

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

DEC 04 2012

JAMES W. McCORMACK, CLERK  
By: SWO  
PLAINTIFF DEF CLERK

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

MARILYN MCDANIEL

VS.

CASE NO. 4:12 cv 751 KGB

DENNIS MILLIGAN, Individually  
and in his Official Capacity

DEFENDANT

**COMPLAINT**

COMES Plaintiff, Marilyn McDaniel, by and through counsel, Luther Sutter, and for her  
Complaint, she states:

This case assigned to District Judge Baker  
and to Magistrate Judge Yancy

**PARTIES AND JURISDICTION**

1. Marilyn McDaniel is a person with a disability, as that term is defined with the Americans with Disabilities Act of 1990 and Section 504, who worked for the Circuit Clerk of Saline County, Arkansas. Dennis Milligan is sued individually and in his official capacity as the Saline County Circuit Clerk. Defendant is a recipient of federal financial aid. Ms. McDaniel is substantially limited in one or more of major life activities as demonstrated in the charge attached as Exhibit "A", and incorporated by reference herein. Ms. McDaniel timely filed this charge, and now timely files this Complaint within 90 days of receiving her Right-To-Sue letter. This Court has federal question jurisdiction under 28 U.S.C. §1331 and supplemental jurisdiction over Plaintiff's state claims under 28 U.S.C. §1367. Since the acts giving rise to this action arose in this District, venue is proper under 28 U.S.C. §1391(b),

**GENERAL ALLEGATIONS OF FACT**

2. At all times relevant, Plaintiff performed her job the best she could in light of her disability. Her performance was at least as good as other non-disabled employees.

3. Despite her request for another job or leave, Milligan failed to accommodate Defendant's disability, narcolepsy, and terminated her in retaliation for requesting accommodation in violation of Section 504, the ACRA, and the ADA.

4. All actions were taken under color of law.

5. Indeed, Milligan, acting under color of law, terminated her, then sued her in his official capacity to recover a Fax confirmation receipt in order to intimidate Plaintiff from exercising her 1<sup>st</sup> Amendment right to campaign against here. The suit was an abuse of process and groundless. Indeed, the Saline County Circuit Court dismissed Milligan's Complaint on summary judgment. Thus, Plaintiff has been the victim of malicious prosecution. As a direct and proximate cause of Plaintiff's acts and omissions alleged herein, Plaintiff has suffered severe mental and emotional distress, lost wages, lost fringe benefits, and incurred other damages in an amount to be proven at trial.

#### **COUNT I**

6. Plaintiff re-alleges the foregoing as if fully set forth herein.

7. Plaintiff is, or is regarded as disabled.

8. Plaintiff requested accommodation, but Milligan refused to engage in a conversation designed to accommodate Plaintiff's disability, instead throwing her medical information back at her.

9. Instead Milligan terminated her in retaliation for requesting accommodation in violation of the ACRA,

10. As a direct and proximate cause of Defendant's act and omissions, Plaintiff has been harmed emotionally and has lost wages, as well as lost fringe benefits and incurred medical bills.

11. Milligan's actions have been so willful so as to support an award of punitive damages under the Arkansas Civil Rights Act of 1993. Milligan's actions violate the employment and non-employment provisions of the Arkansas Civil Rights Act of 1993.

**COUNT II**

12 Plaintiff re-alleges the foregoing as if fully set out herein.

13. Defendant, acting under color of law, filed a frivolous lawsuit against the Plaintiff to recover a facsimile confirmation page. He continued to pursue this lawsuit, even though he knew Plaintiff had none of his property. Thus Plaintiff filed the lawsuit in order to intimidate and harass the Plaintiff from campaigning against him and in a obvious retaliation for Plaintiff filing an EEOC charge and exercising her other 1<sup>st</sup> Amendment Right and state right to free speech.

14. Defendant's filing of the lawsuit constituted abuse of process and its summary dismissal in her favor demonstrate Milligan filed the lawsuit without a reasonable basis in fact. Thus, Defendant should be held liable for malicious prosecution.

15. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff has been harmed emotionally and has lost reputation and wages, as well as lost fringe benefits and incurred medical bills and attorney's fees.

11. Milligan's actions have been so willful so as to support an award of punitive damages under the Arkansas Civil Rights Act of 1993. .

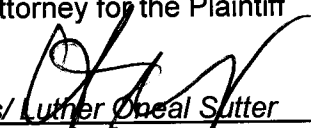
WHEREFORE, Plaintiff prays for appropriate compensatory damages exceeding \$75,000.00, for punitive damages, for reinstatement, or front pay, for trial by jury, for a reasonable attorney's fee, for costs, and for all other proper relief.

Respectfully submitted,

SUTTER & GILLHAM, P.L.L.C.  
Attorneys at Law  
P.O. Box 2012  
Benton, AR 72018

501-315-1910 Office  
501-315-1916 Facsimile  
Attorney for the Plaintiff

By:



/s/ Luther Oneal Sutter  
Luther Oneal Sutter, AR Bar No. 95031  
luthersutter.law@gmail.com

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JS 44 (Rev. 12/07)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Marilyn McDaniel

(b) County of Residence of First Listed Plaintiff Saline  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Luther Oneal Sutter, P.O. Box 2012, Benton, AR 72018,  
501-315-1910

**DEFENDANTS**

Dennis Milligan, Individually and in his Official Capacity **+**  
County of Residence of First Listed Defendant Saline  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
ACRA 1993

Brief description of cause:  
Civil Rights

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE 12/3/12 SIGNATURE OF ATTORNEY OF RECORD  
Luther Oneal Sutter

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_