

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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FRANCISCO BAEZ, )  
Plaintiff, )  
v. )  
THE CITY OF BROCKTON POLICE )  
DEPARTMENT; GEORGE KHOURY; )  
EMANUEL GOMES; and )  
WAYNE SARGO, )  
Defendants. )  
\_\_\_\_\_  
)

**COMPLAINT AND JURY TRIAL DEMAND**

A. NATURE OF THE ACTION

This is an action for equitable and legal relief attorneys' fees, costs, and other relief against Defendants, based on their discrimination against Plaintiff on account of his race, national origin, and ethnicity.

This is a suit in law and equity seeking redress for violation of M.G.L. c. 151B, § 4(1), Fair Employment Practices Act. This case is also brought against the individual Defendants pursuant to 42 U.S.C § 1983 alleging discrimination on account of race, national origin/ethnicity.

B. JURISDICTION

This Court has original jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), over claims brought under 42 U.S.C. § 1983. This Court has supplemental jurisdiction over the state civil rights claims pursuant to 28 U.S.C. § 1337(a).

Venue in this district is proper pursuant to 28 U.S.C. § 1331, in that each cause of action arose in this district. All conditions precedent to suit have been complied with, to

wit: Plaintiff timely filed a complaint with the Massachusetts Commission Against Discrimination and more than ninety days have elapsed since that filing.

C. PARTIES TO THIS ACTION

1. Francisco Baez (the “Plaintiff”) is a Black, Hispanic male whose parents were born in the Dominican Republic. During all times relevant to this complaint the Plaintiff was employed as a police officer for the City of Brockton Police Department. The Plaintiff resides in the Town of Avon, County of Norfolk, Commonwealth of Massachusetts.

2. The City of Brockton Police Department (the “Department”) is the municipal police department of the City of Brockton, County of Plymouth, Commonwealth of Massachusetts.

3. George Khoury (“Sergeant Khoury”) was, during all relevant times, a Sergeant in the Brockton Police Department.

4. Emanuel Gomes (“Chief Gomes”) was, during all relevant times, the Chief of the Brockton Police Department, he is presently a Captain in the Department.

5. Wayne Sargo (“Captain Sargo”) was, during all relevant times, was the Captain of Operations for the Brockton Police Department.

D. FACTUAL ALLEGATIONS

6. The Plaintiff is a Black Hispanic male whose parents were born in the Dominican Republic.

7. The Plaintiff began working as a police officer for the Department in 1996.

8. During the Plaintiff's employment with the Department he was the only employee of the Department of Dominican Republic ancestry.

9. During the time that the Plaintiff worked with Sergeant Khoury, Sergeant Khoury referred to black people as "niggers" and to Hispanic people as "spics". Sergeant Khoury also referred to white women who dated black men as, "white trash nigger lovers".

10. On September 13, 2013 the Plaintiff was in the booking area as were a number of other officers including Sergeant Khoury. The Plaintiff walked by Sergeant Khoury but never, pushed him, nudged him, or touched him in any way.

11. On September 15, 2013 Sergeant Khoury wrote a report to Chief Gomes about the Plaintiff. In that report, despite the fact that the Plaintiff did not even touch Sergeant Khoury, Sergeant Khoury reported to Chief Gomes that, on September 13, 2013, sometime after 1600 hours, in the booking room, the Plaintiff bumped into him and was discourteous to him. Sergeant Khoury referred to the conduct of the Plaintiff as an assault on him by the Plaintiff.

12. In Sergeant Khoury's September 15, 2013 report to Chief Gomes, Sergeant Khoury also alleged that on the same day, September 13, 2013, that the Plaintiff passed him in the hallway leading to the cell area and bumped him as he passed. This allegation is also a complete fabrication.

13. Sergeant Khoury's false allegation was made because he had animus towards the Plaintiff on account of the Plaintiff's race, national origin, and/or ethnicity.

14. Neither Chief Gomes nor Captain Sargo informed the Plaintiff of the allegations against him.

15. Captain Sargo sent the Plaintiff a memo dated September 17, 2013. In that memo Captain Sargo asked the Plaintiff to state, in writing, what duties he was performing on September 13, 2013 regarding the “Neighborhood Surge” and to describe in detail any interaction with Sergeant Khoury.

16. The Plaintiff responded to Captain Sargo that on September 13, 2013 he had no interaction with Sergeant Khoury.

17. On December 10, 2013, as a result of the false allegation made by Sergeant Khoury, the Plaintiff received a written disciplinary action issued by Captain Sargo. In that letter of reprimand Captain Sargo stated that; “Sergeant Khoury related that you did willfully bump him twice in the booking area and while he was involved with a ‘Neighborhood Surge’ operation.” Captain Sargo reprimanded the Plaintiff for conduct unbecoming of an officer and for insubordination.

18. At the time Captain Sargo issued the written reprimand to the Plaintiff Captain Sargo was aware that the booking area, where the alleged incident took place was monitored by a camera that video recorded the area.

19. Captain Sargo viewed the tape of the booking area for the time that Sergeant Khoury claimed he was assaulted by the Plaintiff before he issued a letter of reprimand.

20. Captain Sargo issued a written reprimand to the Plaintiff despite the fact that Captain Sargo had access to and viewed a video of the booking area which showed that at the time Sergeant Khoury claimed that he was bumped by the Plaintiff he was not touched by the Plaintiff, or by anyone else.

21. At the time Captain Sargo issued the letter of reprimand to the Plaintiff, Captain Sargo was aware that the tape recording of the booking area showed that the Plaintiff did not bump Sergeant Khoury and that Sergeant Khoury's report was either wrong or a complete fabrication.

22. Captain Sargo never informed the Plaintiff of the allegations against him before he issued the Plaintiff a disciplinary letter of reprimand and thus never gave the Plaintiff an opportunity to respond to the allegations made by Sergeant Khoury before issuing a disciplinary reprimand to the Plaintiff.

23. The decision by Captain Sargo to discipline the Plaintiff in spite of the fact that he had in his possession a video clearly demonstrating that Sergeant Khoury was engaged in a total fabrication was on account of discrimination, racial, national origin, and ethnic animus on the part of Captain Sargo against the Plaintiff and/or because he was condoning and acting on the prejudice and/or discriminatory animus of Sergeant Khoury.

24. On or about December 10, 2013 the Plaintiff appealed his written disciplinary reprimand to Chief Gomes.

25. Chief Gomes knew that the area where the alleged assault of Sergeant Khoury occurred was an area in the booking room monitored by a camera that recorded the activity in the area.

26. Before he issued a denial of the Plaintiff's appeal of his written disciplinary reprimand, Chief Gomes had access to the video recording of the booking room at the date and time of the alleged assault of Sergeant Khoury by the Plaintiff.

27. Chief Gomes upheld the written reprimand of the Plaintiff despite the fact that he had in his possession and viewed a video clearly demonstrating that Sergeant Khoury had engaged in a total fabrication when he alleged that the Plaintiff had assaulted him.

28. The decision of then Chief Gomes to uphold the written reprimand of the Plaintiff was on account of racial, national origin, and ethnic bias and animus on the part of Chief Gomes and because he was conditioning and acting on the prejudice and discriminatory animus of Sergeant Khoury

29. In an attempt to defend the Plaintiff, his union asked the Department to produce the video of the booking area on the date in question. The union was told by the Department that no such tape existed. This was a lie, in fact a copy of the video of the booking room, on the day in question had been made and preserved by the Department.

30. On or about January 13, 2014 the Plaintiff made a written request for his personnel records.

31. In February 2014 the Plaintiff received his personnel records, in the records was a video of the booking area for the date of September 13, 2013.

32. The video of the booking area for the date of September 13, 2013 showed that the Plaintiff had no body contact with Sergeant Khoury and that Sergeant Khoury's allegations that the Plaintiff had assaulted him were a total fabrication.

33. The Plaintiff filed a grievance of the decision of Chief Gomes upholding his written reprimand.

34. A hearing was held before the City of Brockton Director of Personnel Maureen Cruise ("Director Cruise").

35. At the hearing before Director Cruise the recording of the booking area for September 13, 2013 was available and was shown to Director Cruise. The recording showed that the Plaintiff never bumped Sergeant Khoury and was evidence that Sergeant Khoury had fabricated his story which led to the Plaintiff being issued a written disciplinary reprimand.

36. Despite the clear evidence that Sergeant Khoury had fabricated his allegation that he had been assaulted by the Plaintiff, Director Cruise upheld the written reprimand of the Plaintiff.

37. The Plaintiff's union appealed the Director Cruise's decision upholding the written reprimand of the Plaintiff to an independent arbitrator, as was the union's right under the existing collective bargaining agreement.

38. On or about September 3, 2014, after the Plaintiff's union appealed the written reprimand to an independent arbitrator, the City of Brockton entered into an agreement whereby the City of Brockton agreed to remove the Plaintiff's written reprimand from the Plaintiff's personnel records and to rescind the discipline issued to the Plaintiff.

39. On September 24, 2014 the Plaintiff filed a complaint with Lieutenant William Hallisey, who was, at the time, in charge of the Internal Affairs Division of the Department. In the complaint the Plaintiff asked that a formal investigation be conducted concerning the lies and fabrications of Sergeant Khoury that he had been assaulted by the Plaintiff, in the booking area, on the day of September 13, 2013. In the same complaint the Plaintiff requested that Captain Sargo and now former Chief Gomes also be investigated.

40. On information and belief neither Sergeant Khoury, Captain Sargo, or former Chief Gomes were never disciplined as a result of the fabricated charges made against the Plaintiff.

41. The Plaintiff was emotionally pained because he was concerned that a reprimand in his file for allegedly assaulting a superior officer would mean that the Plaintiff would never be promoted.

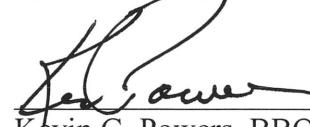
42. The fabricated charges made by Sergeant Khoury, the failure to investigate those charges, and the upholding of those charges cause the Plaintiff severe mental pain and suffering due to the fact that the Plaintiff was extremely fearful that he was being set up for termination by and from the Department.

43. The Plaintiff was extremely upset and concerned that if he was terminated from the Department that he would never work as a police officer again and that he would not be able to support his family

**The Plaintiff requests a Jury Trial on All Issues and Causes of Action Contained in this Complaint.**

Respectfully Submitted,

The Plaintiff  
By his Attorneys,

  
\_\_\_\_\_  
Kevin G. Powers, BBO #405020  
Rodgers, Powers & Schwartz LLP  
111 Devonshire Street  
Boston, MA 02109  
(617) 742-7010

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b> Baez, Francisco  (b) County of Residence of First Listed Plaintiff <u>Norfolk</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>	<b>DEFENDANTS</b> The City of Brockton Police Department; Khoury, George; Gomes, Emanuel; and Sargo, Wayne  County of Residence of First Listed Defendant _____ <small>(IN U.S. PLAINTIFF CASES ONLY)</small> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  Attorneys (If Known)
(c) Attorneys (Firm Name, Address, and Telephone Number) Rodgers, Powers & Schwartz, 111 Devonshire Street, Suite 400, Boston, MA 02109, 617-742-7010	

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)				
<input type="checkbox"/> 1 U.S. Government Plaintiff		<input checked="" type="checkbox"/> 3 Federal Question <small>(U.S. Government Not a Party)</small>				
<input type="checkbox"/> 2 U.S. Government Defendant		<input type="checkbox"/> 4 Diversity <small>(Indicate Citizenship of Parties in Item III)</small>				
		<b>Citizen of This State</b> <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<b>PTF</b> <input type="checkbox"/> 4	<b>DEF</b> <input type="checkbox"/> 4		
		<b>Citizen of Another State</b> <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5		
		<b>Citizen or Subject of a Foreign Country</b> <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6		

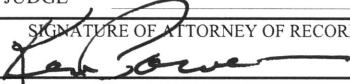
<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)						
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>TORTS</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice		<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other		<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<b>OTHER STATUTES</b> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability			
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education		<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
					<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
				<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

<b>V. ORIGIN</b> (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another District (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation					

<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <b>42 U.S.C. § 1983</b>			
		Brief description of cause: Employment discrimination on the basis of race, national origin, and ethnicity.			

<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.		<b>DEMAND \$</b>	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
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<b>VIII. RELATED CASE(S) IF ANY</b>		(See instructions):		<b>JUDGE</b>	<b>DOCKET NUMBER</b>	
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DATE 09/13/2016	<b>SIGNATURE OF ATTORNEY OF RECORD</b> 				<b>JUDGE</b>	
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<b>FOR OFFICE USE ONLY</b>						
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<b>RECEIPT #</b>	<b>AMOUNT</b>	<b>APPLYING IFP</b>	<b>JUDGE</b>	<b>MAG. JUDGE</b>
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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Francisco Baez v. The City of Brockton Police Department et al.

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2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 410, 441, 470, 535, 830\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.

III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

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4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES

NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES

NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES

NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES

NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES

NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES

NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Kevin G. Powers

ADDRESS 111 Devonshire Street, Suite 400

TELEPHONE NO. 617-742-7010