

**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.

SCHEDULING ORDER

1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL

A Scheduling Conference in this case was held on November 16, 2016 at 8:30 a.m. in Courtroom A902 of the Alfred A. Arraj Courthouse, 901 19th Street, Denver, Colorado. Qusair Mohamedbhai and Laura B. Wolf attended for Plaintiffs, Cathy Havener Greer and Jenny Lopez Filkins attended for Defendant City of Fort Collins, David R. DeMuro attended for Defendant Donald Vagge, and Marni Nathan Kloster attended for Defendant Gary Shaklee. The Parties will be represented in this case as follows:

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2. STATEMENT OF JURISDICTION

As a result of Plaintiffs' assertion of violations of their civil rights pursuant to 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, Plaintiffs have presented a federal question over which this Court properly has jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiffs' claim for attorneys' fees and costs is conferred by 42 U.S.C § 2000e-5(k) and 42 U.S.C. § 1988(b). Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the state of Colorado, and at the time of the events giving rise to this litigation, all of the parties resided in Colorado.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiffs:

Plaintiffs Detective Kennyberg Araujo ("Det. Araujo" or "Plaintiff Araujo") and Sergeant Francis Gonzales ("Sgt. Gonzales" or "Plaintiff Gonzales") (collectively "Plaintiffs") 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 in their Complaint & Jury Demand 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").

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.

Sgt. Gonzales is Latino/Hispanic and of Mexican heritage. Despite being described in one annual review as “the gold standard” for task force sergeants, Sgt. Gonzales 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.

Det. Araujo is Latino/Hispanic and from Brazil. Although he was praised as having “the essentials to be an exceptional officer,” Det. Araujo 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.

b. **Defendants:**

City:

Fort Collins denies that it has discriminated or retaliated against either Plaintiff based on their race, national origin, or any other illegal reason and denies that it has perpetrated or perpetuated a culture of discrimination. Fort Collins specifically denies that it has violated Title VII of the Civil Rights Act of 1964, as amended, or the Civil Rights Act of 1866, 42 U.S.C. 1981. Fort Collins denies that the FCPD has fostered and condoned a culture of discrimination against Hispanic/Latino officers. Fort Collins denies that any action it took with regard to either Plaintiff was taken in retaliation to any protected activity by either of them. With respect to the broad claim of a pattern and

practice of discrimination: Fort Collins categorically denies any such pattern or practice, and denies that it has created or perpetuated a culture of discrimination. Specifically, the City denies that it permitted any of its officers to “openly target and discriminate against” other officers, still less that it fostered or condoned any such behavior. The City likewise denies that either Mr. Araujo or Mr. Gonzales, or any other employee, has been subjected to “relentless race discrimination” or to unlawful or discriminatory “hypercritical evaluation” on the basis of race or national origin. The City also denies that any action it took with regard to either Plaintiff was in retaliation for any protected activity. Fort Collins incorporates the defenses and affirmative defenses set forth in its Answer to Plaintiffs’ First Amended Complaint.

Defendant Vagge:

During part of the time alleged in the first amended complaint, defendant Don Vagge was an assistant chief of the Fort Collins Police Department, retiring on or about May 1, 2015. He denies that he was the final decision maker for the Department, and denies that he ever discriminated or retaliated against either plaintiff. He intends to raise various defenses to the plaintiffs’ claims, including that he did not commit the allegedly improper acts, part or all of the claims are barred by the statute of limitations, and he had little or no personal involvement in many of the allegedly improper actions.

Defendant Shaklee:

Sergeant Gary Shaklee is currently a sergeant with the City of Fort Collins Police Department. Sergeant Shaklee denies the substantive allegations in the Plaintiffs’ Amended Complaint. Specifically, he denies that he violated any federal law or took any action that was discriminatory or in response to any protected activity by either

Plaintiff. Any action Sergeant Shaklee engaged in either as a police officer or a supervisor was done in full compliance with the law and was reasonable and appropriate under the circumstances. It should be also noted that Sergeant Shaklee never supervised Plaintiff Gonzales and that Plaintiff Araujo's work performance matters are well documented. Sergeant Shaklee incorporates herein those affirmative defenses set forth in his response to Plaintiffs' First Amended Complaint.

4. UNDISPUTED FACTS

The following facts are undisputed:

1. Plaintiff Araujo was hired by the Fort Collins Police Department ("FCPD") on January 4, 2007 as a police officer.
2. Plaintiff Araujo's last day of his employment with the FCPD was on June 19, 2015.
3. Plaintiff Araujo held the rank of detective at the time his employment ended with the FCPD.
4. Plaintiff Gonzales was hired by the FCPD on September 1, 1981 as a police officer.
5. Plaintiff Gonzales still works at the FCPD and currently holds the rank of sergeant.
6. Defendant Shaklee currently works at the FCPD and holds the rank of sergeant.
7. Defendant Vagge retired from the FCPD on May 1, 2015 with the rank of Deputy Chief of the Criminal Investigations Division.
8. John Hutto is the present Chief of Police for the FCPD.

5. COMPUTATION OF DAMAGES

a. **Plaintiffs:** Plaintiffs claim actual economic losses (including consequential damages), compensatory damages (including, but not limited to, those for past and future pecuniary and non-pecuniary losses, emotional distress, suffering, loss inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses), declaratory relief and injunctive relief, including prospective injunctive relief, as appropriate, punitive damages for all claims allowed by law in an amount to be determined at trial, as well as attorneys' fees and costs, pre-judgment and post-judgment interest at the highest lawful rate, and all other damages and relief legally recoverable including equitable relief.

Plaintiffs suffered significant economic losses in the form of lost promotions, extended probationary periods, and discipline resulting in lost overtime. While Sgt. Gonzales continues to work for the FCPD, he has suffered significant economic losses resulting from his discriminatory failure to be promoted to lieutenant over the last fifteen years. Presently, Sgt. Gonzales's annual salary and benefits are valued by the FCPD at \$119,183.14. Det. Araujo also suffered losses on account of his constructive discharge from the Fort Collins Police Department ("FCPD). Although Det. Araujo has mitigated the losses resulting from his discriminatory discharge by finding comparable work, his losses are difficult to calculate insofar as he lost seven years of seniority with the FCPD when he took his position with the Denver Police Department. At the time of his constructive discharge, Det. Araujo's annual salary and benefits were valued by the FCPD at \$97,543.31. These figures are undervalued, as both Sgt. Gonzales and Det.

Araujo would have been earning more had they not suffered from the unlawful discrimination and retaliation forming the basis of this lawsuit.

Due to the complex nature of these damages, a more precise computation of damages will be provided during the normal course of discovery, to the extent Plaintiffs' damages are subject to such computation, and will be determined by a jury in its sound discretion following a presentation of the evidence at trial in this matter.

b. Defendants: The Defendants do not currently seek damages, but they reserve the right to seek costs and attorney fees.

6. REPORT OF PRE-CONFERENCE DISCOVERY & MEETING UNDER FED. R. CIV. P. 26(f)

a. The Fed. R. Civ. P. 26(f) meeting was held on September 14, 2016.

b. The following counsel participated in the meeting: Qusair Mohamedbhai and Laura B. Wolf represented Plaintiffs. Cathy Havener Greer represented Defendant City of Fort Collins, David R. DeMuro represented Defendant Donald Vagge, and Marni Nathan Kloster represented Defendant Gary Shaklee.

c. The Parties made their initial disclosures on November 9, 2016.

d. There are no proposed changes in requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

e. The Parties have not agreed to conduct informal discovery, but the Parties are actively working to resolve this case and will use all methods available to them, including informal discovery if possible and if agreed upon.

f. The Parties agree to take all reasonable steps to reduce discovery and reduce costs.

g. The Parties agree to produce all electronic files in either paper form or an electronic version of their choosing. A Party will only be required to produce electronically stored information in an electronic form if specifically requested with the form specified (i.e., with or without metadata, PDF, or native form). The Parties agree that, in the event that disputes arise regarding discovery of electronically stored information, they will attempt to apply the *Sedona Principles* to resolve such disputes and will also comply with the practice standards adopted by the United States District Court for the District of Colorado.

h. The parties will be engaging in private mediation in the upcoming months and are continuing to work toward a possible settlement or resolution of the case.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. Defendants propose a limit of ten (10) depositions exclusive of experts per side. Plaintiffs propose a limit of seven (7) depositions exclusive of experts per side.

b. The Parties agree to limit the length of depositions of witnesses other than the Plaintiffs to seven (7) hours of actual deposition time. The Defendants request that the depositions of each Plaintiff be ten (10) hours. Plaintiffs oppose this request and maintain that the length of each Plaintiff's deposition should be no longer than seven (7) hours, per FRCP(d)(1).

c. The Parties propose a limit of forty-five (45) interrogatories for Defendants collectively to propound and a limit of twenty-five (25) interrogatories for Plaintiffs collectively to propound.

d. Consistent with the Parties' proposed limitations on interrogatories, the Parties propose a limit of forty-five (45) requests for production for Defendants collectively to propound and a limit of twenty-five (25) requests for production for Plaintiffs collectively to propound.

e. Consistent with the Parties' proposed limitations on interrogatories, the Parties propose a limit of forty-five (45) requests for admissions for Defendants collectively to propound and a limit of twenty-five (25) requests for admissions for Plaintiffs collectively to propound.

f. The Parties anticipate their submission to the Court of a proposed protective order for its review and approval to accommodate the exchange of confidential documents and other information during the discovery process.

9. CASE AND PLAN SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings: **Friday, February 10, 2017.**

b. Discovery Cut-off: **Friday, September 1, 2017.**

c. Dispositive Motion Deadline: **Friday, October 6, 2017.**

d. Expert Witness Disclosure:

1. Anticipated fields of expert testimony: Plaintiffs anticipate retaining an expert to testify with respect to their economic loss as a result of Defendants' conduct. Plaintiffs also anticipate retaining an expert to testify with respect to the

management of a police force, including how to handle discipline, the promotional process, and internal investigation. Defendants anticipate they may retain an expert in one or more of the following fields: municipal/police practice and/or supervision; medical and/or mental health; economics and/or accounting; and any topic identified by Plaintiffs.

2. The Parties propose a limit of two (2) retained experts per side.

3. The Parties shall designate all experts and provide opposing counsel with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **Monday, June 5, 2017**.

4. The Parties shall designate all rebuttal experts and provide opposing counsel with all information specified in Fed. R. Civ. P. 26(a)(2) on or before **Monday, July 17, 2017**.

Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2)(B), no exception to the requirements of the rule will be allowed by stipulation of the parties unless the stipulation is in writing and approved by the court.

e. Identification of Persons to Be Deposed:

<i>Name of Deponent</i>	<i>Expected Length of Deposition</i>
Donald Vagge	7 hours
Gary Shaklee	7 hours
City of Fort Collins 30(b)(6)	7 hours
John Hutto	7 hours
Lori Greening	7 hours
Elizabeth Rita	7 hours – Defendants object
Kennyberg Araujo	7 hours - Defendants request 10
Francis Gonzales	7 hours - Defendants request 10
Lt. John Pino	7 hours
JoAnne Sizemore	7 hours
Rita Davis	7 hours

f. Deadline for Interrogatories: Interrogatories must be served on the opposing party no later than **33 days before the discovery cutoff date**. Responses to same are due as required by Fed. R. Civ. P. 6(d) and 33(b)(2).

g. Deadline for Requests for Production of Documents and/or Admissions: Requests for Production of Documents must be served on the opposing party no later than **33 days before the discovery cutoff date**. Responses to same are due as required by Fed. R. Civ. P. 6(a) and 34(b)(2). The same deadlines apply for submission of Requests for Admissions.

10. DATES AND FURTHER CONFERENCES

a. Status conferences will be held in this case at the following dates and times:

b. A final pretrial conference will be held in this case on _____ at _____ o'clock __.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. Counsel have been unable to reach an agreement as to the amount of time designated for Plaintiffs' depositions as well as to the number of depositions that may be taken in total. Defendants also object to Plaintiffs' deposing Elizabeth Rita. Besides these impasses, there are no discovery or scheduling issues on which counsel were unable to reach an agreement.

b. The Parties anticipate a five (5) day jury trial. All Parties have requested a trial to a jury.

c. There are no pretrial proceedings that the Parties believe may be more efficiently or economically conducted in any of the District Court's facilities outside of Denver, Colorado.

12. NOTICE TO COUNSEL AND *PRO SE* PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

The Scheduling Order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this _____ day of _____, 2016.

BY THE COURT:

R. Brooke Jackson
United States District Judge

SCHEDULING ORDER REVIEWED:

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