

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No: 16-cv-00966-CBS

KENNYBERG ARAUJO, and
FRANCIS GONZALES,

Plaintiffs,

v.

THE CITY OF FORT COLLINS, a municipality;
DONALD VAGGE, former Deputy Chief of Police, in his individual capacity, and
GARY SHAKLEE, Police Sergeant, in his individual capacity,

Defendants.

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Detective Kennyberg Araujo and Sergeant Francis Gonzales, through their attorneys Qusair Mohamedbhai and Laura B. Wolf of RATHOD | MOHAMEDBHAI LLC, hereby submit their First Amended Complaint and Jury Demand against the above named Defendants and allege for their First Amended Complaint as follows:

I. INTRODUCTION

1. Plaintiffs Detective Kennyberg Araujo (“Det. Araujo” or “Plaintiff Araujo”) and Sergeant Francis Gonzales (“Sgt. Gonzales” or “Plaintiff Gonzales”) have suffered ongoing discrimination based on their race and national origin as well as retaliation throughout their employment with the Fort Collins Police Department (“FCPD”), in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C § 2000e *et seq.* and the Civil Rights Act of 1866, 42 U.S.C. § 1981. The culture of discrimination as well as the specific acts alleged herein were perpetrated and perpetuated by Defendants City of Fort

Collins (“Fort Collins” or “Defendant Fort Collins”), former Deputy Chief Donald Vagge (“Deputy Chief Vagge” or “Defendant Vagge”), and Sergeant Gary Shaklee (“Sgt. Shaklee” or “Defendant Shaklee”).

2. Unfortunately, the experiences of Det. Araujo – who is Latino/Hispanic and from Brazil – and Sgt. Gonzales – who is Latino/Hispanic and of Mexican heritage – are not unique to them. For decades, the FCPD has fostered and condoned a culture of discrimination against Latino/Hispanic officers, which is evidenced in its hiring and promotional practices as well as its disparate treatment of Latino/Hispanic officers in its disciplinary decisions and performance evaluations. Complaints of discrimination by these Latino/Hispanic officers have been met with retaliation in the form of demotions, transfers, denials of promotion and special assignment, and constructive discharge. Deputy Chief Vagge and Sgt. Shaklee have actively participated in and directed the discrimination and retaliation against Det. Araujo and Sgt. Gonzales, causing both officers great financial and emotional hardship.

3. Sgt. Gonzales, described in one annual review as “the gold standard” for task force sergeants, has been repeatedly passed over for promotion to lieutenant for the last fifteen years. Despite Sgt. Gonzales’s exemplary resume and thirty-five years of service with the FCPD, his failure to be promoted is unsurprising as the FCPD has only ever promoted one Latino/Hispanic officer to position of lieutenant, Lt. John Pino. Deputy Chief Vagge has been the driving force blocking Sgt. Gonzales from advancing in his career. In July 2016, after becoming more vocal about the discrimination he was facing as well as serving as a witness for two Latino/Hispanic officers in support of their complaints of discrimination, Sgt. Gonzales was passed over for a special assignment to School Resources

Officer (“SRO”) Sergeant despite being the most qualified candidate.

4. Det. Araujo, praised as having “the essentials to be an exceptional officer,” likewise did not experience the type of career advancement he envisioned. Under the hypercritical supervision of Sgt. Shaklee, Det. Araujo was set up to fail; his white colleagues, meanwhile, were given the encouragement and support to succeed. The environment established by Sgt. Shaklee was overtly discouraging to Latino/Hispanic officers, whom he disparagingly refers to as “tonks” behind their backs. Not only did Det. Araujo face unparalleled criticism from Sgt. Shaklee, but Sgt. Shaklee took active measures to isolate Det. Araujo from the members of his team, just as he has done with other Latino/Hispanic officers in the past. After bringing complaints of discrimination against Sgt. Shaklee to Deputy Chief Vagge, Det. Araujo was subjected to retaliation in the form of additional reprimands, suspension from all collateral-duty assignments, and reduced hours and pay. Det. Araujo was constructively discharged in June 2015 and now works as a police officer with the Denver Police Department.

II. JURISDICTION AND VENUE

5. 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.*, 42 U.S.C. § 1981, and 42 U.S.C. § 1983.

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

7. All procedural prerequisites for filing this lawsuit have been met. With regard

to Det. Araujo's Title VII claim, Det. Araujo timely filed a Charge of Discrimination alleging race and national origin discrimination against Fort Collins with the Equal Employment Opportunity Commission ("EEOC").

8. A Right to Sue letter was issued to Det. Araujo on February 2, 2016. The original Complaint and Jury Demand was 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), Det. Araujo has satisfied all procedural prerequisites to sue under Title VII for race and national origin discrimination in federal court.

9. All other claims of discrimination and retaliation are brought under 42 U.S.C. § 1981, directly or through 42 U.S.C. § 1983, which contains no administrative exhaustion requirements.

III. PARTIES

10. Plaintiff Detective Kennyberg Araujo ("Det. Araujo" or "Plaintiff Araujo") is a natural person who resides in Colorado, was an employee of the Fort Collins Police Department from 2007 through 2015, and at all relevant times lived in Colorado.

11. Plaintiff Sergeant Francis Gonzales ("Sgt. Gonzales" or "Plaintiff Gonzales") is a natural person who resides in Colorado, has been an employee of the Fort Collins Police Department since 1981, and at all relevant times lived in Colorado.

12. Defendant City of Fort Collins ("Fort Collins") is a Colorado municipal corporation. Fort Collins, through its agent the Fort Collins Police Department ("FCPD"), is the current employer of Plaintiff Gonzales and is the former employer of Plaintiff Araujo. Fort Collins is the proper entity to be sued under 42 U.S.C. § 1981, through 42 U.S.C. § 1983, and is also an employer within the meaning of Title VII.

13. Defendant Deputy Chief Vagge (“Deputy Chief Vagge” or “Defendant Vagge”), former Deputy Chief of Police of the FCPD, is being sued in his individual capacity. At all times relevant to this action, Defendant Vagge was a final policymaker for Fort Collins.

14. The actions of Deputy Chief Vagge, as more particularly described herein, were undertaken individually and as a final policymaker for Fort Collins. Specifically, Defendant Vagge was an authorized decisionmaker for Fort Collins in his role as Deputy Chief of the FCPS such that any and all of his decisions adopting a particular course of action represents an act of official government policy. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986). Chief of Police John Hutto (“Chief Hutto”) delegated to or authorized Deputy Chief Vagge’s conduct described herein, thereby making Deputy Chief Vagge a final policymaker. *See id.* Defendant Vagge’s unlawful actions were reflective of his creation of and conformity with a long standing practice of discrimination based upon race and national origin, which had been condoned, permitted, or otherwise encouraged within the FCPD. Defendant Vagge’s conduct, as more specifically described herein, was undertaken within the course and scope of his employment as a supervisor in the FCPD and under color of law.

15. Defendant Sergeant Gary Shaklee (“Sgt. Shaklee” or “Defendant Shaklee”) is being sued in his individual capacity. Sgt. Shaklee is currently employed by the FCPD as a police sergeant, and he is the former supervisor of Det. Araujo.

16. All actions of Defendant 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 and national origin, which had been condoned, permitted, or otherwise encouraged within the FCPD by Defendants Fort Collins and Vagge, as well as Chief Hutto. Defendant Shaklee’s conduct, as more

specifically described herein, was undertaken within the course and scope of his employment as a supervisor in the FCPD and under color of law.

IV. GENERAL ALLEGATIONS

I. The Fort Collins Police Department Has Fostered and Condoned a Culture of Discrimination Against Latino/Hispanic Officers for Decades

17. The FCPD has a long standing and ongoing policy, practice, or custom of holding Latino/Hispanic officers and applicants to a higher standard than similarly situated white officers and applicants.

18. The FCPD's policy, practice, or custom of discriminating against Latino/Hispanic officers and applicants, as compared to white officers and applicants, is evidenced, in part, through FCPD's discrimination in its promotional and special assignment opportunities, its disparate disciplinary actions, its highly subjective performance evaluations, and its hiring process.

A. The FCPD Has a Policy, Practice, or Custom of Systematically Discriminating Against Latino/Hispanic Officers by Routinely Denying Them Promotional Opportunities

19. The FCPD's policy, practice, or custom of discriminating against Latino/Hispanic officers is evidenced by its regular and repeated denial of promotions of Latino/Hispanic officers that are more or equally qualified candidates as compared to their white counterparts.

20. The FCPD uses a highly subjective promotional process to hide its discriminatory practices, essentially requiring its Latino/Hispanic officers to test out at number one for even a chance at a promotion.

- a) While test results are considered in the promotional process, the Executive Staff interview holds the most sway over whether a candidate is promoted.
- b) The Executive Staff interview is the only step of the process in which there is no

transparency.

- c) The Executive Staff is typically all-white or else does not adequately represent the minority population of Fort Collins.

21. At least in the last three decades, no Latino/Hispanic officer has ever been promoted to a supervisory position in the FCPD without testing out number one in the application process, while many white candidates are regularly promoted based on subjective criteria excusing their lower scores.

22. Even after testing out at number one, most Latino/Hispanic officers are not promoted, leading many Latino/Hispanic officers to leave the FCPD.

23. In the 1970s, Latino/Hispanic Officer John Martinez (“Officer Martinez”) was denied a promotion to sergeant despite having testing out as the top candidate.

24. Officer Martinez was told that Fort Collins was not ready for a Latino/Hispanic sergeant.

25. Soon thereafter, Officer Martinez left the FCPD for the private sector.

26. In 1999, Lieutenant John Pino (“Lt. Pino”) became the first and only Latino/Hispanic officer to have ever been promoted to lieutenant in the FCPD’s history.

27. Lt. Pino’s promotion came only after he tested out as the number one candidate.

28. White candidates who do not test out as the top candidate are regularly promoted due to subjective criteria and the discriminatory biases of the Executive Staff.

29. Defendant Fort Collins has been aware of the decades-long struggle experienced by Latino/Hispanic officers in the FCPD for at least three decades.

- a) In the 1980’s, the Coloradoan newspaper published a piece entitled, “Hispanic officers still face bias.”

b) The article detailed the bias faced by Latino/Hispanic officers both in the Fort Collins community and from within the FCPD.

30. Despite this awareness, Fort Collins has taken no steps to end the culture of discrimination within the FCPD or to foster a more inclusive environment for its Latino/Hispanic officers.

31. In taking no action against this unlawful behavior, Fort Collins has ratified the discriminatory conduct of its supervisors and final policymakers.

B. The FCPD Has a Policy, Practice, or Custom of Discriminating Against Latino/Hispanic Officers by Holding Them to a Higher Standard than their White Counterparts in Disciplinary Matters

32. The FCPD's policy, practice, or custom of discriminating against Latino/Hispanic officers is evident in the disparate discipline given to Latino/Hispanic officers as compared to similarly situated white officers.

33. Latino/Hispanic officers in the FCPD are regularly disciplined for conduct either condoned or overlooked when taken by white officers.

34. For example, in or around 2011, the Fort Collins City Council requested a uniformed presence during their council sessions.

35. Officer Jason Atencio, a Latino/Hispanic male, was assigned the shift during a particularly cold winter day.

36. Because of the sub-zero conditions, Officer Atencio left his patrol car locked and running, knowing that he was expected to have his car ready for an emergency response if he was called out of the council session.

37. Officer Atencio received a letter of reprimand at the direction of Lt. Russell Reed ("Lt. Reed"), who is white, because leaving a patrol car running while unattended is a violation

of FCPD policy.

38. Despite being explained the circumstances, Lt. Reed refused to remove the discipline from Officer Atencio's personnel file.

39. Meanwhile, in November 2014, Lt. Reed left his FCPD vehicle unattended and running for nearly four hours.

40. An officer who observed the vehicle made a verbal complaint to Patrol Division Deputy Chief Jerry Schiager, who is white.

41. Lt. Reed's only explanation for having left his vehicle running and unattended was that he had become distracted.

42. Although Lt. Reed acknowledged having violated FCPD policy on the grounds that he had become distracted, Deputy Chief Schiager refused to write up Lt. Reed.

43. This disparate treatment is just one example of the ongoing discrimination suffered by Latino/Hispanic officers, who receive disparate and disproportionate discipline as compared to their white counterparts.

C. The FCPD Has a Policy, Practice, or Custom of Discriminating Against Latino/Hispanic Officers During its Hiring Process

44. The FCPD's policy, practice, or custom of discriminating against Latino/Hispanic officers begins during its hiring process, where Latino/Hispanic applicants are treated less favorably than white applicants.

45. For example, in 2007, Bryce Gonzales ("Bryce") applied for a sworn officer position with the FCPD.¹

46. Bryce submitted his application at the same time as Tim Brennan ("Mr. Brennan"), a white male.

¹ Bryce Gonzales is Sgt. Gonzales's son. He will be referred to by his first name for ease of reference.

47. Both Bryce and Mr. Brennan completed and passed the oral board process but failed the psychological exam.

48. Bryce was told that due to these results, he would not be allowed to continue through the final phases of the hiring process.

49. Bryce was also prohibited from retesting with the FCPD for eighteen months.

50. Meanwhile, white training sergeant David Haywood overrode Mr. Brennan's psychological test results, allowing him to complete the hiring process and become a sworn officer.

51. No explanation was ever provided for this override, which violates FCPD policy, nor was any reason given as to why only Mr. Brennan was offered this preferential treatment.

52. After becoming eligible for reapplication, Bryce reapplied with the FCPD.

53. Bryce graduated along with fellow recruits Chris Renn, David Lindsay, and Dustin Weir, all of whom are white.

54. Chris Renn, David Lindsay, Dustin Weir, and Bryce were placed in the Field Training Officer ("FTO") Program.

55. The FTO Program is intended to provide a standardized program to facilitate an officer's transition from the academic setting to the actual performance of general law enforcement duties of the Agency.

56. Far from being standardized, Bryce was bounced around to several different training officers during his four phases of training.

57. Upon information and belief, Bryce's white counterparts were given more standardized training and each successfully completed their probationary period.

58. At the end of the probationary period, Bryce was notified by white Patrol Deputy

Chief Jim Szakmeister and Sgt. Haywood that he did not successfully complete his final rotation: the work program.

59. Unlike other probationary officers who fail a rotation, Bryce was not given the option to extend his probation.

60. Upon information and belief, white officers who have been allowed to extend past a failed work program include Joel Tower, Scott Crumbaker, and Leslie Taylor.

61. Bryce was also told that while he may find a career elsewhere, he could never again apply for a sworn officer position with the FCPD.

62. Megan Savage, a white woman, was allowed to reapply to the FCPD after failing the FTO Program.

63. These discriminatory practices have led to an underrepresentation of Latino/Hispanic officers on the FCPD as compared to the ethnic makeup of Fort Collins.

64. While Latinos/Hispanics make up approximately 14% of the population of Fort Collins, only approximately 6% of the officers within the FCPD are Latino/Hispanic.

D. The FCPD Has a Pattern, Practice, or Custom of Retaliating Against Latino/Hispanic Officers Who Bring Complaints or Who Aid Those Bringing Complaints of Race Discrimination

65. In 2012, Lt. Pino brought his concerns of systemic and persistent race discrimination to the attention of the FCPD.

66. Lt. Pino was subsequently removed from his post on the Northern Colorado Drug Task Force (“NCDTF”) in retaliation.

67. Upon information and belief, Lt. Pino is the only lieutenant to have ever been removed from the NCDTF.

68. With the exception of Lt. Pino, for the last fifteen years all lieutenants to have

completed a rotation with the NCDTF have immediately thereafter been promoted to a Deputy Chief position within the FCPD, including Deputy Chiefs Dodd, Schiager, and Yeager.

69. In 2014, Plaintiff Araujo brought his concerns of systemic and persistent race discrimination to the attention of the FCPD.

70. Plaintiff Araujo brought a grievance, initiated an internal investigation, and filed EEOC charges in response to the ongoing race discrimination he was facing at the hands of Defendant Shaklee.

71. In retaliation for bringing these complaints, Plaintiff Araujo was issued a written reprimand, removed from his collateral-duty assignments, suffered a reduction in pay, and was constructively discharged.

72. Plaintiff Gonzales assisted in both Lt. Pino's and Plaintiff Araujo's internal investigations by serving as a witness for each individual.

73. During the process for each investigation, Plaintiff Gonzales was notified by separate individuals that Defendant Vagge had "blackballed" him throughout his career at the FCPD, specifically by blocking his promotion to lieutenant.

74. After assisting in these investigations, Plaintiff Gonzales suffered multiple forms of retaliation.

- a) After assisting in these investigations, Plaintiff Gonzales for the first time failed to make the eligibility list for promotion to lieutenant during an application process.
- b) In or around June 2016, Plaintiff Gonzales was denied special assignment to SRO Sergeant despite being the most qualified candidate.
- c) Plaintiff Gonzales is not presently being considered for the interim lieutenant

position available at the FCPD despite having exceptionally served in the same role for nine months from June 2010 through March 2011.

- d) Plaintiff Shaklee is being considered for the interim lieutenant position despite being the center of repeated complaints of race-based discrimination throughout his career with the FCPD.

75. The FCPD, receiving such complaints of systematic race discrimination, has been on notice of serious allegations of discrimination, yet it has taken no actions to remedy the situation.

76. In taking no action against this unlawful behavior, Fort Collins has ratified the discriminatory conduct of its supervisors and final policymakers.

77. The FCPD has created or fostered a policy, practice, or custom of systemically retaliating against those bringing complaints or aiding others in bringing complaints of race discrimination.

II. Defendants Vagge and Shaklee Have Perpetuated and Deepened the Culture of Discrimination Against the FCPD's Latino/Hispanic Officers Throughout Their Careers

78. The FCPD's policy, practice, and custom of discrimination described above has been perpetuated and deepened by two individuals in particular: Defendant Vagge, a final policy maker for Fort Collins, and Defendant Shaklee, a supervisor within the FCPD.

79. The discriminatory and retaliatory conduct of Defendants Vagge and Shaklee has been repeatedly and consistently ratified by Defendant Fort Collins.

A. Defendant Vagge

i. *Final Policymaker*

80. While Deputy Chief, Defendant Vagge was delegated final decisionmaking

authority with respect to the promotional process within the FCPD Investigation Department.

81. In his role as final policymaker within the FCPD Investigation Department, Defendant Vagge repeatedly discriminated against Sgt. Gonzales by actively blocking his promotion to lieutenant over the course of fifteen years.

82. In his role as final policymaker within the FCPD Investigation Departments, Defendant Vagge failed to take corrective actions against Sgt. Shaklee, supporting and approving Sgt. Shaklee's discriminatory and retaliatory conduct towards Latino/Hispanic Officers including Det. Araujo.

ii. *Discriminatory Conduct*

83. Up until his retirement in 2014, Deputy Chief Vagge had been able to discriminate against Latino/Hispanic officers primarily by pulling strings behind the scenes.

84. For example, in 2012, Deputy Chief Vagge's hypercritical and inaccurate evaluation of Lt. Pino resulted in Lt. Pino being the only NCDTF Commander ever to be removed from that post.

85. Lt. Pino also happens to be the only Latino/Hispanic Task Force Commander in the NCDTF's history.

86. After decades of remaining silent, Lt. Pino brought a grievance against Deputy Chief Vagge for his hypercritical evaluation and relentless race discrimination.

87. Plaintiff Gonzales was interviewed for purposes of the investigation and made statements in support of Lt. Pino's claims of discrimination.

88. Most of Lt. Pino's witnesses were never contacted by HR, let alone questioned.

89. After collecting little evidence on behalf of Lt. Pino, Police Chief John Hutto and Fort Collins's HR Department ruled that there was insufficient evidence to show that Lt. Pino

had been unfairly treated or discriminated against on account of his race.

90. During or immediately after his grievance process was complete, Lt. Pino was removed from his post as lieutenant of the NCDTF.

91. Little to no disciplinary actions were taken against Defendant Deputy Chief Vagge.

92. In taking no action against this unlawful behavior, Fort Collins has ratified the discriminatory conduct of Defendant Vagge.

B. Defendant Shaklee

93. Defendant Shaklee has taken a hands-on role in discriminating against Latino/Hispanic officers throughout his career with the FCPD.

94. Sgt. Shaklee uses racial slurs and stereotypes when referring to Latino/Hispanic officers and individuals.

- a) Defendant Shaklee refers to Latino/Hispanic officers and individuals as “tonks.”
- b) Tonk is derogatory slang used to describe an unlawful immigrant living in the United States.
- c) After Lt. Pino was transferred from the NCDTF, Defendant Shaklee referred to him as “lazy and incompetent,” an obvious racial stereotype, and said that he “had no business being a commander at the Task Force.”
- d) Upon Plaintiff Gonzales receiving a commendation for helping transfer sod to a mixed-income Hispanic community, Defendant Shaklee made a racially charged comment amongst fellow officers about Plaintiff Gonzales being the appropriate recipient of an award for moving grass.
- e) Sgt. Shaklee could not contain his laughter when listening to a hostile voicemail

referring to Plaintiff Araujo as a “wetback.”

95. From approximately 2002-2003, while working as a detective in the NCDTF under the command of Plaintiff Gonzales, Defendant Shaklee openly targeted and discriminated against a Latino/Hispanic female officer, Margaret Figuerora O’Brien.

96. After failing to correct his behavior despite repeated intervention and counseling from Plaintiff Gonzales, Defendant Shaklee was removed from the NCDTF.

97. Despite having been removed from his post for his discriminatory conduct, Defendant Shaklee was thereafter promoted to sergeant.

98. Once promoted, Defendant Shaklee used his authority to more widely and severely discriminate against Latino/Hispanic officers.

99. Defendant Shaklee began a systemic campaign of pushing out Latino/Hispanic officers by falsely claiming that he had received complaints about the officer, thereby justifying an investigation into their behavior.

100. Defendant Shaklee would receive approval to initiate the investigation from Defendant Vagge, who either knew or should have known that the alleged complaints were falsified.

101. When the falsification of these complaints were brought to his attention, Defendant Vagge turned a blind eye to Sgt. Shaklee’s gross misconduct.

102. Defendant Shaklee’s discriminatory and retaliatory conduct was motivated by his desire to secure the resignation or termination of the FCPD’s Latino/Hispanic officers.

103. In taking no action against this unlawful behavior, Fort Collins and Deputy Chief Vagge have ratified the discriminatory conduct of Defendant Shaklee.

C. Fort Collins Ratified the Discriminatory Behaviors of Defendants Vagge and Shaklee, Perpetuating the Policy, Practice, and Custom of Discrimination within

the FCPD

104. Over the past decade, two independent surveys were conducted of FCPD employees, one by Dr. Kim Miller and another by an unknown specialist.

105. Dr. Miller conducted a survey on behalf of Lodge 3 of the Fraternal Order of Police, the results of which were highly critical of Defendant Vagge's management style and his practice of targeting employees and allowing others to do so.

106. Upon receiving these results, Defendant Fort Collins conducted another survey, which validated Dr. Miller's results in all respects.

107. A prior survey conducted by Dr. Jack Digliani resulted in similar findings.

108. Despite the results of each of these findings, Defendant Fort Collins took no action to address these concerns.

109. Indeed, notwithstanding the results of these surveys and multiple complaints by Latino/Hispanic employees that they had been targeted for harassment and subjected to disparate treatment, false complaints, and harassment by Defendants Vagge and Shaklee, Defendant Fort Collins took no action to correct this behavior.

110. Despite repeated complaints of discrimination and retaliation against Sgt. Shaklee throughout his career, the FCPD is presently considering Sgt. Shaklee for an interim lieutenant position.

III. Plaintiff Gonzales Has Suffered from the Same Discriminatory and Retaliatory Policies, Practices, and Customs as his Latino/Hispanic Counterparts

111. Sgt. Gonzales, who is Latino/Hispanic and of Mexican origin, has been subjected to the same discrimination on the basis of his race and national origin as his Latino/Hispanic counterparts.

112. During his 35-year tenure as an employee of Fort Collins, Plaintiff Gonzales has

been discriminated against by the FCPD, Deputy Chief Vagge, and Defendant Shaklee, among others.

A. Sergeant Gonzales Has Dedicated His Life to Serving His Community and is Well Respected on the Force

113. Sgt. Gonzales joined the FCPD as a patrol officer on September 1, 1981.

114. Throughout the performance evaluations of Plaintiff Gonzales over the last three and a half decades, Plaintiff Gonzales is commended for his exceptional relationship with his team as well as members of the community.

115. In Plaintiff Gonzales's 1995 annual review, his then-supervisor Sgt. Tim McLellan wrote, "It's not hard to describe Francis Gonzales. Exceptional character, excellent detective and gang officer, leader, a person with outstanding morals and ethics, a superb team player, an excellent speaker, a man with a great sense of humor, and a consummate worker."

116. In 2001, soon after Plaintiff Gonzales became a sergeant, Lt. Jim Broderick wrote that Sgt. Gonzales "is the 'gold standard' that all past, present and future task force sergeants will be measure[d] by."

117. In 2007, Lt. Pino concluded his evaluation by writing, "In my interactions with Francis, I have found him to be reliable, dependable, enthusiastic, [of] high personal integrity, compassionate, and has a great sense of humor."

118. In 2009, Lt. Broderick commented, "Previous evaluations have highlighted the genuine care Francis has for his people. The impact this has on creating cohesive teams and high esprit de corps within the shift cannot be underestimated."

119. The above quotes are only a sampling from a large pool of extremely positive performance evaluations that Sgt. Gonzales has earned throughout his career with the FCPD.

B. Sergeant Gonzales Was Discriminated Against on the Basis of His Race and National Origin from the Start of His Career with the FCPD

120. Since the beginning of Plaintiff Gonzales's employment with the FCPD, Plaintiff Gonzales has been subjected to race and national origin discrimination.

121. Plaintiff Gonzales was initially hired as a patrol officer in 1981.

122. After receiving little training from unenthusiastic supervisors, Plaintiff Gonzales was unable to successfully complete his probationary period, resulting in an extension of his probationary period in 1982.

123. Upon information and belief, the four white officers hired on the same date as Sgt. Gonzales – Daniel Preller, Jan Herendeen, John Bradshaw, and Judy Swenson – were provided with more thorough training and more willing mentors such that their probationary periods were not extended.

124. An extended probationary period begins an officer's career with a setback.

125. After becoming a sworn officer, Sgt. Gonzales was assigned to Lt. Perman's command, who is white.

126. Although Sgt. Gonzales was outperforming several veteran officers in the platoon, Lt. Perman unrelentingly criticized Sgt. Gonzales's work.

127. Lt. Perman also interfered with Sgt. Gonzales's work performance, writing him up for minor incidents while turning a blind eye to the same behavior of white officers under his command.

128. Lt. Perman's discriminatory motives came to light in 1988, when Lt. Perman yelled at Sgt. Gonzales, "If you run into my car, I'll have you working in Andersonville for the rest of your life."

129. Andersonville is a primarily Hispanic neighborhood.

130. Sgt. Gonzales reported the incident to his supervisor, who prepared a written complaint to Lt. Deryle O’Dell and Commander David Feldman.

131. The complaint stated, in part, “Other minority officers could easily perceive this as an offer of proof that the City is not an Equal Employment Opportunity [Employer]. . . . [F]or a representative of management to make such ethnic slurs only condones and precipitates others to copy the same behavior.”

132. No actions were taken to correct Lt. Perman’s behavior until HR became involved, at which time Lt. Perman apologized to Sgt. Gonzales.

133. Upon information and belief, Lt. Perman was never disciplined for making this racially charged comment or for his other discriminatory behavior.

134. In failing to discipline Lt. Perman for his discriminatory behavior, Fort Collins has ratified the discriminatory conduct of Lt. Perman as well as the discriminatory culture of the FCPD.

C. Deputy Chief Vagge Actively Took Steps to Prevent Plaintiff Gonzales from Being Promoted to Lieutenant on the Basis of Plaintiff Gonzales’s Race and National Origin

135. Deputy Chief Vagge actively discriminated against Plaintiff Gonzales on the basis of Sgt. Gonzales’ race and national origin.

136. Plaintiff Gonzales had his first encounter with Defendant Vagge when Deputy Chief Vagge was a sergeant in the administration wing of the FCPD and Plaintiff Gonzales was still a detective.

137. In or around 1990, Plaintiff Gonzales was accused by Defendant Vagge of cheating because he helped a police officer candidate prepare for her interview process.

138. Despite having engaged in the same conduct regularly taken by white officers,

Plaintiff Gonzales was disciplined for this incident.

139. Fearing that Defendant Vagge would block his promotion to sergeant several years later, Plaintiff Gonzales made sure to test out as the top candidate in order to ensure his promotion.

140. After being promoted, Lt. Pino warned Sgt. Gonzales that he would have to test out at number one if he hoped to become a lieutenant without Deputy Chief Vagge blocking him.

141. Sgt. Gonzales began applying for a lieutenant position in 2002. Despite having been the most qualified candidate throughout a number of application processes, he has never been promoted. Throughout the years, the highly subjective and non-transparent Executive Staff interview has been cited as the reason for why a non- Latino/Hispanic candidate was promoted over Sgt. Gonzales.

142. From July 2010 through the end of March 2011, Sgt. Gonzales served as Interim Lieutenant for the Late Week Day shift.

143. Sgt. Gonzales performed this role exceptionally well, exceeding the expectations of Captain Jim Szakmeister.

144. During this time period, Plaintiff Gonzales applied for a full-time lieutenant position.

145. Two white officers, Sgts. Russell Reed and David Haywood, also applied for a full-time lieutenant position.

146. Both white candidates were promoted, while Sgt. Gonzales was held back.

147. Approximately three years later, nearly each of Lt. Reed's officers bid off of his shift due to his poor leadership skills.

148. Despite performing extremely well in every promotional process, the FCPD has

relied on subjective criteria to deny Sgt. Gonzales the promotion he justly deserves.

149. In 2012 and 2014, Sgt. Gonzales was explicitly told that Deputy Chief Vagge had “blackballed” him from promotion throughout his career.

150. The final policymaker with respect to Sgt. Gonzales’s promotion to lieutenant has at all relevant times been Deputy Chief Vagge.

D. Defendant Shaklee Discriminated Against Sgt. Gonzales on the Basis of His Race and National Origin

151. Sgt. Shaklee followed his pattern of race-based discrimination in his actions toward Sgt. Gonzales.

152. In or around 2011, Plaintiff Shaklee began surveilling Plaintiff Gonzales without reason or explanation, ultimately confronting Plaintiff Gonzales about his whereabouts on certain days.

153. Sgt. Shaklee is not and never has been Sgt. Gonzales’s supervisor.

154. That same year, Sgt. Shaklee told Sgt. Gonzales that he had received complaints from fellow supervisors that Sgt. Gonzales had not made himself available to them.

155. Upon information and belief, Sgt. Shaklee sought to use these fabricated complaints to launch an unjustified investigation into Sgt. Gonzales.

156. After speaking with the alleged complainants, Sgt. Gonzales discovered that no such complaints had been made.

157. In or around 2014, Sgt. Gonzales received a commendation for local volunteer work in which he transferred donated sod to a mixed-income Hispanic community to provide green areas for the children to play on.

158. Upon Sgt. Gonzales’s receipt of the award, Sgt. Shaklee commented to a group of officers, “It’s very appropriate that *he* would receive a commendation for moving grass.”

E. In Retaliation for Bringing and Assisting Others in Bringing Complaints of Discrimination, Sgt. Gonzales was Subjected to Adverse Employment Actions and Continues to be Discriminated Against

159. Plaintiff Gonzales testified and assisted in two separate investigations of discrimination by serving as a witness in support of the internal complaints of Lt. Pino in 2012 and of Plaintiff Araujo in 2014.

160. Testifying and assisting in investigations of discrimination are protected activities.

161. As a result of assisting in the investigations, Sgt. Gonzales continued to be “blackballed” by Deputy Chief Vagge with respect to his promotional opportunities.

162. Sgt. Gonzales failed to make the eligibility list for promotion to lieutenant for the first time in his career after assisting in an investigation of discrimination.

163. In or around June 2016, Plaintiff Gonzales was also passed over for special assignment to SRO Sergeant despite being the most qualified candidate for the job.

164. A less-qualified white candidate was selected for the SRO Sergeant’s position in lieu of Sgt. Gonzales.

165. Plaintiff Gonzales had sought out the SRO Sergeant position for over a decade, making his interest well known to his teammates and supervisors.

166. Considering his substantial experience with and dedication to the local school district, a number of strong recommendation letters were written on behalf of Sgt. Gonzales’s assignment to the SRO Sergeant position by representatives of the local schools.

167. Despite Sgt. Gonzales’s significant qualifications, a white sergeant named Laura Lunsford was chosen for the position.

168. Sgt. Lunsford has virtually no experience with the local schools and had not expressed an ongoing interest in the position.

IV. Plaintiff Araujo Has Suffered from the Same Discriminatory and Retaliatory Policies, Practices, and Customs as His Latino/Hispanic Counterparts

169. Det. Araujo, who is Latino/Hispanic and Brazilian, has been subjected to the same discrimination on the basis of his race and national origin as his Latino/Hispanic counterparts.

170. Det. Araujo was born and raised in Brazil and is of Brazilian descent.

171. Det. Araujo is fluent in Portuguese, Spanish, and English.

172. Prior to immigrating to the United States and joining the FCPD, Det. Araujo served in the military, earning the rank of lieutenant.

A. Detective Araujo Was on Track to Become a Successful FCPD Officer until He Was Assigned to Sgt. Shaklee's Supervision

173. Det. Araujo was hired by the FCPD as a patrol officer in 2007.

174. In Det. Araujo's first performance evaluation, his then-supervisor Sgt. Byrne wrote, "Kennyberg has the essentials to be an exceptional officer. He genuinely believes in the mission of FCPD and has a heart for service."

175. During his next rotation in 2008, Det. Araujo was assigned to Sgt. Shaklee's command.

176. Sgt. Shaklee used his first performance evaluation of Det. Araujo to deliver overly harsh criticism, issue Det. Araujo a written reprimand, and extend Det. Araujo's probation.

177. The written reprimand was issued for having violated FCPD policy requiring all officers to submit police reports before the end of their shift for any police action taken during that shift.

178. White Officer Mike McGregor, who was hired in the same class as Det. Araujo, received the same reprimand.

179. While Officer McGregor went on to complete his probationary period at the scheduled time and rotate to another shift, Det. Araujo was put on a work plan and kept under

Sgt. Shaklee's watch, with the written reprimand cited as the sole reason.

180. The extension of his probationary period had significant ripple effects on Det. Araujo's career advancement and income, as the delay regularly prevented him from applying for assignments and promotions for not having the requisite non-probationary years on the force.

181. In addition, all pay raises for Det. Araujo were delayed by six months, the length of his extended probation.

182. The other officers in his hiring class, none of whom were Latino/Hispanic, were permitted to complete their probationary period on schedule and thus did not suffer from the same career setbacks and reduced pay as Det. Araujo.

183. During that same year, Det. Araujo received an angry voicemail from a suspect in a case who had been charged with assault and intimidation of a witness.

184. The suspect ranted, in part, "I can't believe that the Fort Collins Police Department would allow a wetback to walk out of the fields and hang a badge and gun and go out in the streets to enforce the law."

185. When Det. Araujo played Sgt. Shaklee the voicemail referring to Det. Araujo as a "wetback," Sgt. Shaklee began to laugh uncontrollably.

186. The following year, Sgt. Shaklee took active measures to prevent Det. Araujo's assignment to the SWAT team.

187. In 2009, Det. Araujo applied for special assignment to the SWAT team.

188. Despite Det. Araujo's having outperformed the competition, Sgt. Shaklee told the selection committee that they needed to go with someone else because Det. Araujo did not have enough experience.

189. Justin Yeager, a white officer with less experience than Det. Araujo, was chosen

for the position.

190. After Sgt. Shaklee left SWAT in 2010, Det. Araujo reapplied and was accepted onto the SWAT team.

191. At that time, one of the selection committee members told Det. Araujo that the committee had planned to select him for the open spot the year prior, but that Sgt. Shaklee pressured the committee to select Officer Yeager.

192. In 2009, Plaintiff Shaklee was assigned as the sergeant of the NCDTF despite having been removed as a detective from the unit in 2003 for having engaged in race-based discriminatory conduct towards fellow officers.

193. In January 2012, Plaintiff Araujo was assigned to the NCDTF, a special assignment given to only the most promising officers.

194. Immediately after being assigned to the NCDTF, Det. Araujo experienced hostility from Sgt. Shaklee.

195. Sgt. Shaklee micromanaged Det. Araujo's work, provided overly critical feedback, and wrote scathing performance reviews of Det. Araujo.

196. Sgt. Shaklee actively interfered with Det. Araujo's ability to perform his job while criticizing him for having fewer arrests, drug and money seizures, cases filed, and closed cases.

197. Sgt. Shaklee actively avoided communicating with Det. Araujo, preferring to discuss matters with non- Latino/Hispanic detectives even where Det. Araujo was the lead case officer.

B. In 2014, Sgt. Shaklee Fabricated Complaints Against and Initiated an Unjustified Investigation into Det. Araujo in a Successful Scheme to Push Him Out of the FCPD

198. On July 1, 2014, Sgt. Shaklee issued Det. Araujo a written reprimand for having

allegedly violated FCPD policy requiring police officers to submit reports on the same day as their police activity.

199. The only incidents cited by Sgt. Shaklee in support of the write-up were instances in which Det. Araujo served solely as an interpreter for his fellow officers' investigations.

200. Pursuant to FCPD policy, translators have an ethical obligation to remain neutral, while police officers have an obligation to investigate in a non-neutral manner. For this reason, when acting solely as a translator and not as an investigator, an officer typically does not submit a police report.

201. On February 6, 2014, Sgt. Shaklee texted Det. Araujo that the two needed to talk about "this Spanish speaking case."

202. Sgt. Shaklee was referring to a case in which his wife, Det. Jaclyn Shaklee, had asked Det. Araujo for his translation services.

203. According to Sgt. Shaklee, his wife had complained to him that Det. Araujo never wrote a police report after Det. Araujo conducted a phone call in Spanish on behalf of one of her cases.

204. Sgt. Shaklee claimed that he had also received a complaint from Sgt. Kristy Volesky regarding Det. Araujo's failure to complete a police report in another case under the same circumstances.

205. After Det. Araujo tried to explain the difference between acting as a neutral translator and an investigative bilingual officer, Sgt. Shaklee asked Det. Araujo if he had provided any other translation services in the recent past.

206. Det. Araujo responded that he had assisted Det. Siobhan Jungmeyer with the translation of 179 Portuguese text messages in August 2013.

207. Sgt. Shaklee knew of these translation services, as he had explicitly directed Det. Araujo to assist in the translation of the text messages.

208. Det. Araujo admitted to Sgt. Shaklee that he had not submitted a report in the three cases about which he was being questioned.

209. Despite having explained the reason for failing to file these reports, Sgt. Shaklee ordered Det. Araujo to write the reports.

210. Det. Araujo immediately completed the reports per Sgt. Shaklee's orders.

211. Nearly five months later, on July 1, 2014, Det. Araujo received a written reprimand for having failed timely to complete police reports, with two of the three translation cases cited as proof.²

212. In the reprimand, Sgt. Shaklee claimed to have only learned of one of the cases on February 7 and the other on February 18, despite having spoken to Det. Araujo about both on February 6, 2014.

213. Sgt. Shaklee omitted any and all mention of his wife's case, the alleged impetus for the February 6 conversation.

214. Sgt. Shaklee made knowingly false statements and omitted key information in his written reprimand, in violation of FCPD policy.

215. The reprimand itself also evidences a form of disparate treatment. Although each of the primary officers from the three translation cases had failed to submit timely reports of their police work and had violated other FCPD policies with respect to properly recording Det. Araujo's assistance, only Det. Araujo was reprimanded for violating FCPD policy. Out of these individuals, only Det. Araujo is Latino/Hispanic.

² Although the reprimand is dated May 28, it was not presented to Det. Araujo until July 1, 2014.

216. As of July 1, 2014, Det. Jaclyn Shaklee had still not submitted a police report regarding Det. Araujo's phone call in her case.

217. Upon information and belief, Det. Jaclyn Shaklee, who is white, has received no discipline for failing to submit this report.

218. Following this reprimand, Det. Araujo contacted two of the officers who had allegedly made complaints about him, both of whom insisted that they had done no such thing.

219. At least one of these officers notified Det. Araujo that she had been contacted by Sgt. Shaklee as part of an investigation he had been conducting into Det. Araujo.

220. At this time, Det. Araujo became aware that Sgt. Shaklee had initiated an investigation into his conduct, a violation of FCPD policy and the union's Collective Bargaining Agreement, both of which require that the subject of an investigation receive timely notification of it.

C. Det. Araujo Brought Complaints of Discrimination Against Sgt. Shaklee, To No Avail

221. On or around July 15, 2014, Det. Araujo filed a formal grievance with Defendant Vagge asking that Sgt. Shaklee's written reprimand be rescinded and that appropriate action be taken in response to Sgt. Shaklee's misconduct.

222. Deputy Chief Vagge summarily denied the request.

223. Deputy Chief Vagge refused to address any of the complaints lodged against Sgt. Shaklee, as the issues raised, "in my opinion, aren't narrowly focused on the issue of the written reprimand and therefore are beyond the scope of a disciplinary grievance."

224. Det. Araujo appealed the denial of his grievance to Chief Hutto, the present chief of police.

225. Chief Hutto summarily denied the appeal.

226. According to Chief Hutto, he “spoke at length with Deputy Chief Vagge in order to gain a better understanding of the issues at hand.”

227. Chief Hutto took no steps to speak personally with Det. Araujo regarding the grievance.

228. Chief Hutto consulted solely with Deputy Chief Vagge even though Defendant Vagge had been at the center of an investigation of race discrimination against Lt. Pino just two years prior.

229. By relying solely on Deputy Chief Vagge’s perspective and decision, Chief Hutto delegated to Deputy Chief Vagge final decisionmaking authority with respect to Det. Araujo’s grievance.

230. After failing to have his complaints against Sgt. Shaklee taken seriously by both Deputy Chief Vagge and Chief Hutto, Det. Araujo initiated a formal investigation with Internal Affairs (“IA”).

231. In the IA complaint, Det. Araujo alleged that Sgt. Shaklee had violated sixteen of the Administrative Investigation Procedures.

232. Despite the number of alleged violations, IA only reviewed the matter within the lens of two policies: (1) Expectations of Conduct, Policy 340.3.5 and (2) Administrative Investigations, Policy 1020.6.4(b).

233. IA overruled the complaint as to Sgt. Shaklee’s violation of Policy 340.3.5., finding that Sgt. Shaklee had not made false claims despite there being uncontroverted evidence that Sgt. Shaklee manufactured complaints in order to justify issuing Det. Araujo a reprimand.

234. IA sustained the complaint as to Sgt. Shaklee’s violation of Policy 1020.6.4(b), which requires that investigations be conducted in a fair and impartial manner.

235. Despite this finding, the written reprimand was never removed from Det. Araujo's personnel file.

236. It is also believed that Sgt. Shaklee received no discipline for his misconduct.

237. In taking no disciplinary action against Sgt. Shaklee, Fort Collins has ratified Sgt. Shaklee's discriminatory and unlawful behavior.

238. During this same time period, Fort Collins's HR Department conducted its own investigation of Sgt. Shaklee, finding there to be insufficient evidence to prove race-based discrimination.

239. Sgt. Shaklee told HR that the entire situation was a misunderstanding.

240. Sgt. Shaklee told HR that he and Det. Araujo were good friends and that their children played together at his house on a regular basis, which is not true.

241. These statements were never corroborated with Det. Araujo, who is believed to be the only Fort Collins detective on the NCDTF never to have been invited to Sgt. Shaklee's home.

242. Sgt. Gonzales assisted in this investigation just as he had for Lt. Pino.

243. Based on HR's findings, it appears that Sgt. Gonzales's statements were not taken seriously.

244. On October 7, 2014, Det. Araujo filed a charge with the Equal Employment Opportunity Commission ("EEOC") alleging race and national origin discrimination.

D. After Bringing Complaints of Discrimination, Detective Araujo Suffered Unlawful Retaliation, Resulting in his Constructive Discharge

245. In January 2015, several months after grieving his written reprimand, initiating an IA investigation, and filing a charge of discrimination with the EEOC, Det. Araujo received a confidential memorandum from his lieutenant supervisor, Lt. David Pearson.

246. The memo stated that since the July 1, 2014 written reprimand, Lt. Pearson had

“become aware of other performance related issues.”

247. After outlining a number of cases awaiting reports by Det. Araujo, Lt. Pearson explicitly prohibited Det. Araujo from performing any collateral duty assignments for a period of four months, resulting in his inability to work any overtime.

248. The letter also makes significant demands of Det. Araujo regarding his completion of a number of assignments in a short timeframe and calls for the micromanagement of Det. Araujo by Sgt. Shaklee, the person he had just accused of race-based discrimination against him.

249. The letter closes, “Failure to perform to these expectations could result in suspension from your collateral duties, removal from the Northern Colorado Drug Task Force, and/or disciplinary action.”

250. To Det. Araujo’s knowledge, Sgt. Shaklee and Lt. Pearson have not disciplined any white officers who regularly fail to submit police reports before their shift ends for the day, including officers on the same cases listed in Lt. Pearson’s letter.

251. Lt. Pearson himself failed to submit a timely report in at least one case on which Det. Araujo’s retaliatory discipline was based.

252. It is believed that Lt. Pearson was never disciplined for failing to timely submit this report.

253. The ongoing discrimination and retaliation suffered by Det. Araujo over many years resulted in his constructive discharge in June 2015.

254. Det. Araujo resigned after the discriminatory and retaliatory environment became too intolerable to continue working for the FCPD.

255. Det. Araujo now works as a police officer with the Denver Police Department.

V. Fort Collins Has Continually Failed to Take Seriously Complaints of Race Discrimination

256. As discussed above, the FCPD has been aware of its culture of discrimination against Latino/Hispanic officers for decades.

257. In taking no action to correct this unlawful behavior, Fort Collins has engaged in discrimination and has ratified the discriminatory conduct of its supervisors and final policymakers.

258. In 2012 and 2014, the FCPD witnessed formal complaints of race discrimination being brought against Deputy Chief Vagge and Sgt. Shaklee.

259. Although these complaints were investigated by HR, it was apparent to Sgt. Gonzales, a witness for both complainants, that the accusations were not being taken seriously.

260. Based on his interviews with HR, Sgt. Gonzales was not surprised when the investigations exonerated Defendant Vagge and Defendant Shaklee.

261. Chief Hutto recently emailed the entire FCPD stating,

It has come to my attention that a message has gone out to the bargaining unit acknowledging that there may be people within the Department who have experienced discrimination, retaliation, or been targeted in some way and that these actions have had an adverse effect on their careers. It concerns and troubles me that there may be folks in our organization that feel this way. If you are one then I am urging you to not remain silent. Find a way to make your voice heard. My door is always open and, as I have said in the past, I am ready to listen. There are numerous other paths you could take and I encourage you to do whatever you are most comfortable with. Go to the FOP, your supervisor, or a co-worker. If at the end of the day even one person feels this way it is unacceptable to me. You have my personal promise that your concerns will be taken seriously and addressed.

262. Chief Hutto has been aware of the culture of discrimination suffered by his Latino/Hispanic officers for many years now, but he has failed time and again to take seriously the concerns of those whose lives and careers have been affected by this discriminatory work

environment.

263. Despite Chief Hutto's recent email insisting that he takes complaints of discrimination seriously, Sgt. Shaklee is currently being considered for an interim lieutenant position.

264. Sgt. Gonzales spent nine months successfully serving as interim lieutenant over the Late Week Day Shift, receiving a glowing commendation for his efforts.

265. To Sgt. Gonzales's knowledge, he is not being considered for the present interim lieutenant position.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF Violation of Title VII, 42 U.S.C § 2000e-2(a) Race and National Origin Discrimination (Plaintiff Araujo Against Defendant Fort Collins)

266. Plaintiffs hereby incorporate all other paragraphs of this First Amended Complaint as if fully set forth herein.

267. Plaintiff Araujo is Latino/Hispanic and Brazilian.

268. Based on his race and national origin, Plaintiff Araujo is a member of a class of citizens protected by Title VII.

269. At all relevant times, Plaintiff Araujo performed the functions of his job competently and was qualified for his position with Defendant Fort Collins.

270. Fort Collins treated Det. Araujo less favorably than his similarly situated non-Latino/Hispanic and non-Brazilian counterparts.

271. Fort Collins, by and through the conduct of its employees and agents, has unlawfully denied Plaintiff Araujo the benefits, privileges, promotional opportunities, and terms and conditions of his employment due to his race and national origin.

272. Plaintiff Araujo was subjected to adverse treatment because of his race and national origin, including but not limited to denials of promotional opportunities and special assignments, written reprimands, overly critical performance evaluations, reduced pay, and denial of continued employment based on his race and national origin, as detailed above.

273. The effect of the practices complained of above has been to deprive Plaintiff Araujo of equal employment opportunities and otherwise adversely affect his status as an employee.

274. The unlawful employment practices complained of above were intentional.

275. The unlawful employment practices complained of above were done with malice or reckless indifference to the federally protected rights of Plaintiff Araujo.

276. Fort Collins's discriminatory actions did cause and will continue to cause Plaintiff Araujo to suffer economic losses as well as severe emotional distress and other significant injuries, damages, and losses.

277. The unlawful employment practices of Fort Collins and its agents, supervisors, and employees directly and proximately resulted in such damages as may be proven at trial, including but not limited to lost income and benefits; lost employment opportunities; psychological, emotional, and mental anguish; distress, humiliation, embarrassment, and degradation; pain and suffering; and Plaintiff Araujo's attorneys' fees and costs in bringing this action.

SECOND CLAIM FOR RELIEF
Violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981
Race Discrimination
(All Plaintiffs Against Defendants Shaklee and Vagge in their Individual Capacities)

278. Plaintiffs hereby incorporate all other paragraphs of this First Amended Complaint as if fully set forth herein.

279. Plaintiff Araujo is Latino/Hispanic and Brazilian.

280. Plaintiff Gonzales is Latino/Hispanic and of Mexican origin.

281. Plaintiffs are thus members of protected classes under 42 U.S.C. § 1981. *See St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 611 (1987); *Manzanares v. Safeway Stores, Inc.*, 593 F.2d 968, 970 (10th Cir. 1979); *Zapata v. IBP, Inc.*, No. Civ. A. 93-2366-EEO, 1998 WL 717621, at *3 (D. Kan. Sept. 29, 1998).

282. Defendants Vagge and Shaklee discriminated against Plaintiffs in violation of 42 U.S.C. § 1981 based on their race.

283. Defendants Vagge and Shaklee were personally involved in and have an affirmative link to the acts of discrimination suffered by Plaintiffs Araujo and Gonzales.

284. Defendants Vagge and Shaklee have unlawfully denied Plaintiffs the benefits, privileges, promotional opportunities, and terms and conditions of their employment due to their race.

285. Plaintiffs were subjected to adverse treatment because of their race, including but not limited to denials of promotional opportunities and special assignments, written reprimands, overly critical performance evaluations, reductions in pay, and denial of continued employment based on their race, as detailed above.

286. Defendants Vagge and Shaklee treated Plaintiffs less favorably than their similarly situated non-Mexican/Brazilian, non- Latino/Hispanic counterparts.

287. The effect of the practices complained of above has been to deprive Plaintiffs of equal employment opportunities, otherwise adversely affect their status as employees, deprive them of their right to make and enforce contracts, and deprive them of the full and equal benefit of laws, because of their race.

288. The unlawful employment practices complained of above were intentional.

289. The unlawful employment practices complained of above were done with malice or reckless indifference to the federally protected rights of Plaintiffs.

290. Defendants Vagge's and Shaklee's discriminatory actions did cause and will continue to cause Plaintiffs to suffer economic losses as well as severe emotional distress and other significant injuries, damages, and losses.

291. The unlawful practices of Defendants Vagge and Shaklee directly and proximately resulted in such damages as may be proven at trial, including but not limited to lost income and benefits; lost employment opportunities; psychological, emotional, and mental anguish; distress, humiliation, embarrassment, and degradation; pain and suffering; and Plaintiffs' attorneys' fees and costs in bringing this action.

THIRD CLAIM FOR RELIEF
Violation of the Civil Rights Act of 1866, 42 U.S.C. § 1981
Retaliation

(All Plaintiffs Against Defendants Shaklee and Vagge in their Individual Capacities)

292. Plaintiffs hereby incorporate all other paragraphs of this First Amended Complaint as if fully set forth herein.

293. Defendants Vagge and Shaklee retaliated against Plaintiffs in violation of 42 U.S.C. § 1981.

294. Plaintiffs engaged in protected activity by opposing what they reasonably believed were unlawful discriminatory employment practices prohibited by 42 U.S.C. § 1981 based on race, and/or by filing charges, testifying, assisting, or participating in an investigation, proceeding, or hearing, and/or by being associated with someone who engaged in one or more of these protected activities.

295. Plaintiffs' protected activities include, but are not limited to, filing charges

with the EEOC, filing internal grievances, reporting issues of race-based discrimination to management and supervisors within Fort Collins, and assisting with internal investigations of race discrimination.

296. In response to Plaintiffs' protected conduct, Defendants Vagge and Shaklee retaliated against them through adverse employment actions.

297. Defendants Vagge and Shaklee were personally involved in and have an affirmative link to the acts of retaliation suffered by Plaintiffs Araujo and Gonzales.

298. Defendant Vagge's and Shaklee's retaliatory adverse employment actions against Plaintiffs have included demotions, transfers, denials of promotion and special assignment, reduction in pay, and constructive discharge, as discussed in detail above.

299. Defendants Vagge and Shaklee treated Plaintiffs more adversely than their similarly situated counterparts who did not take part in protected conduct opposing race discrimination in the workplace.

300. The unlawful employment practices complained of above were intentional.

301. The unlawful employment practices complained of above were done with malice or reckless indifference to the federally protected rights of Plaintiffs.

302. Defendants Vagge's and Shaklee's retaliatory actions did cause and will continue to cause Plaintiffs to suffer economic losses as well as severe emotional distress and other significant injuries, damages, and losses.

303. The unlawful retaliatory practices and other acts or omissions of Defendants Vagge and Shaklee directly and proximately resulted in such damages as may be proven at trial, including but not limited to lost income and benefits; lost employment opportunities;

psychological, emotional, and mental anguish; distress, humiliation, embarrassment, and degradation; pain and suffering; and Plaintiffs' attorneys' fees in bringing action.

FOURTH CLAIM FOR RELIEF
Violation of 42 U.S.C. § 1981, Brought Through 42 U.S.C. § 1983
Discrimination on the Basis of Race
(All Plaintiffs Against Defendant Fort Collins)

304. Plaintiffs hereby incorporate all other paragraphs of this First Amended Complaint as if fully set forth herein.

305. At all times relevant to this claim, Defendant Vagge, in his role as Deputy Chief, was a final policymaker for Fort Collins.

306. At all times relevant to this claim, Defendants Vagge and Shaklee were acting under color of state law in their capacities as Fort Collins law enforcement officers.

307. Plaintiffs Araujo and Gonzales had a clearly established right under the law of the United States to the full and equal benefit of the laws, to equal employment opportunities, and to make and enforce contracts.

308. At all times relevant to this claim, Defendants Fort Collins and Vagge maintained longstanding policies, customs, or practices, and failed to properly train, supervise, and discipline FCPD officers in a manner amounting to deliberate indifference with respect to discrimination in the workplace.

309. Defendants Fort Collins and Vagge established policies, customs, and practices promoting race-based discrimination while failing to discipline, train, and supervise Sgt. Shaklee concerning his discriminatory treatment of Latino/Hispanic officers in the workplace.

310. At all times relevant to this claim, it was clearly established that supervisors could not interfere with an employee's right to the full and equal benefit of the laws, to equal

employment opportunities, and to make and enforce contracts by discriminating against employees on the basis of race.

311. Any reasonable supervisor acting under the color of state law knew or should have known of these clearly established rights.

312. Defendant Shaklee engaged in discriminatory conduct that was objectively unreasonable in light of the facts and circumstances confronting him, violating Plaintiffs' rights to the full and equal benefit of the laws, to equal employment opportunities, and to make and enforce contracts.

313. Defendant Shaklee knew that his discriminatory conduct would result in demotions, transfers, denials of promotional opportunities and special assignments, written reprimands, overly critical performance evaluations, reduction in pay, and denial of continued employment for Plaintiffs Araujo and Gonzales.

314. Defendant Shaklee engaged in the acts and omissions described herein pursuant to the customs, policies, and practices of Fort Collins, which encourages, condones, tolerates, and ratifies the unlawful discriminatory culture against its Latino/Hispanic officers.

315. Defendant Shaklee's actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Plaintiffs' federally protected rights.

316. Defendants Fort Collins's and Vagge's policies, customs, and/or practices and failure to properly monitor, train, supervise and discipline their employees were the moving force and proximate cause of the violation of Plaintiffs' federally protected rights.

317. The discrimination in violation of federal law suffered by Plaintiffs was a foreseeable consequence of Defendants Fort Collins's and Vagge's actions and inactions.

318. Defendants Fort Collins and Vagge were deliberately indifferent to the federal rights of Fort Collins's Latino/Hispanic employees by failing to properly train, monitor, supervise, and discipline FCPD's workforce with respect to discrimination in the workplace. Defendants Fort Collins and Vagge could have and should have pursued reasonable methods of training, monitoring, supervising, and disciplining FCPD employees.

319. Defendants Fort Collins's and Vagge's acts or omissions as described herein deprived Plaintiffs of the rights, privileges, liberties, and immunities secured by the laws of the United States of America, and caused them other damages.

320. As a direct result of Defendants Fort Collins's and Vagge's unlawful actions as described above, Plaintiffs have suffered economic and non-economic injuries in an amount to be proven at trial.

321. The acts or omissions of Defendants Fort Collins and Vagge directly and proximately resulted in such damages as may be proven at trial, including but not limited to lost income and benefits; lost employment opportunities; psychological, emotional, and mental anguish; distress, humiliation, embarrassment, and degradation; pain and suffering; and Plaintiffs' attorneys' fees in bringing this action.

FIFTH CLAIM FOR RELIEF
Violation of 42 U.S.C. § 1981, Brought Through 42 U.S.C. § 1983
Retaliation
(All Plaintiffs Against Defendant Fort Collins)

322. Plaintiffs hereby incorporate all other paragraphs of this First Amended Complaint as if fully set forth herein.

323. At all times relevant to this claim, Defendant Vagge, in his role as Deputy Chief, was a final policymaker for Fort Collins.

324. At all times relevant to this claim, Defendants Vagge and Shaklee were acting under color of state law in their capacities as Fort Collins law enforcement officers.

325. Plaintiffs Araujo and Gonzales had a clearly established right under the law of the United States to the full and equal benefit of the laws, to equal employment opportunities, and to make and enforce contracts.

326. At all times relevant to this claim, Defendants Fort Collins and Vagge maintained longstanding policies, customs, or practices, and failed to properly train, supervise, and discipline FCPD officers in a manner amounting to deliberate indifference with respect to retaliatory conduct in the workplace.

327. Defendants Fort Collins's and Vagge's longstanding policies, customs, and practices, and failure to train, supervise, and discipline its officers included failure to train officers on avoiding and preventing retaliation against those who bring complaints of discrimination or those who aid in the bringing of such complaints.

328. Fort Collins and Deputy Chief Vagge established policies, customs, and practices of ignoring retaliatory conduct while failing to discipline, train, and supervise Sgt. Shaklee concerning his retaliatory treatment of officers who engaged in protected conduct by opposing race discrimination.

329. At all times relevant to this claim, it was clearly established that supervisors could not interfere with an employee's right to the full and equal benefit of the laws, to equal employment opportunities, and to make and enforce contracts by discriminating against employees on the basis of race.

330. Any reasonable supervisor acting under the color of state law knew or should have known of these clearly established rights.

331. Defendant Shaklee engaged in retaliatory conduct that was objectively unreasonable in light of the facts and circumstances confronting him, violating Plaintiffs' rights to the full and equal benefit of the laws, to equal employment opportunities, and to make and enforce contracts.

332. Defendant Shaklee knew that his retaliatory conduct would result in demotions, transfers, denials of promotional opportunities and special assignments, written reprimands, overly critical performance evaluations, reduction in pay, and denial of continued employment for Plaintiffs Araujo and Gonzales.

333. Defendant Shaklee engaged in the acts and omissions described herein pursuant to the customs, policies, and practices of Fort Collins, which encourages, condones, tolerates, and ratifies the unlawful retaliatory culture against its Latino/Hispanic officers.

334. Defendant Shaklee's actions, as described herein, were undertaken intentionally, maliciously, willfully, wantonly, and/or in reckless disregard of Plaintiffs' federally protected rights.

335. Defendants Fort Collins's and Vagge's policies, customs, and/or practices and failure to properly monitor, train, supervise and discipline their employees were the moving force and proximate cause of the violation of Plaintiffs' federally protected rights.

336. The retaliation in violation of federal law suffered by Plaintiffs Araujo and Gonzales was a foreseeable consequence of Fort Collins's and Deputy Chief Vagge's actions and inactions.

337. Defendants Fort Collins and Vagge were deliberately indifferent to the federal rights of Fort Collins's Latino/Hispanic employees by failing to properly train, monitor, supervise, and discipline FCPD's workforce with respect to retaliation in the workplace.

Defendants Fort Collins and Vagge could have and should have pursued reasonable methods of training, monitoring, supervising, and disciplining FCPD employees.

338. Defendants Fort Collins's and Vagge's acts or omissions as described herein deprived Plaintiffs of the rights, privileges, liberties, and immunities secured by the laws of the United States of America, and caused them other damages.

339. As a direct result of Defendants Fort Collins's and Vagge's unlawful actions as described above, Plaintiffs have suffered economic and non-economic injuries in an amount to be proven at trial.

340. The acts or omissions of Defendants Fort Collins and Vagge directly and proximately resulted in such damages as may be proven at trial, including but not limited to lost income and benefits; lost employment opportunities; psychological, emotional, and mental anguish; distress, humiliation, embarrassment, and degradation; pain and suffering; and Plaintiffs' attorneys' fees in bringing this action.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, and award them all relief as allowed by law, including but not limited to the following:

- a. All declaratory relief and injunctive relief, as appropriate;
- b. Actual economic damages, including but not limited to back pay, font pay, and lost benefits, as established at trial;
- c. Compensatory damages, including but not limited to those for future pecuniary and non-pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, and other non-pecuniary losses;

- d. Liquidated damages for all claims as allowed by law, in an amount to be determined at trial;
- e. Punitive damages for all claims as allowed by law, in an amount to be determined at trial;
- f. Prejudgment and post-judgment interest at the highest lawful rate;
- g. Attorneys' fees and costs; and
- h. Such further relief as justice requires.

PLAINTIFFS REQUEST A TRIAL TO JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 7th day of September, 2016.

s/ Laura B. Wolf

Laura B. Wolf

Qusair Mohamedbhai

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 7th day of September, 2016, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** was served via electronic mail on the following:

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s/ Laura B. Wolf _____
Laura B. Wolf