

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-03204-RBJ-NRN

LORI FRANK,

Plaintiff,

v.

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

Defendants.

CERTIFICATION OF JENNY LOPEZ FILKINS

I, Jenny Lopez Filkins, hereby submit this certification, under penalty of perjury, in response to the Court's November 22, 2019, Order, Doc. # 64 at 8-9. Specifically, the Court ordered someone with personal knowledge:

to certify by November 26, 2019 as to whether the allegations contained in pages 000523-535 were investigated and *not* sustained or substantiated. The certification should include the outside entity that investigated the allegations and the date when the allegations were found not to be sustained.

Id. at 8. As in-house employment counsel for the City of Fort Collins, I have personal knowledge of the matters set forth herein.

1. Pages 000523-000535 are from a confidential witness statement provided to Flynn Investigations Group/Employment Matters LLC, an outside investigation firm, as it investigated a 2017 workplace complaint brought by Francis Gonzales against Defendant Jerry Schiager and non-party Russell Reed. The statement contains a smorgasbord of allegations and gripes that are not

limited to gender discrimination or gender-related retaliation, pay inequity, or concern events that allegedly occurred during this lawsuit's operative time period, namely November 2015 to the present.

2. Page 000523, *first paragraph* marked for redaction: These remarks regarding alleged race discrimination were investigated by Fort Collins Police Service's Human Resources Department during its investigation of a male Hispanic employee's race discrimination complaint. Human Resources completed the investigation in 2012. The findings were not sustained.

3. Page 000523, *second paragraph* marked for redaction: These remarks concern a retired patrol sergeant's alleged experiences years ago with discriminatory practices related to promotional opportunities for Hispanic officers. The retired patrol sergeant never filed a discrimination complaint. Because of the alleged events' age, the City did not investigate these allegations, even though they were raised in the confidential witness statement provided to Flynn Investigations Group/Employment Matters LLC.

4. Page 000523-524, *third paragraph* marked for redaction: These remarks concern discrimination a Hispanic officer allegedly experienced decades ago when he excelled on a promotion exam but was denied the promotion. Because of the alleged event's age, the City did not investigate the allegations, even though they were raised in the confidential witness statement provided to Flynn Investigations Group/Employment Matters LLC.

5. Page 000524, *first full paragraph* marked for redaction and first half of *second full paragraph* marked for redaction: These remarks regarding alleged race discrimination were investigated by Fort Collins Police Service's Human Resources Department during its

investigation of a male Hispanic employee's race discrimination complaint. Human Resources completed the investigation in 2012. The findings were not sustained.

6. Page 000524, *second full paragraph* marked for redaction: These remarks concern a Hispanic female detective's claims that a male supervisor created a hostile work environment. Flynn Investigations Group/Employment Matters LLC investigated these allegations. On April 28, 2017, the investigator found that the Hispanic female detective's claims of race or gender discrimination were not sustained.

7. Page 000524, last three sentences of *second full paragraph* marked for redaction: These remarks regarding alleged race discrimination were investigated by Fort Collins Police Service's Human Resources Department during its investigation of a male Hispanic employee's race discrimination complaint. Human Resources completed the investigation in 2012. The findings were not sustained.

8. Page 000525, *first, second, and third paragraphs* marked for redaction: These remarks concern allegations regarding different discipline a Hispanic officer and a Caucasian officer received for identical policy violations. The matter was investigated by Investigations Law Group (ILG). On November 21, 2016, ILG reached inconclusive findings, but noted widespread concern about inconsistent discipline and performance standards. As the Court noted in its November 22, 2019, Order, the November 21, 2016, ILG Report is attorney work product. *See* Doc. # 64.

9. Page 000525, *fourth and fifth paragraphs* marked for redaction: These remarks concern allegedly different hiring and training standards that were applied to a Hispanic officer

and a white officer. The matter was investigated by ILG. On November 21, 2016, in the attorney work product-protected report, the findings were not sustained.

10. Page 000526, *all paragraphs* and Page 000527 *first paragraph* marked for redaction: These remarks concern allegedly different hiring and training standards that were applied to a Hispanic officer and a white officer. The matter was investigated by ILG. On November 21, 2016, in the attorney work product-protected report, the findings were not sustained.

11. Page 000527, *last two paragraphs* marked for redaction: These remarks concern the confidential witness's alleged experiences with race discrimination within Fort Collins Police Services. The witness never filed a complaint regarding these events, which allegedly occurred nearly 35 years before Plaintiff Lori Frank filed her complaint. Because of the alleged event's age, the City did not investigate the allegations.

12. Page 000528, *first full paragraph* marked for redaction: These remarks concern the confidential witness's alleged experiences with harassment by a supervisor. The witness never filed a complaint regarding these events, which allegedly occurred nearly 35 years before Plaintiff Lori Frank filed her complaint. Because of the alleged event's age, the City did not investigate the allegations.

13. Page 000528, *last paragraph* and Page 00529 *first paragraph* marked for redaction: These remarks concern the confidential witness's claim that he was unfairly accused of assisting a police officer candidate with the interview process. These allegations arose in a lawsuit Kennyberg Araujo and Francis Gonzales filed in April 2016 against the City of Fort Collins, the former Deputy Chief of Police, and a Police Sergeant for alleged race discrimination. ILG investigated these allegations in connection with its investigation of Araujo/Gonzales lawsuit. On

November 21, 2016, in the attorney work product-protected report, ILG determined that the confidential witness was rightly disciplined for providing a police officer candidate with test questions ahead of a qualifying test. ILG also determined that the claims of racial bias-based discipline were unsubstantiated.

14. Page 000529, *second and third paragraphs* marked for redaction: These remarks concern the confidential witness's claim that he was denied a promotion because of his race. These allegations arose in a lawsuit Kennyberg Araujo and Francis Gonzales filed in April 2016 against the City of Fort Collins, the former Deputy Chief of Police, and a Police Sergeant for alleged race discrimination. Investigations Law Group investigated these allegations in connection with its investigation of the Araujo/Gonzales lawsuit. On November 21, 2016, in the attorney work product-protect report, ILG determined that the claims of racial bias were unsubstantiated.

15. Pages 000530 through 000533, *all paragraphs* marked for redaction: These remarks concern claims that the witness made in the lawsuit Kennyberg Araujo and Francis Gonzales filed in April 2016 against the City of Fort Collins, the former Deputy Chief of Police, and a Police Sergeant for alleged race discrimination. ILG investigated these allegations in connection with its investigation of the Araujo/Gonzales lawsuit. On November 21, 2016, in the attorney work product-protected report, ILG determined that: the claims regarding racially discriminatory promotional process were inconclusive; the claims regarding discriminatory hiring practices were unsubstantiated; inconsistent discipline and performance management practices existed, but claims of racial bias were unsubstantiated; and the claims against a Deputy Chief and a Lieutenant regarding harassment, racial discrimination, and retaliation were unsubstantiated.

16. Page 000534, *first paragraph* marked for redaction: See paragraph 15, above.

17. Page 000534, *second paragraph* through Page 000535 *middle section* marked for redaction: These allegations were investigated by Kim DeLuca at ILG. On April 28, 2017, certain claims regarding the investigation subject's use of a racial slur were sustained.

18. I certify that, based on a good faith review of the records and based on my personal knowledge, the information contained herein is true and correct.

Dated this 26th day of November, 2019.

S/Jenny Lopez Filkins, Esq.

JENNY LOPEZ FILKINS, ESQ.

Respectfully submitted this 26th day of November, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 26, 2019, a true and correct copy of the above and foregoing **CERTIFICATION OF JENNY LOPEZ FILKINS** was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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