

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRANCISCO BAEZ,)
Plaintiff,)
v.) NO.: 16-CV-11865-GAO
THE CITY OF BROCKTON POLICE)
DEPARTMENT; GEORGE KHOURY;)
EMANUEL GOMES; and)
WAYNE SARGO,)
Defendants.)

**PLAINTIFF'S OPPOSITION TO THE DEFENDANTS' MOTION TO DISMISS
AND MOTION TO AMEND THE COMPLAINT**

I. NATURE OF THE ACTION

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.

II. STATEMENT OF THE CASE

A. *Procedural Background*

The Plaintiff originally filed his case, *pro se*, with the help of an intake person at the Massachusetts Commission Against Discrimination (the “MCAD”). The MCAD complaint named the Defendant, The City of Brockton Police Department (the “Department”), as well as the present individual Defendants (Exhibit1). The Department filed a written response to the complaint, in MCAD parlance it is called an “Answer” or “Position Statement” (Exhibit 2). The Position Statement was filed by the City of Brockton Assistant City Solicitor Karen Fisher. In that Position Statement filed by the

Department they did not raise the issue that they were not the proper entity to be named in the complaint. The Position Statement stated, “[r]espondent BPD is a Department of the City of Brockton and is responsible for the maintaining and preserving of peace, order and cleanliness of the City. . . . Complainant has been an employee police officer of the BPD since May 13, 1996.”

The MCAD Rules and Regulations state that the respondent must file an answer to an MCAD complaint, and in that answer “must assert all jurisdictional and other defenses which the Respondent wishes to raise. . . .” 804 CMR 1.10(8)(c).

B. Factual Background

The Plaintiff, Francisco Baez, is a Black Hispanic male whose parents were born in the Dominican Republic. The Plaintiff began working as a police officer for the Department in 1996. During the Plaintiff’s employment with the Department he was the only employee of the Department of Dominican Republic ancestry. During the time that the Plaintiff worked with Sergeant George Khoury, (“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”.

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. On September 15, 2013 Sergeant Khoury wrote a report to Chief Emanuel Gomes (“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. 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. The Plaintiff alleges that Sergeant Khoury completely fabricated the story due to Khoury's racial and ethnic animus against the Plaintiff.

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

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. 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. 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.

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. 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.

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. It is alleged that 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.

On or about December 10, 2013 the Plaintiff appealed his written disciplinary reprimand to Chief Gomes. 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. 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. 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. It is alleged that 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.

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

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. 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.

The Plaintiff filed a grievance of the decision of Chief Gomes upholding his written reprimand. A hearing was held before the City of Brockton Director of Personnel Maureen Cruise ("Director Cruise"). 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. 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.

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. 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.

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.

III. ARGUMENT

A. *The Defendants' Motion to Dismiss was Not Filed in Compliance with Local Rule 731(A)(2)*

The Defendants had a duty to confer about the proposed motion and to then certify that a conference took place. The Defendants did not confer and did not certify, in writing, that it had conferred prior to filing its motion to dismiss. The failure of the

Defendants to follow the Court's rules precludes the Defendants' motion to dismiss from being considered at this time.

B. *The Department Should be Estopped from Asserting that it is not the Proper Party*

The Defendant Department should be estopped from raising the issue that the proper party is the City of Brockton and not the Department. *See Otis v. Arbella Mut. Ins. Co.*, 443 Mass. 634, 639–40 (2005) (citing *Blanchet v. School Comm. of Westwood*, 427 Mass. 176, 184 (1998); *E. Cambridge Sav. Bank v. Wheeler*, 422 Mass. 621, 623–24 (1996); *Fayv. Fed. Nat'l Mtge. Ass'n*, 419 Mass. 782, 787–88 (1995)). Estoppel is appropriate in this case because the Plaintiff named the Department as the party defendant in his MCAD complaint and the Defendant Department failed to raise the issue that they were not the proper party defendant when it filed its Position Statement with the MCAD. In fact, the Department stated in its Position Statement that the Complainant, now the Plaintiff, has been an employee police officer of the Department since May 13, 1996. The Department was required by the MCAD regulations to assert all jurisdictional and other defenses which the Respondents, now Defendants, wished to raise. 804 CMR 1.10(8)(c). The Defendant Department failed to raise any defense that they were not a proper party at any point in the MCAD proceedings. The Department should not now attempt to somehow benefit from their failure to timely assert that only the City of Brockton is the proper party.

The Defendant Department cites the single case of *Stratton v. City of Boston*, 731 F.Supp. 42 (D. Mass. 1989) in support of their argument that the Department should be dismissed as a party. While the Department states in their brief that they are a separate

legal entity they cite no statute or regulation, nor do they present any documents to the Court to support the assertion.

The *Stratton* case was a case brought pursuant to 42 U.S.C. § 1983, and alleged unlawful and inhuman detention. In contrast, the instant case is an employment discrimination case against the Plaintiff's employer. The Department admitted in its MCAD Position Statement that it was the employer of the Plaintiff.

C. As an Alternative to Dismissal, the Plaintiff Should be Allowed to Amend the Complaint to Substitute the City of Brockton for the Department as a Party Defendant Even if the City of Brockton was not named as a Party in the Plaintiff's MCAD Complaint

As stated above, the Plaintiff asserts that the *Stanton* case is not applicable. However, if it is, the Court should follow the lead of Judge Keeton the Court should, as Judge Keeton did, and issue the following order.

(1). Direct the Clerk and the parties to delete the Police Department from the caption of the case and on the docket of the Court and all pleadings thereafter.

(2). The Plaintiff may amend his pleadings and allege claims previously alleged against the Brockton Police Department against the City of Brockton.

(3). That the City of Brockton is estopped from asserting, as a defense to the action that they were not named as a party in the MCAD complaint.

D. Conclusion

For all the reasons stated above the Court should deny the Defendant Department's motion to dismiss and allow the Plaintiff to amend his pleadings to allege claims made against the Department against the City of Brockton, as well as the technical amendment adding a prayer for relief (*See Exhibit 3*).

Respectfully Submitted,

The Plaintiff
By his Attorney,

/s/ Kevin G. Powers

Kevin G. Powers, BBO #405020
Rodgers, Powers & Schwartz LLP
111 Devonshire Street, Suite 400
Boston, MA 02109
(617) 742-7010

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2016, this document filed through the CM-ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Kevin G. Powers

EXHIBIT

1

The Commonwealth of Massachusetts
Commission Against Discrimination
One Ashburton Place, Boston, MA 02108
Phone: (617) 994-6000 Fax: (617) 994-6024

MCAD DOCKET NUMBER: 14BEM01208
FILING DATE: 05/19/14

EEOC/HUD CHARGE NUMBER: 16C-2014-01565
VIOLATION DATE: 12/10/13

Name of Aggrieved Person or Organization:

Francisco Baez
405 West Main Street
Avon, MA 02322
Primary Phone: (508)962-3667 ext. _____

Named is the employer, labor organization, employment agency, or state/local government agency who discriminated against me:

City of Brockton Police Department
Attn: Legal Department
7 Commercial Street
Brockton, MA 02302
Primary Phone: (508)941-0200 ext. _____

George Khoury
Attn: City of Brockton Police Department
7 Commercial Street
Brockton, MA 02302

Emanuel Gomes
Attn: City of Brockton Police Department
7 Commercial Street
Brockton, MA 02302

Paul Bonaca
Attn: City of Brockton Police Department
7 Commercial Street
Brockton, MA 02302

Wayne Sargo
Attn: City of Brockton Police Department
7 Commercial Street
Brockton, MA 02302

No. of Employees: 25+

Work Location: Brockton, MA

Cause of Discrimination based on:

National Origin, Dominican Republic; Race, Color, Hispanic.

The particulars are:

I, Francisco Baez, the Complainant believe that I was discriminated against by City of Brockton Police Department, George Khoury, Emanuel Gomes, Paul Bonaca, Wayne Sargo, on the basis of National Origin, Race, Color. This is in violation of M.G.L. 151B Section 4 Paragraph 1 and Title VI.

1. I am a Hispanic male who has worked for the City of Brockton's Police Department as a Patrolman since 1996. My parents are originally from the Dominican Republic. Since I began working for Respondent, there have never

- been any another other people of Dominican Republic decent working for the City of Brockton's Police Department.
2. George Khoury has always had a negative mentality toward minorities. Once while on patrol with him, he referred to Black people as "Niggers," Hispanics as "Spics," and white women who dated Black men as "White trash nigger lovers."
3. In or about 2008, Mr. Khoury and his cousin Robert Diliddo, a Narcotics Detective, performed a raid on a house whose owners were from the Dominican Republic. After inspecting their house, both Khoury and Diliddo used the Dominican flags they found in the house and displayed them as trophies on their desks. I felt this was very discriminatory and took the flags from their desks. They later apologized to me for this incident, but this deeply offended me. This shows that Sargent George Khoury, prior Chief Emanuel Gomes, Lieutenant Paul Bonaca, and Captain Wayne Sargo have always held a negative animus toward people of Hispanic descent, especially those from the Dominican Republic.
4. In or about 2011, Sargent Khoury asked me to speak to a fellow Hispanic officer concerning an alleged drug problem that another officer had. When I spoke to Sargent Khoury, I had mentioned that another White officer had a similar drug problem, but was rushed to a treatment program, while this opportunity had never been offered to other officers.
5. Over the course of working for Respondent, I have applied for multiple new positions. Some of these include positions in the Narcotics Division, CPR instructor (I have been certified through the military as well as Red Cross), General Detective, and the Gang Unit, most recently in March 2014. I have continually been passed over for these positions, which favor White men with less experience than I have. Paul Bonaca is the person who hires for these positions and has repeatedly denied me.
6. On or about September 13, 2013, I was passing through the booking area of our police station, when I passed by Sargent George Khoury. He told his supervisor, Paul Bonaca that I had bumped into him and acted "discourteous." He never approached me and told me these things before I was reprimanded for doing so. There was video footage of our interaction on that day, and the video had not showed me touching him in any way, nor us exchanging words. I was reprimanded by Wayne Sargo, the Captain of Operations, on December 10, 2013, at the direction of Chief Emanuel Gomes, with a Letter of Reprimand in my personnel file.
7. I appealed this Letter of Reprimand on or about December 10, 2013, with the City of Brockton. On or about April 16, 2014, I had my hearing with the City. On or about April 20, 2014, I was notified that it would be going to Arbitration.
8. Because of these reasons, I believe that I have been discriminated against based on race, color, and national origin by the City of Brockton Police Department. Sargent George Khoury, prior Chief Emanuel Gomes, Lieutenant Paul Bonaca, and Captain Wayne Sargo.

I hereby verify, under the pains and penalties of perjury, that I have read this complaint and the allegations contained herein are true to the best of my knowledge.


(Signature of Complainant)

The Commonwealth of Massachusetts
Commission Against Discrimination
One Ashburton Place , Boston, MA 02108
Phone: (617) 994-6000 Fax: (617) 994-6024

5/19/2014

Francisco Baez
405 West Main Street
Avon, MA 02322

RE: Francisco Bacz vs. City of Brockton Police
Department, George Khoury, Emanuel Gomes, Paul
Bonaca, Wayne Sargo
MCAD Docket Number: 14BEM01208
EEOC/HUD Number: 16C-2014-01565

Dear Complainant Party:

Please be advised that the Massachusetts Commission Against Discrimination (MCAD) has assigned Elizabeth Hickey to investigate the above referenced complaint of discrimination. The Commission's investigator will review the allegations in the complaint and will keep the parties informed of developments arising from that investigation.

The Respondent has been advised that it must provide you with a copy of its Position Statement. You are required to submit a Rebuttal to that Position Statement to the Commission within twenty-one (21) days after you receive the Position Statement.

In order to reduce the time necessary to investigate and resolve complaints of discrimination, the MCAD schedules an Investigative Conference with the parties shortly after the complaint is filed. Information about the Conference is included with this notice.

An Investigative Conference regarding the above complaint will be held at the Commission's Office, One Ashburton Place , Boston, MA at 02:30 PM on 08/19/14. You are required to attend this conference and your failure to do so will be taken as representing a lack of interest on your part in pursuing this claim.

If you have any questions pertaining to the Investigation, please contact Elizabeth Hickey at (617) 994-6065.

Very truly yours,

Elizabeth Hickey
Investigator

AFFIDAVIT OF FRANCISCO BAEZ

I, Francisco Baez, on my oath present the following in connection with my complaint with the Massachusetts Commission Against Discrimination against Brockton Police Department, and others:

1. I am a patrolman in the Brockton Police Department (BPD) and have served in that capacity since 1996. I obtained my position after receiving a passing grade in a Civil Service examination for the position of permanent police officer. Prior to my employment with BPD I was a patrolman with the Massachusetts Bay Transit Authority since 1993.
2. I am Hispanic, my parents having emigrated from the Dominican Republic.
3. I believe that I have been discriminated against by the former chief of BPD, now Captain Gomes, together with several other supervisors and superior officers because of my race and national origin and that, as a result of this discrimination I have been working in a hostile work environment.
4. The most recent act of discrimination occurred on December 10, 2013. At that time, Chief Gomes caused a letter of reprimand to be placed in my personnel file based on a complaint from Sgt. George Khoury.

5. Sgt. Khoury alleged that I had purposely bumped into him twice while in BPD Headquarters and had been discourteous to him. One of the areas where these acts were alleged to have occurred was covered by security cameras. A viewing of the video clearly shows that the actions alleged by Sgt. Khoury did not occur. Despite that fact, Lt. Paul Bonaca and Capt. Wayne Sargo sustained the charges and forwarded the complaint to Chief Gomes, who imposed the discipline. I would note that this was the first instance of formal discipline to appear in my personnel record.
6. In the past I have worked with Sgt. Khoury and he has displayed a negative attitude towards minorities, in my presence, on a number of occasions. I have heard him describe African-Americans as "niggers", Hispanics as "spics" and Caucasian women that might be with minorities as "nigger-lovers". He and I have had words regarding his obvious racist attitudes.
7. When Sgt. Khoury worked in the Narcotics Division as a detective he was involved in a raid. After the raid, he and another detective , Robert Diliddo (Khoury's cousin) proudly displayed several Dominican flags on their desks as trophies. I removed these flags from the desks since the inference was that all Dominicans were drug dealers (an attitude that is shared by many in the Narcotics Division).
8. On another instance, Sgt. Khoury requested that I speak to an Hispanic officer who was upset about the treatment of another

officer believed to have a drug problem. The sergeant became very verbally angry with me when I called his attention to the fact that a Caucasian detective with a similar problem was rushed to a treatment program while this opportunity had not been offered to the Hispanic officer in question.

Caucasian

9. Due to the attitude displayed by Sgt. Koury, I have tried my best to avoid him wherever possible.
10. In the past, I have twice applied for a position in the Narcotics Division in which there were no Hispanic officers at the time. I have had Drug Enforcement Administration training both basic and advanced. Despite the fact of my training and seniority, I have been passed over for Caucasian applicants for the position.
11. I have applied for positions in the Gang Unit. At the time, there were no Hispanics in the Unit. I was passed over for a Caucasian officer with less time on the job and less contact with the community.
12. I have applied for the position of CPR instructor. I was certified from the military, as well as the Red Cross. I was passed over for two trained Caucasians who then had to be sent out for training.
13. I have repeatedly applied for the position of general detective but have been passed over in favor of white officers, often with less experience.

14. The Brockton Police Department, despite the fact that the City of Brockton is a “minority majority” city, does not have any minority supervisors.

Subscribed under the pains and penalties of perjury this 14th day of May, 2014.

Francisco Baez

EXHIBIT

2

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

FRANCISCO BAEZ,)
Complainant,)
)
) MCAD Docket No. 14BEM01208
vs.) EEOC/HUD No. 16C-2014-01565
)
BROCKTON POLICE DEPARTMENT,)
GEORGE KHOURY, EMANUEL GOMES,)
PAUL BONANCA, WAYNE SARGO,)
Respondents.)

POSITION STATEMENT OF RESPONDENTS

Now come the Respondents, Brockton Police Department ("BPD"), George Khoury ("Khoury"), Emanuel Gomes ("Gomes"), Paul Bonanca ("Bonanca") and Wayne Sargo ("Sargo") (collectively "Respondents"), and hereby submit the following Position Statement in response to the Charge of Discrimination filed by the Complainant, Francisco Baez ("Complainant"), alleging that the Respondents discriminated against him on the basis of national origin, race and color in violation of M.G.L. c. 151B, §4, Par. 1 and Title VII. The Complainant submits allegations to support his Complaint in the eight (8) numbered paragraphs set forth therein. The Respondents categorically deny Complainant's claims of discrimination on the basis of national origin, race and/or color and state that the allegations set forth in the Charge of Discrimination (paragraphs 1-8) are false and/or misleading. Respondents will demonstrate in this statement, along with supporting documentation, that Complainant cannot establish a prima facie case of discrimination on any basis and that any action taken by Respondents during the course of Complainant's employment was justified, legitimate and non-discriminatory.

Background

1. Respondent BPD is a Department of the City of Brockton and is responsible for the maintaining and preserving the peace, order and cleanliness of the City and the enforcement of the Revised Ordinances of the City of Brockton, and the laws of the Commonwealth of Massachusetts and the United States of America.
2. Complainant has been an employee police officer of the BPD since May 13, 1996.
3. Upon information and belief, Complainant is a Hispanic male of Dominican descent.
4. Respondent, Khoury has been a police officer of the BPD since October 30, 1995. He is currently a Sergeant, having been promoted to this position on March 27, 2009.

5. Respondent, Gomes has been a police officer of the BPD since April 28, 1986. He served as Chief of Police for the BPD from 2012 through 2014. Thereafter, he was placed back into his current position as Captain, a position he was promoted to on April 18, 2002.
6. Respondent, Bonanca has been a police officer of the BPD since May 13, 1996. He is currently a Lieutenant having been promoted to this position on July 10, 2008.
7. Respondent, Sargo has been a police officer of the BPD since March 17, 1980. He is currently a Captain having been promoted to this position on October 1, 2007.
8. Complainant filed this action with the Equal Employment Opportunity Commission and Massachusetts Commission Against Discrimination on May 19, 2014 alleging that Respondents discriminated against him on the basis of national origin, race and color in violation of M.G.L. c. 151B, §4, ¶1 and Title VII.
9. Respondents deny that Complainant was discriminated against by BPD or any agent or employee of BPD, on the basis of national origin, race and/or color in violation of M.G.L. chapter 151B, § 4, Title VII, or any other state or federal civil rights statutes.
10. Respondents state that Complainant's actions are retaliatory in nature following the denial of a grievance which he filed with the City's Hearing Authority, a decision which was issued weeks prior to the filing of this Complaint.

Dispute of Complainant's Allegations as
Contained in Charge of Discrimination, Paragraphs 1-8

11. As Complainant has set forth numerous allegations in the eight (8) numbered paragraphs contained within his MCAD Complaint, Respondents will address each individually as follows:
 1. I am a Hispanic male who has worked for the City of Brockton's Police Department as a Patrolman since 1996. My parents are originally from the Dominican Republic. Since I began working for Respondent, there have never been any other people of Dominican Republic descent working for the City of Brockton's Police Department.

Response: Respondents admit that Officer Baez is a Hispanic male of self-proclaimed Dominican descent and has been employed as a patrolman since 1996 with the Brockton Police Department. With respect to whether BPD has hired any other people of Dominican Republic descent, Respondents state that they would have no way of knowing whether an applicant was of Dominican Republic descent. Forms completed by applicants and provided by the City of Brockton to the Commonwealth's Division of Human Resources only reference five federally

recognized groups/classifications including Ethnic Code 2-White, 3- Black, 4-Hispanic, 5-Asian or Pacific Islander and 6- American Indian or Alaskan Native of which applicants choose one. Furthermore, certification lists sent from the Human Resources Division of the Commonwealth only list candidates as "D-Non-Minority" or "C-Minority". While the BPD may be aware that an applicant is of Hispanic origin due to the completion of said forms, they are not made aware of each candidate's specific nationality. Respondent, BPD has consistently hired Hispanic officers and Complainant's assertion of discrimination for failure to hire Dominican Republic candidates is baseless and cannot be substantiated.

2. George Khoury has always had a negative mentality toward minorities. Once while on patrol with him, he referred to Black people as "Niggers," Hispanics as "Spics" and white women who dated Black men as "White trash nigger lovers."

Response: Khoury vehemently denies the allegations contained in Paragraph 2 of Complainant's complaint and states that he is appalled by Baez's accusations. Khoury has never had any complaint from a fellow officer and/or superior of racial animus of any nature. Furthermore, he has never been the Respondent in a charge of discrimination based on racial animus through the MCAD in the nearly twenty (20) years he has been a member of the BPD. Finally, Khoury was only on patrol with Baez on a few occasions in or around 1997 and this is the first time Khoury has heard this accusation made. Baez made no written record of Khoury's alleged racial comments and made no report, either orally or in writing, to any superior officer regarding this behavior. Accordingly, Complainant's allegation is unsupported by any evidence and is statutorily barred as having occurred more than 300 days prior to the filing of this Complaint. (G.L. c. 151B, §5)

3. In or about 2008, Mr. Khoury and his cousin Robert Diliddo, a Narcotics Detective, performed a raid on a house whose owners were from the Dominican Republic. After inspecting their house, both Khoury and Diliddo used the Dominican flags they had found in the house and displayed them as trophies on their desks. I felt this was very discriminatory and took the flags from their desks. They later apologized to me for this incident, but this deeply offended me. This shows that Sergeant George Khoury, prior Chief Emanuel Gomes, Lieutenant Paul Bonanca and Captain Wayne Sargo have always held a negative animus toward people of Hispanic descent, especially those from the Dominican Republic.

Response: Respondent Khoury states that Robert Diliddo is not his cousin and that they are in no way related to one another. Furthermore, while Khoury was involved in a number of raids of homes in 2008, he denies ever taking a flag, Dominican or otherwise from any property. While he cannot confirm the year in which this alleged incident occurred, Khoury states that at one time he had three

flags on his desk, an American flag, a Puerto Rican flag and a Dominican flag. He further submits that the Puerto Rican flag and Dominican flag were gifts from an informant he had been working with and were in no way displayed as to offend any individual. He became aware that Baez removed the flag from his desk upon returning to work the following day. At no time did Baez discuss the matter with Khoury prior to removing the flag. Even following removal, Baez made no effort to explain to Khoury why he had done so. In fact, there was no written record of any complaint made by Baez to any member of the BPD as a result of this alleged event. Khoury denies ever apologizing to Baez following the alleged incident and states again that he and Baez had absolutely no conversation regarding the flags prior to or following their removal and therefore no apology was warranted.

Furthermore, Complainant somehow concludes that based on the alleged acts of Khoury and Diliddo that Gomes, Bonanca and Sargo "have always held a negative animus toward people of Hispanic descent." It is impossible to discern how Complainant arrives at this conclusion, specifically where there is no allegation or evidence that he ever discussed and/or complained of the incident to the named officers. Again, Complainant's allegation cannot be supported by any evidence and is statutorily barred as having occurred more than 300 days prior to the filing of this Complaint. (G.L. c. 151B, §5)

4. In or about 2011, Sergeant Khoury asked me to speak to a fellow Hispanic officer concerning an alleged drug problem that another officer had. When I spoke to Sergeant Khoury, I had mentioned that another White officer had a similar drug problem, but was rushed to a treatment program, while this opportunity had never been offered to other officers.

Response: Khoury emphatically denies all allegations contained in Paragraph 4 of Complainant's Complaint. Khoury states that he would never ask an inferior officer to speak to another officer regarding a suspicion of drug use; rather, Khoury contends that as a Sergeant, he would be the one to approach the topic of substance abuse with a suspected user. Furthermore, an investigation of internal records revealed no history of Hispanic officers suffering from substance abuse problems in or around 2011. Yet again, Complainant's allegation cannot be supported by any evidence and is statutorily barred as having occurred more than 300 days prior to the filing of this Complaint. (G.L. c. 151B, §5)

5. Over the course of working for Respondent, I have applied for multiple new positions. Some of these include positions in the Narcotics Division, CPR instructor (I have been certified through the military as well as Red Cross), General Detective and the Gang Unit, most recently in March 2014. I have continually been passed over for these positions, which favor White men with less experience than I have. Paul Bonanca is the person who hires for these positions and has repeatedly denied me.

Response: Respondents state that race, national origin, gender, sexual orientation, disability, or otherwise are never factored into during the hiring process. (*Exhibit A- Equal Employment Policy*) In addition, Complainant's assertion that Respondent Bonanca hires for these positions is false. Under Article 39 of the Brockton Police Association contract with the City of Brockton (specialist vacancies), a committee consisting of management and non-management must be formed to interview all applicants. (*Exhibit B- Article 39, Specialist Vacancies*)

Complainant references his application for one of the three detective Gang Unit positions that were filled earlier this year (2014). Respondents state that the interview committee for these positions consisted of Respondent Bonanca, Gang Unit Sergeant Frank Vardara, Gang Unit member Erik Hilliard, and Gang Unit member George Almeida. All of the applicants for the Gang Unit were interviewed by this committee. Furthermore, the decision regarding which candidates should be submitted to the Chief for the final decision was made by the committee collectively. While Bonanca believed Complainant gave a good interview, the final three individuals chosen performed far better during the interview process than Complainant. Finally, while Complainant alleges that these positions "favor White men," it is important to note that only one of the three hires promoted to the Gang Unit was white- James Cronshaw (White), Callie Royster (Black), Frank Lopez (Hispanic).

Complainant also references the position of General Detective. There was a vacancy for which Complainant applied in early 2012. A Committee was formed as a mix of management and patrol personnel consisting of Respondent Bonanca, Respondent Khoury, Officer Legrice and Detective Clark. Seven individuals applied for the position of General Detective. Statistics consisting of past arrests, overall productivity, sick time abuse, etc. of each applicant were gathered and reviewed by the committee. Interviews consisting of identical questions were conducted of each candidate. Following the interview, and review of all records, Officer Graham was offered the promotion on April 23, 2012. While the Complainant did "good" during the interview, the committee felt that Graham's interview was "excellent". Committee members were somewhat concerned with Baez's response regarding his work ethic. When asked "on a scale of 1-10, 1 being the worst, 10-the best, where do you think you would rate?", Complainant rated his work ethic as a "7" in stark opposition to other candidates who all stated between nine and ten. (*Exhibit C- General Detective records*)

Finally, with respect to the CPR Instructor position, interviews were conducted in or around June of 2012 by a committee consisting of Lt. Lafrance, Sgt. Linehan and Officer Amaral (union representative). While the committee admits that

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Finally, with respect to the CPR Instructor position, interviews were conducted in or around June of 2012 by a committee consisting of Lt. Lafrance, Sgt. Linehan and Officer Amaral (union representative). While the committee admits that

Complainant was given fair consideration for the position, they felt that he did not interview well as compared to the chosen candidates.¹

Currently, the detective division of the BPD, consisting of general detectives, narcotics detectives and the gang squad, consists of 29 officers, 25% of which are minority. (*Exhibit D-Detective Division Breakdown*) In addition, Complainant's allegations with respect to the General Detective and CPR Instructor positions are statutorily barred as hires for these positions occurred more than 300 days prior to the filing of this Complaint. (G.L. c. 151B, §5)

6. On or about September 13, 2013, I was passing through the booking area of our police station, when I passed by Sgt. George Khoury. He told his supervisor, Paul Bonanca that I had bumped into him and acted "discourteous." He never approached me and told me these things before I was reprimanded for doing so. There was video footage of our interaction on that day, and the video had not showed me touching him in any way, nor us exchanging words. I was reprimanded by Wayne Sargo, the Captain of Operations, on December 10, 2013, at the direction of Chief Emanuel Gomes, with a Letter of Reprimand in my personnel file.

Response: On September 13, 2013, Respondent Khoury, in a letter dated September 15, 2013 to then-Chief Gomes, states that Baez acted in a rude and unprofessional manner when he, on two separate occasions, intentionally bumped into Khoury while walking past him without acknowledging or apologizing for the contact. Within his letter, Khoury indicates that this is not the first instance in which Baez's conduct has been, without cause, disrespectful and unprofessional towards himself and other superior officers. (*Exhibit E-Correspondence from Khoury to Chief Gomes*)

Thereafter, on September 17, 2013, Cpt. Sargo requested that Complainant respond in writing regarding his duties on September 13, 2013 and any interactions he may have had with Sgt. Khoury on that date. (*Exhibit F-Correspondence from Cpt. Sargo to Baez*) In his response, Complainant states that he had no involvement or interactions with Khoury on September 13, 2013. (*Exhibit G*)

Following a thorough review of both Khoury and Baez's written accounts, Cpt. Sargo ultimately issued Complainant a Written Reprimand for violation of the BPD Rules and Regulations, specifically Conduct Unbecoming an Officer (1.02) and Insubordination (1.03) for his "discourteous and contemptuous" behavior in the workplace. (*Exhibit H-Written Reprimand & Exhibit I-BPD Rules and Regulations 1.02-1.03*)

¹ None of the officers constituting the committee for purposes of hiring the CPR Instructor have been named as Respondents in this matter.

7. I appealed this Letter of Reprimand on or about December 10, 2013, with the City of Brockton. On or about April 16, 2014, I had my hearing with the City. On or about April 20, 2014, I was notified that it would be going to Arbitration.

Response: On December 10, 2013, William Healy, President of the Brockton Police Association, filed a Step 2 Grievance with then-Chief Gomes on behalf of Complainant with regard to Sargo's Written Reprimand. (*Exhibit J-Grievance Request*)

On December 12, 2013, then-Chief Gomes responded, denying Complainant's grievance and concurring with Cpt. Sargo's findings and recommendations for a letter of reprimand. He goes on to state: "Had it not been for Captain Sargo's compassionate recommendation, I would have suspended Officer Baez for his continuous pattern of unacceptable behavior as a Brockton Police officer." (*Exhibit K-Step 2 Grievance Denial*)

As a result of this denial, Healey filed a Step 3 Grievance with the City of Brockton's Hearing Authority. A hearing was scheduled for April 16, 2014 at which time both sides were expected to outline their positions and present any evidence and/or documents as exhibits. (*Exhibit L-Step 3 Grievance Request and Hearing*)

The Step 3 Grievance hearing was held on April 16, 2014 at which time the Complainant, by and through his Union Representative, Attorney Howard Lenow, and the BPD, by and through counsel for the City of Brockton, presented their positions along with supporting evidence. On April 17, 2014, the Hearing Officer, after weighing all evidence and testimony presented, denied Complainant's grievance, stating that his behavior toward Sgt. Khoury was improper and in violation of Articles 1.02 and 1.03 of the BPD Rules and Regulations. (*Exhibit M-Step 3 Grievance Denial*)

8. Because of these reasons, I believe that I have been discriminated against based on race, color and national origin by the City of Brockton Police Department, Sgt. Khoury, prior Chief Gomes, Lt. Bonanca and Capt. Sargo.

Response: Respondents deny Complainant's allegations of discrimination and contend that he cannot support his claim with nothing more than baseless accusations. The BPD offers equal employment opportunities to all candidates without regard to race, color, sex, religion, creed, national origin, ancestry, sexual orientation, disability, Vietnam veteran's status, marital status and/or age. This policy is applied to all aspects of employment including recruitment, hiring, training, development, promotion.... (*See Exhibit A*) Most recently, this policy was converted to CD in 2008 and was distributed to every member of the Patrolmen's union requiring signatures from each. The CD, which contains

pertinent information such as the union contract, rules, regulations, policies, procedures, etc., is downloaded in the BPD computer system and can be accessed from any terminal in the building.

On December 21, 2008, Complainant refused to sign an acknowledgment of receipt of BPD's Policies CD. (*Exhibit N-Baez Refusal to Sign*) Baez provided no documented reason for his refusal but eventually signed following a formal request by his superior. (*Exhibit O-Correspondence from Sgt. Stanton to Baez*)

Respondents' Argument/Analysis

The majority of Complainant's claims must not be considered as they were not filed within 300 days of the occurrence of the alleged discriminatory act as required by G.L. c. 151B, §5.

A charge of discrimination must be filed within three hundred (300) days of the occurrence of the discriminatory act. G.L. c. 151B, §5. While the rules of "relation back" are liberal, they are not so broad as to encompass any claim that was known to the Complainant that could have been brought in a timely fashion. Mass.R.Civ.P. 15(c). In the instant case, the only conduct alleged by Complainant which is not barred by the limitations period is that regarding the Written Reprimand following the incident with Khoury on September 13, 2013. The final grievance denial was issued on April 20, 2014 and pursuant to MCAD's tolling of limitations periods during grievance proceedings, Complainant is well within the limitations period to file this Complaint based on that particular incident.

However, the remaining claims (paragraphs 1-5) reference alleged incidents in 1997, 2008, 2011 and 2012. Complainants who demonstrate a continuing violation may assert claims for conduct falling outside the limitations period, *unless he knew or should have known more than six months prior to MCAD filing that the work situation was pervasively hostile and unlikely to improve and a reasonable person would have filed an MCAD Complaint. Clifton v. Massachusetts Bay Transportation Authority* 445 Mass. 611 (2005).

In this matter, Complainant alleges that Khoury exhibited racist tendencies and spoke in a vile manner to him during their patrols in 1997. (*See MCAD Complaint at ¶2*) This incident was never reported to BPD, or any officer and/or agent thereof, in any manner. Thereafter, Complainant alleges an act of racial discrimination by Khoury which "deeply offended" him in 2008. (*See MCAD Complaint at ¶3*) Again, no report of this incident was made at that time, written or oral. Failures to transfer Complainant into the Detective Division due to alleged racial bias occurred in 2012 with the exception of the Gang Unit transfer of 2014. With respect to the Gang Unit, it has been shown that although Complainant contends that the Detective Division "favors white men," the three available positions were filled by one White, one Black and one Hispanic officer. The other positions were offered to candidates who performed better during interviews as determined by interview committees consisting of management and non-management members of the BPD. Following receipt of the denials for each position,

Complainant never requested an explanation for same. He further never initiated any claims of discrimination with MCAD following these denials.

It is clear that any reasonable person under the circumstances alleged by Complainant would have filed a discrimination claim with MCAD or, at the very least, would have reported the incidents to a superior officer; Complainant failed to do either. Conveniently, it was not until after his Written Reprimand at the request of Khoury and denial of his grievance for same, that Complainant filed a charge of discrimination with MCAD.

Accordingly, all incidents alleged between the years of 1996 and 2012 must be dismissed as they are statutorily barred pursuant to G.L. c. 151B, §5.

The Complainant cannot demonstrate a prima facie case of discrimination nor can he establish that the conduct of the Respondents was anything but legitimate and nondiscriminatory.

Respondents concede that Dominican Republic ancestry would establish Complainant's status as a member of a protected racial classification. However, it is well-established that "merely juxtaposing the fact of one's race with an instance of discrimination is insufficient to state a claim [of discrimination]." *Dartmouth Review v. Dartmouth College*, 889 F.2d 13, 19 (1st Cir. 1989). Even if Complainant's allegations were accurate, Complainant has failed to establish a prima facie case of race, national origin and/or color-based discrimination because he has not established that he was discriminated against based on these specific characteristics or that the Respondents would not have acted as they had but for the unlawful discrimination.

If Complainant was able to establish a prima facie case, the Respondents are given the opportunity to rebut the presumption of discrimination by articulating a legitimate and non-discriminatory reason for any adverse employment action. *Wheelock College v. MCAD*, 371 Mass. 130, 136 (1976). Respondents have denied Complainant's allegations where warranted and have explained legitimate and non-discriminatory reasons for other employment actions alleged (more qualified, diverse members of BPD promoted over Complainant and conduct unbecoming an officer resulting in written reprimand). Once an employer has proposed a reason and presented supporting facts, the presumption of discrimination is dispelled. The employer need not persuade the trier of fact that it was correct in its belief. The reasons given for a decision may be unsound or even absurd, but if they are not discriminatory and if plaintiff does not prove they are pretexts, the plaintiff cannot prevail. *Blare v. Husky Injection Molding Systems Boston, Inc.*, 419 Mass. 437, 445 (1995). Respondents have denied all allegations made by Complainant regarding racial animus exhibited by members of the BPD and continue to contend that any adverse employment action against Complainant resulted from his own unprofessional, disrespectful and discourteous manners toward Respondents and not from any racial bias held by them.

Complainant cannot offer any proof, other than his unsupported assertions, that Respondents' proffered explanations as set forth herein are pretext. The law has provided that any uncertainties must be decided in favor of the Respondent. "The law . . . requires some measure of proof, and in a civil case it is the claimant who bears the burden of proof. When the word of

one party runs up against the word of another, it is not the law's place to comment as to whose word means more. *The defaults are set to favor the defendant, . . .* (emphasis added)." *Scott v. Macy's East, Inc.*, 2002, WL 31439745 (D. Mass. 2002) (J. Gertner)(security officers' arrest of black credit card holder for disorderly conduct did not violate Massachusetts civil rights statute).

Affirmative Defenses

1. The Complaint fails to state a claim against the Respondent upon which relief can be granted.
2. The Complaint is barred by the 300 day limitations period set forth in G.L. c. 151B, §5.
3. The Complaint fails to state a claim against any individual members of the City of Brockton Police Department in their official capacities upon which relief can be granted.
4. The Complaint fails to state a claim against any individual members of the City of Brockton Police Department in their individual capacities upon which relief can be granted.
5. The Respondents state that there is no showing of an objectively serious injury to the Complainant to warrant his claim.
6. The Respondents state that the allegations of the Complaint are frivolous and without merit and this action should be dismissed.
7. The Respondents state that the individual member(s) of the Brockton Police Department have qualified immunity as they at all times were acting reasonably and within the scope of their authority in good faith and their conduct did not violate clearly established constitutional or statutory rights which a reasonable person would have known.
8. Respondents hereby reserve the right to supplement its list of Affirmative Defenses. The absence of any Affirmative Defense is not intended to be a waiver of same and can and will be asserted at a later time with proper notice to all parties.

CONCLUSION

As the Complainant has not set forth the requisite elements of a prima facie case of discrimination in violation, his claim against Respondents must be dismissed. For the foregoing reasons, Respondents request a finding of lack of probable cause and dismissal of all charges against the Respondents.


Karen A. Fisher, Esq.
Assistant City Solicitor, BBO# 672751
City Hall, 45 School Street
Brockton, MA 02301
(508) 580-7110

Dated: July 11, 2014

I hereby certify under the pains and penalties of perjury that I have read this Position Statement of the Respondents and the statements contained herein are true to the best of my information, knowledge and belief.


TRACY HARRINGTON
Brockton Police Department
Internal Affairs Investigator

Dated: July 14, 2014

CERTIFICATE OF SERVICE

I, Karen A. Fisher, Assistant City Solicitor for the City of Brockton, certify that I have this date forwarded a copy of the foregoing document to all parties via postage prepaid, first-class mail, to:

Keith Healey, Administrative Assistant
Massachusetts Commission Against Discrimination
One Ashburton Place
Boston, MA 02108-1518

and

Francisco Baez
405 West Main Street
Avon, MA 02322



KAREN A. FISHER, ESQ.
Assistant City Solicitor
City of Brockton
City Hall - 45 School Street
Brockton, MA 02301
(508) 580-7110

Date: July 14, 2014

EXHIBIT

3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRANCISCO BAEZ, }
Plaintiff, }
v. } No.: 16-CV-11865-GAO
THE CITY OF BROCKTON; }
GEORGE KHOURY; }
EMANUEL GOMES; and }
WAYNE SARGO, }
Defendants. }

**THE PLAINTIFF'S PROPOSED AMENDED 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. § 1333(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. § 1391, 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 is a duly incorporated city under the laws of the Commonwealth of Massachusetts, located in the County of Plymouth, Commonwealth of Massachusetts. The City of Brockton Police Department (the “Department”) is the municipal police department of the City of Brockton, County of Plymouth, Commonwealth of Massachusetts. The Brockton Police Department is a department of the City of Brockton.

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, nor former Chief Gomes were ever 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

WHEREFORE, the plaintiff demands that this Court order:

- A. That the defendants compensate him for any loss of wages and/or benefits, incurred as a result of their discriminatory and/or retaliatory conduct;
- B. That the plaintiff be awarded an amount of money which will fairly compensate him for his emotional and physical pain and suffering;

- C. That the defendants pay the plaintiff's costs and attorneys' fees resulting from this action;
- D. That the plaintiff be awarded punitive damages;
- E. That the defendants pay the plaintiff interest on any judgment entered from the time of the filing of this suit; and
- F. Such other relief as may be just and proper and/or which will make the plaintiff whole.

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