IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No:

KENNYBERG ARAUJO,

Plaintiffs,

v.

THE CITY OF FORT COLLINS, Colorado, a home rule municipality; DONALD VAGGE, former Deputy Chief of Police, in his individual and official capacities; and GARY SHAKLEE, Police Sergeant, in his individual and official capacities;

Defendants.

COMPLAINT AND JURY TRIAL DEMAND

COMES NOW, Plaintiff Kennyberg Araujo, through his attorney, Marc F. Colin, of the law firm Bruno, Colin & Lowe, P.C., and hereby submits his Complaint and Jury Demand against the above named defendants as follows:

I. NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e *et seq.* alleging discrimination and retaliation in violation of 42 U.S.C. § 1981, against Defendants, to correct unlawful employment practices on the basis of race and in retaliation for engaging in protected activities, and to provide appropriate relief to other Hispanic employees of the defendant city who have been and continue to be adversely affected by such practices. The Plaintiff, Kennyberg Araujo, alleges that Defendants discriminated against him when they

targeted him for adverse employment actions because of his Hispanic appearance, accent and Brazilian origin. Plaintiff further alleges that Defendants retaliated against him when he engaged in protected activity including seeking accommodation and/or complaining about discrimination.

II. INTRODUCTION

1. This is a national origin (Brazilian) and race (Hispanic) discrimination and retaliation case. Mr. Araujo was born and raised in Brazil and is of Brazilian descent. He attended high school and college in Brazil and moved to be in the U.S. in 1991. He subsequently obtained a Bachelor of Arts Degree in Psychology and Social Science from the University of Wyoming in 2006.

2. Mr. Araujo was hired by the City of Fort Collins in January of 2007.

3. The City of Fort Collins is a Home Rule municipality and Defendant Vagge was a final policy maker and Deputy Chief of Police for the Fort Collins Police Department. Defendant Shaklee was and is employed as a Police Sergeant for the Fort Collins Police Department. Defendant Shaklee was the former supervisor of Plaintiff herein. Defendants Vagge and Shaklee are sued in both their official and individual capacities.

4. From January of 2007 until June of 2015, when he was forced to resign from his employment as a Detective with the Fort Collins Police Department due to Defendants' harassment and retaliation, Plaintiff Araujo was a consistently exemplary employee.

5. When Defendant Shaklee, who is Caucasian and American born, became Mr. Araujo's direct supervisor, Mr. Araujo's treatment at the Fort Collins Police Department changed

markedly. Despite his outperformance of similarly-situated American-born Caucasian colleagues, Mr. Araujo's performance was consistently criticized for false or otherwise pretextual reasons by Sgt. Shaklee, while American-born Caucasian colleagues who engaged in the same performance practices were not subject to criticism.

6. Sgt. Shaklee has a history of singling out employees of Hispanic origin for criticism, unwarranted complaints and abusive treatment. Sgt. Shaklee's discriminatory practices were well known to Defendant Vagge, who, as the Deputy Chief of the Police Department, actually conspired with Sgt. Shaklee in furtherance of his discriminatory practices, to protect Sgt. Shaklee from the consequences of his discriminatory practices and/or to otherwise assist Sgt. Shaklee in retaliating against subordinate employees who complained of such unlawful discriminatory practices or who supported the complaints of Det. Araujo and other Hispanic employees.

7. Soon after Mr. Araujo complained about discrimination, he was subjected to a series of false Complaints made by Sgt. Shaklee or filed at Sgt. Shaklee's direction.

8. In pursuing these false complaints against Det. Araujo, Sgt. Shaklee violated multiple Fort Collins Police Department policies and procedures. Sgt. Shaklee also induced others, including his wife, a Fort Collins Police Detective, to file false complaints against the Plaintiff and then, in further violation of policy, investigated and sustained the false complaints which he had initiated or caused to be initiated. Defendant Vagge was, upon information and belief, not only aware that Sgt. Shaklee was engaging in this practice with regard to Plaintiff, but was also aware that Sgt. Shaklee had a long standing pattern and practice of singling out, or

otherwise targeting Hispanic employees for unwarranted adverse employment action and both encouraged such actions and failed to act to stop them from reoccurring, culminating in Plaintiff's resignation from the Agency.

9. Sgt. Shaklee's discriminatory and retaliatory practices had been the subject of prior complaints by other Hispanic employees. The City of Fort Collins had knowledge of Sgt. Shaklee's discriminatory and retaliatory practices yet failed to take any action to address them. Rather, Defendant Vagge engaged in a pattern of conduct designed to protect Defendant Shaklee from the complaints of Hispanic and other employees and to allow Defendant Shaklee to continue such practices of discrimination and retaliation.

10. As a result of being subjected to both discrimination and retaliation by Sgt. Shaklee, Plaintiff Araujo initiated an internal Complaint against Defendant Shaklee. This Complaint included claims that Sgt. Shaklee had singled Plaintiff out for false claims of poor performance due to his race and national origin, that Defendant Shaklee had induced others to make similarly false allegations against Plaintiff, and that Defendant Shaklee had violated policy by investigating his own complaints and those which he caused to be initiated and then recommending that such false complaints be sustained. Plaintiff Araujo further alleged that through the above actions and in making false complaints, Sgt. Shaklee had departed from the truth, an offense which, if sustained, would have mandated Sgt. Shaklee's termination.

11. Defendants Fort Collins and Vagge, as a final policy maker for the Fort Collins Police Department, sustained Plaintiff's complaints against Sgt. Shaklee with the exception of his allegations that Sgt. Shaklee had departed from the truth. The departing from the truth charge

was not sustained despite the fact that in order for the other policy violations to have been sustained, Sgt. Shaklee must have repeatedly departed from the truth. Rather, Defendants Vagge and Fort Collins attributed Defendant Shaklee's multiple false statements to inadvertent mistakes. As a result, no significant action was taken by Defendants Vagge and Fort Collins against Sgt. Shaklee for his discriminatory practices or for the sustained policy violations arising therefrom. Defendants Fort Collins and Vagge thereby encouraged Sgt. Shaklee to continue his discriminatory and retaliatory practices and sent a clear message to Plaintiff and other Hispanic employees of the Fort Collins Police Department that complaints against Sgt. Shaklee are futile and that there would be severe adverse consequences suffered by those who made complaints against Defendant Shaklee or provided evidence in support of the same.

12. In doing so, the City of Fort Collins and Defendant Vagge ratified the unlawful actions of Sgt. Shaklee and validated the concerns of the Plaintiff and other Hispanic employees of the Police Department, that Sgt. Shaklee's discriminatory and retaliatory practices were reflective of a policy and practice of the Fort Collins Police Department, a policy and practice that had existed long before the Plaintiff was singled out as the next target of Sgt. Shaklee's racial bias.

13. The actions of Defendant City of Fort Collins, as more particularly described herein, are reflective of a defacto policy, custom and practice of the City which permits, condones, or otherwise encourages discrimination by supervisors of the Fort Collins Police Department based upon race and/or national origin and which further allows such supervisors, in this case Sgt. Shaklee, to retaliate against those who complain against such practices or who provide information or evidence in support of such complaints.

14. All actions of Defendant Vagge, as more particularly described herein, were undertaken within the course and scope of his employment as a Deputy Chief of Police of the Fort Collins Police Department and under color of law. All actions of Defendant Vagge were undertaken by the Defendant individually and as a final policy maker for the Fort Collins Police Department.

15. All actions of Defendant Gary Shaklee, as more particularly described herein, were undertaken by Defendant Shaklee individually and were reflective of Defendant Shaklee's conformity with a long standing practice of discrimination based upon race, which had been condoned, permitted or otherwise encouraged within the agency. Defendant Shaklee's conduct, as more specifically described herein, was undertaken within the course and scope of his employment as a supervisor in the Fort Collins Police Department and under color of law.

III. JURISDICTION AND VENUE

Jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1343. This action is authorized and instituted under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* and 42 U.S.C. § 1981.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3) because of unlawful employment practices alleged herein were committed within the jurisdictional boundaries of the United States District Court for the District of Colorado.

18. All procedural prerequisites for filing this lawsuit have been met. Plaintiff timely filed a Charge of Discrimination alleging race discrimination, national origin and retaliation against the City of Fort Collins and Sgt. Shaklee with the Equal Employment Opportunity

Commission ("EEOC") and subsequently requested a Notice of Right to Sue letter. A right to sue letter was issued on February 2, 2016. This Complaint and Jury Demand is being filed within ninety (90) days of receiving the Notice of the Right to Sue from the EEOC. Therefore, under 42 U.S.C. § 2000e-5(f)(1), Plaintiff has satisfied all procedural prerequisites for suing in federal court.

IV. GENERAL ALLEGATIONS

A. Background

19. Sgt. Shaklee was initially assigned to the Northern Colorado Drug Task Force as a Detective in approximately 2004. Shortly after being assigned to the unit, Sgt. Shaklee was removed from the unit due to the complaints of a Hispanic female employee.

20. During his initial tenure in the drug task force, Defendant Shaklee's then supervisor, a Hispanic male, noted several instances where it appeared that Detective Shaklee had singled out Hispanic employees for scrutiny and unwarranted criticism, leading to several such employees, including the Hispanic female referenced above, to leave the unit or quit their employment entirely.

21. One of the practices noted by Defendant Shaklee's supervisor in the drug task force, was Shaklee's habit of falsely claiming that he had received complaints from other employees or civilians about a Hispanic employee when no such complaints had been made. Defendant Shaklee would then go to his supervisors, including Defendant Vagge, and claim that he had received a Complaint, thereby, causing the Hispanic employee to be investigated. Defendant Shaklee's supervisor memorialized his concerns in Defendant Shaklee's performance

evaluations, which evaluations were reviewed and approved by Defendant Shaklee's chain of command, which included Defendant Vagge.

22. Defendant Shaklee's supervisor also reported the above described concerns to the City of Fort Collins Human Resources employee Lori Greening, who interviewed Defendant Shaklee's supervisor regarding his concerns. This Sergeant pointed out Defendant Shaklee's pattern of targeting individuals with Hispanic surnames for adverse employment action.

23. Defendant Shaklee's supervisor also pointed out Defendant Shaklee's repeated false complaints against him personally, which he perceived to have been in retaliation for having Defendant Shaklee removed from the task force shortly after he was originally assigned there, as the result of his discrimination against a Hispanic female employee.

24. Defendant Vagge and Defendant Shaklee were also the subjects of a similar complaint by yet another Hispanic supervisor, a Hispanic Lieutenant, in 2010. Defendants Vagge and Shaklee had this Hispanic supervisor removed from the Task Force within a short period of time of him being assigned to the unit.

25. Like other Hispanic employees before him, this supervisor filed a Complaint of discrimination against Defendants Vagge and Shaklee, which complaints were also investigated by Lori Greening of the City of Fort Collins Human Resources Department. One of the common threads among these complaints was Sgt. Shaklee's repeated characterizations of Hispanic employees as "lazy and incompetent", an obvious racial stereotype.

26. While Ms. Greening ultimately did not find that Defendants actions were discrimination, Ms. Greening is purported to have made numerous recommendations to address

disparate treatment issues, which recommendations, upon information and belief, were ignored by Defendant Vagge and the City of Fort Collins.

27. Approximately 6% of the employees of the Fort Collins Police Department are Hispanic. Hispanics make up approximately 14% of the population of the City of Fort Collins.

28. Upon information and belief, the former Human Resources Director of the City of Fort Collins, also expressed concerns about Defendant Vagge and Defendant Shaklee targeting Hispanic employees for adverse employment action, harassment designed to secure the resignations of Hispanic employees and their practice of retaliating against those who complained about such practices or who supported complaints of discrimination to no avail. No action was taken by Defendant Fort Collins or Defendant Vagge to address these issues.

29. Over the past decade, 2 independent surveys were conducted of Fort Collins Police Department employees. Dr. Kim Miller conducted a survey on behalf of Lodge 3 of the Fraternal Order of Police. The results of this survey were highly critical of Defendant Vagge's management style and his practice of targeting employees and allowing others to do so. The City then conducted its own survey, which validated Dr. Miller's results in all respects. A prior survey, conducted by Dr. Jack Digliani, resulted in similar findings. Nevertheless, Defendant City took no action to address these concerns.

30. Indeed, notwithstanding the results of these surveys and multiple complaints by Hispanic employees that they had been targeted for harassment and subjected to disparate treatment, false complaints and harassment by Defendants Vagge and Shaklee, to say nothing of the concerns expressed by the City's own Human Resources department, Defendant City took no

action. It is notable here that Defendant Shaklee is currently under consideration for promotion to the rank of Lieutenant.

B. Discrimination and Retaliation Against Plaintiff Araujo by Defendant Shaklee and Defendant Vagge and the City of Fort Collins

31. Plaintiff Araujo was assigned to the Northern Colorado Drug Task Force in February of 2012. This was a "special assignment", offered only to those officers whose previous performance was outstanding.

32. Defendant Shaklee was a Sergeant in the Drug Task Force Unit, and almost immediately upon Plaintiff's assignment to the Unit, began treating Plaintiff differently from the Caucasian members of the unit, holding him to a different standard, singling him out for criticism when his performance was no different from that of Caucasian members of the unit, giving him less favorable assignments, denying him favored assignments that he was qualified for, making sarcastic and demeaning public remarks about him, and engaging in other conduct designed to make Plaintiff request a transfer from the unit.

33. When Sgt. Shaklee's efforts proved unsuccessful, in early 2014, Sgt. Shaklee initiated an investigation against Plaintiff, purportedly based upon 3 complaints Shaklee had purportedly received from Plaintiff's co-workers about his report writing.

34. Prior to his assignment to the Task Force, Plaintiff had volunteered to assist other Fort Collins Police Department employees as a Spanish and Portuguese interpreter. After arriving at the Task Force, Plaintiff was told by Sgt. Shaklee that his volunteer work as an interpreter was a "waste of time".

35. As noted above, in early 2014, Sgt. Shaklee alleged that he had received complaints from 3 police department employees regarding Plaintiff's report writing, specifically associated with cases in which he had acted as an interpreter.

36. Defendant Shaklee falsely claimed that he had received a complaint from Sgt. Kristy Volesky regarding Plaintiff's alleged failure to complete a report and document his actions as an interpreter when he assisted Detective Koby Northern in an investigation. No such complaint had been made, yet Sgt. Shaklee investigated it and sustained Plaintiff for a policy violation.

37. Sgt. Shaklee also alleged that another Detective had made a similar complaint, an allegation which was also false.

38. As to the third complaint, Defendant Shaklee alleged that this complaint had been made by his wife, Detective Jaclyn Shaklee. In fact, no such complaint had been made, yet despite a policy prohibition against Sgt. Shaklee investigating a matter in which his wife was involved, Sgt. Shaklee fabricated these 3 alleged complaints, then sustained his own false complaints and issued Plaintiff a Written Reprimand on May 28, 2014, which was not served on Plaintiff until July 1, 2014.

39. During this "investigation" by Sgt. Shaklee, Plaintiff attempted to explain that his duties as an interpreter asked to report on an interview he conducted on behalf of a Detective were far different from those he prepares as an investigator. Plaintiff provided Defendant Shaklee legal distinctions between these two roles, which authority Defendant Shaklee ignored.

40. At the same time, many of the other Caucasian members of the Task Force were also occasionally late in turning in reports. None of these other Caucasian employees were subjected to criticism from Sgt. Shaklee, nor were they investigated or subjected to discipline by Sgt. Shaklee despite having engaged in the same conduct which led to the issuance of a Written Reprimand to Plaintiff. Such disparate treatment was due to Plaintiff's race. During his selfappointed "investigation" and in his subsequent meetings with Plaintiff, Defendant Shaklee referred to Plaintiff as "lazy and incompetent", a phrase which Sgt. Shaklee reserves to describe Hispanic employees with whom he has issues.

41. In response to the Written Reprimand, Plaintiff filed a Grievance pursuant to Fort Collins Police Department policy and procedure, complaining that Defendant Shaklee had fabricated the complaints, initiated an investigation of his own false complaints and had investigated an alleged complaint of his wife, despite a policy which prohibited such conduct, all predicated upon Hispanic heritage.

42. Immediately after Plaintiff filed his Grievance, Sgt. Shaklee caused to be issued a memorandum citing numerous false "Performance Issues" of the Plaintiff and suspending him from all collateral duties including off-duty work, undercover assignments and on-call. These actions were taken by Defendant Shaklee and permitted by the other Defendants, in retaliation for Plaintiff's initiation of a Grievance against Sgt. Shaklee and in an effort to discourage Plaintiff and other employees from bringing forward complaints regarding Defendant Shaklee's discriminatory and disparate treatment against Hispanic employees.

43. Ultimately, Plaintiff was required to file a formal Internal Affairs Complaint against Defendant Shaklee. While Defendant Vagge and others in Defendant Shaklee's chain of command sustained certain minor policy violations against Sgt. Shaklee, Defendant Vagge and the City of Fort Collins determined that Shaklee's multiple false statements, as established by the investigation, were nothing more than inadvertent mistakes. Thus, no meaningful action was taken against Sgt. Shaklee for the conduct more specifically described herein. These actions were reflective of a policy, custom and practice of Defendant Vagge and Fort Collins to allow and encourage Sgt. Shaklee's discriminatory and disparate treatment of Hispanic employees, his harassment of Hispanic employees and his practice of retaliating against Hispanic employees and others who complained about Defendant Shaklee's discriminatory practices.

V. <u>CLAIMS FOR RELIEF</u>

FIRST CLAIM FOR RELIEF RACE AND NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF TITLE VII

44. Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

45. During Mr. Araujo's employment, Defendant engaged in unlawful discriminatory employment practices by discriminating against him with respect to the terms and conditions of his employment based on his race (Hispanic) and national origin (Brazilian).

46. The unlawful employment practices include, without limitation, disparate treatment, unwarranted discipline, and constructive discharge because of Mr. Araujo's race and national origin.

47. The effect of these practices deprived Mr. Araujo of equal employment

opportunities and otherwise adversely affected his employment status because of his race and national origin.

48. These unlawful employment practices were intentional.

49. The unlawful employment practices were undertaken with malice or with reckless indifference to Mr. Araujo's federally protected rights.

SECOND CLAIM FOR RELIEF RETALIATION FOR ENGAGING IN PROTECTED ACTIVITY UNDER TITLE VII

50. Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

51. Mr. Araujo had a good faith belief that the Defendants were engaged in discriminatory conduct in violation of Title VII.

52. Mr. Araujo engaged in protected opposition to Defendants' unlawful employment practices by complaining about discrimination.

53. In retaliation for Mr. Araujo's opposition to what he reasonably believed to be Defendant Shaklee's unlawful discrimination against him, Defendant Shaklee disciplined the Plaintiff and created such a hostile and oppressive work environment that Plaintiff was compelled to resign from his employment.

54. The effect of these practices deprived Mr. Araujo of equal employment opportunities and otherwise adversely affected his employment status because of his national origin.

55. These unlawful employment practices were intentional.

56. The unlawful employment practices were done with malice or with reckless indifference to Mr. Araujo's federally protected rights.

THIRD CLAIM FOR RELIEF DISCRIMINATORY TREATMENT BECAUSE OF RACE IN VIOLATION OF SECTION 1981

57. Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

58. During Mr. Araujo's employment, the Defendants engaged in unlawful discriminatory employment practices by discriminating against him with respect to the terms and conditions thereof.

59. The unlawful employment practices include, without limitation, disparate

treatment, discipline, and harassment, false accusations and unwarranted investigations all

because of Mr. Araujo's race (Hispanic).

60. The effect of these practices deprived Mr. Araujo of equal employment

opportunities and otherwise adversely affected his employment status because of his race.

61. These unlawful employment practices were intentional.

62. The unlawful employment practices were done with malice or with reckless

indifference to Mr. Araujo's federally protected rights.

FOURTH CLAIM FOR RELIEF RETALIATION FOR ENGAGING IN PROTECTED ACTIVITY UNDER §1981

63. Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

64. Mr. Araujo had a good faith belief that the Defendants were engaged in discriminatory conduct in violation of § 1981.

65. Mr. Araujo engaged in protected opposition to the Defendants' unlawful employment practices by complaining about discrimination.

66. In retaliation for Mr. Araujo's opposition to what he reasonably believed to be Defendant Shaklee's unlawful discrimination against him, Defendant Shaklee investigated, disciplined, publically humiliated, chastised and harassed the Plaintiff, resulting in Plaintiff's separation from his employment.

67. The effect of these practices deprived Mr. Araujo of equal employment opportunities and otherwise adversely affected his employment status because of his Hispanic race and national origin (Brazilian).

68. These unlawful employment practices were intentional.

69. The unlawful employment practices were done with malice or with reckless indifference to Mr. Araujo's federally protected rights.

FIFTH CLAIM FOR RELIEF FAILURE TO TRAIN OR SUPERVISE UNDER § 1981

70. Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

71. Defendant Fort Collins and Defendant Vagge developed and maintained employment related policies, procedures, customs, and/or practices exhibiting or resulting in deliberate indifference to the protected Federal rights of Hispanic employees of the City of Fort Collins Police Department, which proximately caused the violation of Plaintiffs' Federal rights.

72. Defendant Fort Collins and Defendant Vagge maintain employment related policies, procedures, customs, and/or practices that tacitly or explicitly authorize discrimination and retaliation against the protected class of Hispanic employees by supervisors of the Fort

Collins Police Department, including, but not limited to, the failure to properly train on at least the following: proper supervision, internal investigations, grievances, discipline, and Title VII issues and the rights of employees with respect to the same.

73. In light of being a municipal employer, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of Federal rights such as those described herein.

74. Defendants Fort Collins and Vagge are liable for their failure to train and appropriately supervisor the employees of the Fort Collins Police Department.

75. The inadequate training and supervision provided by Defendants Fort Collins and Vagge resulted from a conscious or deliberate choice to follow a course of action from among various alternatives available to Fort Collins.

76. If any training was given to Defendant Shaklee concerning supervision, internal investigations, grievances, discipline, and Title VII issues and the rights of employees, Defendants Fort Collins and Vagge knew or should have known that such training was reckless or grossly negligent and that misconduct in that area was almost inevitable.

77. Defendants Fort Collins and Vagge had a duty to protect the Federal rights of the employees of the Fort Collins Police Department.

78. As a direct and proximate cause and consequence of Defendants Fort Collins and Vagge's failure to train and supervise, Plaintiff suffered injuries, damages, and losses as set forth above.

WHEREFORE, Mr. Araujo respectfully requests that the Court enter judgment in his

favor and against the Defendants, and award the following relief, to the fullest extent allowed by law:

- a. Back pay and related compensation, and front pay, in amounts to be determined at trial;
- b. Compensatory and consequential damages, as allowed;
- c. Emotional distress damages, as allowed;
- d. Punitive damages, as allowed;
- e. Injunctive and/or declaratory relief:
- f. Pre-judgment and post-judgment interest at the highest lawful rate;
- g. Attorneys' fees and costs of this action, including expert witness fees, as appropriate; and
- h. Any such further relief as justice allows.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated this 29th day of April, 2016.

Respectfully submitted,

<u>s/ Marc F. Colin</u>
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