

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FERRUCCIO ROMEO,

Plaintiff,

v.

TOWN OF WINTHROP, TERENCE M.
DELEHANTY, Chief of Police/Interim
Town Manager and AUSTIN FAISON,
Former-Town Manager,

Defendants.

DOCKET NO.: 1:22-CV-10573-DJC

**DEFENDANTS' MOTION TO DISMISS COUNT I, IN PART,
AND COUNTS II AND III OF THE COMPLAINT
(and L.R. 7.1 Certification)**

Pursuant to Fed. R. Civ. P. 12(b)(6) and Local Rule 7.1, Defendants Town of Winthrop (“Town of Winthrop”), Chief of Police Terence M. Delehanty (“Chief Delehanty”), and Austin Faison (“Mr. Faison”) (collectively “Defendants”), respectfully move to dismiss Plaintiff Ferruccio Romeo’s (“Plaintiff”) Complaint, in part, as it fails to state claims upon which relief may be granted. Specifically, Plaintiff’s Title VII claim (Count I) against Chief Delehanty and Mr. Faison is barred as a matter of law and should be dismissed because Title VII does not impose the protection sought which is individual liability. Moreover, Plaintiff’s retaliation claim (Count II) against Defendants fails as a matter of law because Plaintiff has not sufficiently pled facts, even if accepted as true, to establish that he is a “disabled person” protected under the statute on which he bases his claim, 42 U.S.C. § 12203. Further, Plaintiff’s FMLA claim (Count III) against Defendants fails as a matter of law because Plaintiff has not sufficiently pled facts, even if accepted

as true, to establish Defendants unlawfully interfered with Plaintiff's exercise of his rights under FMLA. Alternatively, Plaintiff's FMLA claim (Count III) against Defendants as it relates to 2019 is procedurally barred on statute of limitations grounds.

WHEREFORE, for these reasons, which are set forth in greater detail in the accompanying Memorandum of Law, Defendants respectfully request that this Court dismiss the Complaint at Count I, as it relates to Chief Delehanty and Mr. Faison, and dismiss Counts II and III of the Complaint in their entirety, with prejudice, pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,
TOWN OF WINTHROP,
TERENCE M. DELEHANTY, and
AUSTIN FAISON,
By their attorneys,

/s/ Janet R. Barringer

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Dated: July 29, 2022

LOCAL RULE 7.1 CERTIFICATION

Defendants, through counsel, made a good faith effort to narrow the issues presented in advance of filing this Motion. Specifically, on July 28, 2022, I conferred with Plaintiff to resolve or narrow the issues presented herein and obtain Plaintiff's concurrence to the instant motion. Despite these efforts by counsel, Plaintiff remains opposed to the issues raised and relief sought by way of this Motion.

/s/ Matthew R. Mattie

Matthew R. Mattie

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be served upon non-registered participants.

/s/ Janet R. Barringer

Janet R. Barringer