

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-03204-RBJ

LORI FRANK,

Plaintiff,

v.

CITY OF FORT COLLINS, a municipality, and  
JEROME SCHIAGER, former Deputy Chief of Police, in his individual capacity,

Defendants.

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**ANSWER OF DEFENDANT SCHIAGER**

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Defendant JEROME SCHIAGER (“Schiager”), former Deputy Chief of Police, hereby submits this answer to Plaintiff’s complaint.

**I. REASONS FOR THIS LAWSUIT**

1-20. The 20 paragraphs in this section of Plaintiff’s complaint make no allegations against Schiager and, therefore, he has no duty to respond to them. If Schiager is required to respond, he admits in response to these paragraphs that the Fort Collins Police Department is now known as Fort Collins Police Services (“FCPS”), women have entered the FCPS workforce, then-Chief Hutto sent an email to “FCPD Users” on or about August 4, 2016, that some complaints were thereafter made by some persons, that an external firm was hired to conduct an investigation, and that Plaintiff Lori Frank (“Frank”) has worked as a crime analyst. Schiager is without knowledge as to the remaining allegations of Paragraphs 1-20 and, therefore, denies them.

## **II. JURISDICTION AND VENUE**

21. Schiager admits that Plaintiff has made claims under various statutes in her complaint but denies that the claim against him is valid and denies any remaining allegations of Paragraph 21.

22. Schiager admits that venue is proper in this Court and denies any remaining allegations of Paragraph 22.

23. Schiager is without knowledge as to the allegations of Paragraph 23 and, therefore, denies the same.

## **III. PARTIES**

24. Schiager admits the allegations of Paragraph 24.

25. Schiager admits that Frank is employed by Fort Collins and FCPS and contends that he need not respond to the remaining allegations of Paragraph 25 which are legal conclusions and not directed to him, and, therefore, denies the same.

26. Schiager admits that Terry Jones (“Jones”) served for a period of time as Interim Chief of Police for FCPS and Schiager is without knowledge of the remaining allegations in Paragraph 26 and denies them.

27. Schiager need not respond to the allegations of Paragraph 27 which are not directed toward him or which call for a legal conclusion, and, therefore, denies the same.

28. Schiager denies the allegations of Paragraph 28.

29. Schiager admits the allegations of Paragraph 29.

#### **IV. GENERAL FACTUAL ALLEGATIONS**

30. Schiager admits that FCPS hired Frank as a crime analyst but is without knowledge as to the exact date of hire and, therefore, denies the remaining allegations of Paragraph 30.

31. Schiager is without knowledge as to Frank's birth date and, therefore, denies the allegations of Paragraph 31.

32. Schiager states that the job description for the crime analyst position is the document most relevant to defining the position, and he denies any allegation in Paragraph 32 inconsistent with that job description.

33. Schiager is without knowledge as to the allegations of Paragraph 33 and, therefore, denies the same.

34. Schiager incorporates by reference his response to the allegations of Paragraph 32.

35. Schiager denies the allegations of Paragraph 35.

36. Schiager states that Frank's performance reviews speak for themselves and denies any allegation inconsistent with those documents.

37. With regard to Paragraph 37, Schiager incorporates his response to Paragraph 36.

38. Schiager is without knowledge as to the allegations of Paragraph 38 and, therefore, denies the same.

39. Schiager admits that Frank taught some classes but is without knowledge as

to the allegations of Paragraph 39 and, therefore, denies the same.

40. Schiager is without knowledge as to the allegations of Paragraph 40 and, therefore, denies the same.

41. Schiager is without knowledge as to the allegations of Paragraph 41 and, therefore, denies the same.

42. Schiager is without knowledge as to the allegations of Paragraph 42 and, therefore, denies the same.

43. Schiager is without knowledge as to the allegations of Paragraph 43 and, therefore, denies the same.

44. Schiager is without knowledge as to the allegations of Paragraph 44 and, therefore, denies the same.

45. Schiager is without knowledge as to the allegations of Paragraph 45 and, therefore, denies the same.

46. Schiager admits that Frank gave some presentations but is without knowledge as to the allegations of Paragraph 46 and, therefore, denies the same.

47. Schiager states that the performance review speaks for itself and denies any allegation set forth in Paragraph 47 that is inconsistent with that document.

48. Schiager is without knowledge as to the allegations of Paragraph 48 and, therefore, denies the same.

49. Schiager is without knowledge as to the allegations of Paragraph 49 and, therefore, denies the same.

50. Schiager is without knowledge as to the allegations of Paragraph 50 and, therefore, denies the same.

51. Schiager is without knowledge as to the allegations of Paragraph 51 and, therefore, denies the same.

52. Schiager admits that Frank began at some point to seek reclassification of her position and is without knowledge as to the remaining allegations of Paragraph 52 and denies the same.

53. Schiager states that the City's rules, practices and policies speak for themselves and denies any allegations in Paragraph 53 inconsistent with them.

54. Schiager denies the allegations of Paragraph 54.

55. With regard to the allegations of Paragraph 55, Schiager states that the performance review speaks for itself and denies any allegation in Paragraph 55 inconsistent with the document.

56. Regarding the allegations in Paragraph 56, Schiager states that the performance review speaks for itself and denies any allegations in Paragraph 56 inconsistent with that document.

57. Schiager admits the allegations of Paragraph 57.

58. Schiager admits the allegations of Paragraph 58.

59. Schiager denies the allegations of Paragraph 59.

60. Schiager admits that in about 2011, Frank prepared a report that was used in some discussions and denies the remaining allegations of Paragraph 60.

61. Schiager denies the allegations of Paragraph 61.

62. Schiager denies the allegations of Paragraph 62.

63. Schiager admits that he requested police data in the area of the location of a residence that the city manager was considering purchasing and denies the remaining allegations of Paragraph 63.

64. Schiager is without knowledge as to what Frank recognized and, therefore, denies the same, and also denies all remaining allegations of Paragraph 64.

65. Schiager admits that he spoke to Frank's supervisor about her behavior toward another employee, and denies the remaining allegations of Paragraph 65.

66. Schiager denies the allegations of Paragraph 66.

67. Schiager denies the allegations of Paragraph 67.

68. Schiager denies the allegations of Paragraph 68.

69. Schiager is without knowledge as to what Frank allegedly recognized, and, therefore, denies it and the remaining allegations of Paragraph 69.

70. Schiager admits that he responded to an email from Frank regarding a staffing study in about April 2014 and denies any remaining allegation in Paragraph 70 that is inconsistent with his email.

71. In response to the allegations of Paragraph 71, Schiager incorporates by reference his response to the allegations of Paragraph 70.

72. Schiager is without knowledge as to what Frank allegedly recognized and, therefore, denies and the remaining allegations in Paragraph 72.

73. Schiager admits that Frank complained to Hutto about Schiager and denies the remaining allegations of Paragraph 73.

74. Schiager admits receiving a brief oral reprimand from Hutto in or about May 2014 and denies the remaining allegations of Paragraph 74.

75. Schiager denies the allegations of Paragraph 75.

76. Schiager admits based on present knowledge that on or about November 3, 2015, Frank sent a memo to Hutto on the subject of “concerns of retaliation” relating to Schiager, and denies any allegations in Paragraph 76 that are inconsistent with the memo and denies any remaining allegations in Paragraph 76.

77. In response to Paragraph 77, Schiager incorporates by reference his response to the allegations of Paragraph 76.

78. In response to Paragraph 78, Schiager incorporates by reference his response to the allegations of Paragraph 76.

79. In response to Paragraph 79, Schiager incorporates by reference his response to the allegations of Paragraph 76.

80. Schiager denies the allegations of Paragraph 80.

81. Schiager denies the allegations of Paragraph 81.

82. Schiager admits the allegations of Paragraph 82.

83. In response to Paragraph 83, Schiager states that the performance review speaks for itself and denies any allegations in Paragraph 83 that are inconsistent with that document.

84. In response to the allegations of Paragraph 84, Schiager incorporates by reference his response to Paragraph 83.

85. Schiager admits that Frank responded to her 1<sup>st</sup> Quarter 2016 Performance Review, states that the response speaks for itself, and denies the remaining allegations of Paragraph 85.

86. In response to the allegations of Paragraph 86, Schiager admits that Frank responded and states that the response speaks for itself, and he denies any allegations in the response not consistent with the allegations of Paragraph 86 and any remaining allegations in Paragraph 86.

87. Schiager denies the allegations of Paragraph 87.

88. In response to the allegations of Paragraph 88, Schiager admits that in 2016 he was involved in the process by which Erik Martin (“Martin”), a male, was hired as the financial analyst at FCPS. Schiager is without knowledge as to Martin’s date of birth and, therefore, denies the same. Schiager denies the remaining allegations of Paragraph 88.

89. In response to the allegations of Paragraph 89, Schiager admits that at that time, he supervised Frank as criminal analyst and Martin as financial analyst and denies that the two performed the same duties.

90. Schiager denies the allegations of Paragraph 90.

91. Schiager denies the allegations of Paragraph 91.

92. Schiager denies the allegations of Paragraph 92.

93. Schiager is without knowledge as to Frank’s number of years of service “at



the time Martin came on board,” and, therefore, denies the allegations of Paragraph 93.

94. Schiager is without knowledge as to what Frank’s annual salary was at that time and, therefore, denies the allegations of Paragraph 94.

95. Regarding the allegations of Paragraph 95, Schiager is without knowledge at this time as to Martin’s starting salary and that the City’s pay records speak for themselves and, therefore, denies the allegations of Paragraph 95 that are inconsistent with those records.

96. Regarding the allegations of Paragraph 96, Schiager is without knowledge as to exactly how much younger Martin was than Frank, how long he had been employed by the City of Fort Collins, and whether he had prior law enforcement experience, other than the experience he had working for FCPS prior to full time employment at FCPS. Schiager denies any remaining allegation in Paragraph 96.

97. With regard to the allegations in Paragraph 97, Schiager admits that on or about August 4, 2016, Hutto sent an email to “FCPD Users” and states that the email speaks for itself and denies any allegation in Paragraph 97 that is contrary to the document.

98. Regarding the allegations in Paragraph 98, Schiager incorporates by reference his response to Paragraph 97.

99. Schiager admits that some complaints were made but he is without knowledge regarding the numbers alleged in Paragraph 99 and, therefore, denies the remaining allegations of that paragraph.

100. Schiager is without knowledge as to the allegations of Paragraph 100 and, therefore, denies them.

101. Schiager is without knowledge as to the allegations of Paragraph 101 and, therefore, denies them.

102. Relating the to the allegations of Paragraph 102, Schiager is without knowledge as to those allegations and, therefore, denies them.

103. Schiager is without knowledge as to the allegations of Paragraph 103 and, therefore, denies them.

104. Schiager is without knowledge as to the allegations in Paragraph 104 and, therefore, denies them.

105. Schiager admits based on present knowledge the allegations of Paragraph 105.

106. Schiager admits that there was an investigation by Investigator Lori Greening that exonerated Schiager and he is without knowledge as to the remaining allegations of Paragraph 106 and, therefore, denies them.

107. Schiager admits that in about August 2016, he issued Frank her 2<sup>nd</sup> Quarter Performance Review, states that the performance review speaks for itself, and denies any allegations in Paragraph 107 that are inconsistent with that document.

108. Schiager denies the allegations of Paragraph 108.

109. Schiager admits that two Hispanic officers filed a lawsuit against the City of Fort Collins in about September 2016, states that the lawsuit speaks for itself, and denies

any allegations of Paragraph 109 that are inconsistent with the lawsuit.

110. Schiager is without knowledge as to the allegations of Paragraph 110 and, therefore, denies them.

111. Schiager admits that Lori Greening, the City's Human Resources Investigations Representative, investigated Frank's complaints against Schiager, and Schiager is without knowledge as to the remaining allegations of Paragraph 111 and, therefore, denies them.

112. Schiager admits that he remained Frank's supervisor until approximately February 7, 2017, which includes the time of the investigation conducted by Lori Greening, as referenced in Paragraph 111. Schiager denies any remaining allegations in Paragraph 112.

113. Schiager denies the allegations of Paragraph 113.

114. Schiager is without knowledge as to the allegations of Paragraph 114 and, therefore, denies them.

115. Schiager is without knowledge as to the allegations of Paragraph 115 and, therefore, denies them.

116. Schiager admits that he learned that the investigation by Lori Greening had cleared him of any wrongdoing and denies any remaining allegations in Paragraph 116.

117. Schiager admits that he sent an email to Frank at about 10:18 p.m. on November 15, 2016, so that she would have her evaluation prior to the meeting then scheduled for the next day, and states that the email speaks for itself, and denies any

remaining allegation of Paragraph 117.

118. Schiager incorporates by reference his response to Paragraph 117.

119. Schiager admits that the documents related to concerns about Frank's performance and states that the documents speaks for themselves and denies any allegation of Paragraph 119 that is inconsistent with the documents.

120. Schiager believes that it was the City's regular policy that employees on a PIP were not eligible for certain pay raises, states that he asked to have the policy waived for Frank, and is without knowledge as to any remaining allegations of Paragraph 120 and, therefore, denies them.

121. Schiager has no knowledge that there was any such policy and, therefore, denies the allegations of Paragraph 121.

122. Schiager denies the allegations of Paragraph 122.

123. Schiager admits that Frank was placed on a 90-day PIP and given a "Needs Improvement" on her Performance Evaluation and states that the document speaks for itself and denies any allegation inconsistent with the document.

124. In response to the allegations in Paragraph 124, Schiager states that the documents speak for themselves and denies any allegation in Paragraph 124 inconsistent with that document.

125. Schiager admits that the PIP contained the following language about Schiager's expectation on one quarterly report on response time metrics: "Set up a meeting with Carol Workman, yourself and me prior to publishing next quarter's response time

metrics. I expect this dashboard metric to be accurate and free of errors every time (consistently).” Schiager denies that he imposed a general error-free standard on Frank or on male direct reports including Martin and denies any remaining allegations of Paragraph 125.

126. Schiager denies the allegations in Paragraph 126.

127. Schiager denies the allegations in Paragraph 127.

128. Regarding the allegations in Paragraph 128, Schiager states that his performance evaluations and those of others speak for themselves, and Schiager denies any statement in Paragraph 128 that is inconsistent with the evaluations.

129. Schiager incorporates by reference his response to Paragraph 128.

130. Schiager is without knowledge as to which co-workers are being referred to in this allegation and, therefore, denies the allegations in Paragraph 130.

131. Schiager denies the allegations in Paragraph 131.

132. Schiager admits that Greening conducted an investigation and concluded that Frank was not retaliated against by Schiager, but is without knowledge as to the other allegations of Paragraph 132 and, therefore, denies them.

133. Schiager admits the allegations of Paragraph 133.

134. Schiager states that the November 30, 2016, complaint letter speaks for itself and denies any allegation in Paragraph 134 as inconsistent with that document.

135. Schiager denies the allegations of Paragraph 135.

136. Schiager denies the allegations of Paragraph 136.

137. Schiager states that any evaluations he did on Martin speak for themselves and denies any allegations in Paragraph 137 that are inconsistent with those documents.

138. Schiager admits that Martin attended some training consistent with his role as a supervisor and is without knowledge as to the remaining allegations of Paragraph 138 and, therefore, denies them.

139. Schiager admits that he told Frank that her raise would not be effective until the PIP was resolved, and denies the remaining allegations of Paragraph 139.

140. Schiager admits that he held certain staff meetings with supervisor/management personnel and is without knowledge as to the remaining allegations in Paragraph 140 and, therefore, denies the same.

141. In response to Paragraph 141, Schiager has no knowledge as to what Frank learned and incorporates by reference his response to Paragraph 140.

142. Schiager states that the City's pay plan documents speak for themselves and denies any remaining allegations of Paragraph 142.

143. Schiager admits the allegations of Paragraph 143, except that he denies being responsible for Frank not receiving her annual raise at that time.

144. Schiager is without knowledge as to the allegations of Paragraph 144 and, therefore, denies the same.

145. Schiager admits that as of January 1, 2017, Frank had worked for FCPS for a longer period of time than Martin and is without knowledge as to many allegations of Paragraph 145 and, therefore, denies them.

146. Schiager is without knowledge as to the allegations of Paragraph 146 and, therefore, denies them.

147. Schiager is without knowledge as to what Frank was notified on January 17, 2017, and, therefore, denies the allegations of Paragraph 147.

148. Schiager incorporates by reference his response to Paragraph 140 and is without knowledge as to the remaining allegations of Paragraph 148 and, therefore, denies the same.

149. Schiager incorporates by reference his response to Paragraph 140 and is without knowledge as to the remaining allegations of Paragraph 149 and, therefore, denies the same.

150. Schiager admits the allegations of Paragraph 150.

151. Schiager is without knowledge as to the allegations of Paragraph 151 and denies any allegation in Paragraph 151 that is inconsistent with the memo referred to in that paragraph.

152. Schiager is without knowledge as to the allegations in Paragraph 152 and, therefore, denies the same.

153. Schiager is without knowledge as to the allegations in Paragraph 153 and, therefore, denies the same.

154. Schiager denies the allegations in Paragraph 154.

155. Schiager is without knowledge as to the allegations in Paragraph 155 and, therefore, denies the same.

156. Regarding the allegations in Paragraph 156, Schiager states that the 1<sup>st</sup> Quarter 2017 performance review speaks for itself and denies any allegation inconsistent with it.

157. Schiager incorporates by reference his response to Paragraph 156.

158. Schiager incorporates by reference his response to Paragraph 156.

159. Schiager admits the allegations of Paragraph 159.

160. Schiager is without knowledge as to the allegations of Paragraph 160 and, therefore, denies them.

161. Schiager is without knowledge as to the allegations of Paragraph 161 and, therefore, denies the same.

162. Schiager is without knowledge as to the allegations in Paragraph 162 and, therefore, denies the same.

163. Schiager is without knowledge as to the allegations in Paragraph 163 and, therefore, denies the same.

164. Schiager is without knowledge as to the allegations in Paragraph 164 and, therefore, denies the same.

165. Schiager denies the allegations of Paragraph 165.

166. Schiager denies the allegations of Paragraph 166.

167. Schiager is without knowledge as to the allegations in Paragraph 167 and, therefore, denies them.

168. Schiager admits that on about July 27, 2017, Jones concluded that Frank's



allegations against Schiager were unfounded, but is without knowledge as to the remaining allegations of Paragraph 168 and, therefore, denies them.

169. Schiager admits that in her March 2, 2017, investigation report, workplace investigator Lori Carl reported as to Schiager's statement in his November 16, 2016, memorandum that the dashboard metric for response times must be "free of errors every time" was conceded by Schiager not to be the standard he uses for his direct reports and probably wasn't reasonable to expect it to be free of errors every time, but that his statement about this one metric was not motivated by retaliation. Schiager denies any remaining allegations of Paragraph 169.

170. Regarding the allegations in Paragraph 170, Schiager states that Personnel Directive 2017-12, dated July 27, 2017, speaks for itself and denies any allegations in Paragraph 170 inconsistent with that document.

171. Schiager denies the allegations of Paragraph 171.

172. Schiager denies the allegations of Paragraph 172.

173. Schiager admits that on July 28, 2017, he sent an email to "FCPS Users" regarding his return, and denies any allegation in Paragraph 173 inconsistent with that document.

174. Schiager admits that his rank of lieutenant was not as a result of the investigation and not disciplinary as set forth in the email from Terry Jones to "FCPS Users" on July 27, 2017, and denies any remaining allegation of Paragraph 174.

175. Schiager is without knowledge as to the allegations in Paragraph 175 and,

therefore, denies the same.

176. Schiager is without knowledge as to the allegations in Paragraph 176 and, therefore, denies the same.

177. Schiager is without knowledge as to the allegations in Paragraph 177 and, therefore, denies the same.

178. Schiager is without knowledge as to the allegations in Paragraph 178 and, therefore, denies the same.

179. Schiager is without knowledge as to the allegations in Paragraph 179 and, therefore, denies the same.

180. Schiager denies the allegations of Paragraph 180.

181. Schiager is without knowledge as to the allegations in Paragraph 181 and, therefore, denies the same.

182. Schiager admits that Frank filed the charge of discrimination but is without knowledge as to the remaining allegations of Paragraph 182 and, therefore, denies the same.

183. Schiager admits that on or about January 24, 2018, Jones sent an email to "FCPS Users" on the "Administrative Investigation and results," states that the document speaks for itself, and denies any allegation of Paragraph 183 inconsistent with that document.

184. In response to the allegations of Paragraph 184, Schiager incorporates by reference his response to the allegations of Paragraph 183.

185. In response to the allegations of Paragraph 185, Schiager incorporates by reference his response to the allegations of Paragraph 183.

186. In response to the allegations of Paragraph 186, Schiager incorporates by reference his response to the allegations of Paragraph 183.

187. In response to the allegations of Paragraph 187, Schiager incorporates by reference his response to the allegations of Paragraph 183.

188. In response to the allegations of Paragraph 188, Schiager incorporates by reference his response to the allegations of Paragraph 183.

189. In response to the allegations of Paragraph 189, Schiager incorporates by reference his response to the allegations of Paragraph 183.

190. Schiager denies the allegations of Paragraph 190.

191. Schiager denies the allegations of Paragraph 191.

192. Schiager denies that the PIP and negative evaluation resulted from an unreasonable error free standard that he imposed on Frank and is without knowledge as to the remaining allegations of Paragraph 192 and, therefore, denies the same.

193. Schiager is without knowledge as the allegations in Paragraph 193 and, therefore, denies the same.

194. Schiager is without knowledge as the allegations in Paragraph 194 and, therefore, denies the same.

195. Schiager is without knowledge as the allegations in Paragraph 195 and, therefore, denies the same, and states that the 4<sup>th</sup> Quarter 2017 Performance Evaluation

speaks for itself.

196. Schiager is without knowledge as the allegations in Paragraph 196 and, therefore, denies the same.

197. In response to the allegations of Paragraph 197, Schiager incorporates by reference his response to the allegations of Paragraph 196.

198. In response to the allegations of Paragraph 198, Schiager incorporates by reference his response to the allegations of Paragraph 196.

199. In response to the allegations of Paragraph 199, Schiager incorporates by reference his response to the allegations of Paragraph 196.

200. In response to the allegations of Paragraph 200, Schiager incorporates by reference his response to the allegations of Paragraph 196.

201. In response to the allegations of Paragraph 201, Schiager incorporates by reference his response to the allegations of Paragraph 196.

202. In response to the allegations of Paragraph 202, Schiager incorporates by reference his response to the allegations of Paragraph 196.

203. In response to the allegations of Paragraph 203, Schiager incorporates by reference his response to the allegations of Paragraph 196.

204. In response to the allegations of Paragraph 204, Schiager incorporates by reference his response to the allegations of Paragraph 196.

205. In response to the allegations of Paragraph 205, Schiager incorporates by reference his response to the allegations of Paragraph 196.

206. In response to the allegations of Paragraph 206, Schiager incorporates by reference his response to the allegations of Paragraph 196.

207. In response to the allegations of Paragraph 207, Schiager incorporates by reference his response to the allegations of Paragraph 196.

208. In response to the allegations of Paragraph 208, Schiager incorporates by reference his response to the allegations of Paragraph 196.

209. In response to the allegations of Paragraph 209, Schiager incorporates by reference his response to the allegations of Paragraph 196.

210. In response to the allegations of Paragraph 210, Schiager incorporates by reference his response to the allegations of Paragraph 196.

211. In response to the allegations of Paragraph 211, Schiager incorporates by reference his response to the allegations of Paragraph 196.

212. In response to the allegations of Paragraph 212, Schiager incorporates by reference his response to the allegations of Paragraph 196.

213. In response to the allegations of Paragraph 213, Schiager incorporates by reference his response to the allegations of Paragraph 196.

214. In response to the allegations of Paragraph 214, Schiager incorporates by reference his response to the allegations of Paragraph 196.

215. In response to the allegations of Paragraph 215, Schiager incorporates by reference his response to the allegations of Paragraph 196.

216. In response to the allegations of Paragraph 216, Schiager incorporates by

reference his response to the allegations of Paragraph 196.

217. In response to the allegations of Paragraph 217, Schiager incorporates by reference his response to the allegations of Paragraph 196.

218. In response to the allegations of Paragraph 218, Schiager incorporates by reference his response to the allegations of Paragraph 196.

219. In response to the allegations of Paragraph 219, Schiager incorporates by reference his response to the allegations of Paragraph 196.

220. In response to the allegations of Paragraph 220, Schiager incorporates by reference his response to the allegations of Paragraph 196.

221. In response to the allegations of Paragraph 221, Schiager incorporates by reference his response to the allegations of Paragraph 196.

222. In response to the allegations of Paragraph 222, Schiager incorporates by reference his response to the allegations of Paragraph 196.

223. In response to the allegations of Paragraph 223, Schiager incorporates by reference his response to the allegations of Paragraph 196.

224. In response to the allegations of Paragraph 224, Schiager incorporates by reference his response to the allegations of Paragraph 196.

225. In response to the allegations of Paragraph 225, Schiager incorporates by reference his response to the allegations of Paragraph 196.

**V. CLAIMS FOR RELIEF**

**FIRST AND SECOND CLAIMS FOR RELIEF**  
**GENDER DISCRIMINATION IN VIOLATION OF TITLE VII**  
**AND COLORADO ANTI-DISCRIMINATION ACT**  
(Against the City of Fort Collins)

226. In answer to paragraph 226, Defendant Schiager incorporates his answers to the preceding paragraphs of the complaint as though fully set forth herein.

227-240. With respect to the allegations contained in paragraphs 227 through 240, Defendant Schiager asserts that such allegations are directed to another defendant and that Defendant Schiager need not respond to the same. To the extent a response is deemed required to these allegations, Defendant Schiager denies the same. To the extent the allegations may be directed against Defendant Schiager, he also denies the same.

**THIRD AND FOURTH CLAIMS FOR RELIEF**  
**RETALIATION IN VIOLATION OF TITLE VII**  
**AND COLORADO ANTI-DISCRIMINATION ACT**  
(Against the City of Fort Collins)

241. In answer to paragraph 241, Defendant Schiager incorporates his answers to the preceding paragraphs of the complaint as though fully set forth herein.

242-247. With respect to the allegations contained in paragraphs 242 through 247, Defendant Schiager asserts that such allegations are directed to another defendant and that Defendant Schiager need not respond to the same. To the extent a response is deemed required to these allegations, Defendant Schiager denies the same. To the extent the allegations may be directed against Defendant Schiager, he also denies the same.

**FIFTH AND SIXTH CLAIMS FOR RELIEF**  
**DISCRIMINATION IN VIOLATION OF THE ADEA**  
**AND COLORADO ANTI-DISCRIMINATION ACT**  
(Against the City of Fort Collins)

248. In answer to paragraph 248, Defendant Schiager incorporates his answers to the preceding paragraphs of the complaint as though fully set forth herein.

249-263. With respect to the allegations contained in paragraphs 249 through 263, these claims were dismissed by the Court in its Order dated August 20, 2019.

**SEVENTH CLAIM FOR RELIEF**  
**DISCRIMINATION IN VIOLATION OF THE EQUAL PAY ACT**  
(Against the City of Fort Collins)

264. In answer to paragraph 264, Defendant Schiager incorporates his answers to the preceding paragraphs of the complaint as though fully set forth herein.

265-270. With respect to the allegations contained in paragraphs 265 through 270, Defendant Schiager asserts that such allegations are directed to another defendant and that Defendant Schiager need not respond to the same. To the extent a response is deemed required to these allegations, Defendant Schiager denies the same. To the extent the allegations may be directed against Defendant Schiager, he also denies the same.

**EIGHTH CLAIM FOR RELIEF**  
**42 U.S.C. § 193 AND EQUAL PROTECTION CLAUSE OF THE**  
**FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**  
(Against Defendants Schiager and Jones in their Individual Capacities)

271. In answer to paragraph 271, Defendant Schiager incorporates his answers to the preceding paragraphs of the complaint as though fully set forth herein.

272. Schiager denies the allegations of Paragraph 272.



273. Schiager denies the allegations in Paragraph 273.

274. Schiager denies the allegations of Paragraph 274.

275. Schiager admits that Martin is not the same gender as Frank.

276. Schiager denies the allegations of Paragraph 276.

277. Schiager admits that Frank did not receive her scheduled raise on January 1, 2017, but denies the remaining allegations of Paragraph 277.

278. Schiager denies that Martin had similar conduct and is without knowledge as to the remaining allegations of Paragraph 278 and denies the same.

279. Schiager believes that Martin received a raise in early 2017 but is without knowledge as to the remaining allegations of Paragraph 279 and, therefore, denies the same.

280. Schiager denies the allegations of Paragraph 280.

281. Schiager denies the allegations of Paragraph 281.

282. Schiager denies the allegations of Paragraph 282.

283. Schiager denies the allegations of Paragraph 283.

284. Schiager is without knowledge as to the allegations in Paragraph 284 and, therefore, denies the same.

285. Schiager is without knowledge as to the allegations in Paragraph 285 and, therefore, denies the same.

286. Schiager denies the allegations of Paragraph 286.

287. Schiager denies the allegations of Paragraph 287.

288. Schiager denies the allegations of Paragraph 288.

289. Schiager denies the allegations of Paragraph 289.

290. Schiager denies the allegations of Paragraph 290.

291. Schiager denies the allegations of Paragraph 291.

292. Schiager denies the allegations of Paragraph 292.

293. Schiager denies the allegations of Paragraph 293.

### **DEFENSES/AFFIRMATIVE DEFENSES**

1. Schiager denies any allegation in the complaint not expressly admitted above.

2. Schiager incorporates by reference each defense raised in his Motion to Dismiss filed January 31, 2019.

3. The claim against Schiager is barred by the statute of limitations.

4. The claim against Schiager is barred by the doctrine of qualified immunity.

5. Plaintiff failed to mitigate her damages by improving her performance as requested of her in the evaluations and PIP given to her by Schiager.

6. Schiager is not liable for any event alleged to be improper in the Complaint and in which Schiager had no personal participation, as Plaintiff has already conceded as to all events which took place since February 7, 2017.

7. Schiager did not retaliate against Frank and no alleged retaliatory action by Schiager can be the basis of the claim against him because his alleged actions are too distant in time to the events which allegedly form the basis for retaliation.

8. Martin is not a similarly-situated employee to serve as the comparator in Plaintiff's equal protection claim.

9. The proximate cause of Plaintiff's alleged damages, if any, were the results of Plaintiff's own actions or the actions or policies of the City which Schiager did not control.

10. All actions taken and statements made by Schiager in evaluating Frank were done for business necessity and as required by his employer, and are subject to a qualified privilege.

11. There is no causal connection between Plaintiff's alleged protected activity and any alleged retaliatory or improper action by Schiager.

12. All actions taken by Schiager were based on reasonable, lawful, legitimate, non-discriminatory and non-retaliatory reasons, and taken in good faith.

13. Plaintiff's claim for punitive or exemplary damages is barred or limited to the extent that it violates the excessive fines clause of the Eighth Amendment of the United States Constitution, and the due process clause of the Fourteenth Amendment of the United States Constitution, and the applicable statutes.

WHEREFORE, having fully answered the allegations in the complaint, Defendant Schiager requests that all of Plaintiff's claims against him be dismissed, with prejudice, that he be awarded costs of defense, expert fees, attorney fees, and any such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Defendant Schiager requests trial to a jury on all issues herein.

Respectfully submitted,

Date: August 28, 2019

s/ David R. DeMuro

David R. DeMuro

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ATTORNEY FOR DEFENDANT SCHIAGER

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of August, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

**Jennifer Robinson**

[jrobinson@raemployment.com](mailto:jrobinson@raemployment.com)

**Robert M. Liechty**

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[scook@vaughandemuro.com](mailto:scook@vaughandemuro.com)

and I hereby certify that the foregoing was placed in the U.S. Mail, postage prepaid, and addressed to the following:

[none]

s/ David R. DeMuro

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David R. DeMuro