteran’s preference and did not submit any materials suggesting that she was.

54. On November 4, 2021, fifteen minutes before Capt. Rhoads’ interview with the Director regarding her application for promotion, Major Lafferty called Captain Rhoads to his office to inform her that a rifle was missing from the CID evidence room that she had been responsible for in her previous role as Company A Commander. He went on to say that a formal criminal investigation was being opened to determine who was responsible for this breach of security. Captain Rhoads was shocked to learn that a criminal investigation was being opened without first making an informal inquiry about the whereabouts of the missing rifle. Never in the history of the ASP had a criminal investigation been opened under similar circumstances. The timing of the meeting with Major Lafferty was not coincidental. To the contrary, Major Lafferty deliberately chose to convey the information about the opening of a criminal investigation to Capt. Rhoads immediately before her promotional interview with Col. Bryant.

55. The official CID case file of the investigation of the missing rifle (ASP CID No. 2021-1417) includes transcripts of interviews and video footage of the entrance to the evidence vault, as well as the interior of the vault. As it turned out, the so-called “missing rifle” was never missing

and had been in the Troop A evidence vault all along. What's more, a review of the case file reveals an indefensible discrepancy between the video footage of the evidence vault and the statement given by a CID Lieutenant during the criminal investigation, who claimed that he had thoroughly searched the evidence vault before the criminal investigation was opened. The video evidence in the file conclusively shows that no such search was conducted.

56. At some point during the investigation in CID Case No. 2021-1417, the investigation of the "missing rifle" came to the attention of Major Jason Aaron, Commander of the Highway Patrol for the Eastern Region. Knowing that it was unheard of to conduct a criminal investigation under such circumstances, Major Aaron became suspicious about the motives for opening the investigation and what the criminal investigation had uncovered about the "missing rifle." At the conclusion of the investigation, Major Aaron obtained a copy of the case file and reviewed its contents, including the statement given by the CID Lieutenant and the video footage of the exterior and interior of the evidence vault. Having observed the irreconcilable discrepancy between the video footage and the Lieutenant's statement, Major Aaron felt duty bound to file a formal Complaint alleging serious misconduct by the CID Lieutenant for making a false statement during a criminal investigation. Such Complaints are made using "DPS Form 112-2" and are processed through the ASP chain of command by assigning an OPS number to the complaint, which triggers an independent review of the complaint by DPS's Office of Professional Standards ("OPS"). Accordingly, after preparing a DPS Form 112-2 and attaching the evidence in support of his complaint of misconduct, on December 14, 2021, Major Aaron presented the DPS Form 112-2 and the attachments to Lt. Col. Shawn Garner, Deputy Director and Senior Commander of Field Operations. When Lt. Col. Garner realized that the subject of Major Aaron's complaint was the unprecedented criminal investigation of the so-called "missing rifle" which he had personally

authorized, he went to great lengths to persuade Major Aaron not to submit his complaint. When Major Aaron did not back down, the conversation between the two senior ASP officials became heated. At one point, Lt. Col. Garner threatened to file a “Brady/Giglio” complaint against Major Aaron if he went through with submitting his complaint about the investigation of the “missing rifle.” “Brady/Giglio” is a disclosure rule that requires prosecutors to disclose any evidence that “casts a substantial doubt upon the accuracy” of a law enforcement officer’s testimony. Major Aaron reasonably interpreted Lt. Col. Garner’s threat to mean the Lt. Colonel was going to accuse Major Aaron of misrepresenting what was in the CID case file if he went through with filing his complaint. Consistent with the unimpeachable integrity that he is widely known for, Major Aaron was not deterred by Lt. Col. Garner’s baseless threat. Instead, he handed the DPS Form 112-2 and its attachments to the Lt. Colonel, made clear that he was submitting his complaint as written, and returned to his office.

57. As alleged above, ASP and DPS policy required that Lt. Col. Garner promptly assign an OPS number to Major Aaron’s complaint, which would have automatically triggered an independent review of the complaint by OPS. In a clear and deliberate violation of that policy, Lt. Garner tried to sweep the matter under the rug and deliberately did not assign an OPS number to Major Aaron’s complaint. However, when a FOIA request later called DPS’ attention to the complaint, Lt. Col. Garner had no choice but to enter Major Aaron’s complaint in the OPS system, which he eventually did on February 9, 2022 – five weeks later than what OPS policy required. Pursuant to DPS/OPS protocol, the assignment of Major Aaron’s DPS Form 112-2 to OPS resulted in an extensive investigation, the results of which are expected to be reviewed by the Secretary of DPS.

58. The day after Lt. Col. Garner finally submitted Major Aaron’s DPS Form 112-2 to OPS, Lt. Col. Garner directed the opening of another investigation of “missing” evidence. This formal investigation involved two guns that were allegedly missing from Troop H, where Major Aaron had previously been the Troop Commander (ASP CID Case No. 2022-0241). This retaliatory investigation was opened on February 14, 2022 and assigned to CID Special Agent Stuart Woodward. Much to the disappointment of Lt. Col. Garner, Special Agent Woodward determined that the two guns weren’t missing after all and closed the investigation four days later.¹⁸

COL. BRYANT’S COMMAND STAFF INTENTIONALLY ATTEMPTS TO MISLEAD THE ASP COMMISSION BY FALSIFYING CAPT. WARD’S PERSONNEL RECORDS

59. In 2014, the General Assembly joined other states by enacting the Arkansas Veteran’s Preference Act (“AVPA”) for the purpose of requiring that veterans and the surviving spouse of veterans be given preference over other candidates in all state government hiring and promotional decisions. Ark. Code 21-3-302. “[T]he qualified veteran's status shall be considered on questions of promotion and retention of employees according to § 21-3-304.”¹⁹

AVPA defines a “veteran” as follows:

(1) A person honorably discharged from a tour of active duty, other than active duty for training only, with the armed forces of the United States; or

¹⁸ Following the conclusion of the OPS investigation of Major Aaron’s complaint regarding the botched, pretextual investigation of the “missing rifle” and the subsequent retaliatory investigation of the two “missing guns” in Troop H, Lt. Col. Garner submitted his retirement paperwork and let it be known he would be retiring a year early on July 1, 2022, thus forfeiting a considerable amount of retirement benefits.

¹⁹ The Arkansas Office of Personnel Management has enacted a policy that tracks the requirements of ACRA. OPM Policy No. 30-30.

(2) Any person who has served honorably in the National Guard or reserve forces of the United States for a period of at least six (6) years, whether the person has retired or been discharged or not.

To qualify for veteran's preference in promotion, an employee must establish they are:

(A) A veteran;

(B) A disabled veteran; or

(C) The surviving spouse of a deceased veteran who is unmarried at the time of application for employment and remains unmarried until the decision to hire [or promote] is made;

(2) Is a citizen and resident of this state; and

(3) Meets substantially equal qualifications of other applicants.

ACRA further provides:

If the examination, evaluation, or similar instrument *is not subject to numerical scoring*, the selection authority shall demonstrate how veterans preference was applied in developing a list of qualified candidates to be interviewed and in selecting the successful candidate for the position.

If the selection authority used a scoring method other than numerical scoring, at the veteran's request the selection authority shall provide all documentation to the veteran to demonstrate to the veteran how the veterans preference was used to:

(i) Develop a list of qualified candidates to be interviewed; and

(ii) Select the successful candidate for the position.

(emphasis added).

60. When considering promotions to the rank of Sergeant and Lieutenant, the Director and the Commission are required to consider the candidates' numeric scores on a written test. Candidates who are entitled to veteran's preference receive an additional five points on top of their test score. In contrast, there is no test for promotions to the rank of Captain and Major. Therefore,

when evaluating candidates for promotion to these ranks, there are no numeric considerations factored into the decision. Although ACRA requires an agency to explain upon request how it applies veteran's preference under these circumstances, to Plaintiff's knowledge, ASP has never published any such explanation.

61. When a vacancy for promotion at ASP is published internally, the announcement includes instructions to applicants on what they must submit if they wish to be considered for veteran's preference. These instructions were included in the announcement for the position of Major, CID Commander:

If you are requesting veteran's preference consideration as a qualified veteran, a service-connected disabled veteran, or as the spouse of a disabled veteran, or as the surviving spouse of a deceased qualified veteran (who had remained unmarried at the time of application), you must submit a version of the DD-214 that shows character of service and type of separation, VA disability letter, or other appropriate documentation to be considered for veterans' preference.

All documents must be submitted within five (5) business days from receipt of this email.

Lateral Transfer or Promotion

Criminal Investigation

Major*

62. When Capt. Ward applied for promotion to Sergeant, Lieutenant, and Captain, she never submitted anything to indicate she was requesting veteran's preference. Nor did she state or suggest that she was entitled to veteran's preference when she applied for the position of Major, CID Commander. Nor could she have done so. It was common knowledge in ASP and among the Colonel's Command Staff that Capt. Ward had never served in the U.S. Armed Forces and that her husband, a former ASP trooper, was alive and well and serving as a senior law enforcement executive with the Department of Veteran's Affairs.

63. Likewise, it was common knowledge in ASP and among the Colonel's Command Staff that Capt. Rhoads had served in the Marine Corp before joining ASP. What's more, Capt. Rhoads had already established her entitlement to veteran's preference when she applied for promotion to the rank of Captain.

64. The agenda for the ASP Commission meeting on November 10, 2021 included the selection of the candidate to fill the vacant position of Major, CID Commander. Per standard practice, under the supervision of the Colonel and his Command Staff, personnel packets for the two eligible candidates were submitted to the individual Commissioners shortly before the November 10, 2021 Commission meeting.

65. Records obtained under the FOIA show that, for the purpose of offsetting Capt. Rhoads' entitlement to preference as a Marine Corp veteran, one or more members of Col. Bryant's Command Staff knowingly misled the State Police Commission by falsifying Capt. Ward's personnel records to reflect that she too was entitled to veteran's preference. The following excerpt from ASP records obtained pursuant to the FOIA removes any doubt about this blatant misrepresentation:

Promotion/Lateral Transfer Candidates
(Advertised 10/26-11/2/21)

The following is a table of all candidates who have applied for the advertised Commissioned promotion/lateral transfer position and are listed in band order.

	ASP Major CID Admin. Little Rock
	Capt. Paulette Ward (Veteran's Preference- Spouse)
	Capt. Stacie Rhoads (Veteran's Preference)

66. Based on the facts known to Plaintiff after reviewing records obtained under the FOIA, it does not appear that this misrepresentation could have been the result of an oversight or honest mistake. To the contrary, the evidence strongly suggests that this unlawful attempt to mislead the Commission was deceptive and intentional. Given that Capt. Ward never submitted any documentation or sent any communication to the Administrative Services Division suggesting that she was (or even might be) entitled to veteran's preference, it logically follows that someone with a motive to offset Capt. Rhoads' entitlement to veteran's preference must have taken it upon themselves to falsely inform the Commission that Capt. Ward was also entitled to veteran's preference. This indefensible, blatant misrepresentation demonstrates just how far Col. Bryant's administration was willing to go to elevate the first African American female to the ASP Command Staff strictly based on the color of her skin.

*THE COMMAND STAFF DIRECTIVE PROHIBITING ALL CID PERSONNEL
FROM COMMUNICATING WITH CAPT. RHOADS*

67. The day after the ASP Commission meeting on December 9, 2022 (the significance of which is set forth below), Capt. Ward convened a video conference call with the CID Company Commanders. According to several participants in that conference call, in her capacity as Assistant CID Commander, Capt. Ward issued a Division-wide directive prohibiting all CID personnel from communicating with Captain Rhoads for any reason on any topic. Given that Capt. Ward would have needed approval to issue such an extraordinary, unprecedented order, Plaintiff alleges on information and belief that Lt. Col. Garner directed Capt. Ward to issue this directive, which was intended to further marginalize and discredit Capt. Rhoads.

68. Upon hearing this directive, some of the CID Commanders on the call asked Capt. Ward to clarify whether her directive applied to every aspect of ASP business and whether it

prohibited them and their personnel from communicating with Capt. Rhoads about personal matters. Capt. Ward made clear that her directive not to communicate with Capt. Rhoads on any topic did not include any exceptions for personal matters or anything else. The CID Company Commanders were stunned. None of them had ever seen or heard of any such directive being given about anyone in the ASP – much less a highly respected Captain.

69. Given that Captain Rhoads’ responsibilities required frequent interaction with CID personnel, the Company Commanders immediately realized that the inability of anyone in CID to communicate with Captain Rhoads would create all kinds of problems. Nonetheless, following the conference call, they promptly conveyed Capt. Ward’s directive to the Sergeants and Special Agents under their command. Given the breadth of the unprecedented directive, some of those personnel reasonably speculated that Capt. Rhoads must be under investigation for some type of serious misconduct. Remarkably, neither Capt. Ward nor any member of the Command Staff ever informed Capt. Rhoads about the sweeping “no contact” order that had been issued to CID personnel. Capt. Rhoads first learned of this directive from a CID Special Agent during the afternoon of December 10, 2021.

70. As would be expected in any quasi-military organization, CID personnel across the state immediately cut off all communications with Captain Rhoads, which predictably resulted in unnecessary delays and confusion in the coordination of ICAC, Special Investigations and the other areas for which Capt. Rhoads was responsible. To cite just one of many examples, in the morning of December 29, 2021, Capt. Rhoads e-mailed CID Special Agent Rodney Villiger to tell him that his ICAC computer equipment had arrived and that she could deliver it to his field office in the next week. Special Agent Villiger did not reply to Captain Rhoads’ e-mail. Instead, later that same day, Capt. Ward sent the following e-mail to Captain Rhoads:

From: Paulette Ward
Sent: Wednesday, December 29, 2021 1:44 PM
To: Stacie Rhoads
Cc: Shawn Garner
Subject: Computer

Capt. Rhoads,

SA Rodney Villiger has asked if his ICAC computer has come in. Can you let me know so I can inform him?
Thanks

Captain Paulette Ward, B.A.
Assistant Division Commander
Criminal Investigation Division

71. CID personnel continued to obey Captain Ward's directive until Capt. Rhoads' counsel brought this inexplicable directive to the attention of DPS's Chief Counsel and provided him with the names of almost a dozen witnesses who would corroborate the unprecedented, unexplained "no contact" order that Capt. Ward had given weeks earlier.

72. Following an inquiry by DPS, on January 5, 2022, Lt. Colonel Garner summoned all CID Company Commanders to ASP HQ for a meeting the next day without telling them anything about the purpose of the meeting. Col. Bryant was present at the meeting, but Lt. Col. Garner did most of the talking. Lt. Col. Garner informed the Company Commanders that the purpose of the meeting was to straighten out a big misunderstanding. He then proceeded to walk back Captain Ward's directive by minimizing it as just an internal "miscommunication."

73. In fact, there had not been any misunderstanding about Captain Ward's directive by anyone attending the conference call on December 10, 2021. Her directive had been crystal clear. But for DPS's independent inquiry, which corroborated what is alleged in the preceding paragraphs of this Complaint, the "no contact" directive issued by Capt. Ward would still be in place.

THE NOVEMBER 10, 2021 COMMISSION MEETING

74. When the ASP Commissioners received the personnel packets for Capt. Rhoads and Capt. Ward shortly before the November 10, 2021 Commission meeting, along with Col. Bryant's recommendation to promote Capt. Ward to the position of Major, CID Commander, some of the Commissioners reviewed the qualifications of the two candidates and immediately questioned how Col. Bryant could possibly justify selecting Capt. Ward instead of Capt. Rhoads. One or more of the Commissioners took note that Capt. Rhoads had five times the experience that Capt. Ward had in CID and that much of Capt. Ward's experience was limited to administering polygraph examinations. The evening before the Commission meeting, several of the Commissioners conferred by telephone and were aligned in their opinions that Capt. Rhoads was far more qualified to be the CID Commander than Capt. Ward. Some of the Commissioners made note of the fact that just eight months earlier, when Capt. Ward and then Capt. Lafferty were the only two candidates for promotion to Major, CID Commander, they had promoted Major Lafferty to lead CID after concluding that having a qualified CID Commander for just eight months was preferable to promoting someone who would be in the position much longer but wasn't qualified for this critical role.

75. At the Commission meeting on November 10, 2021, Commissioner Edwards made a motion at 9:20 a.m. to go into executive session to consider a promotion. What followed was an unusually heated discussion about Col. Bryant's recommendation to promote Capt. Ward to lead CID instead of Capt. Rhoads. Col. Bryant's explanation for his recommendation did not hold water with most of the Commissioners, and they let the Colonel know they were not persuaded by his remarks. Consistent with the misrepresentation in the personnel packets that falsely showed the

two candidates had offsetting veteran's preference, Col. Bryant never mentioned that Captain Rhoads was the preferred candidate for this promotion under Arkansas law. At one point in the discussion, Col. Bryant tacitly acknowledged that race was a factor in his recommendation, remarking how great it would be to say they had promoted the first African American female in ASP history to hold the rank of Major.

76. Despite Capt. Rhoads having five times more CID experience than Capt. Ward – not to mention that she was a graduate of the FBI's prestigious National Academy and that her personnel file reflected an extraordinary list of accomplishments in CID – Col. Bryant desperately tried to rationalize his recommendation while avoiding mention of anything factual in the two candidates' personnel packets. After listening to the unpersuasive arguments Col. Bryant put forward to justify his recommendation, a straw vote showed that five of the Commissioners were adamantly opposed to promoting Capt. Ward. Those Commissioners made clear to Col. Bryant that, based on their merits-based evaluation of the two candidates, they would not approve the promotion of Capt. Ward to become the Commander of CID. The Commissioners and Col. Bryant then left executive session and returned to the Commission meeting room, where the meeting was called to order at 10:20 a.m. and concluded with no discussion about the status of the vacant Major position in CID.

THE GOVERNOR DIRECTLY INTERFERES WITH THE PROMOTIONAL PROCESS BY PRESSURING COMMISSIONERS TO APPROVE THE PROMOTION OF CAPT. WARD

77. As alleged above, the Governor has absolutely no authority to direct or influence ASP promotions. What's more, the legislature created a statutory framework that was designed to prevent such undue influence and to give the ASP Commissioners autonomy in protecting the integrity of the promotional process.

78. In disregard of the legislative mandate of independence given to the ASP Commission, after the November 10, 2021 Commission meeting, Col. Bryant solicited Governor Hutchinson's assistance in accomplishing his goal of promoting an African American female to the Command Staff. Without any direct knowledge of the qualifications of Capt. Ward or Capt. Rhoads (or the legally required preference for promoting Capt. Rhoads because of her service in the Marine Corp) and without inquiring about these matters, Governor Hutchinson agreed to help Col. Bryant fulfill his objective and promised to speak to the Commissioners who had refused to go along with the Colonel's recommendation – all of whom Governor Hutchinson had appointed. Thereafter, the Governor placed phone calls to at least three Commissioners and pressured them to support Col. Bryant's recommendation. During these phone calls, the Governor reminded the Commissioners that when he appointed them to the Commission, he had told them he expected them to "support the Director," that they had agreed to do so, and that he expected them to honor that agreement by approving the Director's recommendation to promote Capt. Ward to the position of Major, CID Commander.

79. The Commissioners listened to the Governor and then explained their point of view about this promotion. None of them gave any indication that they were going to change their position to honor an agreement to "support the Director" when the recommendation was so blatantly wrong in several respects.

THE DECEMBER 9, 2021 COMMISSION MEETING

80. The Commission's next regular meeting took place on December 9, 2021. At 10:29 a.m., Commissioner Edwards made a motion to go into executive session to consider a promotion. What followed was a repeat of the discussion that had occurred during the executive session at the

Commission meeting on November 10, 2021. The Governor's phone calls pressuring certain Commissioners to go along with the Colonel's recommendation only strengthened their resolve to stand their ground. Once again, Col. Bryant tried to rationalize his recommendation while avoiding mention of anything factual in the two candidates' personnel packets. At this point, at least five of the Commissioners made clear to Col. Bryant that any objective assessment of the two candidates would lead to the conclusion that Capt. Rhoads was far more qualified than Capt. Ward and that they would not budge from their position based on hearsay, other people's opinions, or anything else that wasn't documented in their personnel packets. As he had done during the executive session on November 10, 2021, Col. Bryant again made a passing reference to the benefits of having an African American female on the Command Staff. The Commissioners and Col. Bryant then left executive session and returned to the Commission meeting room, where the meeting was called to order at 11:52 a.m. and concluded with no discussion about the status of the vacant Major position in CID.

THE FEBRUARY 10, 2022 COMMISSION MEETING

81. No action was taken regarding the vacant CID Commander position during the Commission meeting that was held on January 13, 2022. Shortly before the Commission meeting on February 10, 2022, the Director and the Commissioners received a 19-page letter from Capt. Rhoads' legal counsel calling their attention to certain irregularities in the ASP promotional process and informing them that he was continuing an in-depth investigation of matters related to the process that had been used to select the next CID Commander.²⁰ At 10:23 a.m., Commissioner

²⁰ Counsel's subsequent investigation revealed the facts set forth in this Complaint, most of which were uncovered after February 10, 2022 through numerous interviews with ASP personnel and the review of thousands of ASP internal records.

Reeves made a motion to go into executive session to consider the promotion of a vacant Sergeant position in the Highway Patrol Division and further moved to “table consideration of the Major in the CID Division Little Rock.”²¹ After a brief executive session, the Commissioners returned to the Commission meeting room, where the meeting was called to order at 10:46 a.m. The meeting concluded with no discussion about the status of the vacant Major position in CID.

82. Later that day, the new Chairman of the Commission sent the following e-mail to Capt. Rhoads’ counsel:

Dear Mr. Mars:

I am in receipt of your letter to the Arkansas State Police Commissioners dated February 10, 2022. Your reputation as a knowledgeable and thorough attorney precedes you so I suspect that nothing in the letter was included without in depth research.

Yesterday was my first day as chair of the commission so the letter made things pretty interesting. Your correspondence was very informative and let me know that a lot of things need to be addressed. It appears that the commission has more responsibilities than we knew of, such as the approval of headquarters and IT equipment. I am going to ask the Attorney General’s office to try and provide research which will bring all our duties and responsibilities together in a format which will allow us to move forward as required by state laws and regulations. It is apparent that the **Rules of the Arkansas State Police Commission** and the **Arkansas State Police Policy Manual** have conflicting language regarding promotions and I’d like to get clarification from the Attorney General regarding this.

Your letter has opened our eyes to several things that need attention. Thank you for contacting us.

Sincerely,
Steve Edwards
Chairman, Arkansas State Police Commission

²¹ Minutes of the State Police Commission Meeting, February 10, 2022.

THE GOVERNOR PUBLICLY MENTIONS THE BENEFITS OF PROMOTING AN
AFRICAN AMERICAN WOMAN TO THE ASP COMMAND STAFF
WITHOUT SAYING A WORD ABOUT HER QUALIFICATIONS

83. Sometime on February 10, 2022, Governor Hutchinson read the 19-page letter that Capt. Rhoads' counsel had delivered that morning to Col. Bryant and the seven ASP Commissioners. When a television reporter asked that afternoon whether the Governor wished to comment on the letter, the Governor decided to give his comments in an on-camera interview.

84. Perhaps unintentionally, the Governor tacitly acknowledged during the interview that one of the candidate's skin color was somehow relevant to the issue at hand. Never mentioning the qualifications of the two candidates for promotion, the Governor instead called attention to the fact that Col. Bryant had recommended an African American female for promotion, saying: "There is the review of a *black female trooper* that's been recommended for promotion."

85. Governor Hutchinson also said that Capt. Rhoads' counsel "was try[ing] to interrupt the normal review of [that] promotion." Reaching new heights of hypocrisy, the Governor neglected to mention that he had directly interfered in the "normal review" of this promotion by improperly exerting pressure on the Commissioners to go along with Col. Bryant's misguided agenda.

VI. CLAIMS FOR RELIEF

86. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 85 of this Complaint as though they were set forth word for word herein.

87. But for the Defendant's unlawful consideration of race, Plaintiff would have been promoted to the position of Major, CID Commander on November 10, 2021, thus entitling her to

backpay with interest from that date until judgment is entered awarding the Plaintiff compensatory damages.

88. The background circumstances, as alleged herein, establish a *prima facie* case of reverse discrimination.

89. In violation of the Plaintiff's clearly established right to employment opportunities that are free from influence based on the color of her skin or her gender, the Defendant knowingly violated the provisions of the Arkansas Civil Rights Act by engaging in overt reverse discrimination by failing to promote the Plaintiff to the position of Major, CID Commander on November 10, 2021 and again refusing to promote the Plaintiff to that position on December 9, 2021.

90. On both occasions, the Defendant: (a) ignored the views expressed by at least five members of the Arkansas State Police Commission; (b) was unable to articulate why he or any objective person could reasonably conclude that the African American candidate's minimal qualifications and four and half years of CID experience could reasonably be compared to the Plaintiff's twenty-one (21) years of CID experience and vast accomplishments in solving homicides and other serious felony crimes; (c) was unable to explain why he had not taken into account the Plaintiff's excellent reputation both inside the ASP and among state and federal prosecutors, sheriffs, and police chiefs, as well as the Defendant's prior decisions to select the Plaintiff, instead of others, to attend the prestigious FBI National Academy and, more recently, to serve on the "Disciplinary Procedures Working Group," whose members are chosen based on their track record for excellent leadership, good judgment, and high integrity; (d) failed to identify anything the Plaintiff had said or done, or failed to do, that might make her unsuitable for promotion; (e) and was unable to articulate any comparable accomplishments by the African

American candidate or any comparable prestigious appointments for which she had been selected.

91. Furthermore, the Defendant deliberately concealed from the Commission that the Arkansas Veteran's Preference Act required that the ASP give preference to promoting Plaintiff given her service in the U.S. Marine Corps.

92. On both November 10 and December 9, 2021, the Defendant tacitly acknowledged that his refusal to promote the Plaintiff was based on the fact that she is white, the other candidate is black, and that he wished to be remembered as the ASP Director who promoted the first black woman to the rank of Major.

93. The Defendant's actions have put the Plaintiff at the continuing risk of the Defendant directly and indirectly interfering with the performance of her duties or causing the Plaintiff to be the subject of retaliation for filing this Complaint, which would cause irreparable harm to the Plaintiff for which there is no remedy at law. The Plaintiff is, therefore, entitled to preliminary and permanent injunctive relief, as requested below.

94. At all times relevant, the Defendant's conduct, and the conduct of those with whom he was acting in concert and who were acting at his direction, was carried out with malice and with wanton disregard for the law and the Plaintiff's clearly established right to equal employment opportunities, knowing that their actions would be greatly injurious to the Plaintiff.

WHEREFORE, Plaintiff requests a trial by jury; that judgment be entered against the Defendant in his individual capacity for back pay from November 10, 2021, plus interest, and other compensatory damages allowed by ACRA (in an amount in excess of the minimum amount required for federal court diversity jurisdiction) to be determined by a jury empaneled to try the issues of fact in this case; for preliminary and permanent injunctive relief pursuant to Ark. Code

§ 16-123-108 prohibiting Col. Bryant from causing or permitting any employee of the ASP to retaliate or interfere with the Plaintiff in the performance of her duties; for the costs of this litigation and a reasonable attorney's fee, as allowed by Ark. Code § 16-123-17 (c)(1)(A); and for all other relief to which she may prove herself entitled.

Respectfully submitted,

By: /s/ Thomas A. Mars

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